

ALTERNATIVE DISPUTE RESOLUTION BILL, 2019

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A BILL

FOR

AN ACT TO PROVIDE FOR THE SETTLEMENT OF CERTAIN CIVIL DISPUTES BY CONCILIATION, MEDIATION AND TRADITIONAL DISPUTE RESOLUTION MECHANISM; TO SET OUT THE GUIDING PRINCIPLES APPLICABLE; AND FOR CONNECTED PURPOSES, 2019

Sponsored by Senator Shettima, Kashim

Co-Sponsors:

- | | |
|----------------------------------|-----------------------------|
| Sen. Ndume, Mohammed Ali | Sen. Isah, Jibrin |
| Sen. Dahiru, Aishatu Ahmed | Sen. Umar, Sadiq Suleiman |
| Sen. Sekibo, George Thompson | Sen. Abdullahi, Aliyu Sabi |
| Sen. Mustapha, Olalekan Ramoni | Sen. Moro, Patrick Abba |
| Sen. Amosun, Ibikunle Oyelaja | Sen. Gaidam, Ibrahim Alhaji |
| Sen. Tinubu, Oluremi Shade | Sen. Apiafi, Betty Jocelyn |
| Sen. Adetunmbi, Olubunmi Ayodeji | Sen. Shekarau, Ibrahim |
| Sen. Adeyeye, Clement Adedayo | Sen. Gaya, Kabiru Ibrahim |
| Sen. Goje, Mohammed Danjuma | Sen. La'ah, Danjuma Tella |
| Sen. Suswam, Gabriel Torwua | Sen. Kyari, Abubakar Shaib |

[] Commencement

ENACTED by the National Assembly of the Federal Republic of Nigeria, as follows-

PART I - PRELIMINARY

1
2 1. This Bill may be cited as the Alternative Dispute Resolution Short title
3 Bill, 2019.

4 2.-(1) In this Act- Interpretation
5 "alternative dispute resolution" means conciliation, mediation, traditional
6 dispute resolution or any other mechanism of resolving disputes in which a
7 person assist parties to resolve a dispute otherwise than through the normal
8 judicial process or arbitration;

- 1 "alternative dispute resolution clause" means a contract clause within a written
2 contract or a separate written agreement entered into by the parties agreeing to
3 submit to alternative dispute resolution a dispute which may arise between
4 them in respect of a defined legal relationship;
- 5 "alternative dispute resolution process" means all the steps taken in an attempt
6 to resolve a dispute by alternative dispute resolution from the time a dispute is
7 referred to alternative dispute resolution or steps are taken to resolve a
8 dispute by alternative dispute resolution up to the time the parties reach an
9 agreement or the alternative dispute resolution report is drawn up;
- 10 "Committee" means the Alternative Dispute Resolution Committee
11 established of under the Federal Judicial Committee.
- 12 "conciliator" means an impartial person accredited and registered to facilitate
13 conciliation and includes employees and persons employed by that person;
- 14 "mediation" means a facilitative and confidential structured process in which
15 parties attempt by themselves, on a voluntary basis, to reach a mutually
16 acceptable settlement agreement to resolve their dispute with the assistance of
17 an independent third party, called a mediator;
- 18 "mediator" means an impartial person accredited and registered to facilitate
19 mediation and includes employees and persons employed by that person;
- 20 "party" means a person who is party to a dispute, and includes a legal person, a
21 Federal government, a State government, or a state agency;
- 22 "Registrar" means the person assigned by the Federal Judicial Service
23 Commission Registrar responsible for administrative services to the
24 Committee;
- 25 "report" means the alternative dispute resolution report prepared by a
26 conciliator, mediator or a traditional dispute resolver at the end of alternative
27 dispute resolution process setting out the nature of the dispute, the stage the
28 matter had reached and the outcome, and any other relevant matter subject to
29 confidentiality as provided for under section 22 of this Act;
- 30 "settlement agreement" means a written agreement between the parties

1 entered into at the end of alternative dispute resolution process setting out
2 the terms of agreement;

3 "traditional dispute resolution" means a process in which parties attempt to
4 reach a mutually acceptable settlement agreement to resolve their dispute by
5 the application of customary law of the community concerned and with the
6 assistance of a third party called a traditional dispute resolver; and

7 "traditional dispute resolver" means a person or a group of persons who
8 facilitates alternative dispute resolution process by the application of
9 customary law, and may include an elder or a council of elders.

10 3. The object of this Act is to-

Object of the
Act

11 (a) provide an effective mechanism for amicable dispute
12 resolution;

13 (b) promote a conciliatory approach to dispute resolution;

14 (c) facilitate timely resolution of disputes at a relatively affordable
15 cost;

16 (d) facilitate access to justice;

17 (e) enhance community and individual involvement in dispute
18 resolution; and

19 (f) foster peace and cohesion.

20 Application of the Act.

Application of
the Act

21 4.-(1) This Act shall apply to certain civil disputes including a
22 dispute where the Federal government,
23 State government or their Ministries, Agencies and Departments.

24 (2) Despite subsection (1), this Act shall not apply to-

25 (a) disputes subject to arbitration under the Arbitration Act;

26 (b) disputes where a tribunal established under written law has
27 exclusive jurisdiction;

28 (c) election disputes;

29 (d) disputes involving the interpretation of the Constitution;

30 (e) a claim for a violation, infringement, denial of right or

Guiding principle of alternative dispute resolution

1 fundamental freedom in the Bill of Rights; or
2 (f) disputes where public interest involving environmental or
3 occupational health and safety issues are involved.

4 5. The following principles shall apply to the resolution of disputes
5 under this Act-

6 (a) voluntary participation in the alternative dispute resolution
7 process and a party may withdraw from alternative dispute resolution process
8 at any time;

9 (b) the right to information including the right to be informed of the
10 existence of an alternative dispute resolution process prior to the
11 commencement of process of determining a dispute;

12 (c) confidentiality except in the case of traditional dispute resolution;

13 (d) determination of disputes in the shortest time practicable taking
14 into account the nature of the dispute;

15 (e) impartiality in the determination of a dispute under this Act by the
16 conciliator, mediator or traditional dispute resolver and disclosure of any
17 conflict of interest that may arise;

18 (f) a conciliator, mediator or traditional dispute resolver shall
19 facilitate disputes which he or is competent to facilitate; and

20 (g) the parties may use more than one alternative dispute resolution
21 mechanism in an attempt to resolve a dispute.

22 PART II - ACCREDITATION AND REGISTRATION OF CONCILIATORS
23 AND MEDIATORS

24 6.-(1) A person shall not practice as a conciliator or a mediator under
25 this Act unless that person has been accredited and registered as a conciliator or
26 mediator by the Committee.

27 (2) A person shall be qualified for registration and accreditation if the
28 person-

29 (a) meets the requirements of an Attorney; and

30 (b) such other educational and professional qualifications as the

1 Committee may determine.

2 Requirement for registration.

3 7.-(1) A person who intends to practice as a conciliator or a mediator shall submit an application in the prescribed form together with the application fees to the Committee for accreditation and registration. Accreditation and registration of conciliators and mediators

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6 (2) The Committee shall consider the application within thirty days from the date of receipt of the application, and-

7
8 (a) where the applicant meets the requirements for registration, register the applicant as a conciliator or a mediator; or

9
10 (b) where the applicant does not meet the requirements for registration, decline the application.

11
12 (3) The Committee shall, within seven days of determining an application under subsection (2), inform the applicant of its decision and where it declines an application, the reasons for the decline.

13
14 (4) The Committee shall keep a register of all applicants, accredited conciliators and mediators.

15
16
17 8. The Committee may revoke the registration of, or suspend a conciliator or a mediator if the conciliator or mediator- Revocation of registration

18
19 (a) fails to comply with the terms and conditions of the registration;

20 (b) has been adjudged bankrupt; or

21 (c) is in breach of a code of conduct and is found guilty of such breach.

22
23 9.-(1) A person whose application for accreditation has been declined or whose registration has been revoked or suspended may make application to the Committee, within seven days of receipt of the reason for refusal of application for accreditation and registration, or revocation or suspension of registration, for review of the decision of the Committee. Right of review and appeal against the decision of the Committee

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28 (2) A person who is dissatisfied with the decision of the Committee under subsection (1) may appeal to the High Court within seven days of receipt of the decision of the Committee.

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Code of conduct 1 10.-(1) The Committee shall publish a code of conduct for
2 conciliators and mediators.

3 (2) Without prejudice to the generality of subsection (1), the code of
4 conduct shall-

5 (a) be consistent with this Act;

6 (b) where necessary, be consistent with internationally acceptable
7 standards;

8 (c) provide for initial and further or continuous training of
9 conciliators and mediators; and

10 (d) provide for complaints, disciplinary and grievances procedure
11 concerning conciliators, mediators and traditional dispute resolvers, and
12 relevant enforcement procedures.

13 PART III - CONCILIATION AND MEDIATION

Referral of cases 14 11.-(1) A court before which a dispute is filed or pending may refer the
to conciliation 15 dispute for determination through conciliation or mediation where-
or mediation

16 (a) the dispute is with respect to a matter that provides for resolution
17 through alternative dispute resolution;

18 (b) the law requires the dispute to be settled through alternative
19 dispute resolution;

20 (c) the court is of the view that alternative dispute resolution will
21 facilitate the resolution of the dispute; or

22 (d) a party to the dispute, with the consent of the other party, apply to
23 the court to have the whole or part of the dispute referred for resolution through
24 alternative dispute resolution.

25 (2) A court shall not refer a dispute for resolution through conciliation
26 or mediation if-

27 (a) the court determines that there is no dispute between the parties
28 requiring resolution through conciliation or mediation;

29 (b) there is no dispute between the parties with regard to the matter
30 agreed to be referred to alternative dispute resolution or covered under this Act;

1 (c) the clause making provision for alternative dispute resolution
2 of the agreement, contract or any arrangement entered into by the parties is
3 in operative, incapable of being performed or void;

4 (d) previous attempts at determining the dispute through
5 alternative dispute resolution have failed;

6 (e) substantial public interest involving constitutional,
7 environmental, or occupational health and safety issues are involved;

8 (f) the costs that are likely to be incurred would be
9 disproportionately high;

10 (g) there is a likelihood of delay;

11 (h) a binding judicial precedent is required; or

12 (i) a party is likely to be prejudiced as a result of power imbalances.

13 (3) A court shall specify the time within which a report on the
14 referral shall be filed with the court.

15 12.-(1) Parties may, on their own initiative, use conciliation or
16 mediation to resolve a dispute,

Submission to
conciliation or
mediation

17 (2) A party shall, where an agreement makes provision for
18 determination of a dispute through conciliation or mediation, refer the
19 dispute arising from such an agreement to conciliation or mediation.

20 (3) A party to an agreement which has not made provision for
21 submission of a dispute to alternative dispute resolution or a dispute covered
22 under this Act may, with the consent of the other party to the agreement,
23 submit a dispute arising out of that agreement for determination through
24 conciliation or mediation.

25 13.-(1) Resolution of a dispute through conciliation or mediation
26 commences-

Submission to
conciliation or
mediation

27 (a) when the court refers a dispute to a mediator for conciliation or
28 mediation; or

29 (b) a party submits to the other party to a dispute a request to refer
30 the dispute for determination through conciliation or mediation.

1 (2) The person to whom a request to submit a dispute for
2 determination through conciliation or mediation is sent respond to the
3 invitation within fourteen days of receipt of the request or the period specified
4 in the invitation.

5 (3) Where a person fails to respond to a request to refer the dispute for
6 determination through conciliation or mediation within the period specified
7 under subsection (2) or in the request, such person shall be deemed to have
8 rejected the request.

9 *Commencement of conciliation or mediation.*

Role of the
parties

10 **14.-(1) A party to a dispute shall-**

11 (a) take reasonable measures to resolve the dispute through
12 alternative dispute resolution before resorting to judicial process;

13 (b) co-operate with the other party and the conciliator or the mediator
14 in the resolution of the dispute;

15 (c) participate in good faith in alternative dispute resolution process;

16 (d) maintain confidentiality as provided for under section 30 of this
17 Act; and

18 (e) where an agreement is reached, ensure the agreement is written
19 and sign the agreement.

20 (2) A party is considered to have taken reasonable measures to resolve
21 a dispute through alternative dispute resolution under subsection (1)(a) by-

22 (a) notifying the other party of the issues that are in dispute and
23 offering to settle them through alternative dispute resolution;

24 (b) responding in the affirmative to a notification under paragraph (a);

25 (c) providing relevant information and documents to the other party to
26 enable that other party understand the issues and how they might be resolved;

27 (d) considering whether the dispute can be resolved through an
28 alternative dispute resolution process;

29 (e) where an alternative dispute resolution mechanism is agreed to-

30 (i) participating in the determination of the conciliator or mediator to

1 facilitate the process; and

2 (ii) attending the alternative dispute resolution process.

3 15.-(1) The parties to a dispute may appoint a conciliator or
4 mediator to facilitate alternative dispute resolution process.

Appointment
of a conciliator
or mediator

5 (2) Unless the parties otherwise agree, there shall be one
6 conciliator or mediator.

7 (3) Where the parties fail to agree on the appointment of a
8 conciliator or mediator, each party shall appoint their preferred conciliator
9 or mediator.

10 (4) Where the parties appoint more than one conciliator or
11 mediator, the conciliators or mediators shall act jointly.

12 16.-(1) A conciliator or mediator shall, in facilitating the
13 determination of a dispute, be independent and impartial.

Role of a
conciliator or
mediator

14 (2) In determining a dispute, a conciliator or mediator shall-

15 (a) conduct an assessment of the parties to the dispute and the
16 dispute before commencement of conciliation or mediation to determine
17 whether conciliation or mediation is appropriate;

18 (b) provide a written statement regarding the conciliation or
19 mediation process to the parties at least one day before commencement of
20 conciliation or mediation process setting out-

21 (i) what conciliation or mediation is about;

22 (ii) the rights and obligations of the parties;

23 (iii) the role of parties; and

24 (iv) the role of the conciliator or mediator;

25 (c) advise a party who does not have a legal representative or
26 professional advisor in the conciliation or mediation process of their right to
27 seek independent legal or professional advice;

28 (d) ensure, at all stages in conciliation or mediation, that a party has
29 the capacity to participate in the process;

30 (e) facilitate communication, understanding, and assist parties to

1 identify their needs and interests to enable the parties resolve the dispute;
 2 (f) prepare a report within three days of the conclusion of the
 3 conciliation or mediation process such period as may be directed by the
 4 court; and

5 (g) prepare and authenticate a settlement agreement.

6 (3) A conciliator or mediator shall conduct the conciliation or
 7 mediation process in such manner as he or she considers appropriate for the
 8 effective determination of the dispute and shall, for this purpose-

9 (a) take into account the wishes of the parties including any request by
 10 a party that the conciliator or mediator hear oral statements; and

11 (b) take steps to ensure the speedy settlement of the dispute.

Disclosure by
 a conciliator
 or mediator

12 17.-(1) A conciliator or mediator shall, before accepting the
 13 appointment to act as a conciliator or mediator in the resolution of a dispute,
 14 disclose any circumstance which may-

15 (a) create a likelihood of bias; or

16 (b) affect the conduct of the conciliation or mediation process.

17 (2) A conciliator or mediator shall promptly disclose to the parties any
 18 circumstance which arises during conciliation or mediation and which is likely
 19 to affect-

20 (a) the impartiality of the conciliator or mediator; or

21 (b) the conduct of the conciliation or mediation.

22 (3) Parties to a conciliation or mediation process may substitute a
 23 conciliator or mediator who makes a disclosure under subsection (2).

Revocation of
 appointment of
 a conciliator
 or mediator

24 18.-(1) the parties may revoke the appointment of a conciliator or
 25 mediator who, without reasonable cause, fails to-

26 (a) Commence the conciliation or mediation process within the period
 27 agreed by the parties; or

28 (b) Conduct conciliation or mediation within the rules.

29 (2) A conciliator or mediator may resign at any time after
 30 appointment.

1 (3) A conciliator or mediator who has resigned or whose
2 appointment has been revoked shall, within seven days of revocation of
3 appointment or resignation prepare a report and furnish a copy of the report
4 to the parties and, to the court where the dispute was referred for resolution
5 by that court.

6 (4) The parties shall, within fourteen days from the date of
7 revocation of the appointment or resignation of a conciliator or mediator,
8 appoint another conciliator or mediator.

9 19.-(1) A person who is not a party to conciliation or mediation
10 shall not attend the alternative dispute resolution process unless the parties
11 agree and the conciliator or mediator consents to the attendance.

Attendance
and representation
in conciliation
or mediation

12 (2) A party to conciliation or mediation may be represented by an
13 advocate, an expert or by such other person as the party shall consider
14 appropriate.

15 (3) A conciliator or mediator may, where necessary and where the
16 parties agree to pay the expenses, obtain expert advice on a technical aspect
17 of a dispute.

18 (4) A request for the services of an expert may be made by the
19 conciliator or mediator, or by a party with the consent of the other party.

20 (5) A party shall communicate, in writing to the conciliator or
21 mediator and the other party, the name, address and the extent of the
22 authority of any representative at least seven days before the representative's
23 participation in conciliation or mediation.

24 20.-(1) A conciliator or mediator shall, in consultation with the
25 parties, determine the date and time for the conduct of the conciliation or
26 mediation process.

Date, time and
place of
conciliation or
mediation

27 (2) The conciliator or mediator shall determine, in consultation
28 with the parties to the dispute, a convenient place and time for the conduct of
29 the conciliation or mediation process.

Identification
of issues in
dispute

1 21.-(1) A party shall submit to the conciliator or mediator and the
2 other party to the dispute a statement of issues at least seven days before the
3 first session of conciliation or mediation or within such period as the parties
4 may agree.

5 (2) A conciliator or mediator may request each party to submit-

6 (a) a written statement of that party's position;

7 (b) the facts and grounds in support of that position; and

8 (c) any documents and evidence that the party considers appropriate.

9 (3) A conciliator or mediator may request a party to submit additional
10 information at any stage of conciliation or mediation process.

Confidentiality
of conciliation
or mediation

11 22.-(1) A record, report, settlement agreement or any document
12 submitted or prepared in the course of the conciliation or mediation process
13 shall be confidential and not submitted to any person who is not a party to the
14 conciliation or mediation proceedings.

15 (2) For the purposes of subsection (1) a party shall not rely, as
16 evidence in judicial proceedings, on-

17 (a) the record of the conciliation or mediation;

18 (b) a statement made at the conciliation or mediation; or

19 (c) any information obtained during a conciliation or mediation
20 process.

21 (3) A conciliator or mediator shall not disclose information submitted
22 in the course of a conciliation or mediation process to any person who is not a
23 party to the process without the consent of the parties.

24 (4) The parties may expressly waive the confidentiality requirement
25 under subsection (1).

26 (5) The confidentiality requirement under this Act shall not apply
27 where disclosure is-

28 (a) required by law;

29 (b) necessary to protect a child or a vulnerable person;

30 (c) necessary to report or lessen a serious and imminent threat to the

1 life, health or property of a person;

2 (d) necessary to report the commission or prevent the likely
3 commission of an offence;

4 (e) necessary for the purpose of enforcement of the settlement
5 agreement; or

6 (f) necessary to prove or disprove a claim or complaint concerning
7 negligence or misconduct of a conciliator or mediator based on conduct
8 occurring during conciliation or mediation.

9 (6) Evidence submitted or used in a conciliation or mediation
10 process which is admissible or subject to discovery in proceedings shall not
11 be or be come in admissible or subject to confidentiality solely because it
12 was submitted or used in conciliation or mediation.

13 **23.-(1)** A conciliator or mediator may formulate terms of a possible
14 settlement if it appears that there exist issues to a dispute to which the parties
15 are agreeable and submit them to the parties for adoption and signature.

Settlement
agreement

16 (2) Where the parties reach an agreement, the conciliator or
17 mediator shall prepare a settlement agreement within three days of such
18 agreement.

19 (3) The conciliator or mediator shall explain the contents of the
20 settlement agreement to the parties and, where the parties agree to the
21 contents of the agreement, require the parties to execute the agreement in the
22 presence of the conciliator or mediator.

23 (4) A settlement agreement shall, upon execution by the parties, be
24 binding on the parties.

25 (5) A conciliator or mediator shall authenticate a settlement
26 agreement and furnish a copy of the agreement to each party and, the court,
27 where a dispute was referred to conciliation or mediation by a court.

28 **24.-(1)** A conciliation or mediation process ends when-

End of
conciliation or
mediation

29 (a) the parties execute a settlement agreement;

30 (b) the conciliator or mediator, upon consultation with the parties,

1 determines that further conciliation or mediation is not feasible;

2 (c) the parties jointly submit a notice in writing to the conciliator or
3 mediator that they do not intend to proceed with the conciliation or mediation
4 process; or

5 (d) a party submits a notice, in writing, to them conciliator or mediator
6 and the other party that he or she does not intend to proceed with the
7 conciliation or mediation process.

8 (2) Within seven days of the conclusion of a conciliation or mediation
9 process the conciliator or mediator shall submit a copy of the report to the
10 parties and to the court, where the dispute was referred to conciliation or
11 mediation by a court.

12 (3) Where the parties agree to settle the dispute, the conciliator or
13 mediator shall submit, within seven days of the settlement, a copy of the report
14 together with a copy of the settlement agreement the parties and to the court,
15 where the dispute was referred to conciliation or mediation by a court.

Role of a
conciliator or
mediator in
other proceedings

16 25. A conciliator or mediator shall not, unless with the consent of the
17 parties or required by law-

18 (a) act as an arbitrator or representative or an advocate of a party in
19 any judicial proceeding in respect of a dispute he or she facilitated; and

20 (b) be presented by the parties as a witness in any proceedings arising
21 out of or in connection with conciliation or mediation he or she facilitated.

Exclusion of
liability

22 26.-(1) A conciliator or mediator is not liable for any act or omission
23 in the performance of his or her role under this Act unless the conciliator or
24 mediator is proven to have acted fraudulently, negligently or in bad faith.

25 PART IV - TRADITIONAL DISPUTE RESOLUTION

Competence of
a traditional
dispute resolver

26 27. -(1) A person shall not act as a traditional dispute resolver unless
27 acquainted with the customary law to be applied in resolving the dispute.

28 (2) A traditional dispute resolver shall be impartial and apply the rules
29 of natural justice.

30 (2) The Committee may, in as far as is reasonably practicable, prepare

1 and maintain a list of traditional dispute resolvers.

2 28.-(1) A party may submit a dispute for resolution through a
3 traditional dispute resolution process.

Submission to
traditional
dispute resolution

4 (2) A court before which a dispute is filed or pending may refer a
5 dispute for resolution through a traditional dispute resolution process at any
6 time where-

7 (a) the court determines that traditional dispute resolution will
8 facilitate the resolution of the dispute or a part of the dispute; or

9 (b) a party to the dispute, with the consent of the other party, apply
10 to the court to have the whole or part of the dispute referred to traditional
11 dispute resolution.

12 (3) A person shall not be forced or coerced to submit to traditional
13 dispute resolution process.

14 (4) Traditional dispute resolution process shall be void where the
15 process or settlement agreement contravenes the Constitution, a written law
16 or public policy.

17 29.-(1) A traditional dispute resolution process ends when-

End of traditional
dispute resolution

18 (a) the parties reach an agreement; or

19 (b) a traditional dispute resolver, upon consultation with the
20 parties, determines that further traditional dispute resolution is not feasible.

21 (2) At the end of a traditional dispute resolution process-

22 (a) where a settlement agreement is reached, the traditional dispute
23 resolver shall, within seven days of the settlement-

24 (i) prepare a settlement agreement for execution by the parties; and

25 (ii) submit a copy of the settlement agreement to the parties and to
26 the court, where the dispute was referred to traditional dispute resolution by
27 a court;

28 (b) where traditional dispute resolution process is terminated by
29 the traditional dispute resolver or a party to the dispute, the resolver shall,
30 within seven days of the settlement-

- 1 (i) prepare a report; and
- 2 (ii) furnish a copy of the report to the parties or the parties and the
- 3 court where the dispute was referred to traditional dispute resolution by a court.
- 4 (3) Except where a dispute was referred for resolution through
- 5 traditional dispute resolution or at the request of the parties, a settlement
- 6 agreement need not be in writing.

Effect of settlement agreement

- 7 30.-(1) A settlement agreement in traditional dispute resolution is
- 8 binding between the parties.
- 9 (2) A settlement agreement may for the purpose of record and
- 10 enforcement be registered at the court with jurisdiction or a court that referred
- 11 the dispute to traditional dispute resolution.

12 PART V - RECOURSE TO COURT AND RECOGNITION AND ENFORCEMENT

13 OF SETTLEMENT AGREEMENT

Duty of advocate to advise on alternative dispute resolution

- 14 31. An advocate shall, prior to initiating judicial proceedings, advise
- 15 a party to consider resolving the dispute by way of alternative dispute
- 16 resolution.

Confirmation that alternative dispute resolution has been considered

- 17 32.-(1) A party shall file with the court an alternative dispute
- 18 resolution certificate in the prescribed form, at the time of commencing
- 19 judicial proceedings, stating that alternative dispute resolution has been
- 20 considered.

- 21 (2) A party entering appearance shall file with the court an alternative
- 22 dispute resolution certificate in the prescribed form, at the time that party enters
- 23 appearance or acknowledges the claim, stating that alternative dispute
- 24 resolution has been considered.

- 25 (3) An advocate shall file with the court an alternative dispute
- 26 resolution certificate in the prescribed form, at the time of instituting judicial
- 27 proceedings or entering appearance, stating that the advocate has advised a
- 28 party to consider alternative dispute resolution.

- 29 (4) A court may take into account the fact that a party has considered
- 30 or participated in alternative dispute resolution when making orders as to costs,

1 case management or such orders as the court determines.

2 33. A party may apply to the High Court or the court that referred Resort to judicial
proceedings

3 the dispute for resolution through an alternative dispute resolution process-

4 (a) for an interim measure of protection;

5 (b) to challenge jurisdiction of the alternative dispute resolution;

6 (c) to challenge the appointment or impartiality of the conciliator,

7 mediator or traditional dispute resolver;

8 (d) to challenge referral of the dispute to alternative dispute

9 resolution; or

10 (e) to challenge the settlement agreement.

11 34.-(1) A referral of a dispute for determination through alternative Stay of proceedings

12 dispute resolution under section 11 of this Act shall serve as a stay of

13 proceedings.

14 (2) A court before which proceedings are brought in a dispute

15 which is the subject of alternative dispute resolution agreement or pending

16 before alternative dispute resolution process may, if a party so applies not

17 later than the time when that party enters appearance or acknowledges the

18 claim against which the stay of proceedings is sought, stay the proceedings

19 and refer the parties to alternative dispute resolution.

20 (3) Proceedings before the court shall not be continued after an

21 application under subsection (2) has been made and the matter remains

22 undetermined.

23 (4) Where the court declines to stay judicial proceedings, any

24 provision of the alternative dispute resolution agreement to the effect that a

25 settlement agreement is a condition precedent to the bringing of judicial

26 proceedings in respect of any dispute is of no effect in relation to those

27 proceedings.

28 35.-(1) Where a referral to alternative dispute resolution leads to Recognition and
enforcement of
a settlement
agreement

29 the settlement of a dispute or part of the dispute the settlement shall be-

30 (a) prepared and filed in court;

1 (b) recorded by the court as a judgment of the court; and

2 (c) enforced by the court as its judgment.

3 (2) Where the referral does not lead to a settlement, the court shall
4 continue with the proceedings from the point at which the referral was made for
5 alternative dispute resolution.

6 (3) A settlement agreement shall be recognized as binding and upon
7 application in writing to the High Court or the court that referred the matter to
8 alternative dispute resolution, be enforced subject to this section and section

9 (4) Unless the High Court or the court referring the dispute for
10 alternative dispute resolution otherwise orders, a party relying on a settlement
11 agreement or applying for its enforcement shall furnish-

12 (a) the original settlement agreement or a duly certified copy of it; and

13 (b) the original report or a duly certified copy of it.

14 **36. The recognition or enforcement of a settlement agreement may be**
15 **refused where-**

16 (a) at the request of the party against whom it is invoked, that party
17 furnishes to the High Court or the court referring the dispute to alternative
18 dispute resolution proof that-

19 (i) a party to the alternative dispute resolution process was under
20 some incapacity;

21 (ii) the settlement agreement is not valid under the law to which the
22 parties have subjected it or, failing any indication of that law, under the law of
23 the country where the settlement agreement was made;

24 (iii) the party against whom the settlement agreement is invoked was
25 not given proper notice of the appointment of a conciliator, mediator or
26 traditional dispute resolver;

27 (iv) the party against whom the settlement agreement is invoked was
28 not given proper notice of the alternative dispute resolution process or was
29 otherwise unable to present its case;

30 (v) the settlement agreement deals with a dispute not contemplated by

1 or not falling within the terms of the referral to alternative dispute
2 resolution, or it contains decisions on issues beyond the scope of the referral
3 to alternative dispute resolution, provided that if the decisions on issues
4 referred to alternative dispute resolution can be separated from those not so
5 referred, that part of the settlement agreement which contains decisions on
6 issues referred to Grounds for alternative dispute resolution may be
7 recognized and enforced;

8 (vi) the appointment of the conciliator, mediator or traditional
9 dispute resolver was not in accordance with the alternative dispute
10 resolution clause, this Act or any other law or the law of the country where
11 the alternative dispute resolution took place;

12 (vii) the alternative dispute resolution process was not conducted
13 in accordance with the alternative dispute resolution clause, this Act or any
14 other law or the law of the country where the alternative dispute resolution
15 took place;

16 (viii) the settlement agreement has not yet become binding on the
17 parties or has been set aside or suspended by a court of the country in which,
18 or under the law of which that settlement agreement was made; or

19 (ix) the making of the settlement agreement was induced or
20 affected by fraud, bribery, corruption or undue influence;

21 (b) if the High Court or the court finds that-

22 (i) the subject-matter of the dispute is not capable of settlement by
23 alternative dispute resolution under any law in Nigeria; or

24 (ii) the recognition or enforcement of the settlement agreement
25 would be contrary to the public policy.

26 PART VI - MISCELLANEOUS PROVISIONS

27 37. Where the subject matter of alternative dispute resolution
28 involves a dispute to which any limitation period under the Limitations of
29 Actions Act applies, the parties to alternative dispute resolution process may
30 agree in writing to suspend the running of the limitation period from the date

Limitation
period

1 of commencement of alternative dispute resolution process to the end of
2 alternative dispute resolution process.

Alternative
dispute
resolution
expenses

3 38.-(1) unless the parties agree otherwise, the parties shall equally pay
4 alternative dispute resolution expenses including the fees and expenses of-

5 (a) the conciliator or mediator;

6 (b) any administrative assistance received;

7 (c) experts called; and

8 (d) any expenses incurred in connection with the alternative dispute
9 resolution process and the settlement agreement.

10 (2) The alternative dispute resolution expenses shall be on the basis of
11 a written agreement entered into between the parties and the conciliator or
12 mediator at the commencement of the alternative dispute resolution process.

13 (3) The alternative dispute resolution expenses shall be reasonable
14 and proportionate to the importance of the issue or issues at stake and to the
15 amount of work carried out by the conciliator or mediator.

Rules and
regulations

16 39.-(1) The Chief Justice may make rules of practice and procedure,
17 and regulations generally for the better carrying into effect of any provisions of
18 this Act.

19 (2) Without prejudice to the generality of subsection (1), the Chief
20 Justice may make rules and regulations to provide for-

21 (a) submission and referral of a dispute to alternative dispute
22 resolution;

23 (b) appointment of a conciliator, mediator or traditional dispute
24 resolver;

25 (c) the specific roles applicable to a mediator, conciliator, a traditional
26 alternative dispute resolver or any other person facilitating alternative dispute
27 resolution process;

28 (d) the conduct of alternative dispute resolution process;

29 (e) the forms to be used for submission or referral of a dispute to

1 alternative dispute resolution, filing of a settlement agreement, or any
2 matter to be filed;

3 (f) the requirements and the process of application for
4 accreditation and registration of conciliators and mediators, and related
5 activities;

6 (g) grounds for and the procedure relating to cancellation or
7 suspension of registration;

8 (h) professional conduct and etiquette of conciliators, mediators
9 and traditional dispute resolvers;

10 (i) any fee which may be charged for anything done under this Act;

11 and

12 (j) any other matter as may be necessary for the promotion of the
13 objects and the regulation of the affairs of the Committee.

14 **41.** Any register kept, registration effected, certificate issued,
15 notice or information given, return made, form used or other thing done with
16 respect to the Mediation Accreditation Committee on the commencement of
17 this Act, was in force or effect shall continue in force and have effect as if
18 kept, effected, issued, given, made or done under the provision of this Act.

Preservation of
certificates,
registration and
other acts

19 SCHEDULE

20 CONDUCT OF BUSINESS AND AFFAIRS OF THE COMMITTEE

21 *Meetings*

22 1.-(1) The Committee shall meet at least once every month to
23 conduct its business.

24 (2) The first meeting of the Committee shall be convened by the
25 Chief Justice and the Committee shall meet subsequently at such a time as it
26 shall determine.

27 (3) Notwithstanding the provisions of sub-paragraph(1), the
28 chairperson shall, upon a written request signed by at least five members of
29 the Committee, convene a special meeting of the Committee at any time

1 where it is considered expedient for the transaction of the business of the
2 Committee.

3 (4) A meeting of the Committee shall be presided over by the
4 chairperson, in the absence of the chairperson by a member elected by the
5 members of the Committee present.

6 (5) The Committee may invite any person to attend any of its meetings
7 and to participate in its deliberations but such person shall not have a vote in
8 any decision of the Committee.

9 (6) The proceedings of the Committee shall not be invalidated by
10 reason of a vacancy within its membership.

11 *Quorum*

12 2.-(1) Subject to sub-paragraph (2), the quorum of a meeting of the
13 Committee shall not be less than half of the members.

14 (2) Wherever there is a vacancy in the Committee, the quorum of the
15 meeting shall not be less than three members.

16 *Decisions of the Committee.*

17 3. Unless a unanimous decision is reached, a decision on any matter
18 before the Committee shall be by a simple majority of the votes of the members
19 present and voting and in the case of an equality of votes, the chairperson or
20 person presiding over the meeting shall have a casting vote.

21 *Conflict of interest.*

22 4.-(1) A member of the Committee who has a direct or indirect
23 personal interest in any matter being considered or to be considered by the
24 Committee shall, upon the relevant facts concerning the matter having come to
25 his or knowledge, disclose the nature of his interest to the Committee.

26 (2) A disclosure of interest made by a member of the Committee under
27 sub-paragraph (1) shall be recorded in the minutes of the meeting of the
28 Committee and the member shall not, unless the Committee otherwise
29 determines-

1 (a) be present during the deliberation on the matter by the
2 Committee; or

3 (b) take part in the decision of the Committee on the matter.

4 (3) A member of the Committee who makes a disclosure under sub-
5 section (1) shall not-

6 (a) be present in the meeting of the Committee held to determine
7 whether or not the member should take part in the deliberations or decision
8 of the Committee in relation to the matter; or

9 (b) influence any other member of the Committee in arriving at a
10 particular decision in relation to the matter.

11 *Rules of Procedure and minutes.*

12 5.-(1) Subject to the provisions of this Schedule, the Committee
13 may determine its own procedure and the procedure for any committee of
14 the Committee.

15 (2) The Committee shall cause the minutes of all proceedings of its
16 meetings to be recorded and kept, and the minutes of each meeting shall be
17 confirmed by the Committee at the next meeting.

EXPLANATORY MEMORANDUM

This Bill seeks to make provisions for a legal framework for the settlement of certain civil disputes by conciliation, mediation and traditional dispute resolution. Resolution of disputes forms part and parcel of everyday life in any given society. Hence effective dispute resolution mechanisms in a country will guarantee peace, is an enabler of trade and investment, and contribute to economic, social and political development of the country.

