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DISPUTE SETTLEMENT IN WORKPLACE IN NIGERIA

By

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Abstract

Dispute Systems Design (DSD) is a term used to describe a situation whereby an organization or institution has an inbuilt alternative dispute resolution processes or mechanisms in resolving disputes within the organization or institution. This is normally done in order to reduce tension in workplace to save precious time by productively utilizing the available time working hours and maintain harmonious relationship in the organization.

The other reason is to reduce the cost of resolving disputes.

This paper looks at the various public and private institutions in Nigeria with a view to assess the effectiveness of their inbuilt dispute resolution mechanism. We concluded the paper by recommending that every public and private institution in Nigeria should be compelled by law to integrate and design dispute resolution mechanisms that will be cost and time effective, increase productivity of labour and promote harmonious labour / employee relationship.

What is Dispute Systems Design?

Dispute systems design involves the creation of a set of dispute resolution process as to help an organization, institution, nation state or other set of individuals better manage a particular conflict and or series of conflicts.¹

DSD involves the design of systems or mechanisms which are used routinely to handle similar, repeated disputes. It is especially useful for organizations that have similar kinds of problems occurring over and over again such as disputes between co-workers, over work assignment or between workers and management over compensation, working conditions or work performance.² The concept was first developed by William Ury, Jeanne Brett and Stephen Goldberg in their book *Getting Dispute Resolved*.³ This book divide conflict resolution processes into three types; namely those which negotiate interests, those which adjudicate right and those which rest relative power. This is what Dele Peters classified as three approaches to resolve dispute. According the three approaches are: Interest Based Approach, Right Based Approach and Power Based Approach 3a.

Most conflicts, they say, should be negotiated on the basis of interest. In other words, the parties should negotiate directly with each other or with the help of a third party mediator to try to give each side what they want or need, at least to the extent possible.⁴ Some conflicts, however, involve a question of rights, not interest which cannot be negotiated. Rather, right needs to be clarified in an adjudicatory (court like) process.⁵

A few conflict cannot be resolved either through interest based bargaining or through adjudication because they fundamentally involve relative power, since power struggles tend to be very long lasting and destructive, Ury, Brett and Goldberg urge that they be avoided whenever possible and cut short when they are necessary.⁶ This can be done by developing ways to go back to negotiation as soon as the likely outcome of the power struggle is clear rather than continue to the ultimate end. This makes power struggle less damaging, and costly than they might otherwise i.e. and allow the disputants to 'loop back' to more constructive dispute resolution mechanisms as soon as possible.

DSD usually involves creating a hierarchy of dispute resolution mechanisms. It starts with relatively informal processes to adjudicate rights-based question.⁷ Some systems will end with a mechanism for testing relative power while others will not, assuming that all disputes can be handled with interest or right based approaches. While Nigerians will continue to need attorneys who are effective in court, lawyers are increasingly called upon to play a much wider range of roles. These roles include helping the client build dispute system into their organizational processes which necessitates a more integrated approach to legal practice.

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¹ William U., Jeanne, M.B. and Stephen B.G., *Getting Dispute Resolution Design Systems to cut the Costs of Conflict*, Pon Books, 1993 P. 40

² Oluseye Amusa, *Dispute Systems Design and Legal Practice in Nigeria*, *National Mirror*, 30 January 2012 p. 46

³ *Designing Conflict Management System* Jossy-Bass Ury, Brett Pon Books 1993 P. 65.

3a, Dele Peters *Alternative Dispute Resolution in Nigeria: Principles and practice* Deesage Nigeria Ltd Lagos 2004. P9

⁴ *Ibid*.

⁵ Cathy, C. and Christiana, S., *Merchant Designing Conflict Management System*, Jossy-Bass, 1996

⁶ Ury, Brett et al op. cit. *Conflict principles of the Problem Solving Organization* 8 *Harvard Negotiation Law Review* Pp. 133-157 2003

⁷ Michael L.M. and Robert C.B. (eds.) *The handbook of Dispute Resolution*, RON Books, 2005 P. 50

to the Ogoni nine (9) including Saro Wiwa who was ordered to be executed by the same administration despite international pleas.

4.0 Conclusion

This paper discussed conceptual issues by defining various concepts taking a look at offences punishable with death in Nigeria's statutes; examining the history of the death penalty in general and Nigeria in particular. The debate on the death penalty and right of life is on-going in almost all the jurisdictions of the world. This is specially so in countries currently retaining death penalty including Nigeria, whether to abolish or retain the punishment in their respective statute books. The administration of criminal justice in any country is a serious matter. Indeed, it could be said that the existence or otherwise of a nation depends on the way it administers justice. It must be appreciated that nothing can be gained by self-help, efforts at disintegration, chaos and anarchy. Law is enacted to be a viable and orderly manner of regulating inter-personal relationship and for bringing about peace in a society. For any nation to successfully move along with global trend and for its impact to be felt, a number of strategies should be developed, which may include: establishing the legitimacy of its proposed reform; finding champions or figureheads committee to reform; providing incentives for change and establishing realistic benchmarks and reform objectives.

Thus Dispute System Design (DSD) evolved as an aggregation of comprehensive knowledge, practice area, skill sets and dispute resolution mechanisms.

At this juncture, it is important to note that there isn't one framework for the application of DSD. Ury, Brett, and Goldberg pioneered one of the first Dispute Systems Design (DSD) frameworks in the 1980s,⁸ as a method for resolving intractable or frequent conflicts in troubled organizations, businesses, or entire industries. Their pioneering work was done at the Caney Creek Coal Mine, a mine that had been plagued by strikes in the 1970s. By 1993, Ury, Brett and Goldberg articulated the notion of dispute systems design. Their work focused primarily on systems that included interest based procedures for resolving industry related disputes such systems have since been created and applied in an ever-widening variety of venues.⁸

Dispute Systems Design in Nigeria

In Nigeria, the phenomenon of dispute systems design is nascent but also evolving at a fast rate due to the following trends and factors:

1. The mainstreaming of mediation as a popular dispute resolution mechanism in the Nigerian Commercial Landscape (i.e. Court connected mediation via the Lagos Multi-Door Courthouse project).
2. The ever increasing burden of litigation on the justice system (time, cost and enforceability) coupled with the challenges faced by commercial consumers of justice with regard to enforceability of contracts.
3. The negative perception of the judicial system by the international business community coupled with the one sided arrangements that usually define the hitherto only viable alternative of arbitration in foreign jurisdictions leaving Nigerian companies at a disadvantage; and
4. The after effects of the 2006 Banking reforms which created a large backlog of litigation (averaging between 250 to 500 on going cases pending in courts of law across the country per bank) which left the banking sector desperate seeking; a cost effective, time saving dispute resolution solution. 8b

The last factor created a need by the banking sector for a better way to handle disputes as newly merged banking corporations found themselves presiding over a dazzling array of disputes that exposed them to various forms of risks i.e. reputational credit, legal and operational risk and also revealed a disproportionately large contingent liability profile.

Meanwhile, other commercial sectors continued with a similar combination of challenges and the general consensus is that the Nigerian Legal Practitioner is not capable of providing solutions to the challenges of the accumulated litigation portfolios that represent clear and present contingent liabilities to large local and multi-national enterprises.

Now to put this into proper context, the main adaptors of DSD in Nigeria are large local and multinational enterprises in the Financial, Telecommunications and Oil and Gas in the main.

The usual practice of providing, dispute resolution services to the large local and multinational is basically demand driven. The client wants representation and the law firm provides same, the client also defines the content of that representation and align it with their expectations thus clients expectations of local and international high net worth clients is guaranteed.

A cursory analysis of the nature of demand for dispute resolution services points to an increasing emphasis on an integrated solution. In the past, clients simply requested that Law Firms institute action on disputes and then provided the law firm with details for filing at the court registry. Today, that instruction has broadened as Legal Departments in large companies come under increasing pressure from management to look for ways to reduce, eliminate and better manage the risk that a growing contingent liability profile portends.

The Dispute Systems Design option in adopting the DSD option, law firms will be better able to respond to the instructions letter previewed above by giving the client the comfort of knowing that the firm is attuned to its expectations.

Apart from effectively managing individual disputes, a fast growing area of client demand is emerging wherein the dispute portfolio of corporate clients as a whole needs to be managed with the aim of reducing volume of disputes in a way and manner that ensures that the company is able to

⁸ Ury Brett *et al op. cit.*
8b Oluseye Amusa Op cit