International Journal of Conflict Management

Sharīʿah court-annexed dispute resolution of three commonwealth countries - a literature review

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Received 16 June 2012
Revised 8 December 2012
Accepted 10 December 2012

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Abstract

Purpose – The purpose of this study is to examine the legal framework for court-annexed dispute resolution in courts with Sharī'ah jurisdiction in Nigeria, Malaysia and Singapore. The major part of the study is dedicated to propose reforms in the administration of justice system in the courts with Sharī'ah jurisdiction in Nigeria and the relevance of such reforms to the ongoing reforms in the Middle East and North African (MENA) countries.

Design/methodology/approach – This is an integrative literature review, which adopts a comparative approach in analyzing the conceptual framework of amicable dispute resolution in the modern world with particular reference to the Sharī'ah court.

Findings – The findings of this research illustrate the adaptability of the practices in Malaysia and Singapore in the courts with Sharī'ah jurisdiction in Nigeria and the MENA region.

Practical implications – An exposition of the dispute resolution processes in Islamic law reveals the relevance of these processes in modern reforms of the administration of justice system. The practical implications of this study include the streamlining of the rules and procedures of modern Sharī'ah courts in post-revolution Arab countries to allow for court-annexed amicable (alternative) dispute resolution initiatives.

Originality/value – As far as it is known, this is the first conceptual study on the court-annexed dispute resolution frameworks of Sharī'ah courts in three commonwealth jurisdictions.

Keywords Singapore, Malaysia, Nigeria, Alternative dispute resolution, MENA countries, Sharī'ah court

Paper type Literature review

Introduction

The past century has witnessed dramatic changes in the administration of justice system in the world, particularly in the developed world. The waves of transformation were also experienced in developing countries, which culminated into the introduction of amicable (alternative) dispute resolution (ADR) mechanisms to streamline the process of administration of justice in the courts (Street, 1992; Astor and Chinkin, 2002). Even though informal dispute settlement has been the norm in the primordial communities of

The author would like to thank Professor Syed Khalid Rashid and Associate Professor Nora Abdul Hak for their insightful advice and supervision. This article is a revised version of the literature review of my doctoral dissertation examined in August 2011 at Ahmad Ibrahim Kulliyyah (Faculty) of Laws, International Islamic University Malaysia with the title: "The Legal Framework for Alternative Dispute Resolution in Courts with Sharī'ah Jurisdiction in Nigeria, Malaysia and Singapore".

International Journal of Conflict Management
Vol. 26 No. 2, 2015
pp. 214-238

1044-4068
DOI 10.1108/IJCMA-06-2012-0050

Africa and Asia, there was a gradual drift toward the institutionalization of ADR practices in the West in the later part of the twentieth century. Interestingly, the dominant effect of such reforms has also been felt in a number of African and Asian countries. A quick searchlight around the Muslim world unravels a number of processes that are homologous with the prevailing ADR processes. Islamic law considers a number of effective dispute resolution mechanisms as part of the case management role of a judge (Aronson, 2011; Grossman, 2007). But ironically, it is uncommon to find such court-annexed ADR models in many courts in the Muslim world. From the theoretical perspective, the dispute resolution and avoidance processes in Islamic law include *nasihah* (counseling), *sulh* (mediation, conciliation or compromise of action), *tahkim* (arbitration), Med-Arb, *mazalim* (special adjudicatory panel or court of chancery), *muhtasib* (ombudsman), *fatwa al-mufti* (expert determination), and *qada* (court adjudication) (Rashid, 2004; Oseni, 2011b; Abdul Hak *et al.*, 2011).

This study, therefore, provides a literature review of existing research on court-annexed dispute resolution processes in the Sharī'ah courts in Nigeria, Malaysia and Singapore. These three commonwealth countries, although in two different continents, have a number of things in common (Baker, 2008). From their colonial heritage to the establishment of Sharī'ah courts and the limitation of the jurisdiction of the court to Islamic personal law, there is a wide scope for a comparative study of the three jurisdictions. Undoubtedly, there is a marked increase in the use of ADR processes across the world (Marriot, 2005; Ishan Jan and Mohamed, 2010; Crowe, 2010; Lim, 1998). A new direction is being introduced in this study from a different worldview. It goes without saying that most precedents on ADR processes in Islamic law are found in Islamic legal history, which is relevant in any discourse of modern court-annexed dispute resolution in the Sharī'ah courts (Iqbal, 1962; Hallaq, 2005).

Even though the scholarship on ADR in Islamic law mushroomed during the past decade, generally, four strands of literature on dispute resolution have attempted to address questions associated with the legal framework for ADR in courts with Sharī'ah jurisdiction in Nigeria, Malaysia and Singapore. These include scholarship on the evolution of ADR in Islamic law and how it has changed over time, ADR in the context of Islamic Law, the use and practice of ADR in Nigeria and the Malaysian and Singapore models of ADR within the context of Islamic law. This study closely examines these different strains of relevant literature with a view to understanding their contributions and relationships to the current study, as well as identifies some focal gaps that need to be filled.

Significance of the study

The aim of this review is to examine the existing literature on ADR in Islamic law through a study of its evolution and how it has developed through different phases in Islamic legal history. These theoretical underpinnings of ADR are thereafter applied to practices in selected countries to bridge the gap between theory and praxis. Further assumptions are, therefore, made regarding the relevance of some of the best practices identified to the emerging socio-political and legal changes taking place in some Middle Eastern and North African (MENA) countries, as part of the post-Arab revolution reforms. This study relies on the assumption that most countries affected by the Arab Spring have a fairly large Muslim population as the three selected commonwealth countries.

A careful study of the existing literature shows that none has specifically conducted a comparative study of the legal framework for dispute resolution in courts with Sharīʿah jurisdiction in Nigeria, Malaysia and Singapore. While some of the available literature are general discussions on ADR in Islamic law, some others either specifically address court-annexed ADR in the Sharīʿah court in Malaysia or present a comparative study of both Malaysia and Singapore. Despite the wide classification of the relevant literature, none of such works has pointedly examined the legal framework of dispute resolution and the need to introduce reforms in the mechanism adopted by the courts with Sharīʿah jurisdiction in Nigeria in particular and the relevance of such practice and procedure in the ongoing reforms taking place in the MENA region. The Malaysian, Singapore and other literature examined here are meant to propose a better framework for Nigeria having special regards to best practices in the field. This study is, therefore, an attempt to go beneath the surface and delve into the relevant laws in the three jurisdictions under study to bring about meaningful changes, particularly in the administration of justice in the Sharīʿah court. To this end, it is therefore hypothesized that court-annexed ADR is feasible and implementable in the Sharīʿah courts as part of the case management role of the court.

Conceptual framework of dispute resolution in Islamic law

Evolution of ADR and its development in Islamic legal history. Though there is no known definition of the term "ADR" in Islamic law, the definition of processes like arbitration, mediation and even court adjudication, as evident in studies by Zaidan (2007/1427), Hallaq (2005), Yahya (1978) and Al-Māwardī (1971), there lays credence to the presence of the theory and practice of amicable dispute resolution since the advent of Islam. Despite the fact that most classical sources on dispute resolution did not expressly define ADR (Al-Māwardī, 1971; Al-Khassaf, 1978), some modern Islamic sources, largely influenced by the evolution of ADR in Western jurisdiction, have provided some insights into dispute resolution (Al-Dūrī, 2002; Al-Qass, 1989; Al-Jabalī, 2006; Al-ʿAwwā, 2002). For instance, the Ottoman legal code, the *Mejelle*, defines *sulh*, which is regarded as the generic term for amicable dispute resolution in Islamic law as a contract for the settlement of a dispute by consent (*The Mejelle*, 1980: 254). In fact, the definition of arbitration in Islamic law gives a general notion of the submission of a dispute to a third-party neutral for settlement based on the principles of Islamic law. This is reflected in the definition of arbitration proffered by Madkur (1964, p. 131): "Arbitration is the submission of a dispute by two or more parties to a third party to be decided according to Sharīʿah". The general idea is that amicable resolution of dispute has a generic contractual nature in Islamic law based on the mutual consent of the disputing parties (Haidar, 2003).

To understand how ADR principles have developed and changed over time, this study categorizes the evolution of ADR in Islamic law into six distinct phases in Islamic legal history – *formation*, *consolidation*, *crystallization*, *diminution*, *reinstitution* and *renaissance*. Table I presents a summary of the five phases with their respective descriptions.

The first phase in the evolution of ADR in Islamic legal history – the *formation phase* – involved prophetic precedents on informal dispute settlement personally conducted by Prophet Muhammad among his companions. Meanwhile, there are reports of the traditional Arab dispute settlement systems that were prevalent during the

Phases	Name	Period	Description
1st	Formation	Advent of Islam to the end of the first Islamic Republic in 634 C.E.	Adaptation of pre-Islamic processes such as arbitration and the introduction of Sharī'ah-based processes of dispute resolution with the emergence of proto-*qadis* (judges)
2nd	Consolidation	Second Republic to the end of the fourth Republic in 661 C.E.	The second Caliph consolidated the principles introduced during the formative phase through innovative procedural rules
3rd	Crystallization	Umayyad and Abbasid eras (661–1258 C.E.)	Further expansion of the Islamic state led to the crystallization of ADR processes, as they were practiced to suit the needs of each province within the state
4th	Diminution	Disintegration of the Caliphate and rise of independent emirates (1258-1299 C.E.)	Even though successive empires across the Muslim world retained some of the ADR practices, there were series of political rifts
5th	Reinstitution	Efforts to rebuild the Islamic Caliphate and reinstitute the formal institutions including the administration of justice system (1299-1924 C.E.)	Extensive practice of ADR processes as part of court adjudication in the Ottoman Caliphate. The *Mejelle* contains 41 Articles on amicable dispute resolution
6th	Renaissance	Islamic reawakening in the 20th and 21st centuries	Modern renaissance in administration of justice in both formal and informal sectors. Islamic awakening spurred the reemergence and adaptation of ADR processes

Note: This table provides a summary of the six phases of the evolution and development of ADR in Islamic law. The table is original in this study

Table I.
Six phases of the evolution and development of ADR in islamic law

pre-Islamic period as clearly acknowledged by Wolf (1951), El-Ahdab (1999), Sayen (2003), Hallaq (2005), Saleh (2006) and Abdul Hak *et al.* (2011). Some of these processes were adapted to Islamic practices apart from the Sharī'ah-based processes introduced through Qur'anic legislation (El-Ahdab and El-Ahdab, 2011). This proto-phase ended during the twilight of the first Islamic Republic in 634 C.E. While considering the evolution of Islamic legal ethic, Hallaq (2005) considered some elements of dispute resolution spearheaded by the *qadi* (Islamic judge). There was no clear delineation of the functions of the proto-*qadi* during the early period as they combined state functions with judicial administration. Besides, there was no clear distinction between adjudication and other dispute resolution processes, but there was a general preference for amicable settlement of disputes (Hallaq, 2005). The second phase – the *consolidation phase* – was ushered in during the second Republic with significant reforms in the procedural rules of adjudication and the gradual formulation of other ADR processes (Azad, 1994). During this period, the second Caliph consolidated the principles introduced during the formative phase through innovative procedural rules that were extrapolated from the

general principles of Islamic law (Al-Qarashi, 1990). This phase came to an abrupt end in 661 C.E. after some sort of political arbitration widely documented in Islamic history (Iqbal, 1962).

Furthermore, the decisive arbitration that was a result of the unfortunate political crisis in the then Islamic state paved the way for the recalibration of the political atmosphere within the state, which had great influence on the administration of justice system. This ushered in the third phase of *crystallization* that spanned over half a millennium. During this phase, apart from the formal judicial institution (*qada*), processes such as special tribunals (*mazalim*), ombudsman (*muhtasib*) and expert determination (*fatwa al-mufti*) were further developed to meet the challenges posed by the expansive nature of the Islamic state (Rashid, 2004; Hallaq, 2005). Unfortunately, a new phase – the *diminution phase* – set in with the disintegration of the Caliphate and rise of independent emirates across the Muslim world. This negatively affected the development of the Islamic administration of justice system. Thus, several political rifts and different manifestations of Islamic legal practice characterized this phase (Hallaq, 2005). Even though successive empires across the Muslim world retained some of the ADR practices, there were no coherent procedures that represented the prevailing practices of the pioneering classical period.

Next, the *reinstitution phase* introduced new reforms to revive and fortify the formal judicial institutions (Akgündüz, 2011). By reinstituting the earlier processes of dispute resolution and taking a step further to codify them, the Ottoman Caliphate was able to modernize and bring to bear the theoretical base of ADR in Islamic law into the modern practice. During this phase, court-annexed dispute resolution took the frontal stage in the administration of justice system to give some sense of certainty to processes like mediation and arbitration (Ergene, 2005; Tamdoğan, 2008; Abdul Hak *et al.*, 2011). A quick count of the provisions in the *Mejelle* – the Ottoman legal code – shows that there are 41 Articles on amicable dispute resolution in the code (*The Mejelle*, 1980).

Finally, the *renaissance phase*, which set in as part of the general Islamic awakening movements across the world, gradually gained momentum in the second half of the twentieth century. The dawn of the twenty-first century witnessed tremendous transformation in the dispute resolution frameworks across Muslim communities. In fact, a major step forward in the evolution of ADR in Islamic law is the modern resurgence of interest in modernizing the traditional dispute resolution processes in Islamic law. Apart from the Muslim majority countries, Muslim minorities in developed countries like the USA and the UK have developed voluntary community-based processes for amicable resolution of disputes. This trend has also found its way into developing countries in Asia and Africa, particularly in commonwealth countries with a sizeable number of Muslim population.

Dispute resolution in Islamic law

From Islamic legal history, one can identify a number of dispute resolution processes that were utilized in different forms and varying degrees without necessarily developing them into formal processes. With the exception of court adjudication and perhaps the ombudsman system, it appears most other processes were not conceptually considered as dispute resolution and avoidance processes. A review of the literature on ADR in Islamic law reveals some sort of academic renaissance in this field because before the

twentieth century, very few English sources were available on ADR in Islamic law. Before now, most of the procedures have long been left for the books on Islamic jurisprudence without practically implementing the rules. A careful study of the laws relating to dispute resolution in many Muslim countries reveals that there is a form of eccentric deviation from the classical procedures (El-Ahdab, 1999). This is, undoubtedly, due to the influence of the French Civil Code on the legal systems of the countries. However, in recent times, there is a gradual return to the classical means of dispute resolution, as experienced in some Muslim countries like Malaysia (Muhammad, 2010), Brunei (Black, 2002), Singapore (Abdul Hak, 2006), Saudi Arabia (Sayen, 1987), and the United Arab Emirates (El-Ahdab, 1999).

The literature on ADR within the Islamic law context can be classified into two major categories. The first category consists of those materials on the classical procedure, which are mostly found in chapters of books on Islamic jurisprudence generally. Nevertheless, there are standard works on adjudication of disputes (*qada*), where issues relating to dispute resolution are also examined. They are termed "classical" because they are original sources in Arabic and they are written by leading Muslim jurists. The second category comprises the literature on modern practice of ADR within the Islamic law context based on formalized practices, as well as recent developments in Muslim minority communities across the world.

For the first category of literature, it suffices to observe that there are so many books on the classical methods of dispute resolution. However, a common trend in most of the books is a general analysis of the judicial code of conduct or ethical code for arbitrators and the procedural law. For instance, in explaining the case management role of the judge (*qadi*) within the court system, Al-Khassaf (1978) gives a detailed commentary on the code of conduct of judges before and during the pendency of a case. Though the thrust of the work relates to the procedural rules in normal court proceedings, nevertheless, similar procedures with certain modifications where necessary may also be applicable in mediation and arbitral proceedings. The work also dedicates a whole section to arbitration in Islamic law (*tahkim*) (Zahraa and Abdul Hak, 2006).

A number of works in Arabic such as Al-Qass (1989), Al-Khassaf (1978), Al-Mawardi (1971), Abd al-Rafi (1989) and Fadilat (1991) have critically dealt with the process of administration of justice in Islamic law. Works by such authors more than admirably set the scene for the legal framework of dispute resolution in Islamic law. With the exception of a few, these works fall short of in-depth analytical awareness that would enable us to examine processes like *sulh* (mediation or conciliation), *tahkim* (arbitration), *mazalim* (special tribunals or court of chancery) and *muhtasib* (ombudsman), which are also considered as part of the dispute resolution mechanisms. One may concede to the fact that the expanded jurisdiction of the *qadi* includes *sulh* and, in some instances, *tahkim*, which accounts for why most of the prominent works devoted certain chapters to *sulh*. After a general study of these classical materials, one may arguably observe that more extensive research is required in this field to re-establish the wide scope of the process of dispute resolution in Islamic law. The process of dispute resolution in Islamic law transcends ordinary court proceedings. However, the special attention given to *sulh* as an institutionalized mechanism for dispute resolution within the general jurisdiction of the *qadi* supports the hypothesis of this study that court-annexed ADR is feasible within the Sharī'ah court system. Othman (2005) rightly indicates that:

> […] *sulh* has received the attention of medieval jurists and played an important role as a mechanism for settling disputes within as well as outside the judicial system in Muslim societies (Othman, 2005, p. 2).

Moreover, the socio-legal literature on the modern practice of ADR in Islamic law is gradually gaining grounds with the paradigm shift in the dispute resolution mechanism in the modern world. The courts in Muslim communities across the world have been playing an important role in dispute resolution through effective case management. Notable among such models is the Ottoman model. Akgündüz (2011) reviews the legal documents in the Ottoman archives where major Islamic public law institutions are uncovered. Such institutions included the administration of justice system otherwise known as *qada*, which was considered as an all-encompassing institution for dispute resolution. Specifically, Tamdoğan (2008) examines the model used during the Ottoman Empire particularly in the eighteenth century with particular reference to two main cities in what is presently known as Turkey. He compares instances where *sulh* was applied in the court documents of the two cities of Üsküdar and Adana. This study of *sulh* is based on three normative systems: Sharī'ah, the Ottoman legal code (*qanun*) and custom (*'urf*). After an extensive analysis of the abundance of reference to *sulh* agreement in the court records and the respective legal cultures in the two cities in respect of the agreements, he concludes that *sulh* can be practiced differently according to local variations (Tamdoğan, 2008). Therefore, it is established that *sulh* practice is better enhanced when annexed to a particular court. While one may concede to the argument of Tamdoğan (2008) on the inevitability of local variations in the application of *sulh*, it is submitted that standard best practices must not be varied by local variations. Local variations cannot overturn certain established principles. This is further strengthened by the argument by Deriñ (2005/2006), who emphasizes that in all situations, amicable settlement is encouraged, regardless of the subject matter, place and time.

In the modern era, the literature on dispute resolution in Islamic law has continued to increase with every passing day. More specialized research works have been carried out on the ADR mechanisms in Islamic law. Rashid's (2004) article is a major reference work on ADR in Islamic law. In his study, the author argues that "[*s*]*ulh* includes negotiation, mediation/conciliation and also compromise of action, which in other legal systems is not included in the definition of ADR" (Rashid, 2004, p. 97). He further contends that compromise of action as a form of *sulh* "fits into the definition of ADR" (Rashid, 2004, p. 100). The significance of this work among other literature is that, for the first time, the notable ADR processes in Islamic law are examined together in a single work. The article begins with the concept of *sulh* and argues that compromise of action comes within the general ambit of conventional ADR as practiced under *sulh*. It also examines the *tahkim* procedure, Med-Arb in Islamic law, *muhtasib* or ombudsman, the extra-judicial settlement of *mazalim* and *fatwa al-mufti*, otherwise known as expert determination (Rashid, 2004). This work serves as a general background to this review because the kernel of this study is the court-annexed ADR process in the Sharī'ah court. This study is aimed at examining ways by which those processes analyzed in Rashid (2004)'s work can be annexed to the Sharī'ah court system in Nigeria and the MENA region through adequate law reforms.

Meanwhile, Abu-Nimer (1996) examines conflict resolution in an Islamic context while raising a number of conceptual questions. This work is a comparative study

between the Western concept of conflict resolution and the Islamic or what he calls the "Middle Eastern" context. The author examines the obstacles inherent in the imposition of Western models of conflict resolution in the Middles East. The main argument of the work is the need for a constructive harmonization of the fundamental principles of dispute resolution in the Western and Islamic contexts. However, he argues that before embarking on such harmonization, there is a need to first examine the applicable Islamic legal principles and procedures (Abu-Nimer, 1996). He concludes that, "a fuller understanding of commonality and difference in conflict resolution efforts across cultures will profit the field as well as the societies involved" (Abu-Nimer, 1996, p. 37). In a similar vein, there are two articles in the same journal with the same titles but by different authors. The specific issues addressed in the two articles are different but they both arrived at the same conclusion. While Mohamed Shariff (2009) raises certain issues that can hinder the evolution of the Islamic dispute resolution in the modern world which need to be addressed for it to be a viable alternative system, Hoyle (2009) contends that the "Islamic law has a rich tradition of supporting and facilitating dispute resolution", which should be explored in modern processes of dispute resolution.

Furthermore, it appears more studies have singled-out arbitration (*tahkim*) and its application within the modern societies than any other process of dispute resolution. This has been mainly attributed to the oil boom in the Arab world and the consequential contractual disputes that emerged (Brower and Sharpe, 2003). So many comparative studies have been conducted on this aspect of dispute resolution. Saleh (2006), who thoroughly analyzes the *tahkim* procedure in Islamic jurisprudence, examines commercial arbitration within the Islamic law context. This major contribution to the literature on arbitration in the Arab Middle East covers the Sharī'ah rules of arbitration and also discusses local statutes and judicial precedents on arbitration in selected countries within the region. This is relevant in the discourse on the reforms being proposed in the administration of justice system in the MENA region (Al Tamimi, 2009). In a similar vein, El-Ahdab (1999) and El-Ahdab and El-Ahdab (2011) follow the same approach in examining the practice and procedure of arbitration in Islamic law. An abridged version of the book was earlier published as an article in 1998 where he gives a general introduction on arbitration in Arab countries (El-Ahdab, 1998). Though his works are mainly limited to arbitration, nevertheless, they serve as general guide to further discussion on dispute resolution in Islamic law as practiced in the modern era. In no different way to El-Ahdab (1999), El-Ahdab and El-Ahdab (2011) and Saleh (2006), Al-'Awwā (2002) examines arbitration agreement under the Islamic law as well as statutory provisions. Al-Dūrī (2002) and Al-Jabalī (2006) also carry out similar comparative studies, respectively, where they examine the arbitration agreement in Islamic jurisprudence and modern laws. Most of these comparative studies are made with special reference to the UNCITRAL Model Law on International Commercial Arbitration 1985 (as amended in 2006). Therefore, it is argued that Muslim countries should look inwards to determine the appropriate procedure to be adopted in arbitration as well as other dispute resolution processes while considering adaptable international best practices in the field. Though some insights may be taken from the UNCITRAL Model Law, there are many treasures within the Islamic law procedures that remain unearthed (Kemicha, 1996; El-Hajailan, 1996; Darwazeh and El-Kosheri, 2008).

Apart from the dedicated literature on *sulh* and *tahkim* highlighted above, there are other specific works on *muhtasib* in light of the classical ombudsman and modern practices in

some Muslim countries. In his research on the public and private spheres in Saudi Arabia in relation to ordering the good and forbidding evil, Vogel (2003) examines the functions of the *muhtasib*. He specifically examines the classical public law in Islam from some original sources like al-Mawardi (1996) and Abū Ya'lā (1966). He further juxtaposes the classical practices with the current situation in the twenty-first century Saudi Arabia. Vogel's conclusion is that the Saudi law and regulation and the practice of the committees set up under them have gone beyond the powers and functions of the *muhtasib* in the classical period, as described in the original sources (Vogel, 2003). While one may concede to his viewpoint to a large extent, it can be argued that the functions of the *muhtasib* should be seen in a broader perspective. The duties of a *muhtasib* stipulated in the original sources are still relevant. However, the modern *muhtasib* should be more proactive in his duties due to the complexities involved in modern civil and commercial transactions. Therefore, a *muhtasib* may be empowered to make independent legal reasoning (*ijtihad*) in some situations while upholding Sharī'ah-oriented policy in the pursuance of his functions (Akgündüz, 2011). In fact, a quick look at the aspect of Islamic legal history relating to the development of the office of the *muhtasib* reveals that, though the general rules are set down in the Qur'an, the nature of his functions crystallized after some time. As Hamdani (2008) rightly explained, the institution of *muhtasib* was earlier known as *sahib al-suq* (market supervisor) with limited powers. Before this, it was the institution of *shurta* (police) that was in charge of such jurisdiction. Later, the functions of the office became more defined and it was transformed to the office of the *muhtasib*. The classical role of a *muhtasib* is more of dispute management, which naturally involves both dispute avoidance and dispute resolution.

Case studies of modern practice of court-annexed ADR in the Sharī'ah court

With a focus on three jurisdictions, the case studies examine the literature on court-annexed ADR in the Sharī'ah courts in Malaysia, Singapore and Nigeria. However, it is pertinent to observe that the legal frameworks in Malaysia and Singapore are more sound and robust when compared to the Nigerian framework. However, the overall experience of the three jurisdictions might be relevant in the ongoing reforms in the MENA region.

Court-annexed ADR: The Sharī'ah court in Malaysia and Singapore

The literature on the use of ADR in the Sharī'ah courts in Malaysia and Singapore consists of recent articles, books and theses, most of which were written within the past decade.

Malaysia

The legal framework for Sharī'ah court-annexed dispute settlement in Malaysia is based on a two-pronged approach, which distinctively provides for both arbitration (*tahkim* or *hakam*) and binding mediation (*sulh*) processes. The first is the Islamic Family Law (Federal Territories) Act (IFLA) 1984 (Act 303) ("IFLA 1984"), which introduced the framework for *hakam* (arbitration) and the conciliatory committee. There are corresponding Islamic Family Law Enactments across the States in Malaysia and they were modeled after the IFLA 1984. The statutory *hakam* and the reconciliatory committees were introduced exclusively for divorce cases at the Sharī'ah court where the possibility of reconciliation is emphasized. After about two decades, a new framework for mediation was also introduced through series of legislations across different states in Malaysia. While expanding the scope of the earlier reconciliatory

committees introduced by IFLA 1984, the new Sharī'ah Court Civil Procedure (*Sulh*) Rules were introduced. The guidelines introduced in the Sharī'ah Court Civil Procedure (*Sulh*) Rules are the same all over the country. The Rules apply to all family disputes and ancillary matters except the application for divorce under IFLA 1984 and further proceedings in respect of such divorce.

The State of Selangor is one of the pioneering Malaysian states that introduced Sharī'ah Court Civil Procedure (*Sulh*) Rules in 2001 to regulate *sulh* in the Sharī'ah courts. As a follow-up to the newly introduced rules, Othman (2002) examines the imperativeness and challenges of introducing ADR in Malaysia where references are made to the *sulh* procedure in the Sharī'ah court. After a couple of years, Ahmad (2010) assesses the effectiveness of *sulh* in resolving family disputes in the State of Selangor from the perspective of the parties to the disputes. In this pioneering work, a large percentage of the respondents indicated that they are highly satisfied with the outcome of the *sulh* procedure (Ahmad and Abdul Hak, 2010a). In a similar vein, Hj Azahari (2004) gives appropriate statistics to support the relevance and utilitarian value of such rules in the Sharī'ah courts in Malaysia. She was able to establish through statistical data that the rules have drastically reduced the backlog of cases in court. This is a good modern application of the age-long *sulh* practices introduced in the Muslim societies over one thousand four hundred years ago. Hj Azahari (2004) concedes to the fact that *sulh* has been previously neglected as part of the Islamic legal system – an incontrovertible fact also alluded to by Ahmad and Abdul Hak (2010b). It is pertinent to observe that Ahmad and Abdul Hak's (2010b) study is a comprehensive socio-legal research on the application of *sulh*, people's attitude toward *sulh* and the success recorded in its use in the State of Selangor. The authors conclude by laying emphasis on the need for court-annexed *sulh* programs of this kind to consolidate the administration of justice system in the Malaysian courts (Ahmad and Abdul Hak, 2010b).

However, it is important to observe that the use of *sulh* in the resolution of cases in the Sharī'ah courts is more relevant in family cases in Malaysia and Singapore. Muhammad (2008) traces the history of *sulh* in Malaysia and discussed the position of *sulh* in mediation in Malaysia. The research covers both the substantive as well as the procedural aspects of *sulh* in country (Muhammad, 2008). In another work, Muhammad (2010) reviews the practice and procedure of *sulh* in the Malaysian Sharī'ah courts and concludes that in Malaysia, the *Sulh* officers are given the mandate to take the place of the judge when the latter is absent, as part of the case management role of judges in Islamic law.

Furthermore, to unravel the so-called mystery in the procedure of *sulh* in family disputes, Abdul Hak (2008a, 2008b) explains the characteristics and process of mediation from the perspective of the practice in Malaysia. The study gives a general overview of family mediation in Malaysia where she specifically discusses mediation in the Sharī'ah courts (Abdul Hak, 2008a). One important aspect of the study is the report on the modern history of court-annexed mediation in the Sharī'ah courts in the State of Selangor, Malaysia which began in 2002. This welcome initiative has now been embraced by Sharī'ah courts across Malaysia, and the people are being sensitized on the *sulh* option for amicable resolution of disputes.

From the foregoing analysis, it is clear that there is an increase in the literature on ADR in Islamic law in Malaysia. Meanwhile, from the practical side of the discourse, a number of cases have been successfully mediated and arbitrated in line with Sharī'ah principles, but most of such cases are not reported for obvious reasons. Even in cases

where the Sharī'ah court endorses such cases as consent judgments, which is usually the case, they are usually not reported in the law reports. But one thing that remains important in the practical approach to court-annexed ADR is the probability of being coerced into mediation. In *Norlia Bte Abd Aziz* v. *Md Yusof bin A Rahman* [2004] 5 MLJ 538 at 542, the Sharī'ah High Court in Kuala Terengganu held *inter alia* that even though judges are encouraged to effect mediation between disputing parties, the parties should not be coerced to enter into such amicable settlement. This is because voluntariness is the crux of the practice of ADR and it is considered an important precondition to mediation. In practice, many disputing parties willingly enter into amicable settlement under the supervision of the *sulh* officers as a result of their religious convictions. There is increasing awareness on the importance and significance of the *sulh* procedure in most states across Malaysia. For instance, Appendix gives some statistics on cases handled under the *sulh* process in nine states: Selangor, Melaka, Negeri Sembilan, Johor, Pahang, Penang, Perak, Kedah and Federal territories, which support the thesis of this study about the relevance of court-annexed amicable dispute resolution in the Sharī'ah court.

The practice in Malaysia appears to be a somewhat mandatory mediation when the case is already before the Sharī'ah court because the relevant rules apply. Table II summarizes the *sulh* work process, which applies to all cases coming before the court.

Table II illustrates the practice and procedure of the *sulh* process in the court. Be that as it may, the court-annexed ADR in the Sharī'ah court in Malaysia faces some challenges. Some of the challenges identified by Abdul Hak and Oseni (2011) include

Position	Work process
Registration Process	
Registrar/Senior Assistant Registrar	Receives case file from Assistant Registrar Fixes mention date/sulh to the parties
Sulh Officer	Sulh session will be conducted before the *Sulh*'s Chairman If no agreement to implement sulh, hearing date will be fixed
Assistant Registrar Judge	If there is any mutual agreement in whole or any part thereof, it will be recorded and presented before the judge to be heard To make Judgment and Order in Term
Process of Extracting Order	
Registrar/Senior Assistant Registrar	To prepare/check draft order from parties To refer to judge for endorsement To present the draft order to the parties with or without amendments (by lawyer if any) To receive fair order to be endorsed and signed (by lawyer if any)
Judge	To sign and endorse the order
Registrar/Senior Assistant Registrar	Service of order to the parties

Note: This table provides the work process of the sulh porcedure in the Malaysian Shariah Court. This is relevant for readers who want to have a glimpse at the way and manner mediation is carried out in the Shariah Court

Source: Oseni (2011b)

Table II.
Sulh work process

insufficient facilities, inadequate staff, insufficient knowledge and parties' lackadaisical attitude toward ADR, rescission of settlement agreement and non-uniform practice of ADR in Malaysia. With regards the inadequate staff, at the last count in 2011, there were only 81 *sulh* officers in the whole of Malaysia handling various disputes in the Sharī'ah courts.

Singapore

Though the literature on the court-annexed dispute resolution process of the Sharī'ah court in Singapore is not as much as that of Malaysia, a few have been identified. It is pertinent to mention at this juncture that the Muslims in Singapore constitute a closely knitted minority. In an attempt to discuss the Islamic ADR mechanisms in the Sharī'ah court, it is expedient to have recourse to the history of Muslim personal law in the country, which gave birth to the establishment of the Sharī'ah court. In light of this, Abdul Rahman (2009) discusses the major problems confronting the legal institutions of the minority Muslim community and the need to develop certain key legal institutions to foster the integration of the Muslim community into the larger society in Singapore. This is a welcome recommendation, which, to a large extent, is being considered by the Muslim community in Singapore. In fact, developing independent dispute resolution bodies, which will cater for Islamic law related cases in the region, may be appropriate at this stage of the development of the larger Muslim community in the Association of South East Asian Nations countries. This was the kernel of Muhammad (2009)'s book, which dedicated a segment of the work to the Singapore Sharī'ah Court.

Moreover, Abdul Hak (2006) examines the use of *tahkim* in the resolution of family disputes in the Sharī'ah courts of Malaysia and Singapore. This literature review is specifically interested in her reference to the Administration of Islamic Law Act of Singapore 1966 (Cap. 3) and the *Guidelines Book for Hakam of the Singapore Sharī'ah Court 2005*. These two important documents form the basis of *tahkim* in Singapore and the process has recorded huge successes in the resolution of family disputes. There are eight stages of dispute resolution in the Sharī'ah court. The court procedure starts with the registration stage, the counseling stage and proceeds to the summons stage. The case further proceeds to the mediation stage and later the pre-trial conference. If the case is still not resolved at this stage, it will proceed to the trial stage and it could further go to the *Hakam* (arbitration) stage. Failure to resolve the dispute in all of these stages will ultimately lead to a final appeal, which is heard and determined by the Appeal Board (Abdul Hak, 2006). For instance, in the divorce case of *Rosiah bte Mohd Noor* v. *Ng Puay Chi* [1997] SGSAB 3, the wife appealed against the award of *hakam*, which recommended a consent order to be made by the Sharī'ah court. While the efforts of the *hakam* to reconcile the parties was unsuccessful, they were left to proceed with the divorce and the wife agreed, amongst other things, to waive her rights to maintenance during the waiting period, as well as the consolatory gift upon divorce recognized in Islamic law. A Consent Order was subsequently issued by the President of the Court based on the terms of settlement as contained in the award of the *hakam*. The wife was dissatisfied with the Order, and thus appealed against certain terms of the Order. The Appeal Board dismissed the appeal on the ground that the parties were not coerced or pressured into agreeing to the terms contained in the settlement agreement adopted by the *hakam* and subsequently ratified by the court. The Appeal Board in *Fauziah bte Mohd Noor* v. *Ali Bin Asjadi* [1999] SGSAB 1 reached a similar decision. Though there

are no specific court rules regulating the process of court-annexed dispute resolution in the Sharīʻah Court of Singapore, the court follows the Islamic law procedure in resolving disputes, and this includes the application of relevant ADR processes like *nasihah* (counseling) *sulh* (mediation), *tahkim* (arbitration) and *qada'* (court adjudication). Unlike the Malaysian Sharīʻah courts where there is a line of demarcation between the *sulh* process and court adjudication, the Singapore court-annexed ADR procedure is inextricably fused with adjudication in a continuum of processes. A number of cases have passed through the different stages – while some were resolved before getting to the last stage, others proceeded to the appeal stage. Table III provides a summary of the eight stages involved in the Sharīʻah court-annexed dispute resolution program.

Though the above dispute resolution process in the Sharīʻah court is not free from some procedural challenges, it serves as a good starting point for other developing countries (Abdul Rahman, 2009). A similar research was carried out on divorce in Singapore and Malaysian courts where Latiff (1996) examined a number of relevant cases. He concludes the study with significant recommendations for reforms in the structure and composition of the Sharīʻah Court of Singapore. Unfortunately, most of the recommendations he made in 1996 are yet to be implemented, but it gladdens one's heart that there have been significant amendments to the enabling Act –the Administration of Muslim Law Act of Singapore (Kassim, 2009). However, it is imperative on other countries to emulate this great feat by amending their relevant laws and giving way for

Stage	Process	Description	Time frame	Officer-in-charge
1st	Registration	Initial filing of the case where the case is registered and reviewed	4-6 weeks	Court Registrar
2nd	Counseling	Disputing parties must go through the counseling stage	8-16 weeks	Court-appointed Counselors
3rd	Summons	Formal invitation to the mediation session	Not applicable	Court officer
4th	Mediation	Facilitating the settlement process without much hassle	Not applicable	Designated Mediator
5th	Pre-trial Conference	Narrowing down contentious issues and further efforts to resolve the issues in preparation for trial	8 weeks	Court Registrar
6th	Trial	Court trial where parties may be represented by counsel	Not applicable	President of the Court
7th	*Hakam* (Arbitration)	Necessary before a court can make an order for divorce	Not applicable	2 Arbitrators from list of neutrals
8th	Appeal	Any appeal from the earlier processes goes to the Appeal Board, which is the apex body	Appeal to be made within 1 month	3 learned Muslims

Table III.
Sharīʻah court-annexed dispute resolution in Singapore

Note: This table provides the details of the different stages in the court-annexed programme of the Shariah Court of Singapore
Source: Author

the application of *tahkim* and *sulh* as a two-tier case management technique in both family and commercial disputes.

Nigeria

In the wake of the twenty-first century, court-annexed ADR became a major force to be reckoned with in the Nigerian legal system. Before the advent of the British colonialists, ADR was widely practiced among the local communities in the entity called Nigeria. Every community had its own way of resolving disputes without recourse to means that will create enmity and hatred among the people (Asien, 1997). Asouzu (2001) takes considerably pains to explain that:

> […] before the conquest or annexation and consequent colonization of most African societies by alien powers, these societies had their informal dispute resolution methods, which they retained. Each African community has unique rules and norms for the resolution of controversies over property and other rights (Asouzu, 2001, p. 115).

This was also emphasized by Justice Oguntade JCA (as he then was) in *Okpuruwa* v. *Okpokam* (1998) 4 NWLR (Part 90) 554 at 572, where he observed *inter alia* that:

> […] in the pre-colonial times and before the advent of the regular courts, our people (Nigerians) certainly had a simple and inexpensive way of adjudicating over disputes between them. They referred them to elders or a body set up for that purpose. The practice has over the years become strongly embedded in the system that they survive today as custom.

This is true when one studies the customs of most Nigerian communities from the North to the East and the southern part of the country (Asouzu, 2001; Oluduro, 2011; Oba, 2008).

In the Muslim communities, the Imams and scholars were saddled with the responsibility of resolving disputes among the members of their communities. The pre-colonial period was the flourishing era of the Sokoto Caliphate in the modern northern Nigeria. The advent of the colonialists culminated into a gradual decline of the Caliphate. This changed the framework for dispute resolution in the region with the introduction of the adversarial system based on the English Common Law. During the Sokoto Caliphate, the Emir's courts were specifically responsible for the resolution of disputes (Last, 1967; Adeleye, 1971; El-Masri, 1978). To this end, Mahmud (1988) reveals that when the colonialists came, they found the Emir's Courts system where learned Muslim jurists adjudicated disputes and their decisions were based on the primary sources of Islamic law. The proceedings of the courts were written in Arabic language and all the parties whole-heartedly accepted the decisions. The courts applied all the techniques approved by the law to resolve disputes; most probably, this included *sulh* and *tahkim*. To support this significant finding, Kani (1987) examines the outline of the Islamic Constitution of the Sokoto Caliphate which was drafted by Sheikh Uthman b. Fudi in 1806, as contained in *Bayan wujub al-hijrah* and *Diya' al-hukkam*. While enumerating the functions of the judiciary in *Bayan wujub al-hijrah*, the Constitution of the Caliphate profoundly provides for effective case management (Tukur, 1977). The whole concept of court-annexed ADR is represented in the ten issues enumerated in the provisions. All the processes of ADR recognized in Islamic law are covered in the provisions. The provisions cover *sulh*, *tahkim,* Med-Arb, *muhtasib*, *mazalim* and *fatwa al-mufti* and the powers of a judge to act accordingly. However, it is pathetic to observe that the Emir's Court and *Alkali* courts were abolished when the Caliphate came under

the High Commissioner of the Northern Protectorate, Frederick Lugard. The colonial period ushered in a new legal regime for dispute resolution in northern Nigeria with the promulgation of laws to abolish the Emir's Courts and the introduction of validity tests to verify the remnants of Islamic law in the light of English principles of natural justice, equity and good conscience (Tabiu, 1991). This trend has continued even after the colonial period (Oba, 2004). Despite this, it is believed that the post-independence period has witnessed more negative reforms in the administration of justice system in the Sharī'ah Courts in Nigeria. Hence, the need for reforms in the system, particularly the introduction of court-annexed dispute resolution in the Sharī'ah courts –a phenomenon that already exists in the common law courts in the country.

During the past decade, the common law courts – High Courts – in Nigeria introduced the Multi-Door Courthouse, as a court-annexed program of dispute resolution. Most states across the country amended their civil procedure rules to reflect the prevailing trend of court-annexed dispute resolution (Oseni, 2011b). Unfortunately, despite the fact that the Sharī'ah courts also exist side-by-side with the High Courts though with their respective independent jurisdictions, the former do not have a court-annexed ADR program. One now wonders whether there is no place for amicable dispute settlement in the Sharī'ah. However, recent developments in the country, which are mostly based on private initiatives by some non-governmental organizations, have attempted to bridge the gap between theory and praxis of ADR in Islamic law. In 2002, the Supreme Council for Sharī'ah in Nigeria (Lagos State chapter) established the Lagos State Independent Sharī'ah Panel in 2002 at Abesan Housing Estate Central Mosque in Ipaja (Sanni, 2007). This Sharī'ah Panel is more of an arbitral tribunal than a regular Sharī'ah court. A year after, another Panel was established at the 1004 Estate Central Mosque in Victoria Island. The Panels are manned by learned Muslim judges (arbitrators) who are trained in both Sharī'ah and Common law alike. Since 2002, over 500 cases have been heard and determined by the Panel and parties' satisfaction with the proceedings of the Panel has soared to about 90 per cent over the years (Oseni, 2011b). Interestingly, the Lagos State High Court made a court referral to the Sharī'ah Panel on an issue that involved Islamic law because there are no formal Sharī'ah courts in Lagos State. It appears the courts have come to realize that Muslims have their unique way of doing things, and for proper justice, cases involving Muslim marriage and divorce must be referred to such Panels rather than the Customary Courts, which lack jurisdiction over these issues.

In *Madam Ayisat Afinni* v. *The President and Members of Grade "B" Customary Court, Isolo, Lagos State and Alhaji Jumat Owolabi*, [Suit No.: ID/852M/2007 (Unreported)], the Lagos State High Court at Ikeja was faced with an Originating Motion on Notice. In this case, the applicant married the second respondent on February 8, 1970, in accordance with Islamic Law. After so many years, the second respondent commenced a divorce proceeding at the Customary Court sitting at Isolo, where the first respondent was presiding. The first respondent subsequently assumed jurisdiction and on the November 23, 2007, delivered a judgment dissolving the marriage and granting other reliefs to the second respondent. The applicant proceeded to the High Court where she sought for an Order of Certiorari to quash the entire proceedings and judgment of the lower court. At both the Customary Court and the High Court, the facts of the case were not in dispute. The applicant's counsel argued that the Customary Court had no jurisdiction to dissolve the marriage between the applicant and the second respondent having regard to Nigerian jurisprudence and judicature. On the other hand, counsel to

the second respondent argued that Islamic law was part of customary law and, accordingly, the Customary Court had jurisdiction to dissolve the said marriage. After reviewing all the processes filed in the suit before the High Court, Oshodi J held, relying on two binding authorities of the Supreme Court, that because the apex court had decided that Islamic law was not customary law, the Customary Court had no jurisdiction to entertain the case. So, the lower court lacked the jurisdiction to entertain issues pertaining to marriages conducted under Islamic law. Therefore, the court granted and issued the Order of Certiorari and quashed the entire proceedings and judgment dated November 23, 2007, made by Grade "B" Customary Court in the case. The implication of this landmark judgment is that no court in Lagos State has jurisdiction to hear matters pertaining to Islamic law of marriage and divorce, except the privately established Independent Sharī'ah Panel. One remarkable thing mentioned by Oshodi J in the judgment is a direct reference to this Panel where he emphasized that:

> […] it must be placed on record that there exists in Lagos State Independent Sharia Panels […]. The 2nd Respondent should have approached any of these Panels with respect to his desire to dissolve the marriage.

To this end, it is instructive to cite a case, which the Panel amicably resolved by restoring an age-long relationship through consensual reconciliation. In *Brother Isiaq Mustapha* v. *Abdul Kabeer Atunrashe* [Suit No ISP/IEM/0007DR/1424AH], the tribunal resolved the commercial dispute through compromise of action, which is generally classified under the *sulh* concept. This shows the willingness of Muslims in Nigeria to accept proposals for Sharī'ah-based court-annexed ADR to enhance and facilitate the administration of justice system in the country.

Reforms in the Sharī'ah courts of Muslim countries in the MENA region

While this review focuses on three commonwealth jurisdictions, the dynamics of Sharī'ah court-annexed dispute resolution discussed above could also be extended to the MENA countries, particularly those currently going through socio-political and legal reforms brought about by the lingering Arab revolution. As part of the post-revolution reforms, including constitutional and legislative reforms, the Sharī'ah courts in countries like Tunisia, Libya, Egypt and Yemen should also embrace judicial reforms. Access to justice improves the rule of law. A good court-annexed ADR program would guarantee the rights of the most vulnerable group of the society such as the poor and women. Though Egypt has a fairly good model of court-annexed ADR in the Sharī'ah court, there is a need for post-revolution reforms that would reflect best practices in the field. This argument stems from the fact that majority of the population in the affected countries are Muslims. As ADR is inherently and firmly established in Islamic legal principles, one would believe there should not be any problem in introducing such reforms. Even the non-Muslims, particularly Christians and Jews, residing in such predominantly Muslim countries should not have a problem with the reforms because their religious principles also agree with amicable resolution of disputes. Viewing dispute resolution from the religious prism may definitely bring about improved access to justice and establish common grounds among adherents of different religions. This study of three commonwealth jurisdictions with functional Sharī'ah courts should serve as a springboard for wider reforms in the administration of justice system in the Muslim world.

While socio-political and legal reforms are being carried out in some of the MENA countries, it is also important for policy-makers to consider the codification of relevant Islamic ADR processes specifically designed for different forms of disputes. The *Mejelle* – the Ottoman civil code – still offers a myriad of opportunities for the codification of relevant rules and principles of ADR in Islamic law. Besides, the great strides recorded in Malaysia and to some extent, Singapore, show some rays of hope in the ongoing reforms in the affected MENA countries. The recent report released by the Pew Research Center (2012) on democracy in Egypt reveals a tremendous increase (66 per cent) in those who believe Islam should play a major role in the political life of the country. The implication of these findings is the need to adapt principles of Islamic law, including those that provide for amicable dispute settlement in the administration of justice system, to modern needs through proper legislations and rules of practice and procedure in the courts. What is required at this stage of reforms is all-embracing and overarching policies that reflect the socio-political and cultural values of the region.

Implications for further research

This study, though limited to alternative dispute resolution in the Sharī'ah courts, raises some awareness in the field of Sharī'ah adjudication, particularly in Nigeria and the MENA countries, which calls for further studies in the field. The influence of colonial heritage on the Sharī'ah court process should gradually fade away with some needed reforms as proposed in this study. The implication of this issue for further research is that every judge of the Sharī'ah court is required to be learned in Islamic law, which includes the aspect of effective dispute resolution. One of the primary roles of judges in Islamic law is case management, which mirrors the classical duty of a judge during the early period when there was no clear differences between adjudication and ADR processes.

Moreover, there is the need for a comparative analysis of the effectiveness of the court-annexed ADR program in the Sharī'ah courts in the states across Malaysia. The relevant statistics from the states should be examined and analyzed in line with the underlying philosophy of the program. This will make a case for the need to scale-up some best practices and encourage the unification of such practices in all the courts across Malaysia (Abdul Hak and Oseni, 2011). Similarly, with the new Practice Direction on Mediation No. 5 of 2010 in Malaysia, the civil courts are encouraged to now consider the option of mediation in all cases coming before them. This should stimulate further thoughts, and possible research, on the need to streamline the provisions of this Practice Direction in the Commercial Division of the High Court in Malaysia. The reason for this line of thought is that the Commercial Division of this Court hears and determines Islamic banking and finance cases which ordinarily fall under the purview of Islamic law. The recently established Kuala Lumpur Court Mediation Centre will be a good platform for amicable resolution of Islamic finance disputes. Undoubtedly, the Islamic finance industry in Malaysia will benefit from a research on how to scale up the new initiative, especially when it involves the drafting of specific rules for the court-annexed mediation of Islamic finance disputes (Oseni, 2011a). Furthermore, a further probe into the modern relevance of *tahkim* in dispute resolution, particularly in Islamic banking and finance will be necessary, especially, with the growing resentment of practitioners on litigation of Islamic finance disputes that has proved, in most cases, to be counter-productive. This should be linked with the contemporary relevance of *tahkim* in

international commercial arbitration and the components of the former that should be considered as best practices that can be incorporated into the latter.

In-depth research on the automation of the Sharī'ah court proceedings and its significance in facilitating the proceedings will be necessary to modernize the court process. This will afford many parties the opportunity of conducing *sulh* or *tahkim* proceedings using videoconferencing. E-arbitration is currently being used for commercial disputes and domain disputes. The admissibility of electronic evidence in Sharī'ah arbitration proceedings also needs to be closely examined. This can also be exploited in the proceedings before the Sharī'ah court. Cross-border disputes involving parties from different parts of the world who hitherto were living together may be resolved through the automation of the court process.

Other processes of dispute resolution in Islamic law such as *muhtasib* and *fatwa al-mufti* should be further developed and incorporated into the modern institutions of governance. Further research needs to be carried out on the role of the *muhtasib* institution in good governance. In addition, *fatwa al-mufti*, which represents expert determination, will be a very useful tool for dispute avoidance; hence, further research on dispute avoidance using the *fatwa al-mufti* model in Muslim communities across the world will go a long way in reviving this institution. Far from merely issuing religious verdicts, *fatwa al-mufti* can be effectively utilized in dispute avoidance or early neutral evaluation to prevent further escalation of disputes.

To all intents and purposes, all the dispute resolution processes examined in this study can be incorporated into the modern judicial, political and socio-cultural institutions for better performance. Diligent efforts, through further research, toward the identification of some of these key aspects will benefit the society and the world at large. Experts must continue to play their prime role in excavating some of these treasures, which are lost in the books of Islamic jurisprudence, to introduce meaningful reforms in key areas of the modern world.

Conclusion

It appears the paradigm shift to amicable dispute resolution is a return to the traditional methods of dispute resolution. Islamic Law has modified and recognized these indispensable processes over the time. It is therefore the duty of the relevant authorities to incorporate and implement these processes in modern institutions to encourage the Sharī'ah principles of amicable settlement. While the current framework cannot be totally condemned because it serves a purpose, albeit on a limited scope, it is increasingly clear that the time is ripe for meaningful reforms that will have positive impacts on the lives and values of Muslims as well as non-Muslims who submit to the jurisdiction of the proposed court-annexed *sulh* program.

The Malaysian and Singapore experiences are definitely good examples of best practices in the field of dispute resolution in Islamic law, but in implementing a new model, caution must be exercised. Even though there are general principles regulating amicable resolution of disputes in Islamic law, the local variations in Nigeria and the MENA countries must be considered. As demonstrated in this study, the best practices must be adapted to suit the local variations of the Nigerian milieu particularly when one considers the attitude of people toward amicable settlement. But perhaps most significantly, the age-long traditions of the Africans and Asians, respectively, have more areas of convergence and this will be a good starting point for major reforms.

In conclusion, it is hoped that this study will be of immense benefit to the stakeholders of the Sharī'ah judiciary in Nigeria and contribute to the ongoing reforms in the MENA region. What has been presented here is just a humble effort to introduce major reforms to the *modus operandi* of the resolution of disputes in the Sharī'ah courts in the three commonwealth countries and the need to embrace the timeless wisdom contained in the treasure trove of the Sharī'ah with regard to effective and amicable dispute resolution as contained in its primary sources.

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Appendix

Table AI.
Total Number of *Sulh* Cases in the Sharī'ah Courts across Malaysia (January - October 2010)

No.	State	Previous balance	Registered cases	Completed cases			Total no. of completed cases	Pending at majlis ∅OUL ×
				Successful	Failed	Absent		
1	Johor	1,462	633	319	204	223	746	1,349
2	Kedah	231	723	542	87	71	700	254
3	Kelantan	537	208	83	51	125	259	486
4	Melaka						0	0
5	Negeri Sembilan	359	579	263	163	137	563	375
6	Pahang	271	248	77	43	126	246	273
7	Perak						0	0
8	Perlis						0	0
9	Pulau Pinang	404	308	113	77	118	308	404
10	Sabah						0	0
11	Sarawak						0	0
12	Selangor						0	0
13	Terengganu						0	0
14	Wilayah Persekutuan	1,422	1,071	554	274	238	1,066	1,427
Total		*4,686*	*3,770*	*1,951*	*899*	*1,038*	*3,888*	*4,568*

Source: Oseni (2011b)

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