

BAYERO UNIVERSITY, KANO
GSP2206 - PEACE STUDIES AND CONFLICT RESOLUTION – (PCR)
Lecture Notes on Conflict and Conflict Resolution: Legal Perspective

INTRODUCTION:

This module intends to look at conflict and conflict resolution from legal perspective. The focus of this module will be on the provisions of the law on conflict resolution in Nigeria. The discussions will be centered more on examining the various rules and regulations on dispute and conflict resolution, other processes, procedure and techniques of resolving conflicts will be treated by another module.

The law anticipates that there must be conflicts arising among human beings living together in a community, in a family, as friends, as colleagues or even as passersby. Conflicts, disputes or disagreements as the case maybe must arise in either their social, personal and or business endeavors. That is why the Constitution of the Federal Republic of Nigeria and our legal system by extension have made ample provisions in various legislations and regulations about processes, modes and methods of resolving conflicts and disagreements as they arise. The discussions will center on the laws and regulations that have made provisions on conflict resolution and its methodology, beginning from the Constitution as the ground norm of our laws.

UNDERSTANDING CONFLICT, NATURE AND CHARACTERISTICS

Conflict occurs between two or more people who disagree on an issue that threatens their respective goals, values or needs. Conflict is an unavoidable aspect of everyday life; it is inevitable aspect of life experience. Understanding how it started and how it reached the stage it is at, goes a long way in solving it. The ability to identify and address conflict at an early stage reduces the likelihood of it escalating.

The ultimate root of conflict is perception of something or someone as a threat to one's well-being. Conflict can take many different forms beginning from arguments, to misunderstandings, to quarrels and escalating to full blown conflicts capable of causing wars. Dispute is constant and persistent, perpetual and unceasing in human society. In as much as we live together, we must disagree. Therefore, ability to identify the nature of a conflict brewing helps in identifying the process to be adopted in resolving it.

As stressful conflict can be, however, when it is handled effectively, it can lead to improvement of interpersonal relations of the disputing parties. Resolving conflicts normally results in stronger bonds between hitherto conflicting parties. This shows that conflicts have their benefits when they are managed or settled effectively.

Because of inevitability of disputes and conflicts among individuals living together, modes and ways of resolving these conflicts when they arise must be devised. The law has provided for methods through which conflicts can be settled depending on the nature of the conflict and the

parties involved.

Conflicts are unavoidable in the course of human association. Taking into account the role of law which is categorized into two to wit: prevention of disputes and settlement of disputes, the law recognizes court's action, otherwise known as litigation, arbitration, conciliation, negotiation and mediation as some of the methods of resolving disputes and conflicts among individuals.

LITIGATION

The primary channels under our legal system where conflicts are supposed to be settled are our courts. Legal action to court of law for settlement of conflict and the powers of the court in that regard are provided for under **Section 6 (6) (a – b)** 1999 Constitution of the Federal Republic of Nigeria (as amended). This section provides for the powers of court in Nigeria to adjudicate dispute and resolve conflict. This section provides as follows:

The judicial powers vested in accordance with the provisions of this section -

(a) shall extend, notwithstanding anything to the contrary in this constitution, to all inherent powers and sanctions of a court of law;

(b) shall extend, to all matters between persons, or between government or authority and to any persons in Nigeria, and to all actions and proceedings relating thereto, for the determination of any question as to the civil rights and obligations of that person.

Instituting action in a court of law is for a judicial resolution of disputes by the court or tribunal and is otherwise called litigation. It is also described as an adjudicatory method of conflict resolution. Litigation is a lawsuit or action brought before a court in which the party commencing the action, the plaintiff, seeks a legal remedy, usually for breach of a right or an offence. If the plaintiff is successful, judgment will be given in the plaintiff's favour and a range of court orders may be issued to enforce a right; impose a penalty, award damages, impose an injunction to prevent an act or compel an act or to obtain a declaratory judgment to prevent future disputes.

Several Rules of courts have made provisions on the rights of individuals to institute actions in courts of law by themselves, or to appear in persons seeking for resolution of their disputes or conflicts even without the assistance of a lawyer.

Action to court of law for resolution of a conflict usually involves the following processes:

- Filing of a case in court:- an individual seeking remedy in a court of law regarding any disputes with another will be required to file his complaint in a court of law either by himself or through his legal representative.
- Appearance of parties before the court:- parties to the dispute will thereupon be summoned by the courts to come and present their cases either by themselves or through legal representatives as well.

- Hearing of the case:- the court will listen to the parties for oral presentation of their cases.
- Tendering of exhibits to the court:- if any of the parties is relying on any document showing what happened between the parties leading to the conflict they will need to present it to the court.
- Decision or judgment of the court:- after listening to the parties and evaluating the evidence presented by the parties, the court will then pass its judgment in the matter.
- Execution of Judgment and appeal:- the judgment will then be executed if not appealed, or where it appealed against, the appellate court will listen to the merits of the appeal and make its decision.

However, one of the disadvantages of litigation amongst other things is that it is costly, the disputing parties have to pay for charges in court and if represented by lawyers, they have to pay legal fees. Litigation also is time consuming as cases can be pending in courts for many years before they can be finally settled. In some courts, litigation is very technical. Litigation also promotes enmity between the disputing parties. On the other hand, in litigation, often the judges are unbiased, and parties are given equal opportunities to present their cases. Finally, whatever decision is given it is final subject to appeal where that is applicable. Overall, conflict resolution by litigation is one of the efficient ways of settling conflicts among individuals.

ALTERNATIVE DISPUTE RESOLUTION (ADR)

Apart from litigation, other methods of dispute resolution have been recognized and provided for under our laws. These methods are called alternative dispute resolution (ADR). ADR process is well established in Nigeria and it is fast gaining foothold. Its legal status has been established under Orders 17 of the revised *Federal Capital Territory (FCT) High Court Civil Procedure Rules*; Order 25 of the *Lagos State High Court Civil Procedure Rules* and also section 5 of the *Kano State Justice Sector Reform Team Law 2013*. Under these respective Orders of the Rules and the Justice Sector Reform Team Law, ADR is taken into cognizance through arbitration, mediation, conciliation and negotiation.

The contraction ADR is used to mean 'Appropriate Dispute Resolution', 'Alternative Dispute Resolution' and 'Amicable Dispute Resolution'. ADR refers to a whole range of options to court action or litigation such as mediation, conciliation, arbitration and in some cases negotiations, which involves a third-party involvement in order to assist the parties in resolving their disputes. Uwaifo J.C.A. in *Okpuruwa v Okpokam (1998) 4 NWLR (pt 90) p 554*, observed 'it may be that in practical life when there is any dispute in any community, the parties involved may sometime decide to refer it to a third disinterested party for settlement.' This case also demonstrated the acceptance and recognition of ADR process by our legal system and our courts.

The ADR methods of conflict resolution are also provided for and regulated by the **Arbitration and Conciliation Act, Cap. A18, Laws of the Federation of Nigeria (LFN) 2004** and **Lagos State Arbitration Law, 2009**. These are the Acts that provide for a unified legal frame work for

the fair and efficient settlement of disputes by arbitration and conciliation. Alternative Dispute Resolution employs the principles of common law and equity. The common law and doctrine of equity is a colonial legacy in Nigeria. It relates to the English Common law (law of England) and doctrine of equity which is in operation in Britain. This forms the basis by which equity and justice are pursued and achieved in Nigeria during the British control of Nigeria. Today, this has become ancillary to the Nigerian Law and rules. It becomes important when the existing national laws and rules lack provision for resolving particular unanticipated issues. Currently in Nigeria, there are mediation centers established by law, known as the Multi-door Courthouse, in Abuja, Kano and Lagos. The ADR mechanisms or strategies for conflict resolution are discussed as follows:

ARBITRATION

Arbitration is defined by section 1 of the Arbitration and Conciliation Act as the submission of dispute to an arbitrator other than a court of competent jurisdiction for a decision. Arbitration is one of the modes of settlement of disputes under the umbrella of Alternative Disputes Resolution (ADR) that is recognized under our laws. Arbitration is regulated in Nigeria by the Arbitration and Conciliation Act, Cap. A18 Laws of the Federation of Nigeria, 2004 for the federation and by the Lagos State Arbitration Law 2009 for Lagos State of Nigeria.

This means that Lagos state has its own independent law regulating arbitration. Section 2 of the Lagos State Arbitration Law places all arbitrations in the state under the law except where parties agree expressly that another arbitration law shall govern their arbitral proceedings. Therefore, parties have a right in Lagos to either choose the state arbitration law or the arbitration and conciliation Act to arbitrate their disputes.

The law also recognizes traditional or customary arbitration processes, however only if it satisfies certain conditions as set out by the Supreme Court of Nigeria in the case of *Ohiaeri Vs Akabeze* (1992) 2 NWLR (Pt 221)1, when it held as follows:

It is a common feature of customary arbitration in a closely knit community that some of the arbitrators, if not all, not only have prior knowledge of the facts of the dispute, but also have their prejudices and varying interests in the matter, and are therefore sometimes judges in their own cause and are likely to prejudge the issues.

So not only statutorily recognized arbitrations are enforceable under our legal system, even the customary ones are equally enforceable subject to fulfilling the above criteria set out by the Supreme Court to wit; the arbitrators must not be privy to the facts of the dispute between the parties, and must not have any interest in the issues leading to the arbitration in anyway.

Arbitration exists also under international law, and arbitration can be carried out between private individuals, between states, or between states and private individuals. In the case of arbitration

between states, or between states and individuals, the Permanent Court of Arbitration and the International Center for the Settlement of Investment Disputes (ICSID) are the predominant organizations. Arbitration is also used as part of the dispute settlement process under the WTO Dispute Settlement Understanding. International arbitral bodies for cases between private persons also exist, the International Chamber of Commerce Court of Arbitration being the most important. Arbitration also exists in international sport through the Court of Arbitration for Sport.

Arbitration is normally resorted to when there is arbitral clause in the parties agreement or when the parties otherwise agree to resort to it.

Conflicts/disputes that cannot be settled by Arbitration

Conflicts or disputes maybe settled using the instrumentality of arbitration however, certain cases, conflicts and disputes cannot be settled by arbitration under our legal system. All cases of disputes can be referred to arbitration except in two cases:

Criminal offence:- where there is conflict or dispute that involves commission of a crime, the parties to this type of conflict or dispute cannot settle it by invoking arbitration.

Interpretation of the Constitution:- whenever there is a dispute or conflict relating to interpretation of the Constitution of the Federal Republic of Nigeria, settlement of such a dispute is not to be done using arbitration. Powers of interpreting the Constitution lie solely with the courts. The Constitution vests powers of interpreting it on high courts with appeals from such decisions lying to the Court of Appeal and Supreme Court respectively. See sections 233(1)(b) and 241(1)(c).

Appointment and Removal of Arbitrator(s)

The Arbitration and Conciliation Act made several provisions on the appointment and number of arbitrators, see section 7(2) of the Act. Arbitrators are appointed either by the:

- Parties
- Arbitrators
- Institution
- Court.

The law under sections 10-12 of the Act lists several grounds upon which an arbitrator maybe removed, thus;

- Voluntary withdrawal by arbitrator
- The parties can by consent terminate his appointment where he is incapable of discharging his functions

- Where he unduly delays discharging his functions
- Where he is proven to be partial
- Where the arbitrator does not possess required qualifications
- Where he is considered to be physically and or mentally incapable of handling such arbitration process.

Arbitral Award

Award is the decision of arbitration tribunal after hearing the disputes between parties before it. An award must be in writing and shall contain details of the disputes between the parties and the reasons for reaching the decision by the arbitration tribunal. See generally section 26 of the Arbitration and Conciliation Act.

Enforcement of arbitration award

An award made by an arbitration tribunal is subject to enforcement order by a high court. A party in whose favor an award is made will apply to a high court for an order of the enforcement of the award. The application, according to section 31 of the Arbitration and Conciliation Act, shall be in the following manner:

- The application shall be in writing
- The application shall be accompanied by authenticated original award or a certified copy of the original
- The application shall be accompanied by the original arbitration agreement or certified copy

CONCILIATION

Section 37 **Arbitration and Conciliation Act** empowers parties to any agreement from which dispute or conflict arisen to submit same for conciliation. The section provides thus:

- *Notwithstanding the other provisions of this Act, the parties to any agreement may seek amicable settlement of any dispute in relation to the agreement by conciliation under the provisions of this part of this Act.*

Any party to such a dispute can initiate the conciliation process by requesting the other party in writing to participate in the conciliation process. This is provided by section 38 (1) of the Act, thus;

- *A party who wishes to initiate conciliation shall send to the other party a written request to conciliate under the provisions of this Part of this Act.*

According to section 40 of the Arbitration and Conciliation Act, disputing parties who submitted their disputes for conciliation are free to either accept or reject the terms of the conciliation process. Where parties decided not to accept the terms of settlement proposed by the conciliation body, the conciliators can recommend submission of the said dispute to either court for litigation or to arbitration, whichever seems most appropriate in the circumstance. See section 42 of the Act.

The conciliation terms if accepted by the parties are binding on them and they can be enforced in a court of law. The conciliators only assist parties and propose terms of settlement of the dispute between parties. These terms are not binding on the parties unless they are accepted by both parties.

Conciliations are mostly resorted to in employer/employee disputes; they are however employed in some other types of disputes involving different class of people.

MEDIATION

This is the submission of a dispute to a *neutral* third party (Mediator or intermediary) for facilitating a settlement or decision. Mediation is defined as:

(A) process in which an impartial third party called the mediator is invited to facilitate the resolution of a dispute by the self-determined agreement of the disputants. 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.

Mediation also is defined by The Centre for Effective Dispute Resolution (CEDR) as follows:

Mediation is a flexible process conducted confidentially in which a neutral person actively assists parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.

From this definition we can see that it is in most cases an unofficial and voluntary process where somebody unconnected with either of the parties or the subject of the dispute between the parties, helps the parties settle amicably and mutually their dispute by arriving at a beneficial agreement. It should be noted that the mediator is not to and does not make decision for the parties; it is the parties that agree mutually on the terms of their agreement. The mediator only facilitates the process.

In mediation, disputing parties sketch their complaints through supervision of impartial mediator who is responsible of assisting the parties to reach an agreement acceptable to both of them. Mediation process is voluntary and parties can abandon participation at anytime they wish.

Conciliation as ADR process is distinguished from mediation. While a mediator only tries to bring the disputing parties on a settlement table and encourage them to reach amicable resolution of their problems by themselves, a conciliator on the other hand, helps parties come to a compromise position by proposing solutions that they should consider.

NEGOTIATION

Negotiation is a bargaining process between two or more disputants who seek to find solution to common problems. In simplest terms, negotiation is a discussion between two or more disputants who are trying to work out a solution to their problem.

This process can occur at a personal level, as well as at a corporate or international (diplomatic) level. Negotiations may also take place in both civil and criminal matters in Nigeria. By the provisions of section 76 of the Lagos state Administration of Criminal Justice Law, a person accused of committing a crime, especially economic crimes, can enter into a plea bargain with the prosecution where negotiations maybe opened by both parties for settlement of the matter.

Plea bargaining is of two types; there is charge bargaining and sentence bargaining.

- Charge bargaining is a situation where negotiations will take place between the prosecutor and accused person(s) as to the nature of the charge the prosecutor would prefer against the accused in exchange of a plea bargain.
- Sentence bargain is a situation where negotiations would take place between the prosecution and the accused on the nature of sentencing to be recommended by the prosecution in court in exchange of plea of guilty. See sections 76(1) of the Administration of Criminal Justice Law of Lagos state.

As mentioned in the introduction, the processes, procedures and approaches of negotiations will be highlighted by another module, suffice it to say negotiation is one of the effective methods of settling a conflict whether civil or criminal as the case maybe.

CONCLUSION

Whatever method parties to a dispute or conflict, amongst the various mechanisms illustrated, chose to make use of in settling their conflicts, they have their advantages and disadvantages. ADR mechanisms enjoy some advantages when employed as conflict resolution mechanisms over litigation. ADR methods are less technical, less time consuming and also less expensive. They equally enjoy some level of privacy compared to litigation. Litigation on the other hand, is always settles disputes between parties with finality and the judgment is always binding on parties.

Overall, each of the methods whether litigation or any of the ADR mechanisms has its advantages and disadvantages, however, in most cases, it is the nature of parties conflict or dispute that will determine the method to be adopted in settling it.

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