Peace Studies and Practice
Journal of the Society of Peace Studies and Practice
2018 Edition
Pp 69-80

Application of Alternative Dispute Resolution in Benue State: Interrogating the Role of Citizens Mediation Centre, Makurdi, Benue State.

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Abstract
Disputes are part and parcel of human interactions as people who interact either politically, economically, socially or culturally have different interest, goals and strategies of achieving their highly valued goals. In most cases, the resolution of these disputes through the traditionally and legally recognized means if not properly handled leads to further break down of the peace process as it breeds disaffection between the parties involved. To this end, resolving disputes depends on the best strategy to be used for specific conflicts. This paper investigates the phenomenon of dispute resolution and the peace question in Benue state using both primary and secondary data within the arguments of the justice theory especially the arguments of Robert Nozick and discovers that, most dispute resolved through the legal judicial system do not consolidate the peace between the parties especially when one party to the dispute feels that his or her low economic status is responsible for the nature of judgment delivered. It also discovers that in the legal justice system guinea compromises are not usually made to ensure the peace process, instead only the symptoms are treated leaving the core points of disagreement which makes the peace question vulnerable for easy reopening at the slightest provocation. To resolve disputes without leaving a room for reoccurrence of same dispute and to guarantee the peace process, this paper recommend an alternative dispute resolution mechanism based on recognition of the individual right to own and relinquish same at will what originally belongs to him or her based on societal acceptable norms and values. This should be situated within the outcome of guinea bargain and negotiations schemes that is acceptable by all the parties involved.

Key Words: Mediation Centre, Mediation and Alternative Dispute Resolution

Introduction

In the world of human interactions, disputes are inevitable generally as a result of rising disagreements between parties that have divergent goals which they wish to achieve irrespective of the desires and feelings of others. At the heart of every day's human interaction which is dispute prone is therefore the necessity to foster mutual co-existence and engender gainful relationship through continuous dispute resolution.

When disputes rear, many methods/strategies are therefore adopted towards resolving them ranging from litigation, negotiation, arbitration, conciliation, mediation among others. In most modern liberal

democracies, the common method of resolving such disputes is litigation as people seek justice through the courts of law. However, with increased dynamics in the reasons for disputes and the impact of their resolution on the peace process, the resolution of many disputes in a manner that will consolidate the peace process is no longer done through litigation. This is because, some disputes that are resolved in the courts do not guarantee the sustainable peace especially when one party feels deprived based on his or her socio-economic status. Globally, therefore, alternative dispute resolution techniques are being adopted to resolve disputes and they have proved to provide sustainable peace outcomes to disputes. According to Mackie1 (1998:12) two major undercurrents led to this global growth in the usage of alternative strategies of resolving disputes. One, dissatisfaction with the costs, delays and uncertain outcomes of the litigation systems compare to the alternative system represents the first of these undercurrents. It can be observed that, litigation usually takes longer time which does not adequately match the speed responsiveness and expectations of many disputants especially those that are business and customer orientated and operates within the tenants of globalization with its attendant's technological changes that requires prompt actions. Two, is the question of confidentiality. He argued that some disputes are of a sensitive and confidential nature and individuals and commercial entities may be unwilling to accept the determination of their rights in the full glare of the public, hence preferring alternative quite strategy of resolving their dispute. We can argue from the above that the need for rapid decisions without encumbrances, technicalities and bogus procedures which delay justice and also give birth to judgments that in most cases are not totally acceptable by some parties to the dispute have made alternative dispute resolution strategies more attractive to disputants.

In Benue state, disputes have also occurred that have threatened the peace question as the legal system has not been able to dispense justice to the satisfaction of many especially the low income earners. This has increased the quest by the people to utilize alternative strategies to resolving their dispute. It is based on this clamour for an alternative dispute resolution strategy that the government of Benue state responded promptly by establishing the Citizen Mediation Center under the Ministry of Justice. In this light, this paper examines how the Centre has used ADR as a panacea to dispute resolution in Benue State to consolidate peace in the state.

Conceptualizing Alternative Dispute Resolution

The phrase 'alternative dispute resolution' was first coined and used by Frank Sander, an American legal academic, in 1976 (Sander, 1976). Alternative Dispute Resolution ADR is a mechanism that allows parties in a dispute/disagreement to avoid litigation and the consequences it brings. It is a term used to describe several modes of resolving legal disputes. This means that through the ADR, feuding parties – whether individuals or groups – do not appear before traditional courts to decide their case/fate. ADR therefore includes dispute resolution processes and techniques that act as a means for disagreeing parties to come to an

agreement short of litigation. While the formal dispute resolution by judicial mechanisms such as the formal courts are recognized and are valid means to resolve disputes, the informal dispute resolution (ADR) with less legalistic arts in forms of proceedings and procedure is best suited to resolve most disputes (Roberts and Palmer, 2005). One of the main arguments for ADR is that resolving dispute through informal approach has become more beneficial especially where the parties are not at par in terms of financial/economic wherewithal to bring an action to the formal court (Cameron, Harter, Bingham and Eisner, 1990).

Alternative Dispute Resolution (ADR) has become central to the resolution of disputes in the Nigerian society as it has been used by families, churches, schools and government agencies. Central to the effectiveness of Alternative Dispute Resolution process is ripeness where strategies such as Arbitration, mediation and negotiation amongst other strategies are used in resolving disputes. According to the HPC in its 2010 research report, ADR is the alternative to formal, state-sponsored adjudication system. The leading argument for ADR is that the process is informal, faster and cheaper than litigation. This is not altogether surprising because cases in courts for legal ligation are known to linger for so long due to incessant adjournments and other technicalities. Apart from this mentioned challenge, Cummings and Eagly (2006) also argued that ADR is common among the indigent or employees who do not have the means to hire a lawyer to assist them in their complaint against an oppressor or an employer.

Langen and Barendrecht (2009) asserts that the poor and disadvantaged have drawbacks because they are, in most cases, unable to afford the services at the formal courts hence denying them the right to access justice. Those of them who have tried to hire a legal practitioner to handle their cases have had to compromise their rights because they could not match the financial power of the defendants. This argument, however, should not suggest that only the poor and oppressed access the opportunities of the ADR because elites and the rich also patronize the ADR mechanism as it is less stressful and time saving. According to Nyenti (2012) ADR is now very common because its processes and procedures are informal – thus they are flexible, user friendly and deliver justice speedily. It is important to point out that 'informal' as used here refers to dispute resolution mechanisms falling outside the scope of the formal justice (court) system (Animashaun, Odeku and Nevondwe, 2014).

In its arguments for the appropriateness and importance of the ADR, the European Commission (EC) notes that:

> ADRs offer a solution to the problem of access to justice faced by citizens in many countries due to three factors: the volume of disputes brought before courts is increasing, the proceedings are becoming more lengthy and the costs incurred by such proceedings are increasing.

Unarguably, access to justice is very important in democracies as it is essential for human and societal development and a mechanism for

tackling and reducing poverty, restoring dignity and strengthening the rule of law (Selim and Murithi, 2011). It is from this perspective that Wojkowska (2006) succinctly explains that "there is no denying that support to enhance the rule of law and improve the functioning of the formal justice institutions is crucial, however given the slow pace of reform, it is increasingly recognized that technical top-down fixes alone will not suffice to improve access to justice in many countries". Arguing further, he submits that approaching the ADR mechanism is becoming very popular because:

> Informal justice systems are often more accessible to poor and disadvantaged people and may have the potential to provide quick, cheap and culturally relevant remedies. Informal justice systems are prevalent throughout the world, especially in developing countries. They are the cornerstone of dispute resolution and access to justice for the majority of populations, especially the poor and disadvantaged in many countries, where informal justice systems usually resolve between 80 and 90 percent of disputes (Wojkowska (2006).

This means that, even though the ADR is not the exclusive of poor and deprived populations, it is the most sort after mechanism by the poor and deprived in seeking justice and getting redress without going through the slow, time-consuming and expensive processes of formal justice.

There many methods of ADR: Arbitration, Conciliation and Mediation. Arbitration is a technique for the resolution of disputes outside the courts, where the parties to a dispute refer it to one or more persons – arbitrators, by whose decision they agree to be bound. Conciliation is an alternative dispute resolution process whereby the parties to a dispute use a conciliator, who meets with the parties separately in order to resolve their differences. They do this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bring about a negotiated settlement. Mediation is a voluntary and informal process of resolution of disputes. It is a simple, voluntary, party centered and structured negotiation process, where a neutral third party assists the parties in amicably resolving their disputes by using specified communication and negotiation techniques. Mediation is a process controlled by the parties themselves. The mediator only acts as a facilitator in helping the parties to reach a negotiated settlement of their dispute. The mediator makes no decisions and does not impose his view of what a fair settlement should be (Sheffield,1994).

Methodological and Theoretical Framing

Methodologically, this paper is qualitative in nature and uses both primary and secondary sources of data collection. In total, 10 interviews were conducted and the findings from the interviews collaborated with secondary sources of books, journal articles and reports. Theoretically, the Robert Zonick justice as an entitlement perspective of conflict resolution was adopted to analyze the data collected.

Since Plato conceived justice as a principle of harmony of the mind,

individuals and scholars have developed different conceptions of what constitute justice within their societies. It can therefore be argued here that, disputes emanates from the feelings of injustice and they can only be resolved in a manner that will consolidate the peace process only when all the parties involved perceived that the resolution is not unfair and each party is fairly treated and entitled to what is genuinely his or hers. Since the issue of fair entitlement is central to the peaceful resolution of disputes, this paper adopts the Robert Zonick justice as an entitlement perspective to analyze its argument. According to Zonick (1974) justice is centered on three principles which he sums up into what he calls the three principles of entitlement. The first principle is what he calls the *just acquisition principle w*hich refers to the condition where individuals have entitlement rights to justly, legally and prudently acquire what is in his/her position if he or she does acquire such, then he or she is entitled to hold it without interference. The second principle is that of *just transfer* which gives the holder the right to transfer what he or she holds voluntarily without coercion, dupe, theft, taxation or through any other way that is against his or her wish. The last principle is the *principle of rectification.* This last principle states that no one is entitled to a holding except on the application of the first and the second principles.

We can deduce from the above arguments that, people get into disputes in the quest to holding property of whatever form. In many cases, they use all means at their disposal to achieve their needs and when this is done without the consideration of these three principles, dispute becomes inevitable. We can therefore argue that, whether justice is distributive, reciprocal, communitarian or feminist, the central argument is that justice has an ingredient of fairness as it recognizes the difference amongst the people in the society and sort to establish equality and responsibility on liberty and rights of entitlement which discard forceful alienation and marginalization. This paper therefore adopts the arguments of the Zonick justice theory because it answers the questions of how properties should be held in the society by individuals without coercion which usually creates the room for disputes.

Citizens' Mediation Centre (CMC): Establishment/ Structure

The Citizens' Mediation Centre is housed within the Directorate for Citizens Rights in the Ministry of Justice, Benue State. The Directorate was established in 2003 to actualize government's policy of providing an enlargement of access to justice to the vulnerable and indigent members of the state and to promote the true tenets of liberal democracy which gives the citizens the opportunity to use various Alternative Dispute Resolution (ADR) mechanisms in place of litigation which is sometimes considered as been favorable to the government or the powerful in the society.

As earlier stated, the Directorate was established in 2003 during the regime of Dr. George Akume as governor of Benue state but The Citizens' Mediation Centre Establishment Law was signed in 2008 by His Excellency, the Executive Governor of Benue State, Rt. Hon. Gabriel Torwua Suswam, and it became a critical part of the governance system and to address the peace question in Benue state. The aims and objectives of

the Citizens Mediation Centre (CMC) are as follows:

i. To ensure the protection of the rights of the ordinary citizen and to ensure that the vulnerable get justice.
ii. To provide Mediation and Conciliation and other ADR services as an alternative to litigation.
iii. To educate and ensure the protection of the fundamental human rights of the citizenry.
iv. To serve as a public enlightenment centre to people who seek legal advice.
v. To provide pro-bono services to indigent persons whenever in any legal quagmire.

As an Alternative Dispute Resolution Centre proving non-adversarial forum for the mediation and settlement of disputes between parties who voluntarily agree to the mediation of disputes by Mediators, the duties of the Centre revolves around landlord and tenant matters, employer and employee matters, family matters and matrimonial causes, small debt claims, breach of agreements and contracts, personal injury, defamation, illegal detention and arrest, wrongful demotion, compensation, consumer rights protection, human rights protection, land and communal conflicts, and other related matters. With a mission statement that aims at creating an enabling environment for quick and cost free access to Justice for the vulnerable and indigent members of the society in an informal setting that promotes amicable resolution of disputes, the Citizens' Mediation Centre's Directorate is under the supervision of the Attorney-General and Commissioner of Justice who is the chairman of the Governing Council. It is headed by a Director who serves as the secretary to the council and he is assisted by trained personnel in ADR. The Centre is made up of five units, viz:

i. Citizens Mediation Centre
ii. Office of the Public defender
iii. Human Rights Unit
iv. Consumer Rights Protection Unit
v. Publication Unit

The Citizens' Mediation Centre, specifically, provides a platform for the resolution of a wide range of disputes such as family matters, domestic violence, landlord/tenant, employer/employee, small debts amongst others via a legal backing from the submission of complaints by parties to the enforcement of the Memorandum of Understanding (MoU) in the court of law.

The Centre holds a quarterly departmental meeting as a measure of discussing challenges of Alternative Dispute resolution (ADR) and finding ways to move the directorate forward and thereby engendering effective and efficient service delivery. It also promotes bond building among staff and also helps in information dissemination.

It is important to point out here that each of the component unit plays significant roles that culminate into the resolution of dispute carried out by the centre. For instance, the Office of the Public Defender provides legal representation for indigent person(s) charged with criminal offences but has or are unable to secure the services of a Counsel. The Human Rights Unit of the Directorate is designed to offer pro-bono services to a targeted group such as women, children and the indigent. It

provides counseling services and assists persons in securing the protection of their rights when aggrieved. Under this unit, prison watch and other services such as collaborating with the office of the Federal Attorney-General on prison decongestion exercise along with other stakeholders are carried out.The Consumer Rights Protection Unit is designed to ensure justice for consumers who may have lost their fair deal in any transaction involving purchase and consumption of goods and services.

The Publication Unit carries out enlightenment campaigns through publication of journals, handbills and pamphlets. The unit also organizes seminars and workshops to educate the people on the need for alternative dispute resolution and other related issues concerning the administration of justice. The unit also partners with other agencies such as the Vigilante Group of Nigeria (VGN) under sponsorship of DFID/Security, Justice and Growth (SJG) programme of the British Council.

Planning and Implementation Procedures of ADR in the Citizens' Mediation Centre:

At the Citizens' Mediation Centre, there are basic planning and implementation procedures that the authorities /disputing parties follow to achieve target objectives. These include:

I. Full expression of feelings by parties.
II. Soothing of hurt feelings.
III. Expression of concern.
IV. Identification of needs.
V. Setting out issues.
VI. Brainstorming.
VII. Sensitize options.
VIII. Offer.
IX. Acceptance.

To utilize these procedures towards achieving the goals of the Centre, the Centre handles issues through phases that make it easy for the parties involved in the dispute to accept the outcome of the resolution. These are;

The Preparation Phase

The process of dispute resolution at the Citizens' Mediation Centre normally begins with the Preparation Phase. This is a stage in which the parties agree on a named mediator in accordance with the guiding principles of the Centre. Once a mediator is named, date and venue that is convenient to the parties and the process is also carefully selected. This paves way to the next important phase which is the Opening Phase.

The Opening Phase

The second stage is referred to as the Opening Phase where the choice mediator comes into the picture of things. He does this by introducing himself and explaining in details the mediation process, with specific reference to the role of the mediator, and attempts to elicit necessary statements from the disputants. This enables the mediator to set the procedural framework for the process and its resolution. This phase is crucial to the identification and structural discussion of the issues which represents the next stage.

Identification and Structural Discussion of Issues

The ground for settlement and negotiations can only begin if the attendant issues are identified and discussions bordering on them have been carried out to their logical conclusions. Thus, the identification and structural discussion of issues phase is

an important aspect of the dispute resolution process at the Citizens' Mediation Centre. Here, the mediator is primarily concerned with identifying and characterizing the issues in a dispute with the view to determining the priorities of parties and exploring possible solutions to the elements of the dispute with the parties.

Movement of the Parties to Agreement

This is an important phase in the dispute resolution process at the Centre. Whether the process is effective or whether a resolution can be reached is dependent on this phase, which is the movement of the parties to agreement. The skill of the mediator plays a crucial role here. The negotiator at this stage must be seen to use techniques of principled negotiation to achieve optimal outcomes.

Signing of a Memorandum of Undertaking (MoU)

Finally, where mutually satisfactory resolutions to the issues are accepted by the disputing parties, a Memorandum of Understanding (MoU) is prepared for their endorsement. The MoU may be leave of court or a judge enforced in the same manner as a judgment or order to the same effect, thus enhancing the overall success of the resolution.

The above procedural process has helped the Centre to achieve some results since its establishment. It is therefore pertinent to discuss two cases resolved concluded by the Centre since its establishment.

Selected cases of Disputes Resolved by the Centre since Inception.

According to Agbese P.O Esq, the director of the Centre interviewed on the 4/09/2017, the Centre has since inception mediated successfully in handling 1019 cases summarized as follows;

1.	LandLord/Tenant cases	84
2.	Employer/Employee Matters/wrongful termination	109
3.	Family matters & matrimonial causes	132
4.	Small debts claims	56
5.	Breach of contract	65
6.	Personal injury	26
7.	Defamation	10
8.	Illegal detention/arrest	102
9.	Wrongful demolition	15
10.	Compensation	28
11.	Human Rights Protection	130
12.	Land and Communal conflicts	66
13.	Custody and Child Related matter	87

From the above figures, it can be seen that the Centre has achieved in line with its mandate to help address the peace question in the state. At this point, it is pertinent to examine the processes towards the resolution in two selected disputes.

Case One: Tenant A vs landlord A: Tenancy Dispute

A tenancy dispute between Mr. Tenant (Complainant or Party A) of No. 34 Onitsha Street, Wurukum, Makurdi and Mr. LandLord (Respondent or Party B) of Indigenous Timber Shed, Wurukum, Makurdi was brought before the Citizens Mediation Centre for mediation in 2012. Mr. Tenant (Party A) had on 28th February, 2012 paid for a shop belonging to Mr.LandLord (Party B) in the sum of One Hundred Thousand Naira (N100, 000.00) as rent.

Party A bought wood for roofing from Party B amounting to Twenty One Thousand One Hundred Naira (N21, 100.00) with the agreement that the said amount shall be deducted from the rent of One Hundred Thousand Naira (N100, 000.00). However, soon after this transaction, Party A demanded from Party B a refund of the outstanding balance of Seventy Nine Thousand Nine Hundred Naira (N79, 900.00) when Party B refused to comply with the terms of the tenancy agreement in relation to the deductions of the cost of the roofing wood from the One Hundred Thousand Naira (N100, 000.00). Based on this breach of agreement, Party A reported the matter to the Citizens Mediation Centre.

The first step the staff at the Citizens Mediation Centre took towards resolving this dispute was the naming of a mediator by both parties in accordance with the guiding principles of the Centre. This led to the fixing of a date and venue convenient to the parties. By carefully selecting the resolution process, the mediator helped to pave way to the crucial opening phase of the process.

At the meeting, the mediator was introduced, followed by self-introduction of the parties in the conflict, and then followed by the explanation of the mediation process in detail as per the role of the mediator and the expected cordial interaction to be followed. With this done, the mediator was able to set the procedural framework for the process and its eventual resolution.

The issues of the tenancy dispute between Party A and Party B were addressed; the likelihood of a movement of the parties to an agreement became glaring. Skillfully and without being judgmental, the mediator played a crucial role by using techniques of principled negotiation to make the parties appreciate the need for a peaceful resolution of the dispute.

ADR Results and Outcomes

At the end of the resolution process between Party A and Party B, the decisions taken were mutually satisfactory and accepted by the disputing parties. Party B agreed to pay the balance of Seventy Nine Thousand Nine Hundred Naira (N79, 900.00) to Party A who was no longer interested in renting the shop as at 29th June, 2012. On his part, Party A agreed to accept the Seventy Nine Thousand Nine Hundred Naira (N79, 900.00) from Party B in satisfaction of the balance of rent to the shop.

This mutual agreement led to the signing of a Memorandum of Understanding (MoU) which was duly endorsed by both parties and their witnesses on the 30th June, 2012. Thus, the Citizens Mediation Centre resolved the tenancy dispute between Mr. Emeka Douglas (Complainant or Party A) of No. 34 Onitsha Street, Wurukum,

Makurdi and Mr. Onyeka David (Respondent or Party B) of Indigenous Timber Shed, Wurukum, Makurdi peacefully.

Enforceability of Agreements

Since the Memorandum of Undertaking (MoU) may be leave of court or a judge enforced in the same manner as a judgment or order to the same effect, it does not only enhance the overall success of the resolution, it can also serve as evidence admissible in a court of law if the need arises. This makes it easier for the enforceability of agreements.

Case Two: Mrs. Lender v Mr. Borrower: Debts Claims

This complain was brought before the Centre by Mrs. lender (Complainant or Party A) of Ikpayongo village near Makurdi against Mr. borrower (Respondent or Party B) of Kanshio settlement, Makurdion the 23/5/2016.Mrs. Member Gundu (Party A) had on 4thDecember, 2015loaned the sum of N150,000 in trust to Mr. Iorkyaan Samuel who is a close associate of her husband to be paid back without interest within one month.

According Mrs. Gundu, she did not even asked for the money after the agreed one month until the second month which was February 2016. To her dismay Mr. Iorkyaa (Party B) resulted to calling her names and boasted that he will not pay the money because Mrs. Gundu's husband participated in spending the money with him.She said that Mr. Iorkyaa had refused to pay her the money even after reporting the case to all family friends and relatives. She had to run to the Centre when party B started threatening. The Centre in resolving this dispute adopted the normal procedure of the Centre as in the first case above.

ADR Results and Outcomes

At the end of the resolution process between Party A and Party B, the decisions taken were mutually satisfactory and accepted by the disputing parties. Party B did not only agree to pay the total sum in one week but also tendered an apology to party A as well as her husband. Accordingly, party A accepted the apology and the time frame given by party B to make good the debt.

This mutual agreement led to the signing of a Memorandum of Understanding (MoU) which was duly endorsed by both parties and their witnesses on the 2ndJune, 2016. With this development, the dispute between the two parties concerning unpaid debt was resolved by the Centre amicably.

Conclusion

From the above, we can argue that although Alternative Dispute Resolution is relatively new in the legal sphere of Benue State, it has contributed greatly to addressing the peace question in the state. This is because it has provided a flexible procedure through which the parties can reach a resolution of their dispute at less cost, in terms of both time and money and bearing in mind that the outcome will not necessarily be similar to what the parties would have achieved after a trial or arbitration. The Citizens Mediation Centre, Ministry of Justice, Benue State, has been involved in the daily dispensation of justice via their applications in the handling of various disputes such as tenancy

disagreements, debt and land disputes, family squabbles, amongst others. Since inception in 2008, the Centre has been at the forefront of dispute resolution in Benue State, having amicably resolved disputes that would otherwise have lingered interminably in the normal run of legal procedures. This has improved the peace question in the state as parties to all the disputes mentioned above accepted the outcomes and have not brought any acts that will breach the peace of such outcome produced.

It is however worthy to note that, despite the successes of the center, its non inclusion into the core budgetary allocation of the ministry of justice of Benue state has starved the center of funds and has made it highly challenging for the center to sponsor its activities. It is also on note that, the lack of publicity of the activities of the center has limited its coverage as not many people are aware of the existence and activities of the center. Again, due to paucity of funds, the center is not only under staff but the staffs are not regularly trained in the complex and ever expanding nature of ADR. To solve these problems and reposition the center towards maximum service delivery, this paper recommends among other things that government should make special budgetary provisions for the activities of the center. The personnel of the center should be strengthened and their capacity improved.

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Interviews

Agbese P.O Esq is Director/Charaterial Mediator, Directorate for Citizen Right

Terdzwungwe Apir, investigator, Director/Charaterial Mediator, Directorate for Citizen Right

4 Complainants

4 Respondents