

The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC

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Abstract

In 2002 the Lagos Multidoor Courthouse (LMDC) opened its doors to the public. The MDC scheme is designed to provide alternative dispute resolution processes for the resolution of various disputes, as part of the public justice system. An empirical research into the effectiveness of the scheme in Lagos state was carried out in June 2012 and this article/report presents the findings of and recommendations from the research.

Introduction

There is a growing concern in the countries of the West African sub-region of the inadequacies in the current mechanisms of dispute resolution available to litigants. The primary dispute resolution process in countries of the West African sub-region is litigation, a mechanism of the state and its formal justice system. The inadequacies of litigation are evidenced by the congestion of their courts which invariably leads to delays in the delivery of justice to their citizens. These inadequacies can largely be attributed to the retention of (i) a mono-track dispute resolution process (litigation) which is alien to the cultures of practically all communities in these states, and (ii) a large uneducated and poor population of the citizenry of countries of the sub-region which impact on access to and understanding of the received formal justice system.

One way of overcoming these inadequacies is the provision of a multi-track dispute resolution system which incorporates litigation and other alternative dispute resolution processes.¹ This is based on the premise that litigation is not the only mechanism for resolving disputes. However, various African states have since colonial times adopted litigation as the primary mechanism for resolving disputes. The traditional methods of resolving disputes in African communities did not involve state funded litigation though it included various other mechanisms for resolving disputes,

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¹ See Kehinde Aina, "The Multi-door Courthouse Concept: Taking Lawyers out of the Court?" in Azinge E & Ani C, Principles of Negotiation and Mediation, NIALS Publ, 2012, pp 263-264.

such as mediation and customary arbitration.² Therefore the resolution of disputes through other mechanisms other than litigation is not foreign or alien to African communities.³ It has become necessary to resort to these other mechanisms to find answers to some of the inadequacies of the current situation in the state justice system. This recognition may partly explain the increase in the promotion and use of alternative dispute resolution mechanisms in the private sector though primarily for the resolution of commercial disputes. In Lagos state, the Multi-door Courthouse (MDC) scheme is designed to provide this multi faceted approach to mechanisms for the resolution of disputes not as a private system, but as part of the formal justice system of the state.

The School of Law, SOAS University of London (SoL) funded this empirical research which analyses the functionality of the Lagos Multi-door Courthouse (LMDC) scheme which is created by statute, the Lagos Multi-door Courthouse Law of 18 May 2007. Section 1(2) (b) of the Law describes the LMDC as “a court-connected Alternative Dispute Resolution Centre...” with the overriding objectives⁴ to:

- (a) Enhance access to justice by providing alternative mechanisms to supplement litigation in the resolution of disputes;
- (b) Minimize citizen frustration and delays in justice delivery by providing a standard legal framework for the fair and efficient settlement of disputes through Alternative Dispute Resolution (ADR);
- (c) Serve as the focal point for the promotion of Alternative Dispute Resolution in Lagos State; and
- (d) Promote the growth and effective functioning of the justice system through Alternative Dispute Resolution methods.

The LMDC scheme therefore makes available to litigants alternative methods of resolving their disputes, as part of the formal justice system of Lagos state and has been in operation since 2002.⁵ This research project empirically analyses the performance by the LMDC of its above listed

² See for example, Allott A., Essays in African Law, Butterworths, 1960, pp 117-149. See also Kehinde Aina, *ibid*, 2012, pp 266-268 for some examples of these traditional dispute resolution processes as practised by the Yoruba, Igbo and Hausa communities in Nigeria

³ These ADR processes have in modern times become popular through adoption and literature primarily from the USA and other Western countries. Even the MDC concept is an American invention ascribed to Harvard Law Professor Frank E.A. Sander, “Varieties of Dispute Resolution”, in Levin A.L & Wheeler R.R (eds), The Pound Conference: Perspectives on Justice in the Future, West Publishing, 1979, pages 65-87.

⁴ See s 2 LMDC Law.

⁵ See the LMDC website available at <http://www.lagosmultidoor.org/> (accessed on 10 September 2012).

overriding objectives⁶ from its inception in 2002 to year end of 2011, which is the reporting period for purposes of our research.

This report is divided into four main sections examining the hindrances to access to justice in Nigeria (A); the main report from the research (B); analysis of data from the research (C); and the conclusion and recommendations from the research (D).

A. Hindrances to access to justice in Nigeria

There are several hindrances to access to justice generally as examined in the vast literature on the subject however for purposes of this research and after careful examination of the dispute resolution map of Nigeria, the two main hindrances to access to justice, a mono track dispute resolution system (A1) and delay arising from court congestion (A2) are examined especially as these are the gaps which the MDC scheme seeks to fill in the justice system.

A1. Mono-track process

As already mentioned the primary dispute resolution process available to litigants through the formal justice system is litigation before the courts.⁷ In Lagos state, litigants institute civil disputes at the High court or Magistrate court depending on the monetary value of the dispute or statutorily conferred jurisdiction in respect of specific subject matters.⁸ From statistics provided by the Lagos State Judiciary for the period between 2008 and 2010 for example, 16,072 civil cases were filed before the Magistrate courts while 25,807 civil cases were assigned in the High court.⁹ According to the Constitution of the Federal Republic of Nigeria, appeals lie from the Magistrate court to the High court then to the Court of Appeal and finally to the Supreme Court of Nigeria.¹⁰ This statistics evidence the huge volume of disputes that come before the Lagos state courts. Litigants have the constitutional right to represent themselves though in practice this is the exception and not the norm, thus necessitating the involvement of legal practitioners in the litigation process.¹¹ In a country with a 35% illiteracy level, representing 56 million members of the (approximately 160 million) population, it is evident that a large majority of the population will lack any understanding of

⁶ Objective (c) is not analysed in this research.

⁷ In addition to litigation there are other adjudicatory and semi-adjudicatory services such as tribunals and ombudsman funded by the state.

⁸ See the Lagos state Magistrate Court Law 2009.

⁹ Available at <http://resourcedat.com/resources/DIGESTOFSTATISTICS2011-01.pdf> (accessed 07 September 2012) more particularly pages 243-249.

¹⁰ See ss 233, 241-245 & 272 of the 1999 Constitution available at <http://www.nigeria-law.org/ConstitutionOfTheFederalRepublicOfNigeria.htm> (accessed 07 September 2012).

¹¹ See s 36(6) (c) of the 1999 Constitution.

the highly formalised litigation process.¹² This also impacts on cost of accessing the process, which includes costs of filing and the fees of the lawyers. It is important to note in relation to costs, that as at 2010, 69% of Nigerians lived below USD1.00 per day.¹³ Thus illiteracy and poverty of large sections of the citizenry may have a significant impact on the lack of access to justice in Nigeria.

The judiciary and legal practitioners in Nigeria appear to now realise that not all types of disputes are suitable for resolution through the process of litigation which can be acrimonious and consequently have a negative impact on community and family cohesion. The private sector in exploiting this new frontier now has a number of providers of alternative dispute resolution processes while many lawyers in Nigeria are also joining the alternative dispute resolution revolution and retraining themselves as neutrals to serve in the roles of mediators, arbitrators and conciliators.¹⁴ All these show that there is a need for the states in Nigeria to explore the possibility of providing multi-track processes for the resolution of disputes within their various justice systems. It is anticipated that this will give their citizens the option of using more cost effective and less complicated processes of dispute resolution.

A2. Court congestion and delay

Litigation being the primary mode of resolving disputes invariably leads to the congestion of the courts as its sole providers. As at April 2012 Lagos state has fifty-four (54) High court judges and one hundred and eight (108) Magistrates¹⁵ to serve an estimated population of 20.5 million people.¹⁶ These data shed some light on how overworked the judges and magistrates are and this situation is not peculiar to Lagos state but replicated throughout the country.¹⁷ One effect of this situation is the congestion of the dockets of these courts which invariably leads to delays in the machinery of justice

¹² For more details see the Worldbank literacy rate data available at <http://data.worldbank.org/country/nigeria> (accessed on 07 September 2012).

¹³ John C. Anyanwu, "Accounting for Poverty in Africa: Illustration with Survey Data from Nigeria", African Development Bank Group Working Paper No 149 of May 2012, available at http://www.afdb.org/fileadmin/uploads/afdb/Documents/Publications/WPS%20Nos%20149_Anyanwu_Clean.pdf (accessed 07 September 2012). The data from the Nigeria National Bureau of Statistics states that 112 million Nigerians lived below USD2.00 per day in 2011.

¹⁴ For example, data from the Chartered Institute of Arbitrators show that as at September 2012, 987 Nigerians hold various levels of membership of the Institute and most of these are already lawyers.

¹⁵ Data from the Lagos State Judiciary available at http://www.lagosjudiciary.gov.ng/JIS/state_court_system.aspx#3 (accessed 07 September 2012).

¹⁶ Data from the Lagos State Bureau of Statistics available at <http://resourcedat.com/resources/DIGESTOFSSTATISTICS2011-01.pdf> (accessed 07 September 2012).

¹⁷ In addition to the High and Magistrate courts, Lagos state has various tribunals such as the rent tribunal, and a Citizens Mediation Centre (CMC) which between 2008 and 2010 handled 77,954 cases as stated in the statistics available at <http://resourcedat.com/resources/DIGESTOFSSTATISTICS2011-01.pdf> (accessed 07 September 2012) particularly pages 250-253.

in Lagos state.¹⁸ In Nigeria generally, it is common for litigants to spend between five (5) and twenty (20) years from the time a civil matter is filed in a court of first instance to its final determination.¹⁹ This time period includes possible appeals through the hierarchy of the various courts to the Supreme Court. Such inordinate delay not only restricts access to justice but may lead to a denial of justice.

The MDC scheme was designed to remedy these two primary defects of litigation with a view to enhancing access to justice through the utilisation of various alternative dispute resolution mechanisms. What makes the MDC scheme unique is that it is designed to provide alternative dispute resolution (ADR) processes within the portfolio of the state judiciary. This creates many pathways or tracks, in addition to litigation, provided to litigants by the state justice system. In the words of Professor Sander, “one might envision ... not simply a court house 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”.²⁰ In Nigeria the MDC scheme is promoted by the Nigerian Conflict Management Group (NCMG).²¹

B. Main Report

This section examines the purpose (B1); objectives (B2); the methodology (B3); and the summary of the findings (B4) from the research.

B1. Purpose of research

This research empirically analyses how the Lagos Multi-door Courthouse (LMDC) scheme currently functions and the challenges before it as it strives to effectively attain its set overriding objectives. This is necessitated by the fact that the LMDC is a model scheme so the research findings will inform the adoption of the scheme, whether in the LMDC format or other modified format, by other states in Nigeria or other countries in the West African sub-region.

B2. Research objectives

The research objectives are to:

¹⁸ This situation is not peculiar to Lagos state but is the same in all states of the Federation.

¹⁹ Examples of three unusually long delays are the following cases which in 2003 were still pending before the Lagos High Court: A.J. Lawal & Another v A. Santos, Suit No LD/469/77 (26 years); S.A. Abudu v Alhaja T. Ogunbambi & Another, Suit No LD/89/74 (29 years); and Sipeolu & Another v AIICO Engineering Group Nigeria, Suit No LD/89/74 (25 years).

²⁰ F.E.A. Sander, “Varieties of Dispute Resolution”, in Levin A.L & Wheeler R.R (eds), *The Pound Conference: Perspectives on Justice in the Future*, West Publishing, 1979, at page 84.

²¹ The MDC scheme has been adopted in the Federal Capital territory, Abuja, Kano, Abia, Kaduna, and Akwa Ibom states and the NCMG has been involved in setting up each scheme.

- a) examine the implementation of the MDC scheme in Lagos state;
- b) determine whether the existence of the LMDC has impacted on the volume of civil disputes filed before the courts in Lagos state;
- c) analyse the format of its implementation and the impact of this format on the effectiveness of the scheme;

B3. Research methodology

The methodology adopted for this research was both qualitative and quantitative. This involved a review of the literature on access to justice in Nigeria, analysis of the statistics provided by the LMDC on the operation of the scheme and deductions from interviews and responses to questionnaires.

Dr Onyema designed a structured questionnaire directed at disputants who had used the services of the LMDC.²² The disputants included commercial banks, construction companies, small medium and large scale companies, information technology providers and individuals. The respondents were chosen to reflect various localities in Lagos state and disputes over different subject matters from data provided by the LMDC. The questions aimed to receive information on how users get to know about the LMDC scheme; nature of disputes; the dispute resolution process chosen or participated in and choice of dispute resolver; outcome of dispute; the cost of using the LMDC scheme; and impact of using the scheme on the post-dispute relationship of the respondents. This effort yielded very little result because of the very low return rate by the respondents. Only three completed questionnaires were received. However, some of this information was discernible from the yearly statistics provided by the LMDC and the feedback forms completed by their users which were also provided by the LMDC. The analysis and conclusions made below are primarily based on the statistics from the LMDC, the interviews and information from the feedback forms.

Unstructured face-to-face interviews were conducted with key players in the LMDC scheme. The first interview was with Mr Kehinde Aina of the Negotiation and Conflicts Management Group (NCMG) who designed and promotes the MDC scheme in Nigeria. At the interview, questions were asked on why he decided on the MDC scheme and how he got the interest and support of the Lagos State Government and judiciary; the current role of the NCMG in the MDC scheme especially with the new schemes springing up in various states of the Federation; the benefits of the MDC scheme to the Nigerian public; and finally where he sees the MDC scheme in the future.

The second interview was with Mrs Etuk the director of the LMDC (Mrs Adeyinka Aroyewun, the Deputy Director and Ms Busola Asiwaju, a Case Manager were in attendance). At this interview

²² The questionnaires were hand delivered to 70 respondents resident in Lagos state.

questions were asked on the historical development of the LMDC; numbers of case referrals and walk-ins; reasons for the low court referrals; costs and funding issues; extending the scheme to low level crimes by the use of restorative justice processes; the relationship between the LMDC and the judiciary of the Lagos state and other MDCs; their challenges and future goals.

The third and final interview was with one of the five ADR (Alternative Dispute Resolution) judges of the Lagos High Court, Justice Mrs Adebiyi, who shared her thoughts on the operation of the LMDC scheme; her role as an ADR judge and training requirements for judges; the use of the Lagos Settlement Week to increase court referrals; the challenges ADR judges face and the place of the LMDC in the new Civil Procedure Rules of Lagos State 2012.

B4. Summary of Findings

The statistics provided by the LMDC was compiled from year ending 2002 to year ending 2011 and covered such matters as names of disputants; type of dispute resolution process adopted; subject matter of the dispute; status of the file; and route of referral to LMDC. The following is a summary of the research findings which is divided into data (4.1) and conclusion from the data (4.2):

B4.1. Data

1. Between 2002 and 2011, a total of 1,136 civil disputes were filed before the LMDC.
2. Of the 1,136 civil disputes filed, 662 cases (58.3%) were referred by the courts while 467 cases (41.1%) were walk-ins.
3. Court referrals significantly increased from 2009 with the introduction of the Lagos Settlement Week (LSW).
4. Of the 1,136 disputes filed, 1071 cases (94.3%) were mediated while 65 cases (5.7%) were arbitrated.
5. Of the 1,071 mediations, 321 (30%) were resolved while 467 (43.6%) were unresolved and 327 (29%) were withdrawn or discontinued.
6. There are 65 trained mediators and 18 trained arbitrators on the LMDC panel of neutrals.

B4.2. Conclusion

1. Court referrals play a major role in increasing the number of cases at the LMDC so that judges and magistrates need to proactively and robustly make more referral orders directly to the LMDC scheme in appropriate cases.
2. The emergence of the LSW has played a major role in the increase of court referrals to the LMDC and should be continued.

3. More referrals will put resource pressure on the LMDC as currently staffed so that there will be a need to increase the resources of the LMDC and explore court referrals to the Lagos state Citizen's Mediation Centre (CMC) and private alternative dispute resolution (ADR) providers.
4. There should be an increase in the number of trained mediators and arbitrators on the LMDC panel of neutrals.
5. Disputants should be better informed of the nature of the chosen ADR process, to facilitate an increase in the numbers and percentage of disputes resolved.

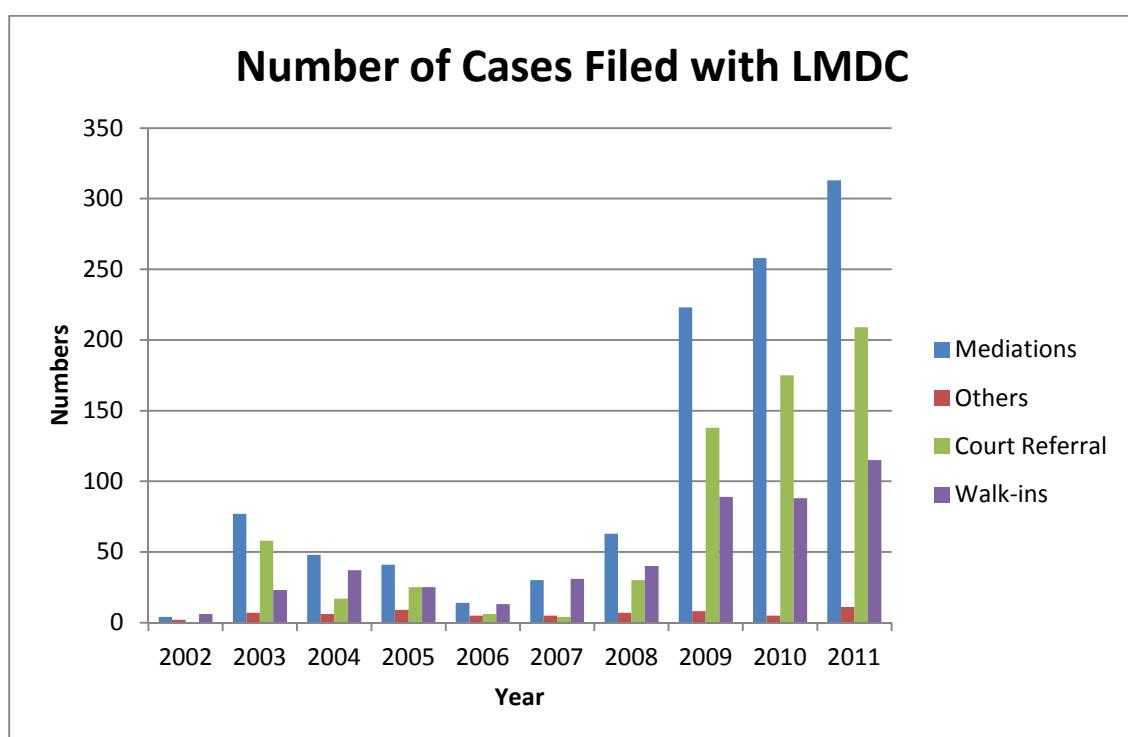
C. Analysis of Data

This section discusses the number of cases filed before the LMDC (1); types of disputes filed before the LMDC (2); inclusion of criminal disputes to the remit of the LMDC (3); mediation as the preferred ADR process under the LMDC scheme (4); the impact of cost on accessing the scheme (5); and the role of ADR judges (6).

C1. Number of Cases filed before the LMDC

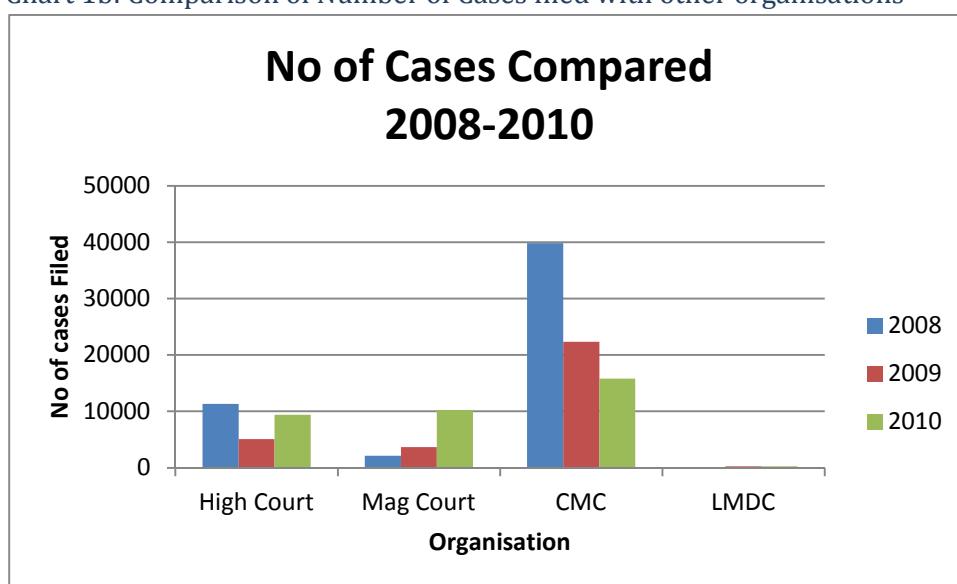
A total of 1,136 disputes have been filed with the LMDC between 2002 and 2011 as represented in chart 1a below.

Chart 1a: Number of cases filed with LMDC



To compare the workload of the LMDC with other dispute resolution providers of the Lagos state government using data provided by the Lagos state judiciary for 2008 to 2010, it can be seen that over this three year period, the Lagos High Courts were assigned 25,807 civil cases, the Magistrate Courts, 16,072 civil cases while the CMC dealt with 77,954 civil cases.²³ Over the same three year period, the LMDC dealt with only 888 civil cases. It is evident from these data that there is a large number of civil disputes to be resolved in Lagos state and the LMDC is not getting any appreciable share of these disputes. This report recommends that more of these disputes need to be referred to the LMDC scheme. Such a move will greatly reduce the number of cases that come before judges and magistrates of the Lagos Judiciary.

Chart 1b: Comparison of Number of Cases filed with other organisations



Cases are filed before the LMDC in two independent ways. The first of these is by referrals from the courts of cases before judges or magistrates which are considered appropriate for resolution through ADR processes offered by the LMDC. The second is through parties walking into the LMDC office and requesting for their dispute to be resolved under its auspices through any of the ADR processes it offers. From our analysis and as shown in chart 1b below, courts in Lagos state have not been consistent and robust in referring cases to the LMDC. Over the reporting period, 58.3% (662 of 1136) of all disputes filed before the LMDC were referred by the courts while 41.1% (467 of 1136) were filed by disputants directly, referred to as walk-ins. As shown in chart 1c, numbers of cases filed directly by disputants with the LMDC prior to commencement of the LSW in 2009 consistently outnumbered those referred from the courts. This is with the exception of 2003 when there were 58 court referrals as against 23 walk-ins and in 2005 when there was an equal number of court referrals

²³ Available at <http://resourcedat.com/resources/DIGESTOFSTATISTICS2011-01.pdf> (accessed 07 September 2012) particularly pages 243-253.

and walk-ins: 25 each. The reason for the greater court referrals from 2009 was because of referrals made during the Lagos Settlement Week (LSW) programme. The LSW is a period of one week dedicated to resolution of disputes through ADR processes when all judges are actively encouraged to refer cases to the LMDC.²⁴ It is instructive to note that there has been a year on year increase in the total number of cases filed with the LMDC from 2009 with 231 cases (from 70 in the previous year of 2008), 263 cases in 2010 and 324 cases in 2011. Before the LSW started, the courts between 2002 and 2008 had referred a total of 140 cases while between 2009 and 2011, the courts referred 522 cases. This data supports our recommendations that the LSW programme continues and that more court referrals will drive up the number of cases filed with the LMDC creating a corresponding reduction in the case load of judges and magistrates which in turn will translate into greater access to justice for litigants.

Therefore one solution to the low case load of the LMDC is for the judges and magistrates to be encouraged and reminded often to actively refer appropriate disputes to the LMDC. A more robust solution as suggested by Mr Kehinde Aina during our interview is for the ADR processes to be formally recognised as other pathways of resolving disputes by the Lagos state judiciary and for such pathways to be fully integrated into the duty of allocation of cases at the Registry of the Courts. In effect making the Court Registries truly ‘multi-door’ as originally proposed under the MDC scheme. It is understood that this proposal has been taken up by the Judiciary in the new Civil Procedure Rules 2013 of Lagos state to come into effect in January 2013. It is understood that the regime will involve the court Registry determining at the point originating processes are filed which pathway a case should be directed. This will be as part of the full menu of dispute resolution processes available to disputants in Lagos state.²⁵ So effectively, when a disputant commences an action, a senior officer of the court will assess the dispute at that point and allocate the dispute/case to a pathway the officer considers the most appropriate for its swift and effective resolution. It is not known whether disputants can seek a review or challenge such decision of the officer where for example the officer refers the disputants to mediation and the disputants do not wish to mediate or feel that mediation is an inappropriate process for the resolution of their dispute.

Such a review process will be necessary where the Lagos state judiciary wishes to retain the consensual nature of ADR processes as opposed to a statutorily mandatory mediation regime. The

²⁴ See for details on the LSW, <http://www.lagosmultidoor.org/media-center/news/135-2009-in-retrospect> (accessed 10 September 2012).

²⁵ It should be noted that the new CPR applies only in the High court maintaining the status quo in the magistrate court. This needs to be re-considered especially because low value disputes are filed before the Magistrate courts and such disputes may be more appropriate within the LMDC scheme.

alternative is to make mediation a pre-condition to litigation in Lagos state.²⁶ In this situation, all disputes will need to be mediated before parties can commence litigation. The resources currently available to the courts in Lagos state will not support such a mandatory two-tier process which may just add to the cost and time of litigating before the courts thereby becoming counter-productive and further restricting access to justice.

As it relates to walk-ins, disputants have been attracted to use ADR processes available at the LMDC to resolve their disputes as evidenced from the data of this research.²⁷ Mrs Etuk, director of the LMDC during our interview, could not recall the LMDC engaging in any active marketing or advertising venture which could have accounted for the numbers of walk-ins.²⁸ She was of the view that the location of the LMDC office within the premises of the Lagos High Court (Lagos Island) may have played a key advertorial role, so that as disputants came into the court premises, they saw the LMDC and walked in to make enquiries.²⁹ Clearly if the location of the LMDC in the premises of only the High Court on Lagos Island has attracted a total of 467 (walk-in) cases over the reporting period, then location of a LMDC office in each court premises will increase this number. In addition advertisement of the LMDC and its services in the local media will also drive up the numbers of walk-in clients. Our finding on this issue validates the view of Mr Kehinde Aina that situating the LMDC in the premises of the court was strategically designed to take the scheme to the disputants, “to leverage on the respect and impartiality often accorded the court system...”³⁰

There is no LMDC office in the Ikeja complex of the High Court or in the premises of any of the Magistrate courts in Lagos state. These are the courts that make referrals and such additional LMDC offices in court premises may serve the additional purpose of reminding judges of the existence and function of the LMDC and consequently trigger more referrals. This will be in addition to an increase in the number of walk-ins by virtue of locating the LMDC where disputants are as mentioned above. Section 2 of the LMDC Law expressly empowers the Council of the LMDC to approve such locations.

²⁶ This can also be a system of mandatory or court-annexed mediation.

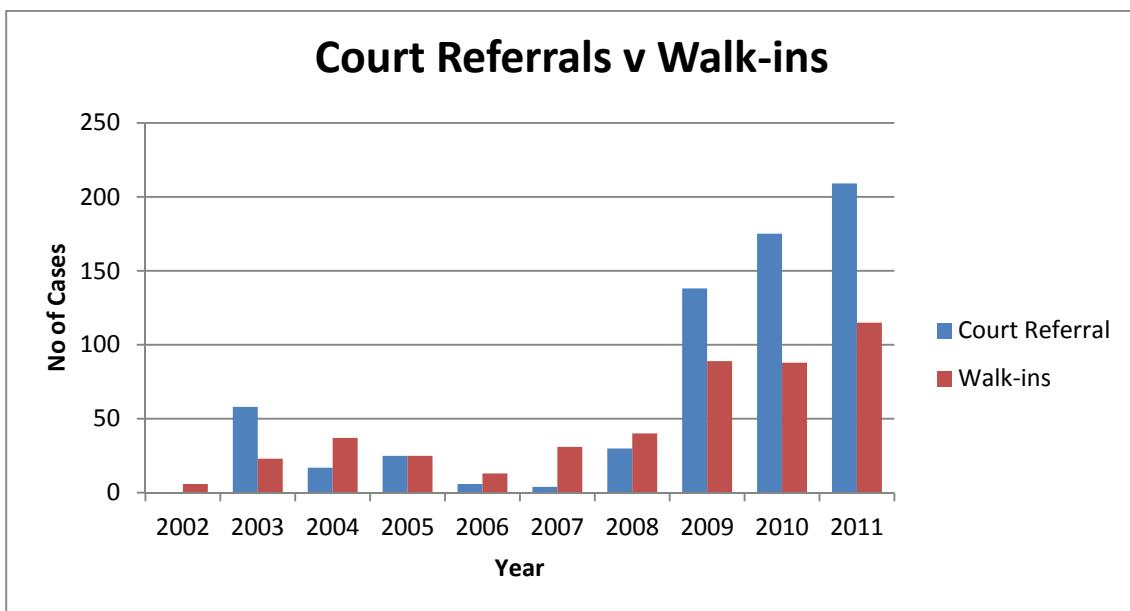
²⁷ A summary of the data is listed in schedule 1 below.

²⁸ It is noted that there are government owned billboards in certain localities of Lagos state with information on the services of the LMDC and the management of the LMDC has made presentations at the annual conference of the Nigerian Bar Association and other professional and trade association events on the scheme.

²⁹ This remains the same as litigants continue to walk-in to access the services of the LMDC. Section 1 (2)(b) of the LMDC Law provides that the offices of the LMDC, ‘shall be located within the High Court of Lagos and any such other suitable locations as the Council shall approve’.

³⁰ Kehinde Aina, (2012) *ibid.*, at page 269.

Chart 1c: Court Referrals v Walk-ins



Summaries:

- Comparatively there are still far too few cases filed or referred to the LMDC so that a predominant number of disputes are still litigated in Lagos state.
- The LSW pays a major role in referral of cases to the LMDC from the courts and should be encouraged.
- For there to be an appreciable increase in the numbers of cases filed before the LMDC, the courts in Lagos state must actively and consistently make more referrals to the scheme.
- The Lagos state government/judiciary need to make resources available to the LMDC Council to enable it provide one LMDC office or at the very least hearing rooms (with skeletal administrative support staff) in each court complex in the state.
- The LMDC need to make targeted advertorials of its services in the local media (possibly in the dominant languages spoken in the state (such as Pidgin English, Yoruba, Igbo and Hausa languages) to attract more walk-in clients.

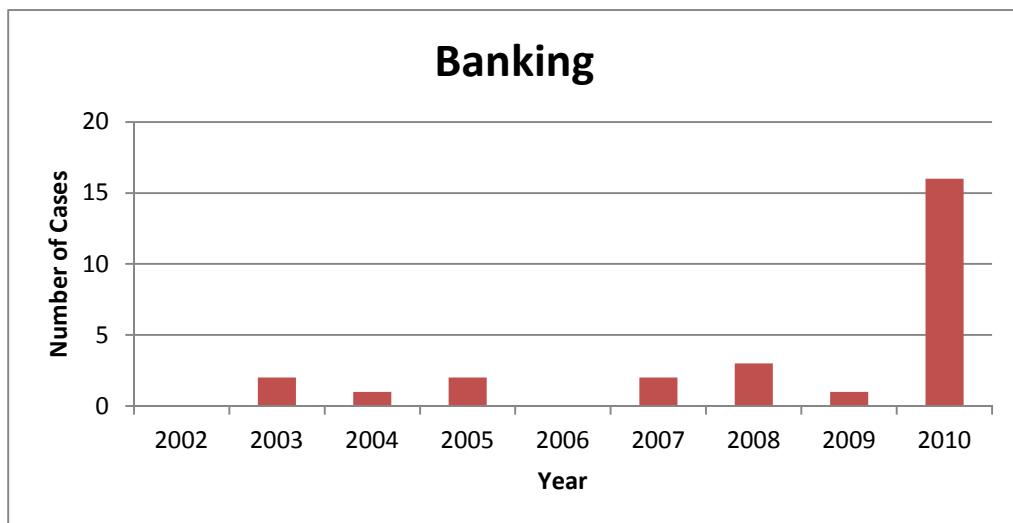
C2. Types of Disputes

The nature or subject matter of the disputes filed before the LMDC over the reporting period include: banking, contracts, construction, debt recovery, defamation, employment, family, human rights, inheritance, insurance, intellectual property, personal injury, professional negligence, property, public law, tenancy, and tort.³¹ The top five most recurring subject matters from the data relevant to

³¹ There were gaps in the statistics provided as the subject matter of some cases were not provided and these were listed under 'uncategorised' in our data analysis.

2002-2010³² are: banking, contract, debt recovery, property, and tenancy disputes, as shown in charts 2(a)-(e).

Chart 2a: Banking



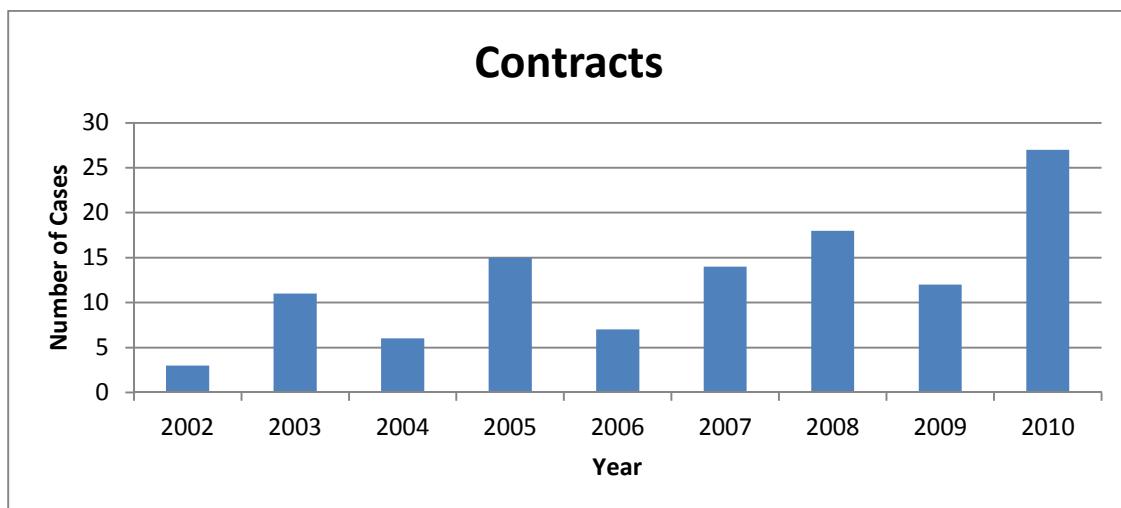
Over the period 27 banking disputes were filed before the LMDC. There were no banking disputes in 2002 and 2006. The highest number of banking disputes occurred in 2010. According to Mrs Etuk of the LMDC this is attributable to a programme designed and implemented by the LMDC as part of their commercial intervention strategy known as the "Banking Track" programme to encourage banks to use ADR mechanisms for the resolution of their disputes.³³ This programme was piloted by three commercial banks in 2010. However, the programme was discontinued primarily because the external solicitors to the three pilot banks refused to support the scheme.³⁴ The increase in the number of referrals from banks during the banking track programme means that such bespoke or targeted programmes will be beneficial to disputants and the LMDC and so should be encouraged.

³² The data set provided by the LMDC did not include subject matter for the 2011 data set.

³³ This involved a LMDC consultant auditing the disputes within a bank and recommending to the management of the bank which disputes should be litigated and which should be referred to ADR under the LMDC scheme.

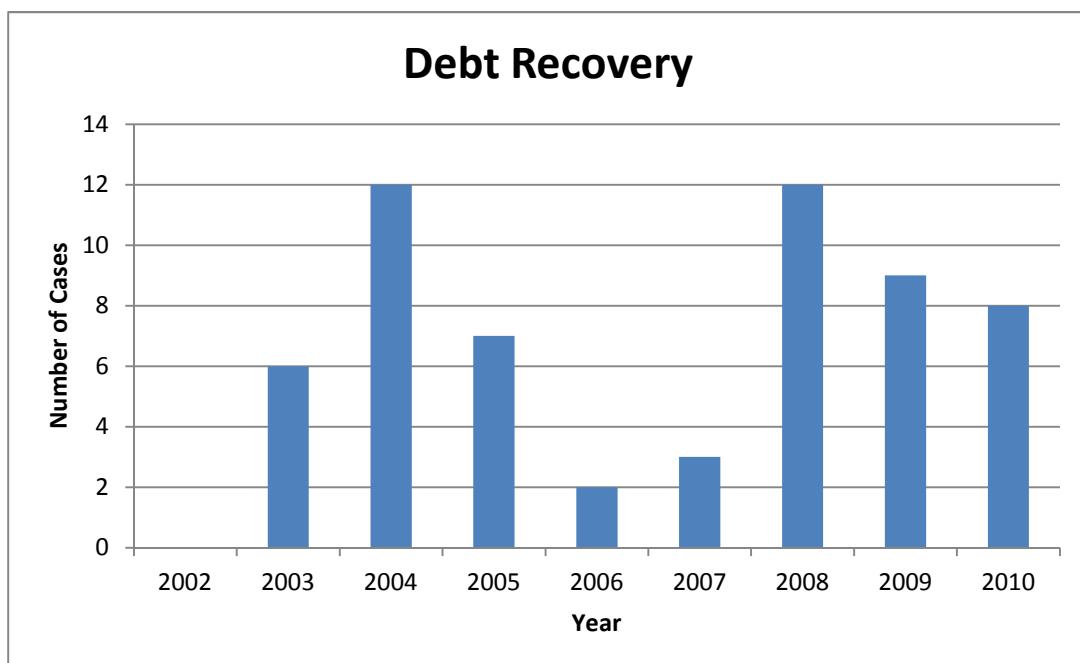
³⁴ The three banks that piloted the programme were: Sterling Bank plc, EcoBank plc, and FinBank plc.

Chart 2b: Contracts



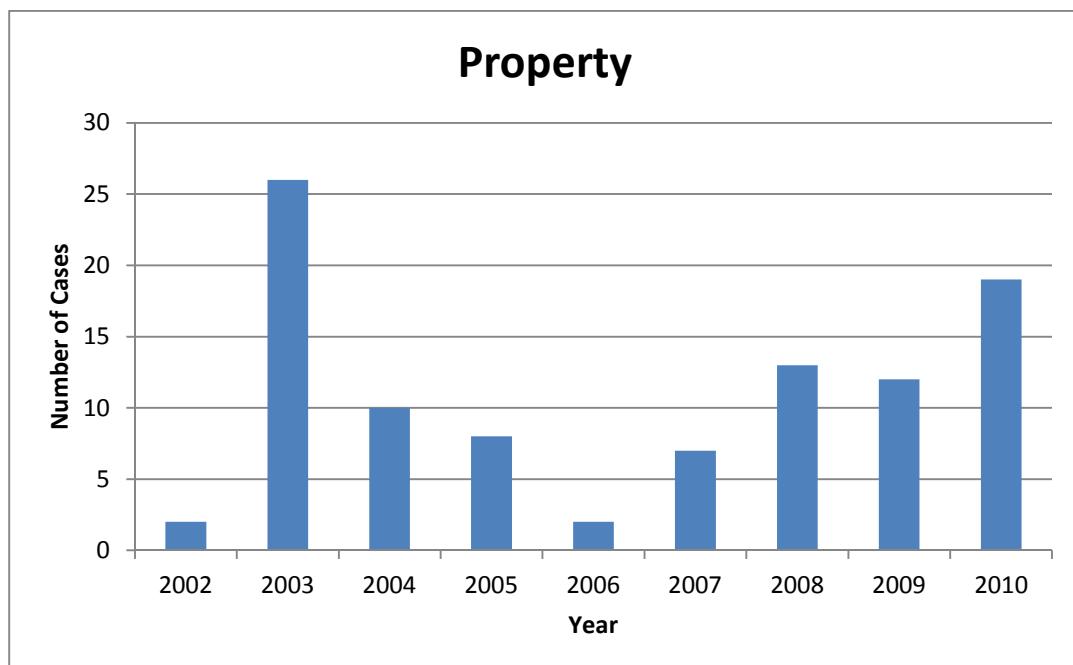
Over the period 113 commercial contracts were filed before the LMDC being the largest subject matter group. It is suggested that commercial entities may need to be targeted with a bespoke programme similar to the banking track programme to attract more such disputes.

Chart 2c: Debt recovery



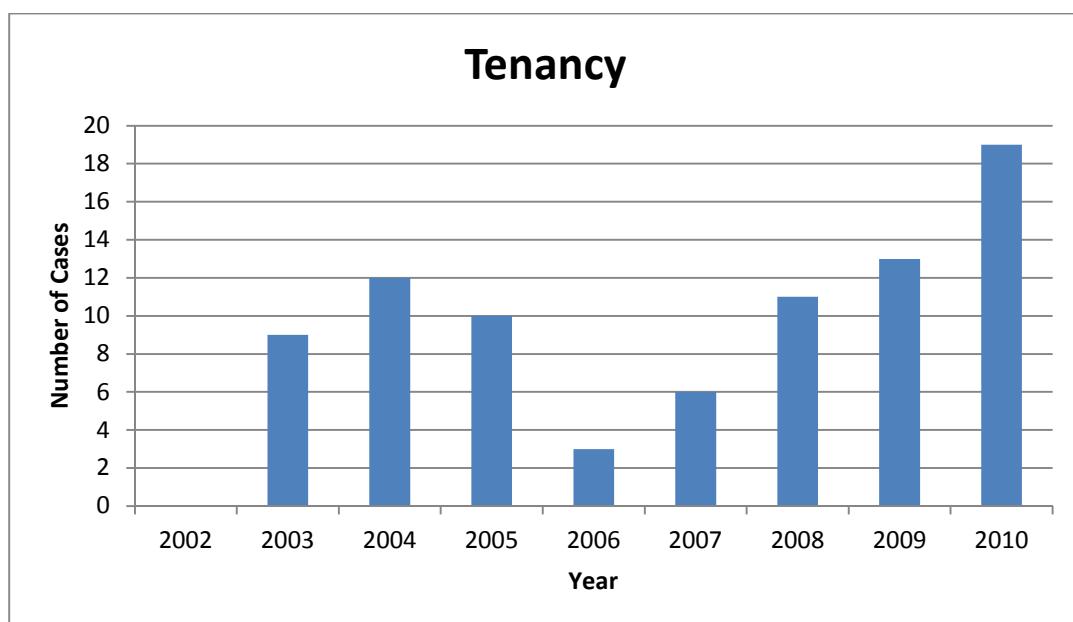
Over the period 59 debt recovery disputes were filed with the LMDC except in 2002 when the LMDC started operation.

Chart 2d: Property



Over the period 99 property related disputes were filed with the LMDC.

Chart 2e: Tenancy



Over the period 83 tenancy disputes were filed with the LMDC except in 2002 when the LMDC started operations. Tenancy disputes refer primarily to disputes between landlords and tenants. It is interesting to note that there is a rent tribunal in Lagos state. In 2008, 8,661 matters were filed before the rent tribunal and in 2009, the number of filings dropped to 3,138 with no filings in 2010 when the LMDC recorded the highest number of tenancy related cases (19) filed before it. This data

is interesting even though it does not explain why there were no cases filed with the rent tribunal in 2010.

C3. Disputes arising from Crimes

All disputes filed or referred to the LMDC are civil in nature. Criminal matters are not referred or filed before the LMDC during the reporting period. Drawing again from the Lagos state Judiciary statistics for the period between 2008 and 2010, 1,275 criminal cases were filed before the High courts while 20,884 criminal cases were filed before the Magistrate courts.³⁵ Thus a total of 22,159 criminal cases were litigated. This is still too many disputes being litigated so that it is necessary to explore the reasons why criminal disputes are not referred to the LMDC.³⁶ During our interview with the officers of the LMDC, we raised the issue of extending the LMDC scheme to the resolution of small value or low level crimes such as petty thefts, through the use of restorative justice tools. Mrs Adeyinka Aroyewun, Deputy Director at LMDC, did not think such matters should be resolved through ADR processes and more importantly that the staff of the LMDC did not have the necessary resources or training to undertake such an enlargement of their remit at the moment. The lack of resources point is substantiated by our findings above but the point on whether such crimes should be resolved by ADR is open to debate.

As a question of legal capacity of the LMDC to undertake such cases, it is interesting to note that in accordance with section 1 (2) (b) of the LMDC Law, the LMDC is referred to as “a court-connected Alternative Dispute Resolution Centre” without any express words limiting its function to civil disputes. It is possible to read section 3 (1) which requires the LMDC to “apply mediation, arbitration, neutral evaluation and any other ADR mechanisms in the resolution of such disputes as may from time to time be referred to the LMDC...” as a limitation since the section refers to “disputes ...referred to the LMDC”. A contrary (and more robust) reading of the section will be that subject to any mandatory requirements of the law, the courts are empowered to refer such (criminal and civil) cases to the LMDC. In addition, it appears the legislator was primarily concerned with the availability of ADR processes to litigants and not the types of disputes (whether civil or criminal) that will be subjected to such processes. Dr Onyema suggests that widening the remit of the LMDC to include such disputes will further assist the LMDC in achieving one of the objectives set for it under the LMDC Law in section 2(b), “to minimize citizen frustration and delays in justice delivery”.

³⁵ See statistics available at <http://resourcedat.com/resources/DIGESTOFSTATISTICS2011-01.pdf> (accessed 10 September 2012).

³⁶ The CMC also only deals with civil matters.

On the perceived difficulties of executing such a scheme in a highly cosmopolitan, densely populated and diverse society like Lagos state and its suburbs, Dr Onyema suggests that this may be overcome through the LMDC working with local councils, training local residents to act as neutrals in such schemes. Restorative justice processes will assist in the restoration of communal cohesion and contribute to the decongestion of the courts dealing with criminal matters; a reduction of the time accused persons spend on awaiting trial and in some cases in prisons; and give victims of such crimes answers to some of their questions, which may help in the process of healing.³⁷ Mrs Etuk on her part also expressed some reservations on the workability of such a scheme in Lagos state. In her view, there are two major obstacles to the success of such a scheme: one is the culture of the people of Lagos state which calls for crimes to be punished; and the other is the lack of corresponding schemes such as community services as operates in the USA and UK.

This is an area that requires further research to determine whether there is a need for such a scheme in Lagos state, a definition of the crimes that will fall within such a scheme and how it will be implemented. Having raised this important issue for further discussion, we note that extension of the scheme to criminal cases will necessitate an increase in the resources available to the LMDC and additional trained neutrals to facilitate the resolution of such crimes under the LMDC scheme.

Summary: the LMDC was set up to provide facilities for the resolution of (civil) disputes and remains true to this mandate while it must begin to explore ways of expanding its remit to include small scale crimes appropriate or suited for resolution through restorative justice mechanisms.

C4. Preferred alternative dispute resolution process

Mediation is without doubt the preferred alternative dispute resolution process under the LMDC scheme. This is substantiated by the data collected from the LMDC and the opinions of Mr Kehinde Aina of NCMG, Mrs Etuk of LMDC and Justice Adebiyi of the Lagos High Court. The importance of mediation to the LMDC scheme is further highlighted by the 2008 Practice Direction on Mediation Procedure for the Administration of Mediation Matters at the Lagos Multi-door Courthouse.³⁸ The vast majority of cases filed before the LMDC during the period were mediated. Thus 1,071 out of a total of 1,136, that is, 94.3% of all disputes filed with the LMDC were mediated. The remaining 65 (5.7%) cases were submitted to arbitration. There is no evidence from the data provided by the LMDC that any dispute had been submitted to early neutral evaluation (ENE) as a dispute resolution

³⁷ This is particularly important since it also gives the perpetrator of the crime the opportunity to apologise to his/her victims and possibly pay some compensation to them for their losses.

³⁸ This Practice Direction was signed by the then Chief Judge of Lagos state, Hon. Justice A. Ade Alabi.

process. With so many disputes on arbitrable subject matters, it is interesting to explore the reasons for such low take-up of arbitration as a mechanism for their resolution before the LMDC.

C4.1. Arbitration

There may be different reasons for the relatively low take up of arbitration under the LMDC scheme. The requirement for an arbitration agreement between the parties before the commencement of arbitration most likely will not be one of such reasons.³⁹ It is basically settled that for the parties to be referred to arbitration there must be evidence of their consent to arbitrate their dispute.⁴⁰ The exercise of such consent is more practicable pre-dispute so that the parties would have agreed to arbitrate before the dispute eventuates. In such a situation, the parties will merely be required to comply with their agreement pre-dispute, which is to arbitrate any eventuating dispute. This will affect only disputes covered by a valid arbitration agreement. Where there is an arbitration clause and parties opt to mediate, then depending on the nature of the arbitration clause, such mediation may be deemed a preliminary step to arbitration. However as a matter of contract construction (since the arbitration agreement is a contract) and subject to the applicable law, the parties' agreement to mediate may amount to a modification or even repudiation of their arbitration agreement. It is therefore of primary importance to use very clear words when disputes subject to an arbitration agreement are subjected to a mediation process following the emergence of a covered dispute. Where parties have not subscribed to an arbitration agreement but wish to arbitrate a dispute that has eventuated, all they need do is conclude a submission agreement, effectively submitting the dispute to resolution by arbitration so that the absence of a pre-dispute arbitration clause between the parties should not be a barrier to parties arbitrating their dispute.

The nature of the disputes filed before the LMDC does not also explain the very low take up of arbitration as the process to resolve such disputes. This is moreso as the top five identified subject matters (charts 2a-2e) of disputes filed before the LMDC as stated in (2) above are all matters that are arbitrable under the laws of Nigeria and so capable of being resolved by arbitration. Therefore it is possible that other factors such as speed, cost and preference of parties may be (partly) responsible for this low take up of arbitration by users of the LMDC. Regarding speed of resolution of disputes, Ms Busola Ayu, one of the case managers at the LMDC during our interview informed us that disputes before the LMDC were typically resolved between one day and one year while most mediations settled on average, within three months from submission of the dispute to the LMDC.⁴¹ It

³⁹ See s 1 of the Arbitration and Conciliation Act of Nigeria 1988 and s 3 Arbitration Law of Lagos State 2009.

⁴⁰ This is a requirement under both customary arbitration and arbitration under the Act/Law.

⁴¹ It is not quite clear if these time scales include the large numbers of disputes that did not settle or were withdrawn. We did not explore the reasons for the time variations.

is interesting to note from the 2011 statistics that of the 11 disputes referred to arbitration, only 1 (9.1%) had been concluded while 10 (90.9%) were still ongoing as at the date of our data gathering in June 2012.⁴²

The nature of the parties does not appear to be one reason for this low take up of arbitration either. The data from the LMDC in some years listed the names of their users and from this data both individuals and companies/businesses mediated their disputes. There was no identifiable pattern to show that only companies used a particular dispute resolution mechanism. It is important to put a caveat on the impact of the nature of the parties on choice of process because of the lack of systematic data, so that further research needs to be conducted on this linkage.

However cost may be one reason for such low take-up of arbitration. Under the Schedule of Fees operated by the LMDC, resort to arbitration is more expensive. Walk-in parties opting for mediation pay Naira 10,000 (with those from court referrals paying Naira 2,500) as filing fee with a sliding scale of additional fees from Naira 20,000 while the indigent disputants may pay nothing to access the scheme.⁴³ The lower filing fee payable by parties under the court referral scheme is because such disputes have already been filed at the Court Registry where filing fees would have been paid so that effectively referral to the LMDC involves paying additional ‘filing’ fees. For arbitration, there is no fee waiver and the scale starts from Naira 100,000. Clearly, cost implications mean that for low value disputes or disputes involving one indigent party, mediation will be a more attractive option than arbitration. So cost of access may be one reason why arbitration take-up is very low under the LMDC scheme.

The lack of adequate number of responses from previous users of the LMDC scheme meant we had no empirical evidence on the reasons parties chose the particular dispute resolution process they did for their dispute, so that we cannot draw any conclusions on the impact (if any) of party choice on the nature of the dispute resolution process chosen.

C4.2. Mediation

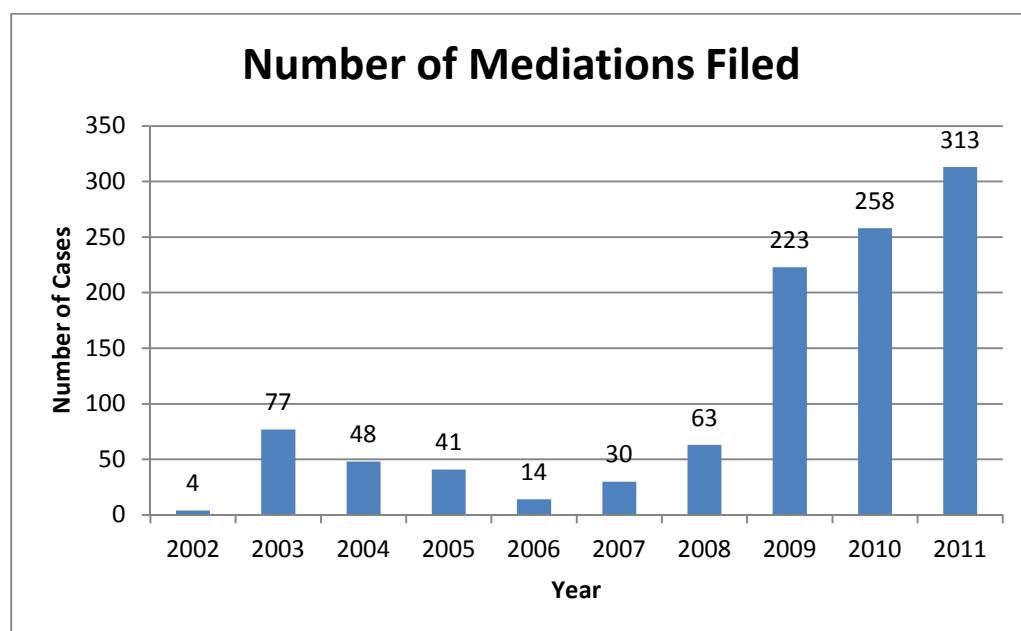
Mediation has already been identified as the predominant process of dispute resolution adopted under the LMDC scheme. It appears that the practice of the LMDC is to give disputants the freedom to choose from the various dispute resolution processes available to them though it appears disputants are ‘actively’ encouraged towards mediation. It is very clear that mediation is actively promoted and encouraged by the LMDC, the NCMG and the Lagos State Judiciary. This preferred

⁴² There was no equivalent data for the other years examined (2002-2010).

⁴³ This additional fee is for the mediation sessions and payable by each party.

option makes it necessary to further analyse the data on mediated disputes to determine its success rate.

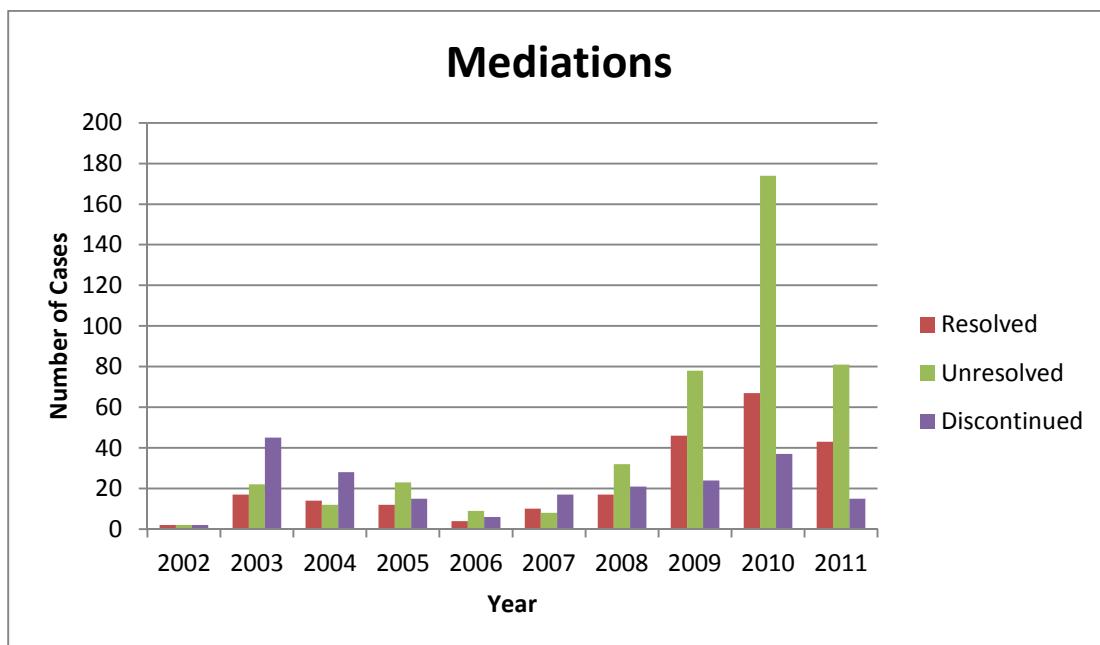
Chart 3a: Number of Mediations Filed



As shown from chart 3b below, over the reporting period, a majority of the mediated disputes were consistently unresolved and a large number of cases filed with the LMDC were withdrawn or discontinued.⁴⁴ The questionnaire sent out to past users of the LMDC asked if their dispute was unresolved and why. The very low response rate of our questionnaire makes it impracticable for us to draw any conclusions from the responses we received. An examination of the feedback forms completed by disputants collated by the LMDC contained no relevant information to enable us make any informed analysis of the reasons behind such low success rates. Some exploratory view from our interpretation and analysis of the statistical data from the LMDC is given below for the reasons of the low success rate.

⁴⁴ The number of discontinued or withdrawn cases is from the total number of cases filed and not just cases mediated.

Chart 3b: Outcomes of mediation



From the LMDC statistics over the reporting period, it was only in 2004 and 2007 that more mediated disputes were resolved than those unresolved. In 2004 mediations, 14 disputes were resolved as against 12 that were unresolved while for 2007 mediations, 10 disputes were resolved as against 8 unresolved disputes. A caveat should be noted here which is that in both years the LMDC recorded relatively very high numbers of withdrawn cases. In 2004, 28 of the 54 cases (52%) filed before the LMDC were withdrawn or discontinued while in 2007, 12 of the 35 cases (34.3%) filed were similarly withdrawn or discontinued. In 2002, the first year of operation, two mediated disputes were resolved and two remained unresolved. For every other year under review, more mediated disputes were unresolved than were resolved. So in 2003, 17 disputes were resolved as against 22 that remained unresolved. The difference has widened consistently since 2008 when almost double the number of resolved disputes (17 cases) remained unresolved (32 cases). In 2009, 81 mediated cases were resolved as against 111 that remained unresolved while in 2010, 67 mediated disputes were resolved against 113 unresolved mediated disputes and finally in 2011, 97 mediated disputes were resolved against 135 mediated disputes which remained unresolved. Over the reporting period, a total of 327 disputes filed before the LMDC were withdrawn or discontinued. This represents 29% of all disputes filed before the LMDC. These data evidence a very worrying trend since, if disputants pay to access a dispute resolution scheme which does not end in the resolution of their dispute, it ends up becoming another layer (with time and cost implications) in their pursuit to access justice. This effectively defeats the primary purposes for which the LMDC scheme was conceived and set up. As a comparator and using data from the Lagos state Bureau of Statistics, on the CMC operations, in 2008 out of 39,837 matters filed before it, 5,359 were resolved, (13.45%); in

2009, 11,942 out of 22,320 disputes were resolved (53.5%) and in 2010, 8,532 out of 15,797 disputes were resolved (54%) evidencing a consistent increase in the percentage of resolved disputes each year.⁴⁵ Therefore if the CMC can attain a 50% plus settlement rate, we need to explore the reasons why the settlement rate for mediations under the LMDC scheme is much lower than under the CMC scheme.⁴⁶

Another worrying data as mentioned above is the number of discontinued or withdrawn cases after filing with the LMDC. Over the period, a total of 327 disputes were discontinued or withdrawn after filing with LMDC. This represents 29% of all disputes filed with the LMDC over the reporting period. The data from the LMDC states that such withdrawals were as a result of “partial submissions (submission of either claimant or defendant); No show (where neither party showed up for the mediation) or No submission (Neither party submitted to the process).”⁴⁷

Some of these factors that impact on such large numbers of unresolved, discontinued or withdrawn cases under the LMDC scheme are examined below. The factors examined are: unwillingness on the part of one party or both parties to sincerely participate in the mediation process, especially where the parties have been referred by the courts (4.2.1); inadequate time allocated to the mediation process to explore settlement of the dispute (4.2.2); and possible lack of imaginative settlement proposals on the part of the parties and mediator (4.2.3).

C4.2.1 Parties attitude

This is generally one shortcoming of mediation as a process especially where one party or both parties feel compelled to mediate without any desire on their part to so mediate. This factor therefore emphasises the importance of one of the fundamental pillars of mediation, party consent, to the success of the process. However, voluntary participation of the parties (evidenced by party consent) needs to be balanced with the interest of Lagos state to promote the use of ADR processes by disputants. In addition it needs to be recognised that this is still early stages of the LMDC scheme which involves a change of human attitude and disposition towards dispute resolution. Lawyers and their clients are familiar with litigation while modern mediation is still a relatively new and evolving regime which the average disputant will need to learn, understand and trust as a distinct process from litigation and not a pre-litigation gimmick.

⁴⁵ See the Lagos State Digest of Statistics 2011 available at <http://resourcedat.com/resources/DIGESTOFSSTATISTICS2011-01.pdf> (accessed on 07 September 2012) particularly pp 243-261.

⁴⁶ For the period between 2008 and 2010, settlement from mediations conducted under the LMDC was 24.3% in 2008, 31.1% in 2009 and 25% in 2010.

⁴⁷ From the CMC statistics at <http://resourcedat.com/resources/DIGESTOFSSTATISTICS2011-01.pdf> (accessed 10 September 2012) it appears there were a lesser percentage of discontinued or withdrawn matters under the CMC scheme.

C4.2.2 Time allocation

In mediation proceeding, it may take some time for the parties to see through the legal fog and begin to appreciate what their needs are and explore ways of resolving their dispute. The structure (including the fee structure) of the LMDC and the Mediation Practice Direction envisage a quick resolution of mediated disputes. From our findings above in chart 3b, this is not happening. The question here is whether disputants and mediators are given adequate time to explore settlement or resolution of their dispute under the current regime of the LMDC. This factor will need to be explored further and if it is found that parties, mediators and the process are rushed, then, it will be necessary to put corrective measures in place to improve the number of settlements and quality of outcomes of disputes mediated before the LMDC. Parties seek dispute resolution processes because they wish to resolve their disputes. Therefore if disputes are not being resolved under the LMDC, the question becomes why should disputants use the scheme at all?

C4.2.3 Imaginative Settlement proposals

It is always necessary to retain well trained mediators and in adequate numbers to service the dispute resolution market. The same applies to the LMDC scheme. Currently the LMDC has 65 mediators and 18 arbitrators listed on its Panel of Neutrals. In a separate questionnaire sent to neutrals, the mediators were asked whether they thought the training they received was fit for purpose considering most of them are CEDR-trained (Centre for effective Dispute Resolution in England) with little or no local knowledge or distinctiveness input in the course content. From the responses we received, the mediators felt they were well trained and apply this training robustly but are not averse to a training designed with local knowledge to help them better serve disputants.⁴⁸ However, they do not see lack of local knowledge in the course content as a hindrance to their ability to effectively perform their function especially since they have the Mediation Practice Direction with which they comply. It may therefore be useful, in addition to exploring training designed to include international best practices, to ensure the course content takes cognisance of local attributes and peculiarities of the environment in which the mediators operate. Finally, LMDC neutrals must be encouraged or even required to keep themselves updated with developments in the fields of mediation and arbitration practice through continuous professional exercises or training, and it may be necessary for the LMDC to monitor compliance with this requirement.

There is no empirical evidence to show a lack of expertise or imagination on the part of the LMDC mediators. To the contrary, all those who completed the feedback forms from the LMDC rated the mediators very highly and were very satisfied with the abilities of the mediators.

⁴⁸ This response is not representative since we received responses from two neutrals.

C5. Impact of Cost

During our interview with the officials of the LMDC, Ms Busola Asiwaju, a case manager informed us that the LMDC Centre robustly deals with indigent disputants so upon the LMDC being satisfied that a disputant is indigent, the filing fee is waived. This is very commendable as it ensures that those citizens who may not even have funds to access the normal court system or LMDC can still seek resolution of their disputes under the LMDC scheme. It can safely be assumed that such disputants will generally have low value disputes. Where for example the dispute is over land ownership, the LMDC can be paid some fee after the resolution of the dispute if the dispute is resolved in the indigent party's favour.

However, it may be such disputes (filed by indigent disputants) that suffer from limitation of time for the resolution of disputes. This is because under the Fee Schedule, such disputants cannot access arbitration as a mechanism for dispute resolution even where that is the most appropriate process for the particular dispute (for example the land ownership dispute mentioned above).

It was not feasible to determine from the data available whether cost of using the ADR processes at the LMDC make any impact on the accessibility of the scheme to all citizens of Lagos state. The impact of the schedule of fees on the indigent citizens of Lagos state has been explored above and it was noted that any shocks is cushioned by the fee waiver and fee reduction policies implemented by the LMDC. It will still be necessary to measure the impact of this policy on access to the LMDC scheme of the very poor members of the society.

C6. The role of ADR judges

An ADR judge is a judge of the High Court of Lagos State that performs the functions assigned to her under sections 15 and 16 of the LMDC Law in addition to her regular role. The ADR judge is empowered to compel the appearance of a disputant before the LMDC and endorses the Settlement Agreement signed by the disputants arising from a mediation process under the LMDC scheme.⁴⁹ The endorsement transforms the Settlement Agreement into a consent judgment which is binding and enforceable just like any judgment of the court so that it can be executed under the Sheriffs and Civil Processes Act of Lagos state.⁵⁰ The ADR judge is specially mandated to encourage the use of the LMDC and refer cases to the LMDC. The ADR judge may also be a member of the Governing Council of the LMDC.⁵¹ Lagos state currently has five ADR judges. In our interview with one of the ADR judges, Justice Mrs Adebiyi, she agreed that judges could make more referrals to the LMDC but

⁴⁹ It is not evident whether this power has been exercised or how regularly it is exercised by the ADR judges.

⁵⁰ See s 4(2) LMDC Law.

⁵¹ See s 7(1) LMDC Law which provides for two ADR judges to be members of the Governing Council created under s 5.

expressed concerns over the capacity of the LMDC to handle any more referrals with its current composition. She was hopeful that when the new Lagos Civil Procedure Rules 2013 (CPR) comes into effect in January 2013, there will be more referrals to the LMDC. Generally all judges are encouraged to refer cases suitable to resolution through ADR to the LMDC, however very few judges have consistently made such referrals. It is therefore hoped that as the new CPR comes into effect judges will no longer have to be reminded or wait until a LSW to make referrals. It has already been stated above as supported by data from this research that such referrals will increase the caseload of the LMDC. This then means that the LMDC must be adequately staffed with trained personnel to ensure that its overriding objectives are met and the scheme does not become another layer in the pursuit of justice for the average citizen of Lagos state.

D. Conclusion and Recommendation

The original concept for the MDC is bringing into the formal justice system various ADR mechanisms as equal dispute resolution mechanisms to litigation, with a provider linked to the court, located in the premises of the courts and controlled by the judiciary but delivered by private independent neutrals. The envisaged procedure is for a disputant to walk into the Registry of a court, file her case before the Registrar who then allocates the case to one of the many dispute resolution processes as pathways. One filing fee is paid for the case which if assigned to an ADR pathway is directed to the MDC scheme and if litigation then it is assigned to a judge or magistrate as the case may be. However, this is not the current procedure adopted under the LMDC scheme. The effect of this is that judges have failed to appreciate that this is an integrated service and no longer litigation versus ADR (perceived as less qualitative or inferior mechanisms). This in effect implies that with the coming into effect of the new Lagos CPR 2013, judges need to change their perception of and attitude towards ADR processes, begin to appreciate the benefits of the various processes and actively engage with them.

The settlement rate of mediated disputes need to increase significantly to make the scheme worth the investment made by the government and judiciary of Lagos state and disputants. There is no gainsaying the fact that a higher rate of settled cases will attract more disputants and of itself market the LMDC scheme to prospective disputants. This is an obvious fact.

It can safely be concluded that the existence of the LMDC scheme and as part of the formal justice system in Lagos state increases access to justice and access to various methods of resolving disputes giving disputants choice. However, such choice must be exercised from an informed standpoint. This will require increased awareness and enlightenment campaigns for both lawyers and the general

public, of the attributes of the various dispute resolution mechanisms available for use under the LMDC scheme. To enable the efficient and effective administration of these disputes, the LMDC must be adequately staffed with highly trained officers and properly resourced. This includes the provision of office space and attendant resources by the Lagos state judiciary for the LMDC in all court premises in the state.

From this analysis of the operations of the LMDC, it is evident that other states of the Federation looking to adopt the MDC scheme need to clearly identify their needs and the purpose which their own MDC scheme will serve and design the scheme to meet those specific needs. There is therefore no one-size fits all that can be recommended for the successful implementation and sustainable operation of the MDC scheme in the various states in Nigeria.

Schedule 1: Summary of Statistics from the LMDC: 2002 – 2011

Year	Total No of Cases	Court Referral	Walk-ins	Mediation	Others	Resolved Mediation	Unresolved Mediation	Discontinued or withdrawn
2002	6	0	6	4	2	2	2	2
2003	84	58	23	77	7	17	22	45
2004	54	17	37	48	6	14	12	28
2005	50	25	25	41	9	12	23	15
2006	19	6	13	14	5	4	9	6
2007	35	4	31	30	5	10	8	12
2008	70	30	40	63	7	17	32	21
2009	231	138	89	223	8	81	111	39
2010	263	175	88	258	5	67	113	78
2011	324	209	115	313	11	97	135	81
Total	1136	662	467	1071	65	321	467	327
Percentage	100%	58.3%	41.1%	94.3%	5.7%	30%	43.6%	29%