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The Chronicles of the Pre-Colonial Method of Settling Disputes: Nigeria as a Case Study by C. Egbunike-Umegbolu

The Chronicles of the Pre-Colonial Method of Settling Disputes: Nigeria as a Case Study

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Abstract

Since the late 1960s, the Alternative Dispute Resolution (ADR) process has gone through several distinct phases. In many Western jurisdictions, ADR has increasingly gained public recognition as an 'alternative' to litigation. In contrast, non-court adjudication has historically been the primary method of settling disputes/conflicts in much of Africa, using the form of the Traditional African Method of Settling Dispute (TAMSD). This article argues that Western jurisdictions have not sufficiently acknowledged the debt[3] *owed to the Traditional African Method of Settling Dispute (TAMSD).*

The writer adopts an ethnographic (qualitative) research method, through observation of the process of dispute settlement in two communities from south-eastern Nigeria; Onicha-Ado n'Idu in Anambra State and Amaofuo in Imo State, to offer a detailed description how pre-colonial monarchs settled disputes.

This article provides an overview of ADR processes and their relationship to the Nigerian legal system. It addresses the question of whether the Traditional African Method of Settling Disputes (TAMSD) is a precursor of ADR and evaluates the post-colonial development of this model of dispute resolution. Can 'court-connected ADR' or ADR be validly regarded as a 'legal transplant' from pre-colonial Africa?[4] *'*

Finally, in line with socio-legal research, the work utilised the qualitative approach for data gathering and analysis as it analysed the research question for the first time on whether the Lagos Multi-Door Courthouse (LMDC) has replicated the pre-arbitral method of settling disputes. It concludes with questioning why the Traditional African Method of Settling Dispute (TAMSD) is still notably effective, while at the same time highlighting some of the similarities with the modern ADR.

1. Introduction

1.1 ADR – History, Contextual Background and Purpose

There remains a general belief that in different jurisdictions, a court system is seen as a better or avant-garde way of settling civil disputes.[5] Mainly when that system is seen as autonomous, it encourages the differences between society and instigates rules for the processes and

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[2] The authoress thanks Prof Emilia Onyema (SOAS London), Dr Adaeze Okoye (Principal Lecturer-University of Brighton), Dr Claire-Michelle Smyth (Principal Lecturer-University of Brighton) and Prof Peter Ebigbo.
[3] TAMSD was their only and main method of settling disputes before legal transplant occurred.
[4] Legal transplant connotes borrowing or outright takeover of laws from one legal system to another legal system/ country but on getting there it is modified to suit their laws.
[5] Susan Blake, Browne, Julie, Sime, Stuart, *A Practical Approach to Alternative Dispute Resolution* (2nd edn, Oxford University Press 2012) 3.

substantiation, with guidelines established over a long period to be sure that justice prevails.[6] The power of the court system is such that other forms of dispute resolution are commonly called 'Alternative Dispute Resolution' or as some scholars would call 'Appropriate Dispute Resolution' (ADR).[7] This resonates with the long-held beliefs by partisans that litigation is the standard and primary choice.[8]

Nevertheless, increasing doubts have been expressed as to whether a lawsuit is always the most effective and efficient way of dealing with a dispute.[9] This is because of the problem of delay, congestion, undue formalism, over-reliance on technicalities over justice, exorbitant costs and unnecessary political interference among other negative factors that made other countries like the USA, Australia, Canada, UK and many EU countries decide to focus on different methods of dispute resolution.[10] According to some academic opinions to a large extent, ADR has assisted in developing and improving access to justice.[11]

The fictional case of *Jarndyce v Jarndyce* in the novel Bleak House by Charles Dickens best explains the America situation with the problems plaguing litigation in America.[12] Dickens presented the case in the first chapter of the book, to first attack the chancery court system of England as being deficient, and also illustrate the problems associated with the legal cost of litigation, existing in the past and as well as still very much so in present-day England - Jackson's reform in 2013.[13] These fictitious cases have been presumed to be construed from one or two real cases; the first of such cases is the real-life case of Richard Smith which lasted up to thirty-six years in England.[14]

However, the second of such cases which is acknowledged as the dispute over the will of William Jennens, aka 'Acton Miser.'[15] The case of *Jennens v Jennens* began in 1798 and dragged on for almost a full decade, its sluggish progress working to the plaintiffs' disadvantage.[16] The defendants clearly adopted delaying tactics, which is still prevalent in courts of today.[17] However this case was last heard in 1900 almost 117 years later, and at this stage, the legal fees had 'eaten up' the Jennens estate of their resources.[18]

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[6] Ibid.
[7] Ibid.
[8] Adrian Zuckerman, ' 'Lord Woolf's Access to Justice! Plus ca change…' ' (1996) 59 The Modern Law Review 774.
[9] Hazel Genn, *Paths to Justice: What People Do and Think About Going to law* (Oxford: Hart Publishing 2011) 1.
[10] Nokukhanya Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective' (2018) Conflict Studies Quarterly 38.
[11] Ahmed (n11) 74.
[12] Charles Dickens, *Bleak House* (Oxford University Press 2008) p.11-13 cited in Blake, *A Practical Approach to Alternative Dispute Resolution* 3.
[13] Patrick Polden, "Stranger than Fiction? The Jennens Inheritance in Fact and Fiction Part 1: The Jennens Fortune in the Courts' ' (2003) Sage 212.
[14] Ibid 212.
[15] Ibid.
[16] Ibid.
[17] Ahmed (n11) 74.
[18] Polden, "Stranger than Fiction? The Jennens Inheritance in Fact and Fiction Part 1: The Jennens Fortune in the Courts' '(n210) 212.

Professor Adrian Zukerman validated the above position on the effects or negative impact of cost by positing:

> At the outset of his Interim Report, Lord Woolf identified the cause of high costs as being not so much the complexity of procedure as the 'uncontrolled nature of the litigation process.[19]

Similar discontentment with the court system was depicted by Dick's phrase in the 19th-century play in the second part of King Henry VI. 'The first thing we do let's kill all the lawyers.'[20] This goes to show the anguish, pain, and irritation that the citizens are going through during litigation due to the different tactics used by lawyers to delay matters in court. Moreover, some of these matters are ill-suited to a full resolution through the adversarial process, as the process in most cases strain and magnifies disputes rather than resolving them, as seen in the above-stated cases where the legal costs devoured the whole estate.[21]

Similarly, in Nigeria, access to justice is a fundamental issue in the administration of justice just as it is the case in other parts of the world.[22] This is explainable given the continuous upsurge in the pace of industrialisation, growth and developments in developed and developing countries alike.[23] Indeed, in recent times, the growing complexity of the modernised age has practically multiplied the disputes that arise daily within societies.[24] The effect as stated earlier is an increased workload in the ordinary courts and the introduction of alternative methods of dispute resolution becomes of vital importance and is unavoidable.[25]

The reason for this is that parties involved in a dispute require a cost-effective and speedy process as in some cases vast sums of money are involved.[26] Evidently, this is why in recent years there has been rapid growth in the use of various forms of ADR; because parties would instead settle their cases out of court than engage in potential lengthy trials.[27]

1.2 Lagos-Nigeria as a Case Study

Almost all new ideas of law or legal development of the legal system in Nigeria originated from Lagos State, which was the federal capital territory of Nigeria from 1914-to 1991 and it is one of the biggest commercial cities in Africa.[28] For instance, Lagos was the first to introduce the new rules of civil procedure in 2004 based on Lord Woolf's reform.[29] Lagos is widely known in Nigeria as the 'Centre for Excellence.' Population wise, as of 2019, Lagos has over 25million inhabitants with over 250 ethnic groups representing Lagos as residents, with a

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[19] Zukerman (n204) 774.
[20] Michael (ed) Hattaway, The Second Part of King Henry VI (Cambridge University Press 1991), 175 cited in Saul Boyarsky, '*"Let's kill all the lawyers": What did Shakespeare mean?*' (1991) 12 Journal of Legal Medicine 571.
[21] Polden (n210) 212.
[22] Akeredolu (n10) 15.
[23] Jerome Barrett, Barrett, Joseph, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* (First edn, Jossey-Bass 2004) 121.
[24] The Association of Multi-Door Courthouses of Nigeria, *A Compendium of Articles on Alternative Dispute Resolution (ADR)*, vol 1 (2013) 19.
[25] Derri (n15) 16.
[26] Genn, *Paths to Justice: What People Do and Think About Going to law* 390.
[27] Ibid.
[28] Alan Burns, *History of Nigeria* (8th edn, George Allen & Unwin Ltd 1978) 18.
[29] A Compendium of Articles on ADR (n69) 7.

reasonable number of international or foreign citizens resident for various economic purposes.[30] Lagos boasts with both huge water and land resources, thus making it inevitably the economic capital of Nigeria and Africa due to the location of its seaport. Hence, the attraction of various international companies like the six major foreign oil companies, which dominate the Nigerian oil industry today (Shell, Exxon Mobil, Chevron, Elf, Agip and Texaco), which were already present in Lagos- Nigeria in setting up their businesses in Lagos by the early 1960s.[31]

In the same vein, Lagos is the first state to create a Multi-Door Courthouse (MDC) for swift dispensation of justice for their citizenry. This means that they provided an efficient justice system that will allow trust and confidence in the running of its state, that will both permit and enable business and growth to strive, which has sustained the tempo while complementing litigation since its creation in 2002. Therefore, it is essential to explore if the LMDC has replicated the Traditional African Method of settling Disputes (TAMSD), similar to the modern-day ADR. By scrutinising these intricacies it is probable to determine if there are any substantial or significant roles the TAMSD has played in this success story.

1.3 The Traditional African Method of Settling Disputes (TAMSD) or The Alternative Dispute Resolution (ADR)?

As long as human beings have existed, disputes are practically unavoidable as it is a fundamental aspect of human nature. Given this pragmatic truth, human society for a long time has facilitated or developed a reliable means of dispute management.[32] Susan et al points out that ADR is taken to cover alternatives to litigation).[33] These alternatives are Arbitration, Mediation, Negotiation and Early Neutral Evaluation. However, the approach of dispute resolution resorted to by disputants will depend on the nature of the disputes or the circumstance of each case.[34]

On the contrary, Nokukhanya Ntuli highlighted that in some jurisdictions, parties prefer the use of adjudication through the court.[35] He indicated further that not until the chaos of costs and caseload management plagued litigation did countries like the USA, England and Nigeria decide to decipher into other forms of dispute resolution to enhance access to justice.[36]

In hindsight, ADR in the common law practice has its origins in the English legal system, as evidenced as early as the 'Norman Conquest, whereby legal charters and official papers indicate that English citizenry instituted actions concerning private wrongs, presided by highly valued male members of a community, in informal, quasi-adjudicatory settings.'[37] In some

[30] Kehinde Aina, 'ADR 2000 - Resolving Corporate Disputes In the 21st Century ' (Institute of Directors (IOD) Members Evening) 18.
[31] Jedrzej George Frynas, 'Litigation in the Nigeria Oil Industry: A Socio-Legal Analysis of the Legal Disputes Between Oil Companies and Communities ', University of St Andrews 1999) 19.
[32] Ibid.
[33] Blake, *A Practical Approach to Alternative Dispute Resolution* 5.
[34] Lisa Parkinson, *Family Mediation: Appropriate Dispute Resolution in a New Family Justice System* (2nd edn, Family Law 2011) 9.
[35] Ntuli (n13) 38.
[36] Ntuli, 'Africa: Alternative Dispute Resolution in a Comparative Perspective' 38.
[37] Micheal Mcmanus, Brianna, Silverstein 'Brief History of Alternative Dispute Resolution in the United States ' (2011) I Cadmus 100.

cases, the king uses these local forums as an extension of his legal authority.[38] In some sense, then, common law ADR has been around for centuries.[39]

The above issues, especially on cost, has been the Achilles heels of the history of ADR.[40] However, some scholars have argued that ADR originated from Africa,[41] while others argued that it originated from ancient Greek.[42] To the ancient Greeks, arbitration was not merely mythology.[43] As Athenian courts became crowded, the city-state instituted the position of public arbitrator sometime around 400 B.C.[44]

According to Aristotle, 'all men served this function during their sixteenth (16) year, hearing all manner of civil cases in which disputants did not feel the need to go before the more formal, and slow, court system.'[45] The decision to take a case before an arbitrator was voluntary, but the choice of being an arbitrator was not.[46] The procedures set up by the Greeks were surprisingly formal.[47] The arbitrator for a given case was selected by lottery.[48] His primary duty was to attempt to resolve the matter amicably.[49] If he failed to resolve the matter, he would call witnesses and require the submission of evidence in writing.[50] Parties often engaged in elaborate schemes to postpone rulings or challenge the arbitrator's decision.[51] An appeal would be taken before the College of Arbitrators, which could refer the matter to the traditional courts.[52] In furtherance to this claim, Cicero and Aristotle both mentioned arbitration in words that may well point to the modern-day arbitration.[53] They made it clear that arbitration was an alternative to the courts. Illustrating with the words of Cicero,

> A trial is exact, clear-cut, and explicit, whereas arbitration is mild and moderate.[54]

Hence, implying that a party going to court expects a win-lose, whereas a party that goes to arbitration might not win everything but will not lose everything.[55]

On the contrary, in the African experience on the history of ADR, Professor Onyema argued that Dispute Resolution Processes (DRPs) of the Western African States was shifted initially

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[38] Ibid.
[39] Ibid 101.
[40] Pablo Cortés, *Voluntariness as the Achilles' Heel of ADR: The Case for Incentives and Mandatory Redress Schemes. In The Law of Consumer Redress in an Evolving Digital Market: Upgrading from Alternative to Online Dispute Resolution* (Cambridge University Press, 2017) 209.
[41] Maria Federica Moscati, Palmer, Michael, Roberts, Marian (eds), *Comparative Dispute Resolution* (Edward Elgar Publishing 2020) 519.
[42] Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* 6.
[43] Ibid.
[44] Ibid
[45] Ibid.
[46] Grace Umezurike, *An Appraisal of Igbo Traditional Method of Conflict Resolution* (Queens College, City University of New York 2019) 3.
[47] Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* 8.
[48] Ibid.
[49] Ibid.
[50] Ibid.
[51] Ibid.
[52] Ibid.
[53] Ibid.
[54] Ibid.
[55] Ibid.

from Africa to the Western states.[56] She revealed 'that the primary cause of these shifts was foreign influences which brought - colonialism, brought with it foreign laws, litigation, state courts, foreign languages and legal systems; and the foreign religions of Islam and Christianity.'[57] The DRPs of the West African States[58] were then modified into the modern-day ADR processes.[59]

Hence, the similarity between the two is evidenced by how African tradition deals with disputes /conflicts. However, it is essential to point out that traditional religion and culture are intertwined[60] and was the life of an Africa in particular Nigeria in the 19th Century.[61]

Consequently, the concept of law and justice under the traditional method of settling a dispute is rooted *'Ubuntu'* which connotes 'I am because you are.'[62] What this means is that they depend on each other; 'the spirit of oneness' and the concept of togetherness, and that is the essential 'beingness' of the other.[63]

Conversely, as Professor Diane Moore has pointed out, as religion evolves and changes in recent years,[64] so too have the traditional African religion in Nigeria where some of those previous supernatural beliefs have been expunged due to these two major foreign religions-Christianity and Islam.[65] It is essential to point out that, that these traditional religions or beliefs include juju (fetish) practices as a way of praying to their deities, which represents the images of their gods or spirits.[66] The chief priest can do this through incantations or libation and acts as a medium between the spirits and the people. He acquires the information required by the people - through indications from the spirits or the gods, especially when they are facing challenges or during celebrations or just for general consultations.

However, some cases that depict the functionality of the traditional methods of settling disputes (TAMSD) and the traditional beliefs or religion can be seen in the following cases like

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[56] Moscati, *Comparative Dispute Resolution* 519.
[57] Ibid.
[58] According to Onyema, these western African States consists of "*Benin, Burkina Faso, Cape Verde, Gambia, Ghana, Guinea, Guinea Bissau, Ivory Coast, Liberia, Mali, Mauritania, Niger, Nigeria, Sao Tome & Principe, Senegal, Sierra Leone and Togo. Some sources, such as the United Nations, list 18 states in West Africa, with the inclusion of the island state of Saint Helena, which is a British Overseas Territory. Saint Helena. Mauritania may also be listed as part of North Africa."* Cited ibid 519.
[59] Elisabetta Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context' (1999) 43 African Law 63.
[60] Ibid.
[61] Ibid.
[62] Center for Khemitology, *Short Course on Ubuntu Philosophy* (2020) 2021 cited in Chinwe Umegbolu, *Episode 7: The Similarities between the Customary arbitration and the Modern day Arbitration* (Edublogs 2020).
[63] Chinua Achebe, *Arrow of God* (Anchor Books, Doubleday 1969) 8.
[64] Diane Moore, *Methodological Assumptions and Analytical Frameworks Regarding Religion Part Two* (Harvard Divinity School (Harvard MOOC edx online course 2020) 2015).
[65] Ibid.
[66] Diane Moore, 'Methodological Assumptions and Analytical Frameworks Regarding Religion Part Three ' (2015) Harvard Divinity School.

Nezianya v Okagbue [1963],[67] *Nzekwu v Nzekwu* [1989][68] and *Mojekwu v Mojekwu* [1997][69] which showcase the legal and customary positions and predicaments of a widow in the South-East of Nigeria which forces the widowed wife of the deceased to drink the water used in bathing the body of the deceased.[70] She is expected to die within a given time frame, but if she survives throughout the given time frame, then she has proved her innocence.[71] The above cases depict the belief and culture of the people, which they still value and dare not reject the verdict given. It is pertinent to thus point out that religion still plays a major role in TAMSD, because religion is still a significant part and parcel of the life of a Nigerian.[72]

Equally, Akeredolu substantiates the above-mentioned view by pointing out that 'the communal structure of traditional Yoruba societies[73] did not foreclose the emergence of communities.'[74] Disputes and conflicts are usually managed such that they do not degenerate into violence and armed conflicts.[75] The timely intercession of the agba elders in resolving the disputing parties often saves conflict or dispute situations from escalating into violent situations.[76] Thus, in the Yoruba Society or in the African communities, whenever disputes arise between individuals and different parties, primacy is given to restore the relationships through the guidance of the elders before any subsequent moves are taken.[77] Why has this system worked so well and is still working to date? One argument is that this lies in the cultural and religious values of the African communities.[78]

What is Alternative Dispute Resolution (ADR)?

Alternative Dispute Resolution refers to an entire range of processes designed to aid parties in resolving their dispute outside of formal judicial proceedings.[79] On the other hand, Susan Blake et al defined ADR as an alternative to litigation where there is a dispute between two or more parties.[80]

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[67] All N.L.R. 358 where the Court held that under the native law and custom of Onitsha, a widow's possession of her deceased husband's property does not wholly belong to her husband's family but this does not make her the owner. So, she cannot deal with his property without the consent of his family. Additionally, if the husband dies without a male child, all his property (land and houses) goes to his family. His female child does not inherit it. Cited in Chinwe Umegbolu, 'Violence against women in Nigeria ' (2020) Wisconsin Institute for Peace and Conflict Studies 1.

[68] N.W.L.R Supreme Court of Nigeria.

[69] 7 N.W.L.R. 283 Court of Appeal Enugu the Court of Appeal in Enugu held that the custom of a community in Nnewi, which is in Anambra State, under which male children only inherit their father's property, is unconstitutional. Cited in Umegbolu (n259) 1.

[70] Ibid.

[71] Ibid.

[72] For example, at the LMDC during my training as a co-mediator, I observed that during the private session with the parties. The mediators use the party's religion to draw a parties conscience to the inappropriateness of his / her behaviour.

[73] People from the Southwestern region of Nigeria, which comprises States like Lagos, Oyo, Ogun, Ekiti, Ondo and Osun State.

[74] Alero Akeredolu, 'Duel to Death or Speak to Life: Alternative Dispute Resolution for Today and Tomorrow' (2018) 7th Inaugural lecture 8.

[75] Ibid 8.

[76] Ibid.

[77] Ibid.

[78] Center for Khemitology, *Short Course on Ubuntu Philosophy* 2021, 7.

[79] Lagos State Multi-Door Courthouse (LMDC) 2007.

[80] Blake, *A Practical Approach to Alternative Dispute Resolution* 5.

In other words, ADR can be defined as a process deployed by an institution or a private individual within or outside a structured court system, to resolve disputes in an acceptable informal manner facilitated by a neutral party.[81] From the above analysis, it can be seen that ADR is an alterative method of settling disputes out of court between two or more parties with the assistance of a third neutral party.[82] The distinguishing feature that is mutual to all definition is that it refers to processes that are outside the court system.[83]

Carrie Menkel-Meadow is of the view that at some early point in history, when two parties had a dispute with one another, they sought assistance from third (3rd) party.[84]

Thus, was born the almost universal notion of the dispute 'triad,' where some 'third party' intervention is made, either to decide who was in the wrong or to conciliate and seek a more consensual and joint resolution.[85] The focal point depicted above goes to show that although ADR is also promoted for the reasons of effectiveness;[86] it also emphases on the interests of the parties rather than strict legal rights.[87] As can be seen in this work, this process has more pros over litigation, because it offers a cheaper alternative and more reliable method to its users than the rigid and expensive procedures involved in the adversarial system.[88]

In reflection, the growth or rise in the use of the African /Alternative Dispute Resolution mechanism in the olden days and until today has resulted in the resolution of disputes or managing of disputes, maintaining peace and order in the village and in recent years cities / various jurisdiction. [89] However, these modern-day ADR processes include Mediation, Arbitration, Conciliation and Negotiation.[90]

The Differences and Similarities of ADR and the TAMSD

There are some similarities between them, however, the writer will first outline what separates them before examining what joins them together. It is imperative to point out these differences and similarities are also the benefits associated with both TAMSD and ADR.

The Differences between TAMSD and ADR:

a) Structured Process:

The features and benefits of TAMSD and ADR to an extent entirely the same. However, the modern ADR process involves a lot of confidential documentation in hard and soft copy, trained professionals either called neutrals and Arbitrators-'[91] who are educated and have the

[81] Chinweifenu Stella Umegbolu, 'Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in Nigeria', University of Brighton 2021) 40.
[82] The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* (2016) 14.
[83] Blake, *A Practical Approach to Alternative Dispute Resolution* 5.
[84] Carrie Menkel-Meadow, 'Remembrance of things Past? The Relationship of Past to Future in Pursuing Justice in Mediation ' (2004) 5 Cardozo J Conflict Resol 97.
[85] Ibid 98.
[86] Ibid.
[87] Ibid.
[88] Masood Ahmed, 'Bridging the gap between alternative dispute resolution and robust adverse costs orders' (2015) 66 Northern Ireland Legal Quarterly 73.
[89] Umegbolu, 'Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in Nigeria 45
[90] Blake, *A Practical Approach to Alternative Dispute Resolution* 5.
[91] The Lagos Multi-Door Courthouse Neutral's Handbook (First Edition, Lagos Multi-Door Courthouse 2017) 19.

prerequisite skills which are not seen in TAMSD. Seen in this light, the ADR process has 'evolved' from the TAMSD which was not as structured as the latter.[92] However, in most villages/communities like Onitsha and Amaofuo in recent years, TAMSD is gradually becoming more commonplace - most of the Igwe's, Diokpa's and Umuada are highly educated and as such most of their procedures are documented only in writing.[93]

b) Confidentiality:

The ADR session's entire process is confidential and without prejudice because parties are given the opportunity to sign the confidentiality clause.[94] In most cases, the confidentiality clause serves as an incentive for making the parties open up and disclose the underlying issues inherent in the matter. This they ordinarily would not have disclosed (if in litigation) as they are often the root causes which triggered or led to the disagreement in the first place.[95] On the contrary, Nwachukwu Egbunike postulated 'there is little or no confidentiality in TAMSD everything is done in the open/public.'[96] For example, 'when parties bring the matter to the Ime Obi (where the obi of Onitsha settles dispute/ conflict) both the interested parties and others interested in the case can attend, hence sort of semi-public.'[97] However, Ebigbo pointed out that 'the parties in certain situations/cases, for instance, character assassination, taboo can categorically plead or may request for it to remain confidential but ordinarily all disputes settled in the villages are usually public hence non-confidentially.'[98] That is to say that TAMSD is not fixed or set in stone it is open to adjustment depending on individual cases.

The Similarities between ADR and TAMSD:

a) Adjudicative and Non- Adjudicative:

Emilia Onyema defined Arbitration as a process wherein a third party decides or makes a decision for the parties, unlike Mediation or Conciliation where the third party supports the parties or the disputants to decide for themselves.[99]'

Conversely, under the TAMSD it can be adjudicative in some instances for example if the parties have exhausted other modes of settling disputes – starting from the family (Diokpa-first son), Umu Ada (first daughters) amongst others and the matter is yet unresolved then the parties will have to go to the Igwe (King) who is the final arbiter and any decisions made therein is final and binding.[100]

[92] Chinwe Stella Umegbolu, Bargaining in the Shadow of the Law: The Facts of Divorce as they Stand Today (2020) Vol 39 (1) Resolution Institute 143.
[93] A Discussion the writer had with Dr Nwachukwu Egbunike -who works with His Majesty, Igwe Achebe, Obi of Onitsha on the 1st of September 2021.
[94] The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 16.
[95] Chinwe Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?* (2020).
[96] A Discussion the writer had with Dr Nwachukwu Egbunike -who works with His Majesty, Igwe Achebe, Obi of Onitsha on the 1st of September 2021.
[97] Ibid
[98] Onyekwere Peter Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* (2021) 66.
[99] Chinwe Umegbolu, *Episode 15: Careers in ADR with Professor Emilia Onyema* (Resolution Institute | member connect 2021).
[100] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 22.

b) The Involvement of a third Neutral Party:

The second similarity is the involvement of a neutral third party. The parties would have to appoint a neutral or mediator, and in some cases, a co-mediator is selected, but they cannot make binding decisions for the parties but will instead facilitate their decision-making process in finding solutions to their disputes/conflict.[101] This is similar to the TAMSD as it involves third or more parties (who can be the Umuada or Diokpa) who assist the parties in reaching a mutually agreed decision.[102] Thus, in both ADR and TAMSD, parties have full control of selecting neutral third party, the venue and the procedural[103] / village rules amongst others, which is not obtainable in litigation.

c) Voluntariness of the Process:

The third similarity is that before the case gets to the traditional ruler, the parties go voluntarily to one of the various groups like the Umuada (First Daughters) or Diokpa (First son) to assist and at these various levels, even within a family, there is mediation already taking place. When they cannot have success at that level, it comes to the traditional ruler mediating between the parties.[104] This involves thorough mediation and all parties are heard out, and even if mediation is not reached, those involved tend to get closure.[105] It is apt to point out that mediation in ADR is voluntary and non-binding and very much a private dispute resolution, hence in most cases mediation cannot take place unless the parties agree to take part in the process, vis-a-vis TAMSD.

d) Party-Autonomy:

Similarly, both TAMSD and ADR embrace party autonomy, as it is a cardinal principle in the rest of ADR processes and TAMSD.[106] It comes just before or at the very early stages of the mediation process, during the general sessions where the parties and their counsels are in attendance. In ADR, the mediators always make it clear to the parties that mediation is party-driven and that the parties have full autonomy during the opening session. Additionally, mediation is more cost-effective than other dispute resolutions; the timeliness in disposing of the dispute resolution through ADR is a tremendous advantage over litigation.[107] This is the same in TAMSD; parties have the full autonomy to decide who hears their disputes and the venue it should be heard. They are also at liberty not to adhere to the decisions reached. However, the full autonomy in both processes is that parties are not influenced by the diokpa[108] / mediator to settle in a particular way and then he or she has the autonomy to make concessions or compromise.[109]

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[101] Jay Folberg, Alison, Taylor 'Reviewed Work Mediation: A Comprehensive Guide to Resolving Conflicts without Litigation ' (1986) 84 Michigan Law Review 17.
[102] Chinwe Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today ' (2020) 39 Resolution Institute | the arbitrator & mediator 141.
[103] Ibid.
[104] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 34.
[105] A Discussion the writer had with Professor Peter Ebigbo – His HRH, Igwe of Amaofuo Village on the 23rd of September 2021.
[106] Gary Born, 'Keynote Address: Arbitration and the Freedom to Associate' (2009-2010) 38 Ga J Int'l & Comp L 16.
[107] The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 31.
[108] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 50.
[109] The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook.*

Active Listening:

Both TAMSD and ADR utilises active listening, so instead of taking out any thoughts about what the parties are going to say or meant to say, the neutral or Igwe (King) / Diokpa listens actively to understand. He can do this by summarizing what the party has just said- making the parties feel that they were heard and thus comfortable in opening up. Finally, the essence of active listening is that the party feels that the third party has listened.

Decisions Delivered:

The ultimate aim of the processes is to have a decision delivered at the end of the day, providing a final decision to parties and resolving the disputes between them[110] which can be a final decision depending on the methods utilised. However, in both processes, the decision or agreement reached is usually one that both parties are comfortable with.[111]

Outcome Approach-Win-Win:

The final outcome under this process is usually a win or win outcome. Even when parties do not reach a conclusive decision or (in mediation) sign Terms of Agreement (TOA), they have heard each other out, in some cases apologise to each other, or the party at fault apologises.[112] However, even if the parties cannot achieve an immediate result like settlements or reconciliation, at least they can come to a state where parties are more willing to address this fact[113]and get closure. Thus, both processes and procedures preserves relationships, which is their selling point as there is no adversarial, tune to ADR and TAMSD as opposed to litigation / court where there is a loser or victor.[114]

Fewer Formalities:

Both the ADR and TAMSD are less formal as against the strict procedures associated with litigation. For instance, Arbitration is less formal as against the rigid procedures in litigation.[115] On the contrary, in litigation, the rule says that a party can only plead the material facts, not the evidence.[116] However, under Arbitration –*section 256* of the Evidence Act expressly prohibits applying the evidence act for arbitral procedures, which means that the arbitrator has the flexible know how to determine the evidence that should be accepted.[117] However, in litigation, the court says that this public document was not certified and because it was not certified, the lawyer cannot tender it. Nevertheless, in Arbitration, the arbitrator is interested in the document's relevance, and if it is relevant, the arbitrator will accept it.[118] It is imperative to point out that both TAMSD and mediation has no formalities.

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[110] Umegbolu, 'Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in Nigeria 78.
[111] Ibid (n96).
[112] Umegbolu, 'Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in Nigeria 101.
[113] Chinwe Stella Umegbolu, *The Psychological Dynamics in Dispute Resolution: the Interplay between the ego and apology which are two sides of a coin when it comes to dispute resolution* (2020).
[114] Umegbolu, 'Dispensation of Justice: Lagos Multi-Door Courthouse (LMDC) as a Case Study in Nigeria 124.
[115] Chinwe Umegbolu, *Episode 10: Adjudication v Arbitration- Two Worlds Apart?* (Edublogs 2021).
[116] Ibid.
[117] Ibid.
[118] Ibid.

Cost and Speed:

However, there are times in which litigation is not an effective tool or route to take to settle disputes. For instance, some matters have been in court (20) twenty years or (30) thirty years. In some cases the original parties are now deceased, and their children or grandchildren will carry on with the case, which must have cost the deceased a fortune and eventually the children the same.

Given these points, both TAMSD and ADR are faster and cost-effective, because, in most cases under the mediation process, parties settle within a day / two days or weeks,[119] likewise in TAMSD matters can last for a day or two days.[120]

Finally, a constant reminder of the above-stated benefits would help remind the lawyers and the potential users to opt for ADR.'[121] Conversely, Onuoma revealed that 'in Nigerian culture, they have the Obi's, Baale's, and the Emir's who otherwise act as arbitrators over the disputes between the parties.[122] Also, he exemplified the above submission by citing Chinua Achebe's 'Things Fall Apart.' He states, 'references were made about families brought to the Igwe (King), and he settled their matters.'[123]

He emphasised that 'as a consequence, it shows firstly that the elements of the Traditional African Method of Settling Disputes (TAMSD) –the parties submit voluntarily, which is the same element overlapping with ADR,[124]' the second is that the parties would hear each other out and then make concessions which overlap the ADR.

Finally, the parties, be it the kinsmen or the communities, will also agree that they will be bound by the terms of that customary arbitration or settlements and sometimes in order to be bound involves some sort of oath-taking in their customary rudimental arbitration and exactly this bounding nature of TAMSD flows into the same ADR now institutionalised, hence culture is key.[125]' Culture is defined as the 'environment (i.e. countries, communities, villages and workplace) in which behaviours are either encouraged or tolerated.'[126]

On the other hand, Gabriel Idang deems that 'culture is a sum of characters that are peculiar or associated to a people which marks them out from other people or societies.[127] Values are the 'beliefs that people think are important in life, whether it is right or wrong.'[128] Additionally, the significance of values in African culture is seen as an inheritance that is passed on from one generation to another.[129] Therefore as illustrated from the cases mentioned above it shows that African culture and values can be assessed from many scopes. Thus, the traditional methods of settling disputes have worked because of those values and cultural heritage that has been imbibed from their childhood by witnessing the traditional system of operation. The underlying

[119] Ibid.
[120] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.
[121] Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*.
[122] Ibid.
[123] Ibid.
[124] Ibid.
[125] Ibid.
[126] Vanessa O'Shea, *Shaping your workplace Culture a Practical Guide* (Culture Shapers Publications, 2018) 16.
[127] Gabriel Idang, 'African Culture and Values ' (2015) 16 University of South Africa Phronimon 98.
[128] Ibid 98.
[129] Ibid.

factor of this formal or traditional system of settling disputes is that the consent of both parties is what legitimised the entire decision, which is similar to modern-day ADR.

1.4 Alternative Dispute Resolution or A Return to Pre-Colonial Initiative-TAMSD?

For there to be an alternative method of dispute resolution, there must necessarily be an original form.[130] This original form was the cultural method of settling disputes before the formalised ADR came into play.[131] Greco posited that the modern ADR revolution is not the first time that ADR has been used or practised in Africa.[132]

Grande corroborated Greco's statement, stating that the alternative dispute resolution (ADR) movement has been branded as a return to a simple model of dispute settlement used in the past and in the modern non-western societies.[133] However, she argued that sometimes transplants are only nominal, which seems to be the case of the ADR movement.[134]

Firstly, the underlying assumptions of the harmonious model[135] transplanted never existed.[136] Secondly, dispute resolution in traditional societies is controlled by the 'group-mindedness'[137] or the group-centred structure of the legal system.[138] Since this is lacking in the western jurisdictions, and if perchance this notion is accepted, it will completely change the general belief or ideology in the west because of the individual-based legal system it operates on.[139]

However, different proponents of ADR have lent their voices to the ongoing debate of transplant or transfer of the African method of settling disputes and its philosophy as it relates to Nigeria.[140] One such is Professor Emilia Onyema, who stated that before the colonial era, there were different methods of settling disputes in various communities in Nigeria[141], though there were no unified or centralised States in its modern construct in these communities.[142] Thus, the idea of state-sponsored and managed dispute resolution such as litigation was unknown in these communities.[143] Therefore litigation was an alternative to these African communities by their European Colonizers. Equally, Professor Nonso Okereafoezeke, observed that the 'British colonists' forcibly changed the face of social control in Igbo and other parts of Nigeria by imposing English law and Justice on Nigerians.'[144]

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[130] Anthony Greco, 'ADR and a Smile: Neocolonialism and the West's Newest Export in Africa ' (2010) 10 Pepperdine Dispute Resolution Law Journal 2.
[131] Moscati, *Comparative Dispute Resolution* 519.
[132] Greco, 'ADR and a Smile: Neocolonialism and the West's Newest Export in Africa ' 2.
[133] Idang, 'African Culture and Values ' (n251) 63.
[134] Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'.
[135] In which people, instead of fighting in front of a court for their rights, achieve the consensual resolution of their opposing interests peacefully and private cited in Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'. 65.
[136] Ibid.
[137] Peter Ebigbo, 'Harmony Restoration Therapy: Theory And Practice' (2017) 2 International Journal for Psychotherapy in Africa 21.
[138] Idang, 'African Culture and Values ' (n251) 63.
[139] Greco (n280) 2.
[140] William Idowu, 'African Jurisprudence and the Reconciliation Theory of Law ' (2006) 37 Cambrian L Rev 5.
[141] Moscati, *Comparative Dispute Resolution* 520.
[142] Emilia Onyema, *A discussion we had -from her unpublished book* (SOAS 2018) November 2018.
[143] Emilia Onyema, *Rethinking the Role of African National Courts in Arbitration* (Wolters Kluwer 2018) 13.
[144] Nonso Okereafoezeke, *Law and Justice in Post -British Nigeria Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo* (Library of Congress Cataloging -in-Publication Data 2002) 13.

Consequently, litigation thrived over the private and traditional processes of dispute resolution.[145] Onyema opined that 'one of the reasons for this shift was the availability of the state-backed sanctions in support of the decisions made by the state courts.'[146]

From the above reasons, one can say that ADR was imported or transplanted in its modern form. Hence, the writer argues that basic ADR had its advantages as it encourages peaceful settlement amongst parties, which is what (TAMSD)[147] is known for even to date. However, this existing account demonstrates the existence of the TAMSD and its modus operandi but has failed to dissect the various categories of the Traditional Nigeria Society in a bid to look at it more holistically to understand –whether the truism that TAMSD evolved to ADR? And how far this model of dispute resolution has thrived in the aftermath of colonisation in Nigeria.

According to Wisdom Anyim, 'hence to understand Nigeria's legal system, it is imperative to view through the pre-colonial, colonial and post-colonial legal transition.'[148]

This viewpoint is embraced in this work by the researcher, who asserts that there are three (3) historical categories of society in Nigeria, which are the pre-colonial era, the colonial era and the post-colonial era.[149]

However, for the purpose of clarity and comparison, the research has merged the colonial and post-colonial era together because they share the same features, which is litigation and ADR. First, the main element of the modern ADR and TAMSD is consent. In the same vein, ADR, whether it is court-connected or private, remains the same. What this means is that decisions of an ADR arrangement are only binding upon parties who have consented to it,[150] not even the court will adopt a decision that is not voluntary from both parties. In other words, what ADR does is organize a forum where consenting parties to a contractual agreement come together to reach an agreement.[151] That mutual agreement reached is binding on both parties.

1.5 The Pre-Colonial Era:

As stated previously, disputes between members of the same villages and other villages were settled or resolved with the use of traditional African method of administration of justice by

[145] They still believe in the Igbo saying that "nwa bu nkeora" which means *"it takes a village to raise a child" which* is still prevalent in most communities in Nigeria. However, there are some bad aspects or disadvantages of the aforementioned like forcing a party that has been accused of a crime to prove his/her innocence. They will be forced to go to a deity or shrine to swear. Additionally, a person can be ostracised for the mere fact that he/ she committed this crime and lied thereby if a man or a woman marries someone from that family then that kindred will be branded an *'Osu'* (outcast) and they will not have anything to do with the rest of the community. The modernisation of African law eradicated some of this bad aspect inherent in the African method of settling disputes. The improved method of settling disputes could be said to be more appropriate in this aspect.
[146] Onyema, *A discussion we had -from her unpublished book* at SOAS University on 1st November 2018.
[147] TAM like the traditional religion or beliefs and practices are embedded in all dimensions of culture as opposed to the assumption that religions function in discrete, isolated, private contexts cited in Umegbolu, 'Violence against women in Nigeria '1.
[148] Wisdom Anyim, 'Research Under Nigerian Legal System: Understanding the Sources of Law for Effective Research Activities in Law Libraries' (2019) Library Philosophy and Practice (e-journal) 3.
[149] Okereafoezeke, *Law and Justice in Post -British Nigeria Conflicts and Interactions between Native and Foreign Systems of Social Control in Igbo* 12.
[150] Blake, *A Practical Approach to Alternative Dispute Resolution* 39.
[151] Ibid.

the older person, Headmen of the Neighbourhood, Ozo titled men (Chief)[152] or Olubadan (traditional head or[153] Emir Traditional leader of the Hausa land)[154] and Umuada (Daughters of the land). In the native courts that were set up, the disputants plead their own case and it can be done in default. For example, because of age, status or disability, their parents, guardians, husbands or relatives were allowed to plead on their behalf.[155] Thus in TAMSD, lawyers and Judges were not required; it was an informal process where the powers of the administrators of justice on pronouncing the villager or a party guilty were in the hands of a traditional ruler (Eze, Igwe, Obi) who is seen as a mini-god or a representative of the god as depicted in the Arrow of God[156] and his ruling or judgement influenced by their traditional religion and its norms.[157]

Consequently, the TAMSD, though informal, still had a well-organised, influential, and popular structured system that has enhanced dispute and conflict resolution. However, William Idowu stated that 'the rules governing social behaviour in traditional African societies are the very negation of law.'[158] The above assertion seems not to be the case considering the fact that TAMSD was the only system of administering justice or settling disputes during the pre-colonial era, which follows the laydown laws of the community or the village at that era.[159] Moreover, this system has been passed on from the past generations or ancestors to the present generation through values, cultural orientation and beliefs.[160] Therefore both regions have a well-organised and effective traditional institution to date.[161]

By the same token, Dr Umezurike theorizes that these traditional institutions could be likened to the present ADR.[162] Asides from settling disputes; they also maintain the laws and norms of the society.[163] For these reasons, it could follow-through that the pre-colonial method or mode of settling disputes or conflicts is still prevalent in this present day.

To test this theory, the work examines two villages respectively as a case study, located in the southeastern part of Nigeria, namely: Onicha-Ado n' Idu in Anambra state and Amaofuo in Imo state. It is imperative to point out that the research was conducted in Amaofuo and Onitsha, respectively, to get a detailed description from the monarchs on how they settle disputes. The study demonstrates why the TAMSD is said to be taken from the African culture, branded as ADR and paraded as an 'alternative' for the Africans whilst it was their original method of settling disputes before colonialism. Nonetheless, it highlights some of the similarities with the modern ADR. The research demonstrates that the TAMSD is still potent and effective even to

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[152] Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?* Accessed 29th March 2021, 1.
[153] Olubadan (traditional head of the Yoruba who acts as an arbitrator in many disputes) *cited in* Barrett, *A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement* 5.
[154] Kehinde Aina, 'Alternative Dispute Resolution' *The Guardian Newspaper* (Nigeria 2008) 13
[155] Kevin Kevin Nwosu, (ed) *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibironke, SAN* (DCONconsulting 2004) 91.
[156] Achebe, *Arrow of God* 5
[157] Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?* Accessed 29th March 2021, 1.
[158] Idowu (n289) 6.
[159] Idang, 'African Culture and Values' 99.
[160] Ibid.
[161] Aina, 'Alternative Dispute Resolution' (n316) 13.
[162] Grace Umezurike, *An Appraisal of Igbo Traditional Method of Conflict Resolution* (Queens College, City University of New York 2019) 1.
[163] Umezurike, *An Appraisal of Igbo Traditional Method of Conflict Resolution*.

date.

1.5.1 Onicha-Ado n' Idu:

This is an institutional monarchy governed by the 'Obi (Traditional ruler or Igwe or King) of Onitsha' HRH Nnaemeka Achebe aka Agbogidi, who was the human resources of Shell Petroleum before he ascended to the throne.[164] He presides over the town both material and spiritual function as the sovereign king, supreme lawgiver, and arbitrator. Additionally, judge the case as it may be and execute judgement.[165] He is usually helped in this function by the 'Ndi ichie' who are the (red-capped chiefs). And they are about three categories of them or hierarchies because is a very hierarchical structure in terms of law given and administration in Onicha-Ado n' Idu.[166] In each village there is the Diokpa (first son) who also has both a spiritual function as well as arbitration in terms of disputes. He usually does this as well with his council of the 'Umunna' (Kinsmen); let us say for instance, in the 'Egbunike clan or family', which is where the researcher hails from. They have the 'Diokpa' of the entire Egbunike Family; they also have the 'Diokpa' of the 'Umu Eju Egbunike' and each of these 'Diokpa' (first son) presides over the council of 'Umunna.'

It is argued that the 'Diokpa's are the mediators, and they are the impartial or neutral party in the matter. Thus, they will preside over a meeting and then the entire male born children will come for the meeting and there the issues are discussed, whereby each man has his voice and his votes, which is similar to the modern mediation.[167] The rationale behind this is that afterwards; whatever decision taken by the 'Umunna' is now final and binding to all, however, if for whatever reason one feels that he did not get a fair hearing from the 'Umunna.' The person is free either as an individual or even as a village to take up that with the Obi (King) of Onitsha and his Ndi Ichie,[168] who can be ascribed as arbitrators.[169] That is why sometimes 'ana Igba akwukwo n'ime Obi' (people can take the case to the obi's court and issue to Ime Obi).

Consequently, the Obi of Onitsha depending on the type of issue might be the one to preside or 'Ndi Ichie eme', or the 'Ogene Onira' or the 'Onowo' depending on the issue.[170] Once a decision is made, their decisions are binding and final which is the case with the present day arbitration[171] and court-connected ADR.[172] Apart from the finality of the judgement in arbitration, another thing they have in common with the present day parties is the power to decide who listens to their cases.[173]

For example, in recent years if a young person dies in Onitsha there are no elaborate preparations for his burial. In this particular case, a family of the deceased flouted this rule and

[164] Channels TV, *View From The Top Interviews Obi Of Onitsha; Nnaemeka Achebe* (2015) 1.
[165] Ibid.
[166] Helen Henderson, 'Women's Roles in Traditional Onitsha Society- 'An ethnographic research conducted in Onitsha around 1960's ' (1960) A Mighty Tree Onitsha History, Kingship, and Changing Cultures 2.
[167] Aina, 'Alternative Dispute Resolution' 82.
[168] Jon Fuller, Kenneth Winston, The Forms and Limits of Adjudication (1978) Vol 92, 2, Harvard Law Review. 363.
[169] Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*
[170] Ibid.
[171] Margaret Moses, *The Principles and Practice of International Commercial Arbitration* (2nd edn, Cambridge University Press 2012) 20.
[172] Kehinde Aina, 'The "Multi-Door Concept" in Nigeria: The Journey so Far ' (*ainablankson Attorneys,* 2007) <https://www.ainablankson.com/#> [copy on record with the author].
[173] Moses (n320) 20.

the villagers complained to their kindred. They were fined but the parties were not satisfied with the verdict and took the case to Ime obi (King's compound).[174] The Igwe and his 'Ndi ichie' lifted the sanction and issued a warning.

Evidently, the obi of Onitsha has the final say in disputes or conflicts and his decisions are final because he is the arbitrator 'Eme abu nso' (there is nothing he does that is an abomination so he is above approach).[175] They also have the 'Umuada' (first daughters of a family) who are equally called upon to settle disputes.[176] They are also seen as arbitrators or mediators as the case maybe.

1.5.2 Amaofuo:

On the other hand, Amaofuo, which is an autonomous village, has their traditional setting and mode of settling disputes, to an extent similar to that of the aforementioned village. It is essential to point out that the 'Eze' (King or traditional ruler) of Amaofuo village is Professor Peter Onyekwere Ebigbo; the natural and traditional ruler of Amaofuo, (also a Professor Emeritus of Psychology, University of Nigeria), who gave an insight on the several ways of settling disputes in his community depending on the level one chooses.

Ebigbo elucidated that 'the highest level of solving disputes is the Traditional Ruler's Palace cabinet. The cabinet has nineteen (19) wards, each ward headed by an 'Ichie' and at the same time they have villages in the community.'[177]

Accordingly, a village head heads each village[178], and in each village, there is 'an oldest man' and in the house of that 'oldest man' people usually assemble to solve disputes such as land disputes, inheritance and to have a talk about the welfare of the village.[179] At each of the levels of either the 'oldest man's obi,' the house of the 'Ichie' (red-capped chief) who is the village head or at the highest level that is the palace of the traditional ruler, disputes are resolved. For example, starting from the village level, if Mrs AF or Mr AF has a land dispute or had an altercation with a member of her or his family, like her husband or vice versa, he or she has to go to their oldest man and request that he convenes a meeting of all the villagers because it is in his 'obi' (compound) that all the villagers will converge including the traditional ruler. When such a meeting is summoned, the traditional ruler honours this invitation as a 'private person.'[180]

Though respected as a traditional ruler, at such a meeting, he will not dominate rather it will be the oldest man who dominates. Depending on what the problem is, for example if a woman quarrels with the husband as illustrated above, she will make sure that she brings her own people and all those who sympathise with her and those who can give evidence in her favour.[181] After putting down drinks for members and 'Oji' (Kola nuts), which will be eaten at the venue of the dispute because the meetings always start with the breaking of the Kola nuts. The person

[174] Henderson (n315) 2.
[175] Henderson, 'Women's Roles in Traditional Onitsha Society- 'An ethnographic research conducted in Onitsha around 1960's'.
[176] Ibid.
[177] Ibid 8.
[178] Four villages make up the community, the traditional ruler rules the community *Cited in* Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 28.
[179] Ibid.
[180] Ibid.
[181] Ibid.

who convened the meeting will now lay down the person's problems.[182] Then the other person will ask questions and afterwards, the first party will answer.[183] The general house will also ask questions and suggest some concessions for both parties.[184] The second party will respond and state if he accepts the concession.[185] After the person has responded, the two are sent out and the house deliberates on the problem. Under the leadership of the 'oldest man,' the decision will be taken.

Consequently, the deliberation carries on and verdict pronouncement will be shifted to another meeting where the final decision is taken.[186] The important element is that there is a lot of open and uninhibited communication, as everybody presents his or her problem fully in a highly psycho-carthatic manner.[187] In this method of presentation, people know one another and see-through who is telling the truth and who is not telling the truth.[188] At the end of the day, the person who has lost a case will be fined –either he brings an item of value or some wine and then he will be warned to desist from doing so or beg the other person.[189] It is a very big honour to win a case but dishonourable not to win a case, just as the Igbo saying 'disgrace of an old woman is worse than killing the old woman.' Therefore nobody wants to lose a case, whether a person is fined one naira (equals 0.0021pence) or a big amount of money.[190] However, it does not matter when one has lost the case, because they have gotten to the root of the problem and even the party that has won must have made concessions during the process thus both parties are considered to be at the same level.[191] It is argued herein that this is the present-day hybrid process, med- negotiation.

Following this principle marshalled out, disputes are also solved at various other levels including the traditional ruler whose own is a little bit more serious and more widely attended. People are invited from various places, especially when a traditional ruler has a good reputation, coming from various communities to see how he solves the dispute and assent is placed on truth and justice.[192] Thus, people rely on the tradition, there is a code of conduct or laid down tradition, and on how people behave, and how land disputes are settled.[193] Their forefathers and the ancestors have laid down ways of inheritance, land allocation, how people deal with one another.[194] The elderly ones are relied upon to bring forward the 'Omenala' (that is the custom of the land) and it is in this custom that people who have transgressed and people who have not transgressed -bring out the roles of witnesses.[195] The role of witnesses can be seen in the modern ADR and even in litigation.

However, the role of witnesses are not important in TAMSD as the community members see through the case, and sometimes the oldest man in the community will decide that he does not want to hear from anyone again and gives the judgement.[196] The important thing is that

[182] Ibid 10.
[183] Ibid.
[184] Ibid.
[185] Ibid.
[186] Ibid.
[187] Ibid 20
[188] Ibid.
[189] Ibid 19
[190] Ibid.
[191] Ibid.
[192] Ibid.
[193] Ibid.
[194] Ibid.
[195] Ibid.
[196] Ibid 8.

whoever is aggrieved embraces those who make him or her feel at home in that meeting. Usually very often, there is a consensus based on the custom. They lay down the code of doing things so when that is ascertained, they judge from compliance or for the deviation from that good conduct.[197] People are generally happy and willing to submit to having lost a case, usually, in pronouncing judgement everybody is told what he or she has done wrong and in return- will be told also what he or she has done right.[198] Some are praised, particularly the person who is going to lose a case (that is the sandwich approach of giving feedback to someone[199] bread-marmite-bread) and then thereafter judgement is pronounced.

Professor Ebigbo asserted that women go for the truth; 'I won't say merciless, but they are very just i.e., justice-minded.'[200] When there are issues that emerge in the community that the men find difficult to settle, then the women are called back, women called 'Umu okpu, (Daughters of the land who are married out).[201]

On the other hand, it is also important to mention the role of 'Umuada' (Daughters of the land); they also perform the same duties as the 'Umu okpu.'[202] For example, If someone is a titled person, that is if the person has taken the 'Ozo title' (the men of honour- a role lower than the 'Ndi Ichie') such a person is expected to live honourably and is meant to keep to the rules in line with the codes as a titled man.[203]

However, if such person is found to be deviating from the code of conduct lay down by the, then the organisation of the 'Ozo titled men' will also be willing to hear the case and can impose severe sanctions on an erring 'Ozo titled holder' who has deviated from their lofty place of honour. Notwithstanding, it is important to reiterate that the highest level of disputes solving is at the palace of the king or the traditional ruler.[204] To reiterate, these roles are similar, and its classification by the writer remains the same as that of 'Onicha Ado.'

In furtherance, there is an 'Omu' (a soft part of the palm tree frond) used to settle disputes in the above-mentioned community.[205] For example, if Mr Ani infringes on Mr Ede's land, then what Mr Ede needs to do is to report to the palace. The traditional ruler will approve that an 'Omu' be placed on the land in question.[206] This act on its own signifies danger and a warning to everyone to avoid the land. Now, there is a substantial amount of fee that Mr Ede will pay, a minimum of 500 naira equivalent to 1.09-Pound sterling) to the messenger, and also pay 1,000 naira to (which is equivalent to 2.05 Pound sterling) the arbitrator that is the traditional

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[197] Ibid.
[198] Ibid.
[199] Anne Dohrenwend, 'Serving Up the Feedback Sandwich' (2002) 9 Fam Pract Manag 8.
p. 45
[201] This organisation usually meet when someone dies or when there is a wedding, they line up some cases that they will take, some disputes that they will solve, and also their role in the community is also very important.
[202] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*327) 2.
[203] Ibid 3.
[204] Before moving forward to Adjudication at the palace, let me put a few facts forward. The palace is an ancient one in the sense that the traditional ruler's father the *'Ogbuenyi'* (elephant killer) the 4th was buried there, his elder brother *'Ogbuenyi'* the fifth was also buried there, his grandmother was buried there and several others of his ancestors, that was there, that was where they adjudicate cases both in the olden days and this present day. So, the palace itself is like an oracle so anybody coming there knows that if he or she do not tell the truth, their belief system binds them that something bad will happen to them because they are bound to tell the truth cited in Ebigbo (n327) 17.
[205] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.
[206] Ibid.

ruler, and then the 'Omu' is placed.[207] Mr Ani against whom the 'Omu' is placed can remove the 'Omu' by coming to the palace, paying 500 naira to the messenger and 1,000 naira for the traditional ruler so that the 'Omu' is set aside.[208] When the 'Omu' is set aside, a day is fixed for judgment on that. People will come to the palace, both the accused and accusers and with those who support each side. They will bring five (5) cartoons of beer, five (5) cartoons of small stout, five (5) cartoons of malt and 5,000 naira equals to 10.26-Pound sterling.[209] Mr Ani that was accused will bring all the cabinet members consisting of 'Ndi Ichies'- (chiefs) cabinet assistants and some messengers to be present at the palace.[210] Ordinarily, in most communities, the capacity of the palace can take up to 500 people. For the above reasons, it is fair to say that this validates that the traditional religion has an influence over the TAMSD, which was earlier mentioned in this research.[211]

Finally, the traditional ruler *alone* will write the judgement, taken into consideration what the members of the cabinet have said and every other thing that was listed. Then he fixes a date for the judgement.[212] The judgement is read, typed out and given to both parties.[213] Usually the word of the traditional ruler is law, if any of the parties are not willing to accept the judgement he can still go to the formal courts; that is the Magistrates Courts or High Courts.[214] Also, the traditional ruler is the chief security officer of the community and also chief justice of the community but he does not replace the police, nor does he replace the courts or the government.[215]

During the pre-colonial era, which is an informal structure, the police had no branches, nor were they unionized, but served mainly as messengers and guards for traditional rulers, such as Obas, Ezes, Igwes, and Emirs in their homes, families, and council of chiefs' courts. This is unlike the present day whereby they are formalised, and state structured. As a private police system, they perform a variety of duties ranging from guard duty, to combat, espionage and surveillance for the traditional rulers (chiefs), who paid them weekly wages.[216] However, in some communities in Nigeria, to be precise Enugu State, they still have the customary courts and even have the customary courts of appeal where the appeal from the customary courts goes to, even after the institutionalisation of arbitration in Nigeria.[217] They still practice that traditional or customary method of settling disputes, so this practice was re-introduced as the modern-day ADR to help settle matters due to the problems associated with the court system.[218]

Indeed, looking at these two villages or traditional institutions, both traditional institutions are similar to the present ADR in terms of their elements and benefits are akin to ADR processes.[219] More so, their rulers who are well educated and are still in tune with the culture of their people and this validates the views of some scholars mentioned above, that the traditional African method of settling dispute has always had a drastic impact on all generations and will still

[207] Ibid.
[208] Ibid.
[209] Ibid.
[210] Ibid.
[211] Moore (n258) 4.
[212] Ebigbo (n327) 25.
[213] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'* 26.
[214] ibid 27.
[215] Ibid.
[216] Ibid.
[217] Umegbolu (n254) 1.
[218] Moscati, *Comparative Dispute Resolution*.
[219] Ibid 521.

continue to the next generation to come; this in spite of religious interference and civilisation.[220] Regardless, some schools of thought have argued that, 'these traditional institutions in the present millennium, have relatively gone into extinction.[221]'

A. Are these Traditional Institutions still active?

M. G. Smith contends that 'African people only know of customs instead of law.'[222]

For the following reasons, in which ever way, one chooses to interpret it or approach it, the focal point here is that in this millennium people are conversant with both customs and laws although in this context more people are more aware of litigation because there is no with longstanding religious principles/traditions surrounding it. The simple reason being that customary law is taught in schools while the TAMSD is fading away from the Nigeria clime because it is not taught in the schools. Though it cannot be said to be in extinction[223] because, the customary court[224] still exists which uses the customs of the land to settle disputes and people still respect and abide by it.[225]

However, if a party decides to appeal to the higher court, which has the power to override the decision of the customary court, they are free to do so.[226] However, most times because the people still have huge respect for the customs of the land in the same vein they still acknowledge the decisions of the customary court, and usually accept the decision made, without taking it further to the higher or conventional court.[227]

To reiterate, the Africans are accustomed to the customs of their land because of the cultural values imbibed from their childhood.[228] Hence, the mind-set or belief that the custom of the land is even stronger than the 'formalised law' because of the belief that their 'chi' (gods of the land) will punish them-by bringing death or misfortune that will befall them or on their family members.

Furthermore, especially where a blood oath may have been taken before the dispute[229], this signifies that they have made a pact with their 'chi' (god) of the land, which is deemed as binding. Apart from the above, in most cases, the custodians of the land will impose fines or sanctions on them –though this is a lighter punishment.[230]

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[220] Ibid.
[221] Chidera Rex Obiwuru, 'Justice and its administration in Igboland before the dawn of the present millennium' (2020) Journal of Historical Studies (JHS) 37.
[222] Idowu (n287) 7.
[223] Obiwuru(n370) 37.
[224] Customary court is an infusion of both the customary and modern legal systems, which are those practices, and beliefs that are deemed to be of good faith and essential part of the social and economic system that they are treated as laws.
[225] Umegbolu (n254) 1.
[226] Umegbolu, *Episode 7: The Similarities between the Customary arbitration and the Modern day Arbitration*.
[227] Ibid.
[228] Idang (n277) 13.
[229] Idowu (n289) 7.
[230] Umegbolu, *Episode 5: What are the factors that could influence the selection of an ADR option?*.

Additionally, those that have embraced Christianity are not left out of such practices.[231] They still obey their customs because the custodians are deemed as the (representative of the gods and will ostracised or brand them as an *'*Osu' (outcast) in the community or villages.[232]

A typical example is a recent case reported at Okwuolisa Traditional Supreme Council Obosi (Ancient Traditional Supreme Council) by *Chief Emenike Mgbenena (Oboli Obosi) v Nze Okey Ogbazi (Ezeakaibe Ugeji).*[233] The complainant Chief Emenike Mgbenena made a complaint that Nze O. Ogbezi insulted him at a meeting of Obosi forum held in Nze Ezeakaibe's house (his house in London).[234] Nze Ogbezi attempted breaking Chief E. Mgbemena's head with an empty bottle of brandy. He also repeatedly called him by his name (Emenike Mgbemena) instead of calling him by his chieftaincy titled name (Oboli Obosi).[235] They both exchanged words and they were both calmed down by the remaining members present. However, at the end of the day the defendant was asked to bring a bottle of brandy, which he presented to the oboli obosi, and he prayed over it, and they hugged and shook hands.

The defendant believed that the matter was over, however the Traditional Supreme Council Obosi summoned him, and he responded via phone to put up a defence from his home in London and judgement was passed by the council heads known as the 'Isi Muo' in Igbo (Spirit head).[236] They ruled that the case lacks merit and ruled to the defendants' favour. However, due to the oral appeal of Nze Okey Ogbazi that he would not like to stage a case with Chief Mgbemena, the 'Isi Muo' of Obosi, advised Nze Okey Ogbazi to bear and take any person of his choice with a bottle of brandy to pay a visit to the complainant so that final peaceful reconciliation will stand for both and peaceful representation of Obosi Kingdom will therefore continue.[237]

The main point of this case like earlier pointed out in this work, is that the traditional mediation or customary arbitration is still very much alive in Nigeria and very similar to ADR[238] and people still recognise the council heads. Thus, any decision given by them is binding. That is why the defendant responded and obeyed the rulings given; because he would not want his family and himself to be ostracised from the meeting and the community.

It follows that nobody from that village can marry from that family, so there are dire repercussions.[239] Equally it is important to point out that some villages have abolished this practise in recent years. However, 'Omenala' (customs) of the land still exists and is very much utilised but some of these practices- ('osu') are repugnant to natural justice, equity and good conscience.

Many of the practices referred to as being repugnant to natural justice, equity and good conscience were taken off or expunged from some cultures in Nigeria, like in the two villages stated above, where these practices have been expunged.[240] This means that these 'traditional

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[231] Paul Okey (Rev Canon) Enwonwu, 'Christainity and Socio-Cultural Practices in Onitsha Contemporary Society ', University of Nigeria, Nsukka 2007) 142.
[232] Ibid 142.
[233] *Chief Emenike Mgbenena v Nze Okey Ogbazi* Traditional Supreme Council Obosi.
[234] Ibid.
[235] Ibid.
[236] Ibid.
[237] Ibid.
[238] Aina (n321) 14.
[239] Enwonwu, 'Christainity and Socio-Cultural Practices in Onitsha Contemporary Society .
[240] Umegbolu (n259) 1.

institutions' are still potent and very relevant to date- still in use by the people wherever they find themselves. They still adhere to the 'Omenala' of their respective community.[241]

In summary, it is submitted that it is more appropriate to say that 'due to the introduction of the legal system in Nigeria by the colonist' -it made the traditional system of settling dispute (TAMSD) a bit unpopular but still effective.'[242] The writer argues 'unpopular' is a better word than 'extinction.'[243] It is so much so still effective in settling of disputes or conflicts in Africa as exemplified above, though not so popular due to introduction of a more formalised system-litigation however, some of those features of TAMSD can be seen in the present or modernised ADR.

1.6 The Colonial and The Post –Colonial Era

Having reviewed the pre-colonial era, the writer decided to merge both societies because there are not many differences during the advent of colonisation and post-colonisation period. In other words, the British colonisation of Nigeria involved trying to eradicate the Traditional African Method of Settling Dispute (TAMSD) in a bid to transform Nigeria;[244] hence litigation was introduced.

Thoroughly taking into consideration these eras, it would be almost accurate to state that there existed little or no difference between the colonial era and post - colonial era in form and ideology with the common goal to eradicate the TAMSD mentality and enthrone litigation, being an European ideology as the popular and accepted mode of dispute resolution. Thus, the introduction of Litigation, formalised courts system, and a more formalised Police Unit. Thus, the pre-colonial era had the traditional ruler functioning as security officer or police.'[245] Though they had the palace's messengers who doubled up as guards or what it is known as the 'police force' to take away an erring villager outside to wait for his judgement, this very much clearly represent the informal police unit in this era unlike[246] the colonial era where the police unit was more structured and more formalised.

Conversely, a major significant difference in these societies was that the post-colonial era witnessed the reintroduction of the formalised ADR. Certainly when the British colonized Nigeria in 1861,[247] this era was a game changer in the sense that there were no more kings of Nigeria or single figure authorities.[248] Rather a governor general that unified the different ethnic regions and called it 'One' Nigeria.[249] Thus, the traditional rulers were seen as the symbols of authority, since the colonisation of Nigeria now came under the jurisdiction of one authority, the Governor General that was accountable to the monarch in England.[250] This was

[241] Chinwe Umegbolu, 'In response to Obiwuru Chidera Rex article- Justice and its administration in Igboland before the dawn of the present millennium (at his request)' (2020) ResearchGate .
[242] Ibid.
[243] Obiwuru (n370) 37.
[244] Okereafoezeike (n298) 12.
[245] Ebigbo (n327) 16.
[246] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.
[247] Peter Nwankwo, *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Eras An Application of the Colonial Model to Changes in the Severity of Punishment in the Nigerian Law* (University Press of America 2010) 136.
[248] Ibid.
[249] Ibid.
[250] ibid 136.

called the indirect rule,[251] which was a way of providing a link between the indigenous people and colonial regimes, but in reality the indirect rule separated or divided the traditional authorities from their people through their association with the colonial regime.[252] The imposition of the indirect rule failed woefully[253] in the South-eastern part of Nigeria,[254] due to the fact that the British government failed to understand the impact of government upon the traditional tribe settings.[255]

On the other hand, Elias' words highlighted the new shift, which the writer considers to be the prime pointer and essence of this chapter. He stated that:

> When the British merchants could not enforce the payment of debts by their local customers in Nigeria, the British government instituted a judicial system with an appointed resident agent (British consulate) to regulate lawful trade between British merchants and their local customers in the ports of Benin, Bimbia, Bonny, Brass, New and Old Calabar, the Cameroons, and the land areas of Dahomey." …Consul Campbell presided over a dispute arising over the throne of Lagos between King Decemo and King Kosoko.[256]

Following from the above, this landmarked case opened the doors of a court system in the colony of Lagos.[257] Going on from this statement, it is evident that Nigeria embraced litigation by force due to the fact that the British instead of developing the TAMSD which emphasizes peace and harmony, they wanted something they were used to, that had punitive measures. Hence, the westerners benefited more by settling cases through litigation.[258] As the economy of the country began to take on a more formal structure, due to the complexities surrounding commercial transactions arising from goods and services.[259] It became imperative for a more formal system to be created so as to deal with these issues. It is believed that the authorities at the time who introduced the foundation for the emergence of court systems, adopted the principles used in their home countries. These they adopted and applied, leading to the foundation of the Nigerian Judicial system and further laid the foundation for the common law.[260]

Against this backdrop, in this present day- the post-colonial era, the legal system is serving the citizens by administering justice and settling disputes. However, it is pertinent to point out the TAMSD, was a mono-option in the pre-colonial era, the same goes for the legal system during the colonial era however during the post colonial era it is not serving Nigerians due to the many problems associated with it. Though this is not only peculiar to Nigeria alone, the Chief judge of Ontario, Canada stated that,

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[251] Ibid.
[252] ibid.
[253] Channels TV (n313).
[254] Southeastern part of Nigeria comprises of the Igbo's from Imo state, Enugu state, Anambra State, Ebonyi State and Abia State.
[255] Nwankwo (n390) 18.
[256] Nwankwo, *Criminal Justice in the Pre-Colonial, Colonial, and Post-Colonial Eras An Application of the Colonial Model to Changes in the Severity of Punishment in the Nigerian Law* 136.
[257] Ebigbo (n327) 136.
[258] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.
[259] Ibid.
[260] Ibid 28.

> People attend lawyers with problems they want resolved, not problems they want litigated." A trial is only way to resolve a case, yet a trial is the only option offered by the court-administered system. Lawyers and their clients deserve friends.[261]

Evidently, the above expression by the Chief Judge clearly underlined the very problem associated with litigation, which is the non-option of resolving disputes other than the mono-door litigation, which could not serve the growth in Nigeria.

The rationale behind these flows from the backdrop that theoretically, litigation is not an inefficient system of dispute resolution in itself.[262] However, the writer argues that the crowded dockets could be attributed to the increase in population[263] without the increase of courtrooms or number of judicial workers, which eventually escalated delays of trials and other uncharitable vices like corruption that characterised the litigation process.[264]

In addition to the above, almost all the courtrooms in the High Court in Lagos State were built before 1983.[265] Regrettably, only few buildings and structures have been added to the existing ones; in other words, the buildings and structures are not increasing commensurate with the increase in population. This is surely one of the major reasons that have resulted in crowded dockets and the slow pace of litigation in the regular courts.[266] Also, the need to have more judicial bodies and revised procedures of law that can enhance access to justice is no doubt a major challenge.

As earlier pointed out, Onyema observed that Nigerians were litigious,[267] however this assertion is disagreed with, as during the colonial era, the populous were persuaded to make use of the one-door system which leads to litigation. Given that, half of the population who were uneducated and could not read or write had no resources except for few people from the affluent homes, like the Awolowo's and the Azikwe's, reinforcing the view that some villagers in the communities in the east still had the TAMSD to fall back on as their only option.[268] It is pertinent to point out that during the time Onyema conducted her research in 2012, it is argued that ADR in Nigeria was just starting off; though the customary arbitration, which was codified, was still used by the people. Thus, litigation was still the only known / popular route for most Nigerians.

However, in recent times, certain remarkable reviews have been made by Lagos State to further advance access to justice, as evident in the amended High Court Civil Procedure Rules of 2019, Order 11 Rule (5).[269] Under this new law, Lagos State in a bid to considerably reduce the

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[261] Aina, 'Alternative Dispute Resolution' 15.
[262] Nwosu (n304) 43.
[263] Alastair Leithead, 'The city that won't stop growing: How can Lagos cope with its spiralling population?' (*BBC News,* 2017) <https://www.bbc.co.uk/news/resources/idt-sh/lagos> accessed 2nd April 2020.
[264] Discussion I had with a chief Judge at Igbosere high court Lagos State after her sitting on 21st November 2021.
[265] Ibid.
[266] The writer observed that there are twelve (12) courtrooms in the building of the Igbosere courtroom. At Lagos State, which was demarcated by thin walls, the researcher observed during court proceedings in Nigeria while waiting for a judge to interview. In summary, in this court, there were about ten (10) judges in the high court, and this is not enough to serve the population in Lagos State. The writer was drenched in sweats and so were the other members of the public in there and when the judge finally appeared she had about twenty (20) cases scheduled for appearance and could only hear three cases.
[267] Onyema (n2) 2.
[268] Ebigbo (n 327) 12.
[269] High Court of Lagos State Rules Civil Procedure Rules 2019.

dockets of the courts have inserted the provision for compulsory fine or sanction in the rules.[270] For example, if a lawyer comes to court unprepared and for that reason the case could not go on, the lawyer will be made to pay a fine of at least 1000.00 naira equivalent to 2.10 Pound Sterling. This new practice is necessary for a speedy dispensation of justice, as it will greatly dissuade lawyers in the habit of giving flimsy excuses to frustrate or further delay a matter in court from further engaging in such despicable acts. This is in line with the review conducted by Lord Woolf to settle matters outside courts, which is through ADR route to avoid unwarranted delay.[271]

Going by the UN statistics on the population of Nigeria in Lagos state, it shows that the population is about 14 million in Nigeria.[272] Contrary to the UN statistics indicated above, the Lagos State Government had recently declared that its population is up to 21 million.[273] Lagos State still has the same number of courtrooms, that was being used when the Nigerian population was just 100,000,000 with just few buildings recently added in Igbosere High court, which the researcher took time to count. Although more rooms were added but that has not been sufficient to accommodate the volume of the population, otherwise the population is moving at a geometrical rate while the structural advancement of facilities and judicial workers are increasing in an arithmetic progression.

1.7 TAM Infused Court-Connected ADR

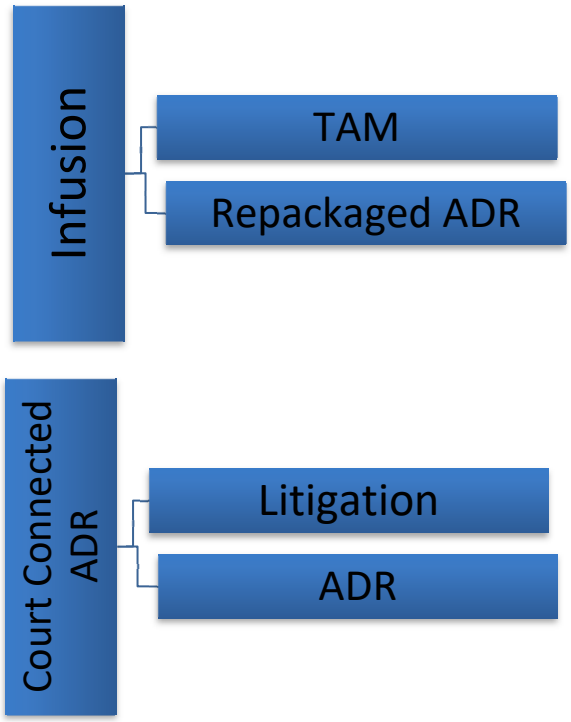
Furthermore, in the post –colonial era, the realisation that 'one' system (litigation) of settling dispute was not as effective and efficient as it used to be. Alas, the introduction of the 'repackaged' ADR, which was / is inherent amongst Traditional African Society (TAS).[274] Africa's came into the formal systems with the notion that their own (TAMSD) was not working for them.[275] Thus, a return to the 'repackaged ADR' is actually a second coming or a second return to Resolutions Systems that are closer to their culture.[276]

The figure below encapsulates or captures the thinking behind this, which is the TAMSD, inherent amongst the TAS whereas their 'alternative' is litigation or the adversarial system. The writer is of the opinion that the 'repackaged ADR' or the *'*westernised ADR' is an adaptation of TAMSD.[277] For the African Society- Nigeria to be precise, due to the fact that they never went out of their way to seek and bring *'*litigation' to their nation, it could be said that it was coerced upon them. They were conditioned to believe that TAMSD was not good enough and this has been the mind set until the early post –colonial era, the cultural orientation begin to change in Africa,[278] to be precise the Nigeria people are becoming more enlightened and beginning to embrace and appreciate their culture. However, since Nigeria's move independence in 1960, they have modified the adversarial system to suit them by incorporating the *'*court-connected ADR.'[279] For this reason alone, the *'*court-connected ADR' could be

[270] Ibid.
[271] Chinwe Umegbolu, 'To What Extent is Arbitration a Cheaper and more Efficient Process of Dispute Resolution – in Comparison to Litigation? ', Kingston University London 2014) 35.
[272] Leithead (n406).
[273] Leithead, 'The city that won't stop growing: How can Lagos cope with its spiralling population?' 406.
[274] Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today 'iii.
[275] Onyema (n2).
[276] Onyema, *A discussion we had -from her unpublished book* at SOAS University London.
[277] Umegbolu (n417) iii
[278] Umegbolu, 'Bargaining in the Shadow of the Law: The Facts of Divorce As They Stand Today'.
[279] Onyema (n2) 1.

regarded as a 'legal transplant.'[280]

Against this backdrop, this two (TAM and Litigation) has encountered a 'legal infusion,' which is now 'part of the modes' of dispute / conflict management or resolution in Nigeria.



In summary, essentially, the westerners who colonized these African countries had the opportunity to witness the benefits of the TAMSD – 'peaceful settlement' as opposed to the 'power tussle' depicted in the courtrooms or through litigation. They decided to key into this system by 'repackaging' it which they adopted and coined a new name - Alternative Dispute Resolution (ADR).[281] Thus, ADR was later shifted back to Africa as a new method of settling disputes.[282] The inference here that this 'new' method of dispute resolution was in any way a 'second' or 'alternative' choice is merely fictitious,[283] overlooking the African value and culture of settling disputes amicably which enables living in peace as 'one.' Thus, from the African perspective, litigation may rightly be seen as an 'alternative' form and ADR or TAMSD is their main method.[284] On its return, ADR has been formalized as one-stop-shop, classified in different units known as Arbitration, Mediation, Negotiation, Conciliation, and Early Neutral Evaluation.[285] This 'repackaged or modernized ADR' process involves a lot of confidential documentation, trained professionals, called 'body of neutrals'[286] that are educated and have the prerequisite skills as opposed to the traditional rulers who were illiterates.[287] Indeed, drawing inferences from the various schools of thoughts on ADR process from the

[280] Legal transplant connotes borrowing or outright take over of laws from one legal system to another legal system/ country but on getting there it is modified to suit their laws. The meaning of legal transplant is analysed further in chapter 5 and 6.
[281] Umegbolu (n417) 142.
[282] Aina (n303) 82.
[283] Aina, 'Alternative Dispute Resolution'.
[284] Ibid.
[285] Caroline Etuk, Obiaya, Ike, Onuma, Ikechukwu, Ivenso, Nnezi (eds), *Mediation Matters* (Obra Legal 2018) 10.
[286] The Lagos Multi-Door Courthouse, *The Lagos Multi-Door Courthouse Neutrals' Handbook* 16.
[287] Umegbolu (n417) 143.

African perspective lens of situatedness[288] on how ADR returned to the West Africa[289] clime. Evidently, drawing from the Africa perspective, ADR 'evolved' from the TAMSD to what they have as ADR in this era. Therefore, it is argued that ADR should be approached depending on one's understanding;[290] hence, through the African lens ADR is their alternative thus connotes 'African Dispute Resolution' (ADR).[291]

2. Findings and Analysis

2.1 Has the LMDC Replicated the Pre-Arbitral Colonial Method of Settling Disputes?

In the reviewed literature, there was a debate on whether the Traditional Method of Settling Dispute (TAMSD) evolved to this modern-day Alternative Dispute Resolution (ADR). Pertinent questions were raised on whether this was a legal transplant from the western world to the African continent or vice versa.[292]

Against this backdrop, this is the first work to provide an insight from the disputants / users and more stakeholders into whether the LMDC has replicated the pre-arbitral colonial method of settling disputes. It has been argued that the western style of ADR is not the first time that the African continent is coming in contact with Alternative Dispute Resolution (ADR). The African continent has always had its indigenous means of settling dispute before the advent of the Europeans. Elisabetta Grande elaborated more on the above subject matter in her article which begged the question,[293] does this mean that we are experiencing a new kind of legal transplant from less complex to more complex societies?

Grande pointed out that the 'data collected in 1993 shows that legal transplants usually take place from more complex societies to a less complex society.[294] However, the literature reviewed in this work indicates that some of the titled men illustrated how disputes were settled in their community via the TAMSD.[295] More so, the writer was born in Nigeria. The writer has witnessed the way disputes were resolved from her community and from various other communities in Nigeria and neighbouring countries like the Benin Republic and Ghana that the writer was opportune to live in. She asserts that this method was part and parcel of the Africa continent.

Lending credence to the above is the case of Rwanda's traditional judicial system[296] in new places where it was implemented; it was successful. Thus, Gacaca corroborates the evidence

[288] Moore (n256).
[289] Moscati (n 248) 51.
[290] Practice Direction on Mediation Procedure 2008, 16.
[291] On the other hand, viewing through the western 'lens' ADR can be referred to 'Alternative Dispute Resolution.'.
[292] Grande (n251) 63.
[293] Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'.
[294] Ibid.
[295] Ebigbo, *Conflicts and Disputes in 'Amaofuo village'*.
[296] Chika Ezeanya-Esiobu stated that Gacaca was used after the genocide in Rwanda's national court system when the genocide ended in 1994; their court system was in shambles there was no judges, lawyers to try hundreds of cases. So their government came up with the idea to resuscitate a traditional system that was known to them and infused into the judicial system that they called Gacaca. Gacaca is a community based judicial system where members of the community members come together to elect men and women of proven integrity to try cases. It is pertinent to point out that by the time Gacaca concluded its trial of genocide cases in 2012. 12,000 community-based courts had tried about 1.2million cases. Cited Chika Ezeanya-Esiobu, How Africa can use its traditional knowledge to make progress, Ted Global 2017. Center for Khemitology, *Short Course on Ubuntu Philosophy*.

stated in the reviewed literature about the traditional method of settling disputes in Nigeria, which is the spirit of Ubuntu.[297]

This ancient universal philosophy connotes collective respect for human dignity, the art of being human, to value the good of the community above self-interest, it is to show respect to others and to be honest and trustworthy, it is fairness to all, it is to be compassionate, forgiving, compromise, it is the spiritual foundation of African societies, and which signifies 'I am because we are, we are because you are' (Umuntu ngumuntu ngabantu).[298] The 'we' connotes the community, and the 'I' connotes the individual or personhood. To the African, the 'we' means his/her extended family or lineage. If you contrast this with 'Des Cartes' maxim, on which Europeanism is based, it says 'I think. Therefore, I am' (Cogito Ergo Sum).[299] Additionally, Chief Ibironke, (SAN)[300] validates the above statement:

> Before the colonial period, disputes between members of the community and different communities were resolved using the traditional method of administration of justice to wit: by elders, chiefs and other paramount rulers of the community.[301]

On the other hand, Gluckman posits that:

> In the native courts that were set up, the litigants themselves pleaded their own case and in default thereof, e.g. Because of age, status, or physical disability, their parents, guardians, husbands or relatives were allowed to plead on their behalf.[302] In these judicial systems, professional pleaders or barristers as they are known today were not required. The legal and judicial systems at this time, to a considerable extent, derived their strength from the predominant influence of religion in the traditional society.[303]

The sentiment expressed in both quotations embodies the view or supports the submission of the writer that the Traditional African Method of settling dispute was pre-existing before the colonial era in Nigeria.

The Differences Between and Similarities Between TAMSD and ADR

According to the findings, some of the respondents acknowledged that there are differences and similarities between TAMSD and ADR. **Focus group 1** stated that

> "The TAMSD could be both adjudicative and non- adjudicative. In the Traditional setting in Africa, the scope is very wide, it is argued that in Nigeria alone there are about 284 models of different traditional systems only in Nigeria. In some environment where there are sanctions for non-compliance decisions, it can be said it is non-adjudicative

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[297] Ibid.
[298] Ibid.
[299] Center for Khemitology, *Short Course on Ubuntu Philosophy*
[300] Senior Advocate of Nigeria (SAN) is a rank awarded to practitioners or academia that have distinguished themselves in practice and are considered the best in advocacy.
[301] Nwosu (304) 91.
[302] Max Gluckman, 'Cross-examination and the Substantive Law in African Traditional Courts' in MacCormick D. (ed) Lawyers in their Social Setting' (1976) 30 cited in Nwosu, *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibironke, SAN* 91.
[303] Adewoye Omoniyi, *The Legal Profession in Nigeria 1865-1962* (Longman, 1977) 7 *Cited in* Nwosu, *Legal Practice Skills & Ethics in Nigeria: In Honour of Chief Babatunde Abiodun Ibironke, SAN*, 91.

> in that instance. In an environment where there are no institutional sanctions or decisions reached then it is non-adjudicative."

On the other hand, **focus group 2** stated

> "That it is substantively adjudicative what that means is that there are serious sanctions or consequences for non-compliance of the Chief or Eze's decision on a case; they do have taskforce that enforce their decisions like excommunicate the defaulting party- which is a way of saying no one is allowed to talk to you. Those are modus of punishment- sometimes some of the traditional laws have even serious powers such as life and death. For instance, in the Hausa Kingdom like the Sokoto caliphate where the monarch combines both religious power and political power, he can condemn someone to death. Hence, in this instance TAMSD is adjudicative. The equivalent to that in Igbo land is banishment. So there are serious consequences if the party fail to follow the decisions reached but there are other loose contexts where the opinion is advisory not really- binding. For example, in my community, in a family level there are different hierarchies of panel like the Diokpa (first son) if there is a problem and he steps in he would advise the party then make suggestions. It all depends on the disputes there are decisions reached in TAMSD that is merely a recommendation and if the parties do not adhere to the recommendation no punishment will be meted out.'

Hence in line with the reviewed literature, the difference between the two is that ADR is structured; there are stipulated rules guiding different processes- Mediation, Conciliation, Arbitration Negotiation. In contrast, TAMSD is not strictly structured like the modern-day ADR.

A Legal Transplant[304]

Implications:

From the findings, all the participants affirmed that the new ADR is from the past – TAMSD. Validating the above view **Lawyer 1** pointed out that

> The word arbitral suggests a force that is not challengeable an unquestionable authority. If you remove the arbitral the sentence will mean has the LMDC replicated the pre-colonial mode of dispute resolution? My answer is yes. In fact that is what it's meant to be the LMDC is the modernised way of settling disputes in the / my village. The

[304] Legal transplant simply means to carry or take an idea from one aspect of a law or take the whole law from a place to another place.[304] The place in this context connotes the developing clime to the developed clime or vis a vis. The main issue being discussed here is whether or not ADR can be deemed to be a new kind of legal transplant from a less complex to a more complex society though this was highlighted in the theoretical perspective but the need for proper analysis is called for as it was raised in this findings. It is pertinent to point out that complex society is the civilized society while less complex society is the remote or developing nation. Now the grounds for raising this question is because comparative legal study or legal scholars has shown that legal transplants usually take place from more complex societies to a less complex society.[304] So what that means is that over the years, some legal scholars have concluded that if there has to be a legal transplant, it should be from 'a more complex society to a less complex society.'[304] Just like colonization moved from a more complex society to a less complex society. Colonialism moved ideas, everything new that is originally located in the complex society, to the regions, to the suburbs, to the local settings. Now, that forms bases or assumptions that every time a new rule, a new principle, new findings, a new development in law it must always move from the advanced society to a less complex society.

> difference between now and then is that the society has changed into a multifaceted society. Now young men and women leave their parents and stay in the cities and form new families, new homes in urban cities when they have conflict in these cities. The traditional family home is too far away from them to help resolve their conflict in a traditional way. However, the LMDC is now a home outside a home, an institution outside the home. To replace or fill in the gap of resolving disputes / conflicts the way it should have been assuming everybody -all brothers and sisters are living together in the traditional setting in those days it was easier for mediation to thrive because of the way people lived, communities lived together under one traditional head if the communities tell you to do this and you refuse, they excommunicate you. They can even banish you and then it was a shame that you were even banished but today in some communities' people cannot even be banished because they are not even living together. People don't even want to go back to their villagers they have already given themselves life banishment by living in town forever without coming back. Consequently, those sanctions can never work and those are the traditionally parameters are no longer trendy. So, for the creation of the LMDC in these cities where these people live becomes an alternative becomes a well replacement of the colonial mode of conflict resolution. I would say yes it has replicated the pre-method of settling dispute?"

Conversely, Party A, B; C, D and E unanimously echoed that 'the LMDC has replicated the pre-arbitral method of settling a dispute. It is just that it is modernised with civilisation and so on.'

The viewpoint mentioned above has established that the TAMSD is relatively not new in the African Continent, precisely Nigeria, since all the elements and benefits associated with the earlier like the aid of the neutral party resolving a dispute to arriving at a well thought out arrangement by both parties to a binding decision can be seen in ADR. More so, the writer describes the LMDC as a transplant from America, and at the same time as an African Institution; this reason for the latter is because African people are influenced by the traditional practices of their people. Hence the cultural nuances and practices of their people cannot be denied or expunged. The writer observed how neutrals were trained at the LMDC and were privileged to train as a co-mediators. They teach and encourage the neutrals on how to interact with the parties in their local dialect and the essential skills and level of awareness of the cultural nuance of the parties and provide culturally acceptable solutions. Hence once this cultural nuance raises its head, the neutral party has been trained to tackle it.

By and large, though the LMDC borrowed this scheme from America or what most people refer to as a legal transplant, they have modified the scheme to suit the cultural orientation of their people. From all indications, most states in Nigeria have replicated or adopted the LMDC. The recent data collected by the writer has demonstrated that the LMDC is a success story and, for the most part, effective because it has replicated the pre-colonial method of settling disputes. Against this backdrop, it is argued that the LMDC has found fertile ground in Lagos and beyond.

Does that mean ADR is a form of a legal transplant from less complex to a more complex society?[305] Then this will be a reversal to the general rule of scholars[306] who have come to the conclusion that legal transplant usually moves from a more complex society to a less complex

[305] Grande (n251) 63.
[306] Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context'.

society. It is pertinent to point out that Grande disagrees that ADR is a form of legal transplant based on the foundation of what scholars have said over the years. Grande finds it easier to align her views with Alan Watson's opinion by concluding that if this is a principle, if this is how legal transplant usually occurs then ADR cannot be a legal transplant because ADR moves from region of less complex society to a more complex society. However, Alan Watson also pointed out that the phenomenon of 'transplant is not restricted to the modern world.'[307]

On the other hand, Legrand, Pierre pointed out:

> At best, what can be displaced from one jurisdiction to another is, literally, a meaningless form of words. To claim more is to claim too much. In any meaningful sense of the term, 'legal transplants,' therefore, cannot happen.[308]

The views above support the notion that transplant can come from anywhere, lesser or more complex society. Nonetheless Grande does not agree that this move is a legal transplant because by the standard she has set. ADR does not meet those requirements in terms of what she has adopted as the bases or identities of a legal transplant.[309] However, despite this movement, Grande avers that it cannot be a legal transplant because it is coming from Africa or lesser complex society. Though, she pointed out that the basis of her conclusion is that ADR usage in a less complex society is usually group-based or community-based.[310] Thus, it is anchored on the institution of the community entity, not individualistic society. In her words, she states: 'this structure or institution cannot be transferred to a more complex society.'[311]

What she means is that if one begins to say that ADR is a form of legal transplant, has ADR now moved on from these basic features it is known for in Africa? For example, ADR is notoriously 'society based.[312] These are the people that facilitate Traditional African Method of Settling Disputes (TAMSD), therefore if one now says that ADR is a move or a transplant from village to township then where is the age group? Where are those basic community structures that Traditional African Society (TAS) is known with? They cannot be found in western culture. Thus, it is argued that the presence of ADR in the western world cannot be seen as a transplant because TAMSD did not come with the features it is known for to the western clime.[313]

Secondly, Grande highlighted 'that even in the less complex society, these institutions are disappearing, or they no longer exist or is not as strong as it is used to be.'[314] What she means is that even in the traditional society that even today, one can no longer get all those age groups, or it does not exist. Hence since these institutions do not exist; therefore, it cannot be called a legal transplant. Therefore, it cannot be said that ADR is a form of a legal transplant 'from a less to a more complex society.'

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[307] Alan Watson, *Legal Transplants An Approach To Comparative Law* (University of Georgia Press 1993) 22
[308] Pierre Legrand, 'The Impossibility of Legal Transplants' (1997) Maastricht Journal of European and Comparative Law 120.
[309] Grande (n251) 64.
[310] Grande, 'Alternative Dispute Resolution, Africa, and the Structure of Law and Power: the Horn in Context' 63.
[311] Ibid 68.
[312] Ibid 69.
[313] Ibid 63.
[314] Ibid.

B Revaluating Grande's Assertion:

It is argued that Grande failed to realize that every general rule has an exception. This means despite the fact that it is true that comparative study shows that legal transplant is usually moving from a more complex society to a less complex society,[315] ADR is an exception to the general rule. This is because both sides of the divide agree that ADR moves from rural to complex society as it is argued that ADR originated from less complex society to more complex, so we agree on this. However, where we differ is what Grande is questioning, whether this move is a form of legal transplant?

However, she made no move in trying to define a legal transplant. Another factor established on is that there is no universally accepted transactional model of legal transplant there is no laid down features or ingredients, or procedures of legal transplants. Therefore, the opinion of the writer that because of the inability to transact or transport its institutional structures from a less complex to a more complex before it can become accepted as a legal transplant, is baseless. Consequently, since there are no universal setup rules, there are no watertight ingredients that ADR must meet up before it is called a legal transplant or yardsticks that ADR must comply with, so there are no bases for the harsh treatment of ADR by Grande by stating because 'ADR is not moving to the complex society with the institutional structures. Therefore, it cannot be recognized as a legal transplant.'[316]

Finally, it is argued that law constantly evolves and is dynamic. The society may change,[317] but the basic principles of ADR remain the same, whilst ADR might have moved from a less complex society where it is much more promoted by institutional structure to a more complex society. Where similar institutionally structure does not exist and yet, retains its principles or features or the basic things for which we know ADR for- talking about features it is beyond equivocation that ADR is usually informal or semi-formal. ADR is usually based on a win-win situation; it is a form of restorative Justice, which facilities peaceful coexistence between disputants. It has no strict technicalities; it is based or focuses on substantive justice and not technical justice. These and many more are distinguishing features of TAMSD which ADR has sustained even as it moves from a less complex society to complex society. The features adumbrated are the inherent; the inalienable feature of TAMSD that ADR has moved with even as it is moving from less complex to a more complex society is still held tight these basic features. The writer would like to emphasize at this point that the adoption and recognition of ADR is not an abandonment of the state institutions or state apparatus for legal Justice.

In other words, ADR compliments a state structure both can always coexist for the good of the society. These submissions are made because Grande asserted that acceptance of ADR is the automatic abandonment of the state structure, the writer disagrees with this notion as the writer believes that both of them can coexist. The presence of ADR does not derogate the state apparatus or state structure for the conventional legal system, which the advanced countries are known for.

Based on the foregoing, this work concludes that *ADR is a form of a legal transplant from a less complex to a more complex society*. ADR is a reversal or an exception to the conclusion of

[315] Ibid 69.
[316] Ibid.
[317] Moore (n258).

scholars that legal transplant must always move or usually move from more complex society to a less complex society.

This finding has shown that in all the categories that 95% of all the participants attested the LMDC as replicating the pre-arbitral method of settling disputes. Out of that 95%, some were of the opinion that it has been repackaged, improved, modified or modernized on its return. However, the other 3% believes that LMDC should take it back to the traditional way (incorporating the Oba's -Kings) that the westerns have refused to or without acknowledging that ADR was from Africa. In comparison, 2 % asserted that there had been no replication that ADR is new.

The writer concludes that there was a replication. However, what is done is to improve TAMSD from what it used to be thus it was scientifically reproduced in such a way that it can be fitted into the modern-day dispute resolution. That is not to suggest in any way that litigation is irrelevant, litigation is still very crucial, but it is more supplemented by those mechanisms like mediation so with the cases that do not need to go to litigation track they can be attended to by mediation.

Thus, there is a new face of justice in Nigeria. What is embedded in the Africa Culture is mediation, is reconciliation, is harmonious coexistence among people which is also kindred in terms of the faces of dispute resolution in the Africa Community, so to that extent there is nothing colonial about it, but what the LMDC has done is going back to what they used to be or what they used in settling disputes as Africans.

It approximates to their pre-colonial traditions to the extent that it allows the talk in an informal setting, in a place where people will give each other a listening ear, where their idiosyncrasies are not labelled outrageous nor where they are not brought down with one's opinion but instead where people actually engage. Is like an engagement to settle, which one can present to the elders, obi, oba or king, the reality against the backdrop of all they have said or happened, and then the reality can be decreed. Initially, there is a kind of shock. However, naturally, one adjusts sufficiently when it is discovered that the field of the dispute has been reduced drastically and then the settlement takes place.

The underlying factor of the pre- colonial arbitral method of settling disputes is that it is predicated on the consent of both parties, peaceful co-existence and compromise which is what legitimized the entire decision, which is similar to the modern or repackaged ADR. This has resulted in managing disputes effectively and hence the buy-in from the LMDC users because it has been explicitly tailored with all the benefits associated with the pre-colonial arbitral method to meet the needs of the citizenry or the common man, and as such has made LMDC quite effective and an outright advantage over litigation.

Following from the above, the pre-colonial arbitral method is an indigenous element of settling dispute at the LMDC. Finally, for this notion to still being debated- that transplant still move or must move from more complex society to a less complex society is because some people from the African continent still suffer as a result of colonialism -its destructive effects on the African tradition has made most people shy away from their tradition or hold no confidence from what emanates from their continent, instead promoting western philosophy, religion and culture. However, there are some benefits of colonialism that cannot be overemphasized.

3. Conclusion

The work has scrutinized the history of ADR, what ADR means in different jurisdictions, its benefits and contribution in terms of speed and informality to the overall court processes. It has provided a detailed evaluation of ADR in various jurisdictions while using the LMDC as a case study whilst pointing out that the TAMSD has been improved to fit within the current dispute resolution regime. The input of this work has gone some way towards enhancing the readers understanding of the originality of the TAMSD and how it was taken.

Conversely, the work established that the LMDC is actually a transplant from America. On the other hand, the TAMSD has been improved to fit within the current dispute resolution regime. The benefits, the differences and the similarities between the Traditional African Method of Settling Disputes (TAMSD) and the modern-day ADR was also highlighted and analysed.

These similarities and benefits identified, therefore, assists in the readers understanding of the role and development of ADR and the Multi-Door Courthouse / Court-Connected ADR in the Nigerian Judicial Landscape, particularly the LMDC, and would further highlight the fact that these alternative processes are complementing the mainstream litigation.