

## THE NATURE OF CONFLICTS:

### Conflict Management and Resolution Strategies and the Reasons as to Why

#### The Nature of Conflicts

- Conflicts are as old as the human race
- They are inherent in all human relations
- They are a common feature of social and legal relations
- They are triggered by conflicting interests and competing claims
- If unmanaged, they escalate into disputes
- Unresolved disputes lead to violent reactions
- In the end, we witness the breakdown of social order

#### How to Manage Conflicts

- Identify the parties in conflict
- Identify the nature of their competing claims
- Identify the incompatible needs and entitlements
- Identify the incompatible interests
- Identify the aggravating factors
- Identify suitable mechanisms for the management of the conflict at hand

#### Consequences of Failure to Manage Conflicts

- They escalate into full-blown disputes
- The disputes must be resolved
- Unresolved disputes threaten social order
- They may escalate into armed conflicts
- The ensuing social strife impedes on security and social-economic development

#### How to Manage Conflicts

- Negotiation; Mediation; Reconciliation; adjudication and other forms of ADR;
- By use of TDR strategies and Community Justice Systems
- Modernday peace-building strategies
- Elimination of either one or more parties to the conflict

#### How to Resolve Disputes

- Litigation in conventional courts

- Arbitration-equally adversarial
- Award of regional or international treaty bodies

## Identifying Suitable Mechanisms for Conflict Management:

### A suitable strategy-

- Is voluntary and binding in honour
- It seeks to address mutual interests
- It delivers quality outcomes acceptable by the conflicting parties
- It results in need satisfaction
- It is cost-effective, i.e., proportionate to the magnitude of the dispute
- It focuses on strengthening relationships
- It pays little attention to legal rights
- It transforms people and events
- It seeks to restore social order and harmony between conflicting parties
- It ensures that all emerge from the process as winners

### A Suitable Strategy also Ensures -

- Parties work together to generate mutually acceptable outcomes
- ADR/TDR strategies eliminate power imbalance
- They offer equal opportunity to participate in the process
- They guarantee party autonomy and simplified procedures
- They are characterized by fairness of process and effectiveness of remedies

## Managing and Resolving Intrastate and Interstate Political and Security Conflicts and Disputes:

### Unsuitability of Litigation

- Adversarial strategies are unsuitable
- They do not deliver quality outcomes
- They do not guarantee need satisfaction
- Their outcomes are rights based-escalating the conflict
- The complexity of procedures impedes on equality of opportunity to participate in the process
- Litigation is costly and ultimately sours relations
- There is always a winner and a loser

## The Suitability of ADR and TDR Strategies

- ADR and TDR strategies are participatory-parties own the process
- Improves need satisfaction and guarantees acceptance of the outcomes
- It guarantees mutual recognition and balancing of power
- Parties view one another differently-as partners in the process
- It guarantees maintenance of peaceful relations
- Averts violent confrontation or legal battles
- It is efficient and cost-effective
- Simplified procedures guarantee equality of opportunity to participate in the process
- Quality procedures guarantee quality outcomes
- It delivers effective remedies

## Nature of Intrastate and Interstate Conflicts and Disputes:

### The Thorn in the Flesh

- Conflicts over mandates of state organs and offices
- Ethnic conflicts
- Conflicts over county and constituency boundaries
- Conflicts between communities over natural resources
- Marginalisation of minority groups and communities
- Armed conflicts between border communities
- Exploitation of cross-border natural resources
- Conflicting foreign policy-military intervention, etc.
- Conflicting religious values and social-cultural ideals

## What Must Be Done

- Strengthen ADR and TDR mechanisms
- Formulate policy guidelines to support ADR/TDR strategies
- Enact legislation to ensure full implementation of Article 159(2)© and (3) of the Constitution
- Develop policy and legislation to facilitate effective promotion of ADR and TDR strategies
- Incorporate community justice systems in conventional judicial processes
- Enhance the legislative framework for effective enforcement of outcomes of TDR and Community Justice systems
- Promote appropriate dispute resolution and conflict management strategies
- Relax our tenacity for conventional judicial system

## Conclusion

- We must accord ADR and TDR their rightful place in conflict management and dispute resolution

- We must view ADR and TDR as appropriate dispute resolution strategies as opposed to mere alternatives
- Political and security conflicts can only be addressed through appropriate conflict management and dispute resolution strategies
- We have more than enough skilled ADR practitioners to drive the agenda
- We have the choice between legal battles or peaceful resolution of disputes