

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

One of the objectives of this module is to look at conflict and conflict resolution from legal perspective. In this module, our discussions will be focused more on examining the various rules and regulations on dispute and conflict resolution.

Conflicts are inevitable in our lives as humans. Conflicts, disputes or disagreements as the case maybe must arise in either their social, personal and or business endeavors. The Nigerian legal system has made ample provisions in various laws and regulations on processes, modes and methods of resolving conflicts and disagreements as they arise. This module will look at methods of resolving conflicts through the provisions of our laws.

**CONFLICT: NATURE AND CHARACTERISTICS**

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.

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. The law recognizes court's action, otherwise known as litigation, arbitration, conciliation, negotiation and mediation as the major and acceptable 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. The Constitution of the Federal Republic of Nigeria, 1999 as amended under **Section 6 (6) (a – b)** vests courts of law with the powers to listen and settle disputes between or among individuals in Nigeria. 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.

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. See Order 9 Rule 1 and 2 of the Kano State High Court Rules, 2014.

Litigation as a method of resolving conflict has its advantages and disadvantages.

### **ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Apart from litigation, other methods of dispute resolution have been recognized and provided for by our laws. These methods are called alternative dispute resolution (ADR). ADR's 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 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. 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 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.

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.

So not only statutorily recognized arbitrations are enforceable under our legal system, even the customary ones are equally enforceable subject to fulfilling the 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. 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**

There are 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
- Interpretation of the Constitution

### **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.

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

### **Arbitral Award**

Award is the decision of arbitration tribunal after hearing the disputes between parties before it.

### **Enforcement of arbitration award**

An award made by an arbitration tribunal is subject to enforcement order by a high court.

### **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.

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.

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 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.*

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.

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.
- Sentence bargaining.

## **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.