

## Rethinking Mediation as a Viable Alternative Dispute Resolution Mechanism in Effective Conflict Management

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**ABSTRACT:** The realm of Alternative Dispute Resolution has expanded dramatically due the setback court system brought justice to delivery across the globe. The study examined mediation as a viable alternative dispute resolution mechanism in effective conflict management. The work adopted a change management theory as its theoretical structure. A descriptive method of research was adopted to carry out the task of the paper. Hence, data gathering is limited to secondary sources. The study found that mediation has become an efficient process of resolving disputes with almost maximum record of success due to its compassionate disposition, satisfactory decision, legitimacy, and cooperative tenet among others. Despite its overwhelming merits over litigation, a number of flaws among perception of favouritism, inadequate training, lack of precedent, and uncertainty outcome were identified by the work. The study concluded that reawakening of mediation process as a means of conflict resolution was to assist in identifying and healing the inadequate court system. The study recommended general awareness of the principle of mediation to dispel perception of favouritism, effective and constant training of mediators, documentation of cases handled by mediation center and binding mediation process. Greater publicity the existence and activities of mediation process is also pivotal.

**Keywords:** *Alternative Dispute Resolution, Conflict Resolution, Justice Delivery, Litigation, Mediation.*

## **INTRODUCTION**

Conflict is inevitable in all human interactions and relationships due to different interest. The reality of mankind to live with conflict has brought man to seek for means of resolving conflict. The quest for peace through the resolution of conflict has therefore become the primary responsibility of mankind. In the traditional setting across the world, Alternative Dispute Resolution (ADR) mechanism was one of the foremost means of resolving conflict (Adedeji, 2021).

ADR was adjudged to be fair and peaceful. Nevertheless, modernisation swept the process to the background through the introduction of formal justice system. Court system, instead of addressing the problem of conflict compounded it. Court system is constantly apprehensive with challenges of delay, corruption, excessive cost, rigid formalistic procedure, mono-track nature and adversarial nature of litigation (Kisi, et al, 2020).

A fair and efficient process for resolving disputes is crucial in any civilised society (Rahman, 2012). Success record of ADR in traditional setting paved way for mediation mechanism. It has been argued that mediation has link with Confucianism, as the philosophy of the duos of Confucianism and mediation is in essence one harmony, of peace and compromise resulting in a win-win approach (Rahman, 2007).

It undeniable that mediation has been playing an essential role in contemporary conflict resolution, as evidenced by the quickly growing corpus of literature. Since 1945, mediation has reportedly taken place in 70% of all conflicts worldwide, and the presence of third-party mediators increases the likelihood of a peace deal being reached by six times (Bercovitch and Gartner, 2009).

The outcome of mediation is a model of conflict management that reveals that conflict is dynamic when the right strategy with skilled human resources is applied (Adedeji, 2021). The study examined mediation as a viable alternative dispute resolution mechanism in effective conflict management.

## **Literature Review**

### **Conceptualizing and Discussing Mediation**

Mediation is a problem-solving negotiation process in which an unbiased third-party helps the disputants arrive at a mutually agreeable negotiated solution (Goodpaster,

1997 cited in Aiyede, 2006). It is a neutral third-party who helps the disputing parties to a voluntary and amicable resolution of the issue with little or no influence over decision-making. Both mediator and parties work together, while the mediator controls the process, the parties decide the outcome.

The Centre for Effective Dispute Resolution (CEDR) also delineates mediation as “a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of the resolution” (Carroll, 2004).

Practice Standards (2007) described mediation rather than defined it as a procedure in which the disputing parties, with the assistance of a mediator, identify problems, devise solutions, weigh possibilities, and decide on course of action and results. The mediator serves as a neutral third party to help the parties come to a decision.

Neutrality is a fundamental component of mediation practice (Douglas, 1999). The inclusion of neutrality in the concept of mediation theory and practice has become a growing contentions due to lack of compelling theoretical framework for its comprehension. Yet, one important determinant of a successful resolution of any conflict is the neutrality of the mediation process.

Notwithstanding, Carment and Rowlands (2001) argued that there is high proportion that mediation process will succeed in some instances where a mediator exert power. Hence, mediation could be operated on two different forms which are pure mediation and power mediation. Mediation can also take forms of unbiased and non-coercive diplomacy to political leverage and occasionally force to compel agreements on the disputants.

Beardsley (2011) affirmed that parties are motivated by self-interest to use mediation as a dispute resolution method. According to him, mediation is more likely to occur in situations where there is a mutually hurting stalemate which is ‘a protracted crisis with high level of intensity’. Recent research has found a few unique guiding principles called ‘values of mediation’ which make mediation different from litigation. This value system dictates the mediator’s performance, serves as a

direction to address some of the ethical dilemmas faced during mediation process, and as checks and balances to mediators. These values includes:

- ❖ **Self-Determination:** This is the ability of both the mediator and the parties to make free and informed choices in the mediation process. The parties have right to choose mediator of their choice, pull out of the process when feel to withdraw as well as sign the settlement agreement without any compulsion. Mediator also has the right to direct the process in the best format without any external influence (European Code of Conduct, 2018). However, this principle of self-determination is breached in some countries where the law of the nation requires parties to submit their conflicts to mediation process as a first port of contact. In essence, mediation is predicated on the disputants' voluntary and active participation in the process.
- ❖ **Neutrality:** Neutrality entails having no special links to either party, refraining from getting involved in the dispute and avoiding any contact with either party. Neutrality enhances the mediator's authority before the disputants who needed to be treated equally. Mediator must not align with any of the parties.
- ❖ **Impartiality:** Impartiality seems familiar with the concept of neutrality; nevertheless it has a distinct meaning in applicability. Impartiality signifies "objectivity and fairness" shown to parties during mediation process (Morris, 1997). To be objective is to focus on facts rather than being influenced by feelings or opinions. Mediator is obliged to decline mediation if he cannot conduct it in an impartial manner.
- ❖ **Confidentiality:** It is the secrecy value attached to the mediation process (Burnley and Lascelles, 2004). Confidentiality builds parties' trust. Mediator is not expected to divulge any secret he is opportune to during the caucus meeting except with the permission of the party for settlement purpose. Preservation of confidentiality enhances chances of reaching a solution without undermining any of the parties' rights.
- ❖ **Non-binding Character:** Parties are not bound by any proposal made during the negotiation. A party can credibly commit to walk away from negotiations.

Agreement in mediation can only become binding when it is signed by all parties, as mediator serves as a witness (Onyema and Odibo, 2017).

Thus, mediation offers a number of opportunity, including the chance for parties to define and explain concerns, comprehend differing viewpoints, identify interests, investigate and evaluate potential solutions, and, if desired, come to a mutually agreeable conclusion (Rahman, 2012).

### **Theoretical Framework**

The study adopted change management theory in explaining the efficient of mediation as Alternative Dispute Resolution mechanism in effective conflict management. Change is a process of transformation from one state to another as initiated by specific factor (Schalk, et al., 1998). Change management is a systematic way of moving from an archaic state to modern productive state in attempt to achieve certain goal of the organization. Change though not pleasant, is a certain fundamental part of life and it is a constant phenomenon.

The theory found that mediation affords disputants with justice. The speed of the process, the informality of the settings, responsiveness of the process to the parties, and its accessible are all indicators of justice. Effective change management supports a smooth transition from old to new while preserving the standard and the objective of the society.

The theory is appropriate to the subject of the study as it enables stakeholders to examine the doctrine of litigation and mediation, and hence permits people to access the overall impression of a change. It predicts the success of the harmonisation of mediation into the judicial reform. The excessive procedures of formal justice system call for a reform in the justice system, as mediation becomes an answer to some identified setbacks of the court system.

### **Methodology**

The work adopted descriptive method of research. Due to the historical nature, the study utilized secondary materials as its sources namely, textbooks, journals, magazines, conference papers, newspapers, works of eminent scholars, and archival materials from various related topics of Alternative Dispute Resolution.

The presentation and analysis of data entailed a chronological and thematic presentation of the work in line with the historical method. The reality of the matter is that the subject of conflict resolution and justice reformation is a reflection of the complex nature of human interactions which has impacts on all aspects of social relations, and this has been comprehensively examined.

## **Result and Discussion**

### **Types of Mediators and Mediation**

The operational modalities of mediator can occur on three levels namely:

**1. Social Network Mediators:** These are members of the social group within which the dispute is taking place. Their intervention may have been prompted by the strong social relationship they shared. The mediators may be a friend, neighbour, or someone from the same political group(Aiyede, 2006). Peace for mankind informs their motivation, while their interest is to promote non-violent relationship among the group (Gourlay and Ropers, 2012). They are perceived to be fair but not necessarily impartial. They are regarded as “insider partial mediator”in conflict resolution. The mediator gets the cooperation of the disputants because he is considered trustworthy.

**2. Authoritative Mediators:** These consist of mediators who occupied position of authority well known, recognized and respected by the disputants. The process under them is sometimes described as “mediation with muscle”. The mediators possess enormous power and clout to deal with the parties and the conflict, in the sense that they can persuade and as well enforce mediated agreement (Gourlay and Ropers, 2012). The “authority of the mediator in this kind of situation is dependent on his access to resources which disputants value so much. Those in this category are usually appointed, empowered and funded by international or national government (Ebimaro, 2008). It is also referred to as “power-based or deal brokering” mediator.

**3. Independent Mediators:** They are completely objective, impartial individuals who have no vested interest in the outcome of the dispute with little or no authority to make decisions. They assist the parties in coming to an amicable resolution. Their objective is restoration of peace.They finance the process with their resources. They could be appointed or involved based on voluntary initiative (Ebimaro, 2008; and

Gourlay and Ropers, 2012). They could be respected former national or international public officers or professionals who run mediation. They are regarded as “outsider mediator”.

There are also several varieties of mediation over the years amongst:

**1) Facilitative Mediation:** Facilitation and fact-finding are a concept similar to mediation that entail an impartial, independent third-party who simply helps the parties in identifying issues and viewpoints but has no authority to enforce any solutions (Law Reform Commission, 2008). The parties and the mediator work together to reach a resolution. He uses the identified interests to analyze the options for resolution and base on this, given his own opinion as to the likely outcome of the case if get to court. He occasionally holds joint sessions with all parties, as well hold caucuses regularly for possible compromise and settlement.

**2) Media Mediation:** The establishment of media mediation is a result of the ongoing demand for justice and a peaceful society (Hawes and Kong, 2013). Media mediation is an open ADR method where disputes are resolved over radio or television. Although the program is very traditional, it is not constrained by precedent. Law also has little significance in the process. Cases under the jurisdiction of the process include family conflicts, inheritance, contracts, and misuse of power by those in high positions. Free or low cost, education, information, speed, flexibility, fairness and morality are few of the benefits of the process. The process is hindered by lack of enforcement power, lack of experts, inadequate funding, and lack of official recognition despite endorsement. Nevertheless, media mediation is seen as a valuable and successful method of disseminating the message of social harmony and defusing social conflicts, making it a hopeful solution to disputes.

**3) Shuttle Mediation:** It is the process of mediation in which a mediator assists the disputants to reach agreement without "face to face". This can be done in two different ways, one of which the process take place at the same time by being present at the same location but in different rooms, or through a communication device, and the other is when the mediator make a series of contacts with each party over a period of time (Boulle and Nesic, 2001). The problem is that shuttle mediation is less effective at achieving an agreement. Despite its obvious drawbacks, shuttle

mediation may be the only viable method of mediation available to the parties in some circumstances. It is widely common and take place within the political parties engaging in disputes.

**4) Evaluative Mediation:** This method is designed for settlement conferences presided over by judges who assist the parties in achieving a settlement by highlighting the advantages and disadvantages of each side's point. The mediator's assistance in settling disputes is more or less consultative in character. They provide structure for the mediation and have a real impact on how it turns out. Most frequently, the parties are present during the mediation. Both the parties and their attorneys may meet with the mediator, as well as the attorneys alone. As the evaluations are based on legal principles of fairness, the mediators are more concerned with the parties' legal rights than their wants and interests. It is assumed that the mediator has knowledge of the dispute's core issues or relevant legal knowledge (Aiyede, 2006).

**5) Peer Mediation:** It is a type of mediation whereby young people, trained in the act of mediation to mediate in the dispute of their own age group. It is often common in school settings to resolve disputes between peers, or between students and teachers in a way that is beneficial to both parties. It can be initiated either by students or staff (Strawhun, et al., 2014). The disputants are joined by two appointed mediators with an adult guiding the process constructively. Failure to resolve the dispute, it is reverted to the school authority for higher administrative action. It is a new development that if embraced, will be of great help to age group, schools and the country as a whole.

**6) Transformative Mediation:** It aims at recognizing and empowering all parties (Bush and Folger, 1994). It acknowledges the needs, interests, values, and points of view of each side. The process has the potential to change all parties' relationships during the process. The mediators meet with all parties present in order to establish recognition. While the mediator follows the parties' direction, they control both the mediation's course and its conclusion.

**7) Therapeutic Mediation:** It is a combination of two essential words. Therapeutic is a process that leads from emotional distress to emotional relief while mediation is



a process which a mediator assists two opposing parties in resolving issues in dispute (Heitler, 2000). Thus, therapeutic mediation is emotional healing plus an agreement on a plan of action. It is a method of evaluation and therapy that helps families manage emotional problems in high-conflict situations involving separation and divorce. It gives parties opportunity to evaluate their current situation thereby maintaining peaceful relationship through transformation despite numerous obstacles.

**8) Community Mediation:** It is a mediation process that is created to address specific problem in a target community. It is improved upon as the mediator gain more experience. Some of their activities and kinds include neighbour mediation which is between individual neighbour or group of neighbour in dispute; homeless and intergenerational mediation which is between young people at risk of home and their parents; street mediation: between young people and others in the street; and work place mediation mainly for staff and management or between two staff. Other types are group mediation usually between two or more opposing groups in the community; school mediation which is training ground in nature and support peer mediation; and training service which is solely to provide training for groups and individuals (Lederach and Thapa, 2012).

### **Attributes of a Competent Mediator**

The effectiveness of a mediator depends on the academic background, experience and the inborn abilities. Uwazie (2011) and Oluyemi (2017) highlighted the following characteristics of an effective mediator:

- (1) **Persuasive and Non-Judgmental:** Mediation is known with persuasion. Competent mediator must have the gift of persuasion rather than judgmental, to reach mutual settlement.
- (2) **Effective Communication Skills:** Mediator is an active listener in mediation rather than passive listener. He must be able to adapt to interpersonal and communication skills. Non-verbal communicative style such as smiling, nodding, hand shake, eye contact, relax sitting posture etc., should be used to the advantage of the parties in mediation.

- (3) **Competence and Flexibility:** Mediator must be brilliant in nature and attitude. He must have good knowledge of mediation process, versatile and articulate in handling complex cases. Alertness and articulation with concentration are part of prerequisites of a competent mediator. He should be someone who can reason and yield along the pace and dynamic of the conflict.
- (4) **Patient:** He must be a man who tolerates and can bear the brunt of the parties' healthy ventilation of spleen and frustration. He must always be calm. Mediator should not be tense even when parties do.
- (5) **Respected Person and Have Respect for the Parties:** Being a man of honour in the society is a plus. He is expected to respect all stakeholders to a conflict. Respect does not mean mediator must agree with the values, opinions, or behaviour of any of the parties but must accept each party equally.
- (6) **Ability to Balanced Approach to Control the Process:** This is the mediator's ability to recognize his own bias and deal with it. It could be total eradication of bias syndrome or reduce it to the barest minimum. A competent mediator must be able to deal with his own weakness to avoid destroying the reputation of the process.
- (7) **Builds Rapport and Keeps the Process Credible:** This is meeting the needs of the parties by empathising them for parties to feel free that their value and belief are recognised and acceptable. This will lead to trust on the side of the parties which will produce a credible process.

### **Factors Affecting Mediation Outcome**

Outcome is mainly a result of interpretation of a given phenomenon. Outcome in mediation is determined by the contribution of the process to either de-escalating or escalating conflict. The following elements affect the outcome of mediation process:

**1. Relationship of the Parties:** The parties' prior relationship is the variable that represents this. Parties who were once friendly have the best probability of success in mediation, whereas parties who have previously antagonistic have the worst odds (Bercovitch, et al., 1991). As a result, a tense relationship in the past could make things worse and thwart reconciliation efforts.

**2. Internal Characteristics of Each Party:** This category includes a significant number of elements that influence the mediation's course and result such as regime type, internal cohesion, and international capability. While non-democratic regimes will need to utilize force or other more forceful measures, to resolve conflict, and hence a relapse in a future time (Bercovitch, 2006).

**3. Power Relationship between the Parties:** There is tendency that mediation will succeed in symmetry power relation between the parties, while it may likely lead to brick in a disparity power relationship. The powerful party might not be prepare for any concessions or compromises that are necessary for mediation success (Bercovitch, et al., 1991). Mediator needs to create a level and fair playing field for parties in mediation.

**4. Nature of the Conflict:** Intensity and the issues of the conflict reveal unique characteristic of each conflict. Addressing few issues may likely lead to success than when the issues are too many to address. There is no consensus whether high-intensity or low-intensity conflicts will lead to success. Any mediation that covers many topics may burden the parties and the settlement too much (Hoffman, 2009), and in such scenario failure is imminent. Also achieving mediation success will likely be easier in low-intensity conflicts. On the issue of context, scholars believed that mediation activities might be seriously hindered over intangible issues such as beliefs, core values, and identity which have high intensity escalation (Bercovitch, 2006).

**5. The Number of Previous Mediation Attempts:** Multiple mediation attempts may be made in a conflict, either by the same mediators or by separate ones. Previous attempts at mediation will undoubtedly provide crucial information for subsequent attempts (Bercovitch and De Rouen, 2004). It denotes that multiple mediation attempts will definitely have a favourable impact on the outcome of current mediation process. On the flip side, in situations of internationalized ethnic disputes, several mediation attempts by the same mediator may lower the likelihood of a successful mediation.

**6. Timing of Mediation Initiative:** There is ongoing debate of the right time to initiate mediation process in the life cycle of conflict. To some, intervention can be

initiated at any stage, early stage or late intervention. However, mediation success is assured when both parties differently experience mutually hurting stalemates (Touval and Zartman, 2001). A mutually hurting stalemate is a situation conflict is costing both parties valuable things and were uncomfortable with the situation (Adedeji, 2022). Convincingly, mediation will produce expected good result during mutually hurting stalemate.

**7. Mediator's Characteristics:** Mediators do come from various backgrounds with different interests in a specific conflict. There is need to discover the nature of mediator whether he is really a third-party or not. It is possible for a mediator not to qualify as a third-party. A mediator is only qualifies if he did not have an interest to the conflict. Bercovitch and Houston (2000) observed the debate about the importance and essence of neutrality and impartiality of mediator in international mediation. Practically, the success of the mediation will depend on the impartiality and the neutrality of the mediator.

**8. Mediator's Approach:** The goal of a mediation process is to change the relationships between the parties and certain components of the conflict (Bercovitch and Houston, 2000). Directive, procedural, and communication-facilitating methods are the three primary categories of mediation tactics. The mediator needs to do an analysis of the conflict to choose the best option that match a given conflict. It is therefore pertinent that a competent mediator will be able to assimilate any of the three strategies to a specific conflict. Applying the appropriate strategy in a conflict situation will likely lead to successful outcome.

### **Mediation Processes in Conflict Resolution**

The main subject of this section is practical step-by-step procedures of mediation process. According to Ebimaro (2008) and Aroyewun (2017), third party conflict resolution can be handled in the following eight steps:

1) **Initiation:** The process begin by presenting cases to the mediation centre in order to gather sufficient information. Mediation can be initiated by anyone or any organization. A written petition could be submitted, simply walk-in or phone call to a mediation center. Additionally, it can come through a government agency popularly called "referral", or a court order.

**2) Preparation:** The parties and the mediators need to be adequately informed of the issues at stake. The mediator need to have a thorough understanding of the parties' power dynamics, status and authority, as well as their respective cultural, religious, and ideological differences. Critical evaluation of the conflict situation takes place to discover all important characters to the actualization of the goal of the mediation. In analysis of the conflict, care must be taken to avoid wrong diagnosed.

**3) Introduction:** The mediator identifying the issues and the parties' interests as the main process gets underway. The purpose of introduction is to deal with and allay the fear of uncertainty, and make parties feel comfortable to participate and trust the process. He develops tactics for inspiring all sides to continue the negotiation. The introductory aspect belongs to the mediator. Mediator must exude confidence and demonstrate that he is in charge of the process (Aroyewun, 2017).

**4) Problem Statement:** It is the first chance the parties have to express the rage, frustration, and hostility resulting from their disagreement. Typically, the 'complainant' is given the first chance to present his case, while the mediator listens with rapt attention and keeps interruptions to a minimum. He notes any sensitive parts of the statements, seeks clarification, and may do a summary of the discussion to convey the understanding of the issues to the parties. Each side is obliged to remain calm and refrain from interfering with the other side's message at this point.

**5) Problem Clarification:** The mediator at this steps identifies the strengths of each side in turn. He uses a variety of techniques to getting the parties' attention and cooperation. The attention of the parties must be shifted from the causes and effects of the conflict to way of adjusting present and future conduct for permanent resolution. While trying to elucidate issues, the message of the mediator must be consistently motivational with persuasive tone. The mediator uses questions to get clarification and identify areas of agreement and disagreement. For easy control of the process, parties in collaboration with the mediator need to have an agreed list of issues to be discussed.

**6) Evaluation of Alternative:** In this phase, the mediator and the parties come up with a number of potential resolutions. The mediator needs to encourage direct communication between the parties as they come up with options. Group conflict is

promoted by the mediator's open and non-judgmental proficiency. In a group conflict, the parties are divided into mixed caucuses of representatives from each group to collaborate in scaling down areas of utter disagreement and consider simpler options for resolution.

**7) Selection of Alternatives:** Issues that would be advantageous to all parties are cooperatively chosen and negotiated under the mediator's guidance. The mediator by training is supposed to be able to read the parties and the direction of their choices, and as a result, guide them to make out viable choice (s) from the pool of alternatives. Mediation proceeding may end in three ways:

- 1) Parties might agree on settlement which will be incorporated into a written agreement.
- 2) Parties might not reach an agreement, which finally closes the session.
- 3) It can be adjourned by the agreement of both parties in collaboration with the mediator. The adjournment is an opportunity for the mediator to get additional information as regard the conflict and the parties.

**8) Agreement:** It is the last stage which involves drafting of the negotiated agreements. All stakeholders in the conflict jointly convene with the mediator to draft the agreement. Agreement, including the "don'ts," are clearly summarized in the contracts and expressed in clear language. There is no formal agreed written agreement, despite this it has a standard. Hence, the study adopts the combination of Aroyewun (2017) and the Republic of India (1999) format:

- Use active word as far as possible; this will clearly specify and identify any agreed obligation and the party who has the obligation to perform;
- Separate the elements of the agreement by assigning different number to each element;
- Write out any dates which are part of the agreement and this should not be abbreviated to avoid misapprehensions;
- Write out the amounts of any item to be paid in naira and in words, where applicable;
- The written agreement should be specific and avoid legal jargon so as not to leave room for ambiguity;

- Be complete in recitation of terms; and
- Ensure the terms of the agreement are executable in accordance with law.
- Each party is entitled to a copy of the resolution.

Upon the completion, both mediator and the parties go through it and make necessary corrections where applicable. To become a binding and enforceable document, all the disputants must append their signature to the mutually acceptable settlement agreement while the mediators serve as witness (Onyema and Odibo, 2017). In addition, each party is entitled to a copy of the resolution.

### **An Assessment of Mediation in Conflict Resolution**

Mediation is becoming a driving force in justice system as the populace are getting familiar with its usage. Some identified advantages are highlighted:

1. In order to keep the disputants' continuous trust, respect and long-term interests, mediation adopts a compassionate disposition (Rhodes-Vivour, 2008). Mediation has become a compassionate tool to assist, prevent, manage, and resolve conflict.
2. Due to cooperative approach, decision is satisfactory. Cooperation thus encourages finality and satisfies their underlying wants and interests, thus compliance (Rhodes-Vivour, 2008).
3. It is informal and adaptable since only the rules and laws that the parties and the mediator agree upon are binding. The norms of the procedure lends to its legitimacy, integrity, and widespread acceptance.
4. Absolute participation of parties in the mediation under the guidance of mediator. Opportunity for the parties to determine the resolution of their legal dispute makes the process proportionate.
5. As mediation is cooperative, disputes are resolved amicably as solutions are jointly arrived at, not imposed. Hence, the process replaces antagonism, tension, and mistrust (Ogunyannwo, 2016).

Despite the preponderate identified strengths of mediation over litigation, there are some identified flaws in the mechanism as outlined below:

- 1) The perception that mediation is partial is one of the common reasons why it fails. A mediator could also be seen as favouring one side over the other or more concerned with his own agenda than the interests of the disputants.
- 2) It is believed that majority of mediators does not have the necessary and adequate background of the mechanism of mediation as majority of them are not well trained as effective mediators.
- 3) As mediation procedure does not give room for precedent, so also outcome is not made available to the public (Ebimaro, 2008). In view of this, evaluating mediation's effectiveness is tasking.
- 4) Due to informality of mediation, the process can be stalled by the parties at any stage, hence the process becomes an added expense and time wasted.

### **Conclusion and Recommendations**

The reawaken of mediation as a method of resolving conflicts resulted from the failure of court system. The study established that mediation and other ADR processes existed, and viable in traditional settings which was destroyed by the introduction and imposition of court system by modernism. The work noted that the resolution of dispute through mediation is operated on the basis of compassionate. Stakeholders are believed to be satisfied with mediation process as it affords active participation in the decision-making process of their own case.

The adopted theory, change management canvassed mediation to be used to assist in identifying and healing the inadequate court system, as the practice of mediation has brought radical reduction of the cases in the docket of court. Despite remarkable successes of the process, the study found a lot of defects in its practice. To address the flaws, the following passionate recommendations were made:

- (1) There is need to work on the perception of the populace that mediation is objective rather than been partial as campaign by the critics. Critics should be made to know that cooperation of the parties is the key to the resolution of conflict.
- (2) Training and re-training of mediators to meet up with the dynamic nature of 21<sup>st</sup> century disputes is fundamental to arm the mediators with quality technique.



- (3) The nature of mediation not allowed for the establishment of precedents does not make the evaluation of mediation effectiveness tasking. However, mediation centres do document cases handled and anonymised the parties due to private nature of the process.
- (4) The option of discontinuing from the ongoing process of mediation should be discouraged to allow parties to take the process seriously, while its mutually acceptable settlement must be duly enforced.

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