

Alternative Dispute Resolution (ADR): An Appraisal of the Role of Sulhu Committee of Jama`atu Nasril Islam (JNI) in Kwara State, Nigeria

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INTRODUCTION

ILORIN Emirate was known to have enjoyed a relative peace in its social, economic and religious affairs over the years, except for political upheavals witnessed during the tail end of Governor Lawal's administration when things went sour between him and his political godfather Dr Abubakar Olusola Saraki. However, since the enthronement of the latter's biological son as the governor years back relative peace has since returned to the state particularly the Emirate in all spheres. The reason for this relative peace is not far-fetched: the emirate through Jama`atu Nasril Islam (JNI) has constituted a committee known as the Sulhu Committee with its operational headquarters at the palace of the Emir of Ilorin to mediate in all conflicts. It is thus the activities relation to Alternative Dispute Resolution (ADR) that will be view to seeing how best it can be improved upon as well as to integrating it into the State Government Committee on ADR.

ALTERNATIVE DISPUTE RESOLUTION (ADR): AN OVERVIEW

According to Miller (2005), ADR is a wide range of procedures and approaches accepted by the constituent parties. NwoSu (nd) sees ADR as means or methods of resolving disputes outside courtroom litigation. These according to him include a wide range of processes that encourage dispute resolution primarily by agreement of the parties as against a binding decision in litigation. Thus, "Alternative" refers to other "options to litigation.

ADR processes vary in substance and form. Some of the processes include Negotiation, Mediation, Conciliation, Arbitration and the Hybrid Processes such as Med-.Arb, Minitrial, Early Neutral Evaluation and Expert Appraisal. Compared to litigation, ADR processes offer a number of advantages and benefits including privacy, speedy resolution of disputes, less costs, better relationship and greater control by the parties over both the process and the outcome. Despite these advantages, it is wrong to assume that ADR is for all purposes better than or superior to

litigation. In the dispute resolution spectrum no one process, be it litigation or ADR, is in all respects superior to the other. The effectiveness of any process is usually determined by the facts and circumstances of the particular case. What is important therefore is for practitioners to have the knowledge and skills to determine and adopt the mechanism that best suits a given case.

But apart from arbitration and to a limited extent conciliation where the Arbitration and the Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004 makes provisions for the settlement of `commercial disputes` by Arbitration and conciliation, there is generally no statutory provision regarding substance, practice and procedure for other ADR processes. This is understandably so because by their nature, ADR processes are private, flexible, voluntary, confidential and largely may be done in an informal and ad hoc setting. All these make it difficult to statutorily regulate the processes.

Another thing about ADR is that the concept is not alien to our judicial system has always been part of our native jurisprudence. On the contrary, it is litigation that imported into our system. Before British colonial rule virtually all our traditional societies had their dispute resolution mechanisms most of which emphasised settlement and reconciliation (essential elements of ADR) of disputing parties. Even till to customary ADR and arbitration still subsist in our local communities.

ADR practice is not exclusive preserve of lawyers. Most ADR processes are multidisciplinary. They draw essentially from diverse fields of learning including law, sociology, psychology, philosophy, economics, management, religion and even the core sciences. ADR Skills can be acquired and developed over time through observation, training and practice.

Finally, ADR processes are the methodologies for resolving disputes outside courtroom litigation. ADR is not a substitute for litigation. It complements litigation. ADR is not courts. Thus, even where there are no delays in litigation, ADR is still a vital component of justice delivery in any judicial system. This is so because it is not all disputes that are about legal right and wrong, which is the foundation on which is not litigation is largely based. In short, Nwosu (nd), provides the following as the characteristics or ADR processes: Voluntary, Flexible, Private, Collaborative, Future focused High Party Involvement/Participation, Non-judgemental and largely interest based.

Forms of ADR Processes

Alternative Dispute Resolution processes vary in form and content. According to Nwosu (nd) they are highly flexible and except for arbitration there are usually no generally acceptable rules on their categorisation. Although, a wide range of ADR processes are known to exist, the popular and generally understood forms are Negotiation, Mediation, Conciliation and Arbitration. Each of these shall now be explained briefly:

Negotiation

Negotiation according to Aja (2007) is a non-violent, and an out-of-court mechanism for enhancing the communication flow between the conflicting parties in a bid to resolve differences by mutual consent. Negotiation involves direct discussions or communication between the parties with a view to resolving their differences. In most cases parties to a conflict would usually first explore the chance of resolving the dispute themselves. Sometimes they succeed; sometimes they do not. Negotiation may fail because the parties lack the skills to search for creative option for resolving their dispute.

Mediation

Aja 2007 defines mediation as negotiation by reliance on a third party. He describes the stuff of mediation as a process of non-binding undertakings, procedures and decisions on the disputing parties by an external peace actor. Hence, mediation retains the many characteristics of negotiation, except the prime role of a third party, acts merely as a facilitator. Basically, the mediator facilitates communication, promotes understanding, focuses the parties on their interests and uses creative problem solving techniques to enable the parties to reach their own agreement. The mediator does not decide or even suggest an outcome for the parties. He also does not render his opinion on the case. A mediator: is a neutral third party who must not be interested in the outcome of the case. In mediation parties to the dispute retain control of both the process and the outcome

Conciliation

Nwosu (nd) defines conciliation as a process where a third party intervenes to assist the parties to resolve their dispute. To a large extent, conciliation shares the same characters as mediation and in most jurisdictions both are used interchangeably. Sometimes, according to Nwosu (nd) attempt

is made to distinguish mediation from conciliation by emphasising the following attributes of conciliation:

- (a) it is usually statutorily provided for;
- (b) often the conciliator is a government official who is required to act as an advocate of government policy and has a statutory obligation to further the objectives of legislation, e.g. the Minister for Labour under the Trade Dispute Act;
- (c) a conciliator may give an opinion or suggest an agreement for the parties.

Arbitration

It is the process where disputants appoint arbitrator(s) to hear their evidence and decide the dispute for them. In arbitration, the parties retain control over the process but not the outcome because arbitrators usually have the power to give binding decision. The decision of an arbitral tribunal (award) may be enforced like a court judgement. An arbitral award is binding on the parties and may be set aside by the court only on statutorily prescribed grounds. Presently, the Arbitration and Conciliation Act Cap A18 Laws of the Federation of Nigeria 2004 regulate arbitration practice and procedure in Nigeria.

Disadvantages of ADR

- (i) The flexibility of ADR if not well checked may lead to uncertainty and adverse consequences.
- (ii) ADR cases do not provide precedents.
- (iii) May be non-binding (with the exception of arbitration) and create problems of enforcement.
- (iv) Where proper skills are not applied there may be delays and waste of time which usually would escalate the costs.
- (v) Parties may not have the opportunity of thoroughly testing the opponent's case and evidence.

BACKGROUND TO THE FORMATION OF SULHU COMMITTEE OF JAMA`ATU NASRUL ISLAM (JNL)

Sulhu` is from the word Sa-la-ha ; meaning "to reconcile`" (Mohammed, nd). Thus, Sulhu committee is a reconciliation committee under the auspices of Jama`atul Nasril Islam (JNI), Ilorin Emirate Branch. The committee was initiated by Alhaji Zulqarnain Gambari the 9th Emir of Ilorin (Hadi, 2003) in line with the directives of Allah in Qur`an chapter 49 verse 9 that:

If two parties among the believers fall into a quarrel, make ye peace between them, but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the command of God; but if it complies, then make peace between them with justice, and be fair, for God loves those who are fair (and) just.

The committee is charged with the responsibility of listening and mediating with the principles of ADR in cases between Muslim and Muslim or Muslim and non-Muslim (if applicable) with a view to minimising the rate at which Muslim washes their linen in public through court litigations. The committee is made up of seven respectable and knowledgeable Muslims, formerly headed by a one-time chairman Council of Ulama in Ilorin (late Alhaji Alabi Makana) but presently, being headed by a one-time Grand Kadi of kwara State (Justice Abdulkadir Orire,CFR) (Hadi, 2003).

Hadi (2003) reports that since its inception over two decedes ago, the committee had considered so many cases ranging from child custody, marriage dissolution, inheritance, violation of trust, land dispute, etc. with over 80 percent success. In the work of this committee, in line with the characteristics of ADR, their decisions in any matter is not enforced on the party(ies) to the dispute, rather, they were implored to take the course of dialogue channelled by the committee through the injunctions of the Qur`an and the Hadith. Where there is a deadlock, the committee encourages and supports the oppressed to initiate a court action. The committee appears in court as witness in such a case.

Appraisal of the Roles and Functions of Sulhu Committee of JNI

Since its inception the committee has decided on quite a number of cases. The table below represents the summary of some cases as retrieved from the secretariat of the committee.

Table 1

	Nature /type of case	Total No. of cases heard	Total No. of cases concluded	%	Total No. of cases not concluded	%
01	Inheritance related cases	20	15	75	05	25
02	Land related cases	10	08	80	02	20
03	Social problem (public disturbance)	05	05	100	-	-
04	Juvenile crime/child abuse	10	10	100	-	-
05	Child custody	10	06	60	04	40
06	Religious related	05	05	100	-	-
	Total	60	49	81.6	11	18.4

From the above table, it is clear that out or about 60 cases examined 49 (81.6%) were concluded, while 11 cases (18.4%) were inconclusive, with this figure, it shows that the committee is very much relevant and has performed its ADR functions, appropriately. People that appeared before this committee knew quite alright that it is not a court of law, SO in most cases they felt at home before the committee, knowing full well that their judgements are based on the principles of Islamic law, considering particularly the calibre and composition of the Committee.

From all indication, the committee has been fair and just in all its considerations, It is in the principle of fair play and justice, particularly in line with Allah`s statement in Qur`an 49:9 as earlier quoted. This informed the backing and footing of court bills of the oppressed who is advised and encouraged to go to court. The reality of the whole thing is that, the input of the committee at

creating a harmonious society and re-uniting families that would have hitherto gone apart could not be over-emphasised.

Problem Confronting the Committee

For the fact that the decision of the committee is non-binding, the committee was faced with the problems of enforcement, no doubt therefore that the committee recorded about 18.4 percent cases that were either inconclusive or referred to court for further hearing.

Another problem that faced this committee is finance. The committee relied on personal contributions from members or sometimes write to Jama`atu Nasril Islam (JNI) for fund for tour of inspection where necessary or for the production of final reports in most cases.

Rather than for Government to recognize the work of this committee and gives support to it, a similar body known as Kwara State Committee on Alternative Dispute Resolution was established, with a well-furnished office accommodation and a new bus for its operations.

CONCLUSION

Alternative Dispute Resolution has been well defined, its nature explained, the processes involved, its characteristics, advantages and disadvantages have all been explained. Jama`tu Nasril Islam (JNI) Ilorin Emirate Branch through the Instrumentality of the 9th Emir of Ilorin established a committee known as Sulhu committee with its works and responsibilities similar to that of ADR even though it derives its existence from Qur`an 49 verse 9. The activities of this committee was appraised and it was established that the committee recorded over 80 percent success in its operations. Some of the problems confronting the committee were, finance, problem of enforcement and lack of government recognition, among others. It was thus concluded that considering the achievement recorded by the committee particularly in bringing about peace and harmony in the state, ADR is recommended as one of the best options for dispute resolution.

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