

## **ALTERNATIVE DISPUTES RESOLUTION IN THE CONTEXT OF SHARIA: AN EXAMINATION OF ITS PRACTICES AND PROCEDURES IN BORNO STATE.**

**Baba Isa Sanda Benisheikh\***

**Yahaya Alhaji Dunoma\*\***

**Bukar A. Maina\*\*\***

**Mustapha A. Loskuri\*\*\*\***

### **1.0 Introduction**

The idea of resolving disputes in an amicable manner against litigation is widely accepted means of dispute resolution. Sharia therefore put significant consideration to Alternative Dispute Resolution (ADR) processes in all causes except *Hadd* (capital) offences which can be resolve through judicial proceedings. As such, Islam encourages disputants to forgive if not compromise issues that lead to misunderstanding. To bring solid and peaceful resolution among community ADR is imperative for disputes resolution. The basis of ADR can be traced to Holy Quran, Hadiths, Ijma and Juristic opinions. Moreover, in Borno State, situated in the Northern part of Nigeria, family heads, religious leaders/scholars and community leaders are employing ADR in resolving family disputes. This is usually practiced at three different levels. First at the level of the family and community, there are those with no designated role but who are broadly trusted, including religious figures. Secondly, customary leaders with governance functions who also receive complaints and engage in dispute resolution and mediation, most notably ward heads (Bulamas) and village heads (Lawans). The third level covers statutory bodies, comprising of the police and courts, were engage with identification, investigation and

---

\* Dr. Baba Isa Sanda Benisheikh, Faculty of law, Department of Private Law University of Maiduguri, Nigeria. 08036240100/0802224799; [benisheikhi@gmail.com](mailto:benisheikhi@gmail.com)/[i.s.benisheikh@nigerianbar.ng](mailto:i.s.benisheikh@nigerianbar.ng)

\*\* Yahaya Alhaji Dunoma, PhD, Department of Sociology and Criminology, Borno State University, Maiduguri, Nigeria. 07031199407

\*\*\* Department of Civil Law Mohammed Goni College of Legal and Islamic Studies, Maiduguri, Nigeria. 08036559336, [sadeeqmainer@gmail.com](mailto:sadeeqmainer@gmail.com)

\*\*\*\* Department of Sharia and Civil Law Mohammed Goni College of Legal and Islamic Studies, Maiduguri, Nigeria. 08032414257; [mustaphaloskuri@gmail.com](mailto:mustaphaloskuri@gmail.com)

resolution of disputes. So also the Borno Amicable Settlement Corridor (BASC) or legal aid services. Sharia principles is practiced within the judicial sector in Borno State of Nigeria. The sectors include Sharia and Upper Sharia Court, the Sharia Court of Appeal and the High Courts on issues other than Islamic Personal law.

This paper examined the concept of *Sulh* (ADR) under Sharia, it discusses practice and procedure of *Sulh*, as undertaken by both the judicial and non-judicial institutions in Borno State.

## 2.0 The Concept of *Sulh*:

*Sulh* is a mechanisms for the resolution of dispute otherwise known Alternative Dispute Resolution (ADR). *Sulh* has been in use or practice from time immemorial and it is practice in different manner before the advent of Islam.<sup>1</sup> Indeed, there has been some historical remarks on the implementation of *Sulh* among the people of Borno State as it was during the periods of the early rulers encourage reconciliation of their subjects.<sup>2</sup> This process of dispute resolution still exist and it is put into use presently in the society. Mostly, the Muslim Ummah in general and the people of Borno in particular, takes every act done against them to be ordained by Allah and prefers negotiation and forgiveness. This is because the process of *Sulh* requires tolerance and such is the practice of the Borno People in resolving disputes of any nature.

*Sulh* in this paper can explain to mean as the process through which disputants have the value of respect for each other put on the line throughout the entire resolution process. By this process of dispute resolution the disputing parties personally would elect a mediator to conduct and assist in the proceeding up to resolution (*Tahkim*) between them. This is one of the successful inherited mechanisms in resolving disputes from the early age and still blooming in this era.<sup>3</sup> Imam An-Nawawi viewed *Sulh* as ending a dispute and the term is derived from an Arabic word meaning to be good, righteous or suitable;<sup>4</sup> so also

---

<sup>1</sup> Ismail. A. D, "Sulhu the Islamic or Sharia Mediation", Paper presented at the Specialized ADR Training Programme in Conjunction with UNHCR in Borno State, from 14<sup>th</sup> -18<sup>th</sup> October, 2024, at Pinnacles Hotel, Maiduguri, Borno State, P, 12.

<sup>2</sup> Ibid.

<sup>3</sup> Rossiman. N. S. B, The Significance of *Sulh* in the Syariah Court, Journal Pemikiran Hukum Dan Hukum Islam, Volume 11, Number 1, June (2020), P, 141.

<sup>4</sup> Imam An-Nawawi quoted by Rossiman. N.S.B. Ibid.

*maslaha* which means that which is good or beneficial.<sup>5</sup> To this end the Holy Quran stated that “reconcile among your brothers and fear Allah.”<sup>6</sup> *Sulh* can also be defined simply as a termination of dispute or ending a dispute with an amicable settlement.<sup>7</sup> *Sulh* as a process and mechanism consist of the processes of conciliation, mediation, negotiation and compromise, through which simply dispute will come to ending and it is explained as a contract through which dispute may be determined.<sup>8</sup> The process and the end result of *Sulh* involves compromise and relinquishing of the disputants right regarding the claim or difference of interest. The agreement or settlement is based on the consent of both disputants to arrive at a mutual decision in order to avoid or minimise litigation. For all intents, this is similar to out of court resolution of dispute under the general law and it is recommendable act in *Sharia*.<sup>9</sup> Any two disputing parties can explore the process and involve in negotiating their differences and agree on a resolution of a disputed matter among themselves without recourse to a third party. This mostly occur between spouses or within family members. The *Quran* had stipulated that resolution of dispute is best process in *Shariah*.<sup>10</sup> *Sulh* therefore is a legal instrument intended not only for the purpose of private conciliation among disputants and groups in lieu of litigation; it is also the procedural option that could be resorted to by a *Qadi* within the context of his courtroom or a *hakam* in his conference room.<sup>11</sup> Thus, *Sulh* is part of every dispute resolution mechanism in *Sharia* comprising several process to be adopted depending on the nature of the disputants and the issue involve.<sup>12</sup>

---

<sup>5</sup> Ibid.

<sup>6</sup> Quran 49:10.

<sup>7</sup> Saodah. B. A, *Sulh: An Alternative Dispute Resolution and Amicable Settlement of Family Dispute* UMRAN Journal of Muslim Affairs Vol 1 No 1 (2015), P, 2.

Sa’odah Binti Ahmad, PhD

<sup>8</sup> Ibid.

<sup>9</sup> A. A. Machika, *Guide to Advocates a Translation and Commentary on Tuhfatul Hukkam*, (Sankore Educational Publishers 2008), 167.

<sup>10</sup> Quran 4:128.

<sup>11</sup> A. Al-Ramahi, ‘*Sulh: A Crucial Part of Islamic Arbitration*’, Law Society Working Papers No. 08-45, (Sharia and Law of The Muslim World, Law School, New York 12/2008), 8 < <http://ssrn.com/abstract=1153659> > accessed on 23 May 2018.

<sup>12</sup> B. A. Wali, The Viability of As-Sulh (ADR) to Sharia Based State in Nigeria, in: Ibrahim Ahmad Aliyu and others (eds) *Alternative Dispute Resolution And Contemporary Issues*, (M.O. Press and Publishers, Kaduna 2010), 121.

*Sulh* is conducted in an informal manner without being governed by any formal rule. This atmosphere of informality has been found to be useful in helping the process of resolution of disputes. It is less technical, not time consuming than litigation. Therefore, the only rule in *Sharia* which governs *sulh* is that- no compromise is possible in rights of Allah and any compromise to permit what is illegal or legal to be illegal.<sup>13</sup> The *Majallah al-Ahkam al-Adliya* Code promulgated by Othman Empire has formulated some articles to deal with *sulh* (from articles 1531-1571). This has proven therefore that the procedures which are in codified form exist.<sup>14</sup> The moment *sulh* is reached voluntarily between the disputants according to some jurists, it automatically binds them. No party is at liberty to repudiate it unilaterally, unless where the terms stipulated are subject to unilateral right of repudiation.<sup>15</sup> The most important of all is that a party should voluntarily consent to a *sulh* for the agreement to be valid.<sup>16</sup>

### 3.0 Other *Sulh* Process in Sharia

Sharia had recommended ADR processes for resolving disputes. This is because litigation is highly cumbersome and technical compared to ADR which does not result to enmity, hatred or abuse of time and resources. This will promote peaceful coexistence, smooth relationship and happiness amongst the disputants. Some ADR mechanisms under Sharia can be seen in the following:-

1. ***Tahkim*** (Arbitration): In the pre-Islamic Arabia, the concept of *Tahkim* was known and it was practiced to resolve civil and commercial disputes.<sup>17</sup> *Tahkim* therefore is being defined in Sharia as ‘two parties choosing arbitrator to resolve their dispute and their claim. Traditionally, the differences between arbitration and formal dispute resolution through judiciary is that the parties themselves select the arbitrator whose decision

---

<sup>13</sup> K. S. Rashid, ‘Alternative Dispute Resolution in the Context of Sharia’ 2<sup>nd</sup> International Conference on law and Commerce, Commerce and Ethics School of Law Victoria University, Melbourne (2003), 28.

<sup>14</sup> M. D. Zaidul Islam, ‘Provision of Alternative Dispute Resolution Process in Islam’ [2012] (6) (10) *SR Journal of Business and Management LOSR-JBM*; 33.

<sup>15</sup> Shabkat al-Batul, Al-Maktab ‘*Asrar Al-Sulh Al-Islamiyyah*’ 7.<<http://www.answer5.net/abatai/index>> accessed on 19 April 2015.

<sup>16</sup> *mu’amalat-Sulh, P.1*, <<http://ezlamgraam.com>>. accessed on 26 April, 2018.

<sup>17</sup> H. M. Amin, *Commercial Arbitration in Islam and Iranian Law* (Tehran n.d), 42.

they must accept.<sup>18</sup> Like a judge, an arbitrator in Sharia imposes his decision on the parties based on the arguments presented, in accordance with the Sharia principles.<sup>19</sup>

*Sharia* allows people to seek the aid of arbitrators whenever they are at loggerhead and unable to resolve their disputes.<sup>20</sup> The Prophet Mohammad (PBUH) has endorsed as well as act as an arbitrator (*hakam*) to settle disputes amongst his followers. He conducted arbitration as well as adjudication. The differences between the two processes of dispute resolution is that in arbitration the parties choose the arbitrators, whilst in adjudication the judge was appointed by the ruler or government.<sup>21</sup>

The companions have used arbitration as methods of resolving disputes among themselves. The famous political case between *Caliph Ali bin Abutalib and Mu'awiyya bin Abi Sufyan* was a leading precedent. The dispute between two companions led to civil war and when the dispute reached its climax *Mu'awiyya* demanded for the resolution of the dispute through arbitration which *Ali Ibn Abitalib* accepted the bid and each party appointed his arbitrator where each appointed arbitrators to decide on who would be the *Caliph*. The two arbitrators were nominated in the arbitration agreement document specifying the dispute, the procedure, the duration of the arbitration, place of the arbitration and the applicable laws.<sup>22</sup> Having discussed the juristic opinions on *Sulh* above, the main features of arbitration are worthy to be considered, thus:

---

<sup>18</sup> H. Mahassini, 'General Principles of Sharia relating to International commercial arbitration' [1992] (3) *The ICC International Court of Arbitration Bulletin, Special Supplement*;1.

<sup>19</sup> <<http://ssrn.com/abstract=1153659>>. See above no.52.

<sup>20</sup> Qur'an 4:35 has spelt out that: *And if you have reason to fear that a breach might occur between a[married] couple, appoint an arbiter from among his people and an arbiter from among her people; if they both want to resolve things aright, God may bring about their reconciliation. Behold, God is indeed all knowing, aware.*

<sup>21</sup> H.J.H. Nor Hashimah and H.J. Mohd Taib, *Alternative Dispute Resolution in ASEAN: Brunci Darussalam* (Attorney-General Chambers Brunci Darussalam); 10. <<http://www.aseanlawassociation.org/agAdocs/w4-Bruneipdf>> accessed on 19 May 2016.

<sup>22</sup> Aishath Muneeza, 'Is Conventional Alternative Dispute Resolution Alien to Sharia?' [2010] (5) *Malaysian Law Journal*; 10. Available at <<http://google.com>> accessed on 3 June 2015.

- a. Arbitration Agreement: the authority of arbitrator to issue binding decisions basically depends upon the full and valid consent of the disputants.<sup>23</sup> It is acceptable if arbitration agreement contains who are the arbitrators, time limit for making award, applicable laws, place of arbitration and so on as seen in the case of Ali Ibn Abi Talib and Mu'awiya Ibn Abu Sufyan.
- b. It is the right of the disputing parties to appoint or nominate arbitrators either by naming or by position holding<sup>24</sup>. The four Islamic schools of thoughts are silent on the possibility of appointing arbitrator by a third party, and therefore there is nothing wrong if a third party appointed an arbitrator to disputants. Arbitrators are deemed to exercise a judicial function and must have same qualification as judges. No revocation of arbitration after starting the proceedings according to Maliki School.<sup>25</sup> But Hanafi and Shafi'i permit the revocation of arbitrators at any time before settlement.
- c. The applicable law: in a situation where a non-Muslim chooses Sharia in the resolution of their dispute with a Muslim, according to Maliki, Shafi'i and Hambali School, it is valid so long as the rules to be applied on the issue do not violate express provision of the Holy Qur'an and sunnah.
- d. No arbitration on the right of Allah (like criminal law). According to the four sunni schools such rights are reserved to Allah alone and cannot be compromise on any account.<sup>26</sup> However any rights arising out of commercial transactions and matrimonies can be subjected to an arbitral process.
- e. The arbitral award and its enforcement according to Maliki, Hanafi and the majority of Shafi'i schools, are enforceable as judgement of court, but the intervention of a judge is necessary as the arbitrator has no power of enforcement.<sup>27</sup>

The distinction however between *Sulh* and *Tahkim* is that, there is no complete separation of *Sulh* and *Tahkim* in *Sharia*, this is due to the fact that many *Quranic* authority and prophetic traditions

---

<sup>23</sup> *Ibid.*

<sup>24</sup> *Ibid.*

<sup>25</sup> *Ibid.*

<sup>26</sup> *Ibid.*

<sup>27</sup> *Ibid.*

supporting arbitration could also be used as authority for *sulh*. However a distinction can be drawn between the two as follows:

- a. In *sulh*, an amicable resolution may be reached between the disputants with or without the involvement of others as coordinators whereas in *Tahkim* the appointment of a third party involvement is indispensable.
  - b. The agreement of *Sulh* is not binding unless it has taken place before a court, whereas *Tahkim* according to the majority of the scholars is binding without court intervention.
  - c. *Sulh* can only be resorted to if the dispute has already occurred (that is no *sulh* to address on prospective issues) whereas *Tahkim* can address both existing and prospective disputes.
2. **Med-Arb** (a combination of *sulh* and *Tahkim*): The job of the arbitrator is to mediate firstly; only when it fails, then the arbitrator starts arbitrating. This is clearly spelt out in the Holy *Qur'an* where conciliation along with arbitration is mentioned, thus: "if you fear breach between them twain appoint (two) arbiters one from his family and the other from hers; for Allah had full knowledge and is acquainted with all things"<sup>28</sup> The *Majella Ahkam al-Adiliya* also supports the idea of going for arbitration (*Tahkim*) when mediation (*Sulh*) attempt fails.<sup>29</sup> This clearly shows that *Sharia* recognises and uses Med-Arb.<sup>30</sup>
3. **Wali Al-Mazalim** (Informal Justice Chancellor): This is a public officer appointed by government to set in motion with fusion of executive and judicial power so as to bring about quicker, cheaper and just determination of disputes. It is purely informal the procedures of this chancellor for instance a *wali al-mazalim* could admit evidence which a court might declare inadmissible. He can call un-qualified witness to give testimony, rely on his own personal knowledge, compel litigant to arbitrate and do away with legal requirement in proving matters before a court. Therefore, *Ibn khaldun* and *Ja'afar Ibn Yahya* were appointed by *Caliph Harun Al-*

---

<sup>28</sup> Qur'an 4:35.

<sup>29</sup> Article 1851.

<sup>30</sup> *Majella Ahkam al-Adiliya* (The legal Code of Usman Empire of Turkey).

*Rashid* to the office of *wali al-mazalim* with the following jurisdictions,<sup>31</sup> thus:

- a. To receive and determine misappropriation of property.
- b. To receive and determine misdeed in administering land given as private or public endowment.
- c. To inspect and punish against indiscretion of public record kept by registrar, accountants and clerks.
- d. To compel against corruption and good governance.
- e. To look into complaint against individual and collective organisation and so on.<sup>32</sup>

**4. *Fatwa of Muftis*** (Expert Determination): *Fatwa* is an *Sharia* ruling, a scholarly opinion on a matter, while *mufti* is a jurist consultant. Therefore, *mufti* is an impartial third person who is an expert in *Sharia* to make a non-binding evaluation and assessment in order to determine their case on merit.<sup>33</sup> The essence of this mechanism is to allow the disputants to assess and evaluate the opinion of the expert with a view to complying with it on voluntary basis as a guide not binding.<sup>34</sup>

The office of *Mufti* was limited to the legal consultation where such expert's advice is used to be respected by all. Although in modern era, Muslim states have chosen to institutionalise the office based on political and religious reasons in order to issue expert opinions on various subject matters. Therefore, *Fatwa of Mufti* now widely accepted form of effective mechanism for resolving disputes among disputants by embarking on *Ijtihad* (reasoning) to either resolve the disputes in light of the existing cases or extend the law if necessary from the general principles of *Sharia* provided that the new principles formulated will meet the conditions laid down by the jurists.<sup>35</sup>

---

<sup>31</sup> M. K. Khan, *Al-Hisbah and the Islamic Economy*, (Islamic Foundation 1982), 21.

<sup>32</sup> Ibid, P 68.

<sup>33</sup> Ibid, P, 57.

<sup>34</sup> *Is convention of ADR alien to Sharia*. <[www.sistersinislam.org/my/sm/baraza/fatwa](http://www.sistersinislam.org/my/sm/baraza/fatwa)> accessed on 20 May 2018.

<sup>35</sup> I. A. K. Nyazee, *Islamic Jurisprudence*, (The Other press, International Institute of Islamic Thought 2000), 47.

### **3.0 Practice and Procedure of Dispute Resolution in Borno State**

Dispute resolution in Borno State has three different approaches with three broad options available for dispute resolution. First, at the level of the family and community, there are those with no designated role but who are broadly trusted, including religious figures. Second, customary leaders with governance functions who also receive complaints and engage in dispute resolution and mediation, most notably ward leaders and village heads. While the customary sector is acknowledged in elements of statute, its effectiveness emerges from its legitimacy and credibility in communities. Third, the statutory legal sector, comprising the courts, where federal and state laws engage with identification, investigation and resolution of disputes or complaints, as well as any state-provided service such as alternative dispute resolution (ADR) or legal aid services. While the family, religious and customary forms of dispute resolution are primarily defined and enforced through their social legitimacy, the last has a legislative mandate. Islamic legal principles inform all three forms in Borno State, with the legal sector including Sharia Court.<sup>36</sup>

### **4.0 Alternative Dispute Resolution by Courts/Institutions:**

The court are creatures of statutes and mostly the statute that created the courts encourage ADR. There are statutory provisions that gave the courts powers to encourage and initiate ADR between disputants, litigation will only be resorted if that fails. There are federal and state courts established in Borno state and all the courts are either by the rules of the court or the law creating the courts to attempt ADR in any disputes; the courts are as follows:

---

<sup>36</sup> It is also referred to formal and informal ADR judicial mechanisms employed by Sharia Courts in the state when adjudicating matters before them. The courts used to sending litigants to their respective family elders (head of family) or Ameer of their community (community leader) with intents and purposes of findings solutions among the disputing parties as an arbiter or mediator. The mutual resolutions reached or agreed terms of resolution between the parties could be used by the courts as a consent judgement relying on it to deliver its final verdict. As it was held in the case of Egesimba Vs Onuzurike (2002) 9-10 SEC p.1 at 19 The S.C. held "...such decision has the same authority as judgment of judicial body and will be binding on the parties and thus create an estoppels."

- a. The High Court of the Borno state is created under Section 270,<sup>37</sup> and the same constitution also stressed the importance of ADR. Section 19(d),<sup>38</sup> provides for the settlement of disputes by Arbitration, Mediation, Conciliation, Negotiation and Adjudication. Order 66 Rules 1-19,<sup>39</sup> provides for supportive court interventions in arbitral proceedings.<sup>40</sup> Order 66 Rule 19(1),<sup>41</sup> stated that the ADR techniques and mechanism are hereby established in this Rule which shall be guaranteed and put into effect by the issue of Practice Direction by the Chief Judge. The jurisdiction of the Borno State High Courts in Nigeria is to be found in section 236(1)<sup>42</sup>. The section provides as follows:

“Subject to the provisions of this constitution and in addition to such other jurisdiction as may be conferred upon it by law, the High Court of a State shall have unlimited jurisdiction to hear and determine any civil proceedings in which the existence or extent of a legal right, power, duty, liability, privilege, interest, obligation or claim is in issue or to hear and determine any criminal proceedings involving or relating to any penalty, forfeiture, punishment or other liability in respect of an offence committed by any person.

It is clear from the wordings of the constitution that the High Court has unlimited jurisdiction to hear and entertain matters and this include any matter pertaining Islamic law with the exception of Islamic Personal Law.<sup>43</sup>

#### **4.1 The Sharia Court of Appeal:**

Before the Sharia Court of Appeal, the Qadi's (judge) are entertaining Islamic Personal law matter as required by Islamic law. In doing so the

---

<sup>37</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>38</sup> Ibid.

<sup>39</sup> Borno State High Court (Civil Procedure) Rules 2017.

<sup>40</sup> Order 66 Rule 1, Ibid.

<sup>41</sup> Borno State High Court (Civil Procedure) Rules 2017.

<sup>42</sup> of the 1979 Constitution of the Federal Republic of Nigeria

<sup>43</sup> Section 277 of the Constitution of the Federal Republic of Nigeria (as amended).

court is expected at all time of the proceedings in ensuring equality, saving time and expenses. Cases are expected to be dealt with expeditiously and fairly, the judge should always give effect to and encourage ADR or *Sulh*.<sup>44</sup> The court shall, in addition to such other jurisdiction as may be conferred upon it by the law of the state, exercise such appellate and supervisory jurisdiction in civil proceedings involving questions of Islamic Personal Law which the court is competent to decide in accordance with the provision of section 277 (2).<sup>45</sup> By this law if after filing an appeal the court deems *Sulh* is necessary, it may, with the consent of the parties refer the matter to such person or persons and in such manner and on such terms as it deems just and reasonable.<sup>46</sup>

#### **4.2 Sharia/Upper Sharia and Area Courts:**

By the provision of the Area Court Civil Procedure Rules,<sup>47</sup> the courts may with the consent of the parties to any proceedings, order the proceedings to be referred for arbitration to such person or persons and in such manner and on such terms as it thinks just and reasonable.<sup>48</sup>

The Area Court were established by the Area Court Law,<sup>49</sup> these Courts were renamed as Sharia and Upper Sharia Courts by Section 3,<sup>50</sup> provided that the courts are established for the purpose of the Administration of Sharia in the state. The courts shall, in addition to any other jurisdiction conferred by other enactment original jurisdiction in civil and criminal matters where the parties are Muslims.<sup>51</sup> The laws applicable in the courts are the laws stipulated by the Holy Quran, Hadith, Islamic jurisprudence and the interpretation adopted by the Maliki law. The laws applicable in the court allows and recommended for *sulh* in any dispute or proceedings before the court. This is based on the sayings of Allah:

---

<sup>44</sup> Order 8 Rule 1 of the Borno State of Nigeria Sharia Court of Appeal Rules 2018.

<sup>45</sup> The Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>46</sup> Order 8 Rules 1, 2, 3, 4 and 5 of the Borno State of Nigeria, Sharia Court of Appeal Rule 2018.

<sup>47</sup> 1968.

<sup>48</sup> Order 12 Rule 1, 2, 3, 4, 5 and 6 of the Area Court Civil Procedure Rules 1968.

<sup>49</sup> Section 1 of the Area Court Law 1967, By the Borno State Sharia Administration of Law 2000.

<sup>50</sup> Section 1 of the Borno State Sharia Administration of Law 2000.

<sup>51</sup> Section 6

“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 God will bring them together again. God is all knowing and wise”.<sup>52</sup>

*And:*

“If a woman fears aversion from her husband, or ill treatment there is no harm if they make a peaceful settlement and peace, is an excellent thing. But men keep self-interest uppermost. If you do good and fear God, God is cognizant of all that you do”.<sup>53</sup>

By the divine law cited above Sulh is very wide and is open to all types of transactions except where a party tried to legalize the prohibited acts or prohibit the lawful acts. It is worthy of note to say that, Sulh can be conducted either in Civil matters like Commercial transaction, Contractual relationship, social disposition like Matrimonial Dispute, Inheritance, or Criminal matters. For example in qisas settlement may be negotiated between the offender and the heirs of the deceased as to the amount lesser or greater than the conventionaldiyyah. Under Maliki law there is no settlement if the homicide is as a result of Robbery.

### **5.0 The Borno Amicable Settlement Corridor (BASC):**

The application of ADR processes in Borno State was institutionalised on the 1<sup>st</sup> day of August, 2009.<sup>54</sup> The attempt was made in term of providing Court annexed ADR facilities at the High Court in Borno State under Section 26.<sup>55</sup> BASC has alternative doors through which disputes are resolve by the appropriate process. Disputes are filed by walk in, referral and any other means other than the two. The available doors or processes are arbitration, mediation and *Sulhu* doors.<sup>56</sup> The corridor is manned by the staff of the State Judiciary headed by the Chief Administrative Officer and subordinate staffs who manage and

---

<sup>52</sup> Quran 4:35.

<sup>53</sup> Ibid 4:128.

<sup>54</sup> Borno Amicable settlement Corridor Mission Statement 2008.

<sup>55</sup> High Court of Borno State Laws 1994.

<sup>56</sup> The Borno Amicable Resolvment Corridor Mission Statement, (2008), 3.

administer the centre.<sup>57</sup> The mechanisms provided by the High Court Civil Procedure Rules are: negotiation:<sup>58</sup>, early neutral evaluation:<sup>59</sup> mediation:<sup>60</sup> conciliation:<sup>61</sup> arbitration: *Med-Arb*: expert determination. The rules of procedure by BASC are as follows:

This Rule provides for the various procedure or means of accessing the sulhu door, it provides that, “The door can be accessed through any of the following ways; Upon Application by any person interested in the dispute personally or through his legal representative, Referral of a dispute to the Door by a court or tribunal, Referral of a dispute or matter by a community leader, or family elder, etc, Referral of a dispute in any manner not covered by (a), (b), or (c).<sup>62</sup>

The rule provided and highlighted the types of disputes to be handled by BASC. “The Sulhu Door is designed to handle dispute which include; Inheritance, Maintenance, Custody Cases; Any other Matrimonial conflicts including: - Contract, Land cases, Criminal cases which are compoundable and any other case that may be filed in any Court in the State; Debt, Employer/employee contract and Rent.<sup>63</sup> It also provided for the means to initiate sulhu process at the Sulh Door by filing the necessary document such as request form, submission form, confidentiality agreement form, confirmation of attendance etc.<sup>64</sup> The rule explained the role of Deputy Administrator after receiving a reply from the other party which include: - Identify the nature of the dispute, Guide the parties to the Panel or Hakams and do everything necessary for Amicable Settlement between the parties.<sup>65</sup> The way and manner Hakams/Neutrals are appointed are provided for. The Deputy Administrator should nominate the Hakams which will eventually be approved by the parties; and that a Hakam should not serve in a matter if he has personal or financial interest in the outcome of the Sulhu except if the parties have filed their written consent.<sup>66</sup> It is stated that a

---

<sup>57</sup> Order 66, Rule 19 Sub-rule 4

<sup>58</sup> Order 66 Rule 15 (a, b, c, d, e, f, g, h, I and j) 2017..

<sup>59</sup> Ibid Rule 19 (3) and (4)..

<sup>60</sup> Ibid..

<sup>61</sup> Ibid.

<sup>62</sup> Rule 1, *Sulhu Door* Borno State Amicable Settlement *Sulhu* door Rules 2008

<sup>63</sup> Rule 2 *Ibid*.

<sup>64</sup> Rule 4 *Ibid*.

<sup>65</sup> Rule 6-7 *Ibid*.

<sup>66</sup> Rules 8-9 *Ibid*.

party can be represented, and the representative must have a written authority from the parties to reach settlement. The names and addresses of such representative shall be communicated in writing to all other parties and the sulhu door.<sup>67</sup> Hakams are appointed only to assist the parties in an impartial manner in an attempt to reach a settlement in line with Sharia.<sup>68</sup> The Rule further states that panel are free to determine the modus operandi depending on the nature of the issue in any language. They can as well terminate the sulhu process if in their opinion further effort would not contribute to a resolution. Hakam can assist the parties in drawing up any settlement.<sup>69</sup>

Session can be held at the Corridor, or any place convenient to the panel and the parties.<sup>70</sup> The panel may also sit on any date to conduct its business. The Administrator shall immediately refer the terms of settlement agreed and duly signed by the parties to the appropriate Court for endorsement by the Court as Consent Judgment.<sup>71</sup> There is a resolution panel appointed by the Chief Judge and the panel will determine whether a settlement return by a Court really contradict Sharia provisions or not.<sup>72</sup> Recommendation for confidentiality in the Sulhu process and the outcome.<sup>73</sup> Finally the rule provided for enforcement of the outcome of settlement.<sup>74</sup> This can be where the terms of settlement are endorsed by a competent court as consent judgment in line with the Rule.<sup>75</sup>

---

<sup>67</sup> Rule 10 *Ibid.*

<sup>68</sup> Rule 11, *Ibid.*

<sup>69</sup> Borno State Amicable Settlement *Sulhu* door Rules 2008..

<sup>70</sup> Rule 14 *Ibid.*

<sup>71</sup> Rule 16, *Ibid.*

<sup>72</sup> Rule 17, *Ibid.*

<sup>73</sup> Rule 18, *Ibid.*

<sup>74</sup> Rule 19, *Ibid.*

<sup>75</sup> Borno State Amicable Settlement *Sulhu* door Rules 2008.

## **6.0 Dispute Resolution Practice by Family Members in Borno State**

In a situation where dispute erupted within a family sphere, the heads of family units are saddled with responsibility of resolving their affairs by adopting *sulh*. This is because Allah has ordained Muslims to maintain family ties and to avoid disharmony.<sup>76</sup> The Quran stated thus:

“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 God will bring them together again. God is all-knowing and wise”.<sup>77</sup>

The assurance for reconciliation is optimistic where the spouses as family members truly in good faith consented to compromise the differences and misunderstandings among couples, the process may cement resolution. This clearly shows that preference for *sulh* in matrimonial disputes against litigation is highly recommended.<sup>78</sup>

## **7.0 Dispute Resolution by Scholars in Borno State:**

The most respected scholar who had excelled in Islamic knowledge and jurisprudence in Borno State mostly resolve disputes reported to them. Therefore, the *Ulamas* (religious Scholars) are most respected, humble, just and of proven character and their settlement is mostly accepted in good faith; and the disputants are mostly disciples, neighbours, members of community who have close contact with the *Ulamas*. The dispute settle at this stage are basically those highlighted by Rule 2,<sup>79</sup> which include succession, marriage, custody, divorce, maintenance, joint ventures business, and farm land matters. Resolutions are always based on the provisions of the Quran which required resolution of dispute, thus: “And if two parties among the believers fall into a quarrel, make ye peace between them: but if one of them transgresses beyond bounds against the other, then fight ye (all) against the one that transgresses until it complies with the Command of Allah, but if it

---

<sup>76</sup> Rossiman. N. S. B, The Significance of *Sulh* in the Syariah Court, Op:Cit..

<sup>77</sup> Qur'an 5:35.

<sup>78</sup> Ibid.

<sup>79</sup> BASAC Op:Cit.

complies, then make peace between them with justice, and be fair: for Allah loves those who are fair (and just).<sup>80</sup>

In realisation of peace and harmony, *Ulamas* mostly persuade couple to resolve their differences notwithstanding what constitute the root cause of the problems. The Prophet PBUH who says that: “A Woman is (usually) married for one of three qualities, she is married for her wealth; she is married for her beauty; she is married for her nobility; she is married for her (adherence) to religion. So take the religious and well-mannered, may your right hand be prosperous.”<sup>81</sup>

The recommendation of the Prophet (PBUH), of giving preference to marry a religious and well-mannered woman is all sign of assuming peaceful.<sup>82</sup> The role of the *Ulama* therefore cannot be over emphasised where Muslim couples seek advice from them in term of matrimonial disputes.<sup>83</sup>

## 8.0 Resolution of Dispute by Legal Practitioners:

The Legal Practitioners Act,<sup>84</sup> required legal practitioners to advice and inform their client to consider ADR process before initiating any litigation. Some law firms advice client on the significance of attempting ADR first before opting for litigation if it fails. It amounts to professional misconduct for a lawyer to fail or neglect to inform his client of the option of ADR mechanisms before resorting to or continuing litigation on behalf of his client. Where the professional neglected in his responsibility, parties will be encourage to consider

---

<sup>80</sup> Qur'an Al-Hujurat: 9.

<sup>81</sup> S. Al-Aabii, *Jawaahir al-Ikhiil Sharh Muktasar al-Khaliil Fii Madh'hab al-Imaam Daar at-Tanziil*, herein referred to Jawaahir (2) (Abuu as-Sa'ud and at-Tayyib n.d), 102-103.

<sup>82</sup> U. S. Keffi, 'The Legal, Social and Economic Role of As-Sulh From the Perspective of Jurisprudence (Fiqh) of the Maliki School' in: Ibrahim Ahmed Aliyu, and others (eds), *Alternative Dispute Resolution and Some Contemporary Issues*, (Nigeria, M.O. Press Publishers, 2010), 209-210.

<sup>83</sup> Odonigi Vs Oyeleke (2001)2 SC 194 at 203 where dispute referred to religious leaders such as imam or pastor for arbitration a resolution given is valid and binding until the contrary is proof otherwise.

<sup>84</sup> Rule 15 (3) (d) of the Rules of Professional Conduct 2007.

ADR.<sup>85</sup> If the parties consent to the ADR the matter will be referred to the BASC.<sup>86</sup>

## **9.0 Practice of ADR by Traditional Leaders in Borno State:**

Traditional dispute resolution is carried out by the traditional leaders. Traditional leadership in Borno State, as in most of Nigeria, is largely hereditary, holds significant social importance and, to some degree, is recognised and upheld by Statute. While the full extent to which statute recognises, empowers and reinforces the role of traditional leaders the government create processes that rely upon the functions and authority of traditional leaders. The actors involved in traditional dispute resolution include ward, village, district heads and the Shehu/Emirs, who perform governance functions, part of which is also pronouncing on disputes or complaints.<sup>87</sup> There is no clear framework by which decisions are reached, but it involves a good amount of discretion lying with the individual decision-maker. There are some belief that traditional leaders decide according to fairness and, to some degree, religious rules. While the effects of failing to adhere to outcomes of traditional dispute resolution are mostly social, they are significant because of the role and status of the traditional leaders. Traditional decisions can also be given legal consequences or effects, such as when a court notes that a particular decision has been taken by such structures or calls a traditional leader as a witness.<sup>88</sup>

## **10.0 Conclusion:**

The usefulness of ADR in Sharia can never be underestimated. This paper demonstrates how these ADR mechanisms are practiced and the procedures adopted in Borno State of Nigeria. The practice and application of *Sulh* under *Sharia* lacks statutory backing in the State which required to be formalised. Despite Sharia principles are dictates

---

<sup>85</sup> High Court Law of Borno State s29, which provides that: courts should encourage amicable resolution of disputes.

<sup>86</sup> Borno Amicable Settlement Corridor Practice Direction (2009), 9-10. Article 2, Rule 2.1 (c).

<sup>87</sup> H. Z. Laminu, *Scholars and Scholarship in the History of Borno*, (The Open Press 1993), 43-54.

<sup>88</sup> UNODC, 'Guidelines for Dispute Resolution by Traditional Rulers-Northern Zone' (a Two Day Alternative Dispute Resolution Summit for Traditional Rulers Held At Kaduna State Nigeria, from 6<sup>th</sup> – 7<sup>th</sup> October 2009); 7.

of Allah (SWA), requires the need to strengthen its practice in accordance with the procedure outline by the Sharia. Sulh has significant role in settling disputes.

The exposition discussed the concept, practice and procedure of *sulh* at various levels but the processes are not functional as required and it is about to be phased out by the conventional ADR. Efforts to retain it back to practice have not been successful. It is recommended that *sulh* should be provided for statutorily under the Borno State Laws, Rules of Courts and the Borno State Criminal Administration of Justice Law 2023. Personnel of BASC, judicial offices, traditional ruler and family heads involved in the administration Sharia justice system will breach the gap. This will enable and ensure the acquiring of required skill and background of *Sulh*.