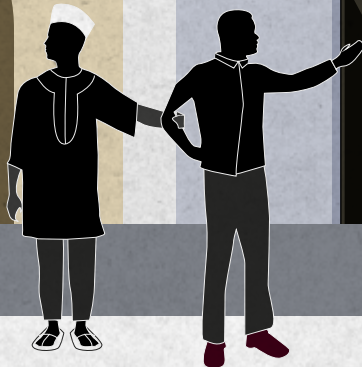


HOW ALTERNATIVE DISPUTE RESOLUTION MADE A COMEBACK IN NIGERIA'S COURTS



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When the Lagos Multi-Door Courthouse (LMDC) opened in 2002, it was Africa’s first court-connected alternative dispute resolution centre. Adapted from a concept first articulated by a Harvard law professor, but embracing indigenous dispute resolution practices, the LMDC was both innovative and rooted in Nigeria’s past. It offers an appealing alternative to litigation. Cases are consistently resolved more quickly, cheaply and amicably than those heard in Nigeria’s congested courts.

Complementing, rather than seeking to replace, the formal legal system, the LMDC has improved access to justice in Lagos State. More significantly, by diversifying the dispute resolution options available to Lagosians, and familiarising lawyers and the public to their advantages, the LMDC has eroded a long-standing national bias towards litigation. Fourteen Nigerian states and the Federal Capital Territory (Abuja) have replicated the model, showcasing the efficacy of dispute resolution mechanisms that resonate with local culture and practice.

By Emilia Onyema and Monalisa Odibo



Nigeria is a highly litigious society. In Lagos State alone, over 30,000 new civil cases are filed each year.¹ Many claimants have to wait a decade for a verdict, which may then be subject to an appeal. It was not always thus. The modern court system is based on an imported model, introduced by the British. Before the colonial period, the various peoples that inhabit present-day Nigeria practised customary dispute resolution, elements of which are immediately recognisable to the lawyers of today. What is now termed alternative dispute resolution (ADR) embraces three distinct strands: negotiation, mediation and arbitration.²

Negotiation is a natural recourse for two individuals seeking to settle differences through discussion. Should this fail, disputants might approach an independent third party. Historically, in what is now Nigeria, this might have been a local elder or traditional authority, such as a king, emir, *oba*, *obi* or *eze*. Alternatively, it may have been a group of elders with a specific and recognised function in the community, or a council of chiefs.

Mediation sees the third party encouraging disputants to compromise in pursuit of a mutually agreed outcome. The participatory nature of the mediation process enables disputants to exercise a degree of control over the settlement, rather than having a decision imposed on them. In many cases, this makes for a “win-win” arrangement, and thus a durable resolution of the conflict.

Arbitration involves the third party conducting a simplified trial, hearing evidence presented by the disputants (or a family member representing them). Traditionally, this procedure was *inquisitorial*, with questions posed by the “judge”, rather than *accusatorial*, whereby arguments are advanced by advocates of the court (as under English law).³ Considering local customs and relevant precedents, the third party would withdraw to deliberate and eventually issue a verdict.

Under both arbitration and mediation, the focus of the neutral party was to resolve the dispute over and above punishing malfeasance. T.O. Elias, who would later serve as Nigeria’s first attorney-general and as chief justice of the Supreme Court, characterised the “African judge as a peace-maker anxious to effect a reconciliation.”⁴ If compensation was awarded or agreed to, a ceremonial reconciliation of the parties would often follow its

payment. Igbos, Nigeria’s third-largest ethnic group, traditionally brought palm wine and oil beans to share with the aggrieved party.⁵ According to law professor Nonso Okereafoezeke, reconciliation is the “central pivot of Nigeria’s native justice systems”.⁶

Foreign systems

During the colonial period, courts of law were introduced as and when the British administration required them. From the 1840s, merchants established “equity courts” to regulate trade on the Bight of Biafra, and in the Upper Niger and Benue basins. Ten specialised courts were established in the Colony and Protectorate of Lagos between 1861 and 1874.⁷ These systems were amalgamated into one political and administrative entity, with a common legal system, from 1906 to 1916.⁸

Although not immediately available to all Nigerians, the introduction of formal court processes and litigation provided those in cities with a new means of pursuing their grievances. For many, this new legal system had one major comparative advantage: enforcement. The colonial state had the authority to imprison misfeasors or confiscate their assets, potentially even awarding compensation to the aggrieved party.

The ability of the courts to enforce their decisions through the state apparatus raised the prominence of litigation above traditional dispute resolution processes. The English court system overtook customary processes in importance, popularity and use. As the idea of statehood, its powers and dominance became clearer, so did the supremacy of litigation before the courts and the public justice system.

The introduction of a formal legal system also established norms relating to access to justice. This encouraged urbanised Nigerians to view litigation before state courts and tribunals as the proper way to seek justice or assert a legal right, rather than pleading with a traditional leader to intervene. This adversarial foreign import thus became the dispute resolution mechanism of choice for city dwellers in colonial Nigeria. The formal legal system has remained pre-eminent since independence in 1960.

The 1999 Nigerian constitution entrenches the supremacy of litigation through Chapter VII, which sets out the hierarchy of the courts and their respective jurisdictions. A whole infrastructure perpetuates this state of affairs: from the Ministry of Justice and the legal practitioners who earn their living from litigation, to the judges delivering verdicts, and the police, sheriffs and prisons enforcing them. Equally committed to the *status quo* are the educational institutions that produce the employees who sustain the legal industry.

A lack of knowledge of ADR among lawyers and judges, and a perception that such methods might threaten their core business, contributed to a lack of interest in mediation and arbitration. The Nigerian legal profession has, however, belatedly acknowledged the need to relieve pressure on a congested court system, in which repeated adjournments see disputes indefinitely deferred and not resolved.⁹

Court short

A typical court case now takes between two and 20 years to conclude. A 2012 review of commercial cases before the courts in Lagos, found that it took an average of 583 days to resolve a case in the court of first instance – that is, the initial trial court where an action is brought.¹⁰ After that, the appellant might still appeal the verdict, deferring resolution for a decade or more.

“**54% of Nigerians surveyed by Afrobarometer stated that they were unable to understand the legal process and procedures**”

For example, in a dispute over fundamental legal rights, *Ariori v Elemo* was filed at the Lagos High Court in October 1960, with the first judgment in October 1975. An appeal was eventually heard by the Supreme Court in January 1983. *Emeka Nwana v Federal Capital Development Authority*, was filed following the claimant’s dismissal from employment in April 1989, but was not resolved by the Supreme Court until April 2007.

The situation is unlikely to improve. Since independence, the population of Nigeria has quadrupled to approximately 185 million.

If the current growth rate continues, Nigeria’s population will double again by 2050, making it the third most populous country on the planet. Even if the entire legal infrastructure can expand at the same rate, it may not be suited to help Nigerians resolve disputes. Some 54% of Nigerians surveyed by Afrobarometer stated that they were unable to understand the legal process and procedures; 48% could not obtain legal counsel or advice; and 44% left court feeling that their side of the story had not been heard.¹¹

The adversarial nature of the courts means that a judge rules in favour of one party and against another, awarding sentences that often fail to satisfy either party. The winner-takes-all nature of the judicial system is encapsulated by the Yoruba expression “*A ki ti Kootu de ka sore*”, meaning you do not return from court and remain friends. The idea of a sympathetic third party hearing disputes and contributing to their resolution continues to resonate with Nigerians.

Since the 1990s, local businesses have moved to include arbitration clauses in contracts with suppliers, aware that a dispute is likely to be more promptly resolved by arbitration than the formal court system. The evolution of this practice encouraged Nigeria’s federal and state governments to regulate aspects of arbitration, making provisions to support the process and its outcome. Incrementally, arbitration became backed by the same enforcement powers as the formal system. Placing arbitration on an equal footing with litigation prompted a renewed interest in ADR among Nigerians. Mediation is increasingly recognised as the most appropriate means to resolve minor disputes that would normally proceed to civil court.¹²

From the Citizens’ Mediation Centre...

Lagos, Nigeria’s commercial capital and most densely populated state, was an early centre of innovation. In 1999, the Lagos State Ministry of Justice established the Citizens’ Mediation Centre (CMC) to provide free dispute resolution services to indigent Lagosians. With 49% of Nigerians reportedly unable to pay the costs to pursue litigation, the new centre filled an evident gap.¹³ Targeting unresolved disputes over relatively small sums of money, the CMC focused on debt recovery, and quarrels between employers and employees, landlords and tenants, or among members of the same family.

The CMC became a separate legal entity in 2007 and now offers free services across Lagos. Its model has been replicated in 16 states. In addition to broadening access to justice and alleviating the burden on the court system, the CMC can boast a significant degree of success. It resolved 46% of cases handled in 2012-13, a figure that reached 54% in 2014-15. This has been against the backdrop of increasing demand for the centre's services: the number of cases handled increased from 25,641 to 35,203 over the same period.¹⁴

The success of the CMC led the state judiciary to consider how it might broaden the dispute resolution channels available to Lagosians. In 2001, government lawyers enlisted technical support from the Negotiation and Conflict Management Group (NCMG), an organisation committed to the promotion of ADR in the public and private sectors.

...to the Lagos Multi-Door Courthouse

NCMG founder Kehinde Aina was a commercial lawyer who was frustrated by the number of cases stuck in the system that were unresolved after a decade or more. In a bid for change, Aina adapted for Nigeria a model drawn up by Prof. Frank Sander at Harvard University: the Multi-Door Courthouse (MDC).¹⁵ In this context, the "doors" refer to accessing various processes of dispute resolution, as opposed to the single option of litigation. Sander envisioned:

not simply a courthouse but a Dispute Resolution Center, where the grievant would first be channelled through a screening clerk who would then direct him to the process (or sequence of processes) most appropriate to his type of case.¹⁶

Aina convinced the Lagos State executive and judiciary of the merits of the MDC scheme. He consulted with the Nigerian Bar Association, local corporations and communities to ascertain their needs. Working with the Lagos High Court, Aina piloted Sander's comprehensive justice centre.

When it opened in June 2002, the Lagos MDC (LMDC) became the first court-connected ADR centre in Africa, its mission to provide timely cost-effective and user-friendly access to justice. During the initial three years, Aina managed the operations of the courthouse, demonstrating his commitment to the new institution and to

promoting ADR. In May 2007, the state legislature enacted the Lagos Multi-Door Courthouse Law, providing statutory backing to the scheme. This enabled the private dispute resolution processes to exist alongside the public dispute management space of the courts. Aina terms these spaces where parties meet to resolve disputes "settlement rooms".

The LMDC is situated on premises of the High Court on Lagos Island. It also manages an ADR track at the High Court in Ikeja. When cases are heard at these locations, a judge may determine that ADR is a more appropriate means of resolving the conflict than litigation, referring the dispute to the LMDC. Each year, during "Lagos Settlement Week" (LSW), judges from courts across the state are required to refer cases to the LMDC. The first LSW in November 2009 saw the LMDC settle 45% of cases it mediated, compared to 12.5% of cases pursued through litigation during the same period.¹⁷ All of these disputes were resolved in the space of an extraordinary session, which lasted only three hours. Aside from decongesting the courts, the week helps to make Nigerians aware of the advantages of ADR. LSW has become an established part of the judicial calendar, reminding lawyers of the benefits of settling disputes without litigation.

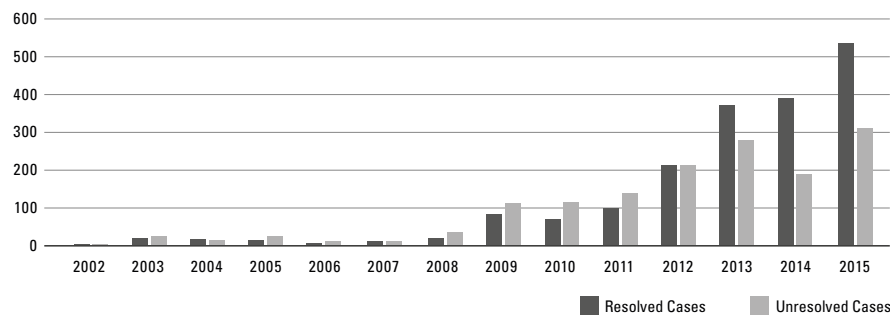
Judges came to regard the LMDC as an ally rather than a rival. In 2012 the Lagos High Court Procedure Rules instigated mandatory case-screening and referrals. All cases before that tribunal are now evaluated for their suitability for resolution by ADR, and, where appropriate, referred to the LMDC. Initially, the 2007 LMDC law had provided for the mandatory referral of cases only where "one of the parties to a dispute in court was willing to attempt ADR."¹⁸

Due process

Lagosians, however, do not need to approach a court to resolve their disputes. Individuals are free to contact the LMDC directly and initiate a case. Indeed, between 2002 and 2008, "walk-ins" exceed referrals from judges. The instigation of LSW in 2009 shifted the balance towards court referrals, which now run to thousands each year, whereas walk-ins remain in the hundreds. The surge in the number of cases the LMDC handles has significantly increased the number of disputes it has successfully resolved. This has, however,

also led to an increase in the number of “unconcluded matters”. In 2014 and 2015 the number of cases that failed to be concluded exceeded those that went the distance. For concluded matters, the settlement rate has remained relatively high, averaging 65% in 2014 and 2015. In a 2015 survey of LMDC users, 69% of respondents described themselves as very satisfied or satisfied with the process; and 86% reported that they would recommend the scheme.¹⁹

Settlement Rate at the Lagos Multi-Door Courthouse 2002-2015



Lawyers and officials in Lagos debate the pros and cons of mandatory referrals to the LMDC. Those in favour argue that this promotes the speedy and inexpensive resolution of disputes, improves access to justice and reduces the court backlog.²⁰ Each case the LMDC handles raises awareness of the scheme, and the existence of alternatives to litigation. Even when settlements are not reached, sharing their views outside of court may play a constructive role in helping parties to better understand their disputes. Disputants may benefit from exploring the possibilities of settlement at an early hearing, rather than enduring a lengthy and potentially expensive trial. Evidence from other contexts indicates that a majority of civil disputes are concluded on the basis of an out-of-court settlement, rather than a judicial determination.²¹

It is conceivable that disputants and their lawyers need to be coaxed towards ADR because of an inherent bias towards, or familiarity with, litigation.²² Only by meeting at the courthouse will litigants and lawyers become familiar with alternative means of resolving disputes, understand their potential benefits and consider ADR in future. Mandatory referral to ADR processes eradicates the “signalling effect of weakness”, eliminating hesitancy over ADR

because of a fear that the opposing party might underestimate the strength of the disputant’s case or their resolve and means to sustain it through litigation.²³

Opponents of mandatory referral hypothesise that disputes successfully resolved by ADR following judicial referral would have been handled by the courts in due course and question whether it promotes more settlements than voluntary take-up of ADR. They maintain that a reduction in delay or cost is not an automatic benefit and is only the outcome of successfully resolved cases. Rather, where a case is referred to ADR but is not settled, it only delays the resolution of a dispute.²⁴ Counterfactuals aside, critics argue that pressuring an unwilling party to come to the negotiating table may diminish the perceived advantages of ADR. Informal dispute resolution is attractive because of its voluntary nature; accordingly, a consensual process is more likely to lead to agreement than one where a party or parties do not wish to participate.²⁵ Finally, it is possible to argue that not all cases are suitable for ADR and thus referrals should be discretionary.

Resolving disputes

Regardless of how Lagosians find themselves at the courthouse, the process is simple: a disputant completes a request form and a statement of issues. These are then sent to the other party, asking them to respond with their submission within seven days. Next, at an intake screening, a dispute resolution officer (DRO) clarifies the nature of the claim and identifies underlying issues. The DRO describes the options available, assessing the needs of the case and helping the disputants to agree on an appropriate “door”.

Between 2002 and 2015, 98% of disputants opted for mediation. The registrar proposes a third party with relevant experience, who is assigned from the LMDC’s panel of neutrals – a group that consists primarily of lawyers, although legislation permits experienced ADR practitioners from any professional background.²⁶ A date is scheduled for a session and confidentiality agreements signed. If one party fails to attend, an ADR judge may intervene.

Mediation will take different forms depending on the nature of the dispute, but typically the neutral solicits presentations from both parties, unearthing information on their shared history, legal issues,

damages sought, and subjective factors. Mediators seek to identify impediments to resolution, and common ground. Encouraging the parties to speak reveals hidden emotions and resentments, uncovering underlying issues of power and control. In discussion with the mediator, parties to the dispute can propose their preferred terms of evaluation and enforcement, shaping the outcome.

Assuming parties are willing to enter the settlement room without legal representation, the process can remain simple and free from complex legal terminology. Removing procedural and language barriers increases the likelihood of reaching a speedy and sustainable settlement. ADR practices also resonate with Nigerians from all three major ethnic groups: Hausa, Igbo and Yoruba.²⁷ By hearing the dispute behind closed doors, the LMDC provides confidentiality, thus preserving reputations and relationships. Dispensing with the need for witnesses to testify before open court also reduces the emotional costs of resolving disagreements. These factors tend to make mediation popular in family and inheritance disputes, and some commercial ones.

“ **Assuming parties are willing to enter the settlement room without legal representation, the process can remain simple and free from complex legal terminology** ”

If a resolution is reached by mediation, parties sign a settlement agreement. This is initially equivalent to a contract; but once presented to one of the six ADR judges in Lagos, it becomes comparable to a court ruling, with the state required to act upon its breach. Awards that arbitrators make are similarly enforceable by leave of the court, albeit under different legislation.²⁸

Limitations remain, however. While the LMDC centres share premises with the High Court in Lagos, links with lower-level tribunals, such as magistrates' courts and area courts, are still weak. If the LMDC, or indeed the CMC, had a physical presence at locations where most low-value disputes are first heard, a greater volume of cases could be resolved through mediation. Co-location at the Court of Appeal might encourage weary participants – and judges – to pursue an alternative means of resolving their differences.

More could be done to harmonise systems. Despite the physical co-location in Lagos Island and in Ikeja, the LMDC and courts do not yet share the same registry, as envisaged by Kehinde Aina. At present, disputants are required to file discrete papers and pay separate filing fees. Aina describes a shortage of funding as the reason behind the failure to centralise the registry and facilitate the tracking of cases suitable for resolution by ADR.

There are benefits to the LMDC remaining detached, however. By asserting its independence, the courthouse is able to offer a credible alternative to the formal legal system, rather than becoming an appendage of the state judiciary. ADR should be viewed as an alternative to litigation, rather than a supplementary process.²⁹

Alternative dispute resolution on the rise

The success of the MDC model has seen it replicated across Nigeria. In October 2003, the judiciary of the Federal Capital Territory established an MDC in Abuja, where the majority of government departments are located. From 2006, MDCs followed in 14 more states.³⁰ Aina views the replication of the model as having been driven by innovation on the part of individuals with an appreciation of the needs of the private sector, rather than those seeking career advancement in the judiciary.

Chief Justice of the Federation Walter Onnoghen has pledged to establish a dedicated mediation centre at the Supreme Court in Abuja. This would ensure that even parties to litigation at its most advanced stage can resolve their disputes amicably while on-site. The National Industrial Court of Nigeria, responsible for hearing employment disputes and grievances brought by trade unions, has established ADR centres at its divisions in Abuja, Kano, Gombe, Enugu, Calabar and Ibadan. Similarly, the Chartered Institute of Bankers of Nigeria has promoted the use of ADR within financial disputes, while the National Judicial Institute has organised training for magistrates.

It is all the more impressive that such replication has been spearheaded by entrepreneurial Nigerians rather than co-ordinated by the federal government. There remains scope for working with the private and public sectors to promote awareness of ADR processes and their efficacy

in resolving certain types of disputes. Courthouse advertisements in Pidgin English or Nollywood films and TV soap operas demonstrating the value of ADR could increase walk-ins, rather than relying on judges to refer cases or lawyers to recommend alternatives to litigation.

Some Lagosians already appear to recognise the potential. Businesses have adopted ADR with zeal, offering additional means of resolving disputes. Lagos now hosts several specialist centres, some of which have enacted bespoke arbitration rules for adoption and use by disputants, while others use the rules annexed to the Nigerian Arbitration and Conciliation Act. Such centres are increasingly targeting regional and international clients, as the state judiciary does not refer cases to private providers.

In November 2012, the Lagos Court of Arbitration (LCA) was launched at the Kuramo conference, a forum for lawyers and businesspeople convened by Nobel Prize-winning author Wole Soyinka. An independent initiative, operating out of premises donated by the state government, the LCA demonstrated the desire of the private sector to promote Lagos as a venue for commercial dispute resolution. The LCA operates out of the International Centre for Arbitration and ADR, the first purpose-built ADR centre in Africa.

The legal profession is gradually recognising the importance of ADR. In August 2015, the then chief justice, Mahmud Mohammed, called on those attending the Nigerian Bar Association annual general meeting to engage more with ADR processes. Some local universities and the Nigerian Law School have now included ADR in their curriculum and qualified lawyers can acquire training from specialised ADR centres and arbitration institutions. The NCMG and University of Lagos intend to partner in establishing a College of Negotiation, loosely modelled on the globally renowned Harvard Program on Negotiation.

Nigeria would benefit from greater clarity in legislation. It remains possible for ADR to be further integrated into the formal justice system, through recognition under the constitution or laws clarifying their relationship with the state enforcement apparatus. Such steps would increase disputants' confidence in the process and reassure them that participation in mediation or arbitration is equivalent to having their "day in court". It would send the message that parties need not sacrifice expediency for durability. Here, Nigerian lawyers have a particular role to play in reminding Nigerians of their cultural heritage and the benefits of resolving conflict without recourse to the courts.

Notes

- ¹ According to the Lagos State Government's Digest of Statistics, between 2010 and 2012 a total of 96,994 civil cases were filed in the various high courts of Lagos State
- ² The LMDC and ADR practitioners in Nigeria recognise early neutral evaluation and other hybrid processes
- ³ Elias, T.O., *The Nature of African Customary Law*, Manchester: University Press, 1956, p.247
- ⁴ *Ibid.*, p.272
- ⁵ Green, M.M., *Ibo Village Affairs*, Sidgwick & Jackson, 1948, p.110, cited in Elias, *The Nature of African Customary Law*, p.269
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- ⁷ Elias, T.O., *The Nigerian Legal System*, London: Routledge & Kegan Paul, 1963, p.44
- ⁸ Ewelukwa, D.I.O., "Administration of Justice", in Okonkwo C.O. (ed.), *Introduction to Nigerian Law*, London: Sweet & Maxwell, 1980, p.59
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- ¹⁰ Arnot, Bob, "How Lagos judges are now resolving disputes more quickly", *British Council Voices Magazine*, 20 February 2015
- ¹¹ Logan, Carolyn, "Ambitious SDG goal confronts challenging realities: Access to justice is still elusive for many Africans", *Afrobarometer*, March 2017, pp.21–22
- ¹² While providing a non-adversarial alternative to litigation, mediation in Nigeria has yet to be afforded the same statutory backing as arbitration
- ¹³ Logan, *op. cit.*, p.21
- ¹⁴ "Access to Mediation and Legal Assistance Services", *Justice for All Nigeria*, CIP 2.3, Impact Report 6, 6 October 2015, p.4
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- ¹⁶ *Ibid.*, p.84
- ¹⁷ Ani, Comfort Chinyere, "Alternative Dispute Resolution (ADR) in Nigeria: A Study of the Lagos Multi-Door Courthouse (LMDC)", in Ernest Uwazie (ed.), *Alternative Dispute Resolution and Peace-building in Africa*, Cambridge Scholars Publishing, 2014, p.48
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- ¹⁹ *Ibid.*, p.9
- ²⁰ Lukman, Ayinla, "Enhancing Sustainable Development By Entrenching Mediation Culture In Nigeria", *Journal of Law, Policy and Globalization* (Vol. 21), 2014
- ²¹ Genn, Hazel, Riahi, Shiva and Fleming, Katherine, "Regulation of Dispute Resolution in England and Wales: a Sceptical Analysis of Government and Judicial Promotion of Private Mediation", *Regulating dispute resolution: ADR and access to justice at the crossroads*, Bloomsbury Publishing, 2014, p.139
- ²² Dawson, Michael, "Non-Consensual Alternative Dispute Resolution: Pros and Cons", *Australian Dispute Resolution Journal* (Vol. 4), 1993
- ²³ Bernstein, Lisa, "Understanding the Limits of Court-connected ADR: A Critique of Federal Court-Annexed Arbitration programs", *University of Pennsylvania Law Review* (Vol. 141, Issue 6), 1993, p.2169
- ²⁴ Hensler, Deborah R., "ADR Research at the Crossroads", *RAND Corporation*, 2001
- ²⁵ Ojelabi, Lola Akin, "Improving Access to Justice through Alternative Dispute Resolution: The Role of Community Legal Centres in Victoria, Australia", *La Trobe University*, September 2010
- ²⁶ Lagos Multi Door Court House Law (2007), S20
- ²⁷ Van Zeijl, Femke, "A new type of justice for Nigeria", *Al Jazeera*, 8 October 2016
- ²⁸ Settlement agreements signed by parties attending mediation are regarded as a legal agreement between the parties, enforceable under Section 19 of the Lagos Multi Door Court House Law (2007). Once an ADR judge has validated the agreement, it shall be deemed to be enforceable under Section 11 of the Sheriffs and Civil Process Act (1990). Arbitration awards are enforced under the Arbitration and Conciliation Act (1988). Terms of Settlement or Memoranda of Understanding reached at other institutions can be processed by the LMDC and endorsed by an ADR judge, enforceable as a consent judgment of the Lagos State High Court
- ²⁹ Rooke, John, "The Multi-Door Courthouse is Open in Alberta: Judicial Dispute Resolution is Institutionalized in the Court of Queen's Bench", *University of Alberta*, 2010
- ³⁰ These are: Kano, Akwa Ibom, Kaduna, Abia, Ondo, Cross River, Katsina, Delta, Bornu, Bayelsa, Ogun, Kwara, Edo and Enugu States

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