

**COMPARATIVE ANALYSIS OF ALTERNATIVE DISPUTE  
RESOLUTION (ADR) UNDER COMMON LAW AND  
ISLAMIC LAW: CASE STUDY OF NORTHERN NIGERIA**

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**ABSTRACT**

Disputes and conflicts among individuals are as old as life itself. It is obvious that conflict naturally befalls our day to day activities. Hence, conflict is an inescapable component of human interactions and transactions. In Northern Nigeria apart from the court(s) there were other forms or traditional way of resolving dispute even before 1960. In trying to suppress and resolve conflicts among individuals, people resort to court by way of litigation. However, in Northern Nigeria problems associated with litigation such as: destruction or total crumbling of existing relationships; anxiety due to anticipation of negative outcomes in litigation; lack of confidentiality; etc necessitate the parties or potential litigants to opt for *Sulh*. Alternative Dispute Resolution refers to ways of addressing and settling disputes outside court. *Sulh* which is an Islamic term has been very popular in Northern Nigeria being an agreement or settlement to end a dispute, whether initiated by the parties, the court or a third party. The aim of writing this paper is to compare the two concepts, i.e.; ADR under the common law and the concept of *Sulh* under Islamic Law. This paper found that Alternative Dispute Resolution and *Sulh* promote resolution of disputes outside court and encourage the maintenance of cordial relationships in the societies. Finally, this paper recommended that there should be more and persisting trainings, seminars and workshops for the judges, lawyers, ADR centers, religious and traditional Institutions. The paper further

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recommended that more Multi-door Court Houses and ADR centers be created in Northern Nigeria.

**Keywords:** Arbitration (*Tahkim*), Conciliation (*Islah*), Mediation (*Wasata*), Negotiation (*Tafaawud*), Plea Bargain.

## 1.1 Introduction

Man cannot live in isolation; he must interact with his fellow beings in this life (be it private or public life). In private life we have activities in family relationships that include: Matrimony, child custody, child support, divorce, alimony, marital property and other domestic relationships that relate to family. While in public life there exist human transactions which include business/economic activities, social relationships activities, religious activities, civil activities, community and international activities.

With particular reference to the above activities, disputes<sup>1</sup> often arise between parties in the performance of agreements relating to particular transaction(s). Hence, conflicts and disputes are inescapable components of human interactions and transactions. Disputes have primitive origin as it has been with mankind from time immemorial. When these disputes arise, parties normally will want to resolve the disputes among themselves, naturally by seeking redress in court through litigation.

However, in Northern Nigeria a lot of problems that are associated with litigation to mention but few such as: legal technicalities; destruction or total perishing of existing relationships; anxiety due to anticipation of negative outcomes in litigation; lack of confidentiality; time and costs associated with handling disputes through litigation; etc necessitate the parties or potential litigants to opt for ADR or *Sulh*. The common methods of resolving dispute between parties in Northern Nigeria as an alternative to litigation are by alternative dispute resolution ADR and *Sulh* techniques such as: Arbitration (*Tahkim*),

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<sup>1</sup> In most cases dispute arises where people have differences in things such as: background, orientation, culture, experiences, education, age etc. Hence, they have different ways of perceiving things that are right or wrong, and this may result into conflicts/disputes between them.

negotiation (*Tafaawud*), mediation (*Wasata*) and conciliation (*Islah*). These will be dealt with in the subsequent discussion.

In recent times, efforts have been made to establish centers for ADR and *Sulh* in Northern Nigeria. As ADR or *Sulh* plays a principal role in resolving disputes, thus, this paper tends to make a comparative analysis. ADR and *Sulh* are recognized under the Nigerian legal systems, i.e, English common law and Islamic law. This paper significantly discusses and compares Alternative Dispute Resolution (ADR) under the common law and the concept of *Sulh* under Islamic Law; definition/meaning and scope of ADR and *Sulh*, Types of ADR and *Sulh*, and the development so far achieved from both concepts and how they are applicable in Northern Nigeria.

However, since it had been the aim of this paper to discuss the practice of ADR and *Sulh* in Northern Nigeria; the paper would cite an example of Hausa tribe which is the major tribe in the Northern part of the country. Among the *Hausas* of the Northern Nigeria, especially those in the Diaspora, it has been found that wherever they migrate, they would appoint for themselves a leader called *Sarkin Hausawa* (ruler of the *Hausa* people) who settle disputes among the immigrants using various means including mediation and reconciliation. The *Sarki* has ward heads referred to as *Mai unguwa* (owner of the ward). The *Mai unguwa* resolve conflict at ward level within the *Sabon Gari* where the immigrants settle. Conflicts that cannot be resolve at word level are referred to the *Sarkin Hausawa's* Court. When resolving such dispute, the *Sarki* is usually assisted by his chiefs and committee elders called *Uban Gari*.<sup>2</sup>

The first statute on arbitration in Nigeria was the 1914 Arbitration Ordinance.<sup>3</sup> While presently, the Laws that seems to address Alternative Dispute Resolution (ADR) in Nigeria although, it deals

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<sup>2</sup> Anayo N. Edeh, *Alternative Dispute Resolution (ADR) in Nigeria* (CIDJAP Press 2018).

<sup>3</sup> Orojo Olakunle Orojo and M Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi and Associates Nig. Ltd. 1999).

with only some aspect of it, is Arbitration and Mediation Act<sup>4</sup> and the Islamic law principles where applicable; Northern Nigeria inclusive.<sup>5</sup>

### 1.1.1 Meaning and Scope of ADR

There is no universal acceptable or standard definition of ADR. Each person will define ADR, describes it the way he/she perceives it.<sup>6</sup> In trying to explain the meaning of ADR, Justice Oluede wrote: ‘ADR mechanisms are other avenue and options open to parties in a dispute over small claims. ADR is a culmination of several dispute resolution modules, it stands to offer parties different dispute resolution option, which might suit their dispute.’<sup>7</sup>

The adjective ‘alternative’ in ADR is often used to mean alternative to formal court system, particularly litigation. However, the usage of ‘alternative’ may not be appropriate in places where not all parties would choose, or have access to, the court process. In such circumstance ADR may not connote an alternative to formal court system.<sup>8</sup> Thus, ADR may be court-connected or non-court-connected.

ADR may be conveniently categorized into two groups namely: (1) the binding ADR and (2) the non-binding ADR. Binding ADR includes arbitration and other adjudicatory ADR methods.<sup>9</sup> The same applies to other binding ADR methods like Mini-trial, Expert Determination of issues and mediation-arbitration, otherwise known as Med-Arb. The non-binding ADR, inter-alia, includes negotiation, mediation or conciliation and neutral evaluation. These methods are mainly consensual and reconciliatory.<sup>10</sup>

Many commentators have argued that ADR should not be viewed as subservient to litigation. For example, according to Vickery, [t]he

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<sup>4</sup> The Arbitration and Mediation Act, 2023.

<sup>5</sup> Islamic Law draws its sources from primary sources, namely Qur’an and Sunnah (tradition of the Prophet Muhammad S.A.W); and secondary sources such as Ijma (consensus), Qiyas (analogy) and Ijtihad (juristic reasoning).

<sup>6</sup> Edeh (n 2).

<sup>7</sup> *ibid.*

<sup>8</sup> Abdulsalam O. Ajetunmobi, *Alternative Dispute Resolution & Arbitration in Nigeria, Law Theory and Practice* (Princeton & Associate Publishing Co. Ltd. 2017).

<sup>9</sup> Chima Josephat Ubanyionwu, ‘Legal and Historical Frameworks of Alternative Dispute Resolution in Nigeria’ *Nigerian Journal of Legal Studies* (2023) <<http://www.nigerianjournalonline.com>> accessed 15 September 2025.

<sup>10</sup> *ibid.*

original perception of ADR as a ‘trendy’ or ‘soft’ process has been replaced by a general appreciation of its role in avoiding protracted and costly civil litigation.’<sup>11</sup> Similarly, Brown and Marriott emphasized that ADR be considered an equal of litigation: ‘ADR has a strong professional, mainstream following and that at the least, mediation and other processes falling under the ADR aegis should be described in a way that equates them conceptually with litigation.’<sup>12</sup>

The term “Alternative Dispute Resolution” is generally to describe the methods and procedures used to resolve disputes either as an alternative to the traditional dispute resolution mechanism of the court or in some cases as supplementary to such mechanism.<sup>13</sup> They are those mechanisms that are used to resolve disputes faster, fairer, and without destroying on-going relationships.

## 1.2. Types of ADR under Common Law

### 1.2.1. Arbitration

Arbitration is more aligned in many respects to litigation and for it is argued by scholars that arbitration should not be recognised as ADR.<sup>14</sup> Thus, with the regard to status of arbitration, in recent times, it has been doubted whether arbitration can be regarded as ADR method.<sup>15</sup> Some scholars opined that negotiation, conciliation and mediation qualified to be called Alternative Dispute Resolution (ADR). Hence, they stipulated that to refer arbitration as Alternative Dispute Resolution (ADR) would be misleading.<sup>16</sup> While the debate on whether arbitration can be regarded as ADR method continues among the scholars, however, the realm of this paper will treat arbitration as an alternative to litigation.

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<sup>11</sup> Ajetunmobi (n 8).

<sup>12</sup> *ibid.*

<sup>13</sup> Olakunle (n 3).

<sup>14</sup> Banke Olagbegi- Oloba, ‘Should we go to court? An Examination of Arbitration as an Alternative to Litigation in Nigeria.’ NICARB 2020, 655.

<sup>15</sup> Olakunle (n 3).

<sup>16</sup> Felicia Anyogu and Matthew Izuchukwu Anushiem and Nnenna Adaku, ‘Role of Arbitration in Dispute Resolution in Nigeria: A Legal Examination’ *International Review of Law and Jurisprudence IRLJ* (2023) 5 (3) <<http://nigerianjournalsonline.com>> accessed 15 September 2025.

Arbitration means a commercial Arbitration whether or not administered by a permanent arbitral institution. It is argued that this definition is restrictive and applies to commercial disputes only. However, Hisrt LJ described arbitration in the case of arbitration as: ‘... it is the reference of a dispute between two or more parties for determination in a judicial manner by a person or persons. It is the process of dispute resolution in which an arbitrator renders a decision after a hearing at which both parties have an opportunity to be heard.’

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According to Ronald Bernstein, arbitration is an agreement of the parties that a dispute between them be settled by a tribunal of their choice. Arbitration is a mechanism for the resolution of disputes which take place, usually in private, pursuant to an agreement between two or more parties, under which the parties agree to be bound by the decision to be given by the arbitrator according to law or, if so agreed, other considerations after a fair hearing, such decisions being enforceable at law or set aside by the same court (arbitral tribunal) for good cause, such as partiality on the part of the arbitrator or arbitrators; or an unfair award. Thus, the arbitrator's decision is final and binding on both parties, and it is enforceable in a court of law.<sup>18</sup> Moreover, arbitration can offer cost advantages over traditional litigation, although it may involve higher fees than mediation due to the involvement of a decision-maker and formal procedures.<sup>19</sup> Arbitration may arise in any of the following ways: a) by order of court;<sup>20</sup> b) by statute;<sup>21</sup> and c) by agreement of the parties.<sup>22</sup>

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<sup>17</sup> *S.P.D.C.N Ltd v Ajuwa* [2015] 14 NWLR (Pt 1480) 403.

<sup>18</sup> Omoyeni Tolulope Julius and Falusi Fisayo Samuel and Onuoha Anthony Uchenna, ‘Alternative Dispute Resolution Mechanisms and Internal Democracy in Nigeria’ *Wukari International Studies Journal* (2023) 7 (1) 340 <<http://wissjournals.com.ng>> accessed 13 August 2024.

<sup>19</sup> Juan Pablo, ‘Effectiveness of Mediation and Arbitration as Alternative Dispute Resolution Methods in Mexico’ *Journal of Conflict Management* (2024) 4 (1) 38 -50 41-42 <<http://pdfs.semanticscholar.org>> accessed 21 September 2024

<sup>20</sup> Olakunle (n 3).

<sup>21</sup> *ibid.*

<sup>22</sup> *ibid.*

### 1.2.2. Negotiation

The most common form of dispute resolution.<sup>23</sup> Negotiation is not a new phenomenon in the world. Even in ancient times, people involve in one form of negotiation or the other even without knowing.<sup>24</sup> According to previous studies, over 70% of disputes find resolution through negotiation.<sup>25</sup> This concept includes the ability to listen, communicate effectively, and find mutually beneficial solutions.<sup>26</sup> This is consensual dispute resolution process whereby parties in dispute come together to discuss, directly or indirectly, the matter in dispute between them in order to agree on the form of any joint action which they might take in the resolution of the dispute.<sup>27</sup> The parties may represent themselves or may be represented by a negotiating agent or agents.<sup>28</sup>

In this process the parties voluntarily seek a mutually acceptable agreement to resolve their common dispute.<sup>29</sup> It involves discussions or dealing about a matter, with a view to reconciling differences and establishing areas of agreement, settlement or compromise that would be naturally beneficial to the parties or that would satisfy the aspiration of each party to the negotiation.<sup>30</sup> While the facilitator's role is to keep the parties talking and bargaining by allowing the disputants themselves to control the process and the solution. Generally, negotiation involves giving up something in order to get something in return. The facilitator prepares the memorandum of agreement containing all the point agreed, while the parties can then formalise the memorandum by inserting a condition that will be binding.<sup>31</sup>

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<sup>23</sup> Olubayo Oluduru and Akin Olawale Oluwadayisi, Arbitration and ADR: A Tool for Conflict Resolution and Additional Career for Professionals, *Journal of Arbitration* (2021) 16 (1) 1 – 165.

<sup>24</sup> Edeh (n 2).

<sup>25</sup> Amila N.K.K. Gamage and Suresh Kumar, 'Review of Alternative Dispute Resolution Methods in Construction Projects' *Saudi Journal of Engineering and Technology* (2024) 9 (2) 75 – 87 <<http://saudijournals.com>> accessed 21 September 2024.

<sup>26</sup> Gunawan Widjaja, 'Managing Legal Disputes through Alternative Disputes Resolution' *Journal of Ecohumanism* (2024) 3 (3) 451- 460 < <http://cecol.com> > accessed 21 September 2024.

<sup>27</sup> Ajetunmobi (n 8).

<sup>28</sup> *ibid.*

<sup>29</sup> Oluduru and Olawale (n 23).

<sup>30</sup> Olakunle (n 3).

<sup>31</sup> Oluduru and Olawale (n 23).

Negotiation may be for the purpose of structuring commercial agreements, resolving conflicts, managing operational problems, managing social relationships etc.<sup>32</sup>

### 1.2.3. Mediation

Mediation has no single universal accepted definition.<sup>33</sup> It has been defined as: ‘A voluntary, confidential process where a neutral third party (the mediator) assists disputing parties negotiate, problem resolve and arrive at their own (disputing parties) solution to the dispute between them.’<sup>34</sup> It differs from arbitration in that the mediator does not make a binding ruling.<sup>35</sup> However, the provision of Arbitration and Mediation Act provides for enforcement in court as contract, consent judgment or consent award.<sup>36</sup>

The mediator facilitates communication and information exchange between the parties, offering guidance and support to reach mutually satisfactory solutions.<sup>37</sup> Once selected, the mediator will arrange the mediation process.<sup>38</sup> Mediator(s) may meet jointly or separately with each party to explore issues, interests, and potential resolutions.<sup>39</sup> The mediator is more “leading” in that he may make recommendation for the consideration of the parties.<sup>40</sup> If the parties disagree with the conclusions of the mediator, the mediation is called off and the parties are left with other remedies or to litigate. The mediator does not make an award, nor does he, in the purest form of mediation, evaluate party

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<sup>32</sup> Edeh (n 2).

<sup>33</sup> *ibid.*

<sup>34</sup> *ibid.*

<sup>35</sup> Alike Rhoda Akhere and Osarenmwinda Smart, ‘Empirical Study of the Right Conflict Resolution Approach (Arbitration vs Mediation)’ *Gusau Journal of Business Administration (GUJOBA)* (2024) 3 (1) 157 <<http://gujoba.com.ng>> accessed 21 September 2024.

<sup>36</sup> Arbitration and Mediation Act, 2023, Section 82(2).

<sup>37</sup> Naser Sherman, and Bashar Talal Momani, Alternative Dispute Resolution: Mediation as a model, *F1000Research* (2024) 13 778 <<http://pmc.ncbi.nlm.nih.gov>> accessed 17 September 2025.

<sup>38</sup> Oluduru and Olawale (n 23).

<sup>39</sup> Rhoda and Smart (n 35).

<sup>40</sup> Orojo Olakunle Orojo and M Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi and Associates Nig. Ltd. 1999).

claims,<sup>41</sup> but uses certain procedures, techniques and skills to help them to negotiate an agreed resolution of their dispute without adjudication.<sup>42</sup>

### 1.2.4 Conciliation

Under the Nigerian Law, the Arbitration and Conciliation Act<sup>43</sup> provides a framework for conciliation in Nigeria. Similar to mediation, conciliation is a process whereby the conciliator may play a more advisory role, suggesting possible solutions to help the parties<sup>44</sup> and explores the opportunity for settlement.<sup>45</sup> It is a bringing of opponent into harmony, reconciliation, a voluntary (and not legal binding) attempt by parties to an industrial dispute to reach agreement without strike action.<sup>46</sup> It's a way to find a win-win solution and make everyone happy.<sup>47</sup>

The parties to a dispute use a conciliator, who meets with the parties both separately and together in an attempt to resolve their differences.<sup>48</sup> He is not necessarily a reconciliator and he has no power to bind the parties. He is not an adviser to the parties, who should turn to their lawyers and expert for advice. However, the conciliator may make proposals for settlement to the parties. If accepted by the parties, a formal term of settlement is drawn up and assigned by the parties. By signing, the parties are bound by the agreement. Also, the conciliator provides the environment for negotiation.<sup>49</sup>

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<sup>41</sup> Edeh (n 2).

<sup>42</sup> S C Dike and Boma Geoffrey Toby and Dorcas F Elekima, 'Transforming Mediation and Conciliation Practices for Effective Dispute Resolution in Nigeria' *Journal of Property Law and Contemporary Issues*, (2020) 12 (1) 233 <<http://S Dike - ...Dispute Resolution in Nigeria. Journal of Property Law ..., 2020 - papers.ssrn.com>> accessed 13 August 2024.

<sup>43</sup> Arbitration and Conciliation Act, 2004 now Arbitration and Mediation Act, 2023.

<sup>44</sup> Muhammad Farhan Talib and others, 'Harmonizing Conflict: Exploring Global Applications of Alternative Dispute Resolution Methods' *Pakistan Journal of Criminal Justice* (2024) 4 (1) <<http://journals.centeriir.org>> accessed 21 September 2024.

<sup>45</sup> Olakunle (n 3).

<sup>46</sup> Edeh (n 2).

<sup>47</sup> Tanu Dohare and Ekta Rose, 'Resolving Conflicts Outside the Courtroom: Exploring Alternative Dispute Resolution' *MSB-International Journal of Interdisciplinary Research* (2024) 2 (3) <<http://journal.mysocialbliss.com>> accessed 21 September 2024

<sup>48</sup> Edeh (n 2).

<sup>49</sup> Olakunle (n 3).

Conciliation procedures are commonly used in property and labor matters,<sup>50</sup> it may be of various types, among others which include: commercial disputes,<sup>51</sup> family disputes,<sup>52</sup> Community and neighbourhood disputes,<sup>53</sup> and international disputes.<sup>54</sup> It should be noted that, in most texts and jurisdictions, conciliation and mediation are used interchangeably though mediation has become the preferred term.

### 1.2.5 Private Judging

Private judging is a type of alternative dispute resolution whereby the parties enter into an agreement to hire a private judge (a retired judge) to try their dispute in private.<sup>55</sup> In some instances, parties may define procedures governing proceedings before the private judge. Such things like time and place of proceedings are usually discussed and agreed upon by the parties.<sup>56</sup> A private judge has full judicial powers including the contempt powers. Judgment rendered by a private judge is binding on the parties and it enjoys the same right of appeal given to judgments delivered by a sitting judge. Private judging is used primarily for commercial disputes, family dispute, divorce proceedings, etc.<sup>57</sup>

### 1.2.6 Med – Arb

This is known as Mediation-Arbitration.<sup>58</sup> A neutral third party is designed to play the role of the mediator and the arbitrator. If the mediation fails, the process goes straight into arbitration, which save time from re-explaining the whole story to another neutral third party.<sup>59</sup>

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<sup>50</sup> Beny Saputra, 'Strengthening ADR System in Indonesia: Learning from ADR Practice in Hungary' *Indonesia Comparative Law Review* (2024) 6 (2) <<http://journal.umy.ac.id>> accessed 21 September 2024.

<sup>51</sup> Orojo Olakunle Orojo and M Ayodele Ajomo, *Law and Practice of Arbitration and Conciliation in Nigeria* (Mbeyi and Associates Nig. Ltd. 1999).

<sup>52</sup> *ibid.*

<sup>53</sup> *ibid.*

<sup>54</sup> *ibid.*

<sup>55</sup> Anayo N. Edeh, *Alternative Dispute Resolution (ADR) in Nigeria* (CIDJAP Press 2018).

<sup>56</sup> *ibid.*

<sup>57</sup> *ibid.*

<sup>58</sup> AMA 2023, Section 79.

<sup>59</sup> Bahaudin G Mujtaba and Tiffany D Garner, 'Exploring Negotiation and Mediation Option before Arbitration or Litigation: which Alternative Dispute resolution is best

Arb-Med (arbitration-mediation) is the same process in reverse. An arbitrator will write their judgment in secret at the end of arbitration, and their decision will be the selected decision if the mediation process fails to find a resolution.<sup>60</sup> Also, it can pressure the parties to accept the mediated deal if they are worried about the arbitration settlement.<sup>61</sup>

### 1.3. Application of ADR to Criminal Cases under Common Law

The principle of arbitration states that it is not every dispute that is capable of resolution by arbitration, e.g, in criminal cases. However, ADR now spans all aspect of the legal system globally, including criminal justice system. Today, criminal law in many jurisdictions provides mediation and arbitration in criminal cases as alternative to court trial.<sup>62</sup> Therefore, it became entrenched in the Federal and State Criminal Procedure Rules.<sup>63</sup>

#### 1.3.1 Plea Bargain

In many jurisdictions, including Nigeria, some cases, especially involving economic crimes, are sometimes disposed of following plea bargains.<sup>64</sup> Plea bargaining consist of exchange of official concessions for a defendant's act of self-convictions.<sup>65</sup> Generally, it is an agreement in a criminal trial in which a prosecutor negotiate with the accused in exchange for a guilt plea from the person accused.<sup>66</sup> The accused person accept to plead guilty to a less severe offence than the one originally charged or to smaller number of offences than the original one charged; which meant that an accused receives a lighter sentence or punishment

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for Settling Workplace Conflicts' *International Journal of Law, Justice and Jurisprudence* (2024) 4 (2) 50-53 <<http://www.lawjournal.info>> accessed 19 September 2024.

<sup>60</sup> *ibid.*

<sup>61</sup> *ibid.*

<sup>62</sup> Edeh (n 2).

<sup>63</sup> Ikuru Onome Pette and MOI Nwabuoku, 'Plea Bargainin in Nigeria: the Law Practice and Challenges' *International Journal of Multidisciplinary Research and Growth EvaluationI* (2024) 5 (2) 304-307 <<http://allmultidisciplinaryjournal.com>> accessed 25 September 2024.

<sup>64</sup> Edeh (n 2).

<sup>65</sup> Albert W. Alschuler, 'Plea Bargain and its History' *Columbia Law Review* (1979) 79 (1) <<http://uchicago.edu>> accessed 17 September 2025.

<sup>66</sup> Casey N. Tisdale, 'Prosecutors' Contributions when Initiating Plea Bargain' *ASAP* (2024) 24 192-214 <<http://CN Tisdale, AM Votruba - Analyses of Social Issue and Public ...>, 2024 - Wiley Online Library> accessed 25 September 2024.

than that which he is likely to receive in respect of the offence originally charged.<sup>67</sup> In Nigeria the EFCC Act<sup>68</sup>, particularly section 13 empowers the EFCC to enter plea bargain with the accused and this is done by compounding the offence before the case is taken to court.

### 1.3.2 Restorative Justice

The concept of restorative justice emphasizes the recovery of damages, reconciliation and restoration of relationships between perpetrator, victims, and the community as an alternative to the more traditional retributive approach.<sup>69</sup> Its intendment is to reduce the number of persons that go into custodial centers while reducing recidivism.<sup>70</sup> The central focus of restorative justice is on providing a space for dialogue and understanding between the victim and the offender.<sup>71</sup> In principle, restorative justice may be offered as a standard method in decision-making at all stages of the litigation process.<sup>72</sup> Inmates who are accused and waiting for trial make up more than 60% of the jail population in

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<sup>67</sup> L. H. Gummi, *Alternative Dispute Resolution Mechanism and the Multi-Door Court House Concept: A Review* (Being a paper presentation at the National Judicial Institute Induction Course organize for the newly appointed Judges and Kadis in Abuja, Nigeria on the 25<sup>th</sup> June 2009).

<sup>68</sup> EFCC Act, 2002, Cap E1, LFN, 2004.

<sup>69</sup> Ary Octaviyanti and Oksidelfa Yanto, 'Restrotive Justice as an Alternative Approach in Combating Corruption Offenses' *Journal of Legal and Cultural Analytics (JLCA)* (2024) 3 (2) 159 – 172 <<http://journal.formosapublisher.org>> accessed 2 October 2024.

<sup>70</sup> Umenweke Meshach and Ogboji Chukwudi Prince, 'An Overview of the Legal and Institutional Framework of Non-Custodial Service in Nigeria' *NAUJILJ* (2024) 15 (2) <<http://ajol.info>> accessed 2 October 2024.

<sup>71</sup> Micheal Chika Diyoke and Eberechukwu Odichinma Ogboko, 'Diversion not Detention for Young Offenders in Nigeria: An Urgent Call to Rethink' *African Journal of Sosial and Behavioural Sciences (AJSBS)* (2024) 14 (2) <<http://journals.aphriapub.com>> accessed 2 October 2024.

<sup>72</sup> Lastuti Abubakar and others, 'Restorative Justice in Corporate Dispute Resolution as Business Actor in Indonesia' *Journal of Indonesian Legal Studies* (2024) 4 (1) 187-216 <<http://Indonesianjournal.unnes.ac.id>> accessed 23 September 2024.

Nigeria;<sup>73</sup> thus, restorative justice has now been properly provided for in their laws.<sup>74</sup>

#### 1.4. ADR in Islam - *Sulh*

The term *Sulh* has the literal meaning of “to end a dispute” or “to cut off a dispute”.<sup>75</sup> *Sulh*, means compromise or settlement between parties to a claim, which may be settled for an alternative, in order to avoid or minimize litigation. In many ways this aspect of Shari’ah is similar to out of court settlement under the general law. It is a recommendable act in Islam.<sup>76</sup> The idea of *Sulh* in Islamic law encompasses compromise, settlement, or agreement between parties.

Settlement voluntarily entered between parties may not be rescinded, even if the parties agree to do so, they are to be compelled to honour it.<sup>77</sup> No person who has played a role in the reconciliation or settlement of dispute between two persons shall be permitted to give evidence in favour of either of them as doing so amount to giving evidence about oneself. Reconciliation out of court is unanimously accepted as lawful by all jurists, but not in all circumstances.<sup>78</sup>

##### 1.4.1. Legal Basis for *Sulh* in Qur’an and Sunnah

Legal basis could be found under Qur’an for instance: The enforcement of the Muslim brotherhood is greatest social ideal of Islam. This teaching encourages unity as well as reconciliation, reflecting the

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<sup>73</sup> Micheal Chika Diyoke and Eberechukwu Odichinma Ogboko, ‘Diversion not Detention for Young Offenders in Nigeria: An Urgent Call to Rethink’ *African Journal of Sosial and Behavioural Sciences (AJSBS)* (2024) 14 (2) <<http://journals.aphriapub.com>> accessed 2 October 2024.

<sup>74</sup> The Constitution Federal Republic of Nigeria 1999 (as amended), section 1; CFRN 1999 (Fifth Alteration), Act (No. 15) 2023; the Administration of Criminal Justice Act/Laws 2015; the Nigerian Correctional Service Act, 2019 and the Nigerian Correctional Service Standing Orders Non-Custodial, 2020.

<sup>75</sup> Shittu-Adenuga Zaynab Omotoyosi and Abiola Adekunle Saheed and Mustapha Sunkanmi Sodiq, ‘The Critique of Alternative Dispute Resolution under Islamic Law and its Relevance in the Contemporary Nigeria’ *Jurnal Syariah* (2023) 2 261 <[http://ZO\\_Shittu-Adenuga, AS Abiola, SS Mustapha - Jurnal Syariah,2023 - ejournal.um.edu.my](http://ZO_Shittu-Adenuga,_AS_Abiola,_SS_Mustapha_-_Jurnal_Syariah,2023_-ejournal.um.edu.my)> accessed 13 August 2024.

<sup>76</sup> Abbas Abdullahi Machika, *Giude to Advocates: An English Language Translation and Commentary on Tuhfatu HukkamTuhufa* (Zusala Company Kaduna – Nigerian 2020).

<sup>77</sup> *ibid.*

<sup>78</sup> *ibid.*

significance of brotherhood in Islam, as the Holy Qur'an provides, "The believers are nothing else than brothers (in Islamic religion). So make peace and **reconciliation between two (contending) brothers**; and fear God, that ye may receive mercy".<sup>79</sup> Also, the teachings of the Qur'an promotes keeping cordial relationship with no dispute as it is provided, "So fear God and **keep straight the relations between yourselves**, obey God and his Apostle, if ye do believe".<sup>80</sup>

In another verse a recommendation is made that we should practice self-restraint, and do what we can to come to an amicable settlement in dispute that arises from marital relationship, the Qur'an provides for an excellent plan for settling family disputes. It provides that, "And if a woman fear cruelty or desertion on her husband's part, there is no blame on them both if they **arrange an amicable settlement between themselves; and such settlement is the best**".<sup>81</sup> In another verse the procedure of appointing arbitrators, condition, process of carrying out the settlement session and outcome are provided, where Allah (S.W.A) says "If ye fear a breach between them twain, **appoint (two) arbiters, one from his family and the other from her's; if they wish for peace**, God will cause their reconciliation...".<sup>82</sup> Thus, the Qur'an provides that an arbiter from each family would know the peculiarities of both parties and would help to effect a real reconciliation. Regarding orphans in another verse it provides for guidance on how to deal with their affairs, putting more emphasis on the importance of acting in their best interest. The Qur'an says: "And the ask thee concerning orphans, say; the best thing to do is for their good...".<sup>83</sup> Imam Tirmidhi report a hadith from the prophet (S.A.W.) to the effect that settlement or compromise between Muslims is permitted except making lawful what is otherwise unlawful, and vice versa.<sup>84</sup>

*Sulh* under Islamic law can take many forms. Some forms are strictly spelt out, the procedure are provided by the Holy Qur'an which entails the process and outcomes; for example, *sulh* relating to marriage where the Qur'an provides for the procedure, processes, condition and

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<sup>79</sup>A. Yusuf Ali, *The Holy Qur'an: Text, Translation and commentary*, (Amana Corp. 1983 United State of America). Qur'an 49:10.

<sup>80</sup> *ibid.* Qur'an 8:1

<sup>81</sup> *ibid.* Qur'an 4:128

<sup>82</sup> *ibid.* Qur'an 4:35.

<sup>83</sup> *ibid.* Qur'an 2:220.

<sup>84</sup> Abdullahi (n 76).

outcome as stated above. The forms of *Sulh* under the Islamic law include the following:

### 1. *Tahkim* – Arbitration

*Tahkim* is a verbal noun of the Arabic word *hakkama*, which primarily signifies the turning of a man back from wrongdoing.<sup>85</sup> The means of dispute resolution is a tradition that has long been rooted in Arab societies even before Islam was born.<sup>86</sup> Subsequently after the arrival of *Islam*, arbitration was given approval in the *Qur'an* and mentioned several times.<sup>87</sup> The attempt to negotiate by sending a messenger to negotiate the virtues of husband and wife in classical jurisprudence is called *tahkim*.<sup>88</sup>

In general, *tahkim* is an agreement between the parties to a dispute to hand over the decision of the dispute to a third party (*hakam*).<sup>89</sup> *Tahkim*, according to *Majallah al-Ahkâm al-'Adliyyah* (Book of Laws of the Islamic Othman Dynasty), is the voluntary election of a legal expert (other than the *Qadhi*) by the parties to a dispute.<sup>90</sup> Based on the definition put forward by Islamic law experts (*Fuqaha*), it can be underlined that *tahkim* is a form of legal settlement outside formal justice channels by appointing a *hakam/muhakkam* outside criminal law.<sup>91</sup>

According to Muhammad Hasbi Ash Shiddieqy and quoted by Agus Salim in his article, *tahkim* is an attempt made by two or more people

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<sup>85</sup> Rafidah Mohamad Causairi and Mahdi Zahraa and Rukhaiyah Abd Wahab, 'Role and Ethics of Hakam in Resolving Matrimonial Disputes' *International Journal of Law, Government and Communication (IJLGC)* (2024) 9 (36) 316 - 332 <<http://gaexcellence.com>> accessed 6 October 2024.

<sup>86</sup> Abu Rokhmad, 'Islamic Legal Paradigm on Dispute Settlement' *International Journal of Civil Engineering and Technology (IJCIET)* (2017) 8 (8) 1060 – 1067 <<http://researchgate.net>> accessed 6 October 2024.

<sup>87</sup> (n 79) *Qur'an* 4:35.

<sup>88</sup> Agus Salim, 'Optimization of Husband and Wife Conflict Resolution in the People of Kebumen Regency Through Tajdidu An Nikah' *Injury Interdisciplinary Journal and Humanity* (2024) 3 (3) < <http://injury.pusatpublikasi.id> > accessed 6 October 2024.

<sup>89</sup> Muhammad Al Mansur and others, 'Mediation as an Alternative Solution for The Islamic Family in Indonesia' *International Journal of Social Science and Human Research* (2024) 7 (7) 4657- 4662 <<http://ijsshr.in>> accessed 6 October 2024.

<sup>90</sup> *ibid.*

<sup>91</sup> *ibid.*

to send one or more people to settle certain matters in accordance with Islamic law.<sup>92</sup> It is in order to appoint an Arbitrator a learned and neutral person in a matter of property and injury, it shall not be to settle “*Hadd*” murder, “*Li’an*” dispute on consanguinity, *talaq*, “*Fuskh*” emancipation, dispute on attainment of the status of adulthood, endowment or contract. In practice, arbitral had been done by the companions of the Prophet,<sup>93</sup> as in the example of Umar bin Khattab’s decision, relocating the distribution of zakat funds for converts to strengthen the economy of the poor.<sup>94</sup> Islamic legal experts among the Hanafiyah, Malikiyah and Hambaliyah schools of thought agree that everything that becomes a judicial decision (arbitration) is immediately binding on the dispute, without first asking for the consent of the parties. This opinion is also supported by some legal experts among the Shafi’i school.<sup>95</sup>

## 2. *Sulh/Tafaawud* – Negotiation

*Sulh* is derived from the word *Ṣalaha*<sup>96</sup> or *Ṣaluha*. It means to be good, right, proper, suitable or, the process of restoring or reconciling.<sup>97</sup> Also, the term Negotiation is similitude in Arabic to be “*mufawadat*”, a phrase usually used in the books written by contemporary authors on International Law of Islam.<sup>98</sup> In classical Islamic thought and tradition,

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<sup>92</sup> Salim (n 88).

<sup>93</sup> Daryanto Daryanto, ‘Concept of Tahkim in Indonesia for Islamic Business Dispute Settlement’ *Journal of Islamic Law Studies (JILS)* (2019) 2 (3) <<http://scholarhub.ui.ac.id>> accessed 6 October 2024.

<sup>94</sup> Syamsul Hidayat Isman, ‘Al-Tahkim Al-Tsawabit and Res Judicata Doctrine Reconciling Islamic Law Principles into Constitutional Court Decisions’ (International Conference on Islam, Law, and Society (INCOILS) 2023 ) <<http://incoils.or.id>> accessed 6 October 2024.

<sup>95</sup> Mustofa Mustofa and Ustad Adil, ‘Sharia Economic Dispute Resolution: Case Study in the Religious Court of JAKPUS Related to Murabahah’ *International Journal of Asia Business and Management (IJABM)* (2024) 3 (4) 489 – 506 <<http://journal.forosapublisher.org>> accessed 4 October 2024.

<sup>96</sup> Ramizah Wan Muhammad, ‘The Theory and Practice of Sulh (Mediation) in the Malaysian Shariah Court’ *IJUM Law Journal* (2008) 16 (1) <<http://HeinOnline>> accessed 7 October 2024.

<sup>97</sup> Adamu Abubakar Muhammad and others, ‘Alternative Dispute Resolution (As-Sulh) as a Principle of Islamic Legal System on Marriage Conflicts among Muslim Ummah’ *Jurnal Kajian Ilmu-ilmu Keislaman* (2023) 4 (1) <<http://jurnal.uinsyahada.ac.id>> accessed 7 October 2024.

<sup>98</sup> Qazi Attaullah and Lufullah Saqib, ‘Tracing the Concept of Negotiation in Law, Pakistani Legal System and Shari’ah (Islamic Law): A Comparative Study’ *Jihat al-Islam* (2017) 11 (1) <<http://pu.edu.pk>> accessed 7 October 2024.

*Sulh* means the amicable settlement of disputes the good faith negotiation.<sup>99</sup> The basis of *Sulh* can be found in the *Qur'an* in the following verse: “And if two parties among the believers fall into a quarrel, make ye peace (*Sulh*) between them”.<sup>100</sup> These two verses are strongly supported the application of *Al-Sulh* for dispute settlement among two warring parties and the essential aspect of doing that justly.<sup>101</sup>

In the eyes of Muslim jurists, the process of *Sulh* essential entails a contract. Thus, in order for the process of *Sulh* to be considered valid, there are four main elements that have to be present in the process as follows: a) parties (*al-Mutakhaisiman*), b) matter in dispute (*musalaha 'anhu*),<sup>102</sup> c) pronouncement of offer and acceptance (*sighah*), and d) alternative to the matter in dispute (*musalah 'alaihi-badal al Sulh*).<sup>103</sup>

### 3. *Wasaatah* – Mediation

The word “*wasata*” literally means “the middle” and it relate to the verb “*yatawassat*” which means to guide parties to words a compromise or middle ground. *Wasata* is used to describe both act and mediates or makes an appeal.<sup>104</sup> Nevertheless, the common ward for mediation in Islamic law is (*Al-Mashyu Bayna Al- Mutanaziinah*), meaning, walking between the disputants.

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<sup>99</sup> Mashiur Rahman, ‘Sulh: Towards a More Comprehensive Understanding of the Process’ *Journal of Asian and African Social Science and Humanities* (2018) 4 (1) 40 – 48 <<http://aarcentre.com>> accessed 7 October 2024.

<sup>100</sup> (n 79) *Qur'an* 49:9/10.

<sup>101</sup> Adamu Abubakar Muhammad and others, ‘Alternative Dispute Resolution (As-Sulh) as a Principle of Islamic Legal System on Marriage Conflicts Among Muslim Ummah’ *Jurnal Kajian Ilmu-ilmu Keislaman* (2023) 4 (1) <<http://jurnal.uinsyahada.ac.id>> accessed 7 October 2024

<sup>102</sup> Muhammad Rafiqul Hoque and Muhammad Mustaqim Mohd Zarif, ‘The Paradoxical Use of the Term Sulh: An analytical Study from Quranic Perspective’ *Journal of Ma'alim al-Quran wa al-Sunnah* (2020) 16 (1) <<http://jmq.s.usim.edu.my>> accessed 7 October 2024.

<sup>103</sup> Mashiur Rahman, ‘Sulh: Towards a More Comprehensive Understanding of the Process’ *Journal of Asian and African Social Science and Humanities* (2018) 4 (1) 40 – 48 <<http://aarcentre.com>> accessed 7 October 2024.

<sup>104</sup> Abubakar (n 97).

Typically, it is viewed as the established manner of the dispute resolution within the Muslim Community.<sup>105</sup> During the time of the Prophet (S.A.W) and the time of his *Sahaba* mostly mediated and arbitrated the disputes between the members of the community.<sup>106</sup> Mediation, must be lawful and wholesome. Basically, the subject matter of an agreement may not encounter with Islamic law or standards. Mediator meets two main responsibilities for settling a disagreement. Firstly, the mediator encourages parties to mediate in such a way that there is reasonable outcome. Secondly, he (mediator) should be neutral and power of decision making in the hand of the hands of the conflicting people.<sup>107</sup>

#### **4. *Islah* – Conciliation**

*Sullah* (conciliation) simply means to bring peace with somebody either straight forward or with the support of an impartial person.<sup>108</sup> Settlement or conciliation means transfer that is leaving a certain right or suit by way of receiving something or giving it in to order avoid dispute or for the fear of its occurrence.<sup>109</sup> The essential of conciliation are declaration and acceptance and its conditions are that the subject matter of the contract must be define and clear to the judge. If dispute becomes too intricate or there appears a (hitch) the litigants are called upon to agree to conciliation (compromise). But if it is a straightforward case, that shall not be so as long as one does not fear any trouble through passing judgment on the people who are blood relations.<sup>110</sup>

#### **5. Private Judging - *Maslaha***

Private judging is a type of alternative dispute resolution whereby the parties enter into an agreement to hire a private judge (a retired judge) to try their dispute in private.<sup>111</sup> Under the Islamic law there is no specification that the private judge has to be hired when it comes to

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<sup>105</sup> Abida Hassan and Dil Mohammad Malik, 'Alternative Dispute Resolution Progresses in Islam' *Journal Usooluddin* (2020) 4 (2) <<http://journalusooluddin.com>> accessed 8 October 2024.

<sup>106</sup> *ibid.*

<sup>107</sup> *ibid.*

<sup>108</sup> Hassan and Mohammad (n 105).

<sup>109</sup> *Dutsi v Tofa* [2001] LRNN 406.

<sup>110</sup> Abdullahi (n 76).

<sup>111</sup> Edeh (n 2).

private judging. It is in view of the paper that, for instance, in practice Shari'ah court retired judges and sitting judges can entertain inheritance matters in private with the parties' agreement without the parties going to court. However, experts other than judges in Islamic law of inheritance also, entertain inheritance matters without going to court. The matter sometime is taken to court for adoption as consent judgment.

## 6. Med - Arb

Med - Arb is a hybrid process that begins with mediation and ends in arbitration if necessary. Within the context of Islamic law, Med-Arb is the hybrid of both the *Sulh* and *tahkim* processes in order to arrive at an amicable resolution of the dispute. However, the Med-Arb process has been recognized and prescribed by the Qur'an<sup>112</sup> and it was practiced in the Islamic legal history.<sup>113</sup> Therefore it is always emphasizes that the arbitrator must begin with suggestions of possible moves towards reconciliation before embarking on the arbitral proceedings.<sup>114</sup> In most cases during the *tahkim* proceedings, both *Sulh* and *tahkim* are combine to facilitate the process of dispute resolution.<sup>115</sup>

### 1.4.2. Application of *Sulh* to Criminal Cases under Islamic Law

The criminal act of *qisas-diyat* in Islamic criminal law is a crime that is threatened with *qisasa* or the equivalent, while *diyat* is replaced with compensation. Regarding the crime against life and mistreatment as discussed in this study, the determination of the crime is the right of the victim and also his heirs. In this case, it means that the victim or heir can cancel the crime by granting amnesty or forgiveness to the defendant or suspect. If forgiven by the victim or his heirs, the *qisas* punishment will be replaced with *diyat* or compensation. Thus, the government no longer has the obligation to punish the perpetrators.

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<sup>112</sup> (n 79) Q4:35.

<sup>113</sup> Shahadat Hossain, 'Arbitration in Islamic Law for the Treatment of Civil and Criminal Cases: An Analytical Overview' *Journal of Philosophy, culture and Religion – An Open Access International Journal* (2013) 1 <<http://academia.edu>> accessed 7 October 2024.

<sup>114</sup> *ibid.*

<sup>115</sup> *ibid.*

*Diyat* is fixed blood-price which is taken from the offender and given to the victim or his lawful guardian.<sup>116</sup> Thus, it becomes the property and asset of the victim.<sup>117</sup> Killing or wounding a person will only entail punishment or financial liability if it is committed unjustly or unlawfully (*udwan, ta'addiy* or *zulm*). This means that the acts of killing or of inflicting injuries must have been committed without a legal justification.<sup>118</sup> In cases of homicide and bodily harm the plaintiffs may demand either retaliation or financial compensation.<sup>119</sup>

If there are no terms for retaliation, although during the trial it is established that the defendant has caused the death or the injuries, the plaintiff may demand blood money. This is not a form of fining; it accrues to the plaintiff(s) and not to the state, its amount is negotiable between the plaintiff and the defendant, and, finally, in many cases it is not the perpetrator who must pay the compensation, but his clan.<sup>120</sup>

If an injury similar to the one suffered by the victim cannot be inflicted without a serious risk for the life of the condemned, retaliation lapses and is replaced by financial compensation.<sup>121</sup> Under certain conditions, must also atone for the shedding of blood in a purely religious way, by performing an expiation (*kaffara*) consisting in the freeing of a slave, or if one does not possess slaves, fasting for two months.<sup>122</sup> If retaliation by killing is obligatory for a Muslim, he has three options. i.e. to retaliate by killing, to take blood money or to have amnesty.<sup>123</sup> In retaliation to punishment, the victim and his lawful heir have the right to forgive the offender, hence if they do forgive; the punishment of *qisas* would stand invalidated. This remission may either be without compensation or involve blood-money.<sup>124</sup> If the victim forgives the

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<sup>116</sup> A. Q. Oudah Shaheed *Criminal Law of Islam* (Vol. 3 Adam Publishers & Contributors New Delhi 2010).

<sup>117</sup> *ibid.*

<sup>118</sup> Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge University Press 2005).

<sup>119</sup> *ibid.*

<sup>120</sup> *ibid.*

<sup>121</sup> *ibid.*

<sup>122</sup> Rudolph Peters, *Crime and Punishment in Islamic Law: Theory and Practice from the Sixteenth to the Twenty-first Century* (Cambridge University Press 2005).

<sup>123</sup> Minhaj p.359

<sup>124</sup> A. Q. Oudah Shaheed *Criminal Law of Islam* (Vol.3 Adam Publishers & Contributors New Delhi 2010).

offender, the latter can be awarded an appropriate *ta'azeer* punishment.<sup>125</sup>

### 1.4.3. Restorative Justice

In Islamic criminal law system, there is a concept that emerges as an alternative dispute resolution based on the principles of restorative justice, namely the concept of restorative justice. Restorative justice offers a different approach to dealing with lawlessness, with a focus on restoring broken relationships and reconciliation between perpetrators, victims and society.<sup>126</sup> The implementation of restorative justice can be seen in the implementation of *qisas* and *diyat*.<sup>127</sup>

The concept of restorative justice in Islamic criminal law is evident in the way punishment is determined for murder cases, as seen in the *qisas* system. For the crime of murder, the punishment options include *qisas* (death penalty), *diyat* (monetary compensation), or pardon from the victim's family. These three punishments are presented as alternatives, not cumulative, which means that once one sentence is chosen, the others cannot be added. Of particular interest is the third option, where the victim's family has the power to grant forgiveness, exemplifying the emphasis on reconciliation and restoration of relationships in Islamic law.<sup>128</sup>

The Hon. Grand Kadi Mustapha Yola, submitted that these means of settling disputes or stopping litigation is allowed by the consensus of Islamic jurists, though not for all manner of cases. The limitation being in cases where the law has fixed definite punishments such as murder, adultery and in all cases where there is specific direction as to punishment.<sup>129</sup>

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<sup>125</sup> *ibid.*

<sup>126</sup> Syariful Alam and Nu'man Aunuh and Yaris Adhial Fajrin, 'The Concept of Restorative Justice in Islamic Criminal Law: Alternative Dispute Settlement Based on Justice' (in 4th International Conference on Law Reform, KnE Social Sciences held at University of Muhammadiyah Malang, Malang, Indonesia 2024).

<sup>127</sup> *ibid.*

<sup>128</sup> *ibid.*

<sup>129</sup> Edeh (n 2).

#### **1.4.4. Development of ADR/Sulh and Successes Achieved in Northern Nigeria**

Indeed, several empirical studies carried out in both the United States and the rest of the world, including Europe, the Middle East and Africa, showed that those who used ADR process enjoyed substantial savings in cost in comparison to those incurred in litigation, resulting in a speedier resolution of the dispute, and more a satisfactory outcome for the parties.<sup>130</sup> Today, a wide variety of ADR processes for resolving disputes among individuals, governments and organizations are available in Nigeria, in an informal, private setting.<sup>131</sup>

In Nigeria, the concept of the Multi-door Court has since been replicated in Lagos, Abuja, Abia, Akwa-Ibom, Kaduna, Kano, Delta, Enugu States, etc.<sup>132</sup> Also the Laws, statutory provisions and Rules of Courts regulating the establishment of Courts and their procedures made certain provisions on Alternative Dispute Resolution. There are different laws that have made certain provisions on Alternative Dispute Resolution. Some rules of Court also demand that the presiding judge is to encourage the parties involved to consider Alternative Dispute Resolution. Some of these statutory provisions and Rules of Courts are as follows: a) Constitution,<sup>133</sup> b) Acts,<sup>134</sup> c) Laws, Rules of Court, for instance from the Northern part we have various State High Court

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<sup>130</sup> Olakunle (n 3).

<sup>131</sup> *ibid.*

<sup>132</sup> Edeh (n 2).

<sup>133</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended). Section 19 (d) provides that the foreign policy objectives shall be the respect for international law and treaty objectives as well as the seeking of settlement of international disputes by negotiation, mediation, arbitration and adjudication. Section 254(3) permits the National Industrial Court of Nigeria to establish within its premises, an Alternative Dispute Resolution Centre to aid in the speedy disposition of cases that come to the Court.

<sup>134</sup> Arbitration and Mediation Act, 2023; Federal High Court Act Cap F12, LFN, 2004. Section 17 provides for reconciliation in civil and criminal cases – In any proceedings in the Court, the Court may promote reconciliation among the parties thereto and encourage and facilitate the amicable settlement thereof; Matrimonial Causes (Amendment) Act (No. 45) 2009, provides that it shall be the duty of the Court in which a matrimonial cause has been instituted to give consideration, from time to time, to the possibility of a reconciliation of the parties to the marriage; Economic and Financial Commission Act (amended) 2004 section 14(2); Nigerian Custom Service No.45 LFN 2004, section 243 and Pension Reform Act 2014 (as amended), see section 99(3); all provides for compounding of offences.

Rules, Magistrate Court Rules and Shari'ah Court Rules which promote Alternative Dispute Resolution.<sup>135</sup>

Some States in Northern Nigeria have established multi-door courthouses and ADR/*Sulh* centers. Moreover, some commissions were created by the state Governments in order to promote settlements processes.<sup>136</sup> Also there exist ADR centers, traditional institutions and NGOs.

In a research conducted in 2023, 88% of people in Northern Nigeria are knowledgeable about ADR, 84% preferred to explore and resolve their disputes through ADR in dispute adjudication to all other means of dispute adjudication. Also, it was concluded that, 90% northerners have an interest in the Islamic ADR mechanism.<sup>137</sup>

### 1.5. Comparative Analysis

The common methods of resolving dispute between parties in Northern Nigeria as an alternative to litigation are by alternative dispute

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<sup>135</sup> Kano State Administrative Criminal Justice Law 2019 section 272, Kaduna State Administration of Criminal Justice Law 2017, section 282(4). States High Court (Civil Procedure) Rules: Kano State High Court (Civil Procedure) Rules 2014 Order 25 Rule 1(2)(c), Kaduna State High Court (Civil Procedure) Rules 2007 Order 26 Rule (2)(d), Katsina State High Court (Civil Procedure) Rules 2017 Order 56 Rule 1 – 5; High Court of Justice of Kwara State of Nigeria (Civil Procedure) Rules 2022 Order 33 Rule 2 and 3 etc. Magistrates' Court Rules/Laws: Kano State Magistrates' Court Rules 2018 Order 16, Kano State Magistrates' Court Law 2018 section 50; etc. *Shar'ah* Courts Rules/District Courts Rules/Area Courts Rules: Kano State Sharia Courts (Civil Procedure) Rules 2021, Order 11; Kaduna State Sharia Courts (Civil Procedure) Rules 2010, Order 12; Katsina State of Nigeria Shari'a Court (Civil Procedure) Rules (with Amendment) 2008, Order 12; Kwara State Area Courts (Civil Procedure) Rules 2022 Order 12; Kwara State District Courts (Civil Procedure) Rules, Order 12 Rule 4 and 5; Kaduna State District Courts Laws 2018; etc.

<sup>136</sup> For example the creation of institutions: Hisbah Commission, Public Complain Commission etc, was established in Zamfara States; Zauran Sulhu, Hisbah Board etc in Kano State; in Katsina State there is an establishment of *Sulh* door; in Bauchi State *Zauran Sulh* for conflict resolution under State *Shari'ah* Commission was established in 2001, and *Hisah* Board; in Borno state *Sulh* is currently offered as an official judicial service through the Amicable Settlement Corridor of the State High Court; etc.

<sup>137</sup> Shittu-Adenuga Zaynab Omotoyosi and Abiola Adekunle Saheed and Mustapha Sunkanmi Sodiq, 'The Critique of Alternative Dispute Resolution under Islamic Law and its Relevance in the Contemporary Nigeria' *Jurnal Syariah* (2023) 2 261 <<http://ZO Shittu-Adenuga, AS Abiola, SS Mustapha - Jurnal Syariah,2023 - ejournal.um.edu.my>> accessed 13 August 2024.

resolution ADR and *Sulh* techniques such as: Arbitration (*Tahkim*), negotiation (*Tafaawud*), mediation (*Wasaatah*) and conciliation (*Islah*). Below is a chart illustrating the similarities and differences of various form of ADR mechanism between the two concepts.

S/No.	Similarities of forms of ADR and <i>Sulh</i>	Difference (s) of ADR and <i>Sulh</i> under common law.	Difference (s) of ADR and <i>Sulh</i> under Islamic law.
1.		Alternative Dispute Resolution is generally described as methods and procedures used to disputes as an alternative to litigation.	<i>Sulh</i> ” means compromise or settlement between parties to a claim, which may be settled for an alternative, in order to avoid or minimize litigation.
2.	The objective of ADR and <i>Sulh</i> are equal, and the same, i.e; maintenance of societal order and justice and create cordial relationship. Both emphasizes equity, equality, compassion and fairness for all.		
3.	Both ADR and <i>Sulh</i> have legal frameworks that regulate them.	Under common law the legal authority are grounded in human-made laws and societal norms.	The difference is that Islamic Law principles are divine revelation.
4.		ADR mechanism are non-binding /non-enforceable with the exclusion of arbitration, mediation and Med - Arb.	All forms of <i>Sulh</i> mechanism are binding and enforceable once they are made, even if after the parties leave the <i>Majlis Al-aqad</i> (venue).

Comparative Analysis of Alternative Dispute Resolution (ADR)

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5.		Under common law mediator must be appointed by the parties or a judge.	While, under Islamic law a person can voluntarily intervene and mediate between two disputants.
6.		Under Common law there is no situation that may warrant compelling a litigants to submit to ADR.	Whereas, under Islamic law there are such circumstances. If dispute becomes too intricate or there appears a (hitch) the litigants are called upon to agree to conciliation (compromise).
7.	Arbitration: the process of arbitration mandates the appointment of arbiter by parties/by the court, at the end it binds the parties and the award of arbiters stands and shall not be set aside except if manifest injustice is occasioned thereby.		Certain areas in civil cases are outside the scope of arbitration. E.g, Mutual deprecation (Li'an), or paternity necessitate litigation.
8.	The processes in mediation, conciliation and Med – Arb stand the same under both legal system (common law and Islamic law).		

	Agreement are made in writing.	Under common law agreement or settlement must be in writing.	Unlike common law, under Islamic law oral agreement or conciliation binds the parties.
9.	In criminal cases both ADR and <i>Sulh</i> are limited to serious offences (non compoundable offences).		While under Islamic law settlement is permissible in matters relating to unintentional homicide.
10.		Source of law under common law are Statutes, common law, judicial precedents, and constitutional provisions.	<i>Quran, Sunnah, Ijma, Qiyas</i> and other secondary sources.
		ADR enshrines fundamental rights and freedoms in law.	It recognizes rights within Islamic law framework.
12.	Private judging dispute resolution parties enter into agreement by hiring a private judge (a retired judge) to try their dispute in private.		Even presiding judge can be called upon to treat a matter amicably in private, e.g, in <i>mirath</i> cases (distribution of estate of a deceased).

### Observations

1. *The paper* inferred from the above discussion though some *Sulh* are made in writing, however, *sulh* agreement are made orally.
2. This paper found that ADR and *Sulh* under Islamic Law promote resolution of disputes outside court and encourage the maintenance of cordial relationships in the societies.

3. Also, it is the finding of this paper that, there exist some ADR and *Sulh* centers among the Northern Nigerian communities, in order to facilitate the mechanism of ADR and *Sulh*.
4. Also, the paper found similarities in ADR and *Sulh* in some cases. Though, dissimilarities were found in some aspects as stated in matters above.
5. Majority of ADR techniques under the common law are non-binding; subsequently, in the incident of non-compliance by either party, recourse is made to either Arbitration or litigation.

### **Recommendations**

1. The paper recommends that, even though many *Sulh* agreements are oral, it encourages written records, signed by parties, and where possible endorsed by competent authority in order to improve certainty, prevent later disputes, and facilitate authority's/court's recognition when needed. Thus, promoting the documentation of settlements.
2. Since the strength of both ADR and *Sulh* lies in amicable settlement, arbitrators, mediators and religious/community leaders, even other individuals should be trained in ADR and *Sulh* skills that enhance neutrality, confidentiality and fairness. This will improve the quality and credibility of outcomes.
3. The paper recommends that, the Government should establish annexes ADR (Multidoor Court Houses)/*Sulh* centers so that parties can be referred early to amicable settlement, thereby reducing backlog and reinforcing community harmony.
4. ADR and *Sulh* share important similarities yet preserve distinct features. Future approaches should build on their common strength that the unique religious dimension of *Sulh* are preserved.
5. In Nigeria the legislation should provide for compulsory ADR as a condition precedent to any other method of dispute resolution under the common law. This gives parties confidence that their amicable settlement will be respected by the system.

## 8.0 Conclusion

Conclusively, ADR and *Sulh* share common objectives such as: reducing litigation, promoting understanding and mutual agreement, preserving relationship and resolving conflict peacefully. In practice ADR and *Sulh* are of various forms which include: Arbitration – *Tahkim*, Negotiation – *Sulh/Tafaawud*, Mediation – *Wasaatah*, Conciliation – *Islah*, Private Judging – *Maslaha*, Med – Arb, etc. ADR and *Sulh* share similarities in: a) procedure – for instance, voluntary participation from both parties, third-party facilitation in arbitration and mediation; b) condition – e.g, parties are willing to communicate, negotiate, and compromise; c) outcomes – both ADR and *Sulh* can result in binding agreement that are enforceable by law. From the aforementioned discussion so far conversed, ADR and *Sulh* are better and suitable mechanism in resolving dispute among people in Northern Nigeria, due to the fact that Individuals and communities can resolve disputes productively, promoting understanding and peace. Moreover, people from that diaspora are much comfortable with the system than going for litigation.