**ALTERNATIVE DISPUTE RESOLUTION MECHANISMS: PRACTICE AND PROCEDURE UNDER ISLAMIC LAW**

**BEING A PAPER PRESENTED**

**BY**

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**OPENING REMARK**

It is my pleasure to be here this morning at the instance of the Administrator of the National Judicial Institute, my lord **Hon. Justice Salisu Garba Abdullahi,** who extended an invitation to me to speak on thetopic: “Alternative Dispute Resolution Mechanisms: Practice And Procedure Under Islamic Law”. I also will not fail to commend his management team for convoking this and other seminars and workshops on regular occasions. I recognize the industry of the Director of Studies, Abdulazeez Olumo, Esq. for his continuous effort at organizing an intellectual banquet of this magnitude for judicial officers. It is my silent but sincere prayer that the gains from all these efforts will translate into giant accomplishments for the Nigerian judiciary.

1. **INTRODUCTION**

Dispute resolution mechanism under Islamic law is total and all-encompassing. There is no gainsaying the fact that Islam, before any other civilizations, preceded in providing diverse ways of resolving disputes. Whatever mechanism that Islamic law prescribes in a given case, the ultimate goal has always been to achieve amicable settlement. This further reiterates the claim that Islam is a religion of peace and in the same manner, its laws (i.e the *Shari’ah*) has peace as one its primary goals as reflected in the general objectives of *Shari’ah*, properly described as *al Maqasid al ‘Ammah.*

From a classical point of view, the entire dispute resolution processes are discussed under the theme of *al Qada* (administration of justice) in Islamic jurisprudence, without any need for a separate coinage of Alternative Dispute Resolution (ADR) as understood in the contemporary time. The directive of Umar bin Khattab –in his letter to Abu Musa al Ash’ariy, one of the judges of his era– is instructive in this regard; “It is permissible to make amicable settlement (*Sulh*) between Muslims, except a settlement that permits something that is forbidden or forbids something that is permitted.” This letter, which is considered to be an essential legislation on administration of justice in Islamic law, captures *Sulh* as an integral part of the dispute resolution mechanism under the *Shari‘ah* and not as an alternative process.

Even in contemporary legal scholarship, the “A” in “ADR” has been subjected to some critical debate.[[1]](#footnote-0) Should “A” be alternative or appropriate? By “alternative” dispute resolution, another legal procedure is considered basic and primary i.e alternative to formal court hearings, trials and legal proceedings. Clearly, this is a misnomer, as most legal systems today have evolved diverse ways through which disputes and conflicts are resolved without recourse to a formal trial.[[2]](#footnote-1) This argument accords with the Islamic law position above. The “A” in “ADR” should therefore be rendered as “appropriate” dispute resolution. In other words, what process will best serve the ends of justice in a given case? To make a choice between variety of processes, then we further consider the “who” and “what” questions; who are those involved and what is the nature of the dispute? It is even more telling that other civilizations such as the Chinese and Hindu preferred the use of amicable settlement and compromise as against confrontation, prior to colonial imposition of litigation with its attendant challenges.[[3]](#footnote-2) Seen from this perspective, one tends to even consider litigation as the “alternative” to traditional mechanism for dispute resolution across civilizations as represented the concept of amicable statement.

The use of western legal terminologies to render Islamic legal concepts therefore, portends a serious pitfall on the part of scholars willing to engage in real lslamic legal discourse. That is why caution must be exercised when rendering an Islamic law concept in languages other than Arabic. For instance, Islamic legal issues and terminologies when rendered in a different legal language could resort into distortion and other problems inherent in discussing Islamic concepts and principles in languages other than Arabic.[[4]](#footnote-3) According to Attas, the correct approach is simply to give a correct application of linguistic symbols pertaining to Arabic in the context of Islam.[[5]](#footnote-4) This invariably implies that the clear message of Shari’ah is presented undiluted and in an unambiguous, unadulterated manner. For these reasons, I shall make do with “dispute resolution processes” in this paper, while I seek your indulgence to drop “alternative”.

**2. DISPUTE RESOLUTION PROCESSES UNDER ISLAMIC LAW**

The dispute resolution processes under Islamic law are as listed below:

1. *Sulh* (Negotiation, mediation, conciliation/compromise of action)
2. *Tahkim* (Arbitration)
3. *Sulh wat-Tahkim* (Med-Arb)
4. *Muhtasib* (Ombudsman)
5. *Qada’ul Mazalim* (Redress by *Mazalim* Administrator)
6. *Fatawa of Muftis* (Expert Determination)

Each of the above processes shall be examined with some elaborative brevity with particular emphasis on their practice and procedure.

**2.1** **SULH**

The word *Sulh* is an Arabic word which shares similar etymological formation with *Tasaluh.* Both words literally imply reconciliation, ending disputes, termination of hostility or conflict. In the technical sense, however, *Sulh* is the terms upon which an accord to bring a conflict between two disputants to an end is based.[[6]](#footnote-5) It may also connote forgoing a right or terminating a suit for a consideration in order to bring the suit to an end or to avoid the occurrence of a dispute.[[7]](#footnote-6)

*Sulh*, therefore, accommodates the negotiation, mediation, conciliation and compromise of action. In the contract of *Sulh,* parties have the rights to reach settlement on a compromise or waiver of rights mutually negotiated and agreed upon. It may also involve the intervention of a third party who may play the role of a mediator or conciliator as understood in the conventional ADR. This could be the Kadi or prominent but upright members of the Muslim community.

The legal basis for *Sulh* is contained in the following textual authorities primarily from the Glorious Qur’an and authentic Sunnah. *Sulh* also has a basis in the *Ijma‘* (consensus) – the third legal authority among the sources of Shari‘ah. Allah –the Law Giver- legislated *Sulh* as a dispute resolution process meant to achieve reconciliation between disputing parties because of its remarkable benefits in guaranteeing peace among people. As shall later be seen in this work, our examination of *Sulh* will re-affirm the practical value of the words of Allah; “Amicable settlement is the best”.[[8]](#footnote-7) The Most Exalted says:

﴿وَإِن طَآئِفَتَانِ مِنَ ٱلۡمُؤۡمِنِينَ ٱقۡتَتَلُواْ فَأَصۡلِحُواْ بَيۡنَهُمَاۖ فَإِنۢ بَغَتۡ إِحۡدَىٰهُمَا عَلَى ٱلۡأُخۡرَىٰ فَقَٰتِلُواْ ٱلَّتِي تَبۡغِي حَتَّىٰ تَفِيٓءَ إِلَىٰٓ أَمۡرِ ٱللَّهِۚ فَإِن فَآءَتۡ فَأَصۡلِحُواْ بَيۡنَهُمَا بِٱلۡعَدۡلِ وَأَقۡسِطُوٓاْۖ إِنَّ ٱللَّهَ يُحِبُّ ٱلۡمُقۡسِطِينَ٩

إِنَّمَا ٱلۡمُؤۡمِنُونَ إِخۡوَةٞ فَأَصۡلِحُواْ بَيۡنَ أَخَوَيۡكُمۡۚ وَٱتَّقُواْ ٱللَّهَ لَعَلَّكُمۡ تُرۡحَمُونَ١٠﴾ [الحجرات: 9-10]

*And if two factions among the believers should fight, then reconcile and make amicable settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the ordinance of Allah. And if it returns, then make settlement between them in justice and act justly. Indeed, Allah loves those who act justly.[[9]](#footnote-8)*

*The believers are but brothers, so make settlement between your brothers. And fear Allah that you may receive mercy.[[10]](#footnote-9)*

The above verses further harp on the intervention of a third party, with the instruction given to non-disputants who are members of the Muslim community and are fully aware of the conflict or hostility between two warring Muslims or parties (which may include non-Muslims such as when a non-Muslim consent to the *Sulh* or *Tahkim* agreement as the case may be). Also, from the verses, we learn that justice, fairness and piety must be demonstrated by all parties involved namely; the disputants, mediator and/or conciliator.

In yet another verse, Allah chided those who preoccupy themselves in conversation of undue secrecy i.e excessive or vain talk; exempting those who encourage others in charity and reconciliation, whom He promised huge reward.

﴿۞لَّا خَيۡرَ فِي كَثِيرٖ مِّن نَّجۡوَىٰهُمۡ إِلَّا مَنۡ أَمَرَ بِصَدَقَةٍ أَوۡ مَعۡرُوفٍ أَوۡ إِصۡلَٰحِۢ بَيۡنَ ٱلنَّاسِۚ وَمَن يَفۡعَلۡ ذَٰلِكَ ٱبۡتِغَآءَ مَرۡضَاتِ ٱللَّهِ فَسَوۡفَ نُؤۡتِيهِ أَجۡرًا عَظِيمٗا١١٤﴾ [النساء: 114]

*No good is there in much of their private conversation, except for those who enjoin charity or that which is right or reconciliation between people. And whoever does that seeking means to the approval of Allah - then We are going to give him a great reward.[[11]](#footnote-10)*

In a plethora of authentic narrations, *Sulh* has been encouraged by the Prophet (SAW) and put into practice. As a virtue, there is a reward for the one who establishes *Sulh* and justice among people.[[12]](#footnote-11) In practice, he who invents information that is likely to increase the chances of resolving dispute or reduce animosity among disputants is exempted from the offense of lying.[[13]](#footnote-12) Compromise of action as a feature of *Sulh* connotes waiver of rights which could come in several forms and may as well be interpreted as repelling vice with virtue since the ultimate goal is to replace conflict with harmony, enmity with friendliness and dispute with peaceful reconciliation. Allah –the Most Exalted– says:

*﴿وَلَا تَسۡتَوِي ٱلۡحَسَنَةُ وَلَا ٱلسَّيِّئَةُۚ ٱدۡفَعۡ بِٱلَّتِي هِيَ أَحۡسَنُ فَإِذَا ٱلَّذِي بَيۡنَكَ وَبَيۡنَهُۥ عَدَٰوَةٞ كَأَنَّهُۥ وَلِيٌّ حَمِيمٞ٣٤﴾ [فصلت: 34]*

*And not equal are the good deed and the bad. Repel [evil] by that [deed] which is better; and thereupon the one whom between you and him is enmity [will become] as though he was a devoted friend.[[14]](#footnote-13)*

The Prophet (SAW) exemplified compromise of action in the famous treaty of *Hudaibiyyah* when some belittling remarks were made against his personality. He (SAW) endured in order to achieve a smooth reconciliation between himself and the Muslims on one hand and the unbelievers of Makkah on the other hand, in spite of the unfavourable conditions in the treaty against the Prophet and Muslims and in favour of the unbelievers.

When Allah’s Messenger concluded the Treaty with the people of *Hudaibiyyah, Ali bin Abi Talib wrote the document, mentioning it is “Muhammad, Allah’s Messenger.” The non-Muslims objected over this part of the treaty, saying; Don’t write “Muhammad, Allah’s Messenger”, for if you were a Messenger, we will not fight you. Allah’s Messenger asked Ali to delete this part, but Ali said: ‘I will not be the person to rub it off.’ Allah’s Messenger then rose and rubbed it off himself in the interest of achieving amicable settlement (Sulh).[[15]](#footnote-14)*

The consensus of Muslim jurists agrees with foregoing authorities and allusions from the Glorious Qur’an and authentic Sunnah. For instance, the third Caliph Umar bin Khattab once said:

*Prevail on disputants until they go for amicable settlement. Adjudication leads to bitterness between disputants.[[16]](#footnote-15)*

In whatever procedure adopted for *Sulh*, be it formal or informal, it must not be used to achieve a compromise or waiver in the rights of Allah. The rights of Allah are those prescribed laws that allow no compromise whatsoever. As mentioned earlier in the introduction, it is permissible to make amicable settlement (*Sulh*) between Muslims, except a settlement that permits something that is forbidden or forbids something that is permitted. Examples of such rights include the prescribed penalties for criminal offenses (*hudud),* expiation (*Kaffarah*) among others. In the rights of human beings, however, compromise or waiver is permissible and even encouraged in so far as it does not conflict with known principles of Shari’ah and its outcome eliminates injustice of whatever form.

It goes without saying that barring the few isolated instances that *Sulh* is not permitted, there are countless circumstances in which *Sulh* can function as the *appropriate* dispute resolution process. Some of the circumstances that bear some relevance to judicial procedure are listed below:[[17]](#footnote-16)

1. When consent of both parties is obtained. Whenever both or one of them object to *Sulh*, justice has to take its course. In other words, consent is key.
2. When both parties produce equally strong proof, then the court persuades them to adopt *Sulh.* On the contrary, *Sulh* will not be an option when the issues involved are clear and the party deserving a favourable judgement is different from his opponent. The court has no business in opting for *Sulh,* as this will be tantamount to derailing from the path of justice or to put it in colloquial English, proceeding on the frolic on its own.
3. When the facts leading to the dispute have occurred very long ago and it is difficult to recall them vividly, *Sulh* is recommended because the parties and their witnesses can hardly narrate their cases and the court will not have the clear picture of the dispute before it.
4. When there is genuine fear that the court resolution is capable of causing crisis or disorder such as break down of law and order, or causing more problems than it is designed to solve.
	1. ***TAHKIM* (ARBITRATION)**

In the history of administration of justice (*Ta’rikh al Qada*), there is always the mention of the dispute resolution processes in the pre-Islamic era, which include *Tahkim*. Many decisions were reached through it and a number of judges of this era, like Aktham bin Sayfi, played the role of arbitrators.[[18]](#footnote-17) With the advent of Islam, *Tahkim* was retained as a dispute resolution process following Shari’ah stipulations and guidelines. By literal definition, *Tahkim* is the act of entrusting a neutral third party to adjudicate a dispute. Technically however, it is an appointment by disputing parties of someone to judge on a matter
that both parties are in disputes.[[19]](#footnote-18) This implies that for Tahkim to come into effect, disputing parties must consent to appointing an arbitrator to settle the dispute that may raise or has arisen among them.

Since arbitrators are appointed by mutual agreement of concerned parties, the term “hakam” or “muhakkam” is the designation for judges or persons who arbitrate. In Tabsirah al Hukkaam,a classical text of the Maliki School,**[[20]](#footnote-19)** we learn that appointment of arbitrator is the exclusive right of disputants:

"تولية الخصمين حكمًا يرتضيانه ليحكم بينهما"

*Appointment by two disputants of a choice arbitrator for the purpose of determining the ensuing disputes as between them*.

It must be stressed that the status of a judge (*Qadi*) is not the same with an arbitrator (*Muhakkam*) as the former can try cases which cannot be adjudicated upon by way of arbitration.[[21]](#footnote-20) This then brings to the fore, the limits set by the *Shari‘ah* on arbitral matters. Like *Sulh*, not all matters under the *Shari‘ah* are arbitrable. More importantly, all matters that can be resolved through *Sulh* can as well be arbitrable under *Tahkim*.[[22]](#footnote-21) Ibn Farhun, a Maliki scholar, gave a general view of arbitrable matters under *Tahkim* thus:**[[23]](#footnote-22)**

"ومعناه أن الخصمين إذا حكّما بينهما رجلًا و راتضياه لأن يحكم بينهما فإن ذلك جائز في الأموال وما في معناها"

*The meaning of the above definition is that when two disputants appoint someone (an arbitrator) and prefer him to arbitrate among both of them, such (arbitral) procedure is permissible in matters pertaining to properties and other matters incidental thereto.*

Also, the decision made by a *hakam* only binds the parties subject to it and same can be enforced by the judge (Qadi) in the same way that consent judgement is enforced in our courts. The qualifications stipulated for persons who act as arbitrators are similar to qualifications meant for Qadis (judges) under Islamic law. These qualifications include that the arbitrator must be Musilim, male, adult, mature, wise, free and fair. In addition, the Muslim must possess the knowledge of Shari‘ah. Non-Muslim, woman, minor, slave and corrupt people are not qualified to be arbitrators. A non-Muslim who is upright is qualified to be an arbitrator among non-Muslims. This qualification may not, however, apply strictly in the contemporary as legislations of some countries regard women and non-Muslims as competent arbitrators.[[24]](#footnote-23) This may be determined even in practical terms on a case-by-case basis.

On the legal authority of *Tahkeem,* Allah –the Most High– admonishes:[[25]](#footnote-24)

﴿فَلَا وَرَبِّكَ لَا يُؤۡمِنُونَ حَتَّىٰ يُحَكِّمُوكَ فِيمَا شَجَرَ بَيۡنَهُمۡ ثُمَّ لَا يَجِدُواْ فِيٓ أَنفُسِهِمۡ حَرَجٗا مِّمَّا قَضَيۡتَ وَيُسَلِّمُواْ تَسۡلِيمٗا٦٥﴾ [النساء: 65]

*But no, by your Lord, they will not [truly] believe until they make you, [O Muhammad], an arbiter concerning that over which they dispute among themselves and then find within themselves no discomfort from what you have judged and submit in [full, willing] submission.*

From the Sunnah, Hani bin Yazid narrated:[[26]](#footnote-25)

*When Hani went with his people in a deputation to the Messenger of Allah (SAW), he heard them calling him by his kunyah (surname), Abulhakam. So the Messenger of Allah (SAW) called him and said: Allah is the judge (al-Hakam), and to Him judgment belongs. Why are you given the epithet (kuniyah) of Abulhakam? He replied: When my people disagree about a matter, they come to me, and I decide between them, and both parties are satisfied with my decision. He said: How good this is! What children have you? He replied: I have Shurayh, Muslim and Abdullah. He asked; Who is the oldest of them? I replied: Shurayh. He said: Then you are Abu Shurayh.*

The foregoing hadith indicates that the Prophet (SAW) affirms the arbitral practice of Abu Shurayh with his remark “How good this is!”. This is an indication of his prophetic approval and thus brings it under the purview of legal authorities derived from the Sunnah. In consensus of the Muslim jurists since the time of the rightly guided caliphs recognized *Tahkeem* as one of the dispute resolution processes.

Finally on *Tahkim,* it must be emphasized that informalism is one virtue of *Tahkim* under Islamic law that makes it far less technical, cheap, speedy and time-saving process. This emphasis has become necessary in view of the technicality, formality, high-cost that now characterize the conventional arbitration as it is being witnessed across many jurisdictions.

* 1. ***SULH WAT-TAHKIM* (MED-ARB)**

In simple terms, *Sulh wat-Tahkim* is a combination of mediation and arbitration. It is adopted in cases or situations where *Sulh* is opted for at the initial stage and then concluded through *Tahkim,* in the event that parties are unable to resolve their dispute through *Sulh.* Known as Med-Arb in the conventional ADR, there is a genuine reason to believe that the practice originated from Islamic law. A combined study of verses 35 and 128 of Surah an-Nisaa’, reveals the Med-Arb processes as follows:

﴿وَإِنِ ٱمۡرَأَةٌ خَافَتۡ مِنۢ بَعۡلِهَا نُشُوزًا أَوۡ إِعۡرَاضٗا فَلَا جُنَاحَ عَلَيۡهِمَآ أَن يُصۡلِحَا بَيۡنَهُمَا صُلۡحٗاۚ وَٱلصُّلۡحُ خَيۡرٞۗ وَأُحۡضِرَتِ ٱلۡأَنفُسُ ٱلشُّحَّۚ وَإِن تُحۡسِنُواْ وَتَتَّقُواْ فَإِنَّ ٱللَّهَ كَانَ بِمَا تَعۡمَلُونَ خَبِيرٗا١٢٨﴾ [النساء: 128]

*And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them - and settlement is best. And present in [human] souls is stinginess. But if you do good and fear Allah - then indeed Allah is ever, with what you do, Acquainted.*

﴿وَإِنۡ خِفۡتُمۡ شِقَاقَ بَيۡنِهِمَا فَٱبۡعَثُواْ حَكَمٗا مِّنۡ أَهۡلِهِۦ وَحَكَمٗا مِّنۡ أَهۡلِهَآ إِن يُرِيدَآ إِصۡلَٰحٗا يُوَفِّقِ ٱللَّهُ بَيۡنَهُمَآۗ إِنَّ ٱللَّهَ كَانَ عَلِيمًا خَبِيرٗا٣٥﴾ [النساء: 35]

*And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted [with all things].*

* 1. ***QADA’UL MAZALIM* (REDRESS BY *MAZALIM* ADMINISTRATOR)**

*Mazalim* is the plural form of *Mazlamah* which literally means misdeed, wrong, and act of injustice. By its technical meaning *Mazalim* refers to redress by state institution for the wrong or injustice suffered by complainant. The administration of *Mazalim* is considered as leading of litigants to equity and justice and forcible prevention of contending litigants from denial through fright of the authority.[[27]](#footnote-26) The main purpose of *Mazalim* as an institution is to achieve divine justice for all its subjects. Judicial justice in all legal system, including Islamic law, may still fall short of expectations as it may not succeed in penetrating into minutes and complicated issues of mankind’s activities. The Prophet (SAW) in one narration was reported to have said:[[28]](#footnote-27)

*I am a human being, verily you bring case before me for my adjudication and one of you tender better proofs than the other and I decided it accordingly, based on the strength of evidence. But to those in whose favour I give judgement concerning any of the rights of his brother, let him not take it. For I only cut for him a piece of the fire.*

The *Mazalim* is separated from the judiciary and those who are appointed must be effective, respectful, modest and pious. In order to enjoy some level of freedom to function in the society, the institution is not structured like an independent and not like an appendage of the executive. As a primary duty, officers of this institution initiate investigations on injustice committed by the high and the low in the society. The jurisdiction of Mazalim includes:

1. Complaint against government agency or official involved in corruption or misappropriation of property belonging to an individual
2. Complaint irregularities in the public records by registrars, clerks and accountants
3. Complaint against irregularities in administering lands dedicated as public and private endowments
4. Complaint lodged by stipend holders
5. Complaint about misappropriation of property
6. Complaint about matter which normally fell within the jurisdiction of *muhtasib,* for example, commission of a sinful act in public, public nuisance etc.
7. Complaint against individuals
	1. ***MUHTASIB* (OMBUDSMAN)**

Ombudsman is a representation of *Muhtasib* in Islamic law. The essence of Muhtasib is to check excesses by enjoining virtues and refraining from vices *(al-amr bil-ma’ruf wan-nahy ‘anil-munkar).* The legal authority on this is taken from the verse below:[[29]](#footnote-28)

 وَلۡتَكُن مِّنكُمۡ أُمَّةٞ يَدۡعُونَ إِلَى ٱلۡخَيۡرِ وَيَأۡمُرُونَ بِٱلۡمَعۡرُوفِ وَيَنۡهَوۡنَ عَنِ ٱلۡمُنكَرِۚ وَأُوْلَٰٓئِكَ هُمُ ٱلۡمُفۡلِحُونَ١٠٤﴾ [آل عمران: 102-104]

And let there be [arising] from you a nation inviting to [all that is] good, enjoining what is right and forbidding what is wrong, and those will be the successful.

This dispute resolution process is well entrenched since the Prophetic era and has form part and parcel of the public authorities in this regard. The Prophet himself appointed Sa‘d bin Al ‘As bin Umayyah as Muhtasib and Umar bin al-Khattab as Muhtasib of Makkah and Madinah respectively. The scope of Hibah (a verbal noun of *Muhtasib*) is however wider than Ombudsman of the contemporary. As summarized by Hussein:[[30]](#footnote-29)

*Al-Muhtasib is literally a judge (Qadi) who takes decisions on the spot, in any place at any time, as long as he protects the interests of the public. His responsibilities are almost open-ended in order to implement the foregoing principle: commanding the good and forbidding the evil of wrongdoing. Al-Muhtasib and/ or his deputies as full judge (s) must enjoy high qualifications of being wise, mature, pious, well-poised, sane, free, just, empathic, and learned scholar (faqih). He has the ability to ascertain right from wrong, and the capability to distinguish the permissible (halal) from the non- permissible (haram).*

In summary, the duties of a *Muhtasib* cover areas not captured by the jurisdictions of judges (*Qudat*) and since the scope of a *Hisbah* is wider, it is expected that the rules regulating different activities that come under *Hisbah* institution are made by the authority in charge. In some Northern states where *Hisbah* institution has been established, there are laws enacted for the purpose of its smooth operation. More importantly, since duties of a *Muhtasib* are almost open-ended, it is better to have laws regulating *Hisbah* institution reduced into codified laws in order to avoid the possible abuse of powers.

In practical terms, the *Hisbah* institution watches over religious, civic amenities, social activities and community affairs including keeping an eye on the activities of different professionals bodies like doctors, lawyers, engineers, teachers, traders, artisans etc*.* They also provide some help to security agency in the state or community like the Police, among other activities.

* 1. ***FATAWA OF MUFTIS* (EXPERT DETERMINATION)**

Fatwa is a verdict issued by a Mufi. A Mufti is a juris-consult who has the capacity to make independent juristic reasoning in order to arrive at a Shari‘ah ruling on new or emerging Shari‘ah issues. Fatwa plays a great in resolution of disputes. A Mufti by virtue of his status and general acceptability among the vast majority of Muslims in a community is better positioned to address many disputes among people through his *Fatwa*. The process through which *Fatwa* is issued is always preceded by a questioner (*Mustafti*) who asked for Shari‘ah ruling on a particular issue. In some jurisdictions like Malaysia, an appreciable progress with respect of Fatwa of the Mufti has been noted.[[31]](#footnote-30) Similarly, *Fatwa* has proven to be a vital dispute resolution mechanism in Islamic finance.

**CONCLUDING REMARKS**

Today’s presentation provides yet another opportunity to correct the wrong impression held by many, including stakeholders in the bench and at the bar that the Kadis of Sharia Courts of Appeal only have core judicial mandate, as represented in the adjudicatory function of the courts, spelt out in the relevant sections of the Constitution. For this singular reason, it is believed by many, albeit erroneous, that Kadis only sit in their capacity as judges of Islamic court, whose primary responsibility is limited to adjudicate on matters brought before them and which fall within their court’s jurisdiction as provided by the Constitution and the enabling law – in this case, the Sharia Court of Appeal of a State.

Whereas the correct position of the law is that a Kadi by virtue of position as a judge of an Islamic court has adjudicatory powers and other powers which he exercises in administrative, arbitral, executory capacities. For instance, section 24 of the Kwara State Sharia Court of Appeal Law, confers the Grand Kadi with powers –*inter-alia –* to make rules of Court, providing for any or all of the following matters:

h) Securing due administration of estate.

i) Requiring and regulating the filling of accounts of administration of estates.

j) Ascertaining values of the estate.

o) for carrying into effect, the provisions of this

The foregoing provision shows that the Kadis of the Court as with other Shari‘ah courts in other jurisdiction, exercise both adjudicatory and incidental or administrative powers. Any claim to the contrary may raise the question of the essence of our discussion on ADR mechanisms under Islamic law, especially in the context of administration of justice in Nigeria.

Thank you for your rapt attention.

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14. Qur’an 41 (Fussilat): 34 [↑](#footnote-ref-13)
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28. Related by Bukhari and Muslim [↑](#footnote-ref-27)
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