AN ASSESSMENT OF MEDIATION IN CONFLICT MANAGEMENT IN AFRICA: THE CASE OF GHANA.

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LEGON JULY 2019
DECLARATION

I hereby declare that this dissertation is as a result of my own research conducted under the supervision of Dr. Ken Ahorsu. It has not been submitted by anyone for any academic award in this university or any other. All sources used in this dissertation have been appropriately acknowledged.

DONALD AMPOFO OSEI                  DR. KEN AHORSU
(STUDENT)                              (SUPERVISOR)

DATE.......................................                                                DATE.....................................
DEDICATION

To my parents Mr. Edmund Ampofo -Ntim and Mrs. Rose Ampofo- Ntim.

And my elder brothers Oliver Osei Banahene and Daniel Ampofo Okoampah.

And to my lovely wife Nancy Bannor Afrakomah and my adorable children Boakyewaa Ampofo-Ntim and Okoampah Ampofo-Ntim.
ACKNOWLEDGEMENT

‘‘Thanks be to God, who gives us the victory through our Lord Jesus Christ’’ 1 Corinthians 15 vs. 57. I give glory to God for making it possible for me to complete my study fruitfully.

My sincere gratitude goes to Dr. Ken Ahorsu, for his patience and guidance. My sincere gratitude also goes to His Lordship Justice Nene Amegatcher of the Supreme Court of Ghana, Dr. Afua Boatemaa Yakohene (Lecturer, Legon Centre for International Affairs and Diplomacy), Mr. Austin Gamey (Executive Officer, Gamey and Gamey Group) and Lawyer Martin Tieku Amoyaw (Eastern Regional Director and Acting Executive Director, Legal Aid Commission) for their immense support.

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Finally, to my wife, Nancy Bannor Afrakomah and my adorable children Boakyewaa Ampofo-Ntim and Okoampah Ampofo-Ntim, I appreciate your endurance and love.

To all those who encouraged me and contributed in diverse ways to help me to successfully conduct this research, I say a big thank you. God bless you all.
ABBREVIATIONS

ADR - Alternative Dispute Resolution
AU - Africa Union
ECOWAS - Economic Community of West African States
EAC - East African Community
RECs - Regional Economic Communities
DRC - Democratic Republic of Congo
UN - United Nations
LECIAD - Legon Center for International Affairs and Diplomacy
MII - Mediators’ Institute of Ireland
EU - European Union
IMI - International Mediation Institute
NGOs - Non-Governmental Organizations
USAID - United States Agency for International Development
COSATU - Congress of South African Trade Unions
FRELIMO - Front for the Liberation of Mozambique
RENAMO - Mozambique National Resistance Movement
CAR - Central African Republic
CPA - Comprehensive Peace Agreement
MFDC - Movement of Democratic Forces of Casamance
NGOs - Non Governmental Organizations
RGPC - Reflection Group for the Peace in Casamance
NPC - National Peace Council
DOVVSU - Domestic Violence and Victim Support Unit
GHACMA - Ghana Association of Certified Mediators & Arbitrators
IGAD - Intergovernmental Authority for Development
<table>
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<tr>
<td>CEPS</td>
<td>Customs Exercise and Preventive Service</td>
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ABSTRACT

This dissertation studied the need for contemporary mediation in Africa, specifically Ghana, and the effectiveness and efficiency of contemporary mediation in resolving conflicts in Africa. The study adopts a qualitative method, using both secondary data and primary data, which were gathered from the target population which consists of practitioners of ADR, academics with expertise in mediation and students of the University of Ghana. The findings of the study indicate that the administration of mediation and other ADR methods have been successful in improving the judicial system of Ghana and promoted peace and stability in various Ghanaian communities. An example of success chalked by mediation and other ADR methods include the successful resolution of major conflicts such as the Andani and Abudu conflict of the people of Dagbon state, leading to the installation of a new Dagbon King, Yaa Naa Abubakari Mahama, in January 2009. Despite the successes of mediation in Ghana, the study also found that mediation has not been successful in its attempt to resolve some disputes in Ghana; noticeable among them are the Kokomba and Nanumba conflicts in Northern Ghana and the Nkonya and Alavanyo crisis in the Volta region. The unsuccessfulness of mediation in resolving conflicts in Ghana is attributable to different challenges which are classified into three categories namely: Practitioner Challenges, Regulatory Challenges and Client Challenges. In order to make the administration of mediation more effective and efficient in resolving conflicts in Ghana, the study recommends that the government of Ghana should come out with an adequate remuneration package for Mediators and other ADR practitioners so as to get the best from them. The government should also adopt a project to comprehensively sensitize and educate the Ghanaian populace about the availability and the benefits of using mediation and other ADR methods in conflict resolution. Thirdly, the government of Ghana should come out with a regulatory body that will harmonize the activities of all the institutions that administer mediation in the country. Finally, the study also recommends that mediators and other ADR practitioners should fully comply with the code of ethics of ADR so as to gain the trust of community members, business men and the entire Ghanaian populace in the usage of mediation as an effective conflict resolution mechanism in Ghana.
CHAPTER ONE

INTRODUCTION

1.0 Background to the Study

During and immediately after the Cold War, there have been major challenges and attacks on existing state authorities and these caused several states in the international system to lose de facto control over parts of their territory.1 Due to these attacks on de facto governments, several conflicts and fighting had occurred along ethnic and territorial lines across the globe during and immediately after the Cold War. Most of these conflicts, however, took the form of intra-state or civil conflicts as compared to the inter-state conflicts that occurred during World War One and World War Two. The civil wars of the post-Cold War system caused deadly damages to humanity, properties and had long lasting negative effects on the development of several countries in the international system.2 The Bosnian War of 1992–1995; the Albanian civil war of 1997; the Kosovo War of 1998–1999; the Rwandan genocide of 1994; the Liberian Civil Wars of 1989 – 1997 and 1999 – 2003; the Ivorian wars of 2002 – 2007 and 2010 – 2011 are all examples of post-Cold War civil wars that led to destruction of lives and properties in the international system.3

In sub-Sahara Africa, the trends of intra-state or civil wars have drastically subsided over the years. Ethnic conflicts which have in the past led to the destruction of lives and properties of African countries have drastically reduced. Although intra-state or civil wars have subsided in most African societies, family, communal and industrial (organizational) conflicts are persistently on the increase.4 As individuals interact with each other in their families, communities and industries, disputes lead to diverse conflicts among people of the same family, community or industry.
Generally, family, communal or industrial conflicts in most African countries are resolved or managed through the orthodox court system. The orthodox court system however has several setbacks such as corruption, backlog of cases, delays in justice procedures, technicalities (difficulty in understanding) and expensiveness of arbitration process which undermines the ability of the court system to effectively resolve the numerous family, communal and industrial conflicts across most African societies.\(^5\)

In addition to the above setbacks of the orthodox court system, family, communal and industrial conflicts, unlike intra-state conflicts, are more relational and occur between people who have to live with each other in the same family or community or industry after the conflict has been managed or resolved. The emphasis on the orthodox court system is, however, to ensure justice without necessarily leading to true peace or reconciliation between the conflicting parties. This focus of the orthodox court system has therefore caused many divisions among members of the same families, communities and organizations to the neglect of finding true peace and reconciliation between disputants which is cherished by African societies.\(^6\)

As a result of the setbacks of the orthodox court system, coupled with the fact that the orthodox court system does not encourage true peace or reconciliation of disputing parties, some think-tanks, international organizations and governments across the international system suggested mediation as an alternative system of addressing and managing conflicts. For example, foreign direct investors, governments and foreign embassies which operate in different countries are much concerned about the length of time involved in the adjudication of industrial cases in courts and how this affects the operations of their businesses in foreign countries. Foreign direct investors, therefore, prefer the use of mediation in resolving industrial conflicts as compared to the orthodox court system due to the delay that is associated with the orthodox court system.\(^7\)
Mediation is defined as a process in which an impartial third party (a mediator) facilitates the resolution of a dispute(s) between two or more parties by promoting the parties voluntary agreement (or self-determination) of the dispute(s).¹⁸

Focusing on conflict situations in Ghana, it is important to state that although Ghana is relatively a peaceful country, there is ascendancy in the trend of family, communal and industrial (organizational) conflicts in the country.¹⁹ As individuals interact among themselves in their families, communities or industries, they offend each other and this leads to conflict in most Ghanaian societies. The conflicts that occur in the contemporary Ghanaian system are, therefore, more relational as compared to civil conflicts which may occur on ethnic basis and, as a result, the disputants may not have direct relations among themselves. It is, however, unfortunate that most of the conflicts that occur on family, community and industrial basis in Ghana are sent to the orthodox court system to be resolved and some of these cases remain in court as long as ten years. Due to challenges such as back log of cases, delay in court proceedings and the failure of the orthodox court system to promote true peace and reconciliation between disputing parties, the orthodox court system falls short of ensuring sustainable peace among disputants in most Ghanaian communities. This, therefore, led to the introduction of mediation into the Ghanaian legal system as an alternative dispute resolution mechanism. In Ghana, an Alternative Dispute Resolution Act, 2010 (Act 798) was enacted in 2010 to improve access to relatively cheaper and quicker justice. It was also to ensure a more affordable, amicable and reconciliatory peace and justice and to also reduce the setbacks associated with the court system in Ghana. It is important to mention that certain individuals such as Justice Nene A.O. Amegatcher, Professor Henrietta Mensah-Bonsu and institutions such as the California State University and USAID have made significant contributions to the establishment of Alternative Dispute Resolution in Ghana. They
trained chiefs, organizations and members of the society on how to use ADR methods to resolve their conflicts.

The practice of mediation in Ghana since the enactment of the ADR Act, (Act 798), in 2010 has been very smooth. The smooth operationalization of ADR in Ghana is mainly because, in reality, the principles of ADR have been in existence in Ghana as far back as the pre-colonial days. These principles have remained embedded in the various traditional norms and values of the Ghanaian society. In the past, most disputes were resolved through the extended family system using the principles of mediation. In the contemporary Ghanaian society, however, the extended family system continues to suffer a break down due to urbanization and rural-urban migration. The breakdown of the extended family in most Ghanaian communities is the main reason why Ghanaians have readily relied on the court trial process of dispute resolution which is very slow, expensive and cumbersome. The introduction of contemporary mediation to the Ghana legal system is, therefore, a step back into the past to readopt traditional African methods of resolving conflicts.10 This explains the reason why contemporary mediation is being widely used in Ghanaian communities to settle conflicts since the enactment of the Alternative Dispute Resolution Act (Act 798) in 2010. For instance, contemporary mediation was used in settling noticeable conflicts in Ghana, including the religious conflicts (ban on drumming) involving the Christian Churches in Accra and the Ga-Traditional Area in 199911; the Bawku Conflict (2007-2010),12 Kokomba-Nanumba Conflict (1994-2000); Dagbon Conflict (2002-2018), among others.

1.1 Statement of Research Problem

According to some researchers such as Kingsley Affrifah13 mediation had been a method of conflict resolution in traditional African societies prior to the adoption of the orthodox court
system during the colonial period of African countries. According to Kingsley Affrifah mediation and negotiation, which were the main tenets of traditional conflict resolution in African societies, are “the most appropriate civil, cost effective, mutual and less time consuming mechanism for resolving conflicts in Africa with the view to reconcile and unite African people to jumpstart its development”. Affrifah explained that mediation and negotiation were mostly appropriate for resolving conflicts in Africa because disputing parties settle their disputes, usually exercising greater control over the mediation processes and, therefore, come out with relatively cheaper, quicker and mutually beneficial solutions to their disputes.

Mediation, however, had been relegated to the background in most African countries during the colonial period when colonial masters introduced the orthodox court system to African societies. Also, during the early part of the post-colonial period, the extended family system (which serves as platform through which mediation was used to resolved conflicts prior to the colonial period) continued to suffer a break down due to urbanization and rural-urban migration. This further made Africans, including, Ghanaians to generally rely on the orthodox court trial process of dispute resolution which is very slow, expensive and cumbersome. The reintroduction of contemporary mediation in most contemporary African societies through the adoption of ADR, as done in Ghana, is therefore a step back into the past to readopt traditional African method of resolving conflicts.

With its reintroduction, contemporary mediation has helped Africans to settle some disputes within the African continent. For example, across the African region, mediation was used as a tool to intervene and manage the Liberian Civil War in West Africa (1999-2003); the threat to public order in Lesotho in Southern Africa (2014-2015); the conflict in Burundi in East Africa (1990-1994); and the intervention by the Intergovernmental Authority for Development (IGAD)
in Sudan’s civil war in Northeast Africa.\(^{17}\) Also, the former Tanzanian President, Julius Nyerere, personally used mediation to manage the tragic conflict between Hutus and Tutsis in Burundi.\(^{18}\) This led to the signing of the Arusha Peace and Reconciliation Agreement in 2000, widely known as the Arusha Accords.\(^{19}\)

It is almost about two decades now that the Alternative Dispute Resolution Act, 2010 has been passed.

The examples cited above shows that contemporary mediation is becoming widely accepted and its practice in African societies is gaining ascendency. The dissertation therefore investigates the administration of contemporary mediation in Africa specifically Ghana and find out the effectiveness and efficiency of contemporary mediation in resolving conflicts in Ghana.

1.2 Research Questions

1. What factors necessitated the adoption of mediation as a conflict resolution mechanism in Africa in general and Ghana in particular since the late 1990s?

2. What are the principles, policies, institutions and ethics that have been instituted that guide the administration of mediation in Ghana?

3. What are the challenges, if any, and successes made?

4. What suggestions can be made as solutions to improve the administration of mediation in Ghana?
1.3 Research Objectives

1. To ascertain the factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa in general and Ghana in particular since the late 1990s.

2. To ascertain the principles, policies, institutions and ethics that have been instituted that guide the administration of mediation in Ghana.

3. To ascertain the challenges, if any, and successes made.

4. To make suggestions as solutions to improve the administration of mediation in Ghana.

1.4 Scope of the Study

This study focuses on ascertaining the factors that necessitated the adoption of mediation as a conflict resolution mechanism in the African continent with specific focus on Ghana. This study establishes whether or not Africans and specifically Ghanaians are using mediation and other ADR mechanism to resolve their conflicts. This study will cover the usage of mediation on the African continent in the 21st century (2000 to 2018). The choice of the period between 2000 and 2018 is justifiable on the grounds that it serves as an adequate period within which a comprehensive analysis can be conducted into the phenomenon under study given the time constraints of this dissertation.
1.5 Rationale of the Study
This study will bring out the significant role that mediation has played in the management of conflicts in Africa specifically Ghana. The findings of this study will therefore inform and educate academics, researchers and policy makers on the types of conflicts that have been managed in Africa through mediation and the steps taken to manage such conflicts. In addition, this study will help increase the awareness of Africans, specifically, Ghanaians on the relevance of mediation as an Alternative Dispute (conflict) Resolution mechanism and thereby increase its usage among the Ghanaian populace. Finally, the findings of this study will be a valuable addition to the existing literature on the usage of ADR in Africa.

1.6 Hypothesis
Mediation played a significant role in the management of conflicts in Ghana from 2000 to 2018

1.7 Conceptual Framework
This study uses the concept of Peaceful Resolution of Conflict (PRC) as its framework. Conflicts are inevitable wherever one finds himself or herself because of group differences, resource scarcity, values and incompatible goals. PRC further states that instead of people adjudicating their cases, it is better they resolve their cases through lay down rules, institutions and principles. It states that all cultures of the world have mechanism for peaceful resolution of conflicts. PRC also lays emphasis on respecting the rights of minorities, the vulnerable and the environment. Some popular scholars of PRC include Johan Galtung and Louis Kriesberg.

The concept of PRC has been adequately criticized by scholars such as John Steadman who argues that while the principles of Peaceful Resolution of Conflict are easily comprehensible,
they are very difficult to practice. Human beings are violent, retaliatory and rational in their action.\footnote{22}

Despite the above criticism, the concept of PRC is very relevant to my study because in Ghana it has become very clear that adjudication of cases is very expensive, time consuming and very cumbersome. Justice is said to be served but peace is elusive and since parties are going to live together, peaceful resolution of the case is better. Since this study is being conducted in an African context and many traditional African justice systems promote creative, peaceful and progressive outcomes, PRC will serve as the best lens with which this study can effectively examine the relevance, awareness and usage of mediation (as an ADR tool) in conflict management in Africa with a specific focus on Ghana.

1.8 Literature Review

The following scholarly works, which are selected based on the objectives of this study, are reviewed.

1.8.1 The Use of General ADR Methods in Managing Conflicts in the International System

In “Are Alternative Dispute Resolution Methods Superior to Litigation in Resolving Disputes in International Commerce?”, Margaret Wang\footnote{23} examines whether or not ADR methods, including mediation, are more effective in resolving conflict in the international system compared to the use of litigation in the resolution of such conflict. The author focuses on international disputes that involve matters of trade and commerce. According Wang, most of the disputes in international commerce usually occur between disputing parties engaged in international sale of goods, international banking and finance, international construction work and foreign
investment, international licensing agreements and international carriage of goods. The disputes between these disputing parties are usually caused by a breakdown of the parties' existing commercial relationships or existing negotiation relationship such as, argument over payment for goods that the purchaser claims were defective. As such, disputants in most international commerce are business partners who usually want to find solution to their disputes and continue with their business relationships.

According to the author, Litigation, the traditional method used in settling international commercial disputes, emphasizes too much on the benefits of disputing parties and neglect parties business relationships. In litigation proceedings, the disputants expect that the one found guilty must pay for the wrong or be forced to compensate the other party. This tenet of litigation unfortunately does not help disputants in international commerce to find solution to their disputes and still continue with their business relationships. Due to this, disputing parties in international commerce prefer to use other dispute resolution methods, such as arbitration, negotiation and mediation (ADR methods) to resolve disputes in international commerce.

In her conclusion, Margaret Wang asserts that comparing ADR methods (arbitration, negotiation and mediation) to litigation in resolving international commercial disputes, ADR methods are generally superior due to their merits. These include the ability to allow the disputing parties' business relationship to be continued, speed of resolution, the low cost of ADR methods, flexibility, effectiveness, perceived fairness and confidentiality as well as privacy in the use of ADR methods.
The article is very relevant to my study because of the fact that ADR methods, including mediation, are increasingly being preferred and being used in resolving conflicts across the world as compared to the traditional method of litigation.

In “Alternative Dispute Resolution in Small States”, Anthony Connerty discussed the nature and the types of ADR systems that are used to resolve conflicts across the world. According to Connerty, ADR is the term used to denote methods of dispute resolution other than litigation and arbitration. The rationale for this distinction, according to Connerty, is the fact that both litigation and arbitration operate regardless of the will of the disputing parties and the result is a binding and enforceable outcome. In litigation, the accused person or the defendant has no choice but to participate in the process. In addition, he or she may be faced with a judgment that can be enforced under the law. Similarly in arbitration, Connerty stated that the outcome of the process is binding on the disputants based on the contractual agreement to arbitrate. The outcome of an arbitral system is often supported by state in order to make the outcome enforceable or binding on the disputants.

Unlike litigation and arbitration, Connerty indicated that the other forms of conflict management which are grouped as ADR (that is mediation or conciliation) are consensual processes which are not necessarily enforceable on disputing parties. With regard to ADR methods, Connerty mentioned that national courts will not enforce ADR agreements; and the ADR process, unlike litigation and arbitration, may not be subject to any statutory code. To Connerty therefore, ADR methods successfully help disputing parties to reach an amicable settlement that is acceptable to all the parties involved.
Connerty outlined how mediation is put into action at the Mayor's and City of London Court. According to Connerty, a mediation scheme was established at the Mayor's and City of London Court to deal with civil (i.e. non-criminal) cases. The scheme is guided by two major principles which are termed as the requirements of the scheme. The scheme should be inexpensive to operate and that cases sent to mediation under the scheme should be dealt with in a fairly short time scale.  

Anthony Connerty concludes that the mediation scheme serves as a suitable blueprint that small states might found useful for adaptation and practice. The article of Anthony Connerty is very relevant to my study because of the principles of the mediation scheme suggested by the author for small states to practice.

1.8.2 The Use of Mediation in the Resolution and Management of Conflicts in Africa

In “African-style mediation and Western-style divorce and family mediation: Reflections for the South African context”, Amanda Boniface conducts a comparative study to explore the principles and processes of both Western-styled mediation and African-styled mediation. Both Western-styled mediation and African-styled mediation are practiced in South Africa hence the need to conduct her study to explore the principles underpinning both styles of mediation. In her comparative study, the author focused mainly on the roles that mediators play in Western-styled mediation and the roles of mediators in African-styled mediation.

Amanda Boniface found out that during African-styled mediation, “there is a tradition of family neighborhood negotiation facilitated by elders and an attitude of togetherness in the spirit of human hood”. During African-styled mediation processes, the mediators do not only consider
the interest of the individual parties involved but also take into consideration the families and communities of the parties involved in the dispute before guiding the disputing parties to resolve their misunderstanding. African styled mediators show much commitment to the families and communities of disputing parties because they have comprehensive view of life. The commitment of Africa-styled mediators to comprehensive view of life is due to the fact that conflicts in Africa are perceived as non-isolated events and are viewed from their social contexts. As a result, the management or resolutions of conflicts are also treated as such.

With regards to Western-style mediation as being practice in South Africa, Amanda Boniface stated that the mediators are usually professionals who do not have a prior relationship with the disputing parties and as a result, do not take into consideration the families and communities of the parties involved in a dispute before guiding the disputing parties to resolve their misunderstanding. The mediators who practice Western-style mediation in South Africa are most often mediating Western-style divorce and family disputes. In her conclusion, Amanda Boniface recommended that practitioners of Western-style divorce and family disputes should learn from the principles of restorative justice applied during African styled mediation process.

The study of Amanda Boniface is very important to my dissertation because, the author is able to point out that mediation as practiced in the Western context can be very different from how it is practiced in the context of Africa.

In “The Challenges Facing Mediation in Africa”, Laurie Nathan outlines some of the major challenges that have constrained the effectiveness of mediation processes in Africa. The objective of this article is to contribute to strengthening of mediation in Africa by outlining some of the major challenges, lessons and capacity-building requirements that are needed to make
mediation more effective in Africa. Most regional organizations in Africa including the African Union (AU), the Economic Community of West African States (ECOWAS), East African Community (EAC) and other Regional Economic Communities (RECs) have a mandate to use mediation in peacemaking and resolution of conflicts on the African continent. Laurie Nathan indicated that the various regional groups in Africa and their member states have undertaken mediation in many countries, including the Democratic Republic of Congo (DRC); Ivory Coast; Lesotho; Burundi; Liberia; Chad; the Comoros; Zimbabwe; Sierra Leone, Somalia, Sudan”. The mediation processes in the above countries, according to Nathan, were sometimes done with the support of the UN, non-governmental bodies and international bilateral partners.

Most of the mediation processes in the countries stated above end up in the signing of peace agreement by the disputing parties. Laurie Nathan however argued that in some of the countries, the signing of peace agreement did not necessarily lead to the end of hostilities. This usually has dire consequences for the people of those countries. Although the failure of mediation is not necessarily the fault of mediators, the failures and challenges of mediation processes in Africa should make mediators on the continent think seriously about how effectively mediation can be used to effectively resolve conflicts and achieve sustainable peace. Laurie Nathan suggested that mediators on the Africa continent ought to be highly skilled and proficient to reduce the high risk of mistakes during mediation processes. Skillful and experienced mediators may not always be successful in resolving conflicts; however, their skills and experiences help them to have a wider range of tools and options to use during mediation as a result of their exposure and familiarity with mediation tactics and strategies. This helps skillful and experienced mediators to minimize the rate of mistakes and more likely to succeed than inexperienced mediators.
In his conclusion, Laurie Nathan\textsuperscript{44} emphasizes that in order to achieve sustainable peace in Africa, it is prudent for the AU, the RECs and other regional organizations to set up mediation units with the countries which would “undertake mediation and preventive diplomacy in situations of actual and potential conflict; provide early warning for the purpose of peacemaking; identify and facilitate participation in mediation-skills training courses; establish and maintain an information repository; undertake or commission research on mediation; identify lessons from peacemaking endeavors and ways of institutionalizing the lessons; and maintain a database of experts who could be called on to play various roles in peacemaking initiatives”\textsuperscript{45}.

The work of Laurie Nathan\textsuperscript{46} is very relevant to my studies because the author was able to point out the gap that exists in the operationalization of mediation in the context of Africa.

\textbf{1.8.3 The Use of Mediation in the Resolution and Management of Conflicts in Ghana}

In “Mediation with a Traditional Flavor in the Fodome Chieftaincy and Communal Conflicts” Ken Ahorsu and Robert Ame\textsuperscript{47} discuss how African traditional values, norms and practices can be blended with Western mediation processes to resolve conflict effectively and achieve sustainable peace and stability. The blending of traditional African mediation with Western mediation processes; termed “Mediation with Traditional Flavor”, provides an opportunity for mediators to merge the tenets of traditional African mediation, the Westminster judicial system and contemporary ADR mechanisms to effectively resolve conflicts and ensure sustainable peace and stability.
Ken Ahorsu and Robert Ame argued that although societies in Africa have experienced changes in their social formation, African values such as kinship as well as cultural bonds and practices have withstood modernization and are still functioning in African societies. These kinships as well as cultural bonds and practices therefore serve as emotional and social safety nets in African societies. Since Africans are committed to these fundamental ties which usually bind different African societies together, the commitment to these ties provide opportunity of common institutions, practices, interests, values and goals that can be used as avenues for resolving conflicts in African societies.

Using Fodome, a town situated in the Volta Region of Ghana, as a case study, Ken Ahorsu and Robert Ame explain how “Mediation with Traditional Flavor” provided an avenue for the Ewe’s traditional values, philosophy, symbolic orders, decorum and traditional discourses of peace and conflict to be used as a framework that incorporated contemporary ADR principles and norms (such as objectivity, transparency, neutrality, and structural transformation) in order to resolve chieftaincy and communal conflicts that took place at Fodome.

The “Mediation with Traditional Flavor” approach was very efficient in resolving the Fodome Chieftaincy Conflict because it facilitated easy commitment of the disputants to negotiate and arrive at a common resolution of their disputes. Also, since the approach was based on the principles of traditional cultural values and norms which are already known to the disputing parties, it helped the parties to easily build trust in the mediation process. The approach also aided the parties to easily accept the terms of the settlement as their own and as a result of the approach. The entire mediation process was responsive to mitigating conflict attitudes. Succinctly, the “Mediation with Traditional Flavor” approach is very successful in the resolution of conflict in an African context such as Ghana because the approach is a culturally attuned to
African values and norms. In their conclusion, Ken Ahorsu and Robert Ame emphasized that although major differences may exist between traditional mediation and contemporary ADR mechanisms, the amalgamation of the two styles of mediation is extremely advantageous and easy to convince disputing parties to the negotiation table as result of the influence of tradition on the parties.

The work of Ken Ahorsu and Robert Ame is very valuable to my dissertation because, not only did the authors outline how mediation was operationalized in a Ghanaian context but their work also explain the fact that contemporary mediation processes are best effective in an African context when is contextualized.

Despite its relevance to my dissertation, the article of Ken Ahorsu and Robert Ame is limited because; it focuses only on how the “Mediation with Traditional Flavor” approach was used in the resolution of the Fodome Chieftaincy and Communal Conflicts. This conflict is just one out of the many conflicts which was resolved using mediation in Ghana.

In “Procedural Justice Beyond Borders: Mediation in Ghana”, Jacqueline M. Nolan-Haley conducted a study in Ghana to find out whether or not disputing parties which experienced mediation processes in the settlement of their disputes were satisfied. Jacqueline M. Nolan-Haley indicated that the Act that regulates the operationalization of mediation and other ADR mechanisms in Ghana (the Alternative Dispute Resolution Act 2010) was enacted in 2010. The enactment of the ADR Act led to the mainstreaming of customary mediation and arbitration into Ghana’s civil justice system. Four years after the enactment of the ADR Act, Jacqueline M. Nolan-Haley therefore conducted her study to find out the degree of satisfaction that Ghanaians derived from their experiences of mediation processes.
The satisfaction that Ghanaians derived from their mediation experiences is based on whether or not disputing parties have procedural justice (fairness) during their participation in dispute resolution processes. Therefore Jacqueline M. Nolan-Haley measured the satisfaction that Ghanaians derived from getting access to justice through the use of mediation processes. Previous studies (Hollander-Blumoff & Tyler, 2011) show that when disputing parties report positive experiences of procedural justice, it is an indication that they are generally satisfied with the mediation process and they tend to comply with outcomes of mediation processes. Jacqueline M. Nolan-Haley was therefore guided by the findings of these previous studies.

She commenced her preliminary study during the summer of 2013 to investigate the experiences of disputing parties which participated in modern mediation in Ghana and their perceptions of the process. Her study on procedural justice framework find out “whether parties believe that their mediation experience was fair, whether they had an opportunity to express themselves during the mediation process, whether they felt they were treated with respect, whether, overall, they felt that the process was fair, and whether they were satisfied with the outcome”. Jacqueline M. Nolan-Haley found out that with regards to the question on the issues of ability to express one’s views, respect and fairness all the parties studied experienced high levels of procedural justice (fairness). However, on the question of satisfaction with the outcome of their mediations, the parties studied experienced a slightly lesser degree of procedural justice (fairness). In her conclusion, Jacqueline M. Nolan-Haley states that the common characteristics of procedural justice in Ghana are consistent with the findings on procedural justice in Western countries. This is because, “the opportunity to express oneself (voice), being treated fairly by the decision maker and feeling assured that she listened to them, and experiencing respect in the
process are as highly valued aspects of mediation in Ghana as they are reported to be in many
western cultures”. 62

The study of Jacqueline M. Nolan-Haley63 is very relevant to my study because, the findings of
the study reveal that mediation has chalked some successes as far as its implementation in Ghana
is concerned.

1.8.4 Summary of Literature Review

As outlined and discussed above, it is important to note that some scholarly works have been
done to study mediation in the international system as a whole. Other studies have also been
done in the African context to study mediation and more specifically, some studies have been
conducted in the Ghanaian context. Although scholars such as Margaret Wang, Anthony
Connerty, Amanda Boniface, Laurie Nathan, Ken Ahorsu & Robert Ame and Jacqueline M.and
Nolan-Haley have conducted studies on mediation, I am yet to find a study which was conducted
in Africa with a focus on Ghana to assess the role that only mediation (not all ADR mechanisms)
has played in the management and resolution of conflicts. Also studies which specifically assess
the awareness of Ghanaians about the usage of mediation as a conflict management mechanism
are either not done or are very minimal. These are two gaps in the existing literature on the use of
mediation in Ghana that my dissertation seeks to fill.

1.9 Sources of Data

This research made use of both primary and secondary data. Primary data was collected from
ADR practitioners, academics and students of University of Ghana. This was done through the
conduction of interviews. Secondary data, on the other hand, was collected from scholarly articles and books from the LECIAD library and the Balme Library.

1.10 Research Methodology

This study used a qualitative approach. Qualitative approach is a research approach to an inquiry involving the collection qualitative data. The chosen research method is appropriate for this study, due to its ability to help the researcher identify, explore, and explain the attitudes, actions and perceptions of people on the phenomenon under study. Specifically, data was collected using semi-structured interview guides.

1.10.1 Research Population

The study population consisted of three groups namely: the practitioners of ADR; academics with expertise in mediation and students of University of Ghana.

1.10.2 Sampling Method/Sample Size

The study employed purposive sampling method, where 2 ADR practitioners (His Lordship Justice Nene Amegatcher of Ghana’s Supreme Court & Mr Saeed Musah-Khaleepha, a Co-Founding Executive Director of Gamey and CO ADR Center) and 1 academic, Dr. Afua Boatema Yakohene (Research Fellow and Lecturer at LECIAD) were selected and interviewed based on the fact that they have acquired practical experience and knowledge on the awareness and usage of peaceful processes like mediation in conflict management in Africa and specifically Ghana.

In addition to the above respondents, researcher also used random sampling to select and interview 25 students of University of Ghana to ascertain their awareness and knowledge of the
usage of mediation as a tool for conflict management. The 25 students were chosen from a larger population randomly and entirely by chance such that each of the students had the same probability of being chosen.

In all, a total of 28 respondents were interviewed to gather the relevant data for this study.

### 1.10.3 Data Handling and Analysis

The semi-structured interviews were recorded electronically. The researcher, in adherence to ethics of social research, sought the prior consent of the respondents before the electronic record. The recorded data were transcribed verbatim and categorized into major themes that were based on the research questions and objectives. Related themes generated from the coded interview transcripts are analyzed in line with the research questions using thematic analysis.

### 1.11 Limitations of the Study

The Researcher sampled and contacted 3 (three) academics to be interviewed based on the fact that they have acquired practical experience and knowledge on the awareness and usage of peaceful processes like mediation in conflict management in Africa and specifically Ghana. However, only one (1) of them granted the researcher an interview. The responses of the other two academics were therefore not part of the findings of the study.

### 1.12. Arrangement of Chapters

Chapter one will be the introduction to the research.

Chapter two will be an overview of mediation as a conflict management tool in Africa.
Chapter three will focus on the assessment of mediation in Ghana.

Chapter four, the final chapter, will outline summary of the research findings, conclusions and recommendations.

Endnote


Ibid


Ibid


Wang, Margaret. Are alternative dispute resolution methods superior to litigation in resolving disputes in international commerce?. Arbitration International 16.2 (2014): 189-212


Ibid

Nathan, Laurie. The challenges facing mediation in Africa. AFRICA Mediators’ Retreat (2009).


62 Ibid


CHAPTER TWO
AN OVERVIEW OF MEDIATION AS A CONFLICT MANAGEMENT TOOL IN AFRICA

2.0 Introduction
This chapter examines mediation and discusses how mediation is used as a conflict management tool in Africa. Specifically, the chapter discusses the concept of mediation; the various types of mediation; African philosophy about peace; how mediation is developed and used in various sub-regions in Africa that is, Southern Africa, East Africa, Central Africa and West Africa. The chapter finally ends with a conclusion.

2.1 The Definitions of Mediation
According to Laurence Boulle and Allan Rycrof\(^66\), mediation is a procedure in which disputing parties discuss their disputes with the assistance of a trained impartial third person(s) who assists them in reaching a settlement. Mediation is also defined by David Kenny\(^67\) as a type of negotiation facilitated by a trusted neutral person, the mediator, who helps those involved in a dispute to sort out their issues and arrive at a consensus. Quite distinct from the above, mediation is also defined by the Mediators’ Institute of Ireland (MII)\(^68\) as “a process in which an independent, neutral mediator assists two or more disputing parties in resolving the dispute in a collaborative, consensual manner”. From a family perspective, Alexander Renata\(^69\) also defined mediation as a formal procedure whereby male and female partners meet with one or two mediators identify problems and attempt to resolve them by reaching some sort of agreement that sought to reduce or eliminate conflicts in the relationship of the parties involved. Deducing from the above definitions, I define mediation as a method of dispute resolution in which a neutral
third party, known as the mediator, assist two or more disputing parties to resolve the disagreement that led to the dispute between the disputing parties.

2.2 Various Types of Mediation

According to Zena Zumeta\textsuperscript{70} mediation varies and is conducted differently based on the nature of dispute to be resolved. As a result, there are different types of mediation. The various types of mediation that exist are therefore discussed as follows:

**Family Mediation:** According to Helen Cleak, Margot Schofield, and Andrew Bickerdike\textsuperscript{71} family mediation, which also include divorce mediation, refers to a process in which a mediator, an impartial third party, helps solve family disputes by encouraging the participants’ voluntary agreement. Succinctly put, John Michael Haynes\textsuperscript{72} also defined family mediation as a voluntary process that engages families to resolve disputes with the help of a third party. According to Cleak et al.,\textsuperscript{73} the family mediator assists communication, encourages understanding and focuses the participants on their individual and common interests. The family mediator works with the participants to explore options, make decisions and reach their own agreement. Joan Kelly\textsuperscript{74} also posits that family mediation is an excellent option of conflict resolution for families wanting to avoid a battle in court because it keeps the family together even after a dispute occurs.

**Community/ Communal Mediation:** As defined by Timothy Hedeen and Patrick Coy\textsuperscript{75} community mediation is the type of mediation that focuses on neighborhood conflict, with trained local volunteers serving as mediators. In community mediation, the mediators usually serve members of their community who cannot afford to utilize the courts or professional ADR providers.\textsuperscript{76} Justin Corbett and Wendy Corbett\textsuperscript{77} also posit that community mediation are typically targeted towards resolving disputes between landlords and tenants, members of
homeowners associations and small businesses and consumers are in the society. Most of these community mediation services are offered for free or at a nominal fee.

**Commercial / Industrial Mediation:** According to Julie Barker\(^78\), commercial mediation is “a flexible, voluntary and confidential form of alternative dispute resolution in which a neutral third party assists parties to work towards a negotiated settlement of their commercial dispute”. According to Julie Barker\(^79\), the cases of commercial mediation consists of first-party insurance claims, breaches of contract, business torts, eminent domain, mortgage foreclosures and real property boundary disputes. As a result, the parties to commercial disputes are usually business owners; banks; contractors; insurance companies; trust companies; real estate owners; governmental bodies; among others. Carlos Esplugues and Louis Marquis assert that commercial mediation is very beneficial to the parties involved because, the cases involved in commercial disputes are often difficult and expensive to litigate. Commercial mediation can therefore help business men to save huge sums of money and also allow the parties to resolve their dispute quickly and efficiently.

**Political Mediation:** According to Michelle Polato\(^80\) political mediation refers to the type of mediation which uses a diplomatic approach or a reconciliation approach to resolve disputes between parties in conflict through negotiation and exchange or transactions. According to Brayden King\(^81\), a political mediation is very relevant in the domestic affairs of states because of its ability to help resolve civil disputes caused by the activism of social movements such as political parties and civil societies. More importantly, the relevance of political mediation is mostly felt in the international system where the government officials of a third state mediate disputes between two different states or when officials of regional bodies such as the African Union (AU), European Union (EU) or the United Nations (UN) goes into a state to resolve civil
disputes in that state. Disputes caused by unconstitutional change of government are some examples of cases resolved through family mediation.

2.3. African Philosophy about Peace

According to Ergimino Pedro Mucale African philosophy is the philosophical discourse produced by indigenous Africans and their descendants including the African Diaspora. As explained by Ergimino Pedro Mucale, African philosophers worked on a wide range of topics similar to their Asian and Western counterparts. As a result, the contributions of African philosophers may be found in the various academic fields of philosophy, such as “metaphysics, epistemology, moral philosophy, and political philosophy”. One particular subject to which African Philosophers have made enormous contribution is the concept of peace.

From the perspective Africans, peace is defined as the existence of “values, attitudes and behaviors that reflect and inspire social interaction and sharing based on the principles of freedom, justice and democracy, all human rights, tolerance and solidarity, that reject violence and endeavor to prevent conflicts by tackling their root causes to solve problems through dialogue and negotiation and that guarantee the full exercise of all rights and the means to participate fully in the development process of their society”. In line with the above definition, Dr Tim Murithi, a Senior Researcher at the Centre for Conflict Resolution, University of Cape Town, South Africa asserts that among the indigenes of Africa, peace is not just the absence of violence, but the presence of social solidarity. As a result, an integral part of the process of achieving positive peace, among Africans, is the need to promote social solidarity.

As explained by Dr Murithi, achieving social solidarity among the residents of African communities demands that members of the society recognize each other as fellow human beings.
and share their concern in the common welfare and well-being of each other. This approach to social solidarity makes sense because “it is only by ensuring the security, safety and well-being of other people can we hope to secure our own security, safety and well-being. To emphasize the need to foster social solidarity is to recognize the inter-connectedness of each human being.”

The concept of social solidarity, as explained by Dr Murithi, shapes the understanding of peace from the perspective of African communities. This therefore explains the reason why the tenets of ADR mechanisms such as mediation, negotiation and arbitration, which aims at ensuring true peace and reconciliation among disputing parties, are gaining wide acceptance in African communities. With the above understanding of peace, it is important to discuss how mediation and other ADR mechanisms were adopted and are currently practiced in the different sub-regions of the African continent.

2.4 The Adoption and Usage of Mediation as a Conflict Management Tool in Southern Africa

According to the International Mediation Institute (IMI), an organization that transcends local jurisdictions to develop global, professional standards for mediators and advocates involved in collaborative dispute resolution and negotiation and situated in Netherlands, Southern Africa is one of the regions that has the fastest developing alternative dispute resolution (ADR) systems in Africa. The fast pace of ADR development, according to IMI, can be partly credited to the numerous NGOs financed by donors who undertook ADR efforts throughout Southern Africa and specifically in South Africa before the transition of the South African government from the apartheid to democratic regime.
Although mediation and other ADR mechanisms have been widely practiced in Southern Africa, most countries in the sub-region are yet to mainstream mediation into the legal and judicial system. For example in South Africa, apart from its domestic Arbitration Act (Act 42 of 1965), a new International Arbitration Act (Act 15 of 2017) was passed in 2017 to be used in dispute resolution. Although this Act focused on arbitration, which is a major part of ADR, the Act did not specifically focus on mediation.

According to Charles Nupen\textsuperscript{88} mediation has been used to resolve several disputes in South and Southern Africa. Whereas the use of mediation has been successful in the resolution of some conflicts, there have been some failures in the attempt to use mediation to resolve some conflicts as well. The success of mediation in resolving conflicts in South and Southern Africa has however depended on the acceptability of the mediators by the warring parties, the neutrality of the mediators in the process, the funding given to the process by the lead actors and the skill and knowledge of mediators on the causes of conflict, the parties, process and viability of the product of mediation.\textsuperscript{89} Among the conflicts that were peacefully resolved in Southern Africa is the 2007 South African public servants' strike.

The 2007 South African public servants' strike was a general strike of workers in the public sector of South Africa. It was led by the Congress of South African Trade Unions (COSATU).\textsuperscript{90} This conflict was mediated by Charles Nupen and Meshack Ravuku. In explaining the situations that led to the conflict, Charles Nupen mentioned that, the strike arose out of demands by South Africa's trade unions for the pay of civil servants to be raised by not less than 12%. The South African government offered a 7.25% pay raise but the trade unions refused to accept. As a result, virtually the whole public sector was on strike over wages and conditions of service. The strike was very serious that even essential service workers, particularly nurses, also participated in the
strike leading to a serious concern about the safety of patients, particularly in public hospitals. As a result two mediators, Charles Nupen and Meshack Ravuku\textsuperscript{91} were asked to mediate the conflict between the workers and the South African government in order to resolve the strike.

According to the mediators, the period of the strike was a much tensed moment in South Africa with daily mass demonstrations outside the negotiation venue. The mediators also indicated that there were incidents of violence and intimidation during the period of the mediation processes. For example one of the mediators, Charles Nupen, narrated that one evening, demonstrators broke into the negotiation venue and emptied fire extinguisher canisters into the air conditioning system. This contaminated the environment with a pervasive white powdery substance and had negotiators coughing, eyes streaming, heading for the exits. This therefore shows that the 2007 South African dispute was clearly not an ordinary dispute but a heated disagreement that needed to be resolved.

According to the mediators, although there had been some progress in the mediation process, when the disputing parties deadlocked two weeks into the strike, “they took the unusual step of issuing a single-text recommendation to settle all issues”.\textsuperscript{92} The mediators stated that they were roundly condemned in most part of the country for issuing a single-text recommendation, but ultimately, when the parties settled a few days later, their agreement was pretty much in line with what the mediators had recommended. Single text recommendation, as used by the mediators, refers to “a form of mediation that employs the use of a single document that ties in the often wide-ranging interests of stakeholders in a conflict”.\textsuperscript{93} In single-text mediation, parties to the conflict add, subtract and refine the text, which represents a “placeholder agreement” and is intended to be the foundation for a final ratified agreement. However, since all parties must agree to the final document and offensive entries may lead to a cessation of the process, disputants
must also be sensitive to how their changes to the text will be perceived by the other parties. The advantage of this model, as indicated by Shane Smith\textsuperscript{94} is the fact that it encourages disputing parties to talk to each other and to focus on each other's interests instead of drafting competing documents that meet only the interests of smaller coalitions. In other words, it helps disputants shift their attention from grievances and ill feelings of one another toward areas of agreement, mutual recognition of responsibilities and potential solutions. This therefore explains the reason why Charles Nupen and Meshack Ravuku used single-text mediation to successfully resolve the 2007 South African public servants' strike.

Another conflict that was resolved with mediation in Southern Africa is the Mozambican Civil War which was fought between the FRELIMO and the RENAMO from 1977 to 1992. FRELIMO refers to Front for the Liberation of Mozambique (FRELIMO), which was made up of the government of Mozambique, and RENAMO refers to the Mozambique National Resistance Movement (RENAMO), which were the rebels. According to Stephanie Schwartz\textsuperscript{95}, the Civil War started as a result of FRELIMO's attempts to establish a socialist one-party state in Mozambique. This decision was opposed by RENAMO which was heavily backed by the anti-communist governments in Rhodesia and South Africa. This therefore resulted in the Mozambican Civil War which lasted from 1977 to 1992. The Mozambican Civil War had adverse effects on human lives, properties and the development of the state. According to Alex Vines\textsuperscript{96} for instance, over one million Mozambicans were killed as a result of the direct engagement in the civil war whereas some of them were starved to death due to interrupted food supplies and an additional five million Mozambicans were also displaced across the Southern African sub-region and the African region at large. Alex Vines\textsuperscript{97} also indicated that the Mozambican Civil War destroyed much of Mozambique's critical rural infrastructure, including
hospitals, rail lines, roads, and schools. The destruction of lives and properties during the Mozambican Civil War is therefore an indication that the conflict leading to the civil war was very intense.

According to Cameron Hume, the mediation process which led to the resolution of the Mozambican Civil War, also known as the Rome General Peace Accords, was conducted between representatives of the FRELIMO and representatives of RENAMO. The negotiation process, which lasted from July 1990 to October 1992, took place in Rome and was mediated by a team of four mediators. The mediators included Andrea Riccardi and Matteo Zuppi (members of the Community of Sant'Egidio), Bishop Jaime Gonçalves and Mario Raffaelli, who was Italian government representative. According to Moises Venancio, the FRELIMO representatives at the mediation process were led by Armando Guebuza (who later becomes the President of Mozambique) whereas the representatives of the RENAMO were led by Raul Domingos. However, the peace agreement, after the mediation process, was signed by the then president of Mozambique, Joaquim Chissano, on behalf of the FRELIMO group and by Afonso Dhlakama who was the leader of the RENAMO group.

Commenting from the perspective of an eye-witness on the mediation process of the Mozambican Civil War, Cameron Hume, a former deputy of the US Mission at the Embassy to the Holy See, who represented the US at the mediation process at Rome, indicated that Mozambique's peace agreement constitutes an uncommon scenario in international conflict resolution. According to Hume, the mediation process of the Mozambican Civil War was uncommon because, it was one of the few cases where the “initiative, the pace, and the results of negotiations were determined not by diplomats but by the offices of the men and women of good will from Sant'Egidio, a Catholic lay order in Rome's Trastever district and by the clairvoyance
and determination of a formerly imprisoned Mozambican Catholic Bishop, Jamie Pedro Goncalves, Archbishop of Beira”.\textsuperscript{102}This therefore shows the team of four mediators was very instrumental to the attainment of peace during the conflict resolution process of the Mozambican Civil War. This assertion was confirmed by Gentili, Anna Maria\textsuperscript{103} who noted that the elements that have contributed to the success of the peace process were “timing, credibility, impartiality, and the skill of the mediation team”.

\textbf{2.5 The Adoption and Usage of Mediation as a Conflict Management Tool in East Africa}

In the East African sub-region, mediation and other ADR mechanisms which include negotiation, conciliation, mediation and arbitration are widely used in conflict resolution. However, most of the East African countries are also yet to mainstream ADR into their legal system. For example in Kenya, “there is no mandatory requirement for disputing parties to commercial litigation to submit to ADR proceedings”\textsuperscript{104}. However, in accordance to the Civil Procedure Act (Cap. 21 of 2010 revised in 2012), Kenyan courts may, either on the application of the parties or on its own motion, refer a commercial dispute to ADR mechanisms.

Gilbert Khadiagala\textsuperscript{105} however stated that in East African countries such as Kenya, Burundi, the Democratic Republic of the Congo, the Sudan and Rwanda mediation is used in the resolution of conflicts. For example, mediation was used by the government of Kenya to resolve Uganda's civil war in 1985; mediation was also used by Tanzania’s government to resolve Rwanda's civil war in 1992 and 1993; mediation was also used by former presidents Julius Nyerere (of Tanzanian)and Nelson Mandela (of South Africa) to respectively resolve Burundi’s conflict in
Apart from all the above mediators, a very prominent armed conflict mediator who used mediation to resolve several disputes in the East African sub-region as well as other parts of the African continent is Wairimu Nderitu, an internationally recognized armed conflict mediator and peace builder. As a result of her significant contribution to the use of mediation as a conflict management tool in East Africa and across the international system, Nderitu was awarded an inaugural Global Pluralism Award for her exemplary work in October 2017 by the Global Centre for Pluralism, an international education and research organization founded by the Aga Khan and the government of Canada.

Specifically on how former presidents Julius Nyerere (of Tanzanian) and Nelson Mandela (of South Africa) were able to respectively resolve Burundi’s conflict in 1995 and 2002, Gilbert Khadiagala indicated that the personality of the mediators involved in the mediation processes in the Eastern part of Africa, and for that matter Africa at large, contributes significantly to the success of mediation being used as a tool in managing conflicts. According to Gilbert Khadiagala, the status of elder statesmen such as Julius Nyerere, Nelson Mandela and Ketumile Masire has proven to contribute significantly to the success of mediation process when they are the mediators of conflicts as compared to mediation process that were mediated by incumbent presidents and foreign ministers or other type of mediators in East Africa. In the case of former president Nyerere's mediation of the Hutu and Tutsi conflict in Burundi for instance, Khadiagala noted that Nyerere's mediation relied on the collective will of regional leadership to ensure the success of the mediation process when he was called to lead the mediation in 1995.
As a result, when President Pierre Buyoya, then a coup maker, launched a coup against the weak Hutu government in 1996, Nyerere used his status to influence regional leaders to respond by imposing economic sanctions on Burundi. This imposition of regional sanctions became the first instance of collective action in the search for peace. These sanctions therefore succeeded in returning Buyoya back to the negotiating table in Arusha in 1998, restarting the mediation that Nelson Mandela inherited upon Nyerere's death in October 1999. This therefore indicates that the personality and the skills of mediators are highly significant in making mediation a successful tool in the management of conflicts.

2.6 The Adoption and Usage of Mediation as a Conflict Management Tool in Central Africa

In the Central African sub-region, some of the member states also use mediation but most are yet to make mediation an integral of their legal system. In line with this assertion, Enga Kameni, a manager of legal services of the African Import Bank in Cairo, Egypt for instance stated that “until recently, alternative dispute resolution mechanisms, whether mediation or arbitration, were largely conducted informally in Cameroon. This was due in part to the tradition of settling disputes amicably by village/community leaders outside of court. With the recent introduction of new legal systems in the country however, the traditional dispute settlement method gradually gave way to litigation”. Enga Kameni continued to state that “given that litigation is generally prohibitively expensive, with often lengthy and convoluted processes, there is renewed interest in arbitration and mediation. A number of African countries, including Cameroon, have therefore harmonized their business laws and created rules for arbitration in the Central African sub-region”
However, unlike the Southern and Eastern parts of Africa where mediation has been successfully used to manage and resolve significant number of conflicts, the usage of mediation as a conflict management tool seemed not to yield so much success in the central part of Africa compared to the earlier parts mentioned. For example with regards to the civil war in the Central African Republic (CAR), Marie-Joelle Zahar and Delphine Mechoulan indicated that the Central African Republic (CAR) has earned an undesirable reputation as one of the most troubled spots on earth mainly because several international and regional mediation efforts which have attempted to resolve the conflict in CAR have failed from 2012 until recently in February 2019 when the United Nations and African Union announced that a peace deal has been reached between the government of the Central African Republic and 14 armed groups after their first-ever direct dialogue aimed at ending years of conflict.

This statement about the consistent failure of mediation as a conflict management tool is also confirmed by Penelope Starr who indicated that the Central African Republic, which has been in a state of crisis from 2013, continues to struggle to chart a path towards reconciliation because a peaceful resolution of the conflict is still out of reach. According to Penelope Starr, one of the recent mediation process which failed to resolved the CAR conflict was a backroom negotiations orchestrated by Central African sub-regional mediator, Congolese president Denis Sassou-Nguesso, in Nairobi between the last two presidents of the CAR, François Bozizé and Michel Djotodia, who are the last two key figures in the CAR disputes in 2015. These two past presidents of CAR, François Bozizé and Michel Djotodia (who overthrew Bozizé) have been respectively presenting ex-Seleka and anti-Balaka, which are the two main parties to the CAR conflicts in all mediation process including the Nairobi negotiation orchestrated by Congolese president Denis Sassou-Nguesso.
Penelope Starr\textsuperscript{119} indicated that the Nairobi negotiations did not only fail but contributed to further confusion of the CAR crises and actually actively undermined the transition process.

Despite the past failures in the use of mediation to resolve the conflicts in CAR, the announcement made by the United Nations and African Union about the peace deal that has been reached between the government of the Central African Republic and 14 armed groups after their first-ever direct dialogue aimed at ending the CAR crises is an indication that mediation can be successful in managing the conflict situation in CAR. The above statement is in line with Marie-Joelle Zahar and Delphine Mechoulan\textsuperscript{120} who assert that although many international and regional mediation efforts have failed in the past to resolve the conflict in CAR, there are however multiplicity of local mediation efforts aiming to bring about tangible immediate change in CAR. This multiplicity of local mediation efforts, stated by, Marie-Joelle Zahar and Delphine Mechoulan\textsuperscript{121}, might have been the main contributor to the peace deal agreement that was reached between the government of the Central African Republic and 14 armed groups in February 2019.

2.7 The Adoption and Usage of Mediation as a Conflict Management Tool in West Africa.

In the West African sub-region, although mediation has been used to settle many disputes in the sub-region and is currently being used in post-conflict peace building processes in countries such as Liberia, Sierra Leone and Gambia, most of these countries have not fully passed a law to integrate ADR into their legal or judicial system. Ghana however successively inculcated ADR
into its legal and judicial system through an Act of Parliament known as the Alternative Dispute Resolution Act (Act 798) of 2010.

With regards to the usage of mediation in West Africa Okai, Nicholas et al\(^{122}\), stated that mediation has been widely used in West Africa by civil society organizations, governments as well as international organizations such as the UN as a tool to manage and resolve issues of coups d’état, unconstitutional changes of power, civil wars, violence from terrorist groups and other conflicts that have disturbed the peace of the sub-region. For example with regards to the civil war that occurred at Liberia, first from December 1989 to July 1997, and the second from April 1999 to June 2003, mediation was used by different mediators to help the warring factions sign as many as 15 peace agreements, including final Comprehensive Peace Agreement (CPA) that was signed in Accra in 2013. These 15 peace agreements were signed between the government of Liberia and non-state rebel groups and warring factions that were involved in the disputes. These agreements therefore led to the current peace and stability in Liberia.\(^{123}\) Although the mediation processes of the Liberia civil war were supported by various organizations including the UN and the AU, it is very important to point out that it was the final mediation and peace process that was led by Abdul Salami Abubakar (is a retired Nigerian Army General who served as the head of state from 1998 to 99) under the auspices of ECOWAS that brought an end to the hostilities in Liberia through the signing of the CPA on 18th August 2003.\(^{124}\) This therefore shows that the use of mediation as a conflict management tool was very effective in the case of Liberia.

Also in the case of Senegal, mediation was used in resolving the Casamance conflict which is one of the longest-standing conflicts in West Africa.\(^{125}\) Although the Casamance conflict was not as brutal in nature as the cases of Liberia, Côte d'Ivoire and Sierra Leone, it is a conflict that has
dragged on for more than three decades, making it one of the longest-standing low-intensity conflicts in West Africa. The conflict ensued between the Government of Senegal and Movement of Democratic Forces of Casamance (MFDC) since 1982.\textsuperscript{126} The conflict ensued because of resentment in the 1980’s about the marginalization and exploitation of Casamance, an area of Senegal south of the Gambia, by the Senegalese central government. This resentment gave rise to an independence movement in the form of the MFDC, which was officially founded in 1982.\textsuperscript{127} MFDC has therefore called for the independence of the Casamance region, whose population is religiously and ethnically distinct from the rest of Senegal. This led to several confrontations between the two warring factions. The bloodiest years of the conflict were during the 1992–2001 period and resulted in over a thousand battle related deaths.\textsuperscript{128}

Through the use of mediation, the hostilities of the Casamance conflict came to an end in April 2012 after the election of Senegalese President, Macky Sall. The mediation process that brought an end to the Casamance conflict was done under the auspices of Saint Egidio community in Rome and took place on 14 December 2012. When President Macky Sall assumed office, he indicated that resolving the conflict in Casamance would be among his topmost priorities. As a result, the president emphasized the need for assistance of international and national mediators to settle the disputes between his government and the separatist factions (MFDC).\textsuperscript{129} Due to this, the state approved the Community of Sant’Egidio to mediate the Casamance conflict. “The Community of Sant’Egidio is a Christian organization founded in 1968 by Andrea Riccardi. It engages in the peaceful resolution of conflicts, among other things. Its methods and status have enabled it to engage in successful mediation efforts in Mozambique, Guatemala, Kosovo and Liberia, among others.”\textsuperscript{130} In addition to the Community of Sant’Egidio, President Macky Sall also used another mediation team known as Reflection Group for the Peace in Casamance
(RGPC) which was headed by Robert Sagna. According to Okai, Nicholas et al, these two mediating groups inspired hope and confidence in the rebel groups as they are deemed neutral and independent. Specifically, the Community of Sant’Egidio began a negotiation process in Rome on 13th October 2013 where a delegation of the Senegalese government and the northern faction of the MFDC led by Salif Sadio were represented. This was the mediation process that brought an end to the Casamance conflict on 14th December, 2012.

Despite the above achievements of mediation in the West Africa, there is a current rise in the sequence of violence from terrorist groups, threats of secession and unconstitutional changes of power in the sub-region. It is therefore important for all the individual and institutional stakeholders as well as all West African states to adopt pragmatic measures of making mediation more effective as a tool to manage and resolve the plethora of potential conflicts emerging in individual West African states, including Ghana, and in the sub-region at large.

2.8 Conclusion.

This chapter examined how mediation is used as tool for conflict management and resolution in African countries. Specifically, the chapter discusses the concept of mediation; the various types of mediation; African philosophy about peace; how mediation is developed and used in various sub-regions in Africa that is, Southern Africa, East Africa, Central Africa and West Africa. The chapter finally ends with a conclusion.

As illustrated in this chapter, although the use of mediation as a tool for conflict management and resolution has been successful in most parts of Africa including the Southern, Eastern and Western parts of Africa, mediation has not been successful in managing or resolving conflicts in
the central part of Africa as expected. This therefore shows that, there is more expected from all
stakeholders of conflict management and resolution in Africa to ensure that mediation is more
effective in resolving conflicts on the African continent than it is now. The next chapter, chapter
three will specifically focus on the assessment of mediation as a conflict management and
resolution tool in Ghana.
Endnote

68 See http://www.themii.ie/about-mediation/about-mediation
77 Ibid
83 Ibid
84 Ibid.
81See https://www.imimediation.org/2017/12/09/adr-south-africa-brief-overview/
86Ibid
88Ibid
94Ibid
100Ibid

Ibid

See https://weinsteininternational.org/cameroon/

Ibid


Ibid


Ibid. p73.
131 Ibid
132 Ibid
CHAPTER THREE
THE ASSESSMENT OF MEDIATION IN GHANA

3.0. Introduction

This chapter presents findings on the assessment of the administration of mediation in Ghana based on the data that have been gathered from respondents. The analysis and interpretation of data were carried out in line with the research questions and objectives that were set for the study. Specifically the chapter is organized under four main sub-titles which include: factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa in general and Ghana in particular since the late 1990s; the principles, policies, institutions and ethics that have been instituted to guide the administration of mediation in Ghana; successes and challenges of administering mediation in Ghana; and mechanisms to improve the administration of mediation in Ghana.

3.1. Factors That Necessitated The Adoption Of Mediation As A Conflict Resolution Mechanism In Africa In General And Ghana In Particular Since The Late 1990s.

As indicated by Charles Nupen\textsuperscript{133} there is a surge in the use of mediation in managing and resolving conflicts in different parts of the African continent including Ghana. Although the tenets of mediation were originally practiced as part of conflict resolution mechanisms in traditional African societies, it is widely known that most conflicts in post-colonial African societies are resolved through the orthodox court system.\textsuperscript{134} The researcher therefore sought to
find out the factors that necessitated the surge in the embrace of mediation as a conflict resolution mechanism in contemporary African countries.

**3.1.1 Setbacks of the Orthodox Court System and its Failure to Encourage True Peace or Reconciliation among Disputing Parties.**

It is clear that mediation is increasingly being endorsed and used as a conflict resolution mechanism in most contemporary African societies mainly because of the failure of the court system to encourage true peace or reconciliation of disputing parties. Africans are interconnected through family, tribal or ethnic links. These links support a sense of oneness or a communal feeling in most African communities. As a result, disputes between two or more individuals; or two or more groups are expected to be settled peacefully to reconcile the disputing parties together in order to continue their communal living.\(^{135}\)

However, it is explained that the orthodox court system is structured to ensure justice between disputing parties without necessarily leading to true peace or reconciliation between the parties involved. The settlement of disputes through the court system has therefore resulted in divisions, hatred and individualism in most African communities. For Africans to prevent hatred and divisions among disputing parties, most people resolved to the use of contemporary mediation. For example, Mr. Saeed Musah-Khaleepha, a Co-Founding Executive Director of Gamey and CO ADR Centre; an institution that offers services in negotiation, mediation, facilitation and arbitration for instance indicated that,

Just like most societies across the world, Africans accept that their opinions and perspectives are bound to differ and yet that does not mean that people should necessarily avoid each other. Specifically, in African societies, people have interdependent relationships and as society people depend on each other for one thing or the other. As a result, mediation comes naturally as a preferred method for resolving disputes to ensure that Africans maintain cohesion that exist between states and within states. Contemporary mediation is therefore
increasingly accepted in Africa because it is a mechanism that maintains a very beautiful relationship with parties even as they make attempts to address their differences.

In line with the above respondent, the 25th student interviewed (hereafter referred to as S25) also mentioned that,

Africans see themselves as one people living in one society or community. As a result, their inter-relation and interdependence on each other is very high. African communities do not want to break this bond that exists among them even after conflicting situations. This explains why the preference for mediation as compared to the orthodox court system is increasing in most African countries.

The responses of the above respondents are in line with the findings of Kingsley Affrifah who assert that most think-tanks, international organizations and governments across the international system promote the use of mediation and other ADR mechanism as an alternative system of addressing and managing conflicts due to the fact that the orthodox court system does not encourage true peace or reconciliation among disputing parties.

Apart from the failure of the court system in ensuring true peace or reconciliation of disputants through the settlement of disputes, some respondents also indicated that most communities in Africa are resorting to mediation because of the myriad of problems that are associated with settlement of disputes through the court system. The court system has different setbacks including issues of corruption, backlog of cases, delays in justice procedures, technicalities (difficulty in understanding) and expensiveness of arbitration process which undermines the ability of the court system to effectively address the challenges of disputants. For example, the third student interviewed (S3) mentioned that,

Africans resort to mediation as a conflict resolution mechanism as a result of the several litigations on the continent which are very expensive to be pursued at the law courts.

According to the fourth student interviewed (hereafter referred to as S4),
Mediation is adopted in most African countries as a Conflict Resolution Mechanism because of the huge number of cases that are left with the courts to deal with. Over the years a number of cases go to court and we all know of how the court system works in Ghana. Adjournment upon adjournment and even at the end parties lose out and they do not even go back to pursue their cases again. But I think with mediation things are getting better.

The 10th student interviewed (hereafter referred to as S10) also mentioned that

Mediation became accepted by African countries because people felt that the court always ruled in favor of one party. Again in mediation after the entire process, parties can still continue with their regular relationship and still continue to have cordial relationship. But this is not usually the issue with the court system.

Lastly, the 23rd student interviewed (hereafter referred to as S23) stated that

There are a lot of cases which are being sent to the courts and in recent time, these cases are increasing. As a result the courts need another channel where such disputes can be resolved and as humans some people do not want their relationships with others to be distorted so they find mediation as a way of settling their disputes where both parties go home satisfied.

The above responses are in line with the findings of Shannon Blanton and Robert Blanton138 who assert that, as a result of challenges such as the backlog of cases, foreign direct investors and foreign embassies which operate in different countries are much concerned about the length of time involved in the adjudication of industrial cases in courts and how this affects the operations of their businesses in foreign countries. Foreign direct investors therefore prefer the use of mediation in resolving industrial conflicts as compared to the orthodox court system due to the delay that is associated with the orthodox court system.

3.1.2 Proliferation of Conflicts in the Post-Cold War Africa

On the inquiry about the factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa, particularly Ghana since the late 1990s, the researcher found that the numerous intra-conflict situations that characterized the African continent immediately after the cold war is a major factor that led to the adoption of mediation in
African countries. Most colonial masters of African countries divided African countries politically making some tribes or ethnic groups subservient to others. This has therefore sown a seed of hatred among various ethnic groups or tribes within most African countries. As a result, African countries experience various civil wars leading to devastating effects on people’s lives and properties. The Kosovo War of 1998–1999 and the Rwandan genocide of 1994 are examples of such devastating conflicts that were cited by the respondents. As a result of the prevalence of various civil wars on the African continent, UN peace operations such as peace keeping, peace building and peace enforcement were regularly carried out on the African continent during the post-cold war era. These peace operations are however usually done simultaneously with ADR mechanisms such as negotiation and mediation with the aim of resolving the dispute which led to such conflicts. Since the use of mediation during UN peace operations has proven to be successful in resolving conflicts in Africa, most African countries have therefore resorted to the use of mediation as a conflict resolution mechanism. According to Dr Afua Boatemaa Yakohene, a research fellow at the Legon Centre for International Affairs and Diplomacy (LECIAD) for instance,

In the post-cold war era, as a result of the latent hatred and divisions that existed in many African countries, many countries went up in flames and it was also a very difficult financial times for many countries. As a result, you would realize that during peace building or peace keeping, mediation or negotiation always comes in as a useful tool to resolve conflicts on the African continent.

In citing an example to buttress the above statement, Dr. Afua Yakohene asserts that,

When UN soldiers are on peace operations, they do not always fight. Behind the umbrella of fighting, diplomats and other states actors are always talking and they often use the tool of mediation to resolve conflicts between disputing parties. This therefore explains the adaptation of mediation by many African countries.
Similar to the responses of Dr. Afua Yakohene, the 1st student interviewed (hereafter referred to as S1) also stated that

I believe mediation was adopted by African countries due to the increase in wars and conflicts on the continent. Thus, to prevent further escalation of conflicts, mediation was adopted to bring about peace.

The 7th student interviewed (hereafter referred to as S7) also stated,

It became very necessary for African countries to adopt mediation in order to prevent the overspill of conflicts getting into other African countries. For example if the Rwandan conflict was not mediated upon, there was the possibility of it escalating into other African countries. Also to find solutions to the issues that most African countries were battling with it was very necessary to adopt mediation.

The above are in line with the findings of Gyimah-Brempong and Marva\textsuperscript{140} who stated that the civil wars of the post-cold war system caused deadly damages to humanity, properties and had long lasting negative effects on the development of several countries in the international system, especially in Africa. According to Gyimah-Brempong and Marva\textsuperscript{141}, the Bosnian War of 1992–1995; the Albanian civil war of 1997; the Kosovo War of 1998–1999; the Rwandan genocide of 1994; the Liberian Civil Wars of 1989 – 1997 and 1999 – 2003; the Ivorian wars of 2002 – 2007 and 2010 – 2011 are all examples of post-cold war civil wars that led to destruction of lives and properties in the international system. This therefore explains the fact that the adoption of mediation as a conflict resolution mechanism became very necessary on the African continent in order to end the above conflicts and also prevent the proliferation of conflict on the Africa continent.

3.1.3 The Usage of Mediation as Traditional System of Conflict Resolution in Africa Prior to the Colonial Era.
On the inquiry about the factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa, particularly Ghana since the late 1990s, the findings indicated that the usage of contemporary mediation as a conflict resolution mechanism is gaining ascendency in most African countries because of the fact that mediation was already a mechanism of conflict resolution that was used in most African communities prior to the colonial era. Conflict resolution in the social system of African countries, from time immemorial, was centered on the tenets of mediation and negotiation. Traditional African societies always have community elders or family heads and these community elders or family heads are people who are mindful of the fact that when there are conflicts or disputes and the disputants are part of their communities or their families, there is the need for them as the elders of the community or family heads to call the disputants together to settle the misunderstanding between them. The elders or family heads does this because they perceive their entire communities as one people and as a result they try as much as possible to ensure true peace among conflicting parties. This therefore explains the reason why African communities are so much receptive to the practice of contemporary mediation. For example, in an interview, His Lordship Justice Nene Amegatcher, a Justice of the Supreme Court of Ghana and one of the pioneers of ADR in Ghana indicated that,

Traditionally, our forefathers, community leaders and family heads have used mediation as an effective system of dispute resolution that has kept the family unit together. Traditional mediation however vanished during the colonial era when colonial masters came to introduce another form of dispute resolution (litigation through the law court) to Africans.

His Lordship Justice Nene Amegatcher continued to state that,

Currently, the colonial masters have themselves realized after several years that mediation is very good so they have gone to polish it up and they are bringing it back to us in Africa. Mediation is not something new that we are now inheriting from the colonial masters. It is something that we have practiced before but now it is being introduced to us with other additions and skills to make it work”. This is
why most African States adopt contemporary mediation as an effective dispute resolution mechanism.

In relation to the above response, the 20th student interviewed (hereafter referred to as S20) also mentioned that,

The adoption of contemporary mediation by most African States can be traced to our traditional system where the chief resolves dispute between parties through mediation in order to get a quick settlement of disputes that emanate between families.

Similarly, the 8th student interviewed (hereafter referred to as S8) also mentioned that,

Generally, people think that most Africans are litigants but that is not the truth. Most Africans are peace loving people so instead of going to court to litigate in adversarial mode, people tend to adapt to the mediation process where there is a win-win situation so there is peace. So the peace loving nature of most Africans has contributed to the adoption of mediation in most African countries.

The above are in line with Ahorsu and Ame who argued that African traditional values, norms and practices are easily adaptable to contemporary mediation and as a result, these traditional values, norms and practices can be blended with Western mediation processes to resolve conflict effectively and achieve sustainable peace and stability.

3.2. The Institutions, Principles, Policies And Ethics That Have Been Instituted To Guide The Administration Of Mediation In Ghana.

As indicated by Martinez-Pecino et al., although ADR mechanisms, such as mediation and negotiation, are becoming widely accepted in Africa and their usage in resolving conflicts in African communities is gaining ascendency, there is more work to be done by African countries to ensure that the general populace in African countries become aware of appropriate institutions, policies and other structures that can help them settle their disputes through mediation. The
researcher therefore sought to find out the principles, policies, institutions and ethics that have been instituted in Ghana to guide the administration of mediation in the country.

3.2.1 Institutions That Have Been Established to Guide the Administration of Mediation in Ghana.

Since the reintroduction of mediation into Ghana in the 1990s, there have been some mediation centers that have sprung up. These institutions can be categorized into two main groups namely: State institutions and non-state institutions. While state institutions are those that have been established by the government of Ghana to facilitate the administration of mediation, non-state institutions are those that have been established by individuals and private entities to administer mediation in the country.

With regards to state institutions, the National Peace Council of Ghana (NPC) is one of the major institutions that predominantly use mediation in addressing many disputes that come about in Ghana. The National Peace Council (NPC) of Ghana is an “independent statutory national peace institution established by the eight hundred and eighteenth (818) Act of the Parliament of the Republic of Ghana, named The National Peace Council Act, 2011." According to the Ministry of Interior, under which the NPC is situated, NPC consist of 13 members, representing various religious, social or political groups. The NPC is established to, inter alia, “harmonize and co-ordinate conflict prevention, management, resolution and build sustainable peace through networking and co-ordination; strengthen capacities for conflict prevention, management, resolution and sustainable peace in the country including but not limited to chiefs, women, youth groups and community organization; increase awareness on the use of non-violent strategies to prevent, manage and resolve conflict and build sustainable peace in the country; facilitate the
amicable resolution of conflict through mediation and other processes including indigenous mechanisms for conflict resolution and peace building; promote understanding of the values of diversity, trust, tolerance, confidence building, negotiation, mediation, dialogue and reconciliation”. As such the NPC is one of the institutions established by the government of Ghana to administer mediation to resolves disputes in Ghana. Mr Saeed Musah-Khaleepha, the Co-Founding Executive Director of Gamey and CO ADR Centre for instance cited an example that,

Through the use of mediation, the National Peace Council have offered considerable number of technical support to the committee of eminent chiefs that handled the Dagbon Chieftaincy disputes and convinced the disputants to sign a peace agreement leading to the installation of new king for the Dagbon state in January 2019.

Apart from the NPC, another State institution that was indicated by the respondents is the Ghana Legal Aid Scheme. Ghana Legal Aid Scheme is “a public service organization within the Justice delivery system of Ghana. It is one of the institutions over which the Ministry for Justice has oversight responsibility and is governed by a twelve (12) member Board of Directors. The Ghana Legal Aid Scheme operates countrywide from ten (10) offices in all the Regional capitals. The Scheme recruits Legal Aid Officers (ADR) and Lawyers in Ghana”. The Scheme is tasked under the Legal Aid Scheme Act 1997 (Act 542) to provide legal assistance to the poor and indigent, as well as other persons in the prosecution and defense of their rights under the Constitution of Ghana. To achieve this objective, the Scheme, inter alia, provides a team of alternative dispute resolution professionals, mediators and advisors who listen to the issues of the clients of the scheme and advise them on what to do. The scheme also tries in most cases to resolve the disputes of their clients amicably through mediation without litigation. This is why some of the respondents identified the Ghana Legal Aid Scheme as an institution established by
the government of Ghana to enhance the administration of mediation in Ghana. Dr Afua Boatemaa Yakohene, the research fellow at the Legon Centre for International Affairs and Diplomacy (LECIAD) for instance stated that,

As a result of the relevance of mediation, the government of Ghana has set aside some institutions to continue to use mediation legally and the Ghana Legal Aid Scheme is one of such institutions.

To add to the above, the Judicial Service of Ghana has incorporated mediation as one of the products that it is marketing now for settlement of conflict. Mediation is not running side by side with litigation or in competition with litigation but mediation has come in to make the Ghanaian justice system more efficient. His Lordship Justice Nene Amegatcher, a justice of the Supreme Court of Ghana for instance stated that,

A judge sitting or being called upon to resolve a dispute can look at a dispute and advise the disputants to go ahead with their case and lead evidence in litigation. But that same judge can look at another case, such as the cases involving families, and suggest that they can best be resolved through mediation in order to keep the family together, and as a result, that judge can recommend and suggest to the disputing party to go for mediation.

The above indicates that the Ghana Judicial Service has its own alternative dispute resolution division and through this medium, the Judicial Service trains lawyers, judges and other people towards the administration of mediation in order to have a perfect justice delivery system.

In relation to the above statement, Dr Afua Boatemaa Yakohene, the research fellow at LECIAD also stated that,

on the part of the state, the Judicial Service has its own court connected ADR, the Social Welfare, Labour Commission and Ghana Arbitration Centre which are all institutions that administer mediation in Ghana.
Apart from the above institutions, other state institutions that were identified by the respondents to be administering mediation in Ghana include the West Africa Dispute Resolution Centre, West African Network for Peace, Committee for eminent chiefs, the National Labour Commission and the Domestic Violence and Victim Support Unit (DOVVSU).

With regards to non-state institutions administering ADR in Ghana, the Ghana Association of Certified Mediators & Arbitrators (GHACMA), as a private association that trains professional mediators and arbitrators to administer mediation in Ghana. The “GHACMA is the network of professionals who offer affordable alternate dispute resolution services to business entities both large and small. They help disputants who are engaged in employment or contractual dispute or any other legal matter to find a solution to their disputes.”

The head office of GHACMA is located at Dzorwulu in the Greater Accra region. The second student interviewed (S2) for instance stated that,

Apart from the Ghana Legal Aid, the other institution I know is the Ghana Association of Certified Mediators & Arbitrators. They offer their services for a fee to whoever is willing to pay so that the association helps him or her or them to deal with any thorny legal issue.

In addition to the above, another private entity identified by the respondents is the Ashaiman Alternative Dispute Resolution (ADR) centers. The Ashaiman ADR centers include three ADR centers namely the Ashaiman Central ADR Centre; the Inter-Community Mediation Centre; and the Zenu Liberty ADR Centre which are all situated in the Ashaiman Municipal Assembly in the Greater Accra Region. These three ADR centers have promoted peace and stability in Ashaiman by helping the community members to settle disputes through mediation. For example in 2017, the Ashaiman Central ADR Centre, which is headed by Mr Gabriel Atsu, successfully settled 1,200 disputes out of 1,297 cases it received. The Inter-Community Mediation Centre, headed by
Mr Alfred Gudonoo, successfully resolved 980 cases out of the 997 cases it received. Lastly, the Zenu Liberty ADR Centre, headed by Mr Isaac Yaw Mensah, successfully settled 290 disputes out of 299 cases it received. Concerning the significance of the ADR centers in promoting peace and stability in Ashaiman, His Lordship Justice Nene Amegatcher, one of the justices of the Supreme Court of Ghana for instance stated that,

As at that time these ADR centers were setup, Ashaiman did not have a court. As a result, when people have conflict, they have to move all the way to Tema in order to have their conflicts resolved. So when mediation was started in Ghana Ashaiman was one of the areas we targeted as a flash point of conflict so we helped them to set up these centers.

The Gamey and Co ADR Centre is an important institution that also administers ADR in Ghana. The “Gamey and Co ADR Centre is a full service ADR Centre providing bespoke services and trainings in ADR especially on negotiations, mediation, facilitation and arbitration to meet the needs of commerce and industry, state and non-state agencies from different social structures as well as private individuals.”

The centre is chaired by Austin A. Gamey, “who has been the consistent and regular face and voice in the adoption, practice and advocacy of ADR in Ghana”. The centre consists of ADR practitioners whose combined experience adds up to hundreds of years of ADR and other professional practice. According to Mr Saeed Musah-Khaleepha, a Co-Founding Executive Director of the Centre for instance,

The centre which has been in the forefront in terms of mediation especially the resolution of industrial or labor disputes for more than 16 years intends to enroll retired judges especially for those who desire to use the ADR mechanism of Private Judging.

Concerning the operations of the Gamey and Co ADR Centre, Dr Afua Boatemaa Yakohene also indicated that,

The Gamey and Co ADR Centre provides resourceful training and consultancy in mediation.
These various institutions mentioned above are the ones that the researcher has found to have been established to administer mediation in Ghana.

3.2.2 Principles and Policies That Have Been Established To Guide the Administration of Mediation in Ghana.

When respondents were asked about their awareness of the principles or policies that have been formulated by the Ghanaian state to guide the administration of mediation in Ghana, majority of the respondents pointed to the Alternative Dispute Resolution Act (Act 798) of 2010. According to Kwadwo Sarkodie\textsuperscript{152}, the genesis of the ADR Act (Act 798) of 2010 can be traced to 1998 when the government of Ghana established a task-force on alternative dispute resolution as a result of the numerous complaints from the people of Ghana about the caseload in Ghanaian courts which was reaching unmanageable levels. These complaints therefore resulted into the drafting of an “Alternative Dispute Resolution Bill” which finally culminated in the Alternative Dispute Resolution Act (Act 798) of 2010.

Specifically, the ADR Act (Act 798) of 2010 is apportioned into five main parts. Whereas the first part comprised of provisions that should govern arbitration of cases in Ghana, part two focused on provisions that should regulate the mediation of disputes and part three consists of provisions on customary arbitration in Ghana. Part four consists of provisions on ADR centers whereas part five, the final part, outlined financial, administration and miscellaneous provisions concerning the administration of mediation and other ADR mechanism in Ghana.

Regarding the usage of the ADR Act (Act 798) of 2010 in the administration of mediation cases in Ghana, His Lordship Justice Nene Amegatcher, one of the justices of the Supreme Court of Ghana indicated that,
Alternative Dispute Resolution Act (Act 798) of 2010 has significantly improved contracts relating to investment in Ghana and therefore boosts the confidence of foreign investors to invest in the Ghanaian economy.

In his explanation of the above assertion, His Lordship Justice Nene Amegatcher stated that prior to the enactment of the ADR Act (Act 798) of 2010, most of the foreigners that invested in the country were not confident about the judicial process of Ghana. This is because, since they are foreigners, they do not fully trust the justice system in your country; they do not know the sort of judges Ghana has, whether they can be bribed or not, they do not know whether or not Ghanaian judges have the competence to resolve complex issues that would be referred to them.

According to Justice Amegatcher, the uncertainty of foreign investors about the judicial process of Ghana prior to the enactment of the ADR Act (Act 798) of 2010 is understandable because, when a country has a justice delivery system that only acknowledges litigation as the only one door to resolve disputes and the judges are from that country applying the country’s laws, people who are outsiders may not be very confident about the country’s judicial system. Foreign investors may therefore want to be masters of their own dispute resolution processes and as result, they usually find out whether or not there are other alternative disputes resolutions processes available in the country they want to invest in.

The passing of the ADR Act (Act 798) of 2010 in Ghana therefore introduced negotiation, mediation and arbitration as alternative dispute resolution processes so that investors coming into the country would be confident that this country has other alternative resolution. This therefore boosts the confidence of foreign investors to invest in the Ghanaian economy since they know they are not tied to only litigation in Ghana’s judicial system. So now in the contracts that foreigners sign in many investment agreements, they have their own dispute resolution mechanisms which ensure that they are part of the dispute resolution mechanism and they have a
hand in selecting who should be part of the judicial process even if it is an arbitration. To conclude his explanation, Justice Amegatcher indicated that in most of the contract agreements recently signed by foreign investors, their first line of action in resolving a dispute is to negotiate. The second line of action is mediation and third line of action, when mediation breaks down, is to go in for arbitration. His Lordship Justice Nene Amegatcher conclude by asserting that,

In all the above ADR processes, foreign investors have a hand in selecting who should be part of the process especially it comes to arbitration.

In relation to the above, Dr Afua Boatemaa Yakohene also asserts that the introduction of the ADR Act (Act 798) of 2010 has been very useful due to the fact that, the usage of the provisions of the Act has expedited actions regarding the resolution of noticeable conflicts such as the Nkonya-Alavanyo dispute and the Andani-Abudu conflicts of the people of Dagbon. Dr Afua Boatemaa Yakohene added that,

although the disputants in major Ghanaian conflicts such as the Nkonya-Alavanyo dispute and the Andani-Abudu conflicts had gone to court for litigation and injunction had been put on some parties to the conflict and some parties declared winners, there had been clashes after litigation proceedings since the parties declared losers refuses to understand so the conflict recurs again.

The usefulness of the ADR Act (Act 798) of 2010 therefore lies in its ability to legalize mediation through which parties in conflict can agree on their own solutions.

In addition to the Alternative Dispute Resolution Act (Act 798) of 2010, Mr Saeed Musah-Khaleepha of the Gamey and CO ADR Centre mentioned that there are certain provisions in the Ghana Legal Aid Scheme, the National Peace Council law and Chieftaincy Act which serve as a guide for an expeditious and consensual resolution of disputes through mediation. Also Justice Amegatcher indicated that in addition to the ADR Act (Act 798) of 2010, the Courts Act of 1993 Act 459 section 72 and 73 charges judges and those involved with dispute resolution to promote
settlement of dispute through reconciliation. According to Justice Amegatcher there is also the Ghana Investment Promotion Centre Act (Act 865) of 2013 which deals with investments and the commercial centre also making provisions that disputing parties can rely on to resolve their disagreements through mediation.

3.3. Successes and Challenges Of Administering Mediation In Ghana

In line with the earlier responses of the respondents of this study as stated above as well as the findings of Jacqueline Nolan-Haley, the administration of mediation has helped African countries including Ghana to find solution to plethora of conflicts which would have led to the destruction of many lives and properties. The achievement of peace and stability through the administration of mediation will however not be without challenges. The researcher therefore sought to find out the successes and challenges that are associated with the administration of mediation, particularly, in Ghana. The responses of the respondents with regard to the above question are analyzed as follows:

3.3.1 Successes of Administering Mediation in Ghana

As demonstrated earlier, it is very clear that the practice of mediation and other ADR methods have improved the judicial system of Ghana and promoted peace and stability in various Ghanaian communities. According to Dr Afua Boatemaay Yakohene for instance,

From the statistics of Ghanaian conflicts attempted with ADR, 60% of ADR cases have been successful.

In explaining the above assertion, Dr Afua Boatemaay Yakohene stated that human beings are such that they feel belittled if they should lose in a dispute. Once a party to a dispute feels belittled then it means that party will never agree to the decision of the court if the dispute was
settled through litigation. As a result, the court can say one thing and the party that lost in the dispute would do the other. But through mediation, disputing parties come to a position where all parties in the disputes gain to an appreciable extent. This win-win feature of mediation is the reason why most conflicts mediated are likely to be resolved rather than the winner takes all approach of the litigation through the law court.

According to His Lordship Justice Nene Amegatcher,

Mediation has been successful in Ghana because, it has been embraced by Ghanaians and many disputing parties resort to it when their attention is drawn to the fact that there are other alternatives to dispute resolution other than litigation. Mediation also reduces the period through which a case can be resolved as compared to litigation.

In his explanation of the above statement, His Lordship Justice Nene Amegatcher cited an example that although some lawyers had a challenge with mediation when it was introduced into the judicial process mainly for the fear that mediation will decrease the patronage of the services of lawyers, the same lawyers later embraced mediation when they were educated that parties to an ADR process like the mediation process cannot do without lawyers. Moreover, the lawyers were made to understand that mediation cases will help them to assist their client to resolve their disputes faster as compared to cases resolved through litigation.

Citing an example, His Lordship Justice Nene Amegatcher explained that comparing a case in which a client has a dispute with somebody and asked a lawyer to assist him/her to deal with the issue through litigation which could take up to five years and that lawyer charged 50,000 cedis and a different case in which a lawyer advised his/her client to use mediation and after three month the issue is resolved and the lawyer charged 20,000 cedis, it is very obvious that the lawyer in the second case can handle many cases within the period of five years and make much money than the lawyer in the first case. This is how come most lawyers have become convinced
and embraced the practice of mediation in the settlement of disputes in Ghana. Another success of mediation enlisted by the respondents is the fact that it has greatly contributed to the reduction of the backlog of cases in the orthodox courts in Ghana.

Contrary to the views of the above respondents, the 6th student interviewed (S6) stated that the administration of mediation has not been successful in Ghana. According to this respondent,

Mediation in Ghana has not been successful because, those who usually mediate cases in the country do not usually understand what mediation is about and how to use certain tools at their disposal to bring lasting solutions.

In explaining the above assertion, S6 indicated that most of the people chosen to mediate on major cases in Ghana are just people revered in the societies like pastors, chiefs and imams who may not have the necessary skills required to lead disputing parties to a successful resolution of cases. The lack of relevant skills by most mediators has therefore hindered the success of the administration of mediation in Ghana.

Similar to S6, the 7th student interviewed (S7) also indicated that although mediation has generally helped to curb some Ghanaian conflicts from escalating, mediation has also failed to resolve many conflicts in Ghana. Citing an example, S7 indicated that conflicts that have been mediated in the Northern Region of Ghana such as the Kokombas and Nanumbas has been going on for years and there have been various ways of finding resolution to it through mediation but it has yielded nothing. Also, S7 indicated that the Nkonya and Alavanyo crisis in the Volta region has not yet been resolved despite several attempts to settle this dispute. As a result, S7 concluded that ADR has not lived up to its expectations despite some successes that ADR has chalked.
The response of Mr. Saeed Musah-Khaleepha of the Gamey and CO ADR Centre is also partly in support of the contrarily views expressed by S6 and S7 as far as the success of administering mediation in Ghana is concerned. As indicated by Mr. Saeed Musah-Khaleepha,

although ADR and for that matter, mediation chalked some successes in resolving conflicts among disputing parties in Ghana, ADR is still trying to find its feet in the country. As a result, there is a lot that has to be done by practitioners like myself to push the ADR agenda forward.

The above responses therefore point to the fact that although the administration of mediation has chalked some successes in Ghana, mediation has failed in its attempt to resolve certain disputes. There is therefore more work to be done by practitioners of mediation to enhance the success of mediation as stated by Mr. Saeed Musah-Khaleepha.

3.3.2 Challenges of Administering Mediation in Ghana

To understand the limitation of mediation in Ghana and the factors that constrained its success in conflict resolution, the researcher sought to find out the challenges associated with the administration of mediation in Ghana. The challenges identified can be classified into three major categories. These categories include practitioner challenges, regulatory challenges and client challenges.

Practitioner Challenges

These are challenges that are associated with mediators, arbitrators or people who lead negotiations between disputing parties. A major practitioner challenge is with regards to the fact that parties in a dispute have the autonomy to choose their own mediator or arbitrator. This
therefore affects the work of some mediators since a mediator may not have an opportunity to handle a case for a whole year simply because parties do not accept him to mediate on their cases. This particularly happens in ADR centers where there are different mediators on roster and some never get to be accepted by disputants. In line with this, Mr Saeed Musah-Khaleepha of the Gamey and CO ADR Centre for instance stated that,

Some practitioners tend to become disillusioned because you could be on a roster at an ADR centre but the parties may not necessarily choose you. You could be there and the parties would be skipping you and for a year you may not have a case to handle.

Another challenge associated with practitioners is the fact that mediators and arbitrators are not adequately paid. As explained by the respondents, people usually think that mediation is for free. Due to this, mediators are not adequately remunerated after settlement of disputes. This therefore demoralizes some practitioners since mediation, and for that matter ADR, is also an occupation for its practitioners. There is therefore a need for ADR practitioners, both in the public and private sector, to be paid well for their services.

In addition to the above, most of the few ADR centers in Ghana do not have available conducive office space for mediators to feel comfortable to resolve cases. This therefore constrains the effectiveness of the work of mediators.

In addition to the above, there is an acute shortage of professional ADR personnel in most parts of the country, especially the rural areas. These areas however need the services of ADR practitioners since there are frequent disputes at rural areas in Ghana. The onus therefore lays on the government of Ghana and private entities to train enough ADR practitioners to settle disputes in most part of the country especially the rural areas.

**Regulatory Challenges**
Regulatory challenges are those associated with the government and private institutions which are at the forefront of enhancing mediation in Ghana. To start with, it is evident that the low level of sensitization and awareness creation which culminated in the ignorance of majority of the Ghanaian populace about mediation and other ADR mechanism is a major factor that has limited the impact of mediation in ensuring peace and stability in Ghana. If majority of the Ghanaian populace knew that there are alternatives means of dispute resolution, they may probably not go for litigation as their first option of dispute resolution. Dr Afua Boatemaa Yakohene for instance indicated that,

In marital disputes for example, oftentimes couples do not want their marriages to end. They want issues to be addressed so that their marriages still go on. However due to their ignorance of contemporary ADR methods, some of these disputes end up to be litigated and this results into the separation of some marriages. The third student interviewed (S3) also stated that,

I think there is lack of education on ADR so the education should get to the rural people who usually have conflicts so that they will stop putting so much money into litigation especially if they have issues amongst family members.

The fourth student interviewed (S4) is also of the view that,

The government is not doing so much to promote ADR because perhaps the government does not feel the impact of conflict immediately as compared to something that would bring them money. As a result, the government finds it difficult to commit more resources into ADR unlike institutions like CEPS where government put in more money. Majority of the Ghanaian populace, who are resident in rural areas, are not aware about the contemporary methods of ADR due to the lack of adequate sensitization and public education by the government and private institutions at the forefront of mediation. The awareness about ADR has only being created in some few cities in the country. The residents of the rural areas which mostly have conflicts and as a result needed to resolve their disputes through mediation are
however ignorant about contemporary ADR. This low level of sensitization is therefore a major challenge to the patronage of mediation in Ghana.

Again on regulatory challenges, the lack of the right of appeal when it comes to mediation cases is a major challenge. Unlike litigation when parties go to the high court and they are not satisfied with the ruling of the court can go to the appeal court or the Supreme Court, in mediation once parties agree and sign to the terms of the resolution that is final. With regards to this challenge, His Lordship Justice Nene Amegatcher explained that

> Even in arbitration which is a form of resolution, parties cannot appeal against the arbitrator’s decision. There is therefore a school of thought that says that ADR is risky because the moment the parties sign to the terms of the agreement, the case is closed and it cannot be appealed later.

This therefore scares people away from mediation since they may not have the chance to seek for redress if they feel cheated after the terms of agreement have been signed.

**Client Challenges**

These are challenges that are associated with disputing parties who decide to resolve their disputes through mediation or any other ADR method. The first challenge identified by most of the respondents is the fact that ADR decisions are not backed by law and as a result, they cannot be strictly enforced. Mediation decisions are mere agreements and as a result in situations where
one party of the dispute decides to go contrary to the agreement it become quite difficult to
enforce such an agreement. This is therefore a hindrance to the success of mediation.\textsuperscript{154}

In addition to the above, due to the fact that majority of Ghanaians are not aware that
contemporary ADR is part of the legal system of Ghana, ADR practitioners are face with the
challenge of low sensitization. There is the need to do a lot of advocacy and interactions with
people so as to reach out to client to file their cases for settlement.

Also, some clients and lawyers take advantage of the nature of ADR and misuse it as a form of
delay tactics especially in commercial activities. His Lordship Justice Nene Amegatcher for
instance cited an example that,

Some clients and their lawyers sometimes want to use mediation as a delay tactics
when they owe banks and is time for them to pay. Due to the fact that through
litigation, the court will order them to pay immediately, they will intentionally
abuse mediation under the guise of going to resolve their disputes with the bank
just to buy enough time to pay back their debts.

Some clients therefore abuse the non-enforcement nature of mediation to delay payment of their
business partner especially in commercial activities. This therefore undermines the justice that
mediation is expected to ensured.

\subsection{3.4. Mechanisms to Improve the Administration of Mediation in Ghana.}

In order to enhance the effectiveness of the administration of mediation in Ghana, the researcher
sought for suggestions from the respondents. The suggestions given by the respondents are
outlined as follows:

1. \textbf{Training of More Competent Mediators:} According to the majority of the respondents, in
order to enhance the effectiveness of mediation in Ghana, there is the need for more
professional and competent mediators to be trained to administer mediation throughout the
country. According to His Lordship Justice Nene Amegatcher for example,
One advantage of mediation is that it is not limited to lawyers. Engineers, architects, accountants, chiefs, teachers, doctors, nurses and so on can be trained in the act of mediation so that depending on the nature of the conflict they can bring their expertise to bear on the nature of the conflict and help to resolve it.

The above response indicates that many Ghanaians can be involved in the practice of mediation regardless of the occupation. The government as well as private entities, such as the Gamey and CO ADR Centre, should therefore educate more people on mediation and train them with the expertise required so that they can resolve disputes in their field of work, be it, the teaching, engineering, medical, or any other field.

2. Sensitization and Education about Mediation: There is the need for comprehensive sensitization and educational policy about mediation among the Ghanaian populace. Currently, the knowledge of the average Ghanaian about mediation is low. As a result, much sensitization and education is needed to be carried out by the government of Ghana and private entities at the fore front of mediation in order to make contemporary mediation comprehensible and accessible to the ordinary Ghanaian. In line with this, Mr. Saeed Musah-Khaleepha of the Gamey and CO ADR Centre stated that,

When citizens are educated on the relevance of mediation, they are offered a lot of opportunities to make their own choice when they have disputes. They have ADR mechanisms they can easily choose from with a lot of convenience and flexibility.

In line with education and sensitization, the seventh student interviewed (S7) also indicated that,

ADR principles should be inculcated into our school curriculum right from the nursery school up to the tertiary level so it becomes part of our upbringing. The above response is an indication that mediation will be effectively enhanced in Ghana if there is much advocacy among the Ghanaian populace as far as mediation is concerned.
3. **Setting-Up of More Private Mediation Centres:** There is the need to encourage the setting up of more private mediation centres. According to the respondents, the current mediation centres in Ghana are totally inadequate and all situated in some few cities in Ghana to the neglect of the rural areas. Dr Afua Boatemaa Yakohene for instance stated that,

> With the introduction of ADR into the Ghana legal system, people must know where to go to when they have a problem that needs to be resolve through ADR. The current ADR centres in the country are however not visible, even in the cities in which they are situated, and they are not even available in most rural areas.”

His Lordship Justice Nene Amegatcher also added his voice to the above statement by stating that,

> The government needs to set up more ADR centers and encourage the private sector to come up with more mediation centers. This is because, mediation is party driven and thrives best in the private sector other than the public sector. In order to enhance the administration of mediation in Ghana, the government and most especially the private sector must set up more mediation centers particularly in the rural areas of Ghana.

4. **Adequate Remuneration of Mediators**

In addition to the above mechanisms, another way to enhance the administration of mediation in Ghana is to adequately remunerate mediators and other practitioners of ADR. Just like judges in the orthodox law court, professional mediators and ADR practitioners also ensure justice in the society, promote peace and stability and even ensure true peace and reconciliation among disputing parties. Mediation is the main occupation of some of its practitioners. As a result, without adequate remuneration, mediators may be forced to quit their profession and seek for jobs in other sectors. This will go a long way to undermine true peace and reconciliation among disputing parties in Ghana. As a result, the government of Ghana as well as private mediation
centers which uses the services of mediation professionals should adequately remunerate mediators so as to get the best from them.

5. **Full Compliance to the Code of Ethics on the Part of Mediation Practitioners:**

Mediation thrives effectively on trust for the mediator. As a result, there is the need for mediators and other practitioners of ADR to positively and strategically conduct themselves in the society so as to gain the trust of the public, business community and the traditional institutions and get them to begin to use ADR especially mediation for the resolution of their disputes. Mr Saeed Musah-Khaleepha of the Gamey and CO ADR Centre for example cited an example that,

> It is not ethical as a mediator or an arbitrator to talk carelessly about things that everybody is talking about in the society. Because when it comes to the point of selection, disputing parties may look at your previous opinions, things that you may have written on social media and elsewhere to find out your biases. There is therefore a need for mediators and other practitioners of ADR to conduct themselves positively so as to end the trust of the Ghanaian public in order to enhance the administration of mediation in the country.

6. **Harmonisation of the Efforts of Mediating Organisations**

There are various government organizations such as the Ghana Legal Aid Scheme, the National Peace Council (NPC), the National Labour Commission and the Domestic Violence and Victim Support Unit (DOVVSU) who administer mediation to settle disputes. All these organizations however administer mediation differently and this may confuse the Ghanaian public about the appropriate way to administer mediation. As a result, the government of Ghana should come out
with a policy to harmonize all the efforts of these organizations so that the administration of mediation can be standardized through the country.\textsuperscript{155}

On the part of private institutions, there is the need for mediation efforts to be harmonized and standardized specifically with regards to the fees that are charged by the various private mediation centers in the country. Mr Saeed Musah-Khaleepha of the Gamey and CO ADR Centre for example stated that,

\begin{quote}
We still need to standardize fees in terms of how much we are going to charge for the services. Practitioners have various fee schedules.
\end{quote}

There is therefore a need for the government of Ghana to adopt a harmonization policy or come out with a regulatory body that will regulate the administration of mediation both in the public and the private sector. This will effectively enhance the administration of mediation in Ghana.

\section*{3.5. Conclusion}

This chapter presented findings on the assessment of the administration of mediation in Ghana based on the data that have been gathered from respondents. Using thematic analysis, the analysis and interpretation of data were carried out in line with the research questions and objectives that were set for the study. Specifically, the chapter answers findings the 1\textsuperscript{st}, 2\textsuperscript{nd}, 3\textsuperscript{rd} and 4\textsuperscript{th} research questions which respectively inquire about the factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa in general and Ghana in particular since the late 1990s; the principles, policies, institutions and ethics that have been instituted to guide the administration of mediation in Ghana; the challenges and successes of
mediation in Ghana; and suggestions that can be made as solutions to improve the administration of mediation in Ghana.

Also this chapter help the study to achieve its 1\textsuperscript{st}, 2\textsuperscript{nd}, 3\textsuperscript{rd} and 4\textsuperscript{th} objectives which respectively seek to ascertain the factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa in general and Ghana in particular since the late 1990s; find out the principles, policies, institutions and ethics that have been instituted to guide the administration of mediation in Ghana; find out the successes and the challenges of the practice of mediation in Ghana and finally make suggestions as solutions to improve the administration of mediation in Ghana.

The next chapter, chapter four, will focus on the summary of the research findings, conclusions of the study and recommendations of the study.

\textbf{Endnotes}


135Yakohene, Afua. Personal Interview. Research Fellow at LECIAD, Accra, Greater Accra Region, Ghana. Friday July 5, 2019


137Kyaadee, Sylvester. Personal Interview. Student at University of Ghana, Accra, Greater Accra Region, Ghana. Monday July 8, 2019}

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CHAPTER 4

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

4.0 Summary of Findings

The analysis of the responses gathered from the 28 respondents interviewed revealed that there are three major factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa and particular in Ghana. These factors include:

- The setbacks of the orthodox court system and its failure to encourage true peace or reconciliation among disputing parties; proliferation of conflicts in most African countries during the post-Cold War era; and the usage of mediation as traditional system of conflict resolution in Africa prior to the colonial era.

- Secondly, the responses of the respondents show that since the reintroduction of mediation into Ghana in the 1990s, both state and non-state (private) institutions have been established, respectively by the government and private entities, to administer mediation in Ghana. These institutions are therefore categorised into two main groups known as: State institutions and Non-State institutions. The state institutions identified by the researcher include the National Peace Council (NPC); the Committee for eminent chiefs; the Ghana Legal Aid Scheme; Court connected ADR services provided by the Judicial service of Ghana; the National Labour Commission; the Domestic Violence and Victim Support Unit (DOVVSU); the West Africa Dispute Resolution Centre; and West African Network for Peace. On the other hand, the Non-state ADR institutions that administer ADR in Ghana include Ghana Association of Certified Mediators & Arbitrators (GHACMA); the Ashaiman Alternative Dispute Resolution (ADR) centres; and the Gamey and Co ADR Centre.
The study also revealed that the Alternative Dispute Resolution Act (Act 798) of 2010 is the main policy document that guides the administration of mediation in Ghana. In addition to the ADR Act (Act 798) of 2010, the study also found out that certain provisions in the Ghana Legal Aid Scheme; the National Peace Council law and Chieftaincy Act (Act 818 of 2011); sections 72 and 73 of the Courts Act (Acts 459) of 1993; and the Ghana Investment Promotion Centre Act (Act 865) of 2013 all have provisions that guides the respective institutions to administer mediation in Ghana.

To add to the above, the study revealed that the administration of mediation and other ADR methods have been successful in improving the judicial system of Ghana and promoted peace and stability in various Ghanaian communities. Some of the success chalked by mediation and other ADR methods include the successful resolution of major conflicts such as the Andani and Abudu conflict of the people of Dagbon state leading to the installation of a new Dagbon King, Yaa Naa Abubakari Mahama, in January 2009.

The administration of mediation in Ghana is however not without challenges. The study therefore finds out that, the challenges associated with the administration of mediation can be classified into three main categories which include Practitioner Challenges; Regulatory Challenges; and Client Challenges. Whereas practitioner challenges refer to constraints that are faced by mediators, arbitrators or people who lead negotiations between disputing parties; regulatory challenges are those associated with the Government of Ghana and private institutions which are at the forefront of enhancing mediation in Ghana; and Client challenges are difficulties that are associated with disputing parties who decide to resolve their disputes through mediation or any other ADR method.
Finally, the study came out with six (6) mechanisms which can improve the administration of mediation in Ghana. These mechanisms include: the need for harmonisation of the efforts of mediating institutions in Ghana; the need for full compliance to the code of ethics on the part of mediation practitioners; the need for adequate remuneration of mediators; the need for the setting-up of more private mediation centres in Ghana; the need for the training of more competent mediators; and the need for a comprehensive sensitization and education about mediation in Ghanaian communities.

4.1. Conclusion of the Study

The conclusion of the study is that the administration of mediation and other ADR methods have been successful in improving the judicial system of Ghana and promoted peace and stability in various Ghanaian communities. This is mainly because, contemporary mediation and other ADR mechanisms have proven to ensure the attainment of true peace or reconciliation among disputing parties. As a result, disputes that occur between families, tribes, communities or business are mostly resolved through mediation and other ADR mechanisms as compared to litigation in the law court. The findings of the study therefore confirm the hypothesis of the study that: mediation played a significant role in the management of conflicts in Ghana from 2000 to 2018.

Although Ghanaians are increasingly becoming aware of the benefit of using mediation as a conflict resolution mechanism, this awareness is mostly in some few cities of Ghana. Majority of Ghanaians, who are resident at the rural areas, are ignorant of mediation and its inculcation into Ghana legal system as an alternative to litigation. This low level of sensitization and
awareness creation which culminated in the ignorance of majority of the Ghanaian populace about mediation and other ADR mechanism is a major factor that has limited the impact of mediation in ensuring peace and stability in Ghana.

If the government of Ghana can embark on a sensitization and an awareness creation project to educate and inform majority of the Ghanaian populace about the benefits of using mediation and other ADR mechanisms as an alternation to ligation, the impact of mediation in ensuring peace and stability in Ghana will be more effective and efficient than it is now.

**4.2. Recommendations of the Study**

Based on the findings of the study, the recommendations of the study are as follows:

- First and foremost, it is very important for the government of Ghana to adopt a project to comprehensively sensitize and educate the Ghanaian populace about the availability and the benefits of using ADR methods including mediation in conflict resolution. This is critically important because, although the researcher selected and interviewed 25 University of Ghana students who come from different parts of the country and as such represent the elite of Ghana, the responses of some of these students indicate that the knowledge of the average Ghanaian on the availability of mediation in Ghana legal system and the benefits of using mediation is very low. If people are ignorant about ADR methods such as mediation, how can they use them? The government of Ghana should therefore adopt and implement an advocacy and awareness creation project to inform and educate the Ghanaian populace about mediation.
Secondly, the government of Ghana should come out with an adequate remuneration package for Mediators and other ADR practitioners. Just like judges in the orthodox law court, professional mediators and ADR practitioners also ensure justice in the society, promote peace and stability and even ensure true peace and reconciliation among disputing parties. Mediation is the main occupation of some of these practitioners. As a result, without adequate remuneration, mediators may be forced to quit their profession and seek for jobs in other sectors. This will go a long way to undermine true peace and reconciliation among disputing parties in Ghana. As a result, the government of Ghana as well as private mediation centers which uses the services of mediation professionals should adequately remunerate mediators so as to get the best from them.

To add to the above, the government of Ghana should come out with a regulatory body that will harmonize the activities of all the institutions that administer mediation in the country. As revealed through the findings of this study, institutions such as the Ghana Legal Aid Scheme, the National Peace Council (NPC), the National Labour Commission and the Domestic Violence and Victim Support Unit (DOVVSU) all administer mediation differently and this may confuse the Ghanaian public about the appropriate way to administer mediation. As a result, the government of Ghana should come out with a regulatory body that will ensure that both public and private institutions that administer mediation in Ghana do so in accordance to the Alternative Dispute Resolution Act (Act 798) of 2010.

Finally, mediators and other ADR practitioners should fully comply with the code of ethics of ADR. This is very important because every mediation thrives effectively on trust for the mediator. As a result, there is the need for mediators and other practitioners...
of ADR to positively and strategically conduct themselves in the society so as to gain the trust of the community members, business men and the entire Ghanaian populace. This will convince people to trust the unbiased nature of mediation processes. The trust in mediation process will consequently increase the patronage of mediation among Ghanaians.
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APPENDICES

APPENDIX I

AN ASSESSMENT OF THE ROLE OF MEDIATION IN CONFLICT MANAGEMENT IN AFRICA: THE CASE OF GHANA.

My name is Donald Ampofo Osei. I am an MA Student from the Legon Centre for International Affairs and Diplomacy (LECIAD), University of Ghana. I am conducting a research on the above topic for the purposes of my dissertation. Kindly assist me by providing your responses to each question. All responses will be treated with strict confidentiality and used for academic research purposes only. No particular individual(s) or address will be identified in the results. Kindly respond as sincerely as possible. Thank you for your assistance. I am very grateful.

INTERVIEW GUIDE:

Office/ Position/ Status of respondent:

Number of years at post:

Objective 1. To ascertain the factors that necessitated the adoption of mediation as a conflict resolution mechanism in Africa in general and Ghana in particular since the late 1990s.
1. How would you define mediation as a conflict resolution mechanism?

2. Is there a need for mediation in Ghana?

3. From your perspective, what factors led to the adoption of mediation as a conflict resolution mechanism in Africa?

Objective 2. To ascertain the principles, policies, institutions and ethics that have been instituted to understand the administration of mediation in Ghana

4. Do you know any institution(s) that has been established in Ghana to help citizens understand the administration of mediation? If yes which institution(s) and what do they do?

5. Do you know about any policies that have been put in place to enable Ghanaians understand the administration of mediation in Ghana? If yes describe the policy?

6. Are you aware about the Alternative Dispute Resolution Act (Act 798) of 2010? What is it about?

Objective 3. To find out the successes if any and challenges made.

7. Will you say the administration of ADR has been successful in Ghana? Why?

8. What are some challenges that are associated with the administration of ADR?

Objective 4. To make suggestions as solutions to improve the administration of mediation in Ghana.

9. Which factors should be considered to improve the administration of mediation in Ghana?
10. Do you prefer the resolution of conflicts through mediation to the orthodox court system?

Why?

Thank you very much. I am very grateful.