



# Alternative Dispute Resolution as a Viable Template for the Settlement of Family Disputes in Nigeria

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## ABSTRACT

In recent times, the various Alternative Dispute Resolution (ADR) mechanisms are fast becoming the best means of resolving family disputes. This is because family disputes are often confidential, and these ADR mechanisms encourage confidentiality. This paper analysed the viability of ADR as a means of resolving family disputes in Nigeria. It emphasised litigation's limitations in resolving emotionally charged family matters and investigates how alternative dispute resolution can encourage confidentiality, party autonomy, and relationship maintenance. Using a comparative and doctrinal methodology, this study examined the acceptance and effectiveness of ADR in nations including the United Kingdom, the United States, and Finland. It also assessed Nigeria's legislative framework governing matrimonial disputes, specifically the Matrimonial Causes Act (MCA) of 1970, as well as the feasibility of incorporating ADR into it. The study concluded that, while ADR has the potential to resolve marital maintenance, child custody, and property

conflicts, statutory and cultural hurdles persist. The study concluded by recommending amendments to improve the legal recognition of ADR in family law and making practical recommendations to boost its usage in Nigeria.

## INTRODUCTION

Alternative Dispute Resolution (ADR) proffers the easiest and fastest mechanisms of resolving disputes.<sup>1</sup> All its mechanisms encourage parties to dictate how their dispute should be resolved and also ensure that parties can maintain a relationship even after the dispute has been settled. Family relationships are complicated, and by extension, family disputes. Unlike business-related disputes, where parties do not necessarily have to be friends to work together, family disputes are usually emotional, and there is usually a need for parties to keep relating with one another even after the dispute settlement. Therefore, family disputes require a dispute resolution mechanism that can help parties preserve relationships, and ADR has suitable mechanisms for this.

The Matrimonial Causes Act 1970<sup>2</sup> is the law enacted for the purpose of dealing with matters relating to legal marriages in Nigeria. It makes provision for matters such as dissolution of marriage, spousal maintenance, property rights, and child custody, among others. The law provides that all matters emanating from the provisions of the Act must be resolved at the High Court.<sup>3</sup> This provision poses a great problem to the possibility of resolving family disputes using ADR mechanisms.

This paper discusses ADR and its different mechanisms, and it discusses extensively the way ADR mechanisms have been used to resolve family disputes in countries like the Unit-

ed States of America, Finland, and the United Kingdom. It explores the effectiveness of ADR in resolving family disputes in these jurisdictions. Furthermore, this paper examines the possibilities of resolving family disputes with ADR mechanisms in Nigeria with particular attention to the benefits and challenges that may be attached. As a result, this paper seeks to answer the following questions: Are ADR mechanisms suitable for the resolution of family disputes in Nigeria? What are the challenges of using ADR mechanisms to resolve family disputes in Nigeria? How can the identified challenges be resolved to ensure effective use of ADR for settling family disputes in Nigeria?

This paper is divided into three sections. The first part will discuss ADR mechanisms and Family Disputes. The second part will examine the use of ADR for resolving Family disputes in other Jurisdictions. Lastly, the third section will discuss the prospects and challenges of using ADR mechanisms to resolve family disputes in Nigeria.

## METHODOLOGY

This paper adopts a mixed-methods approach, combining doctrinal and comparative methods to provide a comprehensive analysis of the subject matter. The doctrinal methodology is employed to examine primary and secondary legal sources such as statutes, case law, and scholarly writings. In particular, the Matrimonial Causes Act (1970) and the Arbitration and Mediation Act (2023) are analysed to understand the extent to which Nigerian law currently accommodates or restricts the use of ADR in family disputes. Judicial precedents and scholarly

- 1 Maurya, A. (2021). Alternative Dispute Resolution. *Indian Journal of Law and Legal Research*, 2(1), pp. 1, 2.
- 2 Matrimonial Causes Act (MCA). (1970). Cap 220, LFN 1990.
- 3 Ibid. Section 2(1).

commentaries are also examined to assess the legal reasoning that underpins the acceptance or rejection of ADR in family matters.

The comparative methodology is used to evaluate how ADR has been effectively utilised in resolving family disputes in other jurisdictions, including the United Kingdom, the United States, and Finland. These jurisdictions were deliberately selected because of their distinct yet relevant experiences: the UK, due to its historical influence on Nigerian law; the US, as a jurisdiction with innovative ADR practices across states; and Finland, for its advanced institutionalisation of family mediation. By comparing Nigeria's legal framework with those of these jurisdictions, this paper identifies both best practices and potential challenges for transplanting ADR mechanisms into the Nigerian family law system.

The combination of doctrinal and comparative methods ensures that the analysis is not only grounded in Nigerian statutory and judicial frameworks but also enriched by insights drawn from international experience. This dual approach allows for a deeper understanding of the viability, benefits, and possible limitations of introducing ADR into the settlement of family disputes in Nigeria.

## 1. ALTERNATIVE DISPUTE RESOLUTION IN NIGERIA

Alternative Dispute Resolution (ADR) can be defined as 'an encompassing all legally permitted process of dispute resolution other than litigation'.<sup>4</sup> Nolan-Haley defined it as 'an umbrella term that refers generally to alternatives to the court adjudication of disputes...'.<sup>5</sup> ADR is 'a collective description of methods of resolving disputes otherwise than the normal trial process'.<sup>6</sup> These definitions suggest that any mechanisms

for settling disputes other than litigation are ADR. There are several mechanisms of ADR, such as negotiation, mediation, conciliation, arbitration, early-neutral evaluation, facilitation, mini-trials, expert appraisal, summary jury trials, and mediation-arbitration, among others. For this paper, negotiation, mediation, and arbitration will be examined extensively.

### 1.1. Negotiation

In layman's parlance, negotiation involves a form of bargaining between parties to reach a common settlement.<sup>7</sup> However, in legal parlance, negotiation is the resolution of disputes through a consensual settlement by the parties to a dispute. It forms the basis of dispute resolution. In this ADR process, the parties do not need to introduce a neutral third party, and if one is introduced, it would be for the making of a representation on behalf of the parties to the contract. Negotiation involves a direct interaction between disputing parties wherein one makes an offer to the other based on the objective assessment of the other party.<sup>8</sup> It involves parties to a dispute having discussions with one another with the intent to settle their differences while ensuring that the decisions reached are beneficial to all parties.<sup>9</sup> The stages involved in a negotiation process are: the preparation and orientation stage; the opening discussion stage; the bargaining stage; the closing stage; and the post-negotiation stage.<sup>10</sup>

4 Ware, S. J. (2001). *Alternative Dispute Resolution*. St. Paul, p. 5.

5 Nolan-Haley, J. M. (2008). *Alternative Dispute Resolution in a Nutshell*, St. Paul, p. 2.

6 *Halsey v. Milton Keynes General NHS Trust*. (2004). ECWQ IV 576.

7 Wertheim, E. *Negotiations and Resolving Conflicts: An Overview*. College of Business Administration Northeastern University. Available at: <https://www.euoparc.org/communication-skills/pdf/Negotiation%20Skills.pdf> (Last access: 01 May, 2025).

8 The International Centre for Alternative Dispute Resolution. (2014). *Alternative Dispute Resolution*. Available at: <https://globalarbitrationreview.com/survey/the-guide-regional-arbitration/2015/article/international-centre-alternative-dispute-resolution-icadr> (Last access: 1 May, 2025).

9 Alogo, E. E. (2021). *Commercial Law and Practice*. Princeton & Associate Publishing Co. Ltd., p. 2.

10 Ajetumobi, A. (2017). *Alternative Dispute Resolution and Arbitration in Nigeria in Nigeria, Law, Theory and Practice*. Princeton & Associates Publishing Co. Ltd.,

## 1.2. Mediation

This is the resolution of disputes by reference of the dispute to a neutral third party called the mediator.<sup>11</sup> In mediation, the parties may agree that the mediators be appointed by a body, person, or institution in the event of disputes between them. Also, the parties may specify the qualities which the mediators must possess before he can have the jurisdiction to resolve disputes between the parties using mediation. For example, the parties may decide that the chief judge of a state should appoint a mediator who must be a Nigerian and be trained in marine law in the event of disputes between them. Mediation involves the intervention of a neutral third party, who is referred to as a mediator, to help disputing parties resolve their dispute.<sup>12</sup> The stages of mediation are: the Introduction stage; the opening stage; the private caucus session; the joint session; and the settlement stage.<sup>13</sup>

The Nigerian Arbitration and Mediation Act 2023 defines mediation as:

*A process, whether referred to by the expression mediation, conciliation or an expression of similar import, where parties request a third person “the mediator” to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship but the mediator does not have the authority to impose upon the parties a solution to the parties.<sup>14</sup>*

From this definition, it can be noted that, unlike an arbitrator, a mediator does not have the power to give a binding decision; he can only facilitate the process. Also, in terms of

flexibility, mediation has a more flexible approach towards the resolution of a dispute. In the course of resolution, the parties in mediation may choose to state facts throughout the proceedings, but there is a point in arbitration where claims must be made in arbitration.

## 1.3. Arbitration

Arbitration means, ‘a commercial arbitration whether or not administered by a permanent arbitral institution’. Arbitration is ‘a process of ADR in which a neutral third party, called an arbitrator or neutral, renders a decision after a hearing at which both parties have an opportunity to be heard’.<sup>15</sup> It was defined in the case of *Commercial Insurance v. Alli*<sup>16</sup> as a mechanism by which parties agree to have their dispute settled by a neutral third party<sup>17</sup> and to be bound by the decision that such third party makes. Therefore, when the arbitrator makes his award, it is final, binding, and cannot be challenged based on law or evidence unless that is reasonable. It has also been judicially decided in the case of *C.N. Onuselungu International Enterprises v Afribank Nig. Ltd.*<sup>18</sup> that arbitration is a voluntary agreement between the parties to resolve their dispute, which is recognised by the court. Hence, the court will give its support to see to its smooth administration. Arbitration is commonly known in Nigeria as a mechanism for settling commercial disputes.

## 2. FAMILY AND FAMILY DISPUTES

To understand the definition and dynamics of family disputes, it is important to define what a family is. A family is:

*a group of closely related people, known by a common name and consisting usually*

p. 75.

11 Malemi, E. (2010). *The Nigerian Legal Method* (1<sup>st</sup> edition). Princeton Publishing Company.

12 Aloba, E. E. (2021). *Commercial Law and Practice*. Princeton & Associate Publishing Co. Ltd.

13 Blake, S. Browne, J., Sime, S. (2021). *The Jackson Alternative Dispute Resolution Handbook* (3<sup>rd</sup> edition). Oxford University Press.

14 Arbitration and Mediation Act. (2023). (AMA). Section 91.

15 Aloba, (n 9).

16 (1992). 3 NWLR (Pt 232).

17 Disinterested party.

18 (2005). LCN/1790 (CA).

*of a man and his wives and children, his son's wives and children, his brothers and half-brothers and wives and children, and probably near relations.*<sup>19</sup>

Simply put, a family is made up of people who are related by blood or by marriage. Although in some other countries, marriage now occurs between people of the same sex, in Nigeria, Legal marriage can only exist between a man and a woman. The only type of marriage recognised under the MCA is the monogamous marriage. Therefore, a standard family in the Nigerian legal parlance is that consisting of a man and a woman and their children. For this paper, a family will be considered as stemming from a legal marriage between a man and a woman, with or without children.

As in any form of human relationship where disputes arise, so do family disputes arise among family members. Family disputes have been defined as 'any conflicts that occur within a family-between husbands and wives, parents and children, between siblings, or with extended families (grandparents, aunts, uncles, etc.)'.<sup>20</sup> Hence, family disputes may be in the form of couples seeking dissolution of marriage, or separated couples fighting over custody of children, or fights over ownership of property, or spousal maintenance. It can also be extended family members fighting over family properties.

Family dispute is a very distinct form of conflict because family members involved in the conflict are emotionally attached, their relationships are usually on a long-term basis, and each family has its own uniqueness and peculiarity.<sup>21</sup> These uniqueness and peculiarity need to be put into consideration when resolving family conflicts. Dispute resolution

mechanisms that take into consideration the unique features of families having disputes will be more effective in resolving the dispute. The strict rule of the court system may not address the entire issue causing the dispute effectively. There are some family issues that are the core basis of the dispute that should never be made public, and that family members will not openly discuss in the courtroom.

Types of Family Conflict – Conflicts between husband and wife include: divorce, property rights, maintenance, and child custody; Sibling rivalry: this type of family dispute deals mainly with children of the same parents fighting; and Parent-Child conflict: this can be a dispute between a child and his or her father or mother or both parents.

For this article, the type of family dispute that will be focused on is the conflict between husband and wife. The causes of this type of family dispute vary depending on each circumstance. Issues like infertility, financial problems, poor communication, infidelity, opposing parenting styles, and the need for independence, among others.<sup>22</sup> Some of the issues which emanate from conflicts between husbands and wives are divorce, determination of property rights ownership, spousal maintenance, and child custody. These issues are delicate legal issues that ought to be determined with care.

### 3. SETTLEMENT OF FAMILY DISPUTES IN NIGERIA

In Nigeria, the family is considered a sacred unit built on the sacred institution of marriage.<sup>23</sup> Traditionally, it is considered a union between two families – the bride's and the groom's families. Therefore, based on the importance at-

19 See Green, M. M. (1941). Land Tenure in Ibo Village in South Eastern Nigeria. Routledge; see also, Nwogugu, E. I. (2014). Family Law in Nigeria (3<sup>rd</sup> edition). HEBN Publishers Plc.

20 Malek, C. (2013). International Conflict. Available at: <https://www.beyondintractability.org/coreknowledge/international-conflict> (Last access: 1 May, 2025).

21 Malek, C. (2013). Family Conflict. Available at: <https://www.beyondintractability.org/coreknowledge/family-conflict> (Last access: 1 May, 2025).

22 Aye, E. N. and others. (2016). Family Conflict and Managing Strategies: Implication for Understanding Emotion and Power Struggles. Global Journal of Psychology Research: New Trends and Issues, 6(3), p. 156.

23 Ugwu, N. V., Okoye, K. M., Agbo C. O. (2024). Moral Challenges of Marriage Institution in the Contemporary Igbo Christian Society. Nsukka Journal of Religion and Cultural Studies, 12(1), pp. 62, 63.



tached to marriage by society, a couple cannot decide to change their marital status by themselves. It is on this basis that the MCA provides that disputes emanating from a marriage under the MCA that falls into the category of matrimonial causes may be resolved through litigation at the State High Court. Section 2 (1) of the MCA states that:

*A person may institute matrimonial causes under this Act in the High Court of any state of the Federation, and for that purpose, the High Court of each State of the Federation shall have jurisdiction to hear and determine . . . matrimonial causes under this Act.*

Section 114 of the MCA defines matrimonial causes as proceedings for a decree of dissolution of marriage, nullity of marriage, judicial separation, restitution of conjugal rights, and jactitation of marriage;<sup>24</sup> decisions on spousal maintenance, custody, and maintenance of children in matters resulting from a case instituted for any of the aforementioned decrees.<sup>25</sup> With these provisions, it is clear that most matters relating to family that emanate from marriage under the MCA in Nigeria may be resolved in a High Court in Nigeria.

The phrase, 'may institute matrimonial causes under this Act in the High Court of any state of the Federation' suggests that it is not a compulsory provision, and if there are other settlement options, the party may explore them. Although the use of 'may' in a statute generally makes a provision discretionary, there are instances where such provisions are mandatory. For instance, the Court of Appeal in the case of *Sino-Afric Agriculture & Ind Company Ltd & Ors v. Ministry of Finance Incorporation & Anor* held that the 'may' in an arbitration Clause does not render the agreement by the parties to resolve the dispute through arbitration useless. Rather, it allows the parties to decide to forgive the contractual right if they so please, but where the contractual right is not forgiven, it is man-

datory for them to arbitrate.<sup>26</sup> That is, a party can decide to forgive the other party and not approach arbitration when a dispute arises, but if he decides not to forgive, he must resolve the dispute through arbitration. Bringing this argument to Section 2 of the MCA, the 'may' refers to the right of the party to decide not to approach the Court that is litigation when matrimonial causes arise. It, however, compels the parties to ensure that if they ever decide to approach the court, they should approach a State High Court. The 'may' there pertains to the question of the exercise of your rights, not the destination. Therefore, a party can decide to resolve their matrimonial causes outside the courtroom.

The question that now comes up is whether all matrimonial causes can be resolved using other mechanisms chosen by the parties. The answer is No. The general rule of interpretation that a provision of a law should not be interpreted in isolation applies. The MCA should be interpreted in consideration of its entire provisions. Section 56 of the MCA provides that the dissolution of a marriage can only be done by an order of *Decree Nissi* and *Decree Absolute* granted by a court of competent jurisdiction.<sup>27</sup> Thus, dissolution of marriage, also known as divorce, can only be done by the court. This is because the marital status of the couple does not affect only the couple; it affects society as well. Therefore, dissolution is not about the parties alone, and they cannot decide their status by themselves because the public, which was aware of their marriage, must be aware of its dissolution.<sup>28</sup>

Nonetheless, other matrimonial causes that only affect the couple, such as spousal maintenance, property rights, and child custody, can be resolved by mechanisms chosen by the parties. There is no strict provision in the MCA for these to be resolved in the High Court. Par-

24 MCA. (1970). Section 114(1)(a).

25 Ibid., 114(1)(c).

26 (2013). LPELR-22370 (CA).

27 MCA. (1970). Section 56.

28 Adepoju, A. A. (2024). Dissolution of Marriage and the Choice of Law: Matters Arising. PPLRUNLAW Review, Vol. 3, no. 1. Available at: <https://runlawjournals.com/index.php/pplrunlaw/article/view/93> (Last access: 4 May 2025).

ties are at liberty to decide how they want to resolve their disputes, provided their decision to do so will not be injurious to public interest. The Supreme Court in *Abey v Alex*<sup>29</sup> per Uwaifo JSC stated that, 'it would appear that it can be argued that the power to settle or compromise at any stage of a pending proceeding extends even to those compromising judgments in certain situations'. This decision suggests that the power of the parties to resolve their dispute is infinite. Where parties agree to do something other than what the court has decided, the parties are superior to the court for their own dispute. In *Offor v Leaders & Co Ltd*,<sup>30</sup> the Court of Appeal held that, 'it is settled law that parties are entitled to settle or compromise a dispute at any stage of pending proceedings... this right has been held to extend even to that of compromising judgments in civil actions'. A combined interpretation of these decisions is that parties can decide to handle their disputes however they choose to, provided their decision does not affect a third party negatively. As such, parties can decide to resolve their matrimonial causes other than dissolution of marriage using any resolution mechanism they so desire.

The MCA recognises the need for parties to matrimonial causes to try to resolve their disputes without court intervention. This explains why Section 11 provides that parties who have filed for dissolution of marriage must attempt to resolve the dispute outside the court before proceedings can commence. Evidence of such a reconciliatory process must be presented in court and must have been unsuccessful before the court can proceed with the hearing of the petitions. Although in the instance of this Section, their lawyer is the neutral third party helping them to resolve the dispute. This paper opines that if the Courts have taken judicial notice of the possibility of resolving matrimonial causes outside the courtroom with a lawyer acting as the neutral third party, then it should be possible to use ADR to resolve family disputes without instituting action in court. ADR

mechanisms should be explored more by parties to family disputes in order to resolve their disputes amicably and more satisfactorily.

#### 4. POSSIBILITY OF MEDIATING FAMILY DISPUTES IN NIGERIA

The Arbitration and Mediation Act 2023 (AMA 2023) repealed the Arbitration and Conciliation Act 1988 and became the first Act on Mediation in Nigeria. AMA 2023 makes provision for different kinds of mediation. In particular, it recognises domestic civil mediation.<sup>31</sup> That is, AMA 2023 encourages mediation of civil matters in Nigeria. Family disputes are a civil matter and, as such, can be subjected to mediation for their resolution. Section 70 (4) of AMA 2023 provides that cases can be referred to mediation from arbitration, litigation, and other similar proceedings. This means that the court can refer certain matters to mediation where it deems it appropriate to do so. Therefore, civil matters involving family disputes other than divorce can be referred to mediation. Permission to have a virtual mediation process. Section 82 (2), the settlement agreement resulting from a mediation shall be binding on the parties and enforceable in court as a contract, consent judgment, or consent award. The Act makes provision for mediation in Sections 67 and 87 of the Act.

#### 5. THE EXTENT OF USE OF ALTERNATIVE DISPUTE RESOLUTION MECHANISMS TO RESOLVE FAMILY DISPUTES IN OTHER JURISDICTIONS

In most countries, mediation and arbitration are the major ADR mechanisms used to resolve family disputes. Some of the jurisdictions that will be examined are the United Kingdom, because of the close relationship of our legal systems as a result of colonialism, the United

29 (1999). 14 NWLR (Pt 637) 148 at 159.

30 (2007). 7 NWLR (Pt 1032) 1.

31 Arbitration and Mediation Act. (2023). Section 67(1) (c).

States, because it is a world-class society that is known for being at the forefront of several legal innovations, and Finland, for its robust practice of family arbitration.

## 5.1. The United Kingdom

Mediation is often used in the United Kingdom to resolve child custody and care disputes.<sup>32</sup> 'Family mediation remains an increasingly popular option for many separating couples and a priority of the United Kingdom government'.<sup>33</sup> The fact that ADR enables parties to a dispute to decide how they want their disputes to be resolved has made ADR a more likeable dispute resolution option for parties to family disputes.<sup>34</sup> ADR mechanisms used mainly in the UK are mediation, collaborative law, arbitration, and negotiation through lawyers.

### 5.1.1. Collaborative practice

This is also known as collaborative law. It was established by Stuart Webb, a Minnesota family lawyer, and has been widely received in countries like the United States, Europe, Canada, Australia, and was launched in England in 2003.<sup>35</sup> It is a voluntary and facilitates the family law process, enabling couples who have decided to end their marriage to work with their lawyers and other family professionals, in order to achieve a settlement that best meets the spe-

cific needs of both parties and their children, thus avoiding the uncertain outcome of the court.<sup>36</sup> Parties are expected to have signed a participation agreement, which binds them to the process and also provides that the lawyers who represent them in the process cannot represent them in litigation if they later decide to go to court.

The Participation Agreement provides for the following: parties should not go to court during the process; parties should disclose all documents and information relating to the dispute; the experts will be neutral, and who will be hired will be decided by both parties; it will be a win-win situation; and their children will not be involved in the process. It addresses legal, emotional, and financial issues through a team made up of lawyers, mental health professionals, or child specialist, and a financial specialist.<sup>37</sup> The agreement reached is submitted to the court for approval.<sup>38</sup>

### 5.1.2. Mediation

It is a process a neutral third party helps couples identify their issues and foster solutions. The mediator, after the introductory stage, holds a private session called a caucus through which he tries to understand the demands, interests, positions, and oppositions of the parties, before proceeding to hold a joint session with them to reconcile their differences.<sup>39</sup> At the joint session, the mediator focuses on the interests of the parties. In the case of mediation relating to family issues, such interests include budget, parenting schedules, financial obligations, and properties, among others. The mediation ends when parties have agreed on all the issues and the mediator has sent the terms to the judge to sign.

There are various techniques of mediation that have been put in place to ensure that par-

32 Macroberts, F. (2024). Mediation: The Path to Resolving Child Disputes. Available at: <https://www.lexology.com/library/detail.aspx?g=67e5b694-7f61-4209-b005-8533d0b6eb5f> (Last access: 14 February, 2025).

33 Lexology. (2024). The UK Government has Rejected Mandatory Mediation for Family Disputes in England and Wales. Available at: <https://www.lexology.com/library/detail.aspx?g=abbc3d1-20fb-40f7-9953-a24edf247563> (Last access: 4 May 2025).

34 Tyler, L. (2021). Alternative Dispute Resolution in Family Law. Weightmans. Available at: <https://www.weightmans.com/insights/alternative-dispute-resolution-in-family-law/> (Last access: 4 May 2025).

35 International Academy of Collaborative Professionals (IACP). (2023). What is collaborative practice? Available at: <https://www.collaborativepractice.com> (Last access: 14 June 2025).

36 Ibid.

37 Ibid.

38 Texas Family Law Code. Section 6.603(b) 148.

39 International Academy of Collaborative Professionals (IACP). (2023). What is collaborative practice? Available at: <https://www.collaborativepractice.com> (Last access: 14 June 2025).



ties to a family dispute utilize mediation before approaching the court. There is the Compulsory Mediation Information and Assessment Meeting (MIAM), which parties must attend before they can approach the family court. At this meeting, the parties meet with the mediator to determine if their dispute is suitable for mediation.

Parties to family disputes involving the following are exempted from attending MIAM: a party who has evidence of domestic violence against the other part; the application involves a child; the party already attended an MIAM; the party has applied for an exemption from MIAM within the last four months preceding the case; and if the application needs urgent attention because failure to do so may: lead to risk to life of a party, a party suffering significant hardship, cause risk to the life of a child and so on. There is a legal aid option for parties to a dispute who are not working or on a low income. In the United Kingdom, there is the Family Mediation Council. People who want to utilize mediation in the UK are advised to pick the mediators from those registered with this council.<sup>40</sup>

### 5.1.3. Arbitration

Arbitration is an ADR mechanism where divorcing couples select a neutral third party, called an arbitrator with family law experience, to hear their case and give a final decision after having heard from both parties.

### 5.1.4. Private financial dispute resolution

Private Financial Dispute Resolution is a negotiation that takes place during the hearing of a financial remedy court application. This process is led by a judge, and the judge guides the parties on the best way to resolve their disputes.<sup>41</sup> The judge is not allowed to impose a

decision on the parties. This mechanism is used to resolve the financial aspect of a family dispute. Parties are expected to focus on reaching a compromise and settling their dispute. Hence, parties do not give evidence at FDR.

### 5.1.5. Mediation voucher scheme

As a response to COVID-19, the UK government launched a 'Time-limited Mediation Voucher Scheme' to help people resolve their family disputes. This scheme was also launched to encourage people to utilize mediation in resolving their family disputes. The UK government contributes 500 Euros towards the cost of mediation to encourage people who are eligible to use the scheme.

## 5.2. The United States of America

Family disputes in the United States encompass a wide range of issues that can arise within a family, including divorce, child custody, visitation rights, child support, and spousal support, among others. These disputes are inherently sensitive and can have a lasting impact on the well-being of family members, particularly children, and can lead to prolonged conflicts and emotional trauma if it is not addressed effectively. Due to the sensitivity involved in family disputes, the use of Alternative Dispute Resolution is encouraged as a mechanism for settling disputes.

In family law cases, courts in the United States often encourage parties to consider ADR processes before attempting traditional litigation. Some States have specific rules that require parties in family law disputes to participate in mediation or other ADR processes before going to court. For example, Texas Statutes Civil Practice and Remedies Code in Section 154 provides that:

*It is the policy of this State to encourage the peaceable resolution of disputes, with special consideration given to disputes involving the parent-child relationship, including the mediation of issues involving*

40 Family Mediation Council. (2023). Code of Practice for Family Mediators. Available at: <https://www.familymediationcouncil.org.uk/code-of-practice/> (Last access: 1 June, 2025).

41 Ministry of Justice. (2023). Financial Dispute Resolution (FDR): A Guide for Parties S. Available at: <https://www.gov.uk/government/publications/financial-dispute-resolution-fdr> (Last access: 1 June, 2025).

*conservatorship, possession, and support of children, and the early settlement of pending litigation through voluntary settlement procedures.*<sup>42</sup>

Title 9 of the US Code establishes federal law supporting arbitration.<sup>43</sup> These requirements are often aimed at promoting cooperative solutions, reducing conflict, and easing the burden on the court system. The United States offers a wide range of Alternative Dispute Resolution mechanisms for family law disputes, such as: Mediation, Arbitration, Early Neutral Evaluation, Collaborative law, and Parenting Coordination.<sup>44</sup>

### 5.2.1. Mediation

Mediation allows families to address issues such as divorce, child custody, visitation, and financial matters in a more collaborative and private setting. During a mediation session, each party is allowed to express their concerns and interests while the mediator helps guide the conversation toward finding common ground. The mediator does not make decisions for the parties but instead helps them explore options and come up with creative solutions that meet everyone's needs. There is no specific federal legislation governing mediation in the United States. However, many states have adopted the Uniform Mediation Act<sup>45</sup> to provide a consistent framework for mediation.

### 5.2.2. Arbitration

Arbitration is a more formal process in which a neutral third party, known as the arbitrator, acts as a decision-maker. The arbitrator's decisions are legally enforceable and act as a replacement for a trial. In family law matters, you can use arbitration to resolve most kinds of disputes. The North Carolina Family Law Arbitration Act states that one can agree to arbitrate all issues arising from a marital separation or divorce, except for the divorce itself, while preserving a right of modification based on a substantial change of circumstances related to alimony, child custody, and child support.<sup>46</sup> Forty-nine states have adopted the 1956 version of the Uniform Arbitration Act as state law.<sup>47</sup>

### 5.2.3. Early Neutral Evaluation

Early Neutral Evaluation (ENE) in family disputes in the United States involves a process where a neutral third party assesses the case and gives evaluative feedback and recommendations to help parties resolve without going to trial. Early Neutral Evaluation was first adopted to deal with the rising demand for custody evaluations and initially used only for child custody and parenting time (visitation) cases. This is known as Social Early Neutral Evaluation (SENE). Early Neutral Evaluation has subsequently evolved to include a separate second program known as Financial Early Neutral Evaluation (FENE), which focuses on child support, alimony, and property division.<sup>48</sup>

42 Texas Statutes Civil Practice and Remedies Code. Available at: <https://statutes.capitol.texas.gov/Docs/CP/htm/CP.154.htm#:~:text=It%20is%20the%20policy%20of,settlement%20of%20pending%20litigation%20through> (Last access: 22 May 2025).

43 Cornell Law School. (2025). Alternative Dispute Resolution. Available at: [https://www.law.cornell.edu/wex/alternative\\_dispute\\_resolution#:~:text=For%20national%20arbitration%2C%20Title%209,numerous%20state%20laws%20on%20ADR](https://www.law.cornell.edu/wex/alternative_dispute_resolution#:~:text=For%20national%20arbitration%2C%20Title%209,numerous%20state%20laws%20on%20ADR) (Last access: 22 May, 2025).

44 Swartz, H. (2025). What is Alternative Dispute Resolution? Available at: <https://highswartz.com/services/adr-alternative-dispute-resolution/family-law-adr/> (Last access: 22 May, 2025).

45 Uniform Mediation Act. Available at: <https://www.uniformlaws.org/HigherLogic/System/DownloadDocumentFile.ashx?DocumentFileKey=-9b33a118-841a-478c-e884-f3bf68b2b12c&forceDialog=0> (Last access: 22 May, 2025).

46 New Direction. (2021). Arbitration as an Alternative to Family Court. Available at: <https://newdirectionfamilylaw.com/blog/separation-divorce/arbitration-as-an-alternative-to-family-court/#:~:text=The%20North%20Carolina%20Family%20Law,%2C%20and%20child%20support.%E2%80%9D%20In> (Last access: 22 May, 2025).

47 Cornell Law School, (n 42).

48 Shaw, E. Family Law, Exploring Early Neutral Evaluation in Family Cases. Available at: <https://www.google.com/url?q=https://erinshawfamilylaw.ca/wp-content/uploads/Exploring-ENE-in-Family-Cases-Final-April-28.pdf&sa=U&sqi=2&ved=2a-hUKEwi2p53Fw6OGAxWcWkEAHVyDD1YQFnoEC-B8QAQ&usg=AOvVaw3CY8lmlbKaRkD6EQPJ5qKJ> (Last access: 22 November, 2025).

#### 5.2.4. Collaborative law

Collaborative law was originally developed in the United States of America.<sup>49</sup> Collaborative law is a relatively new method of alternative dispute resolution primarily used in divorce and family cases. In this process, each party hires a lawyer, and professionals like financial experts or divorce coaches may be involved. The parties come together to negotiate agreements. It is similar to mediation; a key difference is that in collaborative law, the parties agree not to involve the court system. If a lawsuit is threatened, the lawyers must withdraw from the process. Although it is more cost-effective than going to court, collaborative law can be more expensive and time-consuming than mediation due to the involvement of lawyers and specialists.<sup>50</sup>

#### 5.2.5. Parenting coordination

Parenting coordination is a specialized form of family law Alternative Dispute Resolution (ADR) in the USA that focuses on resolving parenting disputes. A parenting coordinator (PC) assists parents in creating and adhering to parenting plans. This process helps parents resolve disagreements concerning their children in a structured and cooperative manner, aiming to reach agreements that prioritize the well-being of the children involved.<sup>51</sup>

ADR is prevalent for resolving family disputes in the United States. It provides a conducive environment for respectful communication, compromise, and understanding. Using ADR instead of traditional litigation can help

families achieve faster, more cost-effective, and less adversarial resolutions that prioritize the well-being of the children and the family as a whole. ADR methods emphasize confidentiality, which is beneficial in sensitive family matters where privacy is crucial. It is also more flexible, allowing families to tailor solutions to their unique circumstances.

### 5.3. Finland

Finland is a country with a great model for family dispute mediation. Family mediation in Finland is divided into three different stages, and each stage deals with a distinct aspect of family law. The three stages are:

1. Out of court mediation: This stage is handled by social services and family mediators. It deals with disputes relating to child care and custody;
2. Court mediation: this deals with disputes relating to custody, housing, right of access, and financial support of children;
3. Mediation to implement a decision: Mediation in Finland is voluntary, confidential, and free. The mediator is usually a judge, assisted by an expert such as a social worker or a psychologist. The decision ordering mediation does not require the consent of the parties.

The Finnish legal system recognizes the importance of ADR as a means to achieve efficient and amicable resolution of disputes, particularly in family law disputes where maintaining relationships is a priority. Due to the financial costs, lengthy process, and adversarial nature of litigation, individuals often prefer alternative dispute resolution methods when it comes to matters in family law.<sup>52</sup>

In Finland, there are several Alternative Dispute Resolution mechanisms available to dis-

49 MacDonald, N. (2023). Alternative Dispute Resolution Options in Family Matters. Available at: <https://www.newtons.co.uk/news/alternative-dispute-resolution-options-in-family-matters/> (Last access: 23 May, 2025).

50 Cornell Law School. (2025). Collaborative Law. Available at: <https://www.google.com/url?q=https://erinshawfamilylaw.ca/wp-content/uploads/Exploring-ENE-in-Family-Cases-Final-April-28.pdf&sa=U&sqi=2&ved=2ahUKEwi2p53F-w6OGAxWcWkEAHVyDD1YQFnoECB8QAQ&usg=AOv-Vaw3CY8lmlbKaRkD6EQPJSqKJ> (Last access: 23 May, 2025).

51 Swartz, H. (2025). What is Alternative Dispute Resolution? Available at: <https://highswartz.com/services/adr-alternative-dispute-resolution/family-law-adr/> (Last access: 22 May, 2025).

52 Liakka, A. (2023). Child Custody Disputes in Finland: The Primacy of Mediation. Lawyermonthly. Available at: <https://www.lawyer-monthly.com/2023/09/child-custody-disputes-in-finland-the-primacy-of-mediation/> (Last access: 14 May, 2025).

putants including arbitration, mediation, and collaborative law.

### 5.3.1. Arbitration

Arbitration is a dispute resolution mechanism where parties agree to have their case heard and settled by one or more independent and impartial individuals called arbitrators, rather than going through traditional court processes. Arbitration in Finland is governed by the Finnish Arbitration Act of 1992. This Act establishes the procedures and guidelines for arbitration proceedings in Finland, ensuring that parties have a fair and efficient process for resolving their disputes.<sup>53</sup>

In addition to the Finnish Arbitration Act, the Rules of the Arbitration Institute of the Finnish Chambers of Commerce play a significant role in shaping arbitration in Finland.<sup>54</sup> The Institute, also known as the Finland Arbitration Institute (FAI), is a leading arbitration institution in Finland that offers a range of services to facilitate arbitration proceedings.

### 5.3.2. Mediation

Mediation is a process where a trained mediator facilitates discussions between parties to help them reach a mutually acceptable resolution to their dispute. It focuses on communication, understanding, and finding a common ground to achieve a peaceful and voluntary agreement. Mediation in Finland is governed by the Finnish Bar Association Mediation rules<sup>55</sup>

and the Finnish Act on Mediation,<sup>56</sup> among others. The Finnish Bar Association provides a standard mediation service where a trained mediator, who is an impartial and independent member of the Finnish Bar registered with the Mediation Board, assists parties in peacefully resolving their disputes.

### 5.3.3. Collaborative law

Collaborative law is a cooperative approach to resolving legal disputes, typically used in family law matters, where the parties and their lawyers work together to find mutually satisfactory solutions without going to court. The process involves the use of experts such as psychologists who serve as child development experts, and in some cases, divorce coaches, mental health professionals who help the parties in reaching a resolution.<sup>57</sup> In Finland, Collaborative Law is governed by the Collaborative Law Act, which outlines the rules and procedures for the process.<sup>58</sup>

Family mediation in Finland aims to help separated or divorcing couples resolve conflicts related to child custody, visitation rights, and financial support in a peaceful and collaborative manner. The primary goal is to promote communication, cooperation, and co-parenting agreements that are in the best interests of the children involved. Family mediation in Finland seeks to reduce the emotional and financial costs of litigation, while empowering families to create sustainable solutions that work for everyone involved. Mediation can help families address sensitive issues, improve communication, and work towards a positive and respectful co-parenting relationship after separation.

53 Cupore. (2016). Availability of Alternative Dispute Resolution Mechanisms. Available at: [https://www.cupore.fi/images/tiedostot/pilottitutkimusraportit/pilotreport\\_ds10\\_availabilityofalternativedisputeresolutionmechanisms.pdf](https://www.cupore.fi/images/tiedostot/pilottitutkimusraportit/pilotreport_ds10_availabilityofalternativedisputeresolutionmechanisms.pdf) (Last access: 19 May, 2025).

54 Salsa, P. (2021). IP Litigation and Alternative Dispute Resolution Options in Finland. Berggren. Available at: [https://www.berggren.eu/en/blog/ip-litigation-and-alternative-dispute-resolution-options-in-finland#\\_tf=From%20%251%24s&aoh=17162924200167&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww.berggren.eu%2Fen%2Fblog%2Fip-litigation-and-alternative-dispute-resolution-options-in-finland](https://www.berggren.eu/en/blog/ip-litigation-and-alternative-dispute-resolution-options-in-finland#_tf=From%20%251%24s&aoh=17162924200167&referrer=https%3A%2F%2Fwww.google.com&share=https%3A%2F%2Fwww.berggren.eu%2Fen%2Fblog%2Fip-litigation-and-alternative-dispute-resolution-options-in-finland) (Last access: 19 May, 2025).

55 Cupore, (n 52).

56 Act on Mediation in Civil Matters and Confirmation of Settlements in General Courts. Available at: <https://www.finlex.fi/en/laki/kaannokset/2011/en20110394.pdf> (Last access: 20 May, 2025).

57 Hechtman, S. B. S. (2023). ADR in Family Law: When is it Suitable? Lawyermonthly. Available at: <https://www.lawyer-monthly.com/2023/07/adr-in-family-law-when-is-it-suitable/> (Last access: 20 May, 2025).

58 Lawzana. (2025). About Collaborative law in Finland. Available at: <https://lawzana.com/collaborative-law-lawyers/finland> (Last access: 20 May 2025).

## 6. BENEFITS OF RESOLVING FAMILY DISPUTES THROUGH AN ADR MECHANISM:

- It is confidential and devoid of publicity: as a result of the peculiarity of family relationships and family disputes, resolution of family disputes in most instances requires a very confidential mechanism. ADR is a settlement mechanism that offers confidentiality as a major attribute. This major attribute will encourage parties in family disputes to utilize it, as in most instances, they do not want their family issues to be public;
- It encourages party autonomy: another unique attribute of ADR is party autonomy. Parties are at liberty to decide how they want their disputes to be resolved. They can choose the venue for the disputes, the language, and the person who will help them resolve the dispute;
- It is a speedy means of dispute resolution: ADR affords parties a swift resolution of their disputes;
- It can help to foster communication between parties: the neutral third parties are trained facilitators who aim at helping parties to relate the cause of their disputes with minimal emotional outburst;
- Its process can be tailored towards the needs and concerns of the parties: party autonomy encourages party-based dispute resolution, so parties can have the resolution tailored towards a win-win situation. In that way, all the parties gain from the resolution, and the dispute is resolved amicably.

## 7. THE CHALLENGES OF USING ALTERNATIVE DISPUTE RESOLUTION TO RESOLVE FAMILY DISPUTES IN NIGERIA

- Lack of rules: a potent question that arises for determination is the extent to

which ADR is applicable in Nigeria. In order to make this determination, recourse must be had to the Nigerian legislation, Case Laws, and also reviews by scholars. ADR as a mechanism for resolving family disputes does not have enough legal backing in Nigeria. Whether through statutes or case laws;

- Lack of Awareness: In a country like Nigeria, it has become a settled practice that disputes must be resolved in court. Several people are not aware of the possibility of resolving their disputes out of court. Even when the options are presented, it seems implausible for them to do so. Hence, awareness of ADR is a great impediment to the use of ADR to resolve all kinds of disputes in Nigeria, including family disputes;
- Unenforceability and non-recognition of decisions emanating from some ADR mechanisms: one of the reasons parties to a dispute prefer to go to court is because of the belief that judgments of the courts are more enforceable than decisions reached amongst themselves. The fact that most ADR mechanisms save for arbitration are not binding is an impediment to the utilization of ADR for resolving disputes, such as family disputes whose resolution would have a permanent effect on the status of a person;
- Uncooperative parties: Some parties are not aware of the possibility of resolving their disputes outside the courtroom. Hence, when the option to do so comes in, they refuse to participate. For them, it is either a settlement in court or nothing. These types of people make it difficult for ADR to be utilized in settling family disputes. This is because all ADR mechanisms are built on the fundamental principle of party autonomy. Parties must agree to resolve their disputes through ADR. Where a party is unwilling to utilize ADR in resolving a dispute, the other party cannot forcefully ensure participation.



- The tendency for ADR to be expensive: parties to ADR are saddled with the responsibility of paying the cost of whatever mechanism of ADR they have chosen to utilize. They have to provide the venue and pay the neutral third party that would help with the settlement of the disputes. Sometimes these costs can become unbearable for one or both of the parties to the dispute. For instance, a partner who has been abandoned and is already finding it difficult to feed may not be able to afford mediation as a mechanism to seek spousal maintenance.

## 8. RECOMMENDATIONS

### 8.1. Public awareness and sensitization campaigns

The National Orientation Agency (NOA), the Nigerian Bar Association (NBA), and civil society organisations should initiate coordinated media efforts (radio, television, and social media) to educate the public about the benefits of ADR for resolving family-related disputes. Community outreach through traditional and religious institutions should also be employed.

### 8.2. Institutionalization of ADR training

Legal practitioners, court officials, and social workers should undergo continuous professional development in family mediation and arbitration through statutory institutions like the Chartered Institute of Arbitrators (CIArb), Nigerian Institute of Chartered Arbitrators (NICArb), and legal education bodies. Certification and regulatory frameworks should be developed to ensure professionalism and accountability.

### 8.3. Enactment of a family ADR framework

Nigeria should develop a standalone Family Mediation and Arbitration Act to govern non-litigation family dispute resolution processes. This would ensure procedural clarity and promote the enforceability of agreements arising from ADR processes in family law.

### 8.4. Amendment of the Matrimonial Causes Act (MCA)

The MCA should be amended to explicitly permit the use of ADR mechanisms, particularly for spousal maintenance, child custody, visitation rights, and property settlement, before and during litigation. Mandatory mediation sessions (similar to MIAMs in the UK) should be introduced as a prerequisite to filing family disputes in court.

### 8.5. Legal aid for ADR

ADR services should be included within the scope of legal aid for indigent parties. A government-funded mediation voucher scheme (as piloted in the UK) could be introduced to lower the cost barrier for vulnerable individuals, especially in matters of child custody and maintenance.

## CONCLUSION

The application of ADR mechanisms in the resolution of disputes has long aided in the administration of the justice system. Some factions no longer regard ADR as an alternative but an appropriate resolution process since it provides the most veritable and flexible means of resolving disputes. Although its application is limited due to ADR being particularly unapplicable in the resolution of family disputes.

Several legislations limit the resolution of

disputes arising under them to litigation. This limitation includes family disputes. The inevitability of disputes in every human relationship or interaction requires a corresponding development of the means through which these disputes can be resolved when they arise.

Family disputes remain a type of dispute that ought to be settled in a timely manner to curb damages, destruction, and to breed peace and development. In view of this, there should be the establishment of Family courts to hear and

determine matters relating to children which emanates under a marriage. The High Courts have also made efforts to develop court rules and procedures that will see to the efficient and effective resolution of family disputes. The role of the legislature cannot be underemphasised. They have helped and assisted in the enactment of laws that will assist in the resolution or guide in the determination of issues relating to family disputes.

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