



TROPICAL GATE FOUNDATION FOR SUSTAINABLE DEVELOPMENT

Present

**INTRODUCTION TO ALTERNATIVE DISPUTE RESOLUTION
DEVELOPMENT AND CONFLICT MANAGEMENT AS
PREPARED BY INSTITUTE OF ALTERNATIVE DISPUTE
RESOLUTION DEVELOPMENT AND CONFLICT MANAGEMENT
OF NIGERIA.**

**TRANSFORMING ADR, RESOLVING DISPUTES AND
RESTORING RELATIONSHIPS**

About

Apostle Dr. Nnamdi Mbaigbo is a dynamic and accomplished leader recognized for his extensive expertise across various domains, including shipping, management consulting, and alternative dispute resolution. With a deep commitment to sustainable development and community empowerment, he has dedicated his professional life to driving transformational change in both corporate and philanthropic endeavors.

Experience

Founder

Tropical Gate Foundation for Sustainable Development (*Visit Tropical Gate Foundation*) (<http://www.tropicalgatefoundation.com.ng>) (Year - Present) - Established to promote sustainable practices and foster development initiatives that empower communities and enhance quality of life.



Unveiling The SHOW THE LIGHT Hand Statue @ UNN By Tropical Gate Ltd. - 11/02/2021

Apostle Dr. Nnamdi Mbaigbo

*Global Leader | Management Consultant | Advocate
for Sustainable Development | Founder | Educator |
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Global Chief Executive Officer Course

Strathmore University

Engaged in high-level executive education to sharpen leadership skills and business acumen.

Management Consultant

Self-employed

- Providing strategic guidance to organizations and businesses to optimize operations, resolve conflicts, and achieve sustainable growth. Education

Alumni

- Lagos Business School
- Yale School of Management, Connecticut, USA
- -Strathmore Business School
- China European International Business School, Shanghai

Certifications & Affiliations

- Fellow, Certified Shipping of Nigeria
- Fellow, Institute of Alternative Dispute Resolution Development and Conflict Management
- Fellow, Institute of Management and Certified Management Consultants
- Member, Chartered Institute of Directors

Honors

- Awarded an Honorary Doctorate Degree in recognition of contributions to management, conflict resolution, and community empowerment.

SKILLS

- Organizational Leadership-
- Alternative Dispute Resolution
- - Sustainable Development Practices
- - Strategic Planning and Consulting
- - Community Engagement
- - Conflict Resolution

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1. THE SCOPE OF ALTERNATIVE DISPUTE RESOLUTION PRACTICE.

1.1 Basic Principles/ Introduction:

Over the last few decades, commercial activities have quadrupled and so has human transactions and relationships. Thus conflicts generally have also spiralled upwards due to human interactions. In order to have a smooth and peaceful coexistence with our neighbours and for business growth, various forms of Alternative Dispute Resolution (ADR) Mechanisms have developed to handle or to help in quelling these conflicts. The history of the development of ADR is a vibrant one. Some of these ADR mechanisms have been codified with basic rules guiding their practices whilst some are not yet codified, but have basic standard practice procedures. Some of these ADR mechanisms are as follows: Negotiation; Mediation; Arbitration; Med - Arb; Arb- Med; Conciliation; Expert Determination; Early Neutral Evaluation; Adjudication; Good Offices; Private judging; Mini-trial; Valuation; Statutory ADRs

This lecture is to take the trainees through the various ADR mechanisms that we have and the other hybrid ones as well. At the end of the training, trainees will be able to distinguish between these different ADR mechanisms with their peculiar advantages and disadvantages. The trainees will also be able to recognize new or upcoming variants as well.

1.2 Lecture:

1.2.1 HISTORY OF ADRS

Alternative Dispute Resolution, as it is known now, originated in England as early as 1066. English citizens held their own informal court to solve private disputes. Often these informal meetings were led by respected male members of the community. In Nigeria ADR has been part of our system from precolonial time to this modern day.

CONFLICT IN MARKET PLACE AND FAMILY LIFE MATTERS WERE SETTLED IN SUCH A MANNER THAT WILL BRING ABOUT PEACE AND HARMONY

1. Customary and Communal Practices.

South West Nigeria (Yoruba): Disputes in the market places were settled by the Iya lojas and in the family, disputes were settled by the olorí, oba (family heads), the Mugalis and the Banlas.

b. South East Nigeria (Igbo):

Disputes arising in the market places were called by market controllers or itinerant market masters who were appointed by each village to settle disputes and might impose approved fines. In present-day Nigeria, disputes are settled by elected executives. In family settings (the Igbos are egalitarian in nature), disputes are settled by kinsmen; the umuada and then the umuokpu and the village.

Supreme Court Decision:

Agu v Ikewibe (1991) 3 NWLR 385

"Customary Law Arbitration is an arbitration of a dispute founded on the voluntary submission of the parties to the decision of the Arbitrators who are either the chief or elders of their community, and the agreement to be bound by such decision or freedom to resile where unfavourable."

c. Northern Nigeria (Hausa): Market place disputes were settled by Seriki Kasuwa; and family disputes settled by the Megida (Head of the family). If not satisfied with judgment, one can move to the Ward Head (Bulama / Mai Anguwa), then the Lawan or Dagaji, then the District Head (Ajia or Hakimi), then the Shehu and finally the Emir.

Dispute settlement in the Nigerian settings were very well structured. The aim of this was not only to perpetrate justice, but also to keep the peace. These neutrals who were settling these disputes were well versed in the principles of natural justice which are:

- a. Hearing all sides in a dispute
- b. Not being a judge in his/her own case

Thus they ensured fair hearing and Justice to both parties. Many of these ADR practices have survived till today.

It is worthy of note that this practice was recognised in the popular case of *Okpuruwu v. Okpokam* – (1998) 4 NWLR Pt. 90, 554 @ 586 – where Hon. Justice Oguntade, JCA (as he then was) asserted as follows:

“In the pre-colonial times and before the advent of the regular courts, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom.”

These ADRs have been part of our jurisprudence and ensured that we had a peaceful society in precolonial times.

Please also note T.O. Elias’ dictum in his article *The Nature of African Customary Law*, where he opines that:

“It is well accepted that one of many African Customary modes in the settling of disputes is to refer the dispute to family head or an elder or elders of the community for a compromise solution based on the subsequent acceptance by both parties of the suggested award which becomes binding.”

2. Religious Practices:

With regards to religion, the Holy books recognise the practice of ADR.

- a. Christianity the Holy Bible encourages peacemaking and therefore note the following:
 - i. Paul instructed the church at Phillipi to act as the mediator between two of their warring members, Euodia and Syntyche (Philippians 4:2-3). He also encouraged negotiation between these 2 women.
 - ii. Moses acted as a mediator between the rebellious Israelites and the Lord (Exodus 32:31–32).
 - iii. And the greatest example of mediation is Jesus Christ, the Son of God, who is the only mediator between God and man (1 Timothy 2:5).
 - iv. The Bible in Matthew 5:25–26 and Luke 12:57:

“If someone brings a lawsuit against you and takes you to court, settle the dispute with him while there is time, before you get to court. Once you are there, he will hand you over to the judge, who will hand you over to the police, and you will be put in jail. There you will stay, I tell you, until you pay the last penny of your fine.”

Conclusion:

Mediation is definitely supported by the Bible and should be pursued whenever a dispute cannot be adequately resolved by the people involved.

B. ISLAM

- i. Sulhu is encouraged by Islam. Sulhu means conciliation and peacemaking. This is a practice that predated Islam. Within the framework of tribal Arab society, chieftains, sheikhs, soothsayers, healers, and influential noblemen played indispensable roles as arbiters in all disputes within the tribe or between rival tribes. Sulhu is a method of resolving disputes between parties involved. It is a settlement, process, or method of determining or bringing to an end a dispute or litigation. It is a popular and common way of resolving disputes among the Muslim community.
- ii. There are many verses in the Holy Quran that talk about Sulhu: The Quran 4:35 and Quran 49:9 uphold arbitration, which by analogy suggests that ancient northern Nigerians practiced customary arbitration. It states:

“If two parties among the believers fall into quarrel, make peace between them... make peace with justice and be fair, for God loves those who are fair and just. If you fear a breach between them twain, appoint one from his family and one from hers. If they wish for peace...”

Reconciliation in the Quran:

“God would cause their reconciliation for God had full knowledge and is well acquainted with all things.”

“If you fear a breach between a man and his wife, appoint an arbiter from his people and another from hers. If they wish to be reconciled together again, God is all-knowing and wise.”

Also in the Holy Quran:
“Making peace is better”

والصلح

3. Statutory ADRs

- i. Modern Day ADRs (Alternative Dispute Resolution), in the United States, emerged out of the legal reform and civil rights movements in the late 1960s. Excessive delays in the legal process from court overload and rising legal costs also encouraged more widespread support of ADR methods. In the United States, ADR grew primarily as an alternative to the court system.
- ii. In Canada, Alternative Dispute Resolution has come about, partially, from observing the success of early ADR processes in the United States as well as from a desire to find alternative ways to solve conflict in society.

4. General Advantages of Using ADRs to Settle Disputes:

- i. Economic savings from not needing to hire lawyers, from time saved, and from having an arbitrator with expertise in the specific area (thus relieving the cost of retaining expert evidence).
- ii. ADR allows a person or company to retain their privacy.
- iii. ADR often saves time because one does not have to deal with the overloaded courts and the delays inherent in the court system.

- iii. In ADR, parties have more control over the process including the solution (especially if they engage in mediation). People may feel more bound by their agreements if they have had more say in the process, if they feel their side of the story has been heard, and if they have played a role in designing the solution.

ADVANTAGES OF ADR (ALTERNATIVE DISPUTE RESOLUTION)

- vi. Since ADR involves listening and negotiation, it helps preserve relationships more effectively than traditional conflict-resolution methods.
- vii. ADR processes are rapid, confidential, and flexible. Complaints are processed quickly, resolved earlier, and often lead to creative solutions—saving time and offering quicker resolution than formal hearings.
- viii. ADR allows for creative resolutions that are acceptable to both parties, even if such outcomes couldn't be imposed by a third-party reviewer.

DISADVANTAGES OF ADR

- i. ADR can increase costs in certain cases, such as family negotiations or large public disputes.
- ii. Courts maintain public records of transcripts and judgments, which ADR does not.
- iii. ADR lacks public scrutiny of the case.
- iv. ADR does not allow for precedent setting
- v. Some disputes are unsuitable for ADR, especially those involving abuse between parties.
- vi. Lack of commitment from participants can hinder the ADR process.
- vi. ADR has limitations in fact-finding.
- vii. Lawyers may hesitate to recommend ADR due to unfamiliarity with its benefits and processes.

BASIC FEATURES OF SOME ADR PROCESSES

Negotiation

A strategic discussion between two parties to resolve an issue acceptably.

- Common in buyer-seller, employer
- employee, and international relations.
- Direct negotiation is the oldest and most frequently used ADR method.
- It gives parties control over both the process and the outcome.
- Less formal and highly flexible compared to other ADR types.

ADVANTAGES OF MEDIATION

- V. If a solution cannot be achieved then other options are still available;
- VI. The process will attempt to preserve the relationship between the parties;
- VII. Mediation can allow each party to hear the opposing view in a non-confrontational environment;
- VIII. Both parties must sign an agreement of the final recommendation in order for it to be binding;
- IX. The parties via the mediator can bring other matters outside of the contract itself into the mediation in order to assist a commercial settlement;
- X. It is a confidential process and anything discussed at mediation is considered 'without prejudice' and therefore cannot be used as evidence in any subsequent tribunal.

DISADVANTAGES OF MEDIATION

- I. It can take more time to reach a resolution than litigation and that results are not always legally binding -
- II. Not compulsory; -
- III. Concerns exist around the enforceability of a mediation agreement; -
- IV. All parties must agree to a resolution as the result is not guaranteed;
- V. Can be difficult if either party are withholding information;
- VI. Mediation may not be appropriate if one of the parties required public disclosure;
- VII. Utilising the services of an unskilled mediator can contribute to an unproductive resolution;
- VIII. An unwillingness of one or both of the parties to cooperate can make the whole process a waste of time, effort and money;
- IX. If the dispute cannot be resolved in mediation the cost of mediation will have been wasted;
- X. During the mediation process either party can withdraw from proceeding at any time;
- XI. There is the possibility that information may be given away to the other party during the mediation process that could benefit the other party.

ARBITRATION

Arbitration is a procedure in which a dispute is submitted, by agreement of the parties, to one or more arbitrators who will make a binding decision on the dispute. In choosing arbitration, the parties opt for a private dispute resolution procedure instead of going to court.

WHO CAN ACT AS AN ARBITRATOR?

Arbitrators are usually Lawyers, Accountants, Estate Surveyors, Quantity Surveyors, Architects, Medical Practitioners, Actuarial Scientists, Engineers and other professionals, Retired Judges or Retirees from any field. These professionals act as impartial third parties, they hear and decide disputes between opposing parties. Arbitrators may work alone or in a panel with other arbitrators. In appointing a one man or sole arbitrator, the two disputants come together to appoint same. Whilst in appointing a three man tribunal, the two disputants appoint the first set of Arbitrators each and then the two appointed arbitrators thereafter appoint the chairman of the arbitration panel.

Arbitration has many advantages over litigation in court, such as party control of the process; lower costs and shorter time to resolution; flexibility; privacy; awards which are final and enforceable; decision-makers who are selected by the parties on the basis of desired characteristics and experience.

ADVANTAGES

- i. Arbitration tends to be less expensive than litigation because it typically involves fewer procedural hurdles and streamlined processes.
- ii. Arbitration can be faster, often resolving disputes more quickly than court cases, which can drag on for years.
- iii. Arbitration is confidential and flexible.

DISADVANTAGES

- i. Limited Judicial Review – One of the main disadvantages of arbitration is the limited judicial review available for arbitrator awards. Unlike court judgments, which can be appealed to higher courts, arbitrator awards are generally final and binding.

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e. ARBITRATION - MEDIATION

(Arb-Med)The concern about the revelation of confidential information in Med-Arb is eliminated in Arb-Med. In arb-med—which, as it sounds, functions somewhat in the reverse of med-arb—a trained, neutral third party hears disputants' evidence and testimony in an arbitration; writes an award but keeps it from the parties; attempts to mediate the parties' dispute; and unseals and issues her previously determined binding award if the parties fail to reach agreement. The final phase of an arb-med process is called the ruling phase.

Although this process removes the concern about misuse of confidential information, it does not remove the pressure on parties to reach agreement in mediation. It also raises a new problem: the arbitrator/mediator cannot change her previous award based on new insights gained during the mediation. As a result, she may pressure the parties to reach an agreement to avoid revealing an award she now disagrees with.

If using this method as in the med-arb, one needs a med-arb or arb-med-arb agreement that describes the process and confirms the parties' understanding that the neutral will be functioning in both roles. The neutral will be in caucus with each party and may learn confidential information that the mediator is not authorized to share with the other party. The parties will agree that the mediator may have these confidential caucuses with each party and that they are willing to waive the right to object to those ex parte communications.

If successful, Conciliation results in a settlement of the dispute. Conciliation is less formal than Arbitration, but is more evaluative than the facilitative process of most forms of Mediation.

APPOINTMENT OF CONCILIATORS:

A one-man Conciliator is appointed by the two disputants. A three-man Conciliation is normally appointed in the following manner.

The disputants appoint the first set of Conciliators and then the disputants appoint the presiding Conciliator.

Conciliators may be retired judges, senior advocates, or non-lawyers with expertise in the subject matter. The court plays no formal role in sponsoring conciliation. Conciliation is becoming increasingly popular, as an alternative to other formal and informal modes of dispute resolution due to its obvious advantages:

- i. It offers a more flexible alternative, for a wide variety of disputes, small as well as large;
- ii. It obviates the parties from seeking recourse to the court system;
- iii. It reserves the freedom of the parties to withdraw from conciliation without prejudice to their legal position inter se at any stage of the proceedings;
- iv. It is committed to maintenance of confidentiality throughout the proceedings and thereafter, of the dispute, the information exchanged, the offers and counter offers of solutions made and the settlement arrived at.
- v. It is cost-effective and produces quicker resolution of dispute.
- vi. It facilitates the maintenance of continued relationship between the parties even after the settlement or at least during the period of settlement is attempted at. This feature is of particular significance to the parties who are required to continue their relationship despite the dispute, as in the case of disputes arising out of construction contracts, family relationships, family properties or disputes between members of any business or other organizations;

g. EXPERT DETERMINATION/ WITNESS

Expert determination is a procedure in which a dispute or a difference between the parties is submitted, by agreement of the parties, to one [or more] experts who make a determination on the matter referred to it [them]. The determination is binding, unless the parties agreed otherwise. In other words, Expert determination is a private process involving an independent technical expert. They make a binding decision on technical.

EXPERT DETERMINATION

Expert determination is particularly suited to disputes of valuation or a purely technical nature across a range of sectors. It is used frequently in rent reviews and accounting disputes, such as partnership breakups.

Key characteristics include:

1. The decision is binding unless the parties agree at the outset that it will not be.
2. It serves as a shortcut to a binding decision, being simpler and cheaper than court or arbitration.
3. There is no need for pleadings, detailed document investigation, cross-examination, or trial-type hearings.
4. An expert can investigate independently without referring back to the parties, unlike an arbitrator—saving cost and time.
5. Expert determination is distinct from court proceedings and expert evidence. The expert acts as the tribunal and is not a witness.

Duties and Responsibilities of Expert Witnesses

These are based on the judgment in *National Justice Cia Naviera SA v. Prudential Assurance Co. Ltd (The Ikarian Reefer)* [1993]:

- i. Expert evidence should be the independent product of the expert, uninfluenced by litigation pressures (*Whitehouse v. Jordan* [1981]).

- ii. An expert witness must provide objective, unbiased assistance to the court within their expertise. They should never act as an advocate (*Polivitte Ltd. v. Commercial Union Assurance Co. Plc.* [1987]; *Re J* [1990]).
- iii. An expert witness should state the facts or assumption upon which his opinion is based. He should not omit to consider material facts which could detract from his concluded opinion (*Re J* sup.).
- iv. An expert witness should make it clear when a particular question or issue falls outside his expertise.
- v. If an expert's opinion is not properly researched because he considers that insufficient data is available, then this must be stated with an indication that the opinion is no more than a provisional one (*Re J* sup.). In cases where an expert witness who has prepared a report could not assert that the report contained the truth, the whole truth and nothing but the truth without some qualification, that qualification should be stated in the report (*Derby & Co. Ltd. and Others v. Weldon and Others*, *The Times*, Nov. 9, 1990 per Lord Justice Staughton).
- vi. If, after exchange of reports, an expert witness changes his view on a material matter having read the other side's expert's report or for any other reason, such change of view should be communicated (through legal representatives) to the other side without delay and when appropriate to the Court.
- vii. Where expert evidence refers to photographs, plans, calculations, analyses, measurements, survey reports or other similar documents, these must be provided to the opposite party at the same time as the exchange of reports (see 15.5 of the Guide to Commercial Court Practice).

Concurrent Expert Evidence (CEE), sometimes referred to as witness conferencing, but colloquially known as "hot-tubbing", is the practice whereby two or more experts at a hearing give their evidence concurrently. This enables simultaneous questioning and discussion on the key issues.

h. EARLY NEUTRAL EVALUATION

Early Neutral Evaluation ('ENE') is a flexible way to resolve business disputes without the parties needing to resort to full-scale litigation or arbitration. Like other alternative dispute resolution methods, one of the main reasons you may wish to engage with the ENE process is with a view to saving time and money.

Early neutral evaluation is a non-binding form of dispute resolution, by which the parties agree to get an initial 'sense-check' from an independent third party with expertise in the relevant field. Whilst it has been used in the field of commercial disputes for some time, there is a growing recognition of the potential benefits of early neutral evaluation in other.

I. ADJUDICATION

The term "adjudicate" is found in general usage to mean "to give a ruling" or "to judge". In more recent times, a specialised use of the term "adjudication" appears as a form of alternative dispute resolution (ADR) available to the construction industry.

Adjudication in construction contracts refers to a specific method of resolving disputes: one that recognises the distinct nature of the construction industry and the types of disagreement that can arise within it.

Adjudication has become a common way to resolve such disputes. It's a process that those entering contracts in the building or construction industry can't opt out of – in other words, it is a mandatory form of dispute resolution in this sector. If there is no mention of adjudication in your contract, then it will be classed as an implied term.

Adjudication is speedy: an adjudicator is required to decide matters referred to them within 28 days. In America, the automatic right to refer disputes to an adjudicator was introduced in The Construction Act 1996. Before that, there was a feeling that when a dispute over payment arose for example, many of the smaller businesses, suppliers and contractors involved in the building trade were at the mercy of the larger organisations and developers with whom they had contracted. Bigger businesses were in a better position to afford to go through lengthy and expensive legal proceedings than smaller contractors, who could often end up failing to recover monies due to them.

Other basic facts in adjudication:

- a. One thing you should be aware of is that adjudication is a dispute resolution method that settles matters on an interim or temporary basis. Decisions are binding – but only until the dispute is determined by litigation or by agreement further down the line.
- a. b. The Construction Act allows a party to a construction contract to refer a dispute to an adjudicator 'at any time'. Common construction disputes might be about:

1. Non-payment of monies due for particular stages of a development
2. Delays to construction
3. Requests for extensions of time
4. Poorly executed and defective work
5. Clarification of the scope of a project
6. More complex contractual issues and negligence claims may also be referred to an adjudicator, even though the process was originally designed to deal with relatively straightforward claims on an urgent basis
7. Very often, the matter referred to adjudication is a standalone issue
8. A dispute might be holding up a particular building project
9. Or causing cashflow issues for one party to the contract

By accepting the adjudicator's jurisdiction and decision, the parties can continue to carry on work. As referred to above, the ruling will usually only be a temporary solution which enables the development to continue until a more permanent solution can be found.

10. Not every disagreement is suitable for adjudication. It's important for you to remember that the adjudication process in construction disputes has been developed to provide fast, practical solutions. If a dispute is particularly complex, the parties may agree to court proceedings or arbitration.

It's often worth seeking professional legal advice on the cost consequences of adjudication if you do decide to proceed. If your case is complex, it follows that adjudication costs will be higher. Additionally, as we discuss below, even if you are successful you have less opportunity to recover these costs than if you go to court.

11. The default position is that only one dispute can be referred to the adjudicator at any one time. However, before the adjudication process begins, it's important to be clear on whether there's one dispute or multiple disputes right at the outset. If there are multiple disputes, it's vital to check whether the contract itself allows you to refer multiple disputes to the adjudicator or whether there's a stipulation that each dispute must be adjudicated separately.
12. If it's the case that there's a dispute with various sub-issues, particular care must be taken when the Notice of Adjudication and subsequent Referral Notice are drafted in order to establish a clear link between the sub-issues so as to ensure you are not in fact referring multiple disputes to the adjudicator.

GOOD OFFICES

Good Offices is a simple and concise dispute resolution method in which an expert provides his/her specialty and extensive knowledge to negotiate a settlement between concerned parties.

The term 'Good offices' was used by 'Justice Marshall' for the very first time in *Schooner Exchange vs. M'Faddon* (1812). The term is often mixed and interchanged with mediation but both the process are different facets of ADR mechanisms. The expression 'Good Offices' is referred to a procedure whereby a neutral third party or a state on its own initiative or through request seeks through diplomatic means, bring the parties to the dispute together on

the same platform either to start a direct negotiation among the parties or to find other methods for resolving the dispute. Good Offices can be international organizations, any one country or group of countries, which are not hostile and offer any two countries having dispute to settle the dispute peacefully. Good Offices may be very extensive in the services and facilities rendered but are slightly short of active participation in the process. The work of Good Offices ends or completes when the negotiation among the parties initiate. The Good Offices do not actively participate in the negotiation, it only brings the unwilling parties together for negotiation.

Article 33 of the UN Charter states that any dispute that is likely to mention endanger the international peace and security should first be addressed through negotiation, mediation or other peaceful means, and states that the council can call on the parties to use such means. The phrases 'other peaceful means' or 'council can call on parties' specifies the inclusion and recognition of Good Offices in the ADR mechanism at international levels. Article 33 of the UN Watercourses Convention mandates the parties to resolve the disputes by either seeking good offices or by requesting mediation or conciliation. The mechanism is most relevant for regional disputes as the dispute is likely to resolve faster than through judicial mechanism and also with the full autonomy of the parties and negligible interference of third party.

Good Offices distinct from Mediation.

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Good Offices distinct from Mediation

- i. There is very thin line distinction between good offices and mediation. Both the terms are often used interchangeably and mixed.
- ii. Good Offices' is a procedure whereby third party brings the conflicting parties together without participating in the negotiation whereas in 'mediation' the.

Mediation vs. Good Offices

- Conflicting parties submit their disputes to a third party who facilitates the negotiation process and actively participates in the negotiation to form the terms of settlement.
- The mediator also adds his suggestions in resolving the disputes.
- In 'Good Offices' the third party only brings the disputing parties together for negotiation whereas in 'mediation' the third party conducts the negotiation. For instance, the Prime Minister of United Kingdom, Mr. Wilson provided Good Offices to India and Pakistan which resulted in the parties reaching an agreement to refer the Kutch issue to an Arbitral Tribunal. On the other hand, Soviet Union President Kosygin mediated in the dispute between India and Pakistan which resulted in the conclusion of the Tashkent agreement in 1966.
- It's clear from the above counts that Good Offices are important for the conflicting parties to bring them together to consider resolving disputes. Good Offices is an influential initiation for unwilling parties to reach settlement peacefully.

Private Judging

- Private judging is a process where the disputing parties agree to retain a neutral person as a private judge. The private judge, who is often a former judge with expertise in the area of the dispute, hears the case and makes a decision in a manner similar to a judge. The term is also referred to as rent-a-judge.
- Private judging is a very vibrant ADR in the US. It typically involves disputing parties bringing in a retired judge to oversee their case. Similar to arbitration, private judging can only be done with the consent of both parties, and in most cases the parties will agree that the private judge's decision will be legally binding.

A private judge will usually be given the same powers of a court, and for the most part the hearing will resemble a typical courtroom proceeding. The main advantage of private judging over the litigation route is that the process is much shorter and more efficient.

In private judging:

- i. The court appoints a neutral third party, agreed upon by the disputants, who has powers to hear and decide a case.
- ii. After the proceedings, the neutral submits a written report detailing findings of fact and conclusions of law which then become the findings of the court.
- iii. The finding, however, is non-precedential and may be appealed to a higher court. Advantages of this process include the greater control accorded disputants, flexibility of rules and procedures, expedience, greater scheduling flexibility, the assurance of a binding and appealable decision, and its confidentiality.
- iv. A major argument against private judging is that access by the poor is restricted by the requirement that the parties pay the fees rather than the State. However, this is equally true of most civil matters adjudicated by the courts.
- v. Similarly, criticisms of the privacy of private judging fail to note that there also is no right to access of settlement negotiations
- vi. and that disputing parties have other options for settlement that are equally closed from scrutiny.
- vii. Only the rich can have access to same as there is likelihood of the rich abandoning the public system to rot as they embark on private judging.

- viii. Likelihood of judges retiring early to earn their pension and then their fees as a private judge. Note that if not satisfied with the award, one can rent an appeal court judge.---
Other elements of private judging:
- ix. A private judge has the authority to manage a legal dispute, only if the parties have mutually agreed to this form of ADR. The parties must be able to mutually agree on private judging, whether they have it written in their contract before hand, or decide to take that step when dealing with a dispute. The parties also have the option to mutually select the private judge.
- x. While the decision from the private judge is legally binding for the parties, they will have the opportunity to appeal a private judgement much like a traditional court judgement.
- xi. Private judging is a growing trend in the legal industry in the United States, offering parties an alternative to the traditional court system. Private judges are hired by parties in a legal dispute to adjudicate the case outside of the public court system. While private judging can offer numerous benefits to parties involved in a legal dispute, it is not without its challenges. Here is a look at the hardest parts of being a private judge, as well as the pressures and difficulties that come with serving as a private judge. Understanding the complexities and nuances of private judging can help you glean insights into the unique challenges that private judges face in today's legal landscape - and help you determine if having a private judge is the right answer for your situation.

- xii. Managing time. Private judges often have to balance multiple cases at the same time, which can be challenging. They have to schedule hearings and other proceedings to ensure they are not conflicting with each other.
- xiii. Limited control Unlike judges in the public court system, private judges may not have full control over the proceedings. They may be bound by the terms of the contract and the wishes of the parties involved.
- xiv. Staying neutral Private judges must remain impartial and neutral throughout the case. This can be tough, especially when there is a lot of emotion involved or when the case is complex.
- xv. Meeting client expectations Clients who hire private judges often have high expectations for the outcome of their case. It can be difficult to meet these expectations while also ensuring the case is resolved fairly and legally.
- xvi. Maintaining confidentiality Private judges must ensure all parties involved in the case maintain confidentiality. This is a big demand, especially when dealing with high-profile cases.
- xvii. Keeping up with the law Private judges must stay up to date with changes in the law and legal precedents. This can be challenging, as the law is constantly evolving and changing. In addition, private judges do not have the same level of oversight as public judges, which means they may be more vulnerable to ethical issues or conflicts of interest.
- xviii. Complex cases Private judges are often called upon to handle complex cases that may require specialized knowledge and skills. This may require ongoing education and training to stay up to date with the latest legal developments.

I. MINITRIAL

The term "mini-trial" is a misnomer, as it is not a trial, mini or otherwise. Rather, it is a private, non-binding settlement technique used most frequently in disputes between corporations. Minitrial is also known as "Information Exchange."

Minitrials involve a structured settlement process in which both parties present abbreviated summaries of their case before the other party and/or their representatives who have authority to settle the dispute. The summaries contain explicit data about the legal bases and the merits of the case.

The mini-trial is described as a "hybrid" since it combines traditional settlement processes to form a distinct, innovative technique. The key characteristic of the mini-trial is its ability to provide information directly to the parties so that they can evaluate relative strengths and weaknesses of each side and enter into well-informed, focused settlement discussions.

MINI-TRIAL OVERVIEW

The mini-trial, in its most common form, involves a brief presentation of each party's case to a panel made up of senior party representatives with authority to settle. The panel is chaired by a neutral, selected jointly by the parties. At the close of the hearing, the neutral recommends a specific outcome. The other panel members use the trial and the recommended outcome as a basis for negotiations.

Professor Eric D. Green developed the mini-trial in 1977 while representing a corporation deadlocked in patent litigation with another corporation.

Although the parties may adapt the mini-trial in various ways to accommodate their desires, most mini-trials share some common characteristics:

1. **Voluntary Agreement:** The parties must expressly agree to attempt settlement through the mini-trial process. This agreement is generally set out in writing.
2. **No Legal Obligation:** There is no statutory, regulatory, or (usually) contractual obligation to participate. Either party may terminate the process at any time.
3. **Procedural Agreement:** The parties make an agreement setting the rules and obligations for the mini-trial procedure.
4. **Defined Terms:** The agreement delineates issues such as the right to terminate proceedings, formality of the process (e.g., use of evidence rules, cross-examination), confidentiality, and the effect on future or pending litigation.
5. **Limited Case Preparation:** The parties engage in a limited period of case preparation, which often includes some discovery.
6. **Informal Exchange:** Each side informally exchanges key documents, exhibits, summaries of witness testimony, and short introductory statements similar to briefs.
7. **Executive Participation:** Each party sends one of its top executives with settlement authority to the mini-trial proceeding.
8. **Presentations:** These decision-makers hear presentations of each side's case, usually by attorneys.

9. Flexible Format: The length and style of presentations vary but typically last from half a day to three or four days. The process is informal in terms of procedure and evidence.
 10. Private Negotiations: After presentations, the decision-makers retire to conduct private settlement negotiations.
 11. Core Theory: The underlying theory is that party representatives, armed with a crash course on the merits of the dispute, will be better able than advocates or lower-level personnel to reach a resolution.
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- xii. The parties hire a mutually agreed upon neutral advisor to sit at the proceedings. This advisor is usually a former judge, but may also be a lawyer or law professor with legal expertise in the particular subject matter at hand, or even a non-legal expert such as a business person or engineer
 - xiii. Neutral advisors do not play the role of traditional arbitrators or judges. They do not have the authority to make a binding decision. Neither do they control the order and style of the proceedings nor decide how or what evidence is produced. The neutral may be permitted to ask questions to probe the strengths and weaknesses of each parties' case and ensure that the parties' decision-makers hear the necessary information to conduct well-informed negotiations after the mini-trial.
 - xiv. The parties may invite the neutral advisor into the post-presentation negotiations between the corporate decision-makers. They may ask the neutral to predict what the likely outcome would be if the case were to go to trial on the merits. Or, the parties may request that the neutral suggest a settlement package. At other times, the neutral advisor may simply act as a mediator in a typical dispute resolution setting.

- xv. Because the mini-trial is so flexible, the parties have the freedom to choose exactly the type of role they want the neutral advisor to play.
- xvi. Private: Despite its name, the mini-trial is a non-judicial, expedited procedure generally used in the commercial context. A panel, comprised of a senior executive from each party and one neutral, selected jointly by the parties, hears submissions from each side.
- xvii. Informal: There are no fixed procedural or evidentiary rules governing the process. Rather, the parties agree to a hearing schedule and decide upon a set of governing rules concerning discovery, evidence and witnesses. These rules are set out in the mini-trial agreement.
- xviii. Assisted: Following each party's presentation, the neutral panel chair issues a recommended, non-binding solution. The party representatives from the panel and their chosen advisors then attempt to negotiate a settlement based upon that recommendation. The neutral may be invited to serve as mediator or facilitator during those negotiations.
- xix. Consensual: Generally, there is no obligation to settle during the mini-trial, nor is the opinion of the neutral binding. Rather, resolutions are achieved through consensus. The parties are free, however, to structure the process otherwise.
- xx. Informative: Despite the fact that there is no guarantee of resolution, the preparation and execution of the mini-trial gives the parties a better understanding of their own case, as well as an understanding of the opponent's position. This is quite useful if the parties proceed to trial.

Conclusion Note for Salvation Army Nigeria Territory Officers

The Salvation Army Nigeria Territory stands at a strategic crossroads where Alternative Dispute Resolution (ADR) is not just a tool—but a transformational pathway. Officers are encouraged to embrace ADR as:-

- A global Army standard for resolving internal and external disputes peacefully
- A post-retirement career path, offering consultancy, mediation, and training opportunities
- A means of livelihood, especially in community development, legal aid, and peace building sectors

By mastering ADR, officers become ambassadors of peace, equipped to serve both the mission and society with wisdom, empathy, and professionalism.

APPRECIATION

We extend heartfelt gratitude to Territorial Commander Commissioner Friday Ayanam for his visionary leadership in positioning the human resources of the Nigeria Territory for exportable value and sustainable development. His foresight ensures that our officers are not only spiritually empowered but also professionally equipped to thrive in a changing world.

Got it! Here's a clean list of
10 assessment questions for your workshop participants to answer themselves:---✓ Multiple

Choice Questions

1. Which of the following is
a binding ADR method?

- A. Mediation
- B. Arbitration
- C. Conciliation
- D. Negotiation

2. What is the primary role of a mediator?

- A. To issue a legal judgment
- B. To enforce a settlement
- C. To facilitate communication and help parties reach agreement
- D. To represent one party

3. Which ADR method is most suitable when parties want a quick, informal resolution with
executive decision-makers involved?

- A. Arbitration
- B. Mini-trial
- C. Litigation
- D. Adjudication

4. In which ADR method does a neutral third party suggest a non-binding solution after hearing both sides?

- A. Arbitration
- B. Mediation
- C. Mini-trial
- D. Litigation

5. Which of the following is a key benefit of ADR over litigation?

- A. Longer resolution time
- B. Public exposure
- C. Confidentiality and flexibility
- D. Mandatory court appearance

6. What does “consensual” mean in the context of ADR?

- A. The neutral decides the outcome
- B. Parties are forced to settle
- C. Resolution is achieved through mutual agreement
- D. The process follows strict legal rules

Scenario-Based Questions

7. Two church departments are in conflict over resource allocation. They want to resolve the issue peacefully, maintain relationships, and avoid formal proceedings. Which ADR method is most appropriate?
- A. Arbitration
 - B. Mediation
 - C. Litigation
 - D. Mini-trial
8. A retired officer wants to start a consultancy offering dispute resolution services to businesses. He prefers a method where he can guide parties without making decisions for them. Which ADR role best suits him?
- A. Arbitrator
 - B. B. Judge
 - C. C. Mediator
 - D. D. Litigator

Short Answer Questions

9. Define a mini-trial and explain its purpose.
10. List two benefits of using ADR in conflict resolution.