



***CONCILIATION***

**UNCITRAL RULES OF ENGAGEMENT**

**BY**


***CHIDY LASBREY MARTINS***





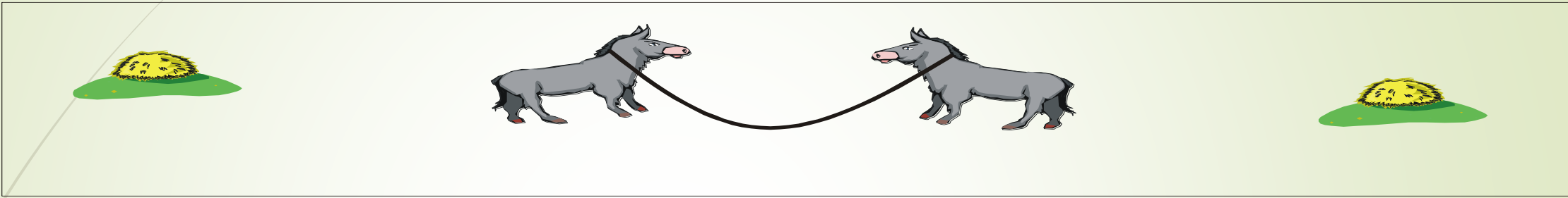
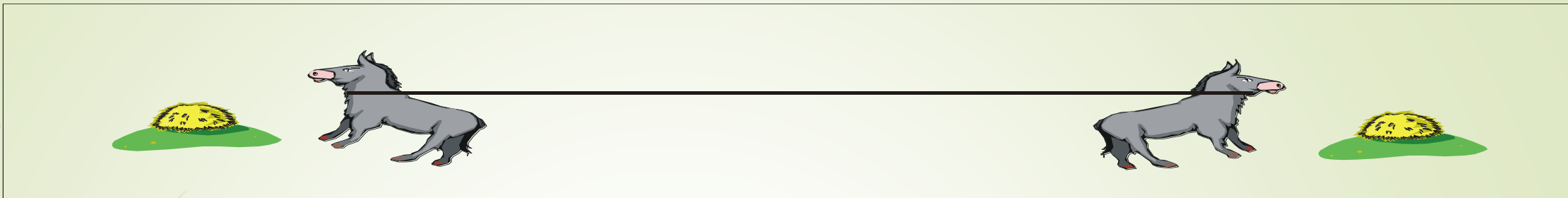
## ➔ PREAMBLE

- ➔ The judiciary globally is overburdened with case dockets and the numbers keep increasing by the minute.
- ➔ In today's world, we all need a judicial system that is quick, affordable and effective.
- ➔ It is a true saying that the Right to Speedy Trial is a Right to Life and to personal Liberty.
- ➔ Timely disposal of cases should indeed be a fundamental right of citizens.
- ➔ As justice delayed is justice denied.
- ➔ Hence the urgent need to seek alternative processes that will enhance speedy dispensation of justice.



**Conciliation** is basically a non-binding process in which an impartial third party is appointed, who assists the disputing parties in reaching a mutually beneficial agreement for the settlement of their dispute.

- The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- Similar to mediation in many ways, however, there are few striking differences.
- Hence we say that the difference between mediation and conciliation is like the difference between six and half a dozen.
- Though informal in some ways, the conciliation process is more formal than Mediation process in some ways:



QUESTION: What theme do you see developing here?

Answer(12 words or less):-----

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# ➔ THE CONCILIATOR

- ➔ The conciliator is supposed to be impartial and conduct the conciliation proceedings in an impartial manner.
- ➔ He is guided by the principles of objectivity, fairness and justice, and by the usage of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- ➔ The conciliator is not bound by the rules of procedure and evidence.
- ➔ The conciliator does not give any award or order.
- ➔ He tries to bring an acceptable agreement as to the dispute between the parties by mutual consent.
- ➔ The agreement so arrived at is signed by the parties and authenticated by the conciliator.
- ➔ In some legal systems, the agreement so arrived at between the parties resolving their dispute has been given the status of an arbitral or consent award.



# **SOME DIFFERENCES BETWEEN CONCILIATION AND MEDIATION**

- The Conciliator must be appointed.
- The conciliation process is backed by statutes.
- The Conciliator enjoys a wider latitude and privileges in his operation than the mediator.
- Looking at the various mediation models, one will discover that conciliation is aligned with evaluative mediation model
- The conciliator can carry on with his assignments to a reasonable extent based on documentary evidence.
- The conciliator can suggest settlement terms to the parties.

## ➤ **ARTICLE 1: APPLICATION OF THE RULES.**

- These rules are governed by party agreement to deploy conciliation as preferred option.
- The parties may agree to exclude or vary any of these Rules at any time.
- Where any of these rules is in conflict with a provision of this Act and any Law from which the parties can not derogate, the provision of the Law prevails.

## ➤ **ARTICLE 2: COMMENCEMENT.**

- The aggrieved party activates the dispute resolution clause in the agreement.



### ➤ **ARTICLE 3: NUMBER OF CONCILIATORS.**

- There shall be one conciliator unless the parties agree that there shall be two or three conciliators.

### ➤ **ARTICLE 4: APPOINTMENT OF CONCILIATORS.**

- One conciliator shall be jointly appointed
- In the case of two conciliators each party appoints one.
- If three are needed each party appoints one and the third appointed jointly.

### ➤ **ARTICLE 5: SUBMISSION OF STATEMENTS.**

- Upon appointment parties are to submit statements to the conciliator and exchange same among each other to facilitate response.

## ➤ **ARTICLE 6: REPRESENTATION AND ASSISTANCE .**

- The parties may be represented or assisted by persons of their choice.

## ➤ **ARTICLE 7: ROLE OF THE CONCILIATOR.**

- The conciliator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

## ➤ **ARTICLE 8: ADMINISTRATIVE ASSISTANCE.**

- The parties, or the conciliator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person.

## ➤ **ARTICLE 9: COMMUNICATION BETWEEN CONCILIATOR AND PARTIES.**

- The conciliator may invite or communicate with parties orally or in writing.
- He may meet or communicate with the parties together or with each of them separately.
- The conciliator after consultation with parties determines the venue of the conciliation.
- Unless the parties have a predetermined venue.

## ➤ **ARTICLE 10: DISCLOSURE OF INFORMATION.**

- Factual information are exchanged between parties to facilitate response.
- However, specific information meant to be kept confidential are not disclosed to the other party by the conciliator.

## ➤ **ARTICLE 11: CO-OPERATION OF PARTIES WITH CONCILIATOR.**

- The parties will in good faith co-operate with the conciliator and, comply with requests by the conciliator to submit written materials, provide evidence and attend meetings

## ➤ **ARTICLE 12: SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE.**

- Each party may, on his own initiative or at the invitation of the conciliator, submit to the conciliator suggestions for the

## ➤ **ARTICLE 13: SETTLEMENT AGREEMENT.**

- When the conciliator envisages that an acceptable settlement window exists, he formulates and submits terms of a possible settlement to the parties for their input. A final settlement agreement follows in line with their input.
- If the parties reach agreement on a settlement of the dispute, they draw up and sign a written settlement agreement.
- If requested by the parties, the conciliator draws up, or assists the parties in drawing up, the settlement agreement.
- The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

## ➤ **ARTICLE 14: CONFIDENTIALITY.**

- All matters relating to the conciliation proceedings are kept confidential including the settlement agreement.
- Except where its disclosure is necessary for purposes of implementation and enforcement.

## ➤ **ARTICLE 15: TERMINATION OF CONCILIATION PROCEEDINGS.**

- By the signing of the settlement agreement by the parties, on the date of the agreement;
- By a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration;
- By a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration;
- By a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration



## **ARTICLE 16: RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS.**

- The parties undertake not to initiate, during the conciliation proceedings:
- Any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings,
- Except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights


## ➤ **ARTICLE 17& 18: COSTS AND DEPOSITS.**

- The fee of the conciliator which shall be reasonable in amount.
- The travel and other expenses of the conciliator.
- The travel and other expenses of witnesses requested by the conciliator with the consent of the parties.
- The cost of any expert advice requested by the conciliator with the consent of the parties
- The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment.
- All other expenses incurred by a party are borne by that party.





## ➤ **DEPOSITS:**

- This has to do with administrative fees which takes care of logistics.
  - Equal deposits are made and requests for further deposits are made when necessary.
  - At the end of proceedings, accounts are rendered to the parties and any balance is given back to the parties as agreed.
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## ➤ **ARTICLE 19: ROLE OF CONCILIATOR IN OTHER PROCEEDINGS.**

- The parties and the conciliator undertake that the conciliator will not act as
  - An arbitrator or as
  - A representative or
  - Counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of the conciliation proceedings.
- The parties also undertake that they will not present the conciliator as a witness in any such proceedings.

## ➤ **ARTICLE 20: ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS.**

- The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings:
- Views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;
- Admissions made by the other party in the course of the conciliation proceedings;
- Proposals made by the conciliator;
- The fact that the other party had indicated his willingness to accept a proposal for settlement made by the conciliator

# ➤ **ADVANTAGES OF CONCILIATION**

- Conciliation is a quick, and cost effective way to resolve a complaint than litigation.
- It is confidential and is done behind closed doors.
- Conciliation when satisfactorily conducted and concluded enhances relationship between the disputing parties.
- The Conciliation process is flexible and can be designed to suit parties needs.
- Parties actively participate both in the process and in decision making.
- Participation is voluntary except if it is enshrined in a contract agreement or demanded by law.
- The outcome of a Conciliation process is always a mutually beneficial decision by the parties.

## ➤ CONCLUSION

➤ Even in our practice as Ombudsman, there is real need to upgrade our skills set with the inclusion of Alternative Dispute Resolution (ADR) processes as this will enhance the speed with which matters are satisfactorily resolved.

- One other area that ADR skills will assist us in our practice is in our approach to issues as ADR enhances our communication skills.
- Listening passionately to parties has a disarming effect and makes parties to be willing to listen to other peoples views.
- These are some of the strategies we need to deploy in our practice as Ombudsman to make our work more effective.
- The ultimate aim of Conciliation is amicable resolution of the dispute.

➤ **REF: UNCITRAL CONCILIATION RULES.**

# CONCILIATION WORKS





➔ *THANK YOU*

➔ *FOR YOUR*

➔ *KIND*

*ATTENTION*