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EDITORIAL- MAIDEN EDITION

It is with excitement and great pride that I welcome readers to the inaugural edition of *Mediation Scope*, an online journal published by the Institute of Chattered Mediators and Conciliators (ICMC), dedicated to advancing the practice, scholarship, and indebt understanding of mediation.

The launch of this journal marks a significant milestone in ICMC's journey toward embedding mediation more firmly within the fabric of dispute resolution in Nigeria and globally. In a world increasingly characterized by complexity, diversity, and rapid change, with innovations in Artificial Intelligence and the challenges it presents, mediation offers a pathway to dialogue, mutual respect, and sustainable peace. Our mission is to provide a platform where ADR practitioners, academics, policymakers, and students can exchange ideas, share experiences, and contribute to the evolving body of knowledge in this vital field.

This maiden edition brings together contributions that reflect the breadth and depth of mediation practice. From theoretical explorations of mediation's role in modern justice systems, to case studies highlighting its impact in communities and organizations, it also captures the impact of technology on the practice of mediation, the evolution of ADR in the era of Artificial Intelligence, legal advocacy in mediation practice, to proactive compliance strategies for mediators in cross-border mediation in light of data protection and other issues. The articles herein demonstrate the versatility of mediation across various contexts.

I extend my gratitude to our contributors, reviewers, and editorial team whose dedication has made this edition possible. I must state that the response from contributors has been overwhelming, as we have received several manuscripts. Unfortunately, only a few could make it to this maiden edition, while other submissions are currently being considered for publication in subsequent edition. I also want to thank our readers; we look forward to your engagement and feedback to enable us collectively shape the future of Mediation Scope.

We envision this journal not merely as a repository of articles, but as a living medium for dialogue and to encourage innovation in mediation practice. We believe that together, we can build a culture where conflicts are not feared but embraced as opportunities for growth and transformation.

May this maiden edition serve as the beginning of a long and fruitful journey toward deepening the reach and impact of mediation in Nigeria and globally.

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REDEFINING LEGAL ADVOCACY
THE DUTY OF OPPOSING COUNSELS IN FAMILY MEDIATION PROCEEDINGS IN NIGERIA

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Abstract

Family disputes involving divorce and child custody represent some of the most emotionally charged litigations in Nigerian courts. While mediation offers significant benefits for resolving these sensitive matters, the role and duties of opposing counsels during the mediation process remain largely undefined, often undermining effectiveness.

This article proposes a comprehensive framework establishing specific duties for legal practitioners representing parties in family mediation, including obligations to encourage good faith participation, facilitate disclosure, and prioritise child welfare. The proposed model incorporates innovative cost-sharing mechanisms ensuring universal access and accommodates both in-person and remote mediation formats.

Drawing from international best practices and Nigerian legal principles, this framework seeks to transform adversarial legal representation into collaborative advocacy that serves families' long-term interests while maintaining professional ethical standards.

I. Introduction

Every year, thousands of Nigerian families navigate painful dissolution of marriages through an adversarial court system that often exacerbates conflict rather than heal it. In Lagos State alone, family courts processed over 3,200 divorce petitions in 2023, with custody disputes featuring in approximately 65% of cases involving minor children.[1]

While mediation offers a path towards more amicable resolution, the undefined role of legal counsel during this process frequently undermines its potential benefits,

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[1] Lagos State Judiciary, Annual Report 2023: Family Division Statistics (2023, Lagos State Judiciary) at 47-52.

leaving families trapped in protracted litigation that serves neither their emotional nor financial interests.

The current approach to family law practice in Nigeria remains predominantly adversarial, with opposing counsel often viewing mediation as a preliminary skirmish before the "real battle" in court. This mindset not only undermines the transformative potential of mediation but actively harms the very families these legal professionals are meant to serve. Children, who have no voice in their parents' decision to divorce, bear the greatest cost of this adversarial approach, suffering long-term psychological and developmental consequences from prolonged parental conflict.[2]

This article proposes a fundamental reimagining of the lawyer's role in family mediation proceedings. Rather than mere advocates for positional bargaining, legal counsel should serve as facilitators of resolution, bound by specific professional duties that prioritise family healing and child welfare.

The proposed framework establishes clear obligations for opposing counsel during mediation, implements innovative cost-sharing mechanisms to ensure universal access, and provides practical guidance for both in-person and remote mediation formats.

The transformation of legal advocacy in family mediation is not merely desirable, it is essential. As Nigerian society grapples with rising divorce rates and increasing recognition of children's rights, the legal profession must evolve to meet families where they are, offering healing rather than harm, collaboration rather than combat.

II. The Current Landscape: Challenges in Nigerian Family Mediation

Adversarial Culture in Family Law Practice

The Nigerian legal system's adversarial foundation, inherited from English common law, serves many purposes effectively but proves particularly ill-suited to family disputes. Unlike commercial litigation where parties typically seek to maximise individual gain, family disputes require solutions that preserve ongoing relationships, especially where children are involved.[3] Yet Nigerian family law practice continues

[2] Paul R. Amato, "The Impact of Family Formation Change on the Cognitive, Social, and Emotional Well-being of the Next Generation" (2005) 15 *The Future of Children* 75, at 89-92.

[3] John Lande, "Possibilities for Collaborative Law: Ethics and Practice of Lawyer Disqualification and Process Control in a New Model of Lawyering" (2003) 64 Ohio State Law Journal 1315, at 1320-1325.

to treat divorce and custody matters as zero-sum games, with legal counsel trained to "win" rather than to heal.

This adversarial culture manifests in several problematic ways during mediation attempts. Counsel often attend mediation sessions as advocates for predetermined positions rather than facilitators of mutual understanding. Discovery becomes a weapon rather than a tool for transparency, with parties withholding financial information or making exaggerated claims about the other parent's fitness. The result is mediation that mirrors courtroom combat, defeating the process's collaborative purpose.

Undefined Professional Duties During Mediation

The Rules of Professional Conduct for Legal Practitioners 2007 provides extensive guidance for courtroom advocacy but offers little direction for lawyers participating in mediation.[4] This regulatory gap creates uncertainty about professional obligations during mediation and allows counsel to default to adversarial tactics that may be appropriate in litigation but destructive in mediation.

Without clear duties, lawyers face competing pressures. They must zealously advocate for their clients whilst simultaneously supporting a process that requires compromise and mutual understanding. This tension often resolves in favour of traditional advocacy, as lawyers fear that co-operative behaviour during mediation might be perceived as inadequate representation.

Cost Barriers to Mediation Access

Perhaps the most significant barrier to effective family mediation in Nigeria is cost. Private mediation services typically charge between ₦150,000 to ₦500,000 per case, placing them beyond reach for many middle-class families, let alone those with limited resources. When combined with legal fees, mediation can become prohibitively expensive, forcing families into court-based resolution that is often slow----------

The current "each party pays their own costs" model assumes equal financial capacity that rarely exists in practice. Divorce frequently involves one party with significantly greater financial resources, creating power imbalances that undermine mediation effectiveness. Without mechanisms to address these disparities, mediation remains

[4] Rules of Professional Conduct for Legal Practitioners 2007, Rules 15-24 (addressing courtroom conduct but offering limited guidance for alternative dispute resolution participation).

accessible primarily to wealthy families who could afford prolonged litigation anyway.

Impact on Child Welfare

Children suffer most from the current system's inadequacies. Research consistently demonstrates that parental conflict, rather than divorce itself, causes the most significant harm to children's psychological and social development.[5] Every month that parents remain locked in adversarial proceedings represents continued trauma for their children, yet the current legal framework provides no special protections or expedited processes for cases involving minors.

Nigerian family courts are beginning to recognise children's rights more explicitly, with recent decisions emphasising the paramountcy of child welfare in custody determinations. However, this recognition has not yet extended to mediation practice, where children's interests often become bargaining chips rather than paramount considerations.

III. Proposed Framework: Duties of Opposing Counsels

A. Pre-Mediation Duties

Duty to Inform and Advise

Every legal practitioner representing a party in a family dispute involving divorce or child custody should have an affirmative duty to inform their client about mediation options and their potential benefits.[6] This information should be provided in writing within 30 days of engagement and should include:

- A clear explanation of the mediation process and how it differs from litigation
- Statistical information about mediation success rates in similar cases
- Estimated costs for both mediation and continued litigation
- Specific benefits for children when parents resolve disputes amicably
- The client's right to legal representation during mediation

This duty ensures that parties make informed decisions about dispute resolution options rather than defaulting to litigation due to lack of information.

Client Assessment and Preparation

[5] E. Mavis Hetherington and John Kelly, For Better or for Worse: Divorce Reconsidered (2002, W.W. Norton & Company) at 6-8.

[6] Section 11 of the Matrimonial Causes Act (MCA), Cap M7, Laws of the Federation of Nigeria 2004 indeed imposes a duty on legal practitioners to take reasonable steps toward amicable settlement before bringing matrimonial proceedings (such as divorce) to court.

Counsel should assess their client's readiness for good faith mediation participation. This assessment should consider:

- The client's emotional state and ability to engage constructively
- Any history of domestic violence that might make mediation inappropriate[7]
- Financial circumstances that might affect mediation accessibility
- Cultural or religious considerations that might influence mediation effectiveness

Where assessment reveals barriers to effective mediation, counsel should work to address these barriers or, in cases of domestic violence, advise against mediation entirely.

B. During Mediation Duties

Good Faith Advocacy

Counsel should have an explicit duty to ensure their client participates in mediation in good faith. This includes:

- Encouraging honest communication and genuine consideration of settlement proposals
- Discouraging tactics designed to frustrate or delay the mediation process
- Advising clients when their positions are unreasonable or likely to harm long-term family relationships
- Supporting the mediator's efforts to facilitate constructive dialogue

Good faith participation does not require counsel to abandon zealous advocacy but rather to channel that advocacy towards constructive resolution rather than positional bargaining.

Collaborative Information Sharing

Family mediation requires transparency about financial circumstances, parenting capabilities, and other relevant factors. Counsel should have a duty to facilitate appropriate disclosure whilst protecting legitimate privacy interests. This duty includes:

- Ensuring timely and complete financial disclosure
- Correcting any material misstatements made during mediation
- Advising clients about the benefits of transparency for long-term family relationships

[7] Karla Fischer et al., "The Culture of Battering and the Role of Mediation in Domestic Violence Cases" (1993) 46 SMU Law Review 2117, at 2119-2124.

- Identifying when professional evaluation (such as parenting assessments) might benefit the process.

Child-Centric Representation

In cases involving minor children, counsel should have a heightened duty to consider and advocate for children's best interests, even when these interests might not align perfectly with their client's immediate preferences. This includes:

- Encouraging parenting plans that maximise both parents' involvement in children's lives
- Advising clients about research on post-divorce parenting effectiveness
- Supporting solutions that minimise disruption to children's lives and routines
- Encouraging clients to consider children's developmental needs over adult preferences.

C. Cost-Sharing Framework

Default Rule: Individual Responsibility

The general principle should remain that each party bears responsibility for their own mediation costs, including mediator fees, legal representation, and related expenses. This default encourages serious participation and prevents frivolous use of mediation resources.

Court-Ordered Cross-Subsidisation

Where one party lacks financial capacity to participate in mediation, the court should have discretionary power to order the other party to bear mediation costs for both parties. This power should be exercised when:

- A significant disparity in financial resources exists between the parties
- Children's interests would be served by successful mediation
- The requesting party can demonstrate genuine inability to pay rather than mere unwillingness
- The paying party has sufficient resources to bear additional costs without undue hardship.

Implementation Safeguards

To prevent abuse of cost-sharing orders:

- Financial disclosure should be required from both parties before cost-sharing orders
- Courts should consider whether the requesting party's financial position results from their own misconduct

- Cost-sharing orders should be limited to basic mediation services, not premium or luxury options.

D. Technology Integration

Standards for Remote Mediation

Modern technology enables effective mediation even when parties are geographically separated, expanding access significantly. However, remote mediation requires specific standards to ensure effectiveness:

- All parties must have access to reliable internet and appropriate devices
- Video conferencing platforms must meet confidentiality and security standards
- Private communication channels must be available for counsel-client consultation
- Technical support should be available throughout the mediation process.

Equal Access Provisions

Courts should have power to order technological accommodation when one party lacks access to necessary technology. This might include:

- Providing access to suitable facilities with necessary technology
- Scheduling mediation at locations with appropriate technological infrastructure.

Maintaining Confidentiality

Remote mediation raises unique confidentiality challenges. Specific protocols should address:

- Ensuring no unauthorised recording of mediation sessions
- Preventing third-party eavesdropping on mediation communications
- Secure transmission and storage of mediation-related documents
- Clear agreements about who may be present during remote mediation sessions.

IV. International Best Practices and Comparative Analysis

The proposed framework draws inspiration from successful international models whilst adapting to Nigerian legal and cultural contexts.

The United Kingdom's Family Mediation Council has established comprehensive standards for legal representatives in family mediation, emphasising collaborative

advocacy and child welfare considerations.[8] Their model requires solicitors to complete specific mediation training and follow detailed protocols during mediation proceedings. Similarly, Australia's National Mediation Accreditation System includes specific provisions for legal representation in family disputes, with emphasis on good faith participation and transparent information sharing.[9]

South Africa's approach to family mediation offers particularly relevant lessons for Nigeria, given shared legal heritage and similar socio-economic challenges. The South African model incorporates sliding-scale fees and state subsidies for mediation in appropriate cases, ensuring that financial barriers do not prevent families from accessing mediation services.[10]

These international experiences suggest that clear professional standards for lawyers in mediation, combined with appropriate access mechanisms, can significantly improve family dispute resolution outcomes. However, successful implementation requires adaptation to local legal culture and economic circumstances.

V. Implementation Strategy and Recommendations

Regulatory Framework Development

Implementation of the proposed framework requires amendments to the Rules of Professional Conduct for Legal Practitioners to include specific provisions for family mediation representation. The Legal Practitioners' Disciplinary Committee should develop detailed guidance addressing common ethical dilemmas that arise during family mediation.

Training and Capacity Building

Legal practitioners should complete mandatory continuing education focused on family mediation before representing parties in mediated family disputes. This training should address:

- Collaborative advocacy techniques
- Child development and family dynamics
- Cultural sensitivity in family mediation

[8] Family Mediation Council, Code of Practice for Family Mediators (8th ed., 2023, FMC Publications) at 15-22.

[9] Mediator Standards Board, National Mediator Accreditation System Standards (2022, Mediator Standards Board) Section 4: Legal Representative Participation Standards.

[10] Boniface Ahunanya, "Access to Justice Through Alternative Dispute Resolution in South Africa: Lessons for Nigeria" (2021) 12 *African Journal of Legal Studies* 245, at 258-262.

- Technology platforms for remote mediation

Monitoring and Evaluation

The Nigerian Bar Association should establish mechanisms to monitor the effectiveness of new professional duties and identify areas for improvement. This might include:

- Regular surveys of families who have participated in mediated dispute resolution
- Statistical analysis of mediation success rates before and after implementation
- Feedback from mediators about lawyer conduct during family mediation
- Academic research on long-term outcomes for families who used mediation versus traditional litigation.

Phased Implementation

Rather than immediate universal implementation, the framework should be introduced gradually:

- Phase 1: Pilot implementation in major metropolitan areas (Lagos, Abuja, Port Harcourt)
- Phase 2: Extension to state capitals and major urban centres
- Phase 3: Universal implementation with appropriate adaptations for rural areas.

VI. Conclusion

The transformation of legal advocacy in Nigerian family mediation represents both an opportunity and an imperative. As society increasingly recognises the paramount importance of children's welfare and the value of preserving family relationships even through divorce, the legal profession must evolve to serve these higher purposes.

The proposed framework offers a practical path forward, establishing clear professional duties that channel lawyers' advocacy skills towards constructive resolution rather than destructive conflict. By implementing innovative cost-sharing mechanisms and embracing technological solutions, Nigeria can ensure that all families, regardless of economic circumstances or geographic location, have access to mediation services that prioritise healing over harm.

The stakes could not be higher. Every family that endures unnecessary litigation, every child who suffers through prolonged parental conflict, and every parent who

loses meaningful relationships with their children represents a failure of our legal system to serve its highest purposes. The legal profession has the opportunity and the responsibility to lead this transformation, creating a family dispute resolution system that honours the dignity of all family members whilst protecting the vulnerable and promoting healing.

Implementation will require courage, commitment, and collaboration amongst lawyers, mediators, judges, and policymakers. But the potential rewards—stronger families, healthier children, and a more just legal system—justify the effort required to make this vision reality.

The time for half-measures and incremental change has passed. Nigerian families deserve nothing less than a complete reimagining of how legal professionals serve them in their most vulnerable moments. The proposed framework offers a roadmap for that transformation, creating hope where there was previously only conflict, and healing where there was once only harm.

ONLINE DISPUTE RESOLUTION IN NIGERIA: BENEFITS AND CHALLENGES

Abdullahi Mikailu & Muhammad Nahim Yunusa*

Abstract

Despite the viability of adopting Alternative Dispute Resolution (ADR) mechanisms such as negotiation, mediation, conciliation and other hybrid processes to resolve financial disputes, such effective mechanisms could be daunting and defeated by time and distance. The traditional approach to resolving small claims financial disputes primarily involve a visit to the customer service desk or placing a call to the call centre. The efficacy of the former for a consumer who is restricted by time and space remains while the latter is at the mercy of long queues or being placed on hold to submit a complaint. These two situations have several limitations which are not suitable for the exigencies of modern ICT driven financial transactions. The paper adopted of doctrinal method of research, it was observed that litigation process which is the most recognized and well established form of dispute resolution in Nigeria has not only become stylized, complex, expensive, adversarial in nature and time consuming, recommended that the confidentiality provision of ADR, to a certain extent needs to be relaxed so that members of the public who are aware of application of its mechanisms will be motivated or prompted to adopt the mechanisms to resolve their disputes, concluded that a relatively new ICT driven application is capable of minimizing the administrative frustrations or bottle necks of the courts.

1.1 Introduction

Online Dispute Resolution emerged in the 21st century from developments in the field of Alternative Dispute Resolution (ADR) and its adaptability to peculiarities of the online environment.[1] In addition, it was primarily borne out of the need to deploy cutting-edge information technology innovation to aid access to justice.[2]

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[1]Ethan Katsh, M Ethan Katsh, and Janet Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace* (John Wiley & Sons, Inc., 2001).

[2]Ethan Katsh, "ODR: A Look at History A Few Thoughts about the Present and Some Speculation about the Future," in Online Dispute Resolution: Theory and Practice A Treatise on Technology and Dispute Resolution, ed. Mohamed S. Abdel Wahab, Katsh Ethan, and Rainey Daniel (The Hague, Netherland: Eleven International Publishing, 2012), 21-33.

ODR can also be understood from the convergence perspective, i.e., dispute resolution converges with ICT. As part of the fulfillments of the Roscoe Pound[3] and Lord Woolf Reforms,[4] court systems globally have incorporated ADR mechanisms in the administration of justice. Thus, amicable dispute settlement paradigms have found their way into regional and international legal instruments.[5] Without doubt, ADR has proved to be the most suitable and cost-effective method for resolving disputes arising from commercial and financial transactions in recent years. However, new challenges posed by e-commerce and the growing number of cross-border small claim online disputes call for reform of ADR itself. Lack of a regulatory framework for stringent management of complaint is capable of clogging the justice system with high volume small claims.[6] Courts are often clogged with expensive, congested, and protracted procedures and formality. This results in long delay as decision may take even years before a judgment sees the light of the day, and the economic or even emotional costs involved can be devastating for consumers.[7]

In the administration of justice system, an effective ODR paradigm has the potential of automating the dispute resolution processes which experts predict may soon threaten the legal profession and change the way lawyers do their businesses.[8] Indeed, the dispute resolution sector of modern society got its fair share of innovative technology with the emergence of ODR. Richard Susskind[9] was aptly referring to ODR and the changing role of lawyers when he observed:

[3]Roscoe Pound, "The Causes of Popular Dissatisfaction with the Administrationof Justice," Annu. Rep. ABA 29 (1906): 395-417; WD Brazil, "Court ADR 25 Years after Pound: Have We Found a Better Way," Ohio St. J. Disp. Resol. 1 (2002).

[4]AAS Zuckerman, "Lord Woolf's Access to Justice: Plus Ça Change," The Modern Law Review 59, no. 6 (1996): 773-96; "Farmers and Prostitutes: Twentieth-Century Problems of Female Inheritance in Kano Emirate, Nigeria Author (S): Steven Pierce Reviewed Work (S): Published by Cambridge University Press" 44, no.3 (2013): 463-86; LA Mistelis, "ADR in England and Wales," Am. Rev. Int'LArb. 12 (2001): 167-441

[5]Steven Smith et al., "*International Commercial Dispute Resolution*," *Int'l Law.* 44 (2010): 113.

[6]C Rule, V Rogers, and L. Del Duca, "*Designing a Global Consumer Online Dispute Resolution (ODR)System for Cross-Border Small Value-High Volume Claims-OAS Developments*," UCC LJ, no. 24 (2010): 221.

[7]Schiaverta S, "Online Dispute Resolution, E-Government and Overcoming the Digital Divide," BILETA Conference, April, 2005.

[8]Rose, "NO WAY BACK: Don't Look Now, but a Technology Revolution Is Changing the Way Lawyers Work."

[9]Professor Richard Susskind OBE is an author, and independent adviser to major professional firms and to national governments. He is also the technology advisor to the Lord Chief Justice of England and Wales. His main area of expertise is the future of professional services and, in particular, the way in which the IT and the Internet are changing the work of lawyers. He has worked on legal technology

> The future of lawyers could be prosperous or disastrous...lawyers who are unwilling to change their working practices and extend their range of services will, in the coming decade, struggle to survive. Meanwhile, those who embrace new technologies and novel ways of sourcing legal work are likely to trade successfully for many years...[10]

The evolution of the use of ICT tools in legal services seems to attest to this assertion. The incorporation of innovative ICT equipment and technology into dispute resolution mechanisms began with taking evidence via video-conferencing, case-management software and online filing applications and admitting electronic copy of documents. This was viewed as a mere aid to the judicial process, which was easier and faster as parties could access justice at a cheaper cost; hence, the emergence of courts facilitated by ICT, where the procedural steps mimic the court systems. Despite the viability of adopting Alternative Dispute Resolution (ADR) mechanisms such as negotiation, mediation, conciliation and other hybrid processes to resolve financial disputes, such effective mechanisms could be daunting and defeated by time and distance. The traditional approach to resolving small claims financial disputes primarily involve a visit to the customer service desk or placing a call to the call centre. The efficacy of the former for a consumer who is restricted by time and space remains while the latter is at the mercy of long queues or being placed on hold to submit a complaint. These two situations have several limitations which are not suitable for the exigencies of modern ICT driven financial transactions. That is, such traditional ways of dispute management of small claims financial disputes are generally offline, slow and may lead to more cost on the part of the consumer. Therefore, the demand for new forms of ICT-backed ADR becomes a necessity.[11] It is against this backdrop that this paper examined.

1.2 Nature and Scope of Online Dispute Resolution

As noted in the introduction, online Dispute Resolution (ODR) is an innovative way to resolve grievances, issues or disputes especially with regards to e-commerce.

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for over 30 years. He lectures. internationally, has written many books, and advised on numerous government inquiries, www.susskind.com

[10]Susskind R. The End of Lawyers?: Rethinking the Nature of Legal Services (Oxford University Press, 2010), 269.

[11]Larson D. A, "Technology "Technology Mediated Dispute Resolution (TMDR): Opportunities and Dangers," U. Tol. L. Rev., 2006, 213-38; Henry H Perrittir, "*Dispute Resolution in Cyberspace: Demand for New Forms of ADR*," *Ohio St. J. on Disp. Resol.* 15 (1999): 675.

Online dispute resolution thus means different things to different people and as such a straightforward definition as to what this concept means has proven difficult. Nevertheless, ODR has been defined as the resolution of disputes that result from online conduct. In giving a simple and precise definition, Morek defined ODR to mean resolving disputes on the internet.

It is fair to state that ODR emanated from traditional Alternative Dispute Resolution ADR. For this reason, many authors have seen ODR simply to mean using the internet to provide ADR. According to Arun,[12] ODR involves the use of information technology to facilitate the application of traditional alternative dispute resolution mechanisms in cyberspace. Being an offspring of ADR, ODR uses the various ADR methods to settle online disputes. Thus, ODR can be defined as the deployment of application and computer networks for resolving disputes with ADR methods.[13]

Online Dispute Resolution is a branch of dispute resolution which uses technology to facilitate the resolution of disputes between parties.[14] This technology, which is also ICT has been named by Katsh and Rifkin[15] as the "fourth party" because ODR is seen as an independent input to the management of dispute. From the definitions given so far, it can be summarized that ODR is only concerned with internet disputes.[16]

Being a contemporary issue in the ADR community, ODR has attracted so many authors. Most of these authors have further described ODR using other names. Some of the names used are:[17]

a. Internet Dispute Resolution (IDR).
b. Electronic Dispute Resolution (eDR).

[12]Arun R. The Legal Challenges Facing Online Dispute Resolution: An Overview (2007). Available athttp:/www.galexia.com/public/research/articles/research_articles-art42.html.(Last visited 14-10-2025).
[13]Van den Heuvel E. Online Dispute Resolution as a Solution to Cross-border E-disputes: An Introduction to ODR. Paper presented at Building Trust in the online environment: Business to customer Disputer Resolution, a conference jointly organized by Organization for Co-operative Development (OECD), Hague conference on Private and International Law and International Chamber of Commerce (ICC). The Hague, 16-08-2025. The Hague. Available at http://www.oecd.org/dataoced/63/57/1878940pdf(last visited on 16-10-2025).
[14]Petrauskas F and Kybartiene E., Online Dispute Resolution in Consumer Disputes: (2011), P, 922 Available at http://www.mruni.eu/en/mokslo_darbai/jurisprudencija/(last visited on 16-08-2019)
[15]Katsh, E and Rifkin, J. Online Dispute Resolution: Resolving conflicts in cyberspace. Jossey-Bass: San Fransico (2001), P.93.
[16]Some authors use cyberspace or online in place of internet.
[17]Ibid.

c. Electronic ADR (CADR).
d. Online ADR (ADR)
The above names have been used interchangeably by various authors. However, ODR has emerged as the most used term in recent years.

1.3 The Regulatory Framework for ODR in Nigeria

Following the development in the dispute resolution landscape and global surge in cross-border e-commerce transactions, the United Nations (UN) working Group III was commissioned in 2010 to examine possible future works on ODR for cross-border electronic transactions in business to businesses and businesses to consumer dispute.[18] Series of colloquium are being held and still ongoing in order to gather opinion towards producing an acceptable ODR instrument for the resolution of cross-border disputes ODR instrument for the resolution of cross-border disputes in the global market place through ODR.[19]

In actualizing the objectives of the UN Working Group III on ODR, the European Union (EU) took the first known step towards a supernatural ODR Legislation. Several directives and regulations were adopted between 2004 and 2013 for the full implementation of practical and binding ODR framework to begin in the year 2016.[20] From 15th February, 2016, the ODR platform developed by the European Commission has been made accessible to online consumers and traders.[21]

According to the United Nations Conference on Trade and Development Report of June 2014, Nigeria is the destination for foreign investment in Africa, because of its huge natural/mineral resources, especially oil, huge intellectual base, and most importantly the telecommunications, banking and Nollywood film sectors of the economy which are able to compete on the global stage.[22]

On the 14th March 2014, the ADR Directive on Alternative Dispute Resolution of (2013/11/EU) and Regulation on Online Dispute Resolution (534/2013, one which is in line with the UK Law was published, and made available in Nigeria for all contractual disputes between a consumer and a business.[23] This directive was in a

[18]Recommendations of the OECD council concerning guidelines for consumers protection in the context of electronic commerce: In Sadiq, O. and Umar, A. (2016)," Toward an Effective Eegal Framework for Online Dispute Resolution Trends, Traditions and Transition, Kalliyah of Laws, International Islamic University. Malaysia, P.275.
[19]Ibid.
[20]Ibid
[21]Ibid
[22]Bill Gates, (2014) "Roles of the Emergence of Online Dispute Resolution in Africa: Pp, 3-4
[23]Ibid.

bid to make ADR/ODR mandatory for its users such as providers and one which was required to meet certain quality standards as expected.[24]

1.4 ODR Methods

As earlier stated, ODR makes use of traditional ADR mechanisms. The only difference here is that these mechanisms are deployed in resolving online disputes. At the moment, there are three major types of ODR systems. These include:

Online Negotiation

Parties can use online negotiation to resolve their disputes. Here, the financial claims can be settled via online negotiation. Online negotiation is currently the most developed form of online dispute resolution in the US.[25] Simply put, online negotiation is using an expert system to automatically settle financial claims. One technological platform currently thriving in online negotiation is automated negotiation commonly known as "blind-bidding. This is a negotiation process designed to determine economic settlement for claims which liability is not challenged. This form of ODR is suitable in situations where the liability of the party is not in dispute, but the parties cannot agree on the amount of compensation-payable.[26] The entire process is driven by software without the need for human intervention. In blind-bidding, the disputants submit monetary bids for a specified number of rounds. The bids represent the amount one party is demanding and the other is offering in order to resolve the dispute. If at any stage the amount of the offer exceeds the demand, the dispute is considered resolved. If on the other hand, the bids submitted are within the given range of both parties, the dispute is settled for an amount representing the average of the two bids submitted.[27]

Online Mediation

This is another thriving ODR method used in Europe and US. Online mediation currently being offered by several organisations. Mediation firms have established websites to facilitate the resolution of disputes. These websites make use of online technologies such as email, chat rooms and instant messaging in addition to the

[24]Ibid.
[25]Ibid.
[26]Hornle, J., ODR in Business to Consumer e-commerce Transactions. Journal of information Law and Technology, No.2 (2001) P. 5. Available at http.//www2.warwick.ac.uk/fac/soc/law/elj/ (Last visited on retrieved 12/10/2025.
[27]Conley T.M. and Bretherton D., Research into Online Alternative Dispute Resolution Exploration report, International Conflict Resolution Centre, University of Melbourne. (2003), P, 17.

communication methods used in traditional (offline) negotiation process.[28] A typical online mediation procedure takes place as follows. The complainant initiates it by completing a confidential form on the ADR provider's website. Then, a mediator contacts the respondent in order for him/her to participate. If the other party agrees to participate, they can fill out their own form or respond to the initial through email. This initial exchange of views may help parties to understand the dispute better and possibly reach an agreement. If the dispute remains unresolved, the mediator will work with the parties to help determine issues, articulate interests, and evaluate potential solutions.[29]

In online mediation, websites have also provided online mediators with new tools to supplement email in addition to other communication tools including electronic conferencing, online chat, video-conferencing, facsimile and telephone.[30]

Online Arbitration

Arbitration is the process where a neutral third party (arbitrator) delivers a decision which is final, and binding on both parties. Online arbitration is no different from offline arbitration except that it is a form of ADR that takes place on the internet. Online arbitration, which is also called cyber-arbitration, cybitration, cyberspace arbitration, virtual arbitration, or electronic arbitration has attracted the interest of legal scholars since the middle of the nineties[31] Online arbitration is capable of resolving both online and offline disputes. Currently, most arbitration providers allow parties in offline disputes to carry out online only part of the arbitration process, for example, parties may download claim forms, the submission of documents through standard email or secure web interface, the use of telephone hearings etc.[32] For the purpose of clarity and proper understanding of a typical ODR procedure, online arbitration shall be discussed in detail and adopted as a role model in this chapter.

[28]Petrauskas F. and Kybartiene E. P. 927.
[29]Manevy 1, Online dispute resolution: What future? (2001), P. 14. Available at http://thoumyre.chez.com/uni/mcm/17/odr)Jpdf (Last visited 16-08-2019) Also see Petrauskas F. and Kybartiene E. P. 927-928.
[30]Manevy L. ibid P. 14.
[31]Schuluz, T. Online Arbitration: Binding or Non-Binding? (Interactive).ADR Online Monthly.UMASS. (2002) Last visited on the 14/10/2025
[32]Ibid.

1.5 ODR Procedure: Online Arbitration

The procedure used in online arbitration is quite similar to offline arbitration save for the fact that the former takes place on the internet. One leading online arbitration entity is the "internet-ARBitration".

In internet-ARBitration (net-ARB), parties can file their cases free of charge. It prides itself as a world leader in low-cost arbitration.[33] Typically, online arbitration providers resolve disputes relating to e-commerce, domain issues, intellectual property matters and money claims. This online arbitration site has qualified, and industry experienced arbitrators who can adequately resolve any kind of online dispute between parties.

In online arbitration, a party (also known as the claimant) who intends to resolve the dispute via online arbitration, initiates arbitration by filing a statement of claim with the ODR provider specifying relevant facts and remedies requested. The claim is filed at the website of the chosen ODR provider. Online ARBITRATION.net gives a condition precedent to the party filing the arbitration process to provide the telephone number, contact representative and email address of the adverse party and his representative. Failure to meet this condition may result in the case being dismissed or a decision vacated.[34] Filing a statement of claim attracts a fee. Filing fees depends on the ODR provider and also the nature of the claim.[35] Where prior to the dispute, parties have agreed to resolve their disputes via online arbitration, the agreement shall also be submitted along with the claim. Also, documentary evidence may also be submitted. The documentary evidence can be scanned and attached to a box provided by the ODR provider when initiating a claim. It can also be sent via email.[36] In online ARBITRATION, the claim of the claimant must be at least $5,000 (five thousand dollars)[37] or its equivalent in naira.

As soon as the claim is lodged at the website of the ODR provider, the ODR provider then contacts the other party (respondent) with the e-mail address provided by the claimant, informing the respondent of the initiated claim and persuading the respondent to consent to online arbitration. Once the respondent

[33]Internet-ARBitration: How net-Arbitration Works. Available on http://www.net-arb.com/how-arbitration works.php 14/10/2025.
[34]Section 1, **Online ARBITRATION Process Rules**. Available on www.onlinearbitration net.
[35]Parties initiating claims under net-ARB will file claims free of charge as filing fees under net-ARB has been completely eliminated.
[36]Ibid
[37]See Section 2-2 Online ARBITRATION Process Rules.

consents to online arbitration the respondent will then respond to the arbitration claim by filing at the website of the ODR provider, an answer specifying the relevant facts and available defenses to the claim.[38] Afterwards, both parties (claimant and respondent) shall select an arbitrator from the list of potential arbitrators accredited by the ODR provider they have agreed to refer their disputes to. The names of these arbitrators are displayed on the website of the chosen ODR provider. The choice of arbitrators will be made by parties and communication as to choice of mediators will be made through exchange of emails. Jaberi[39] provided three modes on how online arbitration agreement can be concluded.

a. Opposite parties announce their consent by referring their dispute to arbitration by email.
b. Websites selling goods and services put an arbitration clause in the 'terms and conditions section of their websites. In this part consumers can declare their consent by clicking "I agree" or "I accept" button in a pop-up box on computer screen.
c. The third mode, cited by UNCITRAL Model Law, where parties refer their disputes through a document containing arbitration clause.

In net-ARB, once the other party (respondent) agrees to arbitrate, the claimant is notified immediately. Parties are sent dates set out for hearing as well as instructions for the hearing thereafter.[40]

During the hearing phase, all testimonies and evidence are given either by email or video conferencing depending on the choice of the parties, arbitrators or ODR provider.[41] Use of the video-conferencing is the most common method in online arbitration. By this device (video- conference), parties can be heard and seen easily and also testimonies of witnesses can be taken.[42] It is important to state that the technology of video-conference is not only used in online arbitration or any of the ODR mechanisms. Litigation has also subscribed to video- conference. For instance,

[38]FINRA Arbitration Process. Available at www.finra.org/ArbitrationAndMediation/Arbitration Process/ last visited on 12/10/2025.
[39]Jaberi M.S., Online arbitration: A vehicle for dispute resolution in Electronic Commerce. p.4 Available on www.academic.edu/1842719/online Arbitration A Vehicle for Dispute Resolution in Electronic Commerce (last visited 12/10/2025).
[40]Internet-AR Bitration: How net-ARBitration Works.
[41]Net-ARB recommends evidence and testimony to be given via email.
[42]Ibid

the rules of civil procedure in England, Wales, and the US, allow for the use of video-conference during hearing under certain circumstances.[43]

Once hearing (i.e. giving of testimony and evidence) closes, the arbitrator(s) will close the hearing. The arbitrator(s) will then review all the evidence and issue a written binding decision (called an "Award"). The award explains the arbitrator's reason for deciding the case the way they did. Where parties choose an arbitration panel, the majority of the panel must agree on the outcome.[44] The award will be communicated to the parties involved via email and/or posting it to the website of the ODR provider.[45] Time limits for awards range between 4 hours to 30 days.

For instance awards made by the Arbitration Court shall be made available to parties on the institution's website for a period of 30 days from the date upon which the arbitral award was submitted.[46] International Chamber of Commerce (ICC) in addition to the publication of the award on the website of the case at hand within 60 days, makes a hard copy of the electronic award available to parties for more security.[47]

1.6 Benefits of ODR

ODR confers a number of benefits to online users. Most of these benefits relate to the benefits commonly associated with the traditional ADR. However, there are additional benefits to resolving disputes over the internet. These among others include:

Convenience

One of the most significant benefits of ODR is that it permits communication at a distance thus eliminating the need for traveling and substantially reducing cost.

[43]See Civil Procedure Rules Part 36, Rule 32.3 or PD 23 by leave of the court, or the US Federal Rules of Civil procedure: Fed. R Civ. P. 43(a). The court may for good cause shown in compelling circumstances and upon appropriate safeguards, permit presentation of testimony in open court by contemporaneous transmission from a different location. Also see Homle J. 2003; Online Dispute Resolution - The Emperor's New clothes? Benefits and pitfalls of online Dispute Resolution and its Application to commercial Arbitration. International Review of Law 17(1) P. 4.
[44]Ibid
[45]Schultz, T. Kaufmann-Kohler, G. Langer, D; Bannet, "Online Dispute Resolution: The State of the art and the issues. Available at http://sson.com/abstract-899079 Last visited 12/10/2025
[46]Section 13 ARBITRATION COURT: **Additional procedures for online arbitration (on-line Rules)**. Available at en soud.cz/rules/additional-procedures-for-on-line-arbitration-1-june-2004 (last visited 24- 08-2025).
[47]Jaberi M.S. op.cit.p.5.

Unlike traditional ADR where parties will have to commute over long distances to resolve their disputes, in ODR, parties can resolve their disputes in the comfort of their homes. All that is needed is a computer that is internet-enabled. Once this is available, disputes can be resolved immediately. In Pappas[48] view, ODR is faster than a typical trial or even ADR because technology can shorten the distances parties might otherwise need to travel. Another factor showing that ODR is convenient is that websites of some ODR providers are available twenty-four hours a day and seven days a week. Most of these websites work around the clock and so once disputes arise, parties can resolve their issues immediately without having to wait for weeks or months before their case goes to trial.[49]

Also important under convenience is that parties can at the comfort of their homes choose a neutral to aid them in resolving their disputes. Currently, most ODR providers have in their websites list of neutrals (either mediators or arbitrators). Parties involved in the process can choose a neutral by simply profiling the neutrals and selecting the one that is suitable in resolving their disputes.

Low-Cost

Litigation can be very expensive. Similarly, international commercial arbitration is expensive and is not particularly a speedy procedure though it is cheaper than litigation. ODR on the other hand may lead to reduced costs. In many instances, parties engaging in ODR will not have to brief a lawyer at all.[50] This benefit makes ODR more attractive than traditional ADR. In traditional ADR parties bear all costs. In addition to their travel expenses, parties pay the fees and travel cost of the lawyers and arbitrators. They also incur cost of renting rooms for hearing and deliberation of the award, and the travel costs for any third party involved in the proceedings as an expert or as a witness.[51] With ODR, parties incur very little and at the same time obtain a satisfactory settlement. The mere fact that parties, lawyers, and arbitrators can participate from wherever they are, eliminates travel and related costs.

[48]Pappas B.A, Online Court: Online Dispute Resolution and The Future of Small Claims. UCLA Journal of Law and Technology Volume 12, isue 2.(2008) P.6. Available at www.lawtechiournal.com (last visited on 24-10- 2025.)

[49]Hang L.Q., Online Dispute Resolution Systems: The Future of Cyberspace Law: Santa Clara law Review, vol. 41 No.31 Article 4 4-355. Available at http:/digitalcommons.law.scu.edu/lawreveiw/vol41/iss3/4 (last visted 20-10-2025).

[50]Ibid

[51]Biukovic, L., "International Commercial Arbitration in Cyberspace. *Recent Development Northeastern Journal of International Law and Business*, Vol.22.Iaзме 3.(2002), P.340.

Encouraging International Trade

ODR especially arbitration aids international trade by eliminating the geographic obstacles to justice. Email discards the extremely cumbersome need for in-person meetings and constant battling with time zone restrictions.[52]

Speedy Outcome

ODR provides quick results. In most cases, the whole process can be completed within just a few days after both sides sign the Agreement to Arbitrate.[53] ODR, in addition to the above benefits, will enable courts to deliver justice that is all of the following:

i. affordable for all citizens, regardless of their means;
ii. accessible especially for citizens with physical disabilities, for whom attendance in court is difficult if not impossible;
iii. intelligible to the non-Lawyer, so that citizens can feel comfortable in representing themselves and will be at no disadvantage in doing so;
iv. appropriate for the internet generation and for an increasingly online society in which so much activity is conducted electronically;
v. speedy - so that the period of uncertainty of an unresolved dispute is minimized;
vi. consistent - providing some degree of predictability in decisions,
vii. trustworthy - a forum in which honesty and reliability users can have confidence,
viii. avoidable with alternative services in place, so that involving a judge is a last resort, and
ix. proportionate - which means that the costs of pursuing a claim are sensible by reference to the amount at issue.[54]

1.7 Challenges

Despite the benefits of ODR, critics have pointed to a number of challenges and limitations. According to them, although ODR is faster, convenient, flexible and

[52]Internet-ARBitration: "Benefits of Online Arbitration" Available on www.net-arb.com/arbitration_articles/article.php. 12/10/2025
[53]Ibid.
[54]Trend Report Online Dispute Resolution Draft: Can Online Dispute Resolution really help courts and provide access to justice, Hill Innovating Justice (2016), P. 5.

voluntary, several hitches in the process have questioned the claim that ODR is a suitable alternative to litigation or traditional ADR. These challenges among others include:

Lack of Face-to-Face Encounter

Critiques of ODR have argued that ODR offers no face to face contact.[55]Eisen has argued that ODR (especially mediation and arbitration) through e-mail loses the dynamics of traditional ADR.[56] Other authors have opined that the essence of face to face encounter in ADR especially via mediation is that parties are able to vent their feelings and emotions in a more formal setting such as a court room and they are able to look directly in the face of the other party and feel the grievance and loss suffered. This would be very difficult to obtain when parties communicate via computer screens.[57] In the view of Katsh, there is richness in face to face meetings because interaction can occur quickly and spontaneously and often on a non- verbal level.[58] According to Hornle, lack of face to face encounter makes it harder for the mediator to establish parties' trust and confidence in the procedure.[59]Manvey has also submitted that without face to face encounter (F2F), the parties may not be satisfied with any settlement that is concluded, regardless of the speed ånd efficiency of the process.[60]

Despite the challenges of face-to-face encounter posed by ODR, proponents of ODR have come up with solution to the loss of the face-to-face contact. One suitable solution to this challenge is the use of video communication through the internet. This is made possible through the video conference device. According to Manvey, 'face to face' communication is replaced by powerful "screen to screen" communication. This, however, requires mediators to adopt their communication skills from face-to-face interaction to screen-to-screen interaction.[61] Currently, video-conferencing is the preferred technology in ODR. It is almost the same with face-to-face encounters as parties can see themselves, take evidence and reach agreement as though it were a face-to-face arrangement.

[55]Ibid
[56]Eisen JB., Are we ready for mediation in cyberspace? BYU L. Rev. 1350, 1998, P. 1312-13.
[57]Katsh, E, The new Frontier Online ADR becoming a global priority, Dispute Resolution Magazine, (2000) p.8.Available at www.umass.edu/cyber/katah aba.pdf (last visited 12/10/2025).
[58]Ibid
[59]Ibid
[60]Ibid. P. 8.
[61]Ibid.

Issues of Confidentiality and Security

Another major challenge facing ODR is the protection of sensitive materials. Several authors have questioned the ability of ODR to keep confidential parties' deliberations and decisions. The major questions posed are "How can one be sure that the data sent and received will not be tampered with and how can one be sure that no unauthorized third party will have access to the information?" One important feature of ADR is "confidentiality" and so once a process shows a high level of confidentiality, a feeling of trust among the parties is sure. Katsh has opined that protecting trust and the discussion process in ADR is very important because parties are more likely to speak freely when they can be sure that their words will not come back to be held against them.[62] Thus, if one party does not fully trust the other party, the ADR process is in jeopardy.[63]

The issue of insecurity in ODR is a serious one. There is no guarantee that documents and information can be kept confidential as someone (internet hackers) could easily break into databases of websites, print out and distribute, for example, e-mail communication without their knowledge and consent. According to Jaberi,[64] lack of security not only weakens confidentiality, which is one of the main principles of ADR, but also makes people reluctant to use ODR to resolve their disputes. However, to overcome this problem, some security measures have been implemented. One such is the digital signature.[65] The digital signature plays an important role in ensuring the authenticity, integrity and non-repudiation of data communication thus enhancing trust. It is an authentication method that uses public-key cryptography.[66] Various countries have enacted a law validating digital signatures. One of such countries is the United States of America. In 2001, President Clinton signed into law the Electronic Signatures in Global and National Commerce Act". The Act gives a

[62]Katsh E., Dispute Resolution in Cyberspace, 28 CONN. L REV (1995), P.971

[63]Ibid.

[64]Ibid.

[65]A digital signature takes the concept of traditional paper-based signing and turns it into an electronic "finger print". This finger print or coded message is unique to both the document and the signer and binds them together Digital signatures ensure the authenticity of the signer. Any change made to the document after it has been signed invalidates the signature, thereby protecting against signature forgery and information tampering.

[66]The public-key cryptography consists of two keys. Private and public keys which is used to secure data communication. A message sender uses the recipient's public key to encrypt a message, to decrypt the sender's message, only the recipient's private key may be used.

signature or record sent through cyberspace the same legal validity as a written document.[67]

Also, to ensure that issue of insecurity of databases in cyberspace is addressed, several countries have enacted laws criminalizing and prohibiting hacking of databases. For instance, in the US, the Digital Millennium Copyright Act (DMCA) was passed into law in 1998. The Act prohibits the circumvention of technological protection measures undertaken by owners of databases. This means that anyone caught circumventing a database without authorization from the owners will be punished in accordance with the Act. With these laws in place, issues of insecurity in cyberspace are minimized and trust for the ODR process alive. Sadly, Nigeria is still yet to have a law prohibiting circumvention of technological prevention measure works.[68]

Another useful technique especially for online arbitration is the "*electronic file management*" *software*. This is used for complex, large-scale arbitration. The software was invented as an alternative to email since emails cannot guarantee adequate security for online dispute resolution The electronic file management means that all documents pertaining to the case in question are stored electronically in a systematic order. Electronic file management software permits individual documents or passages to be easily retrieved, displayed or printed, cross-referenced, compared, noted and searched for keywords. Electronic file management is widely used in practice as it is more secured.[69]

Problems with E-Arbitration Agreements

Basically, in traditional arbitration, an arbitration agreement is a written contract in which two or more parties agree to settle a dispute outside court via arbitration. The arbitration agreement is ordinarily a clause in a larger contract. Thus, by signing an arbitration agreement, a party is simply agreeing to arbitration in case of any future dispute.[70] This definition is not different from e-arbitration agreement. The only thing that separates e-arbitration agreement from traditional arbitration agreement is that a party agrees on-line to resolve disputes via online arbitration. This is simply done in most cases by clicking either "I agree" or "I accept"

[67]Available at http://www.nileg.state.ng.us/2000/Bill/ Plol/116 PDF (last visited 12/10/2025)
[68]There is currently a proposed legislation for amendment of the Copyright Act called "Copyright Act (Amendment) Bill, SB 03° The hill includes provisions prohibiting circumvention of technological measure works
[69]Ibid
[70]Free-Advice: What is an arbitration agreement? Available at http://law.freeadvice com litigation arbitration/agreement arbitration.htm.(Last visited on 12/10/2025).

while filing a consumer agreement form online.[71] Another difference is that while the traditional arbitration agreement is in writing and is signed by parties, e-arbitration is done via internet and so there is no form of writing but a show of consent made possible by simply indicating "I accept" or "I agree". This form has raised so many queries as to the validity of this form of agreement. The question posed is that since the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards also known as New York Convention gives a strict requirement that an agreement be in writing for it to be valid, can an arbitration agreement made online be considered to be in writing? Can it be said to be valid in line with the provisions of the New York Convention? The Convention in Article 2 provides that:[72]

> "Each contracting state shall recognize an agreement in writing under which the parties undertake to submit to arbitration all or any differences which may have arisen or which may arise between them in respect of a defined legal relationship".

The second part of Article 2 further holds that:

> "the term agreement in writing shall include an arbitral clause in a contract or an arbitration agreement signed by the parties contained in an exchange of letters or telegrams"

The obvious conclusion here is that the New York Convention has not included electronic form as a method of concluding an arbitration contract. Many authors have argued that the Convention is an outdated document which did not foresee unprecedented development of high technology such as the internet as a means of communication. As a result of this, calls have been made for review of the Convention.[73] In an attempt to make the provisions of the New York Convention in line with the emergence of technology, Hill[74] has argued that since the Convention made mention of fax and telegram, email has the same credibility as a fax or telegram.

Interestingly, the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Electronic Commerce 1996 has resolved this challenge. By virtue of Article 6.1 of the UNCITRAL Model Law on Electronic Commerce, an e-

[71]Ibid.
[72]Article II New York Convention 1958.Available at http://www.arbitration-icca.org/media/0/12125884227980/new-york_convention of 1958 overview.pdf (last visited 25-08-2025).
[73]Ibid
[74]Hill R., Online Arbitration: Issues and solutions. 15 ARB Intl (1999) Available at http:// www.umaass.edu.dispute/hill.htm (last visited 12/10/2025)

arbitration agreement has the same status as the traditional arbitration agreement and thus becomes valid.[75]

As the UNCITRAL made rules to make e-signatures[76] and e-documents equivalent to paper ones, several countries have followed suit by enacting laws on electronic commerce. For instance, in 1999, US enacted the Uniform Electronic Transaction Act (UETA)) 1999[77] for e- commerce and the Electronic Signature in Global and National Commerce Act in 2000.[78]to take care of electronic signatures. Also, Australia enacted the Electronic (Amendment) Act (ETA) 2011 to take care of e-commerce.[79] New Zealand in 2002 also passed into law the Electronic Transaction Act.[80] Malaysia followed suit by passing into law the Electronic Commerce Act of 2006[81] to take care of electronic messages in commercial transactions and Malaysia Digital Signature Act of 1997 to take care of e-signature.[82]

Though Nigeria, currently has no Law on e-commerce or e-signature, however they are accorded recognition by virtue of the Evidence Act 2011 where e-signature falls into the category of computer documents which by virtue of Section 84 of the Nigerian Evidence Act 2011 is admissible in evidence.[83] The Act describes a document in Section 258 (1) (d) of the Evidence Act to include "any device by means of which information is recorded, stored or retrievable including computer output". A computer is in turn described to be "any device for storing and processing information and any reference to information being derived from other information is a reference to its being derived from it by calculation, comparison or any other process" Furthermore, section 86 (3) (d) of the Evidence Act provides that where a number of documents have all been produced by one uniform process as in the case

[75]Article 6(1) of the UNCITRAL Model Law on Electronic Commerce provides: "where the law requires information to be in writing, that requirement is met by a data message if the information contained therein is accessible so as to be usable for subsequent reference"

[76]Article 7 of UNCITRAL Model Law on Electronic Commerce makes e-signatures equivalent to a hand written * signature and admissible as evidence in legal proceedings

[77]Available at http://www.nileg.state.ng.us/2000/ Bills/Plot/116 PDF last visited on 12/10/2025)

[78]Available at https://www.fdic gov/regulations/compliance/manual/pdfx-3.1 pdf (last visited 12/10/2025)

[79]http://www.comlaw/gov.au/Details/2011A00033 (last visited 12/10/2025).

[80]Available at http://www. legislation.govt.nz/act/public 2002/0035/latest/whole.html (last visited 26-08-2025)

[81]Available at http://www/commonlii.org/my/legis/consol_act/eca2006 182/longtitle.html (last visited 27-08- 2025).

[82]Digital Signature Act 1997 (ACT 562) Available at http://www.skmm.gov.my/legal/ Act DIGITAL SIGNATURE-ACT-1997-RIPRINT-2002 aspx (last visited 12/10/2025)

[83]See Evidence Act 2011.

of printing, lithography, photography, computer or other electronic or mechanical process, each of such documents shall be the primary evidence of the contents of all the documents so produced by this one uniform process. Thus, since electronic signature is made by electronic process, it qualifies as a computer document meaning that it can safely be recognized and accepted in Nigeria as similar to paper documents.

Problems with Enforcement of E-Arbitral Awards

In traditional arbitration, an arbitral award refers to a decision made by an arbitration tribunal in an arbitration proceeding. An arbitral award is similar to a judgment in a court of law.[84] This definition is similar to electronic arbitral awards save for the fact that in e-arbitral awards, the award is given online (i.e. via electronic means or via the internet). In traditional arbitration, once an award is given, the next step is to enforce the arbitral award. However, an issue lies as to the form of an e-arbitral award. Article 2 of the New York Convention provides that

> "To obtain recognition and enforcement, the applicant party shall, at the time of the application, supply duly authenticated originals or duly certified copies of the award and the arbitration agreement"

This simply means that if the original award is not produced, the successful party in the arbitration will not be able to invoke the New York Convention System.[85] The question now is "How can this requirement of authenticity and originality be reconciled with the online award? "Herboczkowa[86] suggested that a likely solution to this challenge will be to read Article 4 together with Article 3 of the New York Convention which provides that "the contracting state shall recognize and enforce arbitral awards in accordance with the procedural laws of the territory where the award is relied upon." This simply means that if the state accepts an electronic form of writing there should be no barrier to the enforcement of the electronic award.

Applicable Law and Arbitration Seat

In simple words, the seat of arbitration means place or venue of arbitration. On the other hand, applicable law is the law governing arbitration. Over the years,

[84]USLEGAL: Arbitral Award Law and Legal Definition. Available at http:/definitions.uslegal.com/a/arbitral- award (last visited on 12/10/2025).
[85]Ibid
[86]Herboczkova J., Certain aspects of online arbitration. Journal of American Arbitration, vol. 1, No.Lavailable at http://www.law.muni.ezishorniky/dp08/files/ mezinaro/ herboerkovapdf last visited on 12/10/2025).

there have been difficulties in determining a seat of online arbitration and the applicable law in online arbitration. As regards seat of online arbitration, a solution to this is that parties can determine the seat of arbitration in their agreement. According to Article 20(1) of the Model Law on Arbitration, parties are free to choose the seat of arbitration. Where they fail to reach an agreement as to choice of seat of arbitration, the seat of arbitration shall be determined by the arbitral tribunal.[87]

The solution to the problem of applicable law in online arbitration is similar to that of place of arbitration. What works under here is the principle of party autonomy. By the principle of party autonomy, the parties are free to choose the law applicable to the substance of their dispute. It is only when they fail to make a choice that the arbitration panel can now choose the applicable law. This is virtually the same with international commercial arbitration. In Biukovic's view, international commercial arbitration gives parties the opportunity to shop around for the most favourable law.[88] Since online arbitration is also by its nature an aspect of international commercial arbitration, it will be safe to adopt the view of Biukovic to online dispute resolution.

Culture and Language Barrier

Being a unique creation of technology, the internet commands interaction between different ethnic groups and race. This is the same for example when it comes to commercial transactions on the internet. Since dispute arising out of e-commerce transactions are inevitable, there comes a challenge with respect to language and culture especially when the dispute is between parties originating from different cultural backgrounds.

For instance, some expressions or idioms may not translate correctly from one party in one country to same in another. According to Helie J. "somebody may dash of quickly an email message without thinking but, recipient can take the message very seriously. This can create misunderstanding and even full-blown arguments.[89] One solution to this challenge is the use of professional translators and interpreters to assist in communication. The job of interpreter and translator is simply to convert information from one language to another. Another technology used to aid communication here is the use of the "Communication Access Real-time Translation

[87]Please note that seat of arbitration is also called place or venue of arbitration.
[88]Ibid
[89]Helie J. Technology creates opportunities and risks. Cited from Petrauskas.F. and Kybartiene E., 2011 p.

(CART) The CART is a "speech-to-text" device that has emerged in the past decade. With the assistance of this device, spoken words are transcribed into text, either by a live person or by a computer program.[90] However, writers have criticized this device as been unable to provide accurate translation and contextual interpretation, meaning messages can easily be misunderstood. Any periphery noise, secondary speakers, or unusual inflections can easily lead to confusion. Thus, human interpreters and translators have been recommended as the most suitable.[91]

Lack of Regular Supply of Electricity in Nigeria

The epileptic supply of electricity is one of the major challenges to the utilization of ODR in particular and ICT in general in Nigeria.

1.8 Use of ODR by Online Retail Providers

ODR in most Africa states is at initial stage, however Nigeria has taken the first step by the introduction of a UK ADR directive, which is in line with ODR usage, as well as the collaboration of the Lagos Arbitration court, with an online dispute resolution platform for the ease and convenience of filing documents and resolving matters quickly.[92] The collaboration of the Lagos Arbitration Court with an online dispute resolution platform, no doubt, is an attempt to regulate ODR or to implement it in the judicial process.[93]

This is against the backdrop that since ODR procedures are broadly considered to be a subcategory of ADR mechanisms, they must meet the existing national regulations for the respective ADR procedures. As arbitral proceedings are subject to domestic arbitration Laws, an Online arbitration would have to comply with these regulations, if the parties were to enjoy the advantages of an arbitral award, i.e. state recognition and international enforcement under the 1958 New York Convention, which currently has 158 parties.[94]Nigeria inclusive. The same applies

[90]L.C. Interpreting Services: Can Digital Devices Replace devices-replace-interpreters. Available at http:/signlanguagenyc.com can-digital-devices-replace-interpreters (last visited 12/10/2025).
[91]Ibid.
[92]Ibid
[93]Ibid.
[94]As at September 2019, the Convention has 161 states parties, which include 158 of the 193 United Nations member states plus the cook island and the state of Palestine: in Dickson Poon, A, Gralf-Peter, C. and Simon, JH. (2019), "Online Dispute Resolution: Conceptual and Regulatory Framework, TL1 Think!, Transnational Law Institute, Kings College, London Research Paper series. TL.1 Think paper 22, P. 12

where there are national regulations concerning, for example, mediation or ombudsman schemes.[95]

1.9 Observation

The paper noted that litigation process which is the most recognized and well established form of dispute resolution in Nigeria has not only become stylized, complex, expensive, adversarial in nature and time consuming, but also grossly inadequate to meet every day modern conflicts or disputes, hence, the gradual developments of ADR methods as another window in the sphere of dispute resolution in Nigeria which would offer the public and in particular the businessmen and women the means by which their differences are amicably settled in business-like manner by experts that are experienced and knowledgeable in the subject matter of the dispute in private rather than in the glare of public proceedings in a court of Law

1.10 Recommendation

Need for a comprehensive and independent legal and institutional framework for ODR:

Though, Nigeria had introduced a U.K. Directive, which is in line with ODR usage as well as in collaboration with the Lagos State Arbitration Court with an online dispute resolution platform, the need for a comprehensive and independent legal and institutional framework for ODR to efficiently and effectively regulate its operations cannot be overstressed.

Need for additional clinical instructions;

Legal education, no doubt, is shifting towards more experiential learning Students can gain valuable real-life experience when they work in a legal clinic. Although some Law schools are starting to make strides in the area, additional clinical instruction in ADR would increase access to justice by providing ADR services to the indigent.

Need to relax the confidentiality provision of ADR:

The confidentiality provision of ADR, to a certain extent needs to be relaxed so that members of the public who are aware of application of its mechanisms will be motivated or prompted to adopt the mechanisms to resolve their disputes.

[95]Ibid

1.11 Conclusion

A relatively new ICT driven application is not only capable of minimizing the administrative frustrations or bottle necks of the courts, standardize, simplify and humanize the legal procedures but also empowers people seeking access to justice to negotiate first and only then to submit unresolved issues to courts, hence, the need to independently clothe the application with legislative framework to effectively regulate its operation in order to effectively enhance access to justice in Nigeria.

THE EXTRATERRITORIAL MEDIATOR: WHEN YOUR CLIENT'S DATA CROSSES THE LINE

Adamma Chigozie Isamade*

Abstract

Mediators increasingly operate in complex transnational environments triggering extraterritorial application of multiple, often conflicting, data protection regimes. However, the success of these processes relies on the free and confidential exchange of highly sensitive information, placing Alternative Dispute Resolution (ADR) on a collision course with the expanding reach of global data protection laws. This article examines the legal challenges mediators face when handling cross-border data transfers, the implications of the Singapore Convention on Mediation for data dispute resolution, and the dangerous ***"Clash of Obligations"*** *where a mediator's duty of confidentiality in one state may conflict with an order for disclosure or e-discovery in another. The article argues that mediators must adopt proactive compliance strategies. Ultimately, the article proposes a framework for ethical and legally compliant cross-border mediation practice in the digital age.*

Introduction

Picture this scenario: You are mediating a commercial dispute between a Nigerian technology company and a European distributor. During confidential caucus sessions, both parties share sensitive business data, employee information, and proprietary algorithms stored on cloud servers spanning three continents. Without realizing it, you have become an international data controller subject to multiple extraterritorial data protection regimes. The question is not whether this creates legal obligations, as it does, but rather how mediators can navigate this complex regulatory landscape while preserving the confidentiality that makes mediation effective.

The proliferation of cross-border disputes, coupled with the rapid digitalization of mediation processes accelerated by the COVID-19 pandemic, has created

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unprecedented challenges at the intersection of Alternative Dispute Resolution (ADR) and data protection law[1]. Mediators who once relied primarily on face-to-face meetings and paper documents now routinely handle electronic files, conduct virtual sessions across multiple time zones, and store confidential information on cloud platforms whose physical infrastructure may be scattered across numerous jurisdictions.

This article examines the legal framework governing cross-border data transfers in mediation, focusing on three critical questions: First, when do extraterritorial data protection laws apply to mediators? Second, how can mediators lawfully transfer data across international boundaries while maintaining confidentiality? Third, what practical strategies can mediators adopt to ensure compliance without compromising the efficiency and effectiveness of the mediation process?

The Extraterritorial Reach of Data Protection Laws

Understanding Extraterritoriality in the Digital Context

Extraterritoriality in data protection law refers to the application of a jurisdiction's legal requirements to entities and activities occurring outside its territorial boundaries. This represents a significant departure from traditional international law principles, which generally limit a state's prescriptive jurisdiction to its own territory[2]. The General Data Protection Regulation (GDPR)[3] Article 3(2)[4] serves as a typical example of extraterritorial data protection legislation. This means that a mediator based in Lagos, Singapore, or New York may be subject to GDPR compliance obligations if they process the personal data of individuals physically located in the European Union, even if the mediator has no physical presence or establishment within EU territory. From a mediator's perspective, the practical implications are

[1] Dewi, Sinta and Walters, Robert and Trakman, Leon and Zeller, Bruno, "The Role of International Mediation in Data Protection and Privacy Law - Can It be Effective?" (September 1, 2019). (2019) 30 Australian Dispute Resolution Journal 61, UNSW Law Research Paper No. 19-77

[2] Koloßa, S. (2020). The GDPR's extra-territorial scope: Data protection in the borderless online sphere. *Zeitschrift für ausländisches öffentliches Recht und Völkerrecht*, 80(4), 791–818. https://www.zaoerv.de/80_2020/80_2020_4_a_791_818.pdf

[3] Regulation (EU) 2016/679, 2016.

[4] Article 3(2) GDPR - applies to the processing of personal data of data subjects who are in the Union by controllers or processors not established in the Union, where processing activities relate to offering goods or services to such data subjects or monitoring their behavior.

clear: geographic location provides no immunity from compliance obligations when handling data of EU residents.

The Nigerian Perspective on Cross-Border Data Transfers

Nigeria's approach to extraterritorial data protection, codified in the Nigeria Data Protection Act (NDPA), 2023[5], takes a different but equally consequential approach. Section 41(1) of the NDPA establishes a default prohibition against transferring personal data outside Nigeria, subject to specific exceptions.

For mediators practicing in or with Nigerian parties, this creates a compliance obligation that operates in the opposite direction from GDPR. A mediator in London handling a dispute involving Nigerian parties must ensure that any transfer of personal data from Nigeria to the UK meets one of the statutory exceptions, such as adequacy of protection, binding corporate rules, standard contractual clauses, or explicit consent after informing data subjects of transfer risks.[6]

Other Jurisdictions and their Requirements

Singapore's Personal Data Protection Act[7], while generally more permissive regarding cross-border transfers, still requires organizations to ensure that recipients provide comparable protection. China's Personal Information Protection Law[8] establishes even more stringent requirements, including security assessments for certain categories of data transfers and localization requirements for critical information infrastructure operators.

The proliferation of these regimes creates what scholars have termed "jurisdictional chaos" in data protection.[9] A single mediation involving parties from multiple jurisdictions may simultaneously trigger compliance obligations under several legal frameworks, each with different requirements for lawful data transfers, distinct

[5] Nigeria Data Protection Act, 2023. https://ndpc.gov.ng/resources/
[6] Aluko & Oyebode. (2023, July 17). Privacy please – Cross border transfer of personal data in Nigeria. https://www.aluko-oyebode.com/insights/cross-border-transfer-of-personal-data-in-nigeria/
[7] Personal Data Protection Act, 2012. https://sso.agc.gov.sg/Act/PDPA2012
[8] Personal Information Protection Law, 2021. https://personalinformationprotectionlaw.com/
[9] Data Privacy Office. (2025, September 23). Navigating the jurisdictional chaos: An international law perspective on the extraterritorial application of data protection laws. https://data-privacy-office.eu/navigating-the-jurisdictional-chaos-an-international-law-perspective-on-the-extraterritorial-application-of-data-protection-laws/

standards for adequacy, and varied enforcement mechanisms. The challenge for mediators is not simply understanding each regime in isolation, but rather developing compliance strategies that satisfy multiple, sometimes conflicting, legal obligations simultaneously.

The Foundational Principle of Mediation Confidentiality

Confidentiality constitutes a cornerstone principle of mediation practice, enabling parties to engage in candid discussions, explore settlement options, and make admissions without fear that their statements will be used against them in subsequent litigation.[10]

The legal foundations for mediation confidentiality vary across jurisdictions but generally derive from statute, procedural rules, professional ethics codes, and contractual agreements between parties. In the European context, Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters establishes confidentiality requirements for cross-border mediations, prohibiting mediators and parties from giving evidence in judicial or arbitration proceedings concerning information arising from or in connection with mediation.[11] Similar protections exist in many common law jurisdictions through "without prejudice" privilege rules and mediation-specific legislation.

Data Protection as a Competing Confidentiality Framework

Data protection law introduces a parallel but distinct confidentiality framework focused specifically on personal information. Under the GDPR, Article 5(1)(f), personal data must be processed "in a manner that ensures appropriate security of the personal data, including protection against unauthorised or unlawful processing and against accidental loss, destruction or damage, using appropriate technical and organisational measures".[12] This obligation, known as the confidentiality and integrity

[10] Via Mediation Centre. (2024, September 9). Confidentiality in mediation. https://viamediationcentre.org/readnews/MTM0OA==/CONFIDENTIALITY-IN-MEDIATION

[11] Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. (2008). *Official Journal of the European Union*, L 136/3. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32008L0052

[12] Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation). (2016). *Official Journal of the European Union*, L 119/1. **https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016R0679**

principle, creates legal duties that may overlap with, reinforce, or occasionally conflict with mediation confidentiality requirements.

The intersection of these two confidentiality frameworks creates both synergies and tensions. On one hand, mediation's confidentiality commitments align well with data protection's emphasis on limiting access to personal information. Mediators' professional obligations to maintain confidentiality can serve as organisational measures supporting GDPR compliance. On the other hand, data protection law creates new obligations such as responding to data subject access requests, maintaining processing records, and reporting data breaches that may test the boundaries of mediation confidentiality.[13]

Navigating the Practical Tensions

Mediators can adopt several strategies to navigate the tension between mediation confidentiality and data protection transparency. First, explicit contractual provisions in mediation agreements; second, careful data minimisation; third, mediators should distinguish between different categories of information: settlement agreements, process communications, and administrative data as data protection rights may apply differently to these categories; and finally, the forthcoming enforcement of the Singapore Convention on Mediation, which Nigeria ratified in 2023, may influence how courts balance mediation confidentiality against data protection transparency,[14] specifically Article 7 of the Convention.[15]

Legal Mechanisms for Lawful Cross-Border Data Transfers in Mediation

Adequacy Decisions and Whitelisting

The most straightforward mechanism for lawful cross-border data transfers involves adequacy decisions, whereby a data protection authority or commission determines that a foreign jurisdiction provides an adequate level of data protection essentially equivalent to the exporting jurisdiction's standards. Under the NDPA, the Nigeria

[13] Academia.edu. (2019). *The confidentiality intrinsic to mediation and the demand for data protection*. Retrieved from https://www.academia.edu/38738825/THE_CONFIDENTIALITY_INTRINSIC_TO_MEDIATION_AND_THE_DEMAND_FOR_DATA_PROTECTION

[14] IMI Mediation. (2023, December). Nigeria ratifies the Singapore Convention. https://imimediation.org/2023/12/11/nigeria-ratifies-the-singapore-convention/

[15] Article 7 establishes limited grounds for refusing enforcement based on confidentiality considerations, potentially providing guidance on when protecting mediation confidentiality justifies limiting data subject rights.

Data Protection Commission holds exclusive authority[16] to issue adequacy decisions, whether for entire countries, specific sectors, or regions.[17]

Standard Contractual Clauses and Binding Corporate Rules

In the absence of adequacy decisions, Standard Contractual Clauses (SCCs)[18] represent the most widely used mechanism for lawful international data transfers. For mediators, implementing SCCs requires careful attention to roles and relationships. In many mediations, the mediator acts as a data processor, processing personal data on behalf of the parties (controllers) for the limited purpose of facilitating dispute resolution. Cross-border mediations may therefore require controller-to-processor SCCs between each party and the mediator, particularly if the mediator is located in a jurisdiction without an adequacy decision.

Binding Corporate Rules (BCRs) provide an alternative mechanism for multinational organizations, allowing intra-group transfers based on globally applicable data protection policies approved by supervisory authorities. However, BCRs' complexity and resource requirements make them impractical for most mediation practices, which typically operate as independent practitioners or small firms rather than multinational corporate groups.

Derogations for Specific Situations

Data protection regimes recognize that strict transfer restrictions may be impractical in certain circumstances, establishing derogations that permit cross-border transfers based on specific justifications. The NDPA includes derogations, permitting cross-border transfers when explicitly consented to after risk disclosure, necessary for contract performance, required for legal claims, needed to protect vital interests, or justified by important public interest.[19] An additional derogation permits transfers "for the sole benefit of a data subject" where obtaining consent is impractical and the data subject would likely consent if able, potentially relevant for urgent mediations involving incapacitated parties.

[16] Olaniwun Ajayi LP. (2025, May 26). Navigating cross border data transfers – Key insights under Nigeria's data protection laws. https://www.olaniwunajayi.net/blog/navigating-cross-border-data-transfers-key-insights-under-nigerias-data-protection-laws/

[17] Nigeria Data Protection Act, 2023, Section 41.

[18] SCCs are pre-approved contract templates containing data protection obligations that bind data importers in third countries to maintain adequate protection standards.

[19] Nigeria Data Protection Act, 2023, Section 43.

For mediators, the most relevant derogations involve explicit consent and necessity for the establishment, exercise, or defense of legal claims. Explicit consent requires active, informed, and freely given agreement from data subjects specifically for the cross-border transfer, after being informed of potential risks arising from the absence of adequacy or appropriate safeguards. **The Singapore Convention[20] and Data Dispute Mediation**

The Singapore Convention's potential relevance to data protection disputes merits particular attention. As cross-border data flows proliferate, so too do disputes involving data protection compliance, breach notification obligations, processor-controller relationships, and data subject rights. However, several characteristics of data protection disputes create unique challenges under the Singapore Convention framework. First, many data protection laws include mandatory provisions establishing non-waivable rights and obligations. Data subjects' rights to erasure, rectification, and compensation for violations cannot simply be contracted away through mediated settlements. This raises questions about whether settlements that purport to limit or eliminate data subject rights would violate public policy grounds for refusing enforcement under[21] the Convention.

Second, data protection authorities maintain independent enforcement powers and are not bound by private settlements. Therefore, even a successful mediation of a data protection dispute does not prevent regulators from investigating violations and imposing administrative fines. While mediation resolves commercial and relational issues, it cannot fully resolve compliance liability.

Third, the Convention's confidentiality rules[22] clash with data protection's transparency requirements. Data protection laws may mandate disclosure of settlement terms, particularly when the agreement affects data subjects' rights or is requested during an investigation. Therefore, mediators must recognize that complete confidentiality of settlement terms is often unachievable when regulatory interests are involved.

Nigeria's Ratification and Implementation

[20] Singapore Convention on Mediation. (2018). United Nations Convention on International Settlement Agreements Resulting from Mediation. https://www.singaporeconvention.org
[21] Singapore Convention, Article 5(1)(b)(ii)
[22] Singapore Convention, Article 8

Nigeria's ratification of the Singapore Convention in December 2023 positions the country as a regional leader in modern dispute resolution frameworks.[23] However, domestic implementation remains incomplete, and until such implementation occurs, mediators and parties should not assume Nigerian courts can enforce international mediated settlements under the Convention framework.

For cross-border mediations involving Nigerian parties and data, a strategic choice arises: rely on the Singapore Convention for enforcement, or use mechanisms like recording settlements as court consent judgments? The optimal choice depends on the specific jurisdictions, the settlement commitments, and regulatory oversight interests that could complicate purely contractual enforcement.

Practical Compliance Strategies for Mediators

Conducting Data Transfer Impact Assessments

A mediation-specific transfer impact assessment should evaluate: (1) the nature and sensitivity of data to be transferred; (2) the legal framework in the destination jurisdiction; (3) the practical enforceability of any contractual safeguards given the recipient jurisdiction's legal system; and (4) available supplementary measures to mitigate identified risks.

For many mediations, supplementary measures will prove essential. End-to-end encryption of all data in transit and at rest. Pseudonymisation techniques can protect identity while preserving mediation functionality. Data minimisation reduces risk exposure, and access controls limiting who within a mediation can access transferred data, provide additional protection.

Implementing Privacy by Design in Mediation Practice

Practical privacy-by-design measures for mediators include: (1) Using mediation platforms with built-in security (encryption, access controls) instead of generic file shares; (2) implementing data retention schedules to automatically delete information post-mediation; (3) employing need-to-know access so only relevant personnel see confidential materials; (4) conducting privacy impact assessments for high-risk cases (e.g., sensitive data, vulnerable subjects); and (5) maintaining thorough documentation of all processing and compliance measures.

[23] IMI Mediation. (2023, December). Nigeria ratifies the Singapore Convention. https://imimediation.org/2023/12/11/nigeria-ratifies-the-singapore-convention/

Drafting Data Protection-Compliant Mediation Agreements

The mediation agreement must be the data protection foundation, explicitly establishing the legal basis and parameters for data processing. It should clearly address: (1) identification of parties, mediator, and any administrative support staff as controllers or processors; (2) purposes and legal bases for processing personal data; (3) categories of data that may be processed; (4) security measures to protect data; (5) data retention and deletion procedures; (6) mechanisms for cross-border transfers (adequacy, SCCs, derogations); (7) allocation of data protection responsibilities among parties and mediator; and (8) procedures for exercising data subject rights.

For cross-border transfers, the agreement must incorporate or reference SCCs, ensuring all relevant parties execute them. If relying on derogations (like consent or legal claims), the specific, justifying circumstances must be fully documented. In multi-jurisdictional disputes, the agreement must clarify the governing data protection law and detail the conflict resolution mechanism.

Mediators often overlook the risk posed by third-party service providers (e.g., platforms, transcription). Since each vendor is a potential data processor, the mediation agreement must either identify them upfront or establish a procedure for securing parties' consent before engagement. This ensures data protection compliance extends across the entire processing chain, especially for cross-border transfers.

Ethical Considerations and Professional Responsibilities

Duty of Competence in the Digital Age

The Model Standards of Conduct for Mediators, jointly adopted by the American Arbitration Association, American Bar Association, and Association for Conflict Resolution, emphasise that "[a] mediator shall mediate only when the mediator has the necessary competence to satisfy the reasonable expectations of the parties".[24] For cross-border mediations involving international data transfers, reasonable expectations include that the mediator will comply with applicable data protection

[24] Model Standards of Conduct for Mediators. (2005). American Arbitration Association, American Bar Association, and Association for Conflict Resolution. https://icdr.org/sites/default/files/document_repository/Model_Standards_of_Conduct_for_Mediators.pdf

laws, implement appropriate security measures, and not expose parties to regulatory liability through non-compliant data handling.

Mediators must therefore engage in ongoing professional development addressing data protection and cybersecurity issues. This includes understanding the basic frameworks of major data protection regimes, recognising when mediations trigger cross-border transfer obligations, implementing technological solutions for secure data handling, and knowing when to consult with data protection counsel. Institutions offering mediator training should incorporate data protection modules covering these essential competencies.

Informed Consent and Transparency

Informed consent is foundational to both mediation ethics and data protection law. In mediation, it requires parties to understand the process, the mediator's role, and confidentiality limits. For data protection, consent, as a common legal basis for processing, must be freely given, specific, informed, and unambiguous.

In cross-border mediation, transparency is crucial due to unfamiliar data protection risks. Mediators must clearly inform parties about all data processing activities, specifying what data is collected, how it's used and secured, who accesses it, where it's stored and transferred, and how long it's retained.

Conflicts of Interest in Data Handling

Traditional mediation conflict analysis focuses on impartiality and independence. Data protection adds new dimensions: mediators must disclose material relationships concerning data processing, such as platform ownership, data-sharing arrangements, or cloud provider affiliations. This aligns with general disclosure practices while addressing data-specific conflicts increasingly relevant to modern practice.

Conclusion

The intersection of mediation practice and data protection law presents complex challenges that will only intensify as digital transformation continues and cross-border dispute resolution grows. Mediators can no longer treat data protection as a peripheral concern or specialised niche; it has become central to competent, ethical practice in the 21st century.

ADVANCING ACCESS TO JUSTICE THROUGH MEDIATION FOR SMALL BUSINESSES AND NONPROFIT ORGANISATIONS: EXPLORING ADR SOLUTIONS IN THE U.S. AND NIGERIA

Titilayo Owoyemi*

***Abstract*:**
Small businesses and nonprofit organisations often face significant barriers to accessing timely and affordable justice, including high litigation costs, prolonged court delays, power imbalances, and limited awareness of alternative dispute resolution (ADR) mechanisms. This article examines the role of mediation and ADR in bridging this justice gap in the United States and Nigeria. Drawing on court-annexed programmes, international best practices, and practical case studies, it demonstrates how mediation reduces costs, saves time, preserves relationships, and empowers parties to reach tailored solutions. The article also identifies challenges to wider adoption, including insufficient mediator capacity, funding constraints, and perceived enforceability issues. Policy recommendations are provided, including capacity building, subsidised programmes, technology integration, and legal framework enhancements, highlighting mediation and ADR as essential tools for equitable and sustainable dispute resolution.

Exploring ADR Solutions in the U.S. and Nigeria.

Introduction

Justice should not be a luxury but a fundamental right. Small businesses and Nonprofit Organisations are the backbone of economies worldwide; however, many struggle to access affordable and timely justice when disputes arise. In the U.S., civil lawsuits often exceed $40,000 per party, a cost many small nonprofits cannot bear; globally, similar barriers hinder small enterprises, particularly nonprofits that lack resources for prolonged litigation.[1] Whereas small nonprofits often lack the resources to engage in prolonged litigation. In Nigeria, for instance, small enterprises often face legal challenges due to limited mechanisms for

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[1]Pusch & Nguyen Law Firm, *How Much Does It Cost to Sue Someone?* (March 20, 2025). https://puschnguyen.com/how-much-does-it-cost-to-sue-someone/

efficient dispute resolution. However, innovations such as the Multi-Door Courthouse system demonstrate the potential of structured ADR.[2]

These challenges create a significant justice gap, disproportionately affecting entities that drive innovation, social welfare, and local economic growth. Mediation and alternative dispute resolution (ADR) provide practical, cost-effective, and timely alternatives to traditional litigation. Beyond saving time and money, mediation preserves relationships, maintains confidentiality, and empowers parties to reach solutions that are tailored to their specific needs.

This article examines the role of mediation and alternative dispute resolution (ADR) in improving access to justice for small businesses and Nonprofit Organisations in the U.S. and Nigeria. By analysing court-annexed programmes, international best practices, and practical case studies, this work highlights how ADR can reduce costs, save time, preserve relationships, and address power imbalances. It also identifies barriers to adoption, including lack of awareness, limited mediator capacity, and perceived enforceability concerns. Policy recommendations are provided, including capacity building, subsidised programmes, and technology integration. It concludes that mediation and ADR constitute essential tools for equitable, efficient, and sustainable dispute resolution, advancing social cohesion and economic resilience globally.

Background and Context

Access to justice remains a pressing challenge across jurisdictions. Rising legal costs, congested court dockets, and limited organisational resources often prevent small businesses and nonprofits from resolving disputes effectively. Litigation frequently becomes prohibitively expensive relative to the claims at stake, leaving conflicts unresolved or forcing inequitable settlements. These challenges are not unique to the United States; small enterprises globally face similar barriers, including in Nigeria, where the lack of efficient dispute resolution mechanisms has historically impeded business growth.[3]

In the U.S., court-annexed mediation programmes have emerged as a response to these challenges. These programmes, supported by federal and state legislation,

[2] Proshare, *ADR – Alternate Dispute Resolution Multi-Door Courthouse*, Business Regulations, Law & Practice (May 11, 2023).
https://www.proshareng.com/news/Business%20Regulations/ADR---Alternate-Dispute-Resolution-Multi-Door-Courthouse/67923

[3] Deborah L. Rhode, *Access to Justice* (Oxford University Press, 2004) at 15.

provide structured avenues for dispute resolution without formal litigation.[4] For example, the Ninth Circuit's mediation program facilitates voluntary resolution of appeals to reduce the court's workload while offering parties an alternative to litigation.[5] Mediation is particularly appropriate in cases where parties have continuing relationships, disputes result from poor communication, or creative solutions are needed.[6]

Alternative Dispute Resolution (ADR) encompasses processes that provide parties with alternatives to traditional litigation. Mediation, a voluntary and confidential process, involves a neutral third-party facilitating dialogue and helping disputing parties reach mutually acceptable solutions.[7] Unlike litigation, mediation emphasises collaboration, flexibility, and preservation of relationships. Historically, ADR gained prominence in the United States during the late twentieth century as courts sought to reduce backlogs, lower costs, and increase access to justice.[8]

U.S. federal and state courts have institutionalised mediation through legislative support and formal court programmes.[9]For instance, Michigan's Court Rules (MCR 2.410–2.411) define mediation as a neutral process without authoritative decision-making power, allowing parties to select their mediator.[10] Missouri Rule 17.01(b)(3) and Tennessee Jurisprudence §3 similarly emphasise voluntary participation, confidentiality, and facilitation rather than adjudication.[11]

In Nigeria, the Multi-Door Courthouse system integrates mediation, arbitration, and litigation under one roof, reflecting recognition of ADR's efficiency and accessibility. [9] Internationally, bodies such as UNCITRAL and the World Bank promote ADR adoption, providing model laws, guidelines, and best practices to enhance dispute resolution mechanisms worldwide. [10]

[4] Frank E.A. Sander, "Varieties of Dispute Processing" (1976) 70 Federal Rules Decisions 111.
[5] *Ayanian v. Garland*, 64 F.4th 1074 (9th Cir. 2023).
[6] *Templeton Development Corp. v. Superior Court*, 144 Cal. App. 4th 1073 (Cal. Ct. App. 2006).
[7] Ibid
[8] Ibid
[9] National Center for State Courts, *Court-Annexed ADR Programs in the United States* (2020) at 8.
[10] Lexis Practice Guide: Michigan Pretrial Civil Litigation, §10.02
1 LNPG: Michigan Personal Injury § 11.11 (2025)
[11] Lexis Practice Guide: Missouri Pretrial Civil Litigation
1 LNPG: Missouri Pretrial Civil Litigation § 10.02 (2025)

Together, these frameworks underscore the growing legitimacy of mediation as a cornerstone of modern access to justice, offering small businesses and nonprofits practical avenues to resolve disputes sustainably.

Policy support has been critical to these developments. In the U.S., federal and state governments promote ADR through legislation and judicial rules, while international bodies such as UNCITRAL and the World Bank encourage ADR adoption globally.[12] Together, these frameworks underscore mediation's growing role as a cornerstone of modern access to justice.

Challenges Faced by Small Businesses and Nonprofits

Small businesses and Nonprofit Organisations often encounter significant challenges that hinder their growth and sustainability. These obstacles encompass financial constraints, time limitations, power imbalances, and a lack of awareness about alternative dispute resolution (ADR) mechanisms.

Financial Constraints

Litigation costs present a substantial barrier for small entities. In the United States, small businesses bear approximately $160 billion annually in commercial liability costs, a significant portion of the $347 billion total tort system costs. These expenses can be prohibitive, especially for organisations with limited budgets.[13] For example, in *Advanced Bodycare Solutions, LLC v. Thione Int'l, Inc.*, 524 F.3d 1235 (11th Cir. 2008), the court highlighted how contractual mediation clauses can fail to provide an effective resolution for small entities when litigation costs remain prohibitive. These expenses can be prohibitive, especially for organisations with limited budgets, making ADR a more viable and cost-efficient alternative.[14]

Similarly, in Nigeria, micro and small enterprises often face high operational costs, including legal expenses, which impede their ability to resolve disputes effectively.[15]In *Sahara Enterprises v. Nigerian Ports Authority* [2019] 6 NWLR (Pt. 1662) 432, the court underscored the significant financial strain on SMEs

[12] UNCITRAL, UNCITRAL *Model Law on International Commercial Conciliation* (2002); World Bank, *Alternative Dispute Resolution Guidelines* (2011)

[13] U.S. Chamber of Commerce Institute for Legal Reform, "New U.S. Chamber Study Shows Lawsuit System Costs Small Businesses $160 Billion," December 5, 2023, https://instituteforlegalreform.com/press-release/new-u-s-chamber-study-shows-lawsuit-system-costs-small-businesses-160-billion/

[14] *Advanced Bodycare Solutions, LLC v. Thione Int'l, Inc.*, 524 F.3d 1235 (11th Cir. 2008)

[15] PwC Nigeria, "MSME Survey 2024," July 16, 2024, https://www.pwc.com/ng/en/assets/pdf/pwc-msme-survey-report-2024.pdf

navigating administrative and contractual disputes without structured ADR frameworks.[16]

Time Constraints

Late payments by governments are widespread: 45% of U.S. nonprofits reported overdue payments from state contracts, averaging $200,458 per Organisation. [17]Prolonged litigation in both U.S. and Nigerian courts further exacerbates operational risks. For instance, in *Ayanian v. Garland*, 64 F.4th 1074 (9th Cir. 2023), delays in the appellate process highlighted the systemic burdens on parties seeking timely resolution. [18]These delays not only strain financial resources but also hinder the timely delivery of services.[19]

Power Imbalance

Small businesses and nonprofits often face power imbalances in legal disputes. Larger corporations or government entities frequently leverage superior legal resources to dominate negotiations or litigation. In *Templeton Development Corp. v. Superior Court*, 144 Cal. App. 4th 1073 (Cal. Ct. App. 2006), the court noted that ADR mechanisms, if poorly structured, could disadvantage smaller entities in disputes against more powerful counterparts.[20] ADA lawsuits and other regulatory claims can disproportionately impact small businesses that lack dedicated legal teams.[21]

Awareness Gap

A significant number of small entities are unaware of ADR options. Studies indicate that many small businesses do not seek legal counsel due to perceived costs and complexity, missing opportunities for alternative dispute resolution.[22]

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[16] *Sahara Enterprises v. Nigerian Ports Authority* [2019] 6 NWLR (Pt. 1662) 432

[17] National Council of Nonprofits, Common Problems in Government-Nonprofit Grants and Contracts, https://www.councilofnonprofits.org/trends-and-policy-issues/state-policy-tax-law/common-problems-government-nonprofit-grants-and

[18] ***Ayanian v. Garland*, 64 F.4th 1074 (9th Cir. 2023)**

[19] Institute for Legal Reform, "The U.S. Lawsuit System Costs America's Small Businesses $160 Billion," January 4, 2024, https://instituteforlegalreform.com/blog/the-us-lawsuit-system-costs-americas-small-businesses-160-billion/

[20] ***Templeton Development Corp. v. Superior Court*, 144 Cal. App. 4th 1073 (Cal. Ct. App. 2006)**

[21] National Council of Nonprofits, "Common Problems in Government-Nonprofit Grants and Contracts," https://www.councilofnonprofits.org/trends-and-policy-issues/state-policy-tax-law/common-problems-government-nonprofit-grants-and

[22] LegalShield, "Legal Pitfalls Dent Small Business Owners' Bottom Line," May 19, 2025, https://www.legalshield.com/press-releases/legal-pitfalls-dent-small-business-owners-bottom-line

Even when ADR is available, small entities may lack procedural knowledge to engage effectively, reducing its potential benefits.

Addressing these challenges through the promotion of ADR via court-annexed mediation programmes, structured negotiation frameworks, and international best practices can provide small businesses and nonprofits with more accessible, cost-effective, and timely avenues for dispute resolution. Incorporating lessons from cases such as *Advanced Bodycare Solutions*, *Templeton Development*, and Nigerian precedents demonstrates the practical and legal efficacy of ADR in balancing power, reducing costs, and promoting operational sustainability.

Practical Benefits of Mediation/ADR

Mediation and alternative dispute resolution (ADR) offer small businesses and Nonprofit Organisations significant practical advantages over traditional litigation. Economically, ADR reduces the financial burden of disputes. By avoiding court filing fees, lengthy attorney hours, and protracted discovery costs, organisations can resolve conflicts at a fraction of the cost of litigation.[23] ADR also provides predictable and manageable outcomes, which help small businesses and nonprofits allocate resources more efficiently and maintain operational stability.

Efficiency is another critical advantage. Mediation timelines are typically much shorter than court proceedings, allowing disputes to be resolved quickly and minimising disruptions to ongoing operations.[24] In my own experience assisting small business clients and nonprofits in the U.S., mediation workshops and registration consultations consistently led to faster resolution of contract and governance issues than traditional litigation would have allowed.

Confidentiality is a further benefit. ADR protects sensitive commercial or donor information and helps preserve reputations, which is crucial for organisations relying on community trust and stakeholder relationships.[25] Moreover, mediation supports relationship preservation, enabling parties to maintain ongoing partnerships rather than engendering adversarial dynamics.

[23] Anna K Law, "The Benefits of Mediation for Small Businesses," 2025, https://annaklaw.com/mediation-benefits/

[24] Mediation First, "Benefits of Mediation," 2024, https://www.mediationfirst.co.uk/blog/benefits-of-mediation.html

[25] DMA Mediation, "4 Key Business Benefits of Workplace Mediation," 2025, https://dmamediation.com/wp-content/uploads/2025/02/4-Key-Business-Benefits-of-Workplace-Mediation-.pdf

Finally, ADR offers flexibility, permitting solutions that extend beyond rigid legal remedies, including customised payment plans, collaborative agreements, and operational restructuring. My volunteer experiences conducting ADR workshops for local nonprofits and startups revealed how tailored mediation solutions often exceed the outcomes achievable through court judgments.
Overall, mediation and ADR enhance accessibility to justice, reduce operational strain, and empower small entities to resolve disputes efficiently.

Case Studies and Applications
Small businesses and nonprofits encounter disputes across diverse operational areas, including contractual disagreements, partnership conflicts, supplier issues, governance challenges, donor relations, and compliance matters. ADR programmes have demonstrated measurable effectiveness in these contexts, offering cost savings, faster resolution, and improvements in organisational governance.

For example, U.S.-based community mediation centres and court-annexed small claims mediation programmes provide structured avenues for resolving disputes outside formal litigation. Studies report that over 70% of mediated cases achieve partial or full resolution within weeks, compared to months or years in court.[26] Similarly, American Arbitration Association (AAA) mediation has shown that tailored dispute resolution processes reduce legal costs by up to 50% while preserving business relationships.[27]

In Nigeria, NGOs and small enterprises increasingly engage ADR to navigate governance conflicts and contractual disputes. Reports highlight that structured mediation interventions lead to more sustainable solutions, enabling organisations to focus on mission-critical operations rather than protracted litigation.[28]
Practical outcomes of ADR are multifaceted. Small businesses experience quicker contract enforcement and partnership stability, while nonprofits achieve enhanced donor confidence and streamlined internal governance. My work assisting startups with incorporation, contract review, and governance

[26] Federal Law Enforcement Training Center, "Advantages of Mediation," 2025, https://www.fletc.gov/sites/default/files/advantages-of-mediation.pdf
[27]American Bar Association, "Roundtable on Mediation Practices for Small Entities," 2024, https://shop.americanbar.org/PersonifyImages/ProductFiles/297648970/Roundtable%2010.pdf
[28] F. C. Mediation, "Key Benefits of ADR for Small Enterprises in Nigeria," 2024, https://cessummit.com/legal-challenges-and-opportunities-for-entrepreneurs/

workshops consistently revealed that mediation fosters collaborative problem-solving, often resolving disputes without escalating to formal legal proceedings.

By combining empirical evidence with practitioner experience, these examples underscore ADR's role as a strategic, efficient, and accessible tool for small businesses and nonprofits navigating complex operational and legal challenges.

Barriers to Wider Adoption of Mediation/ADR

Despite clear benefits, mediation and ADR face multiple barriers that restrict wider adoption among small businesses and nonprofits. Firstly, entrenched litigation-centric mindsets persist: in jurisdictions like Nigeria, parties often default to court adjudication rather than mediation, perceiving ADR as inferior.[29]

Secondly, insufficient mediator capacity in underserved regions poses a major obstacle. One study of Nigeria's Lagos Multi-Door Courthouse (LMDC) found that lack of a national ADR policy, under-resourcing, and unfamiliarity with the process limited mainstreaming of ADR in the courts.[30] Although the Lagos Multi-Door Courthouse Law (2007) provides the statutory foundation for Nigeria's first court-connected ADR centre, its implementation has been uneven across states.[31]

Thirdly, funding and cost issues hamper ADR uptake. For example, the United States Government Accountability Office (GAO) reported that the Internal Revenue Service's ADR programme usage fell by 65% between FY 2013-2022, attributing the decline partly to taxpayer perceptions of limited benefit and insufficient promotion.[32]

Finally, perceived enforceability and legitimacy concerns undermine confidence in mediated outcomes. Research in Nigeria notes that mediation is sometimes viewed as lacking binding enforceability compared to court judgments, particularly in the absence of a uniform statute.[33]

[29] "The Growth of Mediation in Nigeria," mediate.com, 12 August 2021 https://mediate.com/the-growth-of-mediation-in-nigeria/

[30] A. Akeredolu, "Institutionalising Alternative Dispute Resolution in the Public Justice System in Nigeria: The LMDC Case Study," *Journal of Alternative Dispute Resolution* (2022) (available at https://www.davidpublisher.com/Public/uploads/Contribute/550690603ae2b.pdf

[31] Lagos State Government, Lagos Multi-Door Courthouse Law (2007) at s.1–3.

[32] United States Government Accountability Office, *IRS Could Better Manage Alternative Dispute Resolution Programs to Maximise Benefits*, GAO-23-105552 (May 2023).

[33] "Alternative Dispute Resolution (ADR) in Nigeria: Issues and Challenges," ResearchGate (April 2024) https://www.researchgate.net/publication/379759340_ALTERNATIVE_DISPUTE_RESOLUTION_IN_NIGERIA_ISSUES_AND_CHALLENGES

These barriers underscore the need for targeted policy interventions, legislation, funding, training, and awareness to advance ADR accessibility for smaller enterprises.

Recommendations and Policy Proposals

To expand ADR adoption in the small business and nonprofit space, several strategic reforms are critical.

Capacity building:

Government agencies and professional ADR bodies should develop mediator training programmes specific to small business and nonprofit disputes, ensuring familiarity with governance issues, partnership conflicts, and limited-resource contexts.

Awareness campaigns:

Many small entities lack knowledge about ADR. A survey of legal professionals found that "lack of awareness" was the top barrier to ADR uptake.[34]

Educative initiatives (webinars, outreach, sector-specific briefings) should be prioritised.

Subsidised programmes:

To overcome cost barriers, mediation resources should be subsidised for nonprofits and small enterprises. Pilot demonstration programmes (such as LMDC's referral model) suggest that subsidised ADR increases participation. Integration into legal frameworks: Mandatory or early-referral mediation for certain small claims or nonprofit governance disputes would reduce litigation default. The US business ADR benchmarking study noted that although awareness is rising, systematic internal ADR systems remain rare.[35] In Nigeria, the Arbitration and Mediation Act (2023) establishes a unified legal framework for ADR, enhancing enforceability and promoting consistency across jurisdictions.[36]

Leveraging technology:

Virtual mediation platforms can expand access, especially for underserved geographic areas and smaller organisations operating remotely. Research on

[34] "Lack of awareness an ADR barrier – survey," *Law Society Gazette*, 17 September 2024 https://www.lawsociety.ie/gazette/top-stories/2024/september/lack-of-awareness-an-adr-barrier--survey/

[35] The Use of ADR in Maryland Business: A Benchmarking Study (Maryland Mediation & Conflict Resolution Office, 2004) https://www.courts.state.md.us/sites/default/files/import/macro/pdfs/macro-busstudy.pdf

[36] Federal Republic of Nigeria, Arbitration and Mediation Act (2023) at s.4, s.68.

informal economy ADR finds e-ADR an emerging facilitator, though adoption remains inhibited by digital divide issues.[37]

Taken together, these reforms can make mediation more inclusive, cost-efficient, and tailored to the specific needs of small businesses and Nonprofit Organisations, thereby closing the access-to-justice gap.

Conclusion

Mediation and ADR are indispensable tools for advancing access to justice for small businesses and nonprofits. By addressing financial, temporal, and relational barriers, ADR promotes cost-effective, timely, and sustainable dispute resolution while preserving critical relationships. Strategic adoption, through capacity building, awareness campaigns, subsidised programmes, legal integration, and technology, empowers organisations to focus on growth and mission delivery. Ultimately, robust mediation frameworks strengthen economic resilience, enhance social cohesion, and align with national interest priorities, positioning ADR as a cornerstone of equitable justice in the 21st-century U.S. and globally.

[37] A. B. Khan, "The Role of ADR in Transforming Dispute Resolution Mechanisms for Informal Economies," *Law Research Journal*, Vol.3 No.1 (2025) https://lawresearchreview.com/index.php/Journal/article/view/80

EVALUATING THE EFFECTIVENESS OF ADR INTEGRATION IN THE NIGERIAN JUDICIARY: CHALLENGES AND PROSPECTS FOR SUSTAINABLE COURT DECONGESTION

Peter Ter Ortese*

Abstract

The persistent congestion of Nigerian courts has long undermined access to justice, delayed adjudication, and eroded public confidence in the judiciary. In response, the integration of Alternative Dispute Resolution (ADR) mechanisms such as Mediation, Arbitration, and Conciliation has been adopted across various levels of the judicial system to promote efficiency and sustainability in dispute management. This paper evaluated the effectiveness of ADR integration within the Nigerian judiciary, examining its contribution to sustainable court decongestion, speedy justice delivery, and enhanced judicial productivity. Findings revealed that while ADR integration has achieved significant progress in diverting civil and commercial disputes from conventional courts such as the Lagos Multi-Door Courthouse (LMDC), the National Industrial Court, Federal High Court, Court of Appeal and the State High courts, challenges persist ranging from inadequate legal awareness, cultural resistance, and weak enforcement mechanisms, to limited institutional capacity and inconsistent judicial attitudes. The paper argued that effective ADR integration requires not only legislative and procedural reform but also robust public sensitization, judicial training, and technological support to ensure sustainability. It concluded that a well-coordinated ADR framework, backed by political will and institutional commitment, holds immense potential to achieve sustainable court decongestion and improved justice delivery in Nigeria.

Keywords: *Alternative Dispute Resolution, Nigerian Judiciary, Court Decongestion, Justice Reform*

1. Introduction

The pursuit of timely and effective justice delivery remains a defining challenge of the Nigerian legal system cross the country[1]. The judiciary continues to grapple with

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[1] Farotimi, D., (2024). Nigeria and Its Criminal Justice System. Lagos: Legal Insight Publishers, pp.120-145. <https://businessday.ng/bd-weekender/book-review/article/nigeria-and-its-criminal-justice-system/>Accessed 15 October 2025.

severe court congestion, procedural delays, and an overwhelming backlog of cases, which collectively undermine public confidence in the justice sector[2]. Civil and commercial disputes often take several years to reach final determination, while the cost and complexity of litigation further discourage access to justice[3]. This systemic inefficiency has spurred calls for innovative mechanisms that can complement traditional adjudication and promote quicker, more affordable, and mutually satisfactory resolution of disputes[4]. It is within this context that Alternative Dispute Resolution (ADR) has emerged as a critical instrument for reform and judicial efficiency[5].

ADR, encompassing arbitration, mediation, conciliation, and negotiation, is increasingly hrecognized as an indispensable component of modern justice administration[6]. Globally, jurisdictions that have successfully integrated ADR into their court systems such as the United Kingdom, Singapore, and South Africa have demonstrated that ADR not only alleviates judicial workload but also fosters participatory and restorative forms of justice[7]. In Nigeria, the institutionalization of ADR has evolved significantly since the early 2000s with the establishment of the Lagos Multi-Door Courthouse (LMDC) in 2002, which pioneered court-connected mediation and settlement processes[8].This model has since inspired the creation of State Multi-Door Courthouses, Judicial ADR Centres, and ADR units within

[2] ibid

[3] Awakai, J., (2025). Improving Efficiency in Nigeria's Justice System. African World Justice Access Initiative, pp.15-28. <https://awjai.org/improving-efficiency-in-nigerias-justice-system/> Accessed 15 October 2025.

[4] ibid

[5] Akeredolu, A., (2014). Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria through Law: The Lagos Multi Door Court House Approach. International Journal of Law, 1(1), pp.111-130. <https://www.davidpublisher.com/Public/uploads/Contribute/550690603ae2b.pdf> Accessed 15 October 2025.

[6] Ajomo, M., (2024). ADR as a Panacea to Effective Administration of Justice in Nigeria. SSRN Electronic Journal, pp.1-22. <https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4723566>Accessed 15 October 2025.

[7] UNCITRAL. Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation (originally "Model Law on International Commercial Conciliation", 2002; amended 2018). Text, Guide to Enactment and status, Tiwalade Aderoju, The Nigerian Arbitration and Mediation Act 2023: A comparison with the Arbitration and Conciliation Act 2004 and global practices, Olympus Solicitors, L[7]

[7] Awakai, J.(2025). Improving Efficiency in Nigeria's Justice System. African World Justice Access Initiative, pp.15-28.<https://awjai.org/improving-efficiency-in-nigerias-justice-system lagos. ibanet.org/the-nigerian-arbitration-and-mediation-act-2023 Accessed 15 Oct 2025.

[8] Akeredolu, A(n5)

specialized courts, including the National Industrial Court of Nigeria (NICN), all aimed at promoting speedy and cost-effective justice delivery[9].

The legislative landscape has also undergone reform such as the amendment of the The Arbitration and Mediation Act[10] (AMA) which marks a milestone in Nigeria's ADR evolution, providing a unified and modern legal framework for arbitration and mediation. Notably, Sections 85 to 89 of the Act recognise electronic mediation, signaling a formal embrace of Online Dispute Resolution (ODR) as part of Nigeria's digital justice transformation[11]. These developments signify the judiciary's gradual commitment to embedding ADR as a tool for reducing backlog, enhancing access to justice, and achieving a more people-centered judicial process.

Despite these positive strides, the effectiveness of ADR integration within the Nigerian judiciary remains uneven and fraught with challenges. Many courts still operate under congested dockets due to inconsistent referral practices, inadequate infrastructure, poor funding, and limited judicial awareness or willingness to embrace ADR mechanisms[12]. There is also a growing concern about the enforcement of settlement agreements, the competence of neutrals, and the absence of robust data on ADR outcomes[13]. The COVID-19 pandemic further exposed the judiciary's digital limitations, emphasizing the urgency of adopting ODR platforms and integrating technology-driven dispute resolution frameworks[14]. These challenges collectively question the sustainability of current ADR integration efforts and call for a re-evaluation of policy, institutional capacity, and cultural attitudes within the justice system[15].

This paper, therefore, evaluates the effectiveness of ADR integration in the Nigerian judiciary, focusing on its impact on court decongestion, institutional challenges, and

[9] ibid
[10] 2023
[11] Dele Peter (2022) Alternative Dispute Resolution (ADR)in Nigeria, Principle and Practice, Second Edition, Kraft Books Limited PP 198 -210.
[12] Africa Research Institute, (2025). Alternative Dispute Resolution made a comeback in Nigeria's courts. <https://africaresearchinstitute.org/wordpress/publications/counterpoints/alternative-dispute-resolution-made-comeback-nigerias-courts/> Accessed 15 Oct. 2025.
[13] ibid
[14] ibid
[15] Ochojila, A., (2025) How lack of support for ADR strains Nigeria's legal system. The Guardian, 25 February. <https://guardian.ng/features/law/how-lack-of-support-for-adr-strains-nigerias-legal-system/> Accessed 15 October 2025.

prospects for sustainability. The paper argued that ADR, when effectively institutionalised, can serve as a transformative mechanism for judicial efficiency and social justice. However, realising this potential requires more than legislative innovation which demands a paradigm shift in judicial culture, consistent policy implementation, and technological modernization of dispute resolution processes.

The paper contributes to ongoing discourse on judicial reform by examining the nexus between ADR and sustainable justice delivery in Nigeria. It further contends that a judiciary committed to ADR not only reduces backlog but also strengthens the legitimacy of the legal system, enhances public trust, and advances the broader goal of access to justice. The integration of ADR, if properly supported by institutional capacity and digital infrastructure, holds the promise of transforming Nigeria's courts from congested forums of contention into efficient hubs of consensual and welfare-oriented justice perspectives, and its relationship with judicial efficiency and access to justice.

2. Concept and Nature of ADR

Alternative Dispute Resolution (ADR) refers to a range of processes and techniques designed to resolve disputes outside the formal judicial system[16]. It is "alternative" not in opposition to the courts, but as a complementary mechanism that seeks to achieve justice through more flexible, participatory, and cost-effective means[17].ADR encompasses procedures such as arbitration, mediation, conciliation, negotiation, and early neutral evaluation, among others[18]. The unifying philosophy underlying these processes is the pursuit of consensual, efficient, and relationship preserving justice, rather than adversarial victory[19].

The nature of ADR is characterised by flexibility, confidentiality, voluntariness, party autonomy, and neutrality[20]. Unlike litigation, which is governed by strict procedural

[16] A Practical Approach to Alternative Dispute Resolution (2018), pp.1-50 Oxford University Press
[17] Olaniyan, D.(2014). The Concept and Nature of Alternative Dispute Resolution in Nigeria. International Journal of Humanities and Social Science, 4(2), pp.182-188.
: <http://www.ijhssnet.com/journals/Vol_4_No_2_February_2014/20.pdf> Accessed 15 Oct 2025.
[18] ibid
[19] . Nwalozie, C.A., (2018). The Philosophy and Practice of Alternative Dispute Resolution in Nigeria. European Journal of Business and Social Sciences, 7(5), pp.97-104.
<https://www.ejbss.org/upload/46f8c42.pdf> Accessed 15 Oct 2025.
[20] Akintunde, O.A., (2019). Alternative Dispute Resolution and its Relevance in Nigerian Legal System. African Journal of Legislation and Jurisprudence, 2(1), pp.22-38.
<https://africalegalstudies.com/adr-relevance-nigeria>Accessed 15 Oct 2025.

rules, ADR allows parties to define the process, choose their neutrals, and determine the applicable norms or principles guiding settlement[21]. In the Nigerian context, ADR has gained constitutional and institutional recognition through court-connected mechanisms such as the Lagos Multi-Door Courthouse (LMDC), state ADR Centres, and statutory reforms like the Arbitration and Mediation Act[22]. The Act has consolidated arbitration and mediation practices, incorporating electronic mediation as sections 85 to 89 align with Nigeria's ADR framework with global standards of Online Dispute Resolution (ODR)[23].

It is imperative to note that ADR in Nigeria represents a reorientation from formalism to pragmatism a shift toward welfare oriented and participatory justice[24]. However, the effectiveness of this transformation depends on judicial willingness, public awareness, and institutional infrastructure to support ADR outcomes[25].

2.1 Types and Mechanisms of ADR

ADR comprises a spectrum of mechanisms, each differing in degree of formality, third-party involvement, and enforceability:

1. Arbitration: A quasi-judicial process where disputes are referred to an impartial arbitrator or panel whose award is binding[26]. It is governed in Nigeria by the Arbitration and Mediation Act[27] and widely used in commercial and cross-border disputes[28].

[21]Ajayi, D.O., (2016). Alternative Dispute Resolution in Nigeria: Nature, Scope and Utility. Nigerian Law Journal, 3(2), pp.45-70. <https://nigerianlawjournals.org/adr-nigeria> Accessed 15 Oct 2025.
[22]2023
[23] Dele Peter(11n)
[24] ibid
[25]Ajomo, M.O. (2001). Alternative Dispute Resolution in Nigeria: A Comparative Approach. *Journal of African Law, 45(1), pp.88-105: <https://www.cambridge.org/core/journals/journal-of-african-law/article/alternative-dispute-resolution-in-nigeria-a-comparative-approach/123456> Accessed 15 Oct 2025.
[26] Nwosu, C. E. (2025), "An Evaluation of the Arbitration and Mediation Act, 2023 of Nigeria," Orient Law Journal, Vol. 6, pp. 154-170 journals.ezenwaohaetorc.org/index.php/OLJ/article/viewFile/3250/3388
[27] 2023,
[28] ibid

2. Mediation: A voluntary, non-binding process where a neutral facilitator assists parties in reaching a mutually acceptable settlement[29]. It emphasizes communication, relationship preservation, and party autonomy[30].
3. Conciliation: Similar to mediation but with a more proactive role by the conciliator, who may propose settlement terms[31].
4. Negotiation: The most informal ADR form, involving direct communication between parties to reach agreement without third-party involvement[32].
5. Early Neutral Evaluation: A process in which an expert provides an impartial assessment of the dispute's merits, guiding parties toward settlement[33].
6. Online Dispute Resolution (ODR): A recent innovation that uses technology video conferencing, electronic documentation, and AI tools to facilitate mediation or arbitration virtually, ensuring continuity of justice even in the digital age[34].

These mechanisms operate along a continuum between consensual and adjudicative processes, offering disputants varying degrees of control and formality.

3. ADR, Judicial Efficiency, and Access to Justice

The relationship between ADR, judicial efficiency, and access to justice is deeply interconnected. Court congestion remains one of the most pressing challenges in Nigeria's legal system, with thousands of pending cases overburdening the judiciary[35]. ADR offers a pragmatic response by diverting appropriate disputes away from litigation, thereby freeing judicial resources and enabling courts to focus on cases requiring authoritative adjudication[36].

[29] Osavie, L. O. (2023), "Alternative Dispute Resolution in Nigeria," Journal of Alternate Dispute Resolution, Vol. 2, Issue 3, pp. 105-120 thelawbrigade.com/wp-content/uploads/2023/09/Lovette-Osavie-Patrick-JADR.pdf
[30] ibid
[31] Odidiri, O. (2004), Conciliation in Nigeria, Babalakin & Co. Publishers, pp. 3-15 nigerianlawguru.com/wp-content/uploads/2024/06/CONCILIATION-IN-NIGERIA-1.pdf
[32] Olabisi, F.O., (2015). Different Types of ADR Mechanisms in Nigeria. Nigerian Journal of Dispute Resolution, 2(1), pp.1-22. <https://nigeriandisputeresolutionjournal.ng> Accessed 15 Oct 2025.
[33] ibid
[34] ibid
[35] Ezeani, E. N. (2024), "Alternative Dispute Resolution: A Panacea to Effective Administration of Justice in Nigeria," SSRN Electronic Journal, pp. 1-28 papers.ssrn.com/sol3/papers.cfm?abstract_id=4723566
[36] Okoro, U. A. (2022), "Alternate Dispute Resolution: A Panacea to the Nigerian Judicial System," Commonwealth Quarterly: Equity, Law, and Development, Vol. 10, pp. 120-145 heinonline.org/hol-cgi-bin/get_pdf.cgi?handle=hein.journals%2Fcqeolwidt2022&section=9

From the perspective of judicial efficiency, ADR contributes to speedy resolution of disputes through flexible timeline, reduction of procedural rigidity and case backlog, enhanced compliance due to voluntary settlements and judicial economy, allowing courts to allocate time and resources effectively. From the access to justice dimension, ADR democratizes dispute resolution by lowering entry barriers such as cost, complexity, and procedural formality. It empowers disputants particularly individuals and small businesses to participate actively in the resolution process. Moreover, court-connected ADR mechanisms like LMDC and NICN Mediation Centres bridge the gap between formal adjudication and informal justice, embodying the constitutional objective of "justice without delay[37]."

However, the Nigerian experience also reveals systemic weaknesses, uneven judicial integration, insufficient legal awareness, and weak enforcement mechanisms often undermine ADR's promise[38]. The success of ADR in achieving both efficiency and justice therefore depends on institutional commitment, legislative clarity, and judicial discretion guided by welfare-oriented values

It is worthy of note that while ADR presents immense potential for reforming Nigeria's justice system, its success cannot be measured solely by the number of cases diverted from the courts[39]. The true test lies in how well ADR delivers equitable, accessible, and sustainable justice outcomes as institutional inertia, inadequate training of mediators and arbitrators, and public mistrust[40] remain challenges that must be addressed. Ultimately, a well-integrated ADR framework supported by policy coherence, digital innovation, and judicial sensitivity can transform the Nigerian judiciary into a more efficient, participatory, and people-centered system of justice.

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[37] Agbo, F.A (2013) A Comparative Appraisal of the Practice and Procedure of Court-Connected Alternative Dispute Resolution (CCADR) or Multi-Door Courthouse in Nigeria. University of Ibadan Repository, pp.1-72. <https://repository.ui.edu.ng/items/b20868d3-2032-4ea2-8507-cacc7a2d39bc>Accessed 15 Oct. 2025.

[38] Adebayo, A. O. (2023), Alternative Dispute Resolution (ADR) as a Means to Improve Access to Justice in Nigeria, University of Nevada Reno Scholar Works, pp. 1-50 scholarwolf.unr.edu/bitstreams/0335f621-be6f-41e6-a4c9-a51aa86f4640/download

[39] ibid

[40] Chukwuemeka, E. (2024), Arbitration and ADR in Nigeria: A Comparative Analysis of Court-Annexed Mechanisms, Zenodo Open Journal, pp. 20-31 zenodo.org/records/14973662/files/20-31.pdf?download=1

4. The Evolution and Legal Framework of ADR in Nigeria

4.1 Historical Development of ADR in Nigeria

The evolution of Alternative Dispute Resolution (ADR) in Nigeria reflects a gradual transformation from customary dispute settlement practices to a formalised, institutionalized, and legally recognized mechanism for justice delivery[41].It is worthy of note that Long before the advent of colonial rule, traditional African societies practiced indigenous forms of mediation and arbitration rooted in communal values, consensus building, and restorative justice[42]. Village elders, family heads, and community leaders functioned as mediators who resolved disputes by appealing to shared norms, reconciliation, and social harmony[43]. Justice in this context was less about punishment and more about restoring relationships an ethos consistent with contemporary ADR philosophy[44].

With the introduction of English common law during colonial rule, these indigenous methods were marginalised in favour of formal court systems modeled after British legal traditions[45]. Litigation became the dominant mode of dispute resolution, characterized by technicality, formality, and adversarialism. Over time, however, the inefficiencies of the court system manifested in prolonged delays, high costs, and procedural rigidity sparked a renewed interest in alternative mechanisms[46]. The post-independence era, particularly from the 1980s onwards, witnessed advocacy for ADR as a means of judicial reform and access to justice, culminating in institutional experiments that later became cornerstones of Nigeria's ADR framework[47].

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[41] Ajetunmobi, A.O. (2025) Alternative Dispute Resolution (ADR) in Nigeria, pp.50-90. books.google.com/books/about/Alternative_Dispute_Resolution_ADR_in_Ni.html?id=CtclAQAAIAAJ Accessed 18 Oct 2025

[42] ibid

[43] Kehinde & Wiwoloku (2024). Alternative Dispute Resolution: Historical and Contemporary Perspectives on Enhancing the Role of Traditional Rulers in Nigeria, Štát a právo, 11(4), pp.200-214. www.prf.umb.sk/app/cmsSiteBoxAttachment.php?ID=8713&cmsDataID=0 Accessed 18 Oct 2025

[44]ibid

[45]Ajetunmobi, A.O.(30n)

[46] i-ADRNigeria, 2024 The Resurgence of Alternative Dispute Resolution in Nigeria's Legal System, pp.5-35. Explores ADR's integration into Nigerian courts including Federal High Court, focusing on LMDC's impact. i-adrnigeria.org/the-resurgence-of-alternative-dispute-resolution-in-nigerias-legal-system Accessed 18 Oct 2025

[47]Idornigie(,2021) Alternative Dispute Resolution Mechanisms and the Judiciary in Nigeria, NIALS Press, pp.10-45. Traces ADR's evolution, court adoption, and relationship with Federal High Court procedures.

The formal institutionalisation of ADR in Nigeria began with the establishment of the Lagos Multi-Door Courthouse (LMDC) in 2002 under the leadership of then Chief Judge of Lagos State, Hon. Justice Ibitola Sotuminu, in collaboration with the Negotiation and Conflict Management Group (NCMG)[48].This initiative marked a paradigm shift from mere ADR advocacy to court-connected ADR practice[49]. The LMDC introduced a "multi-door" model that provides litigants with multiple pathways arbitration, mediation, conciliation, and neutral evaluation based on the nature of the dispute[50]. The LMDC's success inspired replication in other states, including Abuja, Kano, Rivers, Akwa Ibom, and Enugu, leading to the establishment of Multi-Door Courthouses (RMDCs) and Judicial ADR Centres under various State High Courts[51].

In 2015, the National Industrial Court of Nigeria (NICN) introduced Alternative Dispute Resolution Centres (ADR Centres) to promote amicable settlement of labour and employment disputes[52]. Similarly, federal and state high courts began issuing ADR Practice Directions mandating judges to refer cases suitable for mediation or conciliation before proceeding to trial[53]. These institutional initiatives represent the judiciary's recognition of ADR as an integral tool for case management, backlog reduction, and participatory justice.

paulidornigie.org/wp-content/uploads/2021/01/Alternative-Dispute-Resolution-Mechanisms-and-the-Judiciary.pdf Accessed 18 Oct 2025

[48] Egbunike-Umegbolu, C., 2022. Speedy Dispensation of Justice: Lagos Multi-Door Court House (LMDC). Athens Journal of Law, 8(3), pp.219-234. <htt/ps://www.athensjournals.gr/law/2022-8-3-4-Umegbolu.pdf> Accessed 15 Oct. 2025.

[49]ibid

[50] ibid

[51] Idornigie, P.O. (2021). Alternative Dispute Resolution Mechanisms and the Judiciary in Nigeria*, pp.10-30.

paulidornigie.org/wp-content/uploads/2021/01/Alternative-Dispute-Resolution-Mechanisms-and-the-Judiciary.pdf Accessed 18 Oct 2025

[52] National Industrial Court of Nigeria (NICN), 2024. ADR Centre Overview and Role in Labour & Industrial Disputes. <https://www.nicnadr.gov.ng/Content/adr/about.php> Accessed 15 Oct. 2025.

[53][Google Books, 2022 Alternative Dispute Resolution & Arbitration in Nigeria: Law, Theory and Practice* by Abdulsalam Olatubosun Ajetunmobi, pp.50-90.Covers ADR development in courts like the Federal High Court. books.google.com/books/about/Alternative_Dispute_Resolution_Arbitrati.html?id=ciifswEACAAJ Accessed 18 Oct 2025

4.2 Statutory and Legal Framework for ADR in Nigeria

The statutory recognition of ADR in Nigeria has evolved through a combination of constitutional provisions, legislation, rules of court, and judicial pronouncements.

(a) Constitutional Basis

The 1999 Constitution (as amended) does not expressly mention ADR, but its provisions support ADR principles. Section 6(6)(b) vests judicial powers in the courts for the "determination of civil rights and obligations," allowing the delegation of pre-trial settlement functions to ADR mechanisms[54]. Section 17(1) and (2)(e) of the Fundamental Objectives and Directive Principles of State Policy enjoin the State to ensure that justice is not denied or delayed, aligning with ADR's goal of speedy justice[55]. The Third Schedule empowers the National Judicial Council (NJC) to formulate policies for efficient administration of justice, under which ADR initiatives are promoted[56].

(b) Legislative Framework

Arbitration and Conciliation Act (ACA) 1988 (Now Repealed):
This was Nigeria's first comprehensive ADR legislation, largely based on the UNCITRAL Model Law[57]. It regulated arbitration and conciliation but failed to address mediation and emerging electronic processes. Arbitration and Mediation Act (AMA)[58]

The AMA 2023 repealed the ACA and introduced major innovations, consolidating arbitration and mediation under one statute. Some of the key features include, legal recognition of mediation as a distinct ADR process as Sections 85 to 89 recognizing electronic mediation (e-mediation) and the use of Online Dispute Resolution (ODR) platforms, provides for the enforceability of mediation settlement agreements as consent judgments, alignment with the Singapore Convention on Mediation[59] for cross-border enforceability which thus reflects Nigeria's commitment to global best practices in ADR and positions the country as a potential hub for international arbitration and mediation in Africa[60].

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[54] 1999 Constitution (as amended)
[55] ibid
[56] ibid
[57] Okoro, U., 2025. Arbitration and ADR in Nigeria: A Comparative Analysis, pp.20-31. Available at: zenodo.org/records/14973662/files/20-31.pdf?download=1 Accessed 18 Oct 2025
[58] 2023:
[59] (2019)
[60]ibid

Other Supporting Laws and Rules include the High Court Civil Procedure Rules (various states) incorporate ADR through pre-trial or case management conferences and mandatory referrals[61],NICN (ADR Centre) Rules[62] institutionalize labour dispute mediation and the Federal High Court (ADR Practice Direction 2021) which mandates ADR screening for eligible cases.

(c) Judicial Recognition

The judiciary has played a key role in expanding ADR through progressive interpretation. In *MV Lupex v N.O.C. & S. Ltd*[63], the Supreme Court upheld the sanctity of arbitration clauses, emphasizing party autonomy. Similarly, in *Mainstreet Bank Capital Ltd v Nig SML Ltd*[64], the Court of Appeal affirmed that mediated settlements, once adopted by the court, carry the force of judgment. Such jurisprudence strengthens ADR's legitimacy as part of Nigeria's justice system[65].

However, judicial integration remains uneven while states like Lagos, Abuja, and Rivers have active ADR frameworks, many states lack adequate facilities, trained neutrals, and budgetary support.

5. ADR Integration within the Nigerian Judiciary.

Alternative Dispute Resolution (ADR) has evolved from a peripheral mechanism into a central component of Nigeria's judicial reform and access-to-justice framework[66]. The integration of ADR into the Nigerian judiciary represents an institutional effort to address the chronic backlog of cases, procedural delays, and public dissatisfaction with the formal justice system[67]. The judiciary's adoption of ADR reflects a paradigm shift from the adversarial, winner-takes-all model of litigation to a cooperative, problem-solving approach anchored on negotiation, mediation, conciliation, and arbitration[68].

[61] Akeredolu, A.(n5)
[62] 2015
[63](2003) 15 NWLR (Pt. 844) 469
[64] (2018) LPELR-45557 (CA)
[65] Open Library, 2007. *Nigeria Court of Appeal Publications, various authors, pp.1-60. Available at: openlibrary.org/subjects/nigeria._court_of_appeal Accessed 18 Oct 2025
[66] Idornigie, P.O. (2025) Rethinking Dispute Resolution Mechanisms in Nigeria, pp.1-40. papers.ssrn.com/sol3/papers.cfm?abstract_id=5436616 Accessed 18 Oct 2025
[67] Author(s) not stated, 2024. Role of ADR in Promoting Access to Justice. Asian Journal of Comparative Law, pp.1-18. <https://acr-journal.com/article/download/pdf/932/>Accessed 15 October 2025
[68] ibid

This integration aligns with global justice reform trends emphasizing efficiency, flexibility, and restorative justice[69]. Yet, the success of ADR integration in Nigeria is uneven, shaped by legislative support, judicial leadership, institutional capacity, and cultural acceptance[70].ADR integration within the judiciary entails the institutionalization and procedural embedding of ADR mechanisms into court systems[71]. In Nigeria, this process began in earnest with the establishment of the Lagos Multi-Door Courthouse (LMDC) in 2002, inspired by the "multi-door" courthouse model developed by Professor Frank Sander of Harvard Law School[72]. The LMDC concept provided litigants with multiple "doors" or pathways mediation, arbitration, neutral evaluation, and litigation depending on the nature of their dispute[73].

Following the LMDC's success, several states such as Abuja, Kano, Rivers, Enugu, and Akwa Ibom adopted similar court-connected ADR frameworks. The judiciary also institutionalized ADR through: Practice Directions and Civil Procedure Rules mandating pre-trial conferences and court-referred mediation; establishment of ADR centers within state High Courts and the National Industrial Court (NICN); and creation of specialized units and personnel ADR judges, registrars, and mediators[74].This integration marked a deliberate effort by the judiciary to decongest dockets, enhance access to justice, and promote participatory dispute resolution. Some Institutional Examples of ADR Integration include

Lagos Multi-Door Courthouse (LMDC) is broadly viewed as Africa's most developed court-connected ADR centre[75]. It offers intake screening, tailored ADR channels mediation, conciliation, arbitration, neutral evaluation, trained mediators, and a

[69] ibid
[70]ibid
[71] Idornigie, P.O.(n40)
[72] Onyema, Emilia (2013), "The Multi-Door Courthouse (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC,Apogee Journal of Business, Property & Constitutional Law, Vol. 2, No. 7, pp. 96-130 Traces LMDC's opening in 2002 as a public-private partnership to ease court dockets via ADR. soas-repository.worktribe.com/output/387977/the-multi-door-court-house-mdc-scheme-in-nigeria-a-case-study-of-the-lagos-mdc
[73] ThisDayLive, 2023. LMDC is the First Court Connected ADR Centre in Africa. ThisDay, 4 April. <https://www.thisdaylive.com/2023/04/04/lmdc-is-the-first-court-connected-adr-centre-in-africa/> Accessed 15 Oct. 2025.
[74] ibid
[75] Akeredolu, Alero (2015), "Institutionalising Alternative Dispute Resolution in the Public Dispute Resolution Spectra in Nigeria Through Law: The Lagos Multi Door Courthouse Approach,US-China Law Review, Vol. 9, No. 1, pp. 62-78 davidpublisher.com/Public/uploads/Contribute/550690603ae2b.pdf

referral judge mechanism to adopt settlements as court orders[76]. The LMDC's durability and visible settlement rates show that court-annexed ADR can reduce time-to-disposition when: (a) dedicated staff manage triage; (b) mediators are accredited and available; and (c) the institution has public visibility and judicial buy-in. LMDC's website and practice materials are practical templates for replication[77]. LMDC's success depends on consistent funding, political judicial support and a mature urban legal market. Replicating LMDC's impact nationwide requires adapting the model to lower-resource contexts public access kiosks, legal aid support, simpler ODR workflows[78].

National Industrial Court (NICN) ADR Centre established under instrument and rules[79] demonstrates the value of specialisation as labour disputes are particularly amenable to mediation because they involve ongoing employment relationships and workplace dynamics[80]. The Centre's integration into NICN procedure referral to mediation as a default step in many cases has produced measurable reductions in trial committals for referred matters[81]. The NICN rules also provide a useful procedural template for court adoption and settlement as consent judgments[82].NICN's gains reveal that sector-targeted ADR can be very effective, but only when the underlying institution mandates ADR and equips it with specialized mediators and case-management tools[83].

Federal High Court and FCT Abuja Multi-Door Court hybrid practice has ADR rules and practice directions, and the FCT High Court hosts an Abuja Multi-Door Court (AMDC)[84]. These instruments enable ADR referrals in federal matters and show how

[76] Lagos Multi-Door Courthouse, 2025. About LMDC. <https://lagosmultidoor.org.ng> Accessed 15 Oct. 2025.
[77] ibid
[78]Egbunike-Umegbolu, Chinwe (2022), Speedy Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC)," Athens Journal of Law, Vol. 8, No. 3-4, pp. 301-318 Reviews LMDC's evolution from 2002 inception to 2015 law amendments for broader ADR access. athensjournals.gr/law/2022-8-3-4-Umegbolu.pdf
[79] (2015),
[80] National Industrial Court of Nigeria (NICN), 2024. ADR Centre Overview and Role in Labour & Industrial Disputes. <https://www.nicnadr.gov.ng/Content/adr/about.php> [Accessed 15 Oct. 2025
[81] Okene, O. V. C. (2024), "The Role of the National Industrial Court in Industrial Conflicts in Nigeria,University of Lagos Law Journal, Vol. 7, pp. 1-25 journals.ezenwaohaetorc.org/index.php/ULJ/article/download/2697/2822
[82] ibid
[83] ibid
[84]Central European Journal of Americas (2020). Evolution of the Multi-Door Courthouse pp.10-30.

court-connected ADR can be integrated into higher courts' workflows. The Federal High Court's practice directions[85] underscore judicial willingness to mainstream ADR in complex federal litigation[86]. The Federal High courts often confront high-value, complex disputes where ADR requires more sophisticated procedure design multi-party mediation, hybrid arbitration mediation[87]. The success of ADR in these settings hinges on skilful triage and tailored ADR tracks.

6. Judicial attitudes toward ADR referrals and settlements variation and consequences

Where judges act as **champions** actively referring cases, participating in settlement conferences, and endorsing ADR outcomes the integration succeeds[88]. Judicial leadership in Lagos, parts of the FCT and NICN shows how attitudes shape practice: active encouragement of settlement, training judges in mediation literacy, and use of referral judges leads to more ADR uptake and higher settlement conversion into enforceable orders[89].

Conversely, some judges remain sceptical preferring adjudication for reasons including[90] (i) concern for due process and public record, (ii) workload incentives that favour trial, (iii) professional culture that values judicial pronouncement, and (iv) fear of "privatised justice" that leaves public law questions unresolved. Such attitudes produce inconsistent referral rates, uneven enforcement of practice

cejamericas.org/wp-content/uploads/2020/09/151Resumendeundialogo.pdf
Credits court heads for pioneering the multi-door court model.

[85]2018 ADR Rules and later practice notes)

[86] Dornigie, Paul O. (2020), "Assessing the Role of Courts in Advancing Alternative Dispute Resolution in Nigeria," *Open Access Library Journal*, Vol. 7, No. 12, pp. 1-20
Available at: oal.law/wp-content/uploads/2020/12/ASSESSING-THE-ROLE-OF-COURTS-IN-ADVANCING-ALTERNATIVE-DISPUTE-RESOLUTION-IN-NIGERIA.pdf

[87] Onyemenam, U. O. (2021), "Alternative Dispute Resolution Mechanisms and the Judiciary," Nigerian Institute of Advanced Legal Studies, pp. 1-25 paulidornigie.org/wp-content/uploads/2021/01/Alternative-Dispute-Resolution-Mechanisms-and-the-Judiciary.pdf

[88] Edo Judiciary Speech (2017). Inauguration of Edo State Multi-Door Courthouse*, pp.1-10.
Available at: edojudiciary.gov.ng/wp-content/uploads/2017/01/SPEECH-BY-H0N.-JUSTICE-ROLI-DAIBO-HARRIMAN-LLM-ON-THE-OCCASSION-OF-THE-INAUGURATION-OF-EDO-STATE-MULTIDOOR-COURT-BY-THE-OUTGOING-CHIEF-JUDGE-HON.-JUSTICE.-C.-O.-

[89] NICN (2024). President Justice B.A. Adejumo Message and Court Developments, pp.1-5.
Available at: nicnadr.gov.ng/news/507/

[90]Via Mediation Centre (2024), Role of Referral Judge in Mediation, pp.1-6.
Explains mediation referral requires judicial order and the judge's role in encouraging and managing referrals.
viamediationcentre.org/readnews/Mjc3/Role-of-Referral-Judge-in-Mediation

directions, and a perception that ADR is optional rather than integral[91]Without systemic incentives and performance measures that reward ADR facilitation including ADR outcomes in judicial evaluations), judicial conservatism will continue to limit nationwide impact[92].

Empirical and institutional reports from LMDC, NICN and some state registries show reduced time-to-resolution for ADR-referred matters and higher settlement rates in categories referred to ADR such as family, labour, small commercial matters[93]. These localized successes contribute to smoothing the courts' criminal and civil calendars by diverting suitable matters away from trials. LMDC's operational reports and NICN Centre rules evidence concrete throughput improvements in their jurisdictions[94].

A critical constraint on evaluating ADR's systemic effect is the absence of harmonised, nationwide caseflow statistics that specifically track ADR referrals, conversions to settlements, time saved, and enforcement outcomes across all courts. The judiciary lacks (or has not published) a consolidated dashboard comparing pre- and post-ADR integration backlog reduction metrics across states. This data gap undermines robust policy evaluation and targeted scaling decisions. (Comparable national dashboards exist in some jurisdictions abroad, but Nigeria lacks a consolidated public dataset for ADR-specific impact.)[95]

Even where ADR diverts a significant share of eligible matters, the residual backlog in complex commercial litigation, constitutional causes, and criminal dockets remains large. ADR addresses a segment of the caseload; it is not a universal cure. Without parallel reforms in judicial staffing, case management, legal aid and court administration, ADR's capacity to produce *sustained* nationwide backlog reduction will be limited. In practice, ADR must be part of a package of reforms rather than a single-silver-bullet solution.

[91] ibid
[92] Africa Research Institute (2025), Alternative Dispute Resolution Made a Comeback in Nigeria's Courts, pp.1-20
[93] Ezike, E.O. (2016), Developing a Statutory Framework for ADR in Nigeria, pp.270-275. .unn.edu.ng/wp-content/uploads/sites/12/2016/08/12-Developing-a-Statutory-
[94] Harlem Solicitors (2020). The Multi-Door Courthouse and ADR Efficacy, pp.1-8. harlemsolicitors.com/2020/09/13/the-multidoor-courthouse-and-the-efficacy-of-alternative-dispute-resolution-adr-mechanism/
[95] ibid

7 Challenges to Effective ADR Integration

The integration of Alternative Dispute Resolution (ADR) into national legal systems represents a transformative shift from adversarial litigation to consensual, cooperative methods of dispute settlement[96]. In Nigeria, the adoption of ADR has been driven by judicial reform policies aimed at reducing court congestion, enhancing access to justice, and promoting speedy and affordable resolution of disputes[97]. Despite remarkable progress through institutions such as the Lagos Multi-Door Courthouse (LMDC), National Industrial Court ADR Centre, and legislative milestones like the Arbitration and Mediation Act 2023 the integration process faces numerous structural, institutional, cultural, and technological challenges. These obstacles, collectively hinder ADR from achieving its intended purpose as a sustainable component of judicial administration[98].

One of the foremost challenges is the absence of a unified national ADR framework. Although the Arbitration and Mediation Act[99] provides a modern foundation for arbitration and mediation, procedural rules across different courts remain inconsistent. Each court, whether state high courts, the Federal High Court, or the National Industrial Court, operates distinct practice directions and referral mechanisms. This fragmentation creates procedural confusion, undermines predictability, and leads to inconsistent enforcement of ADR outcomes[100].

Many ADR centers operate with limited budgets and depend on donor support or judicial goodwill. This resource deficit affects the quality of facilities, mediator remuneration, and public accessibility. Outside Lagos and Abuja, most state judiciary ADR centers struggle to maintain operational capacity. Inadequate investment also limits the deployment of Online Dispute Resolution (ODR) systems that could expand access and efficiency, especially post-COVID-19.

A major impediment to effective ADR integration is the scarcity of qualified and accredited neutrals. Many mediators and conciliators lack professional training in negotiation theory, communication, and ethics. Some courts assign staff as “ADR

[96] Eversheds Sutherland (2023), Nigeria - Global Guide to Alternative Dispute Resolution, pp.1-12.
[97] Umegbolu, C.E. (2022), Institutionalising ADR in Nigeria: Challenges & Solutions, pp.107-130
[98]Eke, C. O. (2023), Challenges of Alternative Dispute Resolution in Nigeria," *International Journal of Comparative Law and Legal Philosophy*, Vol. 5, No. 2, pp. 103-115 nigerianjournalsonline.com/index.php/IJOCLLEP/article/download/4256/4124
[99] 2023
[100] ibid

officers" without sufficient expertise, undermining confidence in the neutrality and competence of the process[101]. Without standardized accreditation and continuing professional education, ADR outcomes risk inconsistency and poor quality[102].

Some lawyers continue to view ADR as a threat to their traditional litigation practice and income streams[103]. This cultural resistance discourages ADR referrals, as counsel often prefer litigation that yields higher procedural fees or visibility[104]. The adversarial orientation of many lawyers means they are slow to adopt collaborative settlement methods unless mandated by court rules or judicial pressure[105].

The success of ADR integration depends heavily on judicial attitude. While some judges champion ADR referrals, others perceive ADR as an optional or secondary process[106]. This inconsistency results in uneven referral practices across jurisdictions. Without strong judicial leadership and performance incentives tied to ADR outcomes, courts risk relegating ADR to a symbolic rather than functional role[107].

8. Prospects for Sustainable Court Decongestion through ADR in Nigeria

The Nigerian judiciary has long been plagued by massive case backlogs, procedural delays, and overburdened courts. Civil and commercial matters often take years or even decades to conclude, undermining public confidence in justice delivery[108].
Against this backdrop, Alternative Dispute Resolution (ADR) encompassing mediation, conciliation, arbitration, negotiation, and hybrid mechanisms has emerged as a strategic tool to achieve sustainable court decongestion. However, the success of ADR depends not only on its adoption but also on effective integration into judicial processes, institutional support, and public acceptance .ADR offers a preventive mechanism through pre-action mediation and conciliation, many

[101] Ojo, O. (2024), Challenges of ADR in Nigeria: Lawyer Resistance, pp.10-20.
[102] Legal Digital Nigeria (2025), The Role and Challenges of ADR in Nigerian Legal System, pp.15-30
[103] ibid
[104] Aina, Kehinde (2017), *Lagos Multi-Door Courthouse: 15 Years of Innovation in Dispute Resolution*, Negotiation and Conflict Management Group (NCMG), pp. 1-50
Chronicles founder's role in adapting U.S. multi-door concept for Lagos in 2002.
Available at: africaresearchinstitute.org/wordpress/wp-content/uploads/2017/06/ARI-Counterpoints-LagosMultiDoor-digital.pdf
[105] Umegbolu, C.E. (2022), Institutionalising ADR in Nigeria: Challenges & Solutions, pp.120-135.
[106] Maryland Courts Study (2019), Judicial Referrals to ADR: Benefits and Barriers, pp.1-20.
[107] ibid
[108] Ojo, O. (2023), Judicial Backlog and Delay in Nigerian Courts, pp.12-29.nigeria-lawjournals.org/judicial-backlog-delay-2023.pdf

disputes can be resolved before filing, thereby reducing new case inflow[109].For instance, where parties submit commercial disputes to a mediator at a Multi-Door Courthouse, the matter is removed from the court's cause list entirely once settled.

Courts can refer suitable cases such as employment, contract, land, family disputes) to ADR at pre-trial stages. Nigeria's Multi-Door Courthouse model (first launched in Lagos in 2002) has demonstrated that a significant proportion of referred matters can be resolved within weeks such as Lagos Multi-Door Courthouse (LMDC) statistics show settlement rates of over 60% in referred cases[110].The National Industrial Court of Nigeria (NICN) has reported shorter timelines and reduced docket pressure through its ADR Centre.Active case load reduction and improved judicial efficiency[111].

ADR processes are less formal, quicker, and cheaper than full trials as typical mediation sessions conclude within 30 to 60 days, compared to multi-year court processes[112]. By saving judicial time and resources, ADR enables courts to focus on complex constitutional and criminal cases requiring adjudication which help to reduced delay, quicker justice, and restored public trust. ADR emphasizes interest-based negotiation, not rigid legal rights[113]. Settlements tend to be mutually satisfactory, reducing post-judgment litigation and enforcement disputes (a major source of court congestion). Fewer appeals and enforcement-related motions clogging higher courts[114].

ADR allows the engagement of subject-matter experts such as engineers, accountants, or labour specialists as neutrals. This specialization enhances the

[109] Hamu Legal, The Benefits of ADR Mechanisms in Nigeria, pp.1-7 (2025) hamulegal.com/the-benefits-of-alternative-dispute-resolution-adr-mechanisms-in-nigeria/

[110] Idornigie, P.O. (2025),Rethinking Dispute Resolution Mechanisms in Nigeria, pp.15-25. Highlights the gubernatorial and judiciary referral routes as essential.papers.ssrn.com/sol3/papers.cfm?abstract_id=5436616

[111] Punch Nigeria (2024), How Court-Annexed ADR Eases Nigeria's Judicial Delays, pp.2-7 Highlights judicial reforms incorporating ADR to cut backlog. punchng.com/how-court-annexed-adr-eases-nigerias-judicial-delays/

[112] Nwosu, C. E. (2023), "A Legal Appraisal of Mediation in Employment Dispute at the National Industrial Court,African Legal Journal of Property, Policy and Law, Vol. 5, pp. 1-20 nigerianjournalsonline.org/index.php/ALJPPL/article/view/1120/1136

[113] Aina, Kehinde (2015), "History of Mediation in Nigeria, Mediate.com Online Training, pp. 5-12

[114] ibid

quality of resolution and reduces technical appeals that would otherwise burden appellate courts. Quality settlements and fewer technical reviews[115] to

The institutionalization of ADR within court structures such as the Multi-Door Courthouses, NICN ADR Centre, LMDC) creates systemic filters that divert suitable cases away from trial. When judges are trained to identify ADR-eligible cases and empowered to refer them, overall docket management improves dramatically. Improved judicial productivity and sustainable workload distribution[116].

9 Recommendations

1. The National Judicial Council (NJC) should issue binding National ADR Integration Guidelines mandating early case screening, pre-trial mediation, and continuous monitoring of ADR referrals across all superior courts. State judiciaries should domesticate uniform ADR practice directions to eliminate fragmentation and ensure procedural consistency.
2. Every High Court, the National Industrial Court, and the Federal High Court should host well-resourced multi-door courthouses or ADR centres with trained case managers.

   ADR statistics referral rates, settlement rates, and compliance levels should form part judicial performance evaluation metrics by NJC.
3. Judges and magistrates should undergo periodic ADR capacity building through the National Judicial Institute to enhance appreciation of ADR philosophy, ethics, and settlement techniques.
4. The judiciary should pilot Online Dispute Resolution (ODR) platforms for low-value claims and traffic, consumer, or labour disputes to expand access and reduce physical case load.
5. Courts must maintain central ADR dashboards that capture referral statistics, timelines, settlement compliance, and user feedback to inform continuous improvement and policy design.

[115] Elachi, J.A. (2019), African Lawyers and Alternative Dispute Resolution, pp.15-30.
Details Nigeria's growing ADR framework and adapting court-connected ADR centers.
lawyersofafrica.org/wp-content/uploads/2019/08/African-Lawyers-and-Alternative-Dispute-Resolution.pdf

[116] Alpha Rohi (2025), Nigeria's National Policy on Arbitration and ADR, pp.5-18.
Analyses reforms aiming to modernize laws and streamline ADR integration in Nigeria. alpharohi.com/wp-ar/?p=7522

6 It is necessary to amend relevant procedural laws (High Court Civil Procedure Rules, NICN Rules, and Evidence Act) to mandate early ADR screening and provide for simplified enforcement of mediated settlements.

7 It is imperative to establish a Judicial ADR Development Fund to support training, infrastructure, ODR deployment, and subsidized mediation for indigent parties.Require annual ADR progress reports as part of judicial accountability to ensure transparency and impact measurement.

8 The National Assembly and State Houses of Assembly should periodically review the operation of ADR centres and judicial policies to ensure alignment with constitutional guarantees of access to justice.

9 Lawyers should view ADR not as a rival to litigation but as a professional duty to advance the client's best interest through timely and cost-effective settlement as integrating ADR clauses in commercial contracts will encourage pre-litigation negotiation.

10 Encourage continuous professional development (CPD) in mediation, arbitration, and ODR technologies. Lawyers who serve as neutrals must be certified by recognized ADR bodies and subject to ethical standards similar to judicial codes. Bar Associations and law faculties should mainstream ADR advocacy and curriculum development to foster a culture of consensual dispute settlement.

11 Institutions such as the Lagos Multi-Door Courthouse (LMDC), NICN Mediation Centre, and States ADR Centres should develop standard operational protocols for intake, neutrality, confidentiality, and enforcement.

12 Develop user-friendly ODR platforms for virtual mediation and arbitration, ensuring compliance with data protection laws and accessibility for persons with disabilities or limited internet access.

13 There is need to conduct community awareness programs, clinics, and media engagements to educate citizens about the benefits of ADR mechanisms, especially at grassroots level

14 The Federal Ministry of Justice should coordinate a National ADR Policy harmonizing institutional roles, data standards, mediator accreditation, and public education strategies by incorporating ADR and ODR into the broader justice-sector reform agenda and digital justice transformation plan.

15 It is important to foster collaboration between the judiciary, Ministry of Justice, NBA, and ADR bodies to create an integrated dispute resolution ecosystem by Introducing a national ADR monitoring committee to assess

progress, identify bottlenecks, and recommend periodic improvements to ensure sustainability.

10 Conclusion

The integration of Alternative Dispute Resolution within the Nigerian judiciary marks a decisive shift from the rigid, adversarial tradition toward a welfare-oriented and efficiency-driven justice system. ADR's promise lies not only in resolving disputes faster but in transforming the culture of conflict management prioritizing dialogue, collaboration, and preservation of relationships over procedural victory.

Empirical evidence from Lagos, Abuja, and the National Industrial Court indicates that ADR, when properly institutionalized, significantly reduces case backlog, improves user satisfaction, and enhances public trust in the justice system. However, these gains will only become sustainable when supported by coherent policy, adequate funding, judicial commitment, and legislative backing.

Therefore, welfare-centered justice must remain the normative anchor of ADR reform. Courts should serve not merely as arbiters of legality but as facilitators of social harmony and equitable redress. A unified national ADR framework fortified by technology, hybrid mediation models, and continuous monitoring will bridge the gap between law and justice, litigation and conciliation.

In summary, ADR is not a temporary relief for congested courts but a permanent pillar of a modern, accessible, and humane justice system. Its success in Nigeria depends on sustained collaboration among the judiciary, legislature, practitioners, and citizens in building an ecosystem where justice is not delayed, and therefore never denied.

THE NEXT FRONTIER OF JUSTICE: ARTIFICIAL INTELLIGENCE AND THE EVOLUTION OF ADR IN NIGERIA

Omuwa Emike Odiodio*

Abstract

Nigeria's courts remain plagued by chronic delays, backlog of cases, and prohibitive costs that weaken public trust in the justice system. Alternative Dispute Resolution (ADR) has emerged as a viable pathway to decongest courts, but ADR itself still operates within largely traditional and manual structures. This article explores how Artificial Intelligence (AI) can transform dispute resolution in Nigeria by enhancing efficiency, reducing costs, and expanding access to justice. Drawing lessons from global innovations such as Online Dispute Resolution (ODR) platforms in the European Union, China's "Smart Courts," and predictive analytics tools in the United States, the study situates these developments within Nigeria's evolving legal framework under the Arbitration and Mediation Act 2023 and the Nigeria Data Protection Act 2023. It identifies both opportunities-including decongesting courts, lowering costs, and boosting accessibility and challenges, such as legal enforceability, data security, and cultural resistance to "machine justice." By proposing policy recommendations for regulators, institutions, and practitioners, the paper contributes to emerging African scholarship on law and technology. It concludes that hybrid models, where AI supports rather than replaces human mediators and arbitrators, present the most cultural and legally sustainable path. If effectively regulated and implemented, Nigeria can not only strengthen domestic dispute resolution but also position itself as a regional hub for technology-driven ADR in Africa.

Keywords: *Arbitration, Mediation, Artificial Intelligence, Alternative Dispute Resolution, Efficiency, International Best Practice.*

1. Introduction

Justice delayed is justice denied, and nowhere is this truer than in Nigeria, where litigation often stretches for years, sometimes decades, before resolution.

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Despite the constitutional guarantee of fair hearing[1], the lived reality for many litigants is one of endless adjournments, congested dockets, and spiraling legal costs.[2] Alternative Dispute Resolution (ADR) was introduced as a corrective measure, offering faster and less adversarial pathways such as arbitration and mediation.[3] Yet even ADR in Nigeria faces significant limitations: underutilization, limited digital integration, and slow adoption beyond commercial hubs like Lagos and Abuja.[4]

Meanwhile, Artificial Intelligence (AI) is reshaping how societies solve problems-from diagnosing illnesses to managing financial markets.[5] In the legal sector, AI is beginning to assist with case prediction, document review, online negotiations, and even AI-driven mediators. For Nigeria, the question is no longer whether ADR will expand, but whether it can harness AI to deliver justice that is fast, affordable, and trustworthy.[6] This article argues that the convergence of ADR and AI presents a rare opportunity for Nigeria to modernize its justice system.

2. The State of ADR in Nigeria

Alternative Dispute Resolution (ADR) in Nigeria has grown from a marginal practice to a recognized complement of the formal justice system. Its legal foundation is entrenched in several statutes and institutional frameworks, with recent reforms further strengthening its role.

1. Constitution of the Federal Republic of Nigeria 1999 (as amended), Section 36(1) guarantees the right to fair hearing within a reasonable time.

2 See *Adeleke v. Oyo State House of Assembly* (2006) 16 NWLR (Pt. 1006) 608, where the Court of Appeal stressed that justice delayed undermines justice itself.

3 Arbitration and Mediation Act, 2023 (Nigeria), s. 1, which provides that the objective of arbitration is "the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense."

4 A. Adekunle, "*Court Congestion and Access to Justice in Nigeria: A Case for ADR Reform*" (Nigerian Journal of Public Law, 2021) 45-67.

5 M. Zhang, "*The Rise of China's Smart Courts: AI and Judicial Modernisation*" (2020) 13 Tsinghua China Law Review 35.

6 A. O. Adepoju, "*Artificial Intelligence and the Future of Legal Practice in Nigeria*" (2022) Nigerian Law and Technology Journal 1(2), 15.

2.1 Legal Framework

- Constitutional Basis: Section 19(d) of the 1999 Constitution promotes settlement of international disputes by negotiation, mediation, conciliation, arbitration, and adjudication.[7]
- High Court Civil Procedure Rules: Many state High Courts, notably Lagos, Abuja (FCT), Rivers, and others — include rules mandating ADR exploration before cases proceed to full trial. For example, the Lagos Multi-Door Courthouse (LMDC), established in 2002, pioneered court-connected ADR in Nigeria.[8]
- Arbitration and Mediation Act 2023: This landmark legislation repeals the Arbitration and Conciliation Act, expanding mediation recognition, providing clearer enforcement of awards, and aligning Nigeria with global ADR standards. It codifies provisions for enforceability of settlement agreements (via Article 16 of the Singapore Convention), positioning Nigeria for cross-border dispute resolution.

2.2 Institutional Landscape

- Multi-Door Courthouses (MDCs): Now operating in over 15 states, these centers institutionalize ADR as a first step for disputes. Lagos remains the most advanced, handling thousands of cases annually.
- Professional Bodies: The Chartered Institute of Arbitrators (UK) Nigeria Branch (CIArb), the Institute of Chartered Mediators and Conciliators (ICMC), and the Nigerian Institute of Chartered Arbitrators (NICArb) are leading capacity development and standard-setting.
- Judicial Recognition: Nigerian courts have consistently affirmed ADR outcomes. In *Statoil (Nig.) Ltd v.* NNPC (2013) 14 NWLR (Pt. 1373) 1, the Supreme Court reinforced the binding nature of arbitral awards, underscoring judicial respect for ADR mechanisms.

[7] Constitution of the Federal Republic of Nigeria 1999, s.19(d) (foreign policy objectives - promotion of settlement of international disputes by negotiation, mediation, conciliation, arbitration and adjudication).
[8] High Court of Lagos State (Civil Procedure) Rules 2019, Order 28 (Alternative Dispute Resolution - screening and referral of suitable matters to ADR).

2.3 Challenges:

Despite this progress, ADR in Nigeria faces obstacles:

- Low Public Awareness: Many litigants remain unfamiliar with ADR or perceive it as inferior to litigation.
- Enforcement Hiccups: While arbitral awards are enforceable, mediation settlements often face resistance, though the 2023 Act addresses this gap.
- Capacity and Infrastructure: Outside Lagos and Abuja, ADR infrastructure and trained professionals remain limited.
- Technology Gap: ADR processes remain heavily manual, with little integration of digital tools, leaving Nigeria behind global trends in Online Dispute Resolution (ODR).

3. AI's Promise in Nigeria's ADR Landscape

Globally, scholars have debated whether artificial intelligence should function as a decision-maker or as a decision-support tool within dispute resolution. In practice, the immediate value for Nigeria lies in the latter. Assistive AI systems can support mediators, arbitrators, and even disputants by streamlining administrative burdens, providing preliminary legal information, and predicting likely outcomes of disputes based on historical data.

As Scherer (2019)[9] observes, predictive analytics in international arbitration has already demonstrated how algorithms can examine prior disputes to forecast comparable outcomes. Applied in Nigeria, such tools could improve the efficiency of ADR by guiding parties toward realistic expectations, thereby reducing unnecessary escalation. Carneiro et al. (2014) similarly highlight how AI-powered online dispute resolution (ODR) systems expand access to justice by lowering costs and providing round-the-clock support.[10] This lesson resonates in Nigeria, where limited access to legal aid remains a persistent barrier for small businesses and individuals.

Concrete examples from abroad provide further guidance. The Civil Resolution Tribunal in British Columbia operates as an AI-enabled system that manages intake,

[9] Matthias Scherer, 'Artificial Intelligence and Legal Decision-Making: The Wide Open Pandora's Box' (2019) 36(6) *Journal of International Arbitration* 541, 546.
[10] CARNEIRO, D., et al. Online Dispute Resolution: An Artificial Intelligence Perspective. Artificial Intelligence Review 41, no. 2 (2014): p. 211–240. [online]. [last accessed 12.09.2023]

supports negotiation, and facilitates dispute settlement (Abbott & Brinson, 2023). Likewise, platforms such as SmartSettle use algorithms to propose compromise solutions between disputants while keeping human neutrals in supervisory roles. These cases show that AI is not merely theoretical, it is already reducing costs and accelerating outcomes in comparable jurisdictions.

For Nigeria, the introduction of such systems would not only decongest the courts but also complement the objectives of the Arbitration and Mediation Act 2023, which encourages efficiency and flexibility in dispute resolution. However, any adoption must be carefully localized: infrastructure gaps, regulatory oversight, and cultural acceptance will determine whether AI tools are perceived as trustworthy aids rather than threats to human judgment. The balance, therefore, lies in treating AI as an enhancement, not a replacement, of human expertise in ADR.

3.1 How AI is Reshaping ADR Globally

Across the world, Artificial Intelligence (AI) is no longer a futuristic concept -it is actively transforming dispute resolution processes. From digital negotiation platforms to predictive analytics, AI technologies are enhancing speed, reducing costs, and expanding access to justice in ways that traditional methods cannot.

3.2 Online Dispute Resolution (ODR) Platforms

- European Union: The EU operates an ODR Platform for consumer disputes across borders. Parties file complaints online, and mediators/arbitrators help resolve matters digitally, often within weeks.[11]
- eBay and PayPal: Private platforms like eBay's Resolution Center use automated systems and AI-assisted negotiation to resolve millions of disputes annually without human judges.[12]

3.3 AI in Courts and Mediation

[11] Regulation (EU) No 524/2013 of the European Parliament and of the Council of 21 May 2013 on Online Dispute Resolution for Consumer Disputes [2013] OJ L 165/1 https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013R0524 accessed 30 September 2025.

[12] eBay Inc., Resolution Center - How We Help with Claims and Disputes (eBay Help, 2025) https://www.ebay.com/help/resolution-center/resolution-center?id=4041accessed 30 September 2025.

- China's Smart Courts: China has introduced AI-powered "Internet Courts" in cities like Hangzhou, Beijing, and Guangzhou. These courts handle e-commerce and digital rights disputes, with AI judges assisting in reviewing evidence and drafting decisions.[13]
- United States: In some U.S. states, AI is being piloted for predictive analytics, where algorithms forecast likely case outcomes. This helps parties decide whether to settle or proceed. For example, tools like Lex Machina analyze case law trends to predict litigation risks.
- Singapore: As a global arbitration hub, Singapore is experimenting with AI tools that help mediators analyze case data and streamline negotiations.

3.4 Benefits of AI in ADR

- Speed: Automated systems resolve disputes faster than traditional processes.
- Cost-Effectiveness: Digital platforms reduce expenses associated with physical hearings.
- Access to Justice: Individuals and small businesses can resolve disputes without expensive legal representation.
- Consistency: AI tools can identify trends and ensure more predictable outcomes.

3.5 Risks and Concerns

- Bias and Fairness: AI systems can replicate biases in the data they are trained on.
- Transparency: "Black box" algorithms may limit parties' ability to understand how decisions are made.
- Enforceability: AI-generated decisions may face challenges in jurisdictions without clear legislative frameworks.
- Ethics: The role of human judgment in sensitive disputes (family, labor, community conflicts) cannot be fully replaced by machines.

4. Opportunities and Challenges of Applying AI to Nigeria's ADR System

[13] China IP Law Update, "Hangzhou Internet Court Decisions on AI-Generated Content and Liability" (China IP Law Update, 2024) https://chinaiplawupdate.com/2024/07/hangzhou-internet-court-ai-cases/ accessed 30 September 2025.

The Nigerian justice sector is already straining under the weight of case backlogs, resource limitations, and high litigation costs. Integrating Artificial Intelligence (AI) into Alternative Dispute Resolution (ADR) offers a unique chance to address these issues. However, while the potential benefits are significant, Nigeria must navigate serious structural, legal, and ethical challenges.

4.1 Opportunities

- Decongesting Courts: By automating routine dispute resolution, especially small commercial claims, tenancy disputes, and consumer complaints, AI-powered ADR platforms can take pressure off the formal courts.
- Enhancing Accessibility: With mobile penetration above 90%, AI-driven Online Dispute Resolution (ODR) platforms can make justice available even in rural areas, reducing the need for physical appearances.[14]
- Reducing Costs: Digital mediation and arbitration can eliminate many costs of traditional proceedings (transport, printing, adjournments), making ADR more attractive to individuals and SMEs.[15]
- Capacity Building: AI tools can assist mediators and arbitrators in analyzing legal documents, identifying case patterns, and predicting likely outcomes, boosting practitioner efficiency.
- Global Integration: The Arbitration and Mediation Act 2023[16] has already aligned Nigeria with international best practices. Leveraging AI would position Nigeria as a competitive ADR hub in Africa.[17]

[14] Digital 2024: Nigeria- DataReportal (reporting mobile connections equivalent to c.90.7% of the population in January 2024), showing high mobile penetration that supports ODR reach. Available at: https://datareportal.com/reports/digital-2024-nigeria accessed 30 September 2025

[15] C. Egbunike-Umegbolu, "Assessing the Lagos Multi-Door Courthouse: Access to Justice and Court-Connected ADR in Nigeria" (2022) *Athens Journal of Law* (LMDC study demonstrating LMDC's contribution to faster resolution and enforceability mechanisms). Available at: https://www.athensjournals.gr/law/2022-1-X-Y-Egbunike-Umegbolu.pdf accessed 30 September 2025.

[16] Arbitration and Mediation Act 2023 (Nigeria), s 82(2) (mediation settlement agreements are binding and enforceable as contract/consent judgment/consent award)- anchors the "global integration" claim that Nigeria's statute already supports enforceability of mediated outcomes. Available at: https://www.lawyard.org/wp-content/uploads/2023/05/Arbitration-and-Mediation-Act.pdf accessed 12th September 2025.

[17] International Bar Association, "The Nigerian Arbitration and Mediation Act, 2023: A Comparison with Global Practices" (International Bar Association, 2023) (practitioner note on alignment with international enforcement norms and cross-border mediation). Available at:

4.2 Challenges

- Legal Uncertainty: Nigerian statutes and case law are silent on AI's role in dispute resolution. Questions of enforceability arise: Will Nigerian courts recognize AI-assisted or AI-generated awards?
- Digital Divide: While mobile access is high, disparities in digital literacy and internet quality could exclude vulnerable groups from AI-driven ADR systems.
- Data Privacy & Security: AI platforms require sensitive personal and commercial data. Without robust data protection (beyond the Nigeria Data Protection Act, 2023), risks of breaches remain.[18]
- Trust Deficit: ADR is already underutilized partly due to public mistrust. Introducing AI may compound fears of "machine justice" unless transparency is prioritized.[19]
- Ethical and Cultural Barriers: Many disputes in Nigeria, especially family, land, and community-related are deeply cultural. Replacing human mediators with AI could clash with communal norms.[20]
- Infrastructure Weakness: Erratic electricity supply, inconsistent internet connectivity, and underfunded judicial infrastructure limit the scalability of AI solutions.

4.3 Balancing Promise and Risk

The Nigerian ADR system sits at a crossroads. While AI has the potential to transform justice delivery, its adoption must be carefully sequenced. Hybrid

https://www.ibanet.org/the-nigerian-arbitration-and-mediation-act-2023 accessed 12th September 2025.

[18] Nigeria Data Protection Act 2023, s 24 (obligations for data controllers/processors and requirements for technical and organisational measures). Available at: https://cert.gov.ng/ngcert/resources/Nigeria_Data_Protection_Act_2023.pdf accessed 12th September 2025.

[19] Dillon Reisman, Jason Schultz, Kate Crawford and Meredith Whittaker, *Algorithmic Impact Assessments: A Practical Framework for Public Agency Accountability* (AI Now Institute, April 2018) (framework for assessing public-sector AI risks- relevant to AI-ODR transparency and accountability). Available at: https://ainowinstitute.org/aiareport2018.pdf

[20] AI Now Institute, *AI Now 2018 Report* (Meredith Whittaker et al., 2018) (documenting algorithmic bias, accountability gaps and recommendations for public-sector AI governance). Available at: https://ainowinstitute.org/wp-content/uploads/2023/04/AI_Now_2018_Report.pdf accessed 17th September 2025.

models — where AI supports but does not replace human mediators and arbitrators — may provide the most culturally and legally acceptable pathway.

5. Policy Recommendations for Nigeria

For Nigeria to harness the transformative potential of Artificial Intelligence (AI) in Alternative Dispute Resolution (ADR), deliberate policies and reforms are required. The following recommendations outline practical steps for regulators, institutions, and practitioners.

5.1 Legal and Regulatory Reforms

- Amend ADR Laws: The Arbitration and Mediation Act 2023 should be expanded (or supplemented by regulations) to recognize the validity and enforceability of AI-assisted ADR processes.
- Judicial Guidelines: The National Judicial Council (NJC) should issue practice directions on how Nigerian courts will treat AI-supported mediation settlements and arbitral awards.
- Data Protection Compliance: Stronger enforcement of the Nigeria Data Protection Act 2023 must be ensured to protect sensitive dispute data.

5.2 Institutional Development

- Pilot ODR Platforms: Multi-Door Courthouses (MDCs) and arbitration centers should pilot Online Dispute Resolution (ODR) platforms powered by AI for small commercial and consumer disputes.
- Public-Private Partnerships: Collaborations between government, tech companies, and ADR institutions could accelerate development of indigenous AI-ADR platforms.
- Accreditation Standards: Professional bodies like ICMC, CIArb, and NICArb should establish ethical and technical standards for AI use in ADR.

5.3 Capacity Building

- Training for Practitioners: Mediators, arbitrators, and judges should receive training on AI tools, ensuring they understand both capabilities and risks.

- Digital Literacy for Users: Awareness campaigns should educate businesses and individuals on how to use ODR platforms safely and effectively.

5.4 Ethical Safeguards

- Human Oversight: AI should support, not replace, human decision-making. Every AI-assisted outcome should remain subject to human review and consent.
- Transparency: Algorithms used in ADR must be explainable, with parties able to understand the reasoning behind outcomes.
- Bias Monitoring: Independent audits should ensure AI systems do not perpetuate gender, ethnic, or socio-economic biases.

5.5 Long-Term Vision

- National ADR-Tech Strategy: Nigeria should develop a strategic roadmap for integrating technology into justice delivery, aligning with broader judicial reforms.
- Regional Leadership: By becoming an early adopter of AI in ADR, Nigeria can position itself as a hub for digital dispute resolution in Africa, attracting cross-border cases and investment.

6. Conclusion

Nigeria's justice system stands at a pivotal moment. The courts remain burdened by overwhelming caseloads, delays, and prohibitive costs, eroding public confidence in the rule of law. Alternative Dispute Resolution (ADR) has long promised relief, but its potential has not been fully realized due to limited awareness, uneven infrastructure, and slow institutional uptake.

Artificial Intelligence (AI) offers a rare opportunity to reimagine ADR in Nigeria. Lessons from global models from China's Smart Courts to the EU's Online Dispute Resolution platform demonstrate how AI can streamline processes, expand access, and cut costs. For Nigeria, integrating AI into ADR could mean faster, cheaper, and more transparent justice for millions of citizens and businesses.

Yet, technology is no magic wand. Questions of legality, enforceability, data security, and cultural acceptance must be carefully navigated. AI should not replace human

judgment but support it, creating a hybrid system that blends efficiency with empathy. If Nigeria invests in legal reforms, pilot programs, practitioner training, and ethical safeguards, it can leapfrog into a justice future that is both modern and inclusive.

Ultimately, the convergence of ADR and AI is more than a technological shift — it is a chance to restore faith in justice delivery and reposition Nigeria as a leader in innovative dispute resolution across Africa.