Using Alternative Dispute Resolution (ADR) in the Criminal Justice System: Comparative Perspectives

Chukwunweike A. Ogbuabor
University of Nigeria, Enugu Campus, Enugu

&
Clara C. Obi-Ochiabutor
University of Nigeria, Enugu Campus, Enugu

&
Ebele L. Okiche
University of Nigeria, Enugu Campus, Enugu

Abstract

The use of alternative dispute resolution (ADR) in the civil justice context is a common and accepted phenomenon. However, the same cannot be said of ADR within the criminal justice context especially in common law jurisdictions based on accusatorial or adversarial criminal procedures such as Nigeria. The scope allowed for ADR in the criminal justice context appears to be strictly limited to minor offences. This paper takes a survey of selected jurisdictions on the practice of ADR within the criminal justice context based on different legal traditions. The paper finds that the use of ADR in the criminal justice system is a global phenomenon but operates behind the veil of discouraging statutory language. The paper further finds that despite efforts to discourage the use of ADR in criminal matters, parties often resort to this method to resolve their problems even when the dispute is criminal and serious in nature. The paper therefore argues for the extension of ADR to serious offences and legal measures to bring the law into conformity with practice.

Keywords: alternative dispute resolution; criminal justice system; comparative perspectives;

1. Introduction

ADR appropriate in the criminal dispute context? According to the Law Reform Commission of Western Australia: Alternative dispute resolution has little place in the criminal law, certainly not with serious charges. With minor offences

there is scope for channeling charges through panels or the like to avoid a trial and formal conviction… Outside the area of minor offences, the community expects prosecution and trial (Law Reform Commission of Western Australia, 1999: 17). The philosophy of the community which expects prosecution and trial outside the area of minor offences appears to be the pervading influence over our criminal justice system. For instance, section 25 of the High Court Law of Enugu State of Nigeria provides that in criminal cases, the court may promote reconciliation and encourage and facilitate the settlement in an amicable way, of proceedings for common assault or for any other offence not amounting to a felony and not aggravated in degree, on terms of payment of compensation or other terms approved by the court, and may thereupon order the proceedings to be stayed.[ii] In answer to a question posed by the researchers to a very senior counsel at the Citizen Mediation Centre, Lagos State of Nigeria, the response was: 'ADR in criminal matter? That is not possible.' This appears to be the typical mindset and reaction of not only policemen but also of lawyers in the common law world, including Nigeria. In one report posted on the internet, in answer to the question, 'Are there any examples of Criminal Cases where Alternative Dispute Resolution has been used…?' the answer acclaimed to be the best answer was as follows:

> No, ADR can't be used in criminal cases (in the UK). It's up solely to the Judge (or Magistrate) to pass a sentence based on operation of the law. Having said that, an offender can volunteer other punishments, such as drug treatment orders, which can sometimes take place of prison et al if the judge sees fit, that is probably as close to ADR as you can get in the criminal system.[iii]

In another context, in answer to a similar question, the response was: '… Doesn't work in criminal matters; victims shouldn't be encouraged to face offenders, in part because they may be too merciful. The State has an interest in ensuring crime is appropriately dealt with (Law Reform Commission of Western Australia, 1999: 89). This paper takes a survey of the practice of ADR in various legal systems with a view to establishing the relevance or otherwise of ADR in criminal justice systems. In making the choice of the countries for the purposes of this comparative analysis, we have been guided by a challenge or compulsion to look at various legal cultures or traditions. Thus, we have taken examples not only from the common law world, but also, from the civil law inquisitorial based legal systems, the Islamic legal culture as well as resolution of international crimes. We start with the common law countries.

2. ADR and the Criminal Justice System in Nigeria

In Nigeria, the court has held that arbitration and other forms of ADR are so far restrictive to civil matters. In *BJ Exports & Chemical Processing Co v Kaduna*

Refining and Petrochemical Ltd, (2003, FWLR (pt.165) 445 at 465; 2003, 24 WRN 74), it was held by the Court of Appeal that arbitration and other forms of ADR are so far restrictive to civil matters. According to the Court of Appeal, per Mohammed JCA:

> It is trite that disputes which are the subject of an arbitration agreement must be arbitrable. In other words, the agreement must not cover matters which by the law of the state are not allowed to be settled privately or by arbitration usually because this will be contrary to the public policy. Thus a criminal matter, like the allegation of fraud raised by the respondent in this case, does not admit of settlement by arbitration as was clearly stated by the Supreme Court in the case of Kano State Urban Development Board v Fanz Construction Ltd (1990) 4 NWLR (pt.142) 1 at 32-33.

However, notwithstanding the position of the courts that ADR is not applicable criminal matters or disputes in Nigeria, it is opined that ADR is indeed an entrenched part of the Nigerian criminal justice system, primarily because it is indigenous to the various peoples of the Nigerian State. The different peoples, i.e. ethnicities that formed Nigeria had forms of the modern "ADR" long before the Nigerian State came into existence. In the Igbo nation, the concept of *omenala* (Obiego, 1978, 28) aptly captured the essence of what is today called ADR. In the Muslim north, the concept of *sulh* and *ad takhim* clearly encapsulated ADR of any description. In the Tiv area of North-central Nigeria, the concept of *jir* and *tar* (Bohannan, 1957, 2) were the equivalents of modern ADR. These indigenous practices have remained in spite of the official criminal justice system. For an effective, efficient, and credible criminal justice system in Nigeria, home-grown restorative justice and philosophy of law are critical. Okafo calls this grounded law (Okafo, 2009, 8).

The jurisprudence of non-applicability of ADR to criminal cases is one founded on the concepts of compoundment and concealment of offences which the law legislates against in sections 127, 128 and 130 of the Criminal Code. Section 127 of the Criminal Code provides that any person who asks, receives, or obtains, or agrees or attempts to receive or obtain any property or benefit of any kind for himself or any other person upon any agreement or understanding that he will compound or conceal a felony, or will abstain from, discontinue, or delay a prosecution for a felony, or will withhold any evidence thereof, is guilty of an offence and if the felony is such that a person convicted of it is liable to be sentenced to death or imprisonment for life, the offender is guilty of a felony, and is liable to imprisonment for seven years. In any other case the offender is liable to imprisonment for three years. Section 128 of the Criminal Code, on the other hand, provides that any person who, having brought, or under pretence of bringing an action against another person upon a Penal Act, law or statute in

order to obtain from him a penalty for any offence committed or alleged to have been committed by him, *compounds the action without the order or consent of the court* in which the action is brought or is to be brought, is guilty of a misdemeanour and is liable to imprisonment for one year. Finally, section 130 of the Criminal Code stipulates that any person who, having arrested another upon a charge of an offence, wilfully delays to take him before a court to be dealt with according to law, is guilty of a misdemeanour and is liable to imprisonment for two years. A combined reading of sections 127 and 128 of the Criminal Code would reveal that in the Southern States of Nigeria where the Criminal Code applies, a felony cannot be compounded but other offences such as a misdemeanour and a simple offence can be compounded with the leave of the Court. The effect of these provisions is to render the use of ADR in criminal cases legally very difficult if not impossible.

In spite of the provisions legislating against the use of ADR in criminal justice in Nigeria, there is ample evidence that ADR is incorporated in the formal criminal justice system. For instance, plea bargaining has been legislated into the criminal justice system of Lagos State (Administration of Criminal Justice Law No. 10 of 2007). The Child's Rights Act 2003 (Cap. C50, Laws of the Federation of Nigeria 2004, sections 151, 204, 208, 209 and 223) has also expressly incorporated ADR into the juvenile justice system. Section 14 of Economic and Financial Crimes Commission Establishment Act empowers the Commission to compound offences in order to obtain practical restitution. In *FRN v Cecilia Ibru*, (FHC/L/297C/2009) the EFCC was able to recover 199 assets and ₦190 billion naira through the plea bargaining process (Ogbonna & Anosike, 2010, 12). That, in our view, is nothing but ADR and restorative justice in action.

The Amnesty Programme of the Federal Government for Niger-Delta Militants offers another important evidence of ADR in the criminal justice system. Amnesty or pardon is given to somebody who has been tried, convicted and sentenced. But here, we have a case where pardon is granted even before any arrest or trial. The entire amnesty programme is meant to be preventive, rehabilitative, restitutive as well as restorative. That is ADR in action. The militants involved could have been tried for serious felonies including economic crimes and treason, but, the matter was approached by alternative means, for good reason and good result.

Another example of ADR in the criminal justice system in Nigeria is the Pfizer case. In 2005, criminal proceedings were brought against Pfizer following its illegal administration of Trovan, a broad spectrum anti-biotic, on children in Kano State during an epidemic. The drug had not undergone due clinical trials and resulted in deaths and severe health challenges. The matter was settled through an out of court settlement. Pfizer agreed to pay amounts ranging from

$10000 to $175,000 to the 'study participants' or their survivors. (This Day, August 24, 2011, 19). It appears that in Nigeria, ADR is working in the criminal justice system but behind a camouflage of discouraging legislative language.

3. ADR and the Criminal Justice System in Canada

Canada, Australia, New Zealand and the United States appear to have taken the lead in the use of ADR and restorative justice in the criminal justice system. In Canada, it would appear that the whole spectrum of ADR in the criminal Justice system finds expression. These include victim-offender mediation, sentencing circles, group conferencing and community crime prevention programmes.

In fact, in Canada, legislation recognizes the role of ADR in the Criminal Justice process. Section 718.2(e) of the Canadian Criminal Code legislates recognition of innovative sentencing practices, such as healing and sentencing circles, and aboriginal Community Council Projects which share a common underlying principle: that is, the importance of community based societies. The section states that "all available sanctions other than imprisonment that are reasonable in the circumstances should be considered for all offenders, with particular attention to the circumstances of Aboriginal offenders"(*R v Gladue* [1999] 1 S.C.R. 688). The *Gladue Case* was the first to interpret or consider the meaning of the above provisions of section 718.2(e). The accused, an aboriginal woman, pleaded guilty to manslaughter for the killing of her common law husband and was sentenced to three years' imprisonment. On the night of the incident, the accused was celebrating her 19th birthday and drank beer with some friends and family members, including the victim. She suspected the victim was having an affair with her older sister and, when her sister left the party, followed by the victim, the accused told her friend, "He's going to get it. He's really going to get it this time". She later found the victim and her sister coming down the stairs together in her sister's home. She believed that they had been engaged in sexual activity. When the accused and the victim returned to their townhouse, they started to quarrel. During the argument, the accused confronted the victim with his infidelity and he told her that she was fat and ugly and not as good as the others. A few minutes later, the victim fled their home. The accused ran toward him with a large knife and stabbed him in the chest. When returning to her home, she was heard saying "I got you. I got you . . . bastard". There was also evidence indicating that she had stabbed the victim on the arm before he left the townhouse. At the time of the stabbing, the accused had a blood-alcohol content of between 155 and 165 milligrams of alcohol in 100 millilitres of blood. At her sentencing hearing the judge took into account many aggravating factors including the fact that the offender was not afraid of the victim. The court also took into account several mitigating factors such as her youth, her status as a mother and the absence of any serious criminal history. She was sentenced to three years imprisonment. Her appeal to the Court of Appeal for British Columbia was dismissed. Her further appeal to Supreme Court of Canada was further dismissed. However, the case is held in high esteem for the dicta made

by the Supreme Court in the case. Justices Cory and Iacobucci held that the courts below erred in taking an overly narrow approach of s. 718.2(e). The purpose of this provision is to address the historical over-representation of aboriginals in the criminal justice system. This applied to aboriginals, regardless of place of residence or lifestyle. However, the court ultimately dismissed the appeal, finding that the sentence was fit given the seriousness of the offence. According to the court, the sentencing judge may have erred in limiting the application of s. 718.2(*e*) to the circumstances of aboriginal offenders living in rural areas or on-reserve. Moreover, he does not appear to have considered the systemic or background factors which may have influenced the accused to engage in criminal conduct, or the possibly distinct conception of sentencing held by the accused, by the victim's family, and by their community. The majority of the Court of Appeal, in dismissing the accused's appeal, also does not appear to have considered many of the relevant factors. However, the Supreme Court held that three years imprisonment in her circumstances was not unreasonable. According to Rudin:

> The Court said that s. 718.2(e) offered sentencing judges a chance to address these issues by looking to more restorative sentencing options when sentencing Aboriginal people. In order to change the way Aboriginal people were sentenced, the court needed to know about the particular circumstances that brought the Aboriginal offender before the court and the types of options that might be available when passing sentence. The decision of the Supreme Court was seen as a groundbreaking one that provided some hope that the over-representation of Aboriginal people in prisons might finally be addressed (Rudin,).[iv]

There is now established in Canada, what is known as *Gladue court*, taking its name from the *Gladue case*. Such courts deal with aborigines in the criminal justice system following the principles outlined by the Supreme Court in the *Gladue case* (Rudin, ibid).

4. ADR and the Criminal Justice System in Australia

Australia can be said to be very pro-active in the use of ADR in the criminal justice system. The response of the Australian legal system to the use of ADR in criminal disputes includes the "*Wagga Wagga*" Program in New South Wales, Victim Offender Mediation, Family Group Conferencing, Community Conferencing and the Reintegrative Shaming Experiment (RISE) (Condliffe, 2004: 1; Condliffe, 2005: 35). The significant thing about Australia is that all of the six States except Victoria have statutory-based schemes which provide for ADR in the Criminal Justice System by way of conferencing as an element in the hierarchy of responses to youth crime. The Australian Capital Territory has

enacted the Crimes (Restorative Justice) Act 2004. The overarching purpose of such legislative schemes is to divert young people from the formal justice system, to contribute to the development and re-integration of offenders, and to develop a response to crime which meets the needs of both the victim and the offender (Lewis and McCrimmon, 2005: 9). Hence, in Australia, the focus has been very much on developing more effective ways to deal with offenders, particularly youth and indigenous offenders (ibid).

5. ADR and Criminal Justice System in New Zealand

Family Group Conferencing is reputed to have originated in New Zealand where it arose from Maori Tradition; and was subsequently legislated as the standard way to deal with juvenile crime (Condliffe, 2004: 2). There is therefore no question as to whether the New Zealand Criminal Justice System countenances ADR in its processes. The New Zealand Children, Young Persons and their Families Act of 1989 deals with Youth Justice. It begins with a statement of principles which makes use of criminal proceedings as a matter of last resort if there are alternatives available. It emphasizes keeping young persons in their communities, and recognizes the interests of victims of offences. These principles are followed with an express prohibition of prosecution of children and young persons until a family group conference has been convened. Conferencing is used in a number of overseas jurisdictions; however, Australia and New Zealand stand out in that they have sustained statutory based schemes for such processes unparalleled in other jurisdictions (Lewis and McCrimmon, 2005: 9; Daly & Hayes, 2002: 1). New Zealand was indeed the first jurisdiction to introduce a statutory-based conferencing scheme when it passed the Children, Young Persons and their Families Act 1989.

6. ADR and the Criminal Justice System in the USA

The moment it is conceded or understood that plea bargaining i.e, plea negotiation is ADR par excellence in the criminal justice system, then, there would be no argument as to whether the American legal system recognizes ADR in the criminal justice system, because it does. Plea bargaining is an entrenched part of the American criminal justice system. It is so entrenched that less than ten percent of criminal cases go to trial while over 90 percent are settled under plea bargain (Steinberg, N.D.).[v] Thus, the U.S. criminal justice system countenances ADR. According to the University of Denver Sturm College of Law: The criminal justice system is one of the most recent ADR adopters and has been gaining popularity in many parts of the U.S and around the world as an alternative to traditional retributive justice… Thus, aside from plea bargaining, ADR has also extended other forms of its mechanisms to the criminal justice system in the U.S. These include the VOM and FGC. According to the Victim-Offender Reconciliation Program Information and Resource Center:

> VORP is a restorative justice approach that brings offenders face-to-face with the victims of their crimes with the assistance of a trained mediator, usually a community volunteer…
>
> VORPs have been mediating meaningful justice between crime victims and offenders for over twenty years; there are now thousands of such programs worldwide. Remarkably, consistent statistics from a cross-section of the North American Programs show that about two- thirds of the cases referred resulted in a face-to face mediation meeting; over 95% of the cases mediated resulted in a written restitution agreement; over 90% of those restitution agreements are completed within one year. On the other hand, the actual rate of payment of court-ordered restitution (nationally) is typically only from 20-30%.(VORP Information & Resource Centre, N.D.).

7. ADR and the Criminal Justice System in Germany

Germany, a civil law country, typifies the approach of the civil law countries to alternative dispute resolution in the criminal justice system. ADR is well accepted in the German criminal justice system, especially mediation. According to Trenczek:

> Although mediation is often presented as an alternative to the adversarial court process, it operates within the 'shadow of the law. This is especially true for mediation schemes within the criminal justice context. Unlike in other countries, especially common law jurisdictions, mediation in Germany is most frequently used not in the civil law but within the criminal justice field by Victim Offender Mediation (VOM) programs (Trenczek,2001: 1).

In Germany, the process known as VOM is referred to as "Tater-Opfer-Ausgleich" (TOA) which literally translated is "Offender-Victim-Balancing". It means both conflict settlement and reconciliation (Trenczek, ibid). TOA is integrated in the German Criminal Code and is a routinely used acronym in Germany. The result is that today, there are in Germany, about 400 ADR programs operating mostly community based and/or State - financed, with about two-thirds operating within the juvenile justice context while one third works with adult offender.

8. ADR and Restorative Justice under Islamic/ Sharia Criminal Justice System.

What we call criminal law falls in the shari'a under three separate headings. Qur'anic offences and their punishments (hudud); The law of homicide and hurt; and other crimes punishable at the discretion of the judge (ta'zir, siyasa) (Peters, 2003, 1). Peter's adumbration is substantially in line with Bambale. According to Bambale:

> The Arabic word for crime is "Jarima', which is derived from the word, 'Jaram'. The word 'Jaram' literally means 'to cut' and 'to earn' what is not good. Technically, 'Jarima' or crime refers to prohibition imposed by Allah, the violation of which gives rise to punishments known in Arabic as 'Uqubat'. These punishments take the form of Hadd, Qisas and Ta'azir. Therefore crime may be defined as the legal prohibition imposed by Allah violation of which is punishable by Hadd, Qisas and Ta'azir….
>
> In some cases of crime, the right of individual is dominant and in others, the right of Allah is more conspicuous. Where the right of Allah is dominant, the punishment is called Hadd, and where the right of the individual is dominant, the punishment is called Qisas (Bambale, 2003: 1).

Hadd (Hudud for plural) is crime with fixed punishment. These consist of those Qur'anic offences or crimes mentioned in the Qur'an, for which fixed penalties are provided in the shari'a. They are: Theft, (sariqa); Robbery, (hiraba); Drinking of alcohol, (shurb al-khamr).; and False accusation of unlawful sexual intercourse, (qadhf) (Peters, 2003, 1). An essential with regard to Qur'anic offences is that, if they are formally proven, the judge has no latitude in the choice of punishment. The word Qisas means retaliation. This is the domain of hurt, homicide and assault-based offences. Here, the course of the law and punishment depends largely on the victims' desire, whether to retaliate or to forgo. In the words of Peters:

> The second domain, that of homicide and hurt, is one characterized by private prosecution in the sense that the culprit can only be sentenced and punished if the victim or his "avengers" demand punishment. Whereas most Islamic jurists hold that the victim's heirs are his avengers, the Maliki school lays down that only the victims adult, male agnatic relatives (or in the absence of male agnates, his daughter or sister have this right (regardless of whether the victim was a man or a woman).

> If homicide or hurt is committed intentionally, the punishment is retaliation (quisas). Thus, for homicide the culprit may be punished by death, and for hurt causing the loss of limbs or senses, by inflicting the same injury on him, at least if this is technically possible without endangering the convict's life. Another condition is that the perpetrators blood price must not exceed that of the victim, e.g. because of differences in religion. If the death or injury is not caused intentionally or if the victim or his heirs are willing to forgo punishment in kind", retaliation is then replaced by the payment of the blood price (diya)… In most cases, not the culprit but his aqila (solidarity group i.e., his tribe, or agnatic relatives) is obliged to pay the blood price (Peters, 2003: 3).

Ta'azir refers to discretionary punishment. This domain of Islamic criminal law has no clearly defined offences. Judges have the discretion to punish sinful or otherwise undesirable acts. This is called ta'azir or siyasa. This aspect of Islamic criminal law is what appears to have been codified in section 92 of the Zamfara State Shariah Penal Code wherein it provides that: "Any act or omission which is not specifically mentioned in the Sharia Penal Code but is otherwise declared to be an offence under the qur'an, Sunnah and Ijtihad of the Maliki School of Islamic thought shall be an offence under the Code and such an act shall be punishable."

It would appear from the foregoing pages that Islamic criminal law presents us with a mixed grill. In some cases, it would appear that the criminal law would not compromise prosecution and punishment much in the same manner as the Criminal Code's stance against compoundment and arbitrability of felonies, while in some cases, the Islamic Criminal Law would countenance ADR and restorative justice. In Islamic Criminal Law, there is a concept known as Sulh. According to Hon Justice M.A Ambali; "readily, I want to say that ADR has a seemingly [sic] equivalent in Islamic legal system. It is called sulh… is an integral part of Islamic legal system right from inception."(Ambali, 2007:73). The concept of sulh, it seems, approximates to peaceful settlement (Uthman, 2010:157; Abubakar, 2010:168; Keffi, 2010:188). According to one definition of it, it means to concede/ forgo a right or to demand something in lieu of it for the purpose of terminating a conflict or to avoid occurrence of conflict (Ambali, 2007:75). Another version has it as a covenant which brings disputes between two parties to an amicable end….. sulh is prescribed by Qur'an, Sunuah and the consensus of jurists for the purpose of attaining accord in place of disagreement and put an end to bitterness between the warring parties…(Ambali, 2007:75). Yet another version states as follows: Prevail on disputing parties till they go for peaceful settlement. Surely, court's decision will lead to ever-lingering

bitterness between them (Ambali, 2007:75). These definitions of sulh are founded on Quranic injunctions such as:

> (a) There is no good in many of their conferences except the conferences are of such as enjoin charity or goodness or the making of peace among men.
> (b) …So fear Allah and set things right among yourselves
> (c) …. So make peace between your brothers and fear Allah that Mercy may be shown to you
> (d) And if a woman has reason to fear ill-treatment from her husband or that he might turn away from her:- it shall not be wrong for the two to set things peacefully to right between themselves, for peace is best.

A thorough reflection over the foregoing shows that sulh has been part and parcel of Islamic legal system right from its onset, and it has ever aimed at avoidance of conflicts and bitterness and their removal, where it occurred. However, sulh, peaceful settlement is proper as long as it does prohibit what is not allowed and as long as it does not legalize what is forbidden (Ambali, 2007:75). The learned Judge also gives another example of ADR in Islamic Law. It is called *at tahkim*. In his words, "one of the hybrids of ADR, practiced in Islamic Law is arbitration. It is called at- tahkim. However, "at tahkim has no jurisdiction on matters of hudud: offences whose punishments are prescribed by the Qur'an because they are Islamically not negotiable as rights of God"(Ambali, 2007:75). The learned Judge has no doubts that when it comes to Qisas, ADR is allowed. This is because, according the learned Judge:

> The remedy for any crime of violence to the person lies with the individual and not the public. This is because any violence leading to loss of life or bodily injury is a tort in Islamic law. They may be camdu, deliberate/ intentional, or Khartau, unintentional. For both, Qur'an 2: 178 ad Quri'an 4:92 respectively apply..
>
> The totality of the foregoing verses is that Islamic law prescribes Qisas, retribution in cases of intentional act; either it leads to loss of life or bodily injury. It does also prescribe Diyyaj, (Compensation) in place of Qisas (retaliation), as a result of mediation between the victim and the offender. Over and above both is afwu, the total and unconditional pardon, where neither Qisas nor Diyyah is demanded by the victim in the case of bodily injury or his relation, in the case of death. God then promises handsome rewards as contained in Quraan 42:40 as follow.

> 'The recompense for an injury is an injury equal thereto (In degree): but if a person forgives and makes reconciliation, His reward is due from Allah (Ambali, 2007:75).

9. ADR and International Crimes

Glanville Williams (1978:14) defined crime as 'a legal wrong that can be followed by criminal proceeding which may result in punishment'. The general problems which beset the definition of crime generally also assail the definition of international crime. One of the earliest definitions of international crime is that found in the opinion of Judge Cater of the United States Military Tribunal at Nuremburg in *Re list and others (the Hostage case)* (Annual Digest, 1953: 636) when he stated that an international crime is such an act universally recognized as criminal, which is considered a grave matter of international concern and for some valid reason cannot be left within the exclusive jurisdiction of the State that would have control over it under ordinary circumstances. From the above definition, international crime follows closely international law - jus *cogens* and may be seen as those wrongs which the generality of civilized nations would see as offending collective sense of humanity.

As a general rule, States apply their criminal law only territorially, that is, the courts of a State will only assume jurisdiction over a criminal investigation or prosecution if the acts concerned are alleged to have been committed within its own territory (Obi-Ochiabutor, 2007:12-13). The rule of territoriality derives from the doctrine of national sovereignty, according to which, it is not for the courts of one State to judge matters that occur in the territory of another, which the courts of that State are competent to deal with. The rule is also supported by two practical considerations. First, a State may have no facility to investigate directly what has happened outside its own territory. Second, the criminal laws of different States vary a lot. What is criminal in one State may be perfectly lawful in another. A State could hardly be expected to punish one of its own citizens for an act which, though criminal when committed elsewhere would have been lawful if committed within its own territory. Exclusive territorial jurisdiction of States for all crimes, of course may lead to felons escaping trial and justice by escaping into other territories, unless such suspects are successfully extradited. Conversely, the same for acts committed outside the State territory by running back home.

The development of the concept of international crime is recognition of the fact that certain acts are contrary to the laws of all civilized nations and so, must be arrestable and or triable in any State where the offender is found. It goes back to the development of international law which in order to suppress such acts or violations treated certain types of conduct as *crime jure gentum*, that is, crime contrary to the laws of all civilized nations. This was typical of crimes

committed outside the recognized territory of any particular State, notably piracy in the high seas. In order to suppress piracy, on the high seas, the international community had to treat it as a *crime jure gentum*. Piracy thus became the first crime to be recognized by the custom of States to be a concern of International Law. Since then, the catalogue of international crimes has continued to expand and includes such crimes as genocide, war crimes and crimes against humanity. It has been asserted, rightly in our view that it is the international community of nations that determines which crime, in the light of the latest developments in law, morality and the sense of criminal justice at a relevant time falls within the definition of an international crime (Kittichaisaree, 2001;). Just as in the case of crime under municipal law, Whiteman has stated and Kittichaisaree agrees with him that 'it is correct to contend that what acts should be characterized as international crimes depends on the machinery by which such acts are to be dealt with' (Whiteman, 1968:835; Kittichaisaree, 2001;3). Thus, Kittichaisaree asserts that as generally understood, since the UN Conference of Plenipotentiaries for the Establishment of an International Criminal Court in June and July 1998, international crimes are those prosecuted before an international criminal tribunal, whether ad hoc or permanent(Kittichaisaree, 2001;). Kittichaisaree's definition above has been criticized as unduly restrictive, since it appears to be restricted to the international criminal court and recent developments. According to a learned writer:

> This definition has the effect of locking out an array of other crimes that could be categorized as international crimes, just because they are not listed under the ICC statute. As such, it is capable of retarding the progressive restatement of international crime through treaties. The fact that the international criminal court may not prosecute a crime does not necessarily make it less an international crime; the complimentary jurisdiction of the ICC affirms this to the extent that every international crime under the statute may be tried conclusively before a national court. In addition, there are several international crimes prosecuted by national courts through universal jurisdiction. The ICC statue has only codified the gravest of international crimes, upon which international tribunals had hitherto adjudicated and there is room under the statute for the enlargement of the crimes presently under the statue. As such, though international criminal law might have concentrated on the crime under the ICC, it does signify a synonym for what international criminal law is in its entirety (Oloworaran, 2008:14).

We therefore agree with Oloworaran when he stated that:

> From the array of definitions on international crimes, one could deduce that an international crime, generally speaking, is any act or omission considered criminal and which has gained international acceptability as such, the prosecution of which may give rise to international involvement either by way of trial before an international tribunal, municipal courts (the latter is achieved by the use of universal jurisdiction) or compelling the State having jurisdiction to try the suspect. More specifically, it is any crime that would require international co-ordination and co-operation for its prosecution (ibid:15).

It is also in this light that one is bound to agree with Cassese that "international crimes are breaches of international rules entailing the personal criminal liability of the individuals concerned as opposed to the responsibility of the State of which the individual may act as organs (Cassese, 2003:12). The concept of international crime proceeds from the basis that certain acts are enemies of all mankind (*hostis humani generali*) (Kittichaisaree, 2001;15). Accordingly, international crimes originate from the concept of obligations *erga omnes*, i.e, obligations of a State towards the international community as a whole. By their very nature, such obligations are the concern of all States. According to the ICJ in the *Barcelona Traction Case (Second Phase- Belgium v Spain)*(ICJ Report, 1070: 3, 32) :

> An essential distinction should be drawn between the obligations of a State towards the international community as a whole, and those arising vis-a-vis another State…By their very nature, the former are the concern of all states. In view of the importance of the right involved, all States can be held to have a legal interest in their protection; they are obligations erga omnes. Such obligations derive, for example, in contemporary international law, from the outlawing of acts of aggression, and of genocide, as also from the principle and rules concerning the basic rights of human persons, including protection from slavery and racial discrimination. Some of the corresponding rights of protection have entered into the body of general international law…; others are conferred by international instruments of a universal or quasi-universal character.

The category of acts that can be categorized as being subject to obligations *erga omnes* could be classified as *jus cogens* or peremptory norm of international law (Kittichaisaree, 2001;12). International crimes are thus breaches of international

rules that entail criminal liability of the individual concerned. Such acts or omission may be as a result of breach of *jus cogens*, or breach of treaties or conventions. Such acts or omissions which offend the laws of all civilized nations are treated as *crime jure gentum*. They may also be referred to as *delicti jus gentum* or *jus cogens* crime.

> … certain international values and interests are so fundamental that their effective protection necessitates special arrangements aimed at punishing persons who trample them underfoot. Thus, acts of war crimes, aggression, terrorism, genocide, slavery, torture and crime against humanity constitute criminal acts punishable under international law. These offences, generally referred to as *delicti jus gentium*, do not only constitute crime under international law but their prohibition is believed to have reached the status of *jus cogens* thereby imposing certain imperative obligation upon each State to be exercised in their own interest and in the interest of the international community as a whole (Ntoubandi, 2007:185).

> Now, it is pertinent to state that it is the international community that decides what conduct, act or omission that may amount to an international crime. Piracy is often touted as the first established international crime. As subsequently forcefully stated by Judge Moore in the *Lotus Case* before the Permanent Court of International Justice, 'any nation may, in the interest of all, exercise jurisdiction to capture and punish piracy by law of nations, and a pirate is subject to a universal jurisdiction of every State which may try and punish him if he comes within its jurisdiction'(1927 PCIJ Rep.:70).

The traditional approach toward the resolution of international crimes is no doubt prosecutorial, litigious, adversarial and retribution-based. The preamble to the Rome Statute of the ICC firmly establishes this when it states its propelling force as follows:

> Affirming that the most serious crimes of concern to the international community as a whole must not go unpunished and that their effective prosecution must be ensured by taking measures at the national level and by enhancing international co-operation….

Ntoubandi argues that international criminal law conventions such as the 1949 Geneva Conventions, and Additional Protocol I of 1977, the Genocide Convention, the Torture and Apartheid Conventions and the Rome Statute

express a clear and unambiguous obligation to prosecute the crimes contained therein (Ntoubandi, 2007:131). In certain cases, such as in the Rome Statute, the obligation to prosecute assumes a mandatory character (ibid). This is a truism. In *Atrocity, Punishment and International Law,* Drumbl (2007) investigated the effectiveness of criminal trials and punishment as presently conducted internationally and nationally, as responses to atrocity. Drumbl found that in the area of punishment and sentencing, international tribunals very closely borrow the rationalities of ordinary domestic criminal law. In particular, retribution and general deterrence are borrowed without appreciating the fundamental differences between the perpetrators of extraordinary international crimes such as mass atrocity, and perpetrators of ordinary domestic crimes in ordinary times (Drumbl, 2007: 11). For him, the sanction imposed on extraordinary international criminals largely remains little more than an after-thought to the closure reportedly obtained by the conviction but ultimately relegating punishment to the status of an afterthought demeans its value and meaning. According to him:

> A paradox emerges. International Lawmakers have demarcated normative differences between extraordinary Crimes against the world Community and ordinary Common Crimes. However, despite the proclaimed extraordinary nature of atrocity crime, its modality of punishment, theory of sentencing, and process of determining guilt or innocence, each remains disappointingly, although perhaps reassuringly, ordinary so long as ordinariness is measured by the content of modern Western Legal Systems.[vi]
>
> In contemporary international practice, sanction effectively is limited to imprisonment, with the majority of extraordinary international criminals receiving fixed terms. There is no sentencing tariff. Although able to do so, as of the time of my data compilation (May 2006), the ICTY has not issued a life sentence. The East Timor Special Panels (special Panels) were not empowered to issue a life sentence. At the ICTY, among term sentences finalized by May 2006, the mean term was 14.3 years, and the median term 12years. The length of fixed term imprisonment is palpably lower at the special Panels where the mean sentence for extraordinary international crimes is 9.9years and the median sentence 8years. The ICTR sentences more severely. It routinely awards life sentences. Slightly less than half of all ICTR convicts receive life sentences; the remainder receive much longer fixed terms of imprisonment than at the ICTY….(Drumbl, 2007:11)

Continuing, Drumbl further found that although retributive theory has many shades, these share in common the precept that the criminal deserves punishment proportionate to the gravity of the offence. These institutions that punish extraordinary international crimes place retribution very high on the list of goals of punishment. The question, then, follows: do the sentences issued to perpetrators of extraordinary international crimes attain the self-avowed retributive goals? Can an architect, or tool, of mass atrocity ever receive just deserts? (Drumbl, 2007:15). In apparent answer to the question, Drumbl asserts rather melancholically that … international criminal law remains distant from restorative and reiterative methodologies, both in theory as well as in practice, which … weakens its effectiveness and meaning in many places directly afflicted by atrocity (ibid:13). This is an indirect but effective manner of stating that retributivism in so far as the punishment of international crimes is concerned has not succeeded. Thus, ADR has had to come in various forms and shades. But it must be noted that the ADR options are not free of all difficulties. For instance, Drumbl asserts in relation to plea-bargaining that:

> A further challenge to the retributive value of punishment at both the national and international level is the avid procedural incorporation of plea bargains in cases of extraordinary international crime….Paradoxically, plea bargaining is generally available for extraordinary international crimes at all levels of judicialization, even though in many national jurisdictions it is not possible for serious cases of ordinary crime. The fact that plea bargains are readily available for atrocity crime, but not available in many jurisdictions for serious ordinary crimes, weakens the purportedly enhanced retributive value of punishing atrocity crimes. To be sure, there are many reasons that favour plea bargaining for atrocity crimes…(Drumbl, 2007:16)

Drumbl then in his suggestions recognized that "the criminal law, standing alone, simply is not enough nor can ever be enough. In a proposal which he termed horizontal reform , he proposed a diversification in which the hold of the criminal law paradigm of the accountability process yields through a two-step process: initially, to integrate approaches to accountability offered by law generally (such as judicialized civil sanctions or group-based public service) and, subsequently, to involve quasi-legal or fully extra-legal accountability mechanisms such as truth commissions, legislative reparations, public inquiries, transparency and the politics of commemoration. '…The goal of horizontal reform is to advance from law to justice: initially, by moving international criminal law to a capacious law of atrocity and, ultimately, to an enterprise that constructively incorporates extrajudicial initiatives.' (Drumbl, 2007:18-19). We agree entirely with Drumbl that if international criminal law is to effectively

deal with international crimes, it has to incorporate ADR, which in any case, is already part and parcel of it but in a very limited manner. A leading searchlight has been provided by the operation of the gacaca courts in Rwanda, post conflict (Clark, 2007:766). Following the 1994 genocide in Rwanda in which approximately 800,000 Tutsis and moderate Hutus were killed, many by their friends, neighbours and even family members, with over 120,000 suspects in prisons built for maximally 45,000 inmates, the Rwandan authorities had to take the bull by the horns. They resorted to the gacaca system which is embedded in the traditional practices of the people albeit in a modified form to suit the circumstances (Clark, ibid; Fink, 2005:101; Kirkby, 2006:94). As aptly captured by Kirkby:

> More than a decade after the 1994 genocide in Rwanda, both international and domestic efforts were still failing to achieve justice for survivors and detainees. The International Tribunal for Rwanda (ICTR) has successfully completed only 14 cases (with a further eight on appeal) at an enormous cost, while the Rwandan domestic courts have dealt with only a fraction of those detained for genocide. The Rwandan government responded in 1999 by introducing plans for popular community level courts, known as gacaca. On 10 March 2005, the courts finally began processing more than 100,000 detainees (Kirkby, ibid).

Historically, gacaca did not exist as a permanent judicial institution, but rather was based on unwritten law and functioned as a body assembled whenever conflict ensued within or between family members, particularly in rural Rwanda. The hearings were usually held outdoors either on a patch of grass or in the village courtyard, overseen by the male heads of households. The traditional aim was to sanction violation of rules that were shared by the community with the sole aim of reconciliation.

> This objective drew heavily from the traditional Rwandan worldview that considered the family and wider community as the most valuable societal units. In this worldview, individuals gained their sense of worth primarily through their embedment in communities, from their connections first to family and then to their wider communities. Sentencing at gacaca was intended therefore to re-establish social cohesion, incorporating restorative processes that allowed individuals found guilty to regain their standing in the community. Punishments at gacaca were considered inadequate if they acted solely as punitive measures. For this reason, gacaca judges never imposed prison terms on those found guilty, although in some instances, they

> did banish individuals from the community for a short period but always with the option for them to return eventually (Clark, 2007: 778).

As Clark further explains, in an ideal gacaca hearing, defendants would first confess their crimes, express remorse and ask for forgiveness from those they have injured. The judges would then demand that the confessors provide restitution to their victims, with the process culminating in sharing beer, wine or food, usually provided by the guilty party – to symbolize reconciliation of the parties. With colonization, the process was tinkered with by the Belgian colonialists. The colonialists, much in the system of the indirect rule, appointed local administrators to maintain law and order (usually Tutsis because of the Belgian perception of the Tutsis as superior to Hutus). The gacaca system continued but instead of hearings occurring in communities as they were required and in front of judges who were usually the elders of the families involved, these politically appointed judges soon started to hold gacaca sessions once a week in each secteur of the country. All male inhabitants of the community were encouraged to participate and not just those directly affected. The post genocide period marks the most radical evolution of the gacaca. After a long period of vacillation, certain modifications were made and the gacaca courts were enabled to deal with the issues raised by the genocide. These modifications included the enactment of an enabling law, the categorization of the offences, and the election of judges. Thus, the gacaca courts post- genocide Rwanda comprised approximately 9000 community-based courts, each overseen by locally-elected judges and designed to adjudicate the cases of suspected perpetrators of the 1994 genocide. They also operate with a sentencing guidelines or scheme (Clark, ibid).

It is also instructive that plea bargaining has been accepted in the jurisprudence of international criminal tribunals. The International Criminal Tribunal for Yugoslavia (ICTY) initially rejected the idea of negotiated pleas as incompatible with its broad mandate. However, it eventually amended its rules to accommodate plea bargaining. Justifying this posture in *Prosecutor v Erdemovic*, (Case No. IT-96-22-A, Oct, 1997) the tribunal stated as follows:

> The concept of the guilty plea per se is the peculiar product of the adversarial system of the common law which recognizes the advantage it provides to the public in minimizing costs, in saving of court's time… this common law institution of the guilty plea should in our view find a ready place in an international criminal forum such as the International Tribunal confronted by cases which by their inherent nature are very complex and necessarily require lengthy hearings… An admission of guilt demonstrates honesty and it is important for

> the International Tribunal to encourage people to come forth whether already indicted or as unknown perpetrators. Furthermore, this voluntary admission of guilt which saved the International Tribunal the time and effort of a lengthy investigation and trial is to be commended (Petrig, 2008: 8-9).

A commentator has opined that Rule 62 of the ICTY's Rules of Procedure and Evidence which allows for both sentence and charge bargaining reflects the unique amalgam between the adversarial and inquisitorial procedural elements (Petrig, ibid). Finally, using restorative justice principles to address crime and conflict, as was done in the Truth and Reconciliation Commission of South Africa, has shown that focusing on healing can end cycles of violence. It can promote an end to international conflict and violence.

10. Conclusion

This paper has shown that the use of ADR in the criminal justice system is a global phenomenon. Thus, the assertion of Nigerian courts to the contrary as was held in *B J Exports & Chemical Processing Co v Kaduna Refining and Petrochemical Ltd*, (FWLR, 2005, pt. 165: 445, 465; WRN, 2003: 24, 74) that a criminal matter, like the allegation of fraud raised by the respondent does not admit of settlement by arbitration cannot be supported. The fact is that in Nigeria, ADR is working in the criminal justice system even in cases where very serious offences are concerned. The amnesty programme of the Federal government is nothing short of ADR in the criminal justice system. In Lagos State, plea bargaining has been expressly legislated into the administration of criminal justice law. In northern Nigeria as a whole, where the Penal Code applies, section 339 thereof recognizes the right of the parties to compound serious offences. It is in the southern parts of Nigeria where the Criminal Code applies that serious issues are raised about employing ADR in the criminal justice system because of the provisions of sections 127, 128 and 130 of the Criminal Code which create the offences of compounding a felony and concealing a crime. However, the experience so far is that notwithstanding these provisions, parties still settle their differences amicably even where serious offences or felonies are involved. As Gunmi has aptly captured, 'unofficially, communities and the police continue to mediate about 90% of criminal matters informally...this informal process accounts for why our courts have not been overwhelmed by the sheer number of issues that could have been brought for trial ...'(Gunmi, 2007:39-40). This shows that ADR is working in Nigeria's criminal justice system but behind the veil of discouraging statutory language. There is therefore need to bring the law into conformity with practice.

1. Cap 92, Revised Laws of Enugu State, 2004. The same is reproduced in section 45 of the Magistrate Court Law, Cap 113, Revised Laws of Enugu State, 2004. See also sections 127 – 130 of the Criminal Code.
2. See http://uk.answers.yahoo.com/question/index?qid last accessed 7th September, 2013. Incidentally, the father of the person who sent in that entry is a judge in the UK. Presumably, the person was talking from hindsight.
3. See Jonathan Rudin, "A Court of Our Own: More on the Gladue Courts", http://www.nanlegal.on.ca/upload/documents/a-court-of-our-own---more-on-gladue-courts.pdf. accessed October 6, 2011.
4. See H Michael Steinberg, "Plea Bargains: Why, When and How they are Made", http://www.hmichaelsteinberg.com/pleabargaining.htm; see also http://www.pbs.org/wbgh/pages/frontline/shows/plea/faqs last visited on 10/2/2013. According to the report posted there, "about 95% of all felony convictions in the United States are the result of plea bargain."

References

Abubakar, M. S., (2007) "The Role of the Sharia in Solving Armed Conflicts between Muslims or between Muslims and Non – Muslims", in Ibrahim Ahmad Aliyu (ed.), Alternative Dispute Resolution and Some Contemporary Issues: Essays in Honour of Hon.Justice Ibrahim Tanko Muhammad CON, *ibid,* pp.168 – 187;

Ambali, M. A., (2007) "The Promise of Restorative Justice, Plea Bargaining and Victim Offender Mediation in the Sharia Legal System", in NCMG, (2007) *Compendium of Speeches and Papers Delivered at the 2nd NCMG African ADR Summit* (Lagos: NCMG) pp. 73-79.

Aliyu, Ibrahim Ahmad (ed.), (2010) *Alternative Dispute Resolution and Some Contemporary Issues: Essays in Honour of Hon.Justice Ibrahim Tanko Muhammad CON,* Kaduna: M.o.Press & Publishers Ltd.

Bambale, Yahaya Yanusa(2003) *Crimes and Punishments under Islamic Law,* Ikeja, Nigeria: Malthouse Press Ltd.

Bohannan, Paul, (1957), *Justice and Judgment Among the Tiv*, London, New York, Toronto: Oxford University Press.

Brodesky, Joshua (2003) "Truth and Reconciliation in South Africa", 9 *Dispute Resolution Magazine,* 9.

Case Concerning the Barcelona Traction, Light and Power Company Limited (Second Phase), ICJ Rep. 1970, 3.

Cassese, Antonio, (2003) *International Criminal Law,* New York: Oxford University Press.

Clark,Phil, (2007) "Hybridity, Holism and Traditional Justice: The Case of the Gacaca Courts in Post-Genocide Rwanda", *George Washington International Law Review*, 39(4), 765 – 837.

Coel Kirkby, Coel, (2006) "Rwanda's Gacaca Courts: A Preliminary Critique", *Journal of African Law*, 50(2) 94 – 117.

Condliffe, Peter (2004) "Difference, Difference Everywhere…..," *ADR Bulletin*, 6(10), 1-6.

Condliffe, Peter (2005) "Putting the Pieces Together: The Opportunity for Restorative Justice in Victoria," *Law Institute Journal*, 79(8), 35.

Daly, K & and Hayes, H (2002) "Restorative Justice and Conferencing," *cms-uat.itc.griffith.edu.au/__data/assets/pdf_file/0020/.../kdpaper18.pdf* last visited 28 February, 2014 .

Drumbl, Mark A, (2007) *Atrocity, Punishment and International Law* (Cambridge, New York, etc: Cambridge University Press.

Fink, Benjamin Jason (2005) "Deontological Retributivism and the Legal Practice of International Jurisprudence: The Case of the International Criminal Tribunal for Rwanda", *Journal of African Law*, 49(2), 101 – 131.

Glanville Williams,(1978) *Textbook of Criminal Law,* London:; Stevens & Sons.

Gummi, L. H., (2007) "Restorative Justice and the Criminal Justice System in Africa: Nigeria as a case study", in NCMG, *Compendium of Speeches and Paper Delivered at the 2nd NCMG African ADR Summit,* Lagos: NCMG.

Keffi, U. D. Sheikh, (2007) "The Legal, Social and Economic Roles of As-Sulh from the Perspective of Jurisprudence (Fiqh) of the Maliki School", in Ibrahim Ahmad Aliyu (ed.), Alternative Dispute Resolution and Some Contemporary Issues: Essays in Honour of Hon.Justice Ibrahim Tanko Muhammad CON, *ibid*, pp.188 – 216.

Kittichaisaree, K, (2001) *International Criminal Law,* Oxford: Oxford University Press.

Law Reform Commission of Western Australia,(1999) *Review of the Criminal and Civil Justice System in Western Australia: Consultation Drafts, Volume 1, Project 92*, Australia: LRCWA.

Lewis Melisa & McCrimmon Less (2005)The Role of ADR Processes in the Criminal Justice System: A View from Australia, paper presented to the Association of Law Reform Agencies of Eastern and Southern Africa (ALRAESA) Conference, Imperial Resort Beach Hotel Entebbe Uganda, 4-8 September, 2005.

Negotiating and Conflict Management Group,(2007) *Compendium of Speeches and Papers Delivered at the 2nd NCMG African ADR Summit,* Lagos: NCMG.

Niebur Eisnaugle, Carrie J. (2003) "An International Truth Commission: Utilizing Restorative Justice as an Alternative to Retribution", *Vanderbilt Journal of Transnational Law* Vol.36, No.1, (Jan, 2003) 209-241.

Ntoubandi, Faustin Z, (2007) *Amnesty For Crimes Against Humanity under International Law*, Leiden, Boston: Martinus Nijhoff.

Obiego, C.C. (1978), Igbo Idea of God, *Lucerna*, 1, 28.

Obi Ochiabutor, C.C., (2007) "Gender Crimes in the Rome Statute of the International Criminal Court: Challenges for Municipal Criminal Justice System", unpublished L.LM Seminar paper, Faculty of Law, University of Nigeria Enugu Campus.

Ogbonna Ameachi & Anosike Peter, (2010), Ex-Oceanic bank MD, Cecelia Ibru, jailed: To forfeit 199 assets, N190bn, *The Sun*, October 9, 2010, p. 12.

Oloworaran, Benson (2008) " The International Criminal Court and the Sovereignty of States: A Critical Analysis", unpublished LLM seminar paper, Faculty of Law, University of Nigeria Enugu Campus.

Okafo, N. (2009), *Reconstructing Law and Justice in a Postcolony,* England, USA: Ashgate Publishing Company.

Peters, Ruud, (2003) *Islamic Criminal Law in Nigeria*, Ibadan: Spectrum Books Ltd.

Petrig, Anna, (2008) "Negotiated Justice and the Goals of International Criminal Tribunals", 8 Chi – Kent J. Int'l and Comp. L., 1.

Rudin, J., "A Court of Our Own: More on the Gladue Courts", http://www.nanlegal.on.ca/upload/documents/a-court-of-our-own---more-on-gladue-courts.pdf. accessed October 6, 2011.

Steinberg, Michael H "Plea Bargains: Why, When and How they are Made", http://www.hmichaelsteinberg.com/pleabargaining.htm;

The Canadian Resource Centre for Victims of Crime, "Restorative Justice in Canada", at http://www.crcvc.ca/docs/restjust.pdf. last accessed Sept. 24, 2013.

Thisday, Editorial (August 24, 2011), Kano Pfizer test and Compensation, 19.

Trenczek, Thomas (2001) "Victim -Offender Mediation in Germany- ADR Under the Shadow of the Criminal Law?" *Bond Law Review*, 13(2) Art 6, 1-17.

University of Denver Sturm College of Law, "ADR in Criminal Law", http://law.du.edu/index. php/studentorgs/a-b/adrs/adr-in-criminal-law accessed Nov 11, 2010.

Uthman, M. B., (2007) "An Overview of the Theory of Sulh in Civil and Criminal Cases", in Ibrahim Ahmad Aliyu (ed.), Alternative Dispute Resolution and Some Contemporary Issues: Essays in Honour of Hon.Justice Ibrahim Tanko Muhammad CON (Kaduna: M.o.Press & Publishers Ltd, 2010) pp.151 – 167;

VORP Info & Resource Centre, "About Victim-Offender Mediation and Reconciliation". http://www.vorp.com/ last visited Nov 11, 2013.

Whiteman, M. M. (1968) *Digest of International Law* xi, US Dept. of State.

Cases

BJ Exports & Chemical Processing Co v Kaduna Refining and Petrochemical Ltd, (2003) FWLR (Pt.165) 445 ;(2003) 24 WRN 74.

FRN v Cecilia Ibru (FHC/L/297C/2009

Kano State Urban Development Board v Fanz Construction Ltd (1990) 4 NWLR (pt.142) 1.

Lotus Case (1927) PCIJ Rep. Series A, No. 10, at 70.

Prosecutor v Erdomovic Case No. IT-96-22-A (Oct, 1997).

R v Gladue [1999] 1 S.C.R. 688.

United States v Wilhelm List et al, US Military Tribunal at Nuremburg, 19 Feb, 1948 (1953) 15 Annual Digest 632.