THE IMPERATIVE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN RESOLVING CONFLICTS IN NIGERIA

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ABSTRACT

Alternative Dispute Resolution as a non-judicial mechanism for the settlement of various disputes of different kind in the society through using out of the court process in resolving crisis. However, disputes whether political, economic, social and environmental or otherwise are resolved through court processes, but due to delays, costs, publicity and technicality associated with conventional litigation, Alternative Dispute Resolution (ADR) mechanisms is a kind of process that was highly on demand to address individual and groups misunderstanding. There are several bitter complaints from the peoples of lower status in Nigeria citing that the courts, conventionally the last hope of the common man, have not lived up to expectations in either political or socio-economic litigations thereby justifying their recourse to ADR as a better option. A significant number of cases were lost on flimsy reasons. The paper has uses secondary sources of data to analyze relevant data on ADR in resolving conflicts in Nigeria. The paper has concluded that Alternative Dispute Resolution (ADR) processes have been fully developed in other jurisdictions as a means of resolving various kinds of disputes. Finally, the paper observed that ADR can be effectively used to enhance public confidence in various national, communities and individuals' grievances that can also help in facilitating technical inquiries and information exchanges, and to identify creative solutions to daunting problems. The paper suggested that ADR procedures should be considered imperative means of resolving conflicts in Nigeria through using various tools for overcoming both political and socio-economic crisis, as a better way of improving the efficiency of difficult negotiations, and achieving durable settlements. It can take different forms as arbitration, mediation, conciliation, negotiation, among others.

Keywords: ADR, Arbitration, Conciliation, Negotiation and Mediation

INTRODUCTION

ADR is not new to Nigeria but a kind of norm that has been deeply rooted in our culture. In fact, the ADR processes were in practice in Africa even prior to the colonial era (Ngo-Pondi, 2007). Our traditional societies settled disputes by referring them to the elders and other respected members of the society. The pre-colonial Nigeria era was constituted by settlements, communities, families, villages, hamlets, and most especially kingdoms and empires such as the Oyo empire, the Borno empire, and the Igbo communities. These kingdoms and communities were not without conflicts; rather their disputes and challenges were adequately settled without litigation. In most cases, the disputes were referred to elders or other bodies set up for that purpose (Mazrui, 1986) maintained that:

> Public participation and mediation are not alien to Nigeria. Empirical evidence has clearly shown that a thorough understanding of local knowledge systems, institutions and social organizations is a prerequisite for supporting existing sustainable practices and for enhancing social and technological change. Negotiation and mediation have been integral parts of the traditional African decision-making process. Traditionally, the elders play special roles such as managing public affairs, keeping the peace, serving as judges and looking after community welfare (Mazrui, 1986).

The invasion of Nigeria by the British authority witnessed the introduction of the English type of courts for dispute settlement. The introduction of these courts notwithstanding, the existing traditional means of disputes settlement were not jettisoned but co-existed with the court adjudicative processes. Today, cases are still settled outside the courts through the local system of dispute settlement (Clark, 1995). These systems are recognized by the courts provided the cases are civil.

The introduction of the modern ADR process in the administration of justice in Nigeria is geared towards addressing the challenges associated with court litigations. Today, there is a growing trend to formalize and popularize the use of these mechanisms as viable alternatives to litigation. There is no doubt that recourse to this mechanism in view of the economic and political conditions of the masses in this country will enhance peoples‟ access

to justice'' because the process give a room for the disputing parties views critically analyses and integrate in to problem solution mechanism.

Meaning of ADR

ADR is an acronym for Alternative Dispute Resolution. It is a broad range of mechanisms and processes designed to supplement the traditional courts litigations by providing more effective and faster resolution process. It is a procedure for the settlement of disputes by means other than confrontational and relationship destroying litigation. Today, amicable settlement of disputes is preferred to litigation. Alternative dispute resolution (ADR) is a term generally used to refer to informal dispute resolution processes in which the parties meet with a professional third party who helps them resolve their dispute in a way that is less formal and often more consensual than is done in the courts. While the most common forms of ADR are mediation and arbitration, there are many other forms: judicial settlement conferences, fact-finding, ombudsmen, special masters, etc. Though often voluntary, ADR is sometimes mandated by the courts, which require that disputants try mediation before they take their case to court.

The ADR mechanism was introduced into the Nigerian Legal System in the quest for speedy dispensation of justice. Its processes are not only less formal but also less expensive and more expeditious than the court processes. By this method, a mere apology is enough to bring about settlement. Court processes are bedevilled with inordinate delays, technicalities, strict adherence to the rules of evidence and pre-trial preparations which are not only time consuming and frustrating but also costly. While complex cases are preserved for the courts, other cases can be resolved through the ADR processes, thereby relieving the courts the time that would have been spent on such cases (Akomolode, 2005). Congestion of cases in the courts results in pressure on the judges and poor dispensation of justice. According to (Kabir, 2011):

> Litigation has also been criticized as responsible for the high cost of justice delivery, delay and the spilling of bad blood often associated with court cases

> which is similar to ordinary battle field where there is always a victor and a vanquished (Kabir, 2011).

The growing popularity of ADR worldwide attests to the wide acceptance that litigation is no longer the exclusive process of decision making in our civil justice system (Mahmud, 2005).

Today, ADR is generally perceived as a potential route to civil justice. In Australia, USA and Canada, it has gained prominence in preference to litigation (Macfarlane, 1997). English courts in *Dunnett v. Railtrack* considered it imperative to penalize successful defendants on appeal by not granting them costs because they refused mediation. The court reemphasized that to flatly turn down ADR without just cause could place the party doing so at risk of adverse consequence in costs. The decision was taken in conformity with the English Civil Procedure Rules (CPR) 1.4 which provides that the court should encourage the parties to use ADR, while the parties are required to help the courts in furthering that objective.

The encouragement and facilitating of ADR by the court is an aspect of active case management which in turn is an aspect of achieving the objectives of the courts. The court added that parties should bear in mind the overriding objective and purpose of ADR and should be careful before rejecting it especially when recommended by the court (Macfarlane, 1997). Even the legal advisers to parties have a duty to advise them to consider seriously the possibility of ADR procedures being utilized for the purpose of resolving their claims before proceeding with court actions, especially when suggested by the court itself. In *Cowl Plymouth City Council*, the court stated that where such advice has been given and turned down by a party, perhaps on the ground that it is inappropriate, it should be on record. Such record may be needed to demonstrate to the court that ADR has been considered but not suitable to the case.

In Nigeria, those engaged in ADR processes are trained and certified by the Institute of Chartered Mediators and Conciliators which is a body established in 1999 for the purpose of training persons aspiring to be professional negotiators, mediators, conciliators and peace builders across Nigeria (Greg, 2005, 1997) in his article entitled "Arbitrate, Avoid the Courts, Do Not Litigate" enjoined parties to disputes, lawyers and non-lawyers alike, to seek amicable

settlement of their disputes rather than litigation. Though, one may not completely avoid the courts, but before you sue, try settlement which saves relationship. The erudite Professor contended that ADR is not intended to oust the jurisdiction of the courts as misconceived by the early judges but to supplement it (Greg, 2005). No doubts, the courts are indispensable in the administration of justice. In some cases, the courts on their own refer disputes to arbitrators for consideration though subject to the agreement of the parties. In his own words:

> In the Arbitration and Conciliation Act… the courts have different functions assigned to them by the Act. In fact, arbitration practice will be a mere fruitless and hopeless exercise without the courts. This is because arbitral tribunal has limited legal force to affect certain duties implicit in every arbitration practice. By section 3 of the Act, the courts… have the right to revoke arbitration agreement. Sections 4 and 5 of the Act confer on the court the discretion to stay proceedings in court for reason of arbitration agreement (Greg, 2005).

No doubt, the attenuating impact and effectiveness of the ADR has become vital tool to the Niger Delta Region of Nigeria where frustrations of litigation have led the victims of oil spillage to take laws into their hands by resorting to violence, taking arms and other illegal and unorthodox means of redressing grievances. Therefore, institutionalizing ADR processes in this region will reverse the trend.

Forms of Alternative Dispute Resolution (ADR)

Arbitration

Arbitration in Nigeria is governed by the Arbitration and Conciliation Act which is modelled after the UN Commission on International Trade Law (UNCITRAL) on International Commercial Arbitration 1985 with minor modifications (Funke, 2004). It is a process by which parties to a dispute submit their cases to a neutral third party for settlement. This involves the reference of a dispute or difference between not less than two parties for determination in a judicial manner by a person or persons other than a court of competent jurisdiction. Its distinguishing characteristics is that the parties not only entered into such processes voluntarily but also have a great say in designing the process and the manner in which its outcome will be formalized. The arbitrator is either appointed by the parties or the

court (Greg, 1997) of which the decision may be binding or non-binding (advisory). It binds the parties when they have pre-agreed that the arbitrator's decision is final. The Court of Appeal in *Stabilini Visinoni Ltd. v. Mallinson and PartnersLtd*. further explained arbitration as:

> … a method of dispute resolution involving one or more neutral third parties who are agreed to by the disputing parties, and whose decision is binding. In effect, arbitration is the resolution of a dispute between the parties by a person(s) other than a court of law. It is the reference of a dispute by parties thereto for settlement by a person or tribunal of their choice, rather than a court. The basis for the arbitration is consent of the parties to submit or refer their disputes to arbitration (Moore, 2008: 15).

As the parties to a dispute decide on their own to settle by arbitration, the law requires them to obey the rules, proceedings and awards of the arbitration panel for better or worse. Therefore, appeal does not lay against such decisions neither can a party withdraw from the arbitral process. In *Igwego v. Ezeugo,* the Court held that when parties have agreed to be bound by the decision of the arbitrator as final, they cannot thereafter resile from it if found unfavourable. Oguntade JCA in his dissenting judgment in the case of *Okpuruwu v. Okpokam* maintained that "…if parties to a disputevoluntarily submit their dispute to a third party as arbitrator and agree to be bound by the decision of such arbitrator, then the court must clothe such decision with the garb of *estoppel per rem judicatam*." (Greg, 2005). However, parties may seek judicial relief if the arbitrator, in the course of the arbitral process, exceeded the authority conferred on him or he was in breach of the rules of natural justice, or made an obvious mistake (Kehinde, 2005).

In non-binding arbitration, the decision (award) of the arbitrator is not intended to be final and bind the parties but is advisory and persuasive in nature intended to provide guidance to the parties (Kehinde, 2005). Arbitration processes are less formal than the traditional court litigation and so may permit a waiver of certain formalities such as strict adherence to rules of evidence. Some scholars are opposed to the non-binding arbitration in the sense that „non-

binding" represents mediation while arbitration is best used for a binding process (Craig and John, 2015).

Arbitration has been very useful in the settlement of environmental disputes in the Niger Delta region of Nigeria. An instance is the Funiwa-5 oil well blow-out in Rivers State in January 1980. The community claimed N6om as compensation from the oil company. The later agreed to pay only N6m. The federal government of Nigeria intervened and acted as arbitrator in the matter by instructing the company to pay N12m as compensation which it did through the federal government (Omobolaji, 1989). Again, from time to time, the state Ministry of Lands has intervened between the oil companies and the host communities in this region when negotiations break down, and in those cases, the parties were impressed not only with the mode but also the outcome (Omobolaji, 1989). Even when the administrative agencies serve as arbitrators, the parties have the opportunity to participate in the agencies" decisions. The arbitration forum makes it easier for the villagers to air their views. They feel at home unlike in the courts. It is interesting to note that there is a proliferation of arbitration bodies and ADR centres in Nigeria. Today, we have;

(1) The Nigerian Branch of the Chartered Institute of Arbitrators (UK)
(2) The Chartered Institute of Arbitrators (Nigeria)
(3) The Institute of Dispute Resolution, Ekpan in Delta State, Nigeria
(4) Negotiation and Conflict Management Group (NCMG), and
(5) Abuja Arbitration Forum (Gadzima, 2015).

Mediation

Mediation is a type of ADR methods of which purpose is to facilitate negotiation between the disputants so as to enable them resolves their disputes. It is a voluntary, non-binding private dispute resolution process in which a neutral person helps the parties to reach amicable settlement of their disputes (Joseph, 2017).

From the above citation of the scholar we can under standard that the process requires the direct participation of the third party mainly to encourage the disputants resolve their

differences themselves. Usually, the parties voluntarily enter into mediation and choose the mediator who proposes solution for the parties‟ consideration and acceptance. The opinion expressed by the mediator, no matter how well and fair it may be, does not bind the parties until they agree to accept it.

The duty of the mediator is not to determine rights and wrongs but to control the process leaving the outcome to the parties since he cannot impose any decision on the parties (Bercovitch et al., 1991). Prof. M.A. Ajomo sees the mediator as "a facilitating intermediary-providing a non-binding adjudicatory decision" (Ajomo, 1996). Distinguishing the role of the mediator from that of the arbitrator, (Kehinde, 2005) maintained that;

> While the latter decides the dispute for the parties, the role of the skilled neutral mediator is to act as a catalyst by helping the parties in identifying and crystallizing each side's underlying interests and concerns, carry subtle messages and information between the parties, explore bases for agreement and develop co-operative and problem-solving approach. The common denominator to all these efforts by the mediator is the enhancement of communication between the parties in conflict. (Kehinde, 2005).

Though, legal rules may be relevant to mediation but not mandatory. It is just one of the factors to be considered in the process but more importance is accorded to the subsisting relationship and interest of the parties. That is why mediation is suitably adopted in the resolution of conflicts of a sensitive and confidential nature where the disputants would wish to settle them in private rather than in public as required in litigation. An instance is a dispute that involves a paltry sum unworthy of expenses of litigation (Ogungbe, 2003: 319).

Negotiation

Negotiation is the most common and familiar form of Alternative Dispute Resolution mechanism. It is a dialogue or a consensual discussion with a view to reaching a compromise without the aid of third parties. Negotiation has become an indispensable part of our daily lives as it happens in almost every transaction between two or more persons. It is a means to an end and not an end in itself, the end being a mutually beneficial dispute settlement. (Joseph, 2017) The Black's Law Dictionary defined it as;

> A consensual bargaining process in which the parties attempt to reach agreement on a disputed or potentially disputed matter. Negotiation usually involves complete autonomy for the parties involved without the intervention of third parties. (Akande, 1999).

Therefore, unlike in arbitration and mediation, the parties in negotiation are in full control of both the process and the outcome either in persons or by proxy (Kehinde, 2005). Where decisions are reached through this process, the parties are bound since they are the architects of both the process and the solution. However, we have professional negotiators who are skilled in specific areas and can from time to time be called upon to lead ignorant or inexperienced parties in their negotiations. O.G. Amokaye maintained that in order to achieve a successful negotiation, it is important for the parties to seek the services of a legal practitioner especially in the assessment and preparations of pre-negotiation terms, and if necessary, for an expert to be part of any negotiation team (Kehinde, 2005).

From the above definitions we can under standard that the concept of negotiations was aimed at a process where third party guide the disputant parties to reach an agreement in resolving their differences in an amicable situation agreed by the parties.

Conciliation

Joseph, N (2017) has cited in one of his works reviewing conciliation as a ‘’type of ADR is another process of settling disputes in a friendly manner outside the court. It is a practice of bringing together the parties in a dispute to an independent third party, a conciliator, who meets with the parties so as to resolve their differences.’’

In Nigeria, conciliation is recognized by the Arbitration and Conciliation Act as a method of conflict resolution. Section 37 of the Act provides that the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation. The process involves a neutral and disinterested person meeting with the disputants both separately and together and exploring how the dispute can be resolved. It involves an appointed councillor who does not intervene directly in the dispute, rather he does it indirectly by

exploring the available possible avenues for settlement thereby allowing the parties do the settlement themselves (Kabir, 2011). It is advisory in nature.

The importance of conciliation it is kind of process that seek the will and interest of parties to engage in to resolving differences the conciliator has no power or authority to seek evidence or call witness where rather his major roles is to help to established communication network, clarify misunderstanding and design a model for building a solid mechanism of trust between parties as gate way for understanding to reach an agreement.

Multi-door court house

The concept, also known as multi-option ADR, refers to a court that provides an array of dispute resolution options and then directs the parties to choose the option most suitable to their disputes. It connotes the idea of a single courthouse with multiple doors such as mediation, conciliation, and arbitration conducted under the strict supervision of the court (Joseph, 2017).

From the name implies above we can understand that Multi-door court house is a kind of process of resolving conflict or misunderstanding between parties which is not conventional courts structure rather a kind of platform that was ideally established a case to be treated out the court.

Today, some state judiciaries in Nigeria have established their respective court annexed ADR centers. An example is the Abuja Multi-Door Courthouse which has, no doubt, proved effective means of dispute settlement within the Federal Capital Territory. Many states in the country and the Capital Territory Abuja have created an arm office to treat cases outside the conventional court's structures.

Nigeria is comprised of 36 states and the Federal Capital Territory, less than 10 states have established a formal and functional MDC. This means that disputants in other states that have not established MDC have no access to court-connected ADR processes for resolution of their disputes. This is rather disgusting in view of the advantages of ADR over litigation and relative successes achieved by the MDC in Nigeria. For example, the Principal Registrar

of the Lagos LMDC said that the LMDC handled over 250 cases every year and about 90% of the cases were settled between 7-90 days without recourse to litigation (Joseph, 2017).

Why Resolving Issues through ADR strategy?

Civil and criminal Justice dispensation is rapidly changing on a global and national scale, perhaps on account of the abuse of the both political and socio-economic rights of individuals and groups with impunity and especially the injustices of natural resources exploitation. ADR today is considered a more potent tool in environmental cases than the confrontational and adversarial-based system of adjudication. In South Africa, for instance, the South African Environmental Protection Agency published a policy in 1978 to use ADR methods in the resolution of disputes arising from the enforcement of environmental laws (Joseph, 2017).

It has become an important issues or method of resolving conflict or differences through ADR because of its value and importance of the following aspect:

Speediness of the Cases

Many cases in Nigeria has been resolved with an expeditious speed because of the nature of ADR component which is very difficult to be obtained in the conventional courts system determination of cases remains one of the attributes of ADR which is unlikely to be available in the courtroom.

> Some cases have been pending in our courts for more than ten years as a result of certain constraints like retirement or transfer of judges handling the cases which have been opened and evidence had been taken. Such cases have to start de novo. The devastation, frustration, and economic stress which litigants undergo are better imagined than experienced (Joseph, 2017).

On the other hand, in the quest to decongest the courts, re-invent the judicial system and ease disputes settlement, the government of Nigeria has opened doors and encouraged the use of ADR. The idea of ADR is that it offers a quicker resolution of conflicts by speeding up the dispute resolution process with a minimum disruption. For example, the Principal Registrar of the Lagos Multi-Door Courthouse (LMDC) stated that the LMDC handled over 250 cases every year and about 90% of the cases were settled between 7-90 days without recourse to litigation (Kabir, 2011)..

Again, the longer the period a case lingers in the courts, the more the relationship between the parties' sours. With the ADR, the presence of a skilled third party can change the dynamics and facilitate the process unlike in litigation that judges unskilled in environmental law handle environmental disputes. ADR gives the parties a unique opportunity to craft the process and solution which are tailored to their own needs. The parties can decide on whom to meet and at which period which will be convenient for the parties. With this, they can identify those ADR professionals with enforcement and regulatory experience and expertise. Again, Congestion of cases which bores the judges and remoteness of venue common with our traditional courts are not attributes of ADR. The dwindling popularity of the courts in comparison with ADR in Nigeria was underscored by the Chief Justice of Nigeria, (Joseph, 2017)

Cost effective of the Process

The ADR is a mechanism that was less expensive than litigation. This is a characteristic that has an advantage which has no much of higher cost implication where cases been treat with little budget unlike the conventional courts system.

> Many poor people cannot access the formal legal system because they cannot afford to pay the registration and representation fees necessary to prosecute cases in the courts. This is because payment of legal fees is probably the largest barrier to formal dispute resolutions for many people in developing countries and in particular by the poor in Nigeria (Jeffery, 2000).

In contrast, ADR promotes the settlement of disputes in a manner that avoids many of the transactional costs associated with litigation. In fact, the monetary savings achieved through ADR processes and the results have been acknowledged in a lot of jurisdictions. In some cases, the cost may be borne either by the government or the multinational companies desirous of sustaining its relationship with the host communities, and not the poor victims of pollution as in litigation.

Nigeria is not an island unto itself. For instance, the Office of the Attorney General of the US, in an address to the Steering Committee of the Federal Government's interagency ADR working group reported that the Federal Energy Regulatory Commission's use of

mediation in electricity and natural gas disputes saved the parties an average of $100,000 in avoided costs (Edward, 1988). A study of 19 environmental cases in Florida settled through mediation including dredge and fill, air pollution, domestic waste, hazardous waste, groundwater contamination, and solid waste revealed that at the end, all the parties were happy with the process with a savings of $75,000 per party (Joseph, 2017). In his own words;

The office of Dispute Resolution of the United States Department of Justice conducted a study involving 828 civil cases in which Assistant United States Attorneys participated in ADR over a five-year period. The results demonstrated that ADR added value in four-fifths of the cases. The litigation cost savings averaged over
$10,000. A broad study of 5000 cases by the Oregun. Department of Justice of the relative benefits of mediation, unassisted negotiations, arbitration, trial, dispositive motions and other dispute resolution processes found that the costs of mediation were lower than cases resolved through any other means (Joseph, 2007; Jeffrey, 2000).

Equality in the bargaining power in the Process

The equality of bargaining power in the ADR, this was built on the basis of treating disputing parties equally in the process of reaching understandable ground where all parties are to express their feelings expel out to ensure that all parties has equal power in the process of resolving crisis.

Today, the ADR has become the weapon for not only enhancing the equality effects of bargaining but also assuaging the feelings of these indigent victims of pollution. This involves equalizing the power imbalances inherent in a dispute between an oil company and the victims of pollution by the greater participant and more consensual modes of conflict resolution. This may include;

- Granting the parties to the ADR independent choice of representation, not strictly lawyers;
- Ensuring that the adopted procedures are targeted at achieving fairness and equity rather than strict adherence to an unduly burdensome or technical procedure, and

- Continuing its role through the process of supervising implementation of any outcomes (Joseph, 2017).

With the ADR, an independent third party acceptable to both parties is engaged. This may involve pecuniary cost but offers the greatest assurance that the third party is impartial, skilled and best fit for that purpose. The ADR mechanisms are unique that they may be tailored to suit individual preferences. For the process to be successful, it has to involve all the principal stakeholders and not solely institutions that are established and controlled by the government. With this approach, it is certain that there should be more to be gained by these parties thereby making it the best alternative to litigation.

CONCLUSION

Alternative Dispute Resolution (ADR) processes have been fully developed in other jurisdictions as a means of resolving conflict that was developed to effectively use to enhance public confidence in crisis management, facilitate technical inquiries and information exchanges, and to identify creative solutions to daunting problems. As earlier stated, ADR comprises, inter alia, arbitration, conciliation, mediation, negotiation, including the court-connected ADR mechanism. This work was developed as model to advocate how any form of ADR method can help in addressing conflict at various levels without taken much of disputant's time, least cost and equality among the disputant parties.

The paper assesses the pros and cons of ADR as a peaceful means of settling dispute vis-à-vis the judiciary. No doubt, the merits of the ADR outweigh the judicial process especially in view of the latter's adversarial and confrontational nature. The beauty of ADR the parties to conflict have a stake in accepting or rejecting the third party in resolving the dispute.

Based on the history of Nigeria state and the nature of our ethnic complexity, it can be of great relevance to address various ethnic, religious, environmental and business crises through adopting an appropriate method of ADR in addressing solution to the emerging problems.

RECOMMENDATIONS

The paper has suggested the following recommendation as an advantage of adopting ADR in solving various conflicts in Nigeria:

a. Government institutions at all level need to establish more Community Centres as ADR facilities to address various conflicting differences.
b. There is need to pilot training and retraining of more experts in the area of ADR facilitators and to be redeployed to various centres at community levels for advocacy and enlightenment of resolving cases using ADR strategy.
c. Community leaders, religious leaders, women and youth leaders need to be engaged in the process of ADR to have an inclusive structure.
d. The activities of ADR need to respect the norms and values of groups, communities and state with template of standard peculiarities.

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