

ANALYSING THE ENFORCEABILITY OF *(SULH)* AS AN ALTERNATIVE DISPUTE RESOLUTION (ADR) MECHANISM UNDER ISLAMIC LAW

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Abstract

Conflicts in every Human endeavor are inevitable, like the question, “Are grass green?” However, the most important aspect of every human dispute throughout history and existence is that no matter how long the conflict lasts its terminal point is an amicable settlement. This paper explores the rich tradition of *(Sulh)* Alternative Dispute Resolution (ADR) in Islamic law and delves into the concept which encompasses among other things Mediation (*Wasatah* or *Tadakhul*), Arbitration (*Tahkim*), Ombudsman (*Hisba*), Expert Determination/Neutral evaluation (*Fatwah*), Conciliation (*Sulh*) and Negotiation (*Al-Tafawud*) in Islamic practices. Using doctrinal methodology this paper analyses the enforceability of conflict resolution mechanisms in Islamic legal system in order to promote its application and enforceability in a court of law. The paper has found that there is no codified legal framework for the procedures and way of enforceability of agreements concluded by way of *Sulh* it is therefore recommended that *Sulh* should be formally recognized by codifying a framework for its procedure and enforceability by Shari’a Courts.

Keywords: Alternative dispute resolution, enforcement, *Sulh*, *Tahkim*, negotiation

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1. Introduction

The history, practice, and concept of *Sulh* popularly referred to as Alternative Dispute Resolution (ADR) under Islamic Law have existed for over 1400 years. The word *Sulh* has been mentioned in the Quran numerous times and it is also found in a multitude of prophetic traditions.¹ The comprehension of Alternative Dispute Resolution (ADR) in Islam precedes its recognition in common law. Islamic Law is the forerunner in the domain. It implemented ADR significantly earlier than any other system.² It is believed that the term Arbitration originates from the French word *Arbtracon*. Subsequently, in the 13th to 14th century, the term gained popularity in English and evolved into the word Arbitration.³

Sulh or settlement of disputes devoid of litigation is one of the great principles of faith that Islam calls for and encourages through the Qur'an and the Sunnah. It maintains the bond of brotherhood.⁴ Allah says in the Qur'an.

“.... indeed, the believers are brothers, so make a settlement between your brothers. And fear Allah you may receive mercy”⁵

The above verse alone indicates the preference for applying the process of *Sulh* in the event of conflicts or disputes between parties. The importance of *Sulh* and its necessity for life has been summarized in the saying of the Almighty's Allah “...and reconciliation is better” Consequently, reconciliation in any form serves as the cornerstone of all that is good, while dispute lays the groundwork for all that is evil.⁶

¹ Syed Khalid Rashid ‘Peculiarities and Religious Underlining of ADR in Islamic Law; Constraints and Challenges’ (Harun M. Law Centre. IILUM & Asia Pacific Mediation Forum, held at IIUM, Kuala Lumpur. 16-18 June, 2008).

² Qhazi Adha'ullah and Lutfullah Saqib, *Tracing the Concept of ADR in Shari'a and Law A Comparative Study* (Pakistan: Judicial Academy) 30

³ Anayo N. Edeh, *Alternative Dispute Resolution in Nigeria* (Enugu: Cidjap press 2018)

⁴ Abdul-alimu Anjurr, *Al-sulhu fi dhau'i Al-kitab Was-sunna* (Cairo: Maus'u'atul Al-ilyaa 2012) 13.

⁵ Qur'an 49:10

⁶ Anjurr (n 4) 9

Sulh as a dispute resolution procedure, emphasizing that it requires mutual consent, expertise in the subject matter of the dispute, and neutrality of the arbitrator⁷.

The benefits of using ADR procedures can be better utilised in an Islamic worldview. Furthermore, the overall examination of ADR enforcement has a lot to be desired.

2. The Concept of ADR in Islamic Law

Alternatives Dispute Resolution (ADR) corresponds to the word *Sulh* or *Islah* reconciliation or reformation, it is a process where efforts are made for reformation, so every act that leads to amicability, sobriety and ensures the restoration of peace is *Islah*.⁸ Is a dispute Resolution process and or technique that acts as an alternative means for the disagreeing parties to come to an agreement without needing to go through litigation or court cases as the case may be.⁹ It also implies different ways through which conflicting parties can settle disputes with (or without) a third party.¹⁰

Shari'a highly recommends it. It is among the great noble morals and in addition to a worldly benefit, a great reward in the hereafter is provided to he who promotes amicable settlement between disputing parties. The word reconciliation appears in many verses in the Qur'an the Al-Mighty Allah says;

“No good is there in much of their private conversation, except for those who enjoy charity or that which is right or conciliation between people and whoever does that seek means to the approval of Allah- them we are going to give him a great reward”¹¹

⁷Aida Maita, 'Arbitration of Islamic Financial Disputes' [2014] (20) *Annual Survey of International and Comparative Law* 7.

⁸Adha'ullah (n 2) 30

⁹ Da'awa Institute, *An Islamic Guide for Peaceful Reconciliation (sulhu) and Realistic Alternative to Violence (RAV) in manifesting grievances*. (Niger: Islamic Education Trust 2023) 11.

¹⁰ Ibid 9.

¹¹ Qur'an 4:114

“And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted (with all things’’,¹²

“The recompense for an evil is an evil like thereof; but whoever forgives and makes reconciliation, his reward is with Allah. Verily, He likes not oppressors and wrong-doers’’,¹³

“And divorced women shall wait (as regards their marriage) for three menstrual periods, and it is not lawful for them to conceal what Allah has created in their wombs if they believe in Allah and the Last Day. And their husband has the better right to take them back to that period if they wish for reconciliation. And they(women) have rights (over their husbands as regards living expenses) similar (to those of their husbands) over them (as regards obedience and respect) to what is reasonable, but men have a degree (of responsibility) over them. And Allah is All-Mighty, All-wise’’,¹⁴

“And if two factions among the believers should fight, then make a settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the guidance of Allah. And if it returns, then make a settlement between them in justice and act justly indeed. Allah loves those who act justly’’,¹⁵

¹² Qur'an 4:35

¹³ Qur'an 42:40

¹⁴ Qur'an 2:228

¹⁵ Qur'an 49:9

The aforementioned verses advocate amicable settlement of disputes in an equitable and fair manner, and God promises a divine reward for those who do so. In other words, the act of reconciling people is a branch of the Islamic moral code and a branch of faith. Through this process, grudges are eradicated, hearts are cleaned, and the flames of fitna (discord) are quenched.

One of the earliest recordings of the practice of Sulh was that which was done by the Prophet (S.A.W) and his companions at a place called. “Hudaybiyyah” was when the Prophet (S.A.W) wanted to perform lesser Hajj (Umrah) after he had been forced out of Meccah and migrated to Medina. The incident took place towards the end of the sixth year of Hijrah. The Prophet (S.A.W) left Medina for Meccah with a group of about 1400-1500 men. On hearing of the Prophet’s approach, the Meccans decided to oppose the entry of the pilgrims by a stronger force of arms under the leadership of Khalid bin al Walid. When the Prophet (S.A.W) became aware of this, he turned back and settled at a place known as “Hudaybiyyah”. Decided to conclude the truck, a treaty was drawn; which was the first (Settled Agreement) (*Sulh*) in the history of Islam as regards *Sulhu* thereby making these the beginning of the history of *Sulhu* in Islam in Islamic/Muslim contribution to peaceful settlement of dispute.¹⁶

Equally, on so many occasions to amplify and demonstrate the importance and relevancy of conciliation the Prophet was reported to have said;

“He who makes peace (Sulhu) between the people by inventing good information or saying good things (in his attempt to please the disputants) is not a liar.”¹⁷

In another tradition, the prophet was reported to have said;

“Sadaqah (charity) is due on every joint of a person (which numbers 360) every day in which the sun rises, administering reconciliation and justice between two men is also a sadaqah. Assisting a man to ride upon his riding animal, or helping him load his luggage upon it is a

¹⁶ Da’awa (n 9) 16

¹⁷ Sahih al-Bukhari Hadith No. 2692

sadaqah; a good word is a sadaqah, every step that you take towards prayer is a sadaqah, and removing harmful objects from the pathway is a sadaqah.”¹⁸

The Prophet (S.A.W) also gives preference to dispute resolution over, prayer and Zakah and fasting he said;

“Shall I inform you of a deed more rewarding than fasting prayer and charity? It is the act of Settlement between people, for bad relationships and disputes are like a razor (which can eliminate a community)¹⁹

In another Hadith reported by At-tabarani the Prophet (S.A.W) said ;

“the best charity is to reconcile between people”

ADR(*Sulh*) is a generic name that encompasses several different procedures that lead to the common objectives of an amicable peaceful settlement. The following are processes and roles as means of ADR or *Islah* in Islamic law/jurisprudence and ideals. Viz;

1. Tahkeem (Arbitration)
2. Hisbah (Moral and Ethical Oversight) of Muhtasib (Ombudsman)
3. Fatwah of mufti (Expert Determination or Neutral Evaluation)
4. *Sulh* (Negotiation, Conciliation and Mediation)
5. Informal Justice by the *Wali al-Mazalim* or Chancellor
6. Med-Arb (*Tawassut* and *Tahkeem*)²⁰

i. Tahkeem (Arbitration)

In pre-Islamic Arabia, the concept of Arbitration (*Tahkeem*) was known and was practiced to settle various types of civil and commercial disputes²¹. *Tahkeem* is a method of resolving a

¹⁸ Ibid Hadith No. 2989

¹⁹ Sunan Abu-Dawood, 4273

²⁰ Law teacher: Is Conventional ADR Alien to Islamic Law? 6th August, 2019 <https://www.lawteacher.net/free-law-essays/contract-law/is-conventional-adr-alien-to-islamic-law-contract-law-essay.php> accessed 12 September 2024.

²¹ For example, Tahkeem was used to settle the dispute of Abdulmutallab and the Quraish over the control of Zamzam; see: Abul Walid Muhammad Bn Abdullahi Bn

disagreement or conflict by selecting a qualified individual or individuals to act as arbitrator and make a decision. The arbitrator's appointment can be carried out either by a court of law under the court's guidance²² or by the parties themselves without involving the court.²³ Both of these alternatives are accessible. An arbiter is known as *Hakam* or *al-muhakkam* while the arbitrators are known as *Hakamaini*. The authority of an arbitrator that has been selected by the parties is limited primarily to disputes over properties and any issues that pertain to or arise from financial affairs.²⁴ As a result, it follows that this particular type of arbitrator does not have any authority whatsoever to make decisions regarding issues concerning retaliation (*Qisas*), mutual repudiation (*li'an*), penalty (*Qisas*), slander (*Qazaf*), emancipation (*Itaqin*), divorce (*Thalaq*), lineage (*Nasab*), and loyalty (*Wila'i*). These are all matters that fall under the exclusive jurisdiction of the court.²⁵

After the Advent of Islam, arbitration was approved in the Qur'an as exhibited in some verses:

“And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation, Allah will cause it between them. Indeed, Allah is ever Knowing and Acquainted (with all things)”²⁶.

It is pivotal to note that an arbitrator must have such Qualifications as knowledge, honesty, fear of Allah and competency required for the discharge of his responsibilities.²⁷

Ahmad Azraqi, *Akbaru Makkah Wamaja 'a fiha minal – Asaari*, (Maktabah Al- Asadi 2003) 552.

²² Wapanda v Wapanda (2006) LPELR-7723 (CA). see also Kano State Shari'a Court Civil Procedure Rules 2021, Or.11 R.1

²³ Abu Abdullahi Muhammad Ibn Farhun, *Tabsuratul Al-hukkam*. (Lebanon: Daru Al-kutb Al-alami 2007) 50.

²⁴ Ibid 50.

²⁵ Ibid 50.

²⁶ Qur'an 4:35

²⁷ Da'awa Institute (n 9) 12

ii. *Hisbah* (Moral and Ethical Oversight) of *Muhtasib* (Ombudsman)

The institution of the commissioner of public – complaints or ombudsman (*Muhtasib*) is as old as Islam itself and owes its origin to various verses of the Quran such

“And let there be (arising) from you a nation inviting to (all that is) good enjoining what is right and forbidding what is wrong and those will be successful”²⁸

The Prophet peace be upon him appointed Sa’ad ibn Al-a’as ibn Ummayyah as the *muhtasib* of Meccah and Umar bn al-Khattab as that of Medina. Similarly, Samra’bint Nuhaik played the role of *Muhtasib* during the region of Umar bin al-Khattab, similarly Abdullah bn Utbah al-Masud was the *Muhtasib* of Medina during the regions of Umar bn al-Khattab.²⁹ According to ibn Taymiyyah, the duties of the *Muhtasib* cover areas not covered by the Qadi or Governor.³⁰

The institution of *Hisba* has now become an indispensable tool of government in many states in Nigeria, Kano State *Hisba* Commission serves as a good example in this regard. The office adjudicates between a private person and any governmental or statutory agency in Islamic law. The function of *Muhtasib* (a person who exercises the act of *Hisba*) is equivalent to an ombudsman.³¹ He also works towards avoidance and dispute resolution and also maintains morals. This generally relates to the Qur’anic duty of enjoining the good and forbidding the evil.

The office of the *Muhtasib* is an important institution in dispute resolution and dispute avoidance. The powers vested in him are wider than those enjoyed by the ombudsman in Eastern countries extending to temporal as well as spiritual matters.

Recognizing the potential of the *Muhtasib* office, many states in Northern Nigeria, including Kano, Katsina, Zamfara, Sokoto, Yobe,

²⁸ Qur’an 3:104

²⁹ Ibid

³⁰ Ibid 13

³¹ Imam Mawaardi, *Al- Ahkam al – sultaniyyah*, (Kuwait: Maktabah Dar ibn Quraiba 1989) 375 – 339.

Kaduna, etc., have established this institution with the aim of reconciling disputes between individuals or organisations, provided that all parties involved are willing.³²

iii. *Fatwa of Mufti* (Expert–Determination or Neutral Evaluation)

“Expert determination” is the process where the parties to a dispute entrust their dispute to some experts for evaluation in view of the technical nature of the dispute. ‘evaluation’ or ‘verdicts’ given by However, where an expert or scholar is engaged by the parties to evaluate a dispute and settle the same between them and he does and the parties consent to the determination of that expert, this determination binds the parties and the court of law can enforce same upon application of either of the parties.³³

iv. *Sulh*: Mediation, Negotiation, and Conciliation.

Sulh is a general term that includes; Mediation (الوساطة) Conciliation (التوفيق) and Negotiation (المحاذثة). The eminent four schools of jurisprudence are unanimous that *Sulh* in the legal terminology is a contract by which the dispute between the opponents is resolved and by which agreement is reached between the disputing parties. it is a contract that was established to resolve the dispute after it occurred by mutual consent.³⁴ An ADR can be achieved through either of the aforementioned ways of conflict resolution which are similar in general terms but different in nature.³⁵

Mediation is a way of settling and ending a dispute by one or more persons intervening either of their own initiative or at the request of one of the parties where the independent mediator(s) must then seek to achieve an amicable settlement by proposing solutions to the parties.³⁶ The process like all other ADR processes can be initiated by the court particularly where the judgment is complicated or there is a strong

³² See for example Kano State Hisba Board Law 2003, s 7 (4) (x)

³³ See *Jiddu v Abuna* [2000] 10-11 (S C) 19.

³⁴ Nazir Hammad, *Agadus-sulhu fil-shari'atil al-islam* (Damascus: Darul Qalam 1996) 6

³⁵ Said Bouheraoua, *Foundation of Mediation in Islamic Law and its Contemporary Application* (Malaysia: International University of Malaysia 2010)

³⁶ Kemicha., F (1996) *The Approach to Mediation in the Arab World*. A paper presented in the international conference of mediation. Geneva Switzerland.

relationship of kingship between the litigants to the extent that delivering the judgment may result in mischief or enmity.³⁷

The Almighty Allah authorizes the believers to intervene and mediate between two disputing parties with a view to achieving an amicable settlement. Allah says;

“And if two factions among the believers should fight, then make a settlement between the two. But if one of them oppresses the other, then fight against the one that oppresses until it returns to the guidance of Allah. And if it returns, then make a settlement between them in justice and act justly indeed. Allah loves those who act justly³⁸.

Whereas negotiation (المشاوره or المحادثة) on the other hand refers to direct communication between the parties.³⁹ It is achieved through dialogue and mutual concessions between the disputing parties aiming to bridge their differences, the disputing parties here participate actively in the process and are expected to reciprocate in mutual concessions to resolve their disputes amicably and collaboratively. It is expected that after the negotiation sessions, the disputing parties enter into a settlement agreement binding under civil law or contract.⁴⁰

A woman who fears her husband's evasion, for example, can engage in direct negotiation with him in order to establish an amicable settlement, Allah (S W T) says;

“And if a woman fears from her husband contempt or evasion, there is no sin upon them if they make terms of settlement between them and settlement is between, and present in (human) souls is stinginess, but if you do good and fear Allah. Then indeed Allah is ever, with what you do, Acquainted.”⁴¹

³⁷ Mohammad Bn Yusuf Alkafiy, *Ihkamul Ahkam* (Beirut: Maktabatul asariyya 2009) 13

³⁸ Qur'an 49:9

³⁹ Adha'ullah (n 2) 30.

⁴⁰ Maita (n 7)

⁴¹ 4:128

While Conciliation (التوفيق) is a contract that is concluded by two parties under which each party waives part of his right for the purpose of reaching a mutual and final resolution of conflict.⁴² it can be facilitated by either a Qadi or a prominent Member of the family. It involves the principle of counseling and advising.⁴³ Conciliation and mediation are, no doubt similar but not the same. As the role of a third neutral makes them similar, so also the role of a third neutral makes them distinct. In mediation, the mediator facilitates only and rarely offers his opinion whereas a conciliator, besides facilitation, often offers his own proposals to the disputants. So as compared to a mediator, a conciliator plays a relatively direct role in the resolution of a dispute.⁴⁴

3. Enforcement of ADR in Islamic Law.

It is trite that the judgment of a court of law for all intent and purpose is enforceable by the court that delivers the judgment or any other court.⁴⁵ So, the question remains: Does an agreement reached through Alternative Dispute Resolution (ADR) hold legal validity under Shari'a capable of being enforced? if the answer is in the affirmative, then how and where?

It is important to mention that the Shari'a Courts in Nigeria follow the Maliki School of Thought when it comes to relevant legislation.⁴⁶ Therefore, the enforceability of Alternative Dispute Resolution (ADR) should be examined and evaluated from a Maliki perspective.

The law is that an ADR settlement in whatever form is binding and enforceable and its negation is abhorred. A party to the agreement cannot be allowed to rescind the same but it shall be enforced.⁴⁷ An amicable settlement, in any form, becomes a legally enforceable contract once it is concluded. Neither party is allowed to withdraw from the contract, regardless of whether it was negotiated or concluded

⁴² Idris Abdullahi Haroun, (2017) 'The Use of Alternative Dispute Resolution (*Sulh*) in Shari'a Cases' (National workshop for Area/Shari'a/Customary Court Judges Kwara, 4th April, 2017)

⁴³ Ibid 4

⁴⁴ Madabushi Sridhar, *Alternative Dispute Resolution* (New Delhi: Lexis Nexis Butterworths 2006) 311-312.

⁴⁵ Ngere & Anor v Okuruket & Ors (2014) LPELR-22883 (SC) 19-20

⁴⁶ See Alkamawa v Bello (1998) 6 SCN 1

⁴⁷ Alkafiy (n 24)

before a court of law.⁴⁸ The jurist emphasized the significance of resolving disputes in an amicable manner, noting that it not only obligates the involved parties but also extends to their successors or ancestors.⁴⁹

The book of Aqadus-Sulhi provides additional insight on the obligatory and enforceable nature of the Alternative Dispute Resolution (ADR) procedure. Where it provides;

“Once a settlement is made, both parties are bound by its terms and cannot return to their original positions. The plaintiff is obligated to comply with the settlement and has no additional rights in the case. Similarly, the defendant cannot retrieve the compensation that was offered to the plaintiff. The reason behind this is that reconciliation is a legally binding agreement, which means that neither party has the authority to cancel or retract it after it has been finalized. Nevertheless, if it remains unfinished, it lacks any legal validity.”⁵⁰

It was held in the case of Jiddu⁵¹ that parties can appoint a person learned in Islamic Law to share the deceased estate among them according to law and the court has the power to enforce the sharing. Therefore, an arbitral award has a jurisdictional character and it is binding and enforceable. Moreover, a judge when enforcing an arbitral award is not authorized to review the merits of the disputes or the arbitrator’s reasoning.⁵² This is so because it is a cardinal principle of Islamic law that Muslims are bound by their conditions.⁵³

⁴⁸ Ahmad Bn Salih Al-baraaki, *As-sulhu fil kusumati* (Riyadh: Daru Azzahra’a 2005) 109-111.

⁴⁹ Ibid 192.

⁵⁰ Nazir (n.34) P.89

⁵¹ Jiddu v Abuna (n 20)

⁵² Abdul Hamid El-ahdab, *Arbitration with the Arab Countries* (Hague: Kluwer law international 1999) 16.

⁵³ Abu Dawud, *Sunan Abu Dawud* (Beirut: Daru kutb Al-ilmiiya 2009) Hadith 3594

4. Condition for enforcement of the ADR settlements

Prior to the enforcement of any ADR agreement or Award, it is important to acknowledge that certain conditions must be taken into account and met. ADR settlements are contractual agreements, and in order for any agreement to be regarded legal under Shari'a the following essential requirements must be fulfilled:⁵⁴

- a. Lawful subject matter
- b. Free consent of the parties
- c. Capacity to enter into the contract.⁵⁵

5. Procedure for the Enforcement

The ADR settlement can be enforced in two ways;

1. Summary Enforcement.
2. Enforcement by Action.

Summary Enforcement

It has been stated earlier that an ADR settlement in whatever form is binding and enforceable and its negation is abhorred by Shari'a, a party to the agreement cannot be allowed to rescind the same, each party to the agreement is expected to discharge his part of obligation honourably without any external force in accordance with the injunction of Shari'a where Almighty Allah says;

“O you who believes fulfill (your) obligations”⁵⁶

One may say that the alternative dispute resolution agreement has been summarily implemented or enforced when the parties uphold the sanctity of their individual tasks and discharge them according to the agreement.

⁵⁴ Anjurr (n 4) 92-113.

⁵⁵ Suherman Suherman, 'Arbitration and other Alternatives Dispute Resolution for Commercial Dispute Reviewed from the strengths of ADR and decision of Arbitration' [2019] (6) Bra Wijaya Law Journal 1.

⁵⁶ Chapter 5 v. 1/

Enforcement by Action

The situation that gives rise to enforcement by action occurs when, after the settlement has been reached and concluded, one of the parties refuses to honour or discharge his obligation or seeks to

negate the agreement. In such a scenario, the other party may seek the intervention of a competent court of law in order to enforce the agreement.⁵⁷

6. Procedure for the Enforcement

The procedure for the enforcement of ADR agreement can be by filing an action before the Shari'a Court seeking the enforcement of the amicable agreement. The agreement might be at the initial stage of the contract reduced to writing or concluded viva vos. Where the agreement was reduced to writing an original copy should be brought to the court and if the defendant denies it, witnesses should be called to prove that the written or signature on the documents is that of the defendant and on proof of same the court will enforce the agreement.⁵⁸

Where the agreement was not reduced into writing and the defendant denies it the claimant shall bring two credible witnesses to prove the existence of the agreement between the claimant and the defendant. This is based on the general rule that he who asserts must prove.⁵⁹ Where the court is satisfied with the testimonies of at least two unimpeachable witnesses would go ahead to enforce the agreement as its judgment.

Order 11 Rule 3 of the Kano state Shari'a Court Civil Procedure Rules 2021 for instance provides that;

⁵⁷ Abbas Abdullahi Machika, *Guide to Advocates* (Zaria: Sankorore Educational Publishers Limited 2013)

⁵⁸ Ibid 66.

⁵⁹ Hajaig v Hajaig (2023) LPELR -61151 (CA) and Danjuma v Garba (2021) LPELR-57105 (CA)

“where the parties resolved the matter amicably and in accordance with the principles of Shari’a the judge shall enter a consent judgement thereon.”

7. Conclusion

Islam not only advocated for peaceful dispute resolution but also offered a systematic strategy for conflict resolution that takes into account temporal and spatial considerations. The fundamental principle of peaceful resolution is undermined if the agreement intended to resolve a specific conflict is unenforceable. Therefore, Shari’a put in place mechanisms that necessitate court intervention to adopt and recognize the mutual agreement reached by the parties as its own judgment, thereby enforcing it when necessary.

This paper discussed the various processes of alternative dispute resolution (ADR), but it also demonstrated that agreements reached and/or concluded through ADR are enforceable just like the normal court judgment. In fact, it carries more weight to the extent that even if a party seeks to repudiate the agreement, he would not be allowed to do so because it is binding and enforceable.

From the foregoing discussion, the paper found that despite the plethora of authorities in relation to the bindiness and enforceability of ADR agreements under Islamic law there is no codified legal framework for the enforceability of agreements reached, this lacunar left some courts in a dilemma when it comes to the issue of enforcement of the agreement particularly when such agreement was not reduced into writing.

It was also found that the relevant rules of Shari’a Courts that make provisions for amicable settlement only recognize and encourage same without providing the procedure for conducting and enforcing the agreement concluded thereat.

Based on the above findings the paper recommends that *Sulh*, being the optimum way of dispute resolution, should be publicly recognised by codifying a legal framework defining its procedures and enforceability by Shari’a courts.