

ALTERNATIVE DISPUTE RESOLUTION MECHANISM: PRACTICE AND PROCEDURE UNDER CUSTOMARY LAW

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Protocol

I value it a great honour and privilege from the Administrator, National Judicial Institute Hon. Justice Salisu Garba, and, the Education Committee of the Institute for nominating me as one of the resource persons in this workshop. I sincerely appreciate, my lord. The topic of this paper is "*Alternative Dispute Resolution Mechanism; Practice and Procedure under Customary law*"

1. Introduction

Disagreements or conflicts among human beings are as old as life itself. Conflicts have existed from the dawn of time. Men are by nature compelled to coexist and maintain relationships, which often times lead to conflicts and arguments. According to JIDEONWO v CHUKWUMA (2010) LPELR 4355 a conflict is:

"... a dispute of claims or rights or demand on one side confronted by opposite allegations on the other side, the subject of litigation".

The foregoing will suggest that conflict is fundamentally being an act, a sensation, or the outcome of animosity or disagreement as interests or principles. It exists when parties acknowledge that they are working with constrained resources, competing priorities, and outside parties who are interfering with their ability to succeed.

Conflict of values, interests, or relationships can arise in a variety of contexts and at various levels of affiliation, resulting in interpersonal conflicts, e.g. at work place, among friends, within the family, tribes, communities etc. It is a fact that when a dispute is poorly managed, it will result in unfavourable outcomes, consequently, there is need for a dispute resolution process that can minimize, manage and ultimately resolve the conflict. However, it must be noted that the method of resolving the disagreement, not the fact that there is conflict will constitute the core of the paper.

We must also recognize that long before the British legal system of court litigation was established, the practice of dispute resolution was prevalent in a number of communities in Nigeria.

All indigenous communities are accustomed to using arbitration under customary law to resolve disputes.

2. Judicial Dispute Resolution

Courts are there, among other issues, to settle disagreement between parties. Because of the complexity of today's world, justice administration has grown more difficult. In reality, regardless of the matter, even the smallest act we perform in our life has a high likelihood of ending in court. The quantity of lawsuits filed in our courts continues to increase at a rate that is greater than what the courts can comfortably handle, notwithstanding the number of additional new courts.

The Court setting is viewed as being overly formal and perhaps intimidating because the uninformed may have to deal with the court's intricate and technical procedures. These are significant issues that contribute to the delay in the administration of justice in our courts; as a result, alternate dispute resolution mechanisms have developed to offer simple, quick and effective access to justice.

3. Alternative Dispute Resolution

A President of the United States of America, a brilliant statesman, Abraham Lincoln [1861 to 1865], once said:

“Discourage litigation, persuade your neighbour to compromise where you can. Point out to them how the nominal winner is often the loser. . . in expenses and waste of time”.

The above opinion made more than a century ago, unquestionably summarizes the key elements that may prompt the use of an alternative dispute resolution procedure. We must not ignore the possibility that, even if a litigant prevails or succeeds in Court, the outcome may not be entirely favourable. We must acknowledge that the court’s litigation system has a number of drawbacks.

These flaws mostly relate to the inefficiencies of courtrooms and unneeded delays that increase the number of cases. They may also include the high fees related to particular trials or procedures, as well as the eventual alienation of conflicts.

Alternative Dispute Resolution processes, on the other hand, aim to keep disagreements out of court. These methods include negotiation, arbitration, conciliation and mediation. They are frequently managed by non-governmental organizations, whose

power might range from straightforward guidance to direct hand in attaining the objective. However, only few Nigerian States including Abuja, have established Multi-Door Courthouses to deal with ADR. The constant growth of these alternative trends in conflict resolution is attributed to the general perception of greater flexibility, lower costs, and quicker solutions when compared to litigation. Our laws contain provisions that either demand or encourage using an ADR method even if the matter was taken to the Court, since the courts must also encourage peaceful resolution of issues that are before them. *{See Order 19 Federal Capital Territory High Court Civil Procedure Rules 2018}*. Furthermore, we may find it difficult to imagine any law or regulation that forbids parties from reaching a settlement outside of Court. Ostensibly, since the scope of this paper is limited to the study of participation in arbitration under the Customary law, a thorough examination of contemporary arbitration procedures is not included in our discussion.

4. Customary law procedure of arbitration

The Black's Law Dictionary defines custom as: *law consisting of customs that are accepted as legal requirements or obligatory rules of conduct; practices and beliefs that are so vital and*

intrinsic part of a social and economic system that they are treated or accepted as if they were laws.

Customary law can also be described as usage or practice of the people which by common adoption and acquiescence have become compulsory and have acquired the force of law with respect to the place or the subject matter to which it relates.

It is the norms, traditions and rules of behaviour of the people. It is law propelled by beliefs and value of the people.

According to OYEWUMI v OGUNESAN (1990) 3NWLR (pt 137)182, customary law is the indigenous people of Nigeria's organic or living law:

"the organic or living law of the indigenous people of Nigeria regulating their lives and transaction. It is organic in that it is not static. It is regulatory in that it controls the lives and transaction of the community subject to it".

A community can maintain peace and stability while settling disagreements courtesy of the traditional ADC method. These practices have a long history in Nigerian native law, which differs by ethnic group and is derived from long-standing practices that have governed and controlled local residents' relationships.

Before the common law was incorporated into our legal system, the vast majority of our traditional and indigenous cultures resolved their disputes through mediation and settlement. Instead of the State, they are connected to the cultural norms and worldviews of the people.

The Customary ADR mechanisms are age-old customs that help a community stay peaceful and stable while resolving disputes. These customs have a long history in Nigerian native law, which varies by ethnic group and stem from long-standing customs that have governed and managed the interactions of the local populace. Nearly majority of our traditional and indigenous civilizations settled their problems through reconciliation and settlement prior to the introduction of the common law into our legal system. The community values act as their base for legitimacy rather than the State, and they are connected to the cultural norms and worldviews of the people. Due to the multi-ethnic nature of the country, typical ADR procedures operate in accordance with local traditions or cultural norms but may not always hold true across the board. Customary ADR and arbitration are still in use in our founding communities.

It was argued that colonial masters misunderstood the entire system and rejected it as being incompatible with natural justice, equity, and good conscience, which is why they introduced litigation to our legal system. Some pre-colonial traditional systems among the natives occasionally involved use of scorn, ordeals, witchcraft, or threats of expulsion as a means of getting the parties to settle. Alternative dispute resolution as it is currently understood is often more of a repackaging and reintroduction of something that has always been a part of customary jurisdiction. As long as the process adheres to the fundamental principles of justice, the Nigerian Supreme Court has frequently affirmed the validity of arbitration under customary law. The Supreme Court ruled in *Oparaji v. Ohanu* (1999) 9 NWLR (pt. 618) 290 SC that "*where arbitration under customary law is pronounced valid and binding it would be repugnant to good sense and equity to allow the losing party to reject the decision of the arbitration to which he had previously agreed*".

Mediation between the opposing parties and their separate families is a common practice in conventional ADR. It also entails the parties making amends and mending fences with one another in addition to resolving their differences. It also tries to maintain the parties' previous peaceful relationships within the community

and to restore their present and future peaceful relationships by avoiding the culture of vengeance.

5. How Customary ADR Operates

The Customary ADR are handled by elders, who may include religious leaders, wise men, and other community leaders, who are well known and respected members of the community. However, based on specific regional customs and practices, their make-up, number, and method of operation may differ from one ethnic group to another. Unlike the judges in the formal legal system who are appointed by the judiciary based on their knowledge of state laws, elders are chosen by the disputing parties or their families on an ad hoc basis, based on their 'reputation for high sense of justice, impartiality, deep knowledge of community norms, wisdom and rich experience'. Instead of penalizing the offender, they continually seek to understand the underlying factors that led to the conflict in order to restore the balance and create a lasting peace in the neighborhood.

The decisions may vary depending on the type and gravity of the dispute and the particular customary practice. Some minor offences and wrongdoings committed by family members may just call for an apology or pardon in the name of God, with no

payment. In such a situation, maintaining long-lasting community peace is the main goal. The Customary ADR gives the parties the most flexibility possible to fully describe every aspect of the conflict and to express their emotions without being constrained to only the pertinent issues in an effort to learn the whole truth about the wrongdoing. Other members of the community are welcome to attend and participate in the process, in addition to the families of the parties and the elders who are chosen to oversee and direct the traditional conflict settlement procedures.

Some traditional societies demand and encourage their young members to participate in their methods of resolving disputes in order to ensure the survival and continuity of their traditions from generation to generation.

6. Limitations of customary ADR

The traditional dispute resolution processes, while helpful for enforcing justice in our societies, are not without flaws. Limitations primarily stem from violations of human rights norms, particularly with regard to the unequal treatment of men and women. Most of the time, women are not treated equally in most traditional dispute resolution procedures. Women in some cultures might not have "a standing to appear before elders in the customary dispute resolution processes on their own, and may require a male relative to represent them". In a similar vein, institutions of traditional dispute resolution may render judgments that are unfavorable to women. A girl might be forced to become the wife of a deceased person's relative in some traditional dispute resolution processes in exchange for bride compensation.

7. Conclusions

The Nigerian judiciary has consistently placed a premium on the quality, accountability, openness, and overall efficiency of the administration of justice.

It is imperative to keep in mind that resolving conflicts is necessary to advance justice, peace and societal advancement and stability, these are some established realities and truths.

Despite the well-known, long-standing axiom that the judiciary is the final stronghold of the common man, litigants are progressively losing faith in the ability of courts to resolve their issues. It will take a critical assessment of our judicial system with the goal of reforming them in order to maintain the common man's faith in the ability of the judiciary to administer justice fairly and promptly.

The use of ADR mechanisms is required as a supplement to the litigation system if we are to ensure efficient and affordable conflict resolutions as well as reduce delay, congestion, and aggravation of disputants. Also encouraged should be the use of conventional or customary ADR. The work being done to fix the shortcomings of traditional ADR in order to use those processes as a resource and a tool for resolving disputes is equally significant and this is a welcome development for our customary courts. We do not need to be told that the ideal conflict resolution process is, one in which the parties are better off than they were at the outset of the course of action, not just in terms of what they won or lost but also in terms of the quality of their interpersonal relationships. This should be the primary goal of any dispute resolution method.

One thing to note as a final point is that not all legal professionals are fans of alternative dispute resolution (ADR), as some judges may not be comfortable with it. Indeed, I have overheard whispers that the ADR may keep lawyers out of their conventional jobs!

THANK YOU.

JUSTICE JIBRIL IDRISU (RTD)