

# **THE ROLES OF ELDERS IN ALTERNATIVE DISPUTE RESOLUTION: NIGERIA IN CONTEXT**

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## **ABSTRACT**

The study investigates the role of elders in Alternative Dispute Resolution in the context of Nigeria. The problem of the research is aimed at addressing the unattractive situation in which the elders as ADR in Nigeria have not been given the due awareness it deserves. And where the practice is encouraged, the activities of devious elders seem to be discouraging its patronage. The objective of this paper is to examine the roles of elders in settling dispute amicably for community peaceful coexistence as a whole. However, the paper gave a wide discussion on the conceptualization of alternative dispute resolution in particular. The methods of alternative dispute resolution by the elders in Africa and Nigeria has equally been discussed in the paper. The roles of elders in critical dimension are part of the paper elucidation. The paper also examines motivation for ADR in the Nigeria context. This study adopted both primary and secondary sources of methodology. Social solidarity theory was used on this study. The paper concludes that elder's intervention enhances conflict resolution among indigenes, in the context, Nigeria cannot over emphasizes considering their traditional position in the society. Findings revealed that elder's involvement in conflict resolution aids resolution of conflicts to a great extent, as the strategies has often proved successful. Recommendations are that elders should be regularly exposed to contemporary methods of conflict management.

**KEYWORDS:** Elders, Alternative Dispute Resolution, Community, Traditional

## **Introduction**

Contemporary Africa is faced with the reality of numerous evolving states that have to wrestle with the inexorableness of conflict. On their own, the young institutions in these states cannot cope with the huge demands unleashed by everyday conflict. It is within this context that the comparison as well as complement between traditional institutions and the modern state institutions of conflict resolution becomes not only observable, but also imperative. Zartman (2001). The continuing role and influence of traditional leadership and especially in modern Africa is hard to miss, nonetheless, the relationship between the state and traditional institutions should not be taken for granted for it is a contested environment beleaguered with complexities. Richard (2009). While traditional institutions are rooted in the culture and history of African societies, the modern state exerts a large amount of influence on these institutions. In some cases, the traditional institutions are politicized and have become instruments of propagating state ideology. In other cases, especially where they express disagreement with the state, these traditional institutions have often been undermined or usurped by the state. (Ali and Bukar, 2019).

The adversarial nature of the courts means that a judge rules in favor of one party and against another, awarding sentences that often fail to satisfy either party. The winner-takes-all nature of the judicial system is encapsulated by the Yoruba expression “A ki ti Kootu de ka sore”, meaning you do not return from court and remain friends. The idea of a sympathetic third-party hearing disputes and contributing to their resolution continues to resonate with Nigerians. Ordinarily, the courts serve as the traditional forum for the resolution of conflicts. The judiciary arm of government is conferred with the authority to interpret the law and settle disputes between the parties involved in dispute. However, the problems associated with litigation such as delays arising from long adjournments, costs, corruption, technicalities, congestion of cause lists in the courts, formalities, etc. Impede the realization of the purpose of the courts adjudicative process, with recourse to alternative dispute resolution (ADR) mechanisms as viable alternatives to judicial settlement of disputes in Nigeria (Oddiri, 2020).

Access to justice means more access to courts, and some disputes may not even be suited for the litigation process. The biblical account of the judgment passed by King Solomon between two women laying claim to a living child (1st King 3:16-28) was accompanied with such a profound wisdom that till date, it is traditionally considered the philosophical foundation of ADR, and in most especially by elders. 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 purpose and practice of ADR in such conflict management makes it meaningful, fruitful and sustainable. Among the most embraced methodologies to conflict resolution includes, but not limited to the following; arbitration, judicial, diplomacy, avoidance, confrontation, compromise and negotiations (Hugh M. 2004). These approaches however have certain procedures that must be duly observed in order to get the best results from any of them when eventually employed.

### **Conceptual Framework**

The term "alternative dispute resolution" or "ADR" is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes. The term can refer to everything from facilitated settlement negotiations in which disputants are encouraged to negotiate directly with each other prior to some other legal process, to arbitration systems or ministries that look and feel very much like a courtroom process. Processes designed to manage community tension or facilitate community development issues can also be included within the rubric of ADR. ADR systems may be generally categorized as negotiation, conciliation/mediation, or arbitration systems (Marshall, 1998).

Negotiation systems create a structure to encourage and facilitate direct negotiation between parties to a dispute, without the intervention of a third party. Mediation and conciliation systems are very similar in that they interject a third party between the disputants, either to mediate a specific dispute or to reconcile their relationship. Mediators and conciliators may simply facilitate communication, or may help direct and structure a

settlement, but they do not have the authority to decide or rule on a settlement. Arbitration systems authorize a third party to decide how a dispute should be resolved (Miller and Sarat 1980; Menkel-Meadow, 2004).

It is important to distinguish between binding and non-binding forms of ADR. Negotiation, mediation, and conciliation programs are non-binding, and depend on the willingness of the parties to reach a voluntary agreement. Arbitration programme may be either binding or non-binding. Binding arbitration disputants must follow even if they disagree with the result, much like a judicial decision. Non-binding arbitration produces a decision that the parties may reject (Park and Burger, 2010). It is also important to distinguish between mandatory processes and voluntary processes. Some judicial systems require litigants to negotiate, conciliate, mediate, or arbitrate prior to court action (Miller and Sarat, 1980).

ADR processes may also be required as part of a prior contractual agreement between parties. In voluntary processes, submission of a dispute to an ADR process depends entirely on the will of the parties. These forms of ADR, and a variety of hybrids, are described in more detail in Appendix A: Taxonomy of ADR Models from the Developed and Developing World. The Guide uses the general term, ADR, when referring to conditions or programs that may affect or include various types of ADR, but will refer to particular types of ADR— negotiation, conciliation, mediation, or arbitration— whenever possible Culturell (1980-1981). Although the characteristics of negotiated settlement, conciliation, mediation, arbitration, and other forms of community justice vary, all share a few common elements of distinction from the formal judicial structure. These elements permit them to address development objectives in a manner different from judicial systems.

Most fundamentally, ADR processes are less formal than judicial processes. In most cases, the rules of procedure are flexible, without formal pleadings, extensive written documentation, or rules of evidence. This informality is appealing and important for increasing access to dispute resolution for parts of the population who may be intimidated by or unable to participate in more formal systems. It is also important for reducing the delay and cost of

dispute resolution. Most systems operate without formal representation (Cloke and Goldsmith, 2010; Galanter, 1983).

Equally important, ADR programs are instruments for the application of equity rather than the rule of law. Each case is decided by a third party, or negotiated between disputants themselves, based on principles and terms that seem equitable in the particular case, rather than on uniformly applied legal standards. ADR systems cannot be expected to establish legal precedent or implement changes in legal and social norms. ADR systems tend to achieve efficient settlements at the expense of consistent and uniform justice. In societies where large parts of the population do not receive any real measure of justice under the formal legal system, the drawbacks of an informal approach to justice may not cause significant concern. Furthermore, the overall system of justice can mitigate the problems by ensuring that disputants have recourse to formal legal protections if the result of the informal system is unfair, and by monitoring the outcomes of the informal system to test for consistency and fairness (Cloke and Goldsmith, 2010).

Other characteristics of ADR systems include more direct participation by the disputants in the process and in designing settlements, more direct dialogue and opportunity for reconciliation between disputants, potentially higher levels of confidentiality since public records are not typically kept, more flexibility in designing creative settlements, less power to subpoena information, and less direct power of enforcement. The impact of these characteristics is not clear, even in the United States where ADR systems have been used and studied more extensively than in most developing countries. Many argue, however, that compliance and satisfaction with negotiated and mediated settlements exceed those measures for court ordered decisions. The participation of disputants in the settlement decision, the opportunity for reconciliation, and the flexibility in settlement design seem to be important factors in the higher reported rates of compliance and satisfaction (Cloke and Goldsmith, 2010; Cappelletti, 1993).

Conceptually, there was scholarly divergent views in regard to the concept of elders. Although there are commonly used definitions of old age, there is no general agreement on the age at which a person becomes old. Realistically, if a definition in Africa is to be developed, it should be either 50 or 55 years of age, but even this is somewhat arbitrary and introduces additional problems of data comparability across nations. The more traditional African definitions of an elder or 'elderly' person correlate with the chronological ages of 50 to 65 years, depending on the setting, the region and the country. In another dimension, elders are regarded as the elderly persons in the society which play a pivotal social role of maintaining values, norms of the society by transmitting to the future generation. Elders have collective responsibilities of consolidating unity and prospect of the entire community. Their contributions in providing wisdom and advice to younger generations and the society as a whole should be acknowledged. Elders are also part of social networks of friends and family, are active in clubs and associations, work as volunteers and are economically active. Elders are traditional custodians of the acculturations (Cletus, 2016).

Conflict is a particular relationship between states or rival factions within a state which implies subjective hostilities or tension manifested in subversive economic or military hostilities. Conflict can be described as a condition in which are identifiable group of humans whether tribal, ethnic, linguistic, religious, socio-political, economic, cultural or otherwise is in conscious opposition to one or more other identifiable human group because these groups are pursuing what to be incompatible goals. More importantly, conflict arises from the interaction of individuals who have partly, incompatible ends, in which the ability of one actor to gain his ends, depends to an important degree on the choice or decisions that other parties will take. Conflict could be violent on uncontrollable dominant or recessive, resolvable or insolvable under various sets or circumstances. A.A Mohammed argues that Conflicts are inevitable wherever severe resources are unequally distributed among competitors and inequity is reflected in cultural and political relationship between groups. With regards to various issues in dealing with conflict, it is important to bear in mind not just overt, physical

violence, but also the sometimes subtly disguised forms of structural and cultural violence. Conflict management in general and conflict resolution in particular, are almost entirely determined by our understanding of the composition of a conflict and not only by symptoms (Raman,1963).

### **Elders Role in Critical Dimension**

The roles of elders in conflict resolution as an alternative process in promoting peaceful coexistence within the society, is intentionally recognizing that experience and wisdom that comes with or accompanies longevity can be brought to bear in the prosecution of conflict resolution. The term ‘elderly’ or older person has different meaning in different countries; it is mainly explained and is related to chronological age, functional age as well as retirement age. George. (2004). According to the UN definition, older persons are those people whose age are 60 years and over. Eskedar Sibuh’ (2015) definition has gained acceptance in Ethiopian context as it coincides with the country’s official retirement age.

Africans, like many other people elsewhere, have their own philosophy of life. They have a dissimilar culture by which they see and interact with themselves. For instance, individualism is a philosophy of life by the West, while communality is a principle in Africa. However, the exceptionality of traditional institutions, by virtue of their indigeneity and use of local actors, enables them to either repel or even sometimes challenge the state. These traditional institutions, also known as indigenous conflict resolution systems continue to demonstrate their relevance in post-conflict states. This is especially true in the context of weak states that are overwhelmed with ongoing state-building processes.

There is no straightforward formula regarding the interactions between the state and traditional institutions. McCandless. (2006). a community cannot access formal justice systems due to costs and other externalities; elders are there to resolve disputes. The role of elders is such that their audience accord them all the support they require in successfully carrying out their reconciliatory mandate. Fisher in (2000) said that conflict exposes the opportunity for relevant changes that can only be attained when it is properly handled. In spite

of the recognition of the judicial powers of traditional leaders by the law, there is informal dispute resolution. The first level of informal dispute resolution is usually the family; secondly, by the intervention of the clan; and thirdly, the village can intervene and if the dispute is not resolved, the matter is finally heard at the ward level by ward leaders and their advisers. Adesina (2002). The procedures of dispute resolution at these levels involve negotiation and mediation pointed at reconciliation purposes.

Chiefs and other community elders generally adjudicate in civil cases such as land grabbing, seduction, ‘*woman palava*’ (a situation where a man has illicit sexual dealings with a married woman and the woman later confesses or is forced to confess the act to her husband), and criminal offences such as arson, theft and violation of community sanctions. In civil cases the plaintiff and defender are encouraged to advance their cases together with their witnesses (if any) before the chiefs can take a final decision. Generally, some compensation is paid to the aggrieved party.

The justice system is heavily tilted against women, especially in husband–wife relationships, and against young people. It is not considered in the best interest of the family to wrong a husband even if his guilt is clearly evident. Instead, the elders would attempt to say soothing words to the wife and later privately rebuke the husband for his misdeeds. While this may look like an injustice to the woman, there is an important social element here. The main interest is to hold the marriage together, not to create a situation where the woman will ‘win the war but lose the peace’.

Criminal offences require a range of punishments, ranging from public reproach and the payment of reparation to cleansing ceremonies. Where an alleged offender denies his guilt, the services of diviners, medicine men and other supernatural agencies are sought to help identify the culprit. Collectively, disputing parties would sit together informally and resolve disputes and conflicts to preserve social coherence and re-establish social bonds. Thus, all the techniques of dispute resolution had aimed at restoring social order. Conflict resolution



amongst African communities has since time ancient taken the forms of negotiation, mediation, reconciliation or arbitration by elders.

In negotiation, the aim is to complement the interests of the parties concerned. Thus, even when the conflict involves a member against his or her society, there is an emphasis on recuperation and reinsertion of wayward member back into its place in society. The repossession of a disobedient member can just as well be seen as the reestablishment of the coherence and integrity of the community, as the declaration of value consensus and social cohesion, so that the management of the conflict favors the concerns of both parties. In traditional Igbo society, peace is negotiated. Request for forgiveness for wrongs done to persons and the complete community is a feature of negotiation. Such apology is routed through the elders, compound heads and chiefs of high competence in the society. It is done on the representative level or quasi-representation. In Yoruba, The Babaogun (patron) played the role of a representative in the sense of conflict resolution (Olayinka, 2018).

Mediators sought from inside the communities or societies of the parties concerned. Elders are respected as trustworthy mediators all over Africa, because of their accrued experiences and wisdom. Their roles depend on traditions, circumstances and personalities, accordingly. These roles include, compelling, making recommendations giving assessments, conveying suggestions on behalf of the parties, emphasizing appropriate norms and rules, visualizing the situation if agreement is not reached, or repeating of the agreement already accomplished (Jeong, 2001).

This is the most substantial aspect of conflict resolution. It is the end product of adjudication. After the disputants have been persuaded to end the dispute, peace is re-established. This restoration of peace and coherence is always anchored on the principle of give a little and get a little. This idea buttresses the idea of the disputing parties to give concessions. A banquet is usually organized to endorse the readiness of the conflicting parties towards reaching points of finding the middle ground. The reconciliation function is practiced by an authority figure that mediates between conflicting parties but is empowered to make

binding judgments. The purpose is not to render a judgment in law but to reconcile the conflicting parties and its norms. The relationship between the authority and the community is moderated by community representatives who advise authority (Miller, 2003).

### **Motivation for Elders roles in ADR in the Nigerian Context**

There have been numerous cases of conflict in Nigeria since her independence in 1960, which have resulted in massive waste of natural resources and human lives, and for which conventional litigation approaches have not achieved lasting/maximum results in circumventing the wave of conflicts in Nigeria and many African states. In 2010, there was a bloody war between the people of Umumilo Village and their fellow members in Abudum Village in Anambra state, Nigeria, over alleged destruction of farm crops and economic trees worth a large sum of money on a disputed portion of land, as well as the removal of an ancient boundary hedge demarcating the two communities. It took the intervention of armed police men to restore calmness to the villages. Similarly, the federal government had been called upon to intervene in the Benue and Nasarawa crisis between farmers and Fulani herdsmen.

The crisis had resulted in bloody killing and rendered thousands of people homeless due to dispute over farming and land grazing. In the same vein, the federal government of Nigeria, in trying to arrest the continual land and boundary dispute in some communities in Edo and Delta states of Nigeria, gave its Boundary Commission a two-week ultimatum to submit its report on the resolution of the dispute involving the communities. These areas had been known to be involved in this fight for a long time, which engendered the boundary commission in 2002. But the commission was, however, not forthcoming, as the fight had been escalating over the years. The conflict of land/boundary dispute can be resolved amicably if and only if the parties are willing to find alternative solution to the dispute instead of resorting to violence (Ayres,1997).

The Niger-delta conflict attracted national attention in 1966, and this conflict has been on the increase since 1990. It has graduated from a dominantly peaceful agitation to violent struggle conducted by the youths on the heels to have a say on how the region's oil resources

are to be exploited, the proceeds shared, and then used in a way that will bring development to the people, and not to leave them to suffer the undesirable hazardous effect of oil pollution, as was done by the Nigerian government in Niger-delta.

The Nigerian civil war fought in 1967-1970 was also a struggle for resource control, which later necessitated the then administration to create 12 more states in order to stop the succession bid of the Rebellist in Odumegwu Ojukwu (Isichei,1978). Conflicts between and within different communities as a result of benefits that come from oil exploration are well documented.

These conflicts are said to have resulted from the struggle for the ownership of oil wells, and location of oil pipes (Ogbogoro War (1998), Obeakpu Oyigbo Conflict (1999), Bille-Ke Conflict (2000), Nembe War (2000), OlomoroOleh Conflict (2000). These conflicts have become serious national issues and have attracted international interests as well. The origin of the whole conflict has been attributed to the insensitivity of the government and oil companies to the underdevelopment and the suffering faced by the people of the region, which in turn have resulted to serious upheavals, with youth taking to possession illegal arms and other criminal activities (Brown and Marriott,1999: Brown,1994).

Attempts at resolving these conflicts have been under the institutional and legal framework of Nigeria. It only appears as if this approach has yielded little or no fruit going by the increase in violent conflicts happening in the country. Even the amnesty program for militants in the Niger Delta was halted as a result of its limited success and an uneven response from the militant groups (Puryear,2011). Resolving conflicts has mainly been done under the existing legal mechanism which includes the courts of law, both under civil and criminal law. Under litigation, people go to court to get judgment in their favor, thereby feeling victorious over their opponents. This often times leaves permanent scars on the mind of the losing party rather than resolving the problem, and may create even more enmity and foster hostility among the parties in the future. Hence, they have not really been effective in resolving or managing conflicts.

Legal proceeding is quite costly, moreover its more interested in enforcing legal rights than protecting the interest of the parties involved. It is agreed that the high price of litigation is delay and therefore denial of justice. This situation, if not checked urgently, may lead to public loss of confidence in the formal judicial process and hence anarchy. Indeed, it is noteworthy that there have been notable pronouncements from court of appeals urging speedy, undiluted justice (Case Flow Management in the Lower Courts). Nigeria has, especially at the state level, begun to explore the feasibility of ADR in dealing with issues of development for instance, the president of Enugu Chamber of Commerce, Industry, Mine and Commerce, Chief Okechuku Nwadiobi, in an address at the Eastern Mediation Centre, Enugu in 6th April, 2011, expressed the willingness of the chamber to adopt ADR in resolving conflict which ordinarily would take longer time and stress in the conventional court system (Brown and Marriott 1999: Shavell,1995).

### **Conclusion**

Elders' intervention enhances Conflict Resolution among indigenes in the context of Nigeria cannot be over emphasizes considering their traditional position in the society. The strategies employed by the elders in conflict between indigene is equally improved effective communication to a great extent as the elders utilized various strategies to intervene at least more often. Poor communication followed by high distrust between parties themselves are the major challenges in the strategies utilized by the elders to address in various communities in Nigeria while unwillingness of parties to hear each other out and activities of interested third parties are other challenges in the strategies Utilized by the elders to address conflict resolution. Furthermore, it can be concluded that leaders and elders in the community create a conducive atmosphere to aid proper ease of tensions through effective conflict resolution practices. It is pertinent to note that the use of Alternative Dispute Resolution practices enhances societal cohesion among ethnic diverse. This is because, to a great extent the frequency to which Alternative Dispute Resolution practices improves conflict resolution

outcomes is the same frequency to which parties to conflicts feel more responsive to elders' intervention.

### **Recommendations**

Based on the findings and conclusion of this study, the following are recommended to better improve the impact of role of elders in the utilization of alternative dispute resolution in Africa and Nigeria in particular:

- i. Elders should be regularly exposed to contemporary methods of conflict management, leaders and indigenes since there is no problem with its usage but the purpose and essence to which it is used that can determine its success or failure.
- ii. Indigenes must dedicate more time on learning about and appreciating the reconciliatory activities of their social institutions for conflict resolution and knowledge-based activities rather than merely relying solely on past experience of the elders alone.
- iii. Interpersonal arguments should be limited to a very large extent especially when tensions are high, rather indigenes should seek for the intervention of a third party they in whom they both have confidence in to help sort out their grievances.

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