THE INSTITUTION AND CHALLENGES OF
ALTERNATIVE DISPUTE RESOLUTION (ADR)
IN WEST AFRICA: THE CASE OF GHANA

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THIS DISSERTATION IS SUBMITTED TO THE UNIVERSITY OF
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ARTS DEGREE IN INTERNATIONAL AFFAIRS

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DECLARATION

I do hereby declare that this study has been conducted and written by me under the supervision of Dr. Ken Ahorsu. It is a result of an independent research and has not been previously submitted in part or whole for an award of a degree in this university or any other institution. All sources of information and views from other people used in the writing of this work have been duly acknowledged.

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DATE:....................................................
DEDICATION

To almighty Allah, the master and sustainer of the universe and my late mother, Sadia Idrisu. May Allah be pleased with your soul.
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<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tr>
<td>ADR</td>
<td>Alternative Dispute Resolution</td>
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<tr>
<td>CADRC</td>
<td>Central Alternative Dispute Resolution Centre</td>
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<tr>
<td>CAPCR</td>
<td>Centre for African Peace and Conflict Resolution</td>
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<tr>
<td>CSU</td>
<td>California State University</td>
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<tr>
<td>DANIDA</td>
<td>Danish International Development Agency</td>
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<tr>
<td>DFID</td>
<td>Department of International Development</td>
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<tr>
<td>ECOWAS</td>
<td>Economic Community of West African States</td>
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<td>ECPF</td>
<td>ECOWAS Conflict Prevention Framework</td>
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<tr>
<td>EU</td>
<td>European Union</td>
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<tr>
<td>USAID</td>
<td>United States Agency for International Development</td>
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<tr>
<td>GHACMA</td>
<td>Ghana Association of Certified Mediators and Arbitrators</td>
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<tr>
<td>GIZ</td>
<td>German International Cooperation</td>
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<tr>
<td>JS</td>
<td>Judicial Service</td>
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<tr>
<td>JSG</td>
<td>Judicial Service of Ghana</td>
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<tr>
<td>LEClAD</td>
<td>Legon Centre for International Affairs and Diplomacy</td>
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<tr>
<td>MDC</td>
<td>Multi-Door Courthouse</td>
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<tr>
<td>MED-ARB</td>
<td>Mediation and Arbitration</td>
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<tr>
<td>MIDA</td>
<td>Millennium Development Authority</td>
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<tr>
<td>NLC</td>
<td>National Labour Commission</td>
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<tr>
<td>PULSE</td>
<td>People Using Language Skills Effectively</td>
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<tr>
<td>RCICA</td>
<td>Regional Centre for International Commercial Arbitration</td>
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<tr>
<td>ToT</td>
<td>Training of Trainers</td>
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<tr>
<td>UNDP</td>
<td>United Nations Development Programme</td>
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<td>WADRC</td>
<td>West Africa Dispute Resolution Centre</td>
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ABSTRACT

The inevitable and ever-present nature of conflicts have tickled societies since time immemorial, to develop ways of managing and resolving conflicts arising from all levels in the society. Indigenes of West Africa and Ghana for that matter, no doubt, had comprehensive and pragmatic mechanisms for responding to conflicts. Colonisation and modernisation has however brought about the orthodox court system of resolving disputes which has suffered series of defects ranging from long delays, high cost, backlog of cases and corruption, leading to the adoption of ADR as a means of relieving the burden of courts and ensuring overall peace and security. Ghana has passed into law, a comprehensive ADR ACT (2010) and runs court connected ADR programmes in some courts with a dream to implement the programme in all district courts by 2017 to ensure timely and inexpensive resolution of disputes. Using Ghana as a case, this study upholds the argument that the recently adopted and integrated ADR mechanisms into the West African sub-region’s formal dispute resolution system falls in line with the African culture of dispute resolution notwithstanding the absence of old practices such as libation and sacrifices. With its character of less cost and joint problem solving and reconciliation, the study uncovered that parties who have resolved their disputes through this process are not only satisfied, but are prepared to recommend it to others. Insufficient ADR centres, scepticisms from judges and lawyers, inadequate practitioners, insufficient funding among others are however the factors militating the effectiveness of ADR. To ensure its effectiveness, the study recommends among others; the urgent establishment of the ADR centre and other infrastructure, increase public awareness, allocation of financial resources especially in training of more ADR practitioners and engage in quality control or monitoring of practitioners.
CHAPTER ONE
RESEARCH DESIGN

1.1 Background to the Study

The end of the Cold War saw a recommendation to African states, the adoption of Alternative Dispute Resolution (ADR) mechanisms as a remedy for their governance, economic and judicial crises management. ADR was seen as a pre-requisite for attracting foreign direct investment into the sub-region to jump-start its economic development. It was judged that West African traditional courts were often choked with unresolved cases for years. The perception was that the orthodox court system was largely inefficient and was often manned by corrupt personnel. The court system was judged as unattractive to investors who often want transparent, speedy, just and reconciliatory mechanisms for resolving business conflicts. Politically, ADR was prescribed mainly as a conciliatory mechanism for West African society which was riddled with political, ethnic and communal conflicts. The idea was that while conflicts are inevitable and ever present, new and more conciliatory means of managing them were necessary.

ADR was particularly recommended for West African societies because of the sub-region’s relative deprivation, lack of resources, utility of trust, and inability to reverse psychological traumas that often accompany involvement in violent conflicts. It was also seen as the best way to resolve civil and communal conflicts since the parties to the conflicts will continue to be interdependent. ADR was seen as a mechanism for avoiding retaliation and intractable conflicts.³ It is also judged as speedy, affordable, accessible, creative, enduring, more conciliatory, and self-administered form of justice than the other forms of conflict resolution. Many see ADR as a conflict resolution mechanism that West Africans can easily identify with.
This is because traditional African forms of “ADR” exist and are practiced in its varied forms in almost all West African societies, communities, families and organisations.

The institution of ADR in Africa came as a result of efforts made by the United States Agency for International Development (USAID) and the European Union (EU) to promote stability in developing countries and facilitate economic development by empowering civil structures, promoting access to justice and reforming the judicial systems. In Africa and West Africa in particular, Professor Ernest Uwazie, considered as father of ADR in Africa and the Centre for African Peace and Conflict Resolution (CAPCR) played a crucial role in the institution of ADR in West Africa and especially Ghana in the 1990s. Under Uwazie’s leadership, twelve legal professionals from the West African sub region, specifically from Nigeria, Ghana and Senegal were taken through an intensive Training of Trainers (ToT) on Alternative Dispute Resolution. The aim was to push agenda-setting policies that encourage the integration of ADR in to the West African legal system to effectively reduce the caseloads that have overburdened the courts. In Ghana, their efforts were further complimented by the Judicial Council, the Ghana Law School, Legon Center for International Affairs and Diplomacy (LECIAD) and a host of others who helped in sensitising the general public, traditional rulers, members of the bench and bar on the need for an effective ADR in Ghana’s dispute resolution system.

Ghana has recently passed into law, a comprehensive Alternative Dispute Resolution Act (ADR Act 798 (2010)) which mandates the establishment of ADR centres to facilitate the practice of alternative dispute resolution. Institutions such as the Association of Certified Mediators of Ghana (GHACMA), which engages in training personnel in ADR and also serve as disputes resolution agencies have also sprung up. The Judicial Service in Ghana run optional and mandatory ADR services. With the optional, also known as referral, the courts admonish parties in dispute to resort to the use of ADR. This is usually implemented by the high, circuit,
and magistrate courts. The mandatory approach on the other hand, is run by the commercial courts and ADR is integrated into the court process as a mandatory requirement. This is to provide transparent, efficient, inexpensive and above all, speedy resolution of disputes and prosecutions.\(^3\) Significant claims have been made by the Judicial Service of Ghana that the court sponsored ADR has impacted extensively in reducing the backlog of cases at the courts and lowering cost to litigants.\(^4\) This study seeks to assess the institution, practice and track record of ADR in Ghana.

1.2 Statement of the Problem

Alternative Dispute Resolution (ADR) is increasingly becoming a major component of effective dispute resolution in most West African countries. This has, however, occasioned many criticisms. Some of these criticisms bother on professional qualification and commitment of some practitioners. Others also argue that traditional African societies have practice these so called Western “alternative measures” for centuries before their recent adoption in Western developed societies and the only way its implementation can be relevant is to blend Western and traditional African mediation and arbitration processes.\(^5\) Given the varying perceptions of ADR, how have these perceptions hindered or promoted the institution of ADR in Africa? This study seeks to enquire into the implementation of ADR and see how successful it has been, how much it has contributed to judicial accessibility and find out the challenges bedevilling this relatively new dispute resolution system.

1.3 Scope of the Study

The thrust of the study is to ascertain the performance, as well as the gains and challenges associated with the adoption and operations of Alternative Dispute Resolution (ADR)
mechanism in the West African sub-region, with particular emphasis on Ghana, as one of the propellers of this wonderful idea.

1.4 Research Questions

➢ Is there the need for the institution of ADR in West Africa?
➢ What are the roles and philosophies of ADR?
➢ What are the successes and Challenges of ADR in Ghana?
➢ What can be done to ensure the effective and efficient operation of ADR in Ghana?

1.5 Objectives of the Study

The general objective of the study is to establish the need for the institution of ADR in West Africa as a whole and Ghana, in particular.

The specific objectives are to;

➢ Understand the roles and philosophies of ADR in Ghana.
➢ Decipher how much it differs or concurs with African traditional “ADR”.
➢ Provide suggestions to improve on the performance of ADR in Ghana.

1.6 Hypothesis

The research is premised on the hypothesis that ADR has modestly contributed to judicial accessibility and judicial governance in West Africa as a whole and Ghana, in particular despite the challenges it is facing.

1.7 Rationale of the Study

The use of alternative means to litigation in resolving disputes is touted as the most effective.

The reason is that, while litigation ensures that justice is served, peace and reconciliation are
far-fetched. ADR mechanisms however, has proven to be efficient in saving time, lowering litigation rates and allows factions to work for greater joint solutions. This study hopes to ascertain the effectiveness of its mainstreaming in to the West African dispute resolution system and add to the existing literature on its suitability or otherwise to the African settings.

1.8 Conceptual Framework

This study is situated within the concept of Alternative Dispute Resolution. The second edition of the “Glossary of Terms and Concepts in Peace and Security Studies” defines Alternative Dispute Resolution (ADR) as “A wide range of procedures and approaches other than litigation that aim to identify resolutions to conflicts that will be mutually accepted by the constituent parties. Alternative Dispute Resolution (ADR) has evolved and been adapted to address conflicts in political and international affairs, civil and human rights, corporate and commercial interests, and community and family issues. In these areas, it is used in the processes of arbitration, conciliation, mediation, mini-trials, negotiation, peer review, and rejuvenated or reformulated endogenous means of attending to disputes.”

Arbitration is viewed as an old alternative to litigation and is mostly effective in resolving disputes that are commercial in nature. By this method, parties mutually and freely choose a neutral arbiter to help them resolve their dispute by rendering a decision which is binding on them. Parties however are afforded the opportunity to make their conflicting cases. By mediation, a neutral and impartial third party facilitates communication between disputing parties in order for them to reach a mutually accepted resolution to their dispute.

Conciliation is very similar to mediation and both are often used interchangeably. In this instance, the neutral third party brings disputants together and recommend to them ways in which their conflict can be resolved without taking part in the process. In a mini-trial, there is
a structured information exchange where senior representatives of parties in disputes are authorized to settle the dispute. The process is not really a trial as the name may suggest. In negotiation, efforts are being made by parties to find a solution to their disagreement before going to court. This is usually characterised by making pledges and commitments aimed at reaching an agreement. ADR arose in the 1970s in the United States as a consensual and informal dispute resolution mechanism aimed at effectively reducing the backlog of cases that had overburdened the courts.8

Philosophically, ADR holds the view that conflicts are unavoidable and form an integral aspect of human relations. The idea is that societal conflicts, when allowed to grow can result in mass destruction and set societies to the path of backwardness. Proponents such as Kriesberg advocates the use of processes that enhances creative, peaceful and collective ideas in order to analyse, prevent manage and amicably resolve conflicts. For this to be effectively carried out, there should be the facilitation of communication, non-adversariality of the process, trust, justice, cooperation among parties, tolerance, reconciliation among others.9 Other advocates argue that judicial process, especially litigation, characteristically transform social conflicts to legal disputes. The resolution of certain matters are not suitable for litigation as it may heighten the dispute rather than resolve them.10 This has the potential of severing the relationship between parties who will be needing the service of each other in future. When parties are able to go beyond the legalities surrounding their dispute, creative and lasting solutions to issues that serve as catalyst to their dispute are often arrived at.

Critics of ADR since its early years in the West, argue that the visionless adoption of ADR will consequently lead to the debasement of the justice delivery process. Adjudication can serve justice effectively than all the ADR mechanisms since the power and control of the process are
in the hands of officials mandated by the state who act as trustees of the public and owe it a duty to reason. Owen M. Fiss argued, thus “Adjudication uses public resources, and employs not strangers chosen by the parties but public officials chosen by a process in which the public participates. These officials, like members of the legislative and executive branches, possess a power that has been defined and conferred by public law, not by private agreement. Their job is not to maximise the ends of private parties, not simply to secure the peace, but to explicate and give force to the values embodied in authoritative texts such as the Constitution and statutes: to interpret these values and to bring reality in accord with theory”.\textsuperscript{11} Harry T. Edward, also cautioned that the fast adoption of ADR could lead to the rule of law being substituted with values that are not legal in nature.\textsuperscript{12} Burnet raises issues with regards to the process in resolving disputes through ADR and questions its procedural quality.\textsuperscript{13}

However, proponents and practitioners argue that the \textit{raison d’etre} of ADR is not to replace or restrict formal judicial process of dispute resolution.\textsuperscript{14} ADR programmes are centred on ensuring equity not the rule of law and as such, incapable of setting legal precedents or effectively distort both legal and social norms.\textsuperscript{15} Advocates of ADR are mindful of the fact that not all legal disputes can be resolved non-judicially. The argument is that, the real issues or causative agents of conflicts should be discovered and design appropriate means to resolve them.

The relevance of Alternative Dispute Resolution to this study cannot be overemphasised. The West African sub-region has embraced the use of ADR as a means of addressing conflicts arising from politics, business, communal, land, labour and even interpersonal issues. More importantly, it is universally accepted as an effective remedy to the overburdened court system and the spiralling costs of litigation. Governments, faith based institutions, the legal profession
and the general public have all adopted the use of alternative measures other than litigation to resolve disputes in society. It is argued that the principles of ADR have been in existence since pre-colonial days. Traditionally, conflicts were amicably resolved without resorting to any formal or adversarial procedures.

1.9 Literature Review

In his article, “Alternative Dispute Resolution in Africa: Preventing Conflicts and Enhancing Stability”, Uwazie posits that a great percentage of Africans have lost confidence in their states’ courts to ensure timely and just closure to their cases.\textsuperscript{16} In post conflicts and fragile settings characterised by high tensions and malfunctioning justice systems, there is an urgent need for a “timely, accessible, affordable and trusted” dispute resolution mechanisms to resolve disagreements or disputes before they widen in scope and destruction. He asserts that in situations where the courts are involved, much emphasis is on addressing legal questions, while less or no attention is given to conflict resolution and mitigation which has the tendency of escalating disputes as it is assumed that real conflict begins after a judge proclaims winner in a case.\textsuperscript{17} The ability of citizens to have confidence in the justice sector of their country has serious repercussions on the governance of the society. From a survey conducted in 26 African states, he noted that “respondents who expressed confidence in their judicial systems were more than three times as likely to say they have confidence in their national governance.”\textsuperscript{18} Citizens’ confidence in the judiciary is tantamount to their judgements on their own governments.\textsuperscript{19} The use of antiquated structures, inadequate stenographers, manual records keeping and above all overcrowding of cases render the courts prey to manipulations. Meanwhile, there is a decline in the preference for traditional justice where citizens prefer their indigenous chiefs, spiritual leaders and clan heads to arbitrate and conciliate their grievances due to modernisation.
In his view, ADR institution has instilled and continues to instil confidence in the judicial system once more. Thus, backlog of cases, frequent adjournments, manipulations, exorbitant legal fees, amongst others, are absent in the ADR processes.

The use of ADR, Uwazie noted, places much emphasis on mediation as it focus mainly on the interests of parties unlike their negotiation positions. With mediation, claimants are offered the opportunity to be heard and processes ensure that parties arrive at a mutually beneficial solution. With the belief that their positions have been considered with seriousness, they easily embrace the resolution because their participation guarantees the integrity of the process. ADR with emphasis on mediation, in the assertion of the author, has saved many courts around the world to reduce backlog of cases, delays, cost to litigants, fair and prompt justice delivery and offer parties the opportunity to have control over their case resolution without feeling a sense of being side lined. On the track record of ADR in Africa, Uwazie further states that the idea of ADR is in tandem with traditional concept of African justice due to its core values of reconciliation. Positive results from the pioneering ADR projects in Ghana, Ethiopia and Nigeria in 2003 were a manifestation that ADR is suitable in African settings. He concluded by stating that the use of ADR can serve as an effective dispute settlement system and close the gap between formal legal system and traditional modes of African justice. Its institutionalisation into the legal system of Africa will ensure security and development.

For the institution of ADR in African dispute resolution systems, he calls on governments and international partners to invest in training and infrastructural support for ADR networks composed of mediators and advocates to ensure the continuous advancement of best practice. He also calls for capacity building training for legal professionals, religious leaders, traditional
authorities, election officials, police and security personnel among others. The creation of appropriate incentives for stakeholders is also necessary to broaden the adoption of ADR mechanisms.\textsuperscript{21}

Uwazie’s thesis is relevant to this work because it emphasises the use of timely, accessible, and trusted mechanisms in resolving disputes as a way of ensuring peace, security and good governance in Africa. However his assessment on ADR projects in the named countries was not comprehensive as it was on based on pioneering projects as a “small” success chalked may be hyped and established project comes with its own challenges. Again, Uwazie does not touch the socio-cultural and politico-traditional discrepancies which could stifle smooth implementation of ADR operations in those countries. Despite these concerns, ADR can succeed when all stakeholders give the needed support it deserves to flourish.

In “Mediation with Traditional Flavour in the Fodome Chieftaincy and Communal Conflicts”, Ahorsu and Ame, advocate the use of “culturally tuned indigenous values, norms and ethnographic practice as foundations for conflict resolution,” they argue that though African societies have embraced modernisation and undergone various changes, elements such as kinship, cultural bonds and practices still exists and play influential role in the lives of many.\textsuperscript{22} As a result of these commitments, an effective dispute resolution mechanism should involve a blend of indigenous or ethnographic means of resolving disputes with the “imported” western mediation processes.\textsuperscript{23} Their argument is that the recently promoted conflict resolution mechanisms are wholesale western in perspective transmitted to African settings without due cognisance for the gaps in development, consciousness, rationality and sociocultural differences between the developed nations of the West and the developing African nations. While admitting that ADR is efficient in saving time and economical with regards to litigation
rates and more importantly, allowing disputants to work for greater joint solutions, attention
must also be focused on their cultural mediation and arbitration procedures and practices of
indigenous people and indeed, be blended with the Western forms of resolution.  

A prerequisite for an effective conflict management, according to the writers, are those that
parties in dispute can identify with as their own. Therefore, an understanding of the
sociocultural locales within which conflict occurs “should constitute the primary unit of
analysis, and also the appropriate source of models for preventing, managing, and resolving
conflicts and facilitating new relationships.” The authors effectively demonstrated the
application of this method through the mediation with traditional flavour approach in 2008-09
to resolve a protracted chieftaincy and communal conflicts in the Fodome traditional area
among the Ewe people of the Volta region of Ghana; dating back to the 1940s which were
prosecuted at the law courts with some moving as far as the Appeal Court without success. The
mediators cum authors, while adhering to principles of contemporary mediation, complimented
it with traditional philosophy, institutions, symbolic orders, practices, norms and discourses in
the mediation process to successfully bring the dispute to an end. Their work is much related
to this study as the aim of the study is to access how effectively the adopted alternative dispute
resolution mechanism are being implemented to ensure the realization of peace and security
in West African societies.

In “Mediation – A Preferred Method of Dispute Resolution”, Feinberg argues that issues such
as “burgeoning court dockets, spiralling litigation costs, and dissatisfaction with the traditional
adversarial process have caused increased interest in and use of alternative dispute resolution
mechanisms.” He espouses the virtues of ADR and noted that though all these ADR methods
have their advantages over litigation in particular cases. Mediation, in the view of the writer,
is particularly advantageous to not only litigation but all other alternative means of resolving disputes. In the dispute resolution process, litigation focuses on narrow issues determined by prefabricated legal doctrines, and litigation’s prime interest in dispute resolution is to determine who is right or wrong, not necessarily to resolve the conflict and foster relationship.\(^{27}\) He further noted that mediated-assisted conflict does not only ensure amicable settlement of the conflict but goes beyond legal determinants to explore existing relationship between disputing parties. This reconciliatory approach adopted by ADR is very imperative as the survival of the society is at stake. Disputing parties will always meet together and engage in some activities in the society beyond the conflict, so it is important in ensuring that the antagonism ceases and parties reconcile, for peace and tranquillity to prevail in the society.

In “Mediation and Access to Justice Delivery in Africa: Perspectives from Ghana”, Jacqueline Nolan-Haley praised the adoption of the ADR in Ghana to consolidate its entrenched peaceful and glorious stable democracy in the West African sub region. The main thrust of her work is the fact that mediation should remain a voluntary process in order to provide authentic access to justice. She bemoans how mediation has been transformed into an “indemnity” clause in some industrial laws, and only recommended or resorted when judicial processes stall. This indemnity given to mediation has the tendency of losing its conflict resolution prowess and not given the prominence it deserves in the long run. She concludes by advocating that in ensuring the wheels of justice to smoothly provide fairness, mediation should be made voluntary.

Bolaji, A. Kehinde’s “Adapting Traditional Peacemaking Principles to Contemporary Conflicts: The ECOWAS Conflict Prevention Framework” narrates the West African perpetual conflict predicaments as deep-rooted interest of groups and individuals fighting to protect and expand their spaces as a tool for resolving political, social and religious discriminations
suffered. Kehinde’s praise for the sub-regional body, Economic Community of West African States (ECOWAS) efforts in addressing the phenomenon through effective, dynamic and workable “home-grown” conflict management through the “The ECOWAS Conflict Prevention Framework,” is appropriate and proactive. He further opines that the inclusion of traditionally-trusted conflict resolution mechanisms coupled with local structures, resonant with West African societies in the right directions as this will court traditional, religious and other stakeholders into mainstream conflict resolution without too much reliance on central authority, is tantalising. The incorporation of traditional and religious structures in ECPF is viewed from their potency and capability of speedily resolving conflict. These structures will continue to ensure the survival and sustenance of traditional West African societies. Indeed, tapping the experiences of traditional and religious leaders with conflict resolution clouts is very important as they can offer immeasurable assistance in this regard.

The preoccupation of conflict resolution mechanisms is the restoration and sustenance of peace on the society. Peace-building efforts are thus very imperative in ensuring the societal existence. In “A Glossary of Terms and Concept in Peace and Conflict Studies” by Christopher Miller, peace-building is seen as “policies, programs and associated efforts to restore stability and the effectiveness of social, political, and economic institutions and structures in the wake of a war or some other debilitating or catastrophic event.” Peace is ultimately expected after every conflict resolution. But this does not happen automatically as sometimes, disputants may revert to becoming worse enemies- especially in the adversarial court system, which can become disastrous for society. Peace is a non-negotiable resource for which peace-building activities must be instituted in order to assuage possible conflict in the society. Indeed, peace is a social web connecting and permeating in all spheres of life and its absence accordingly affects every facets of society as well. Traditional and religious peace-building mechanisms
should be strengthened and entrenched in order to make them more proactive than responsive
to emerging conflict.

1.10 Sources of Data and Methodology

The data for this study was collected from both primary and secondary sources. The primary
source involved interviews from selected resource people with extensive knowledge and
experience in the study area. The interview schedule contained mainly open ended questions
and the interviewees were selected from three accredited ADR centres in Ghana. The aim was
to find out how they started their ADR centres, their challenges and by way of statistics,
ascertain their settlement rates under the years covered. These vital information were used in
analysing the institution of ADR in Ghana and its performance in chapter three. The reason for
selecting these three ADR centres stem from their leading and immeasurable assistance in the
settlement of disputes either through the court connected programme, National Labour
Commission or cases brought to them by disputants themselves. The secondary data on the
other hand, were sourced from documents and working papers especially from the Judicial
Service of Ghana, press releases and journals.

1.11 Chapters Arrangement

The research is organised around four chapters; chapter one is made up of the research design,
chapter two looks at an overview of the regimes and mechanisms for conflict resolution in West
Africa. Chapter three deals with the institution of ADR in Ghana and its performance whilst
chapter four constitutes summary of the research, conclusion and recommendations for the use
of ADR in West Africa and Ghana in particular.
Endnotes

4 Ibid
6 Ibid.
14 Bedikien, Mary A., op. cit.
15 ADR Practitioners guide
16 Uwazie, Ernest E., op. cit.
18 Ibid.
20 Uwazie, op. cit.
21 Ibid p.5
23 Ibid., p.7.
24 Ibid.
25 Ibid.
27 Ibid
29 Ibid.
30 Ibid.
31 Miller, C. A., & King, M. E., op. cit.
CHAPTER TWO

AN OVERVIEW OF THE REGIMES AND MECHANISMS FOR CONFLICT RESOLUTION IN WEST AFRICA

2.0 Introduction

This chapter reviews the concept of conflict resolution in the traditional and orthodox settings, detailing their respective adequacies and inadequacies and how the role of social change has affected and still affecting conflict resolution in West Africa. The chapter will briefly discuss Nigeria’s Alternative Resolution Mechanism (ADR) experience and how it is augmenting the judicial system in that country.

2.1 Conflict Resolution in the Traditional African Settings

Conflict is as old as humanity and forms an integral part of human relations.\(^1\) Human existence is characterized by dominance, competition for ownership and control of resources making conflicts inevitable in humans’ daily interactions. Conflict is said to even exist in the animal kingdom.\(^2\) Nations, societies, groups and individuals have engaged time immemorial, in managing conflicts in order that its repercussions do not become unbearable. Africa for many years, especially before the emergence of colonization, is regarded to have a mastery of peace making established from years of traditional and customary and practices.\(^3\) Traditional African societies appreciated the unavoidability of conflicts and have laid down rules and means of communications suitable for preventing, managing and resolving conflicts.\(^4\) These explicit norms and practices are meant to heal wounds and bring both disputing parties and communities to peace, appeasing the gods, ancestral spirits, the land and God.\(^5\) Philosophically, African societies regard conflict as a deviant phenomenon from societal norms, which has harmful consequences on the wellbeing of conflicting
parties, their community, land, ancestors, gods and God. Peace on the other hand, involves conciliating and bringing parties in a dispute to peace and appeasing the ancestral spirits, the land and the gods, which is in tandem with the traditional African culture of being at peace with oneself, his environment and the supernatural. Indeed, the African believes that conflict is beyond individuals, organisations, and societies and thus touches the very environment, which supports livelihoods. This environment is what is sometimes termed as “mother earth” which is believed to be “hurt” by incessant conflict on the land and further believes to be clement. This notion has succinctly aided most African societies to institute appropriate, yet, potent conflict resolution mechanisms to quell conflict and to bring peace and tranquillity amongst disputing parties and the environment.

2.2  Conflict Resolution Principles in Traditional African Societies

Traditional African societies since pre-colonial days had guiding principles through which conflicts were amicably resolved. Conflicting parties, with the aim of getting their dispute resolved, exhibit unflinching confidence in the resolution body or tribunal that would resolve their dispute. Chiefs, family or clan heads, elders, priests, priestesses constitute the tribunal or institutions for resolution of dispute, depending on the issues at hand, its resourceness and place of occurrence. Aside placing high level of confidence in these authorities, parties in a dispute must at all times be ready and willing to submit themselves before them. These authorities are able to see to the resolution of conflicts ranging from an individual to another, community to community or nation to nation.
African conflict resolution processes place emphasis on truth, norms, values, and continuity. The conflicting parties and the resolution body, be it a mediator, arbitrator or judge, must always be honest and unbiased. The decision of parties in dispute to offer themselves to the tribunal means they are ready or have agreed to settle the dispute. Honesty is usually ensured by invoking the spirits of dead ancestors and the gods of the land to protect this moral fibre and ensure that disputants do not lie in their narrations and mediators do not manifest bias in their settlement.

In traditional African settings, conflict resolution mechanisms are put in place to prevent them from attaining uncontrollable stages. Thus, from the family level to the community level as well as across societal institutions, conflict resolution mechanisms are offered to members. The extended family is the smallest unit of the society comprising group of individuals related to one another by ties of blood, marriage or adoption for which the adult members are responsible for the socialisation of the younger ones. The family is the product of marriage and functions for procreation of children, first stage of socialisation, and economic production. It must be noted that, apart from parents, senior brothers and sisters succinctly step in the shoes of parents, especially, in the absence of the father and to provide younger ones with moral support and appropriately train them to observe family and societal norms. In such instances, quarrels and misunderstandings generated between and amongst children are smoothly resolved by senior brothers and sisters. This is the path where senior siblings instil the philosophy of peace into the younger ones and thus prepare their minds to assimilate peace-laden activities in the family and the larger society.
2.3 Resolving Disputes at the Clan Level

Families in Africa and West Africa, for that matter, have clearly defined procedures for resolving disputes ranging from disputes between siblings or extended relatives, husband and wife (couples), family and land among others. Parents assume the important role as mediators in resolving conflict between and amongst children, and often times, done without the use of alcohol and invocation of the gods. This intra-family conflict resolution mechanism has sustained and continue to sustain most families in African societies.

Conflicts emanating from the family, especially amongst the children is resolved by the parents. The parents become adjudicators and resolve any conflict in the family and warn children involved not to repeat such acts in the future. This is usually done swiftly in such a manner not to put the image of the family in a bad limelight in the general society; as this will send a wrong signal of the inability of parents to raise up their children well or resolve conflict at that level. A well behaved, stable and peaceable family is highly respected in the society and often consulted by other members of the society for advice in communal matters. The other objective is equally to amend, mend and correct characters before they become a habit and taken outside.

In a typical dispute settlement in an Igbo family in eastern Nigeria, Uwazie reported settlement of a marriage feud carried in an indigenous manner. The scene of the resolution is characterized by the sitting of male and female groups opposite each other on wooden benches while the younger group sat on a concrete floor in the same arrangement. Heavily present were the “Umuada” (married daughters) and other adult members to settle the domestic feud. The family head, known in local parlance as Onyi’si, welcomed all present with a combination of white and red colanut
(six of them) and called on them to reconcile the couple stressing that “there is no need to decide guilt or innocence in spousal cases, only to reconcile the husband and wife because of the sacredness of marriage.” The Onyi’si initiates the proceedings by calling on the family ancestors to hover around all present to settle the family matter. Ceremoniously, he places the Ofo (the family oath object) in the centre and administer an oath to the people to be impartial and ensure family unity in their verdict. Pursuant to a brief introduction of the case, he (Onyi’si) asked the wife in dispute to stand close to the Ofo and present her case.

Summarily, her complaints bothered on variety of causes, especially, those bothering on adultery and abuse after eighteen years of marriage with seven children. In response, the husband in dispute contended that his wife has neglected him by preparing food late or not preparing it at all. The complaint of adultery was also countered with an excuse of collecting debts from his clients who are mostly widows. He also bemoaned the huge burden on him as he is responsible for his family and the upkeep of his mother and two other relatives. “After invoking the god of thunder (Amadisha) and the ancestors to punish any persons (mediators) who might cause Mmadie and Dozie to severe their marriage and break up the family, the Onyi’si rephrased the dispute as a case of spousal abuse and neglect, pointing to Dozie’s wife beatings and Mmadie’s refusal or reluctance to prepare food for her husband. Most of the audience questioned the disputing couple. The women urged the men to resolve the case without finding fault. The questions were aimed at reconciliation and to keeping the family together.”

The end of the deliberations was marked by an apportionment of equal blame to the couple for the quarrel and a fine of cock and a hen were respectively imposed on the couple. “the birds blood
would be spilled on the ground to appease the gods and goddesses of the ancestors that may have been offended by the couple’s quarrel.”

Libation was also poured by the Onyi’si “invoking an ancestral enchantment to solidify their decision.” The couple also swore to embrace the resolution and eschew conducts that shakes the family harmony. Marriage vows were reiterated and pledges of “mutual responsibility and care for each other and children.”

In the resolution of family or communal disputes in traditional African settings, reconciliation is paramount not punishment. Families also prefer to “wash their dirty laundry” inside their families than seeking outside help as this may attract shame to disputants, their family and even compromise family security.

When parents are unable to resolve a culturally-sensitive conflict in the family, they turn to the larger family, called the clan for redress. Families have also been part of a larger group called the clan, and often times consulted for mammoth issues affecting members of the family. According to Nukunya, “a clan is a group of people, male and female, who are believed to have descended through one line only (male or female) from a common putative ancestor or ancestress”. Despite its inadequacies in frequently socializing its members to know each other, due to its numerical expanse, it still remains a potent tool in animating imperative cultural dictates to its members when members needed it most. The clan head performs these special duties for which members feel part of belonging to a distinct group. One of this important dictates is conflict resolution. Depending on the degree of the conflict, the resolution usually starts with the invocation of gods and ancestors.
to guide them to amicably resolve the dispute. The main idea or reason is to reconcile the disputing parties as blame is often apportioned whilst forgiveness, correction and reconciliation are emphasised. Usually, a minor misunderstanding amongst members of the clan is resolved by clan heads, with the caution to feuding members not to repeat them. As noted earlier, for a culturally-sensitive conflict situation such as incest, adultery, having sex in the bush, amongst others, invocation of the gods and pouring of libation are precursors for the resolution of the case. The fault line in this conflict resolution process is the tendency for cover-ups, especially those of incest or rape of juveniles by an elderly person in the clan. Often times, for fear of protecting the good image of the family, such cases are glossed over, the victim is left to bear the scare for the rest of his/her life. The victim will thus feel justice has not been rightly dispensed and would seek another avenue for redress.

2.4 Resolving Conflict at the Communal Level

At the community level, conflict resolution mechanisms are vested in the most trusted, honourable and impeccable senior members- chiefs, elders, and fetish priests. These distinguished members of the community are highly respected and their deeds revered by all. The belief is that “when elders preside over cases, they do so with the full weight of the supernatural powers of the ancestors behind them.” Another important trait possessed by these individuals is wisdom- to discern properly in dispensing justice fairly to feuding parties. This trust enables other members of the community to visit them with issues and hope their fair judgement, knowledge, and wisdom would help in resolving those issues. These individuals resolve issues from social, economic, cultural points and ensure that all these are dealt with without any bias.
In conflict management and practice of the Buem people of the Ghana-Togo border, mediation is the most common conflict-handling forum and referred to in the local parlance as *benyaogba ukpikator* literally meaning “to say no to a case between adversaries.”\(^{17}\)

This forum offers adversaries the opportunity to calm tempers and jointly convince each other that the feud between them is of no significance. The aim of this procedure is to avoid adversarial deliberations and the “winner-vanquished” mentality typical of adjudication and arbitration.\(^{18}\) The managers of *benyaogba ukpikato* among the Buems are usually lineage elders, medicine men, priests and other influential persons whose wisdom, skills and trustworthiness have gained universal acceptance.\(^{19}\) The reputation they enjoy within their communities empowers them to be able to influence parties who have been summoned to the hearing. Elders or revered persons of the Buem fraternity who are successful in their negotiation art and the handling of the *benyaogba ukpikato* are often called upon to mediate disputes beyond their jurisdiction.\(^{20}\) This makes it (benyaogba ukpikato) the most preferred dispute resolution because the relationship between disputants in terms of residential and kinship ties signifies people who will always be interdependent. Despite the procedural and pacific nature of this mechanism, it is fraught with some weaknesses. A potent weakness with this mechanism is the open display of opulence, especially, from wealthy feuding party. This is made possible in communities where it is required of both feuding parties to present items such as, palm oil, alcoholic drinks, animals, amongst others, for ritual purposes. In an attempt to influence the decision of eminent elders or intimidate the opposing party, a particular feuding party may provide these items over and above the required quantity, and thus, making this mechanism prone to corruption and possible slew of justice.
2.5 Resolving Conflict at the Chieftaincy Level

Chieftaincy, a traditional institution in African societies with the responsibility of governing a particular group of people together with a leader called chief, is vested with a lot of heritage-cultural, religious, social and economic power and respect. The chief, the epitome of traditional power is vested with the authority which is recognised by its members and whose jurisdiction is clearly demarcated. As noted by Nukunya a chief’s preoccupation is maintaining a link between his people and the ancestors, maintaining law and order as well as protecting the people from attacks.\textsuperscript{21} The chief is the religious, traditional, spiritual and commander-in-chief of the entire community. As a traditional judge with advisors at his disposal, the chief settles disputes between and among conflicting parties with the aim of maintaining peace and unity, a prerequisite for community development. Most African societies therefore, resort to the chief for the settlement of disputes without engaging in warfare with offending parties. In the settlement of disputes, the chief is ably assisted by his counselors (elders) who sit in the hearing proceeding to hear testimonies from feuding parties; who swear an oath to testify to the truth or otherwise of the case. Oath as opined by Djan\textsuperscript{22} is “deliberate swearing of forbidden words, which constituted a threat to the amicable relations existing between the living and the ancestors of the chief…” Thus, oath is an important principle in the traditional legal system, as feuding parties summon the presence of the ancestors to witness and prevail over the case being adjudicated. It is also worthy of note that, feuding parties are given opportunity to bring along their respective witnesses to smoothly aid in the adjudication process. After hearing and gathering testimonies from both sides, the chief delivers his ruling on the matter and have the offending party properly sanctioned. The sanction ranges from fines, doing community work, presentation of drinks, amongst others. Again, depending on the issue, the offending party could be expelled from the community or death
recommended, especially those touching on murder, sexual intercourse with a menstruating woman and other criminal offences. A convicted party not satisfied with the chief’s verdict may resort to a community deity or oracle with the belief that this supernatural being could fairly judge the case under contention and bring finality to the case. In narrating the experience of the Ewes of the Volta region of Ghana, Nukunya asserts:

“…in many Ewes areas for instance people dissatisfied with the verdicts of the chief’s court may appeal to oracular trial or trial by ordeal as it is usually called. This is usually administered in the chief’s court in the presence of the chief and his elders (the judges), though there are independent ones which operate without reference to the chief’s court. The trial itself may require the performance of a specific task and the reaction of the suspect will indicate his innocence or guilt. Thus, in case of alleged adultery on the part of a wife, the husband, the wife and the alleged lover may be asked to wash their faces with water. Before this the ritual specialist himself would have washed his own face with the water to be administered in full view of the judges and the disputants. If the husband washes his face without any harmful reactions while the wife and the lover wash with opposite effect, then the allegation is proved. If the reactions are in the other direction, then the allegation is taken to be false. Other methods of this trial include lifting an object, dipping one’s hands into boiling water or oil, walking through fire, amongst others. In each case going through the ordeal without any harmful or negative effect or reaction is taken to mean innocence while failure indicates guilt.”

Appeal of the chief’s verdict suggests a seemingly distrust in the traditional court system. Often times, making some disputants resorting to other means for justice. The weakness emanates from bribing judges by very powerful disputants to influence the decision of the judges, protecting the social image of very powerful disputants belonging to wealthy and respected families, amongst other persuasive strategies used to influence the judicial process. It is also seen as superstitious and some disputes have anti-dote to the trial by ordeal. This traditional mechanism of peaceful settlement of disputes has however ensured the continuous existence of most African societies, even with the advent of colonialism.

2.6 Conflict Resolution in the Religious Front

Religion mirrors the moral precepts of the society and thus proposes the code of conduct for peaceful co-existence with fellow human beings. Durkheim defines religion as “a unified system
of beliefs and practices relative to sacred things; that is to say, things set apart and forbidden-beliefs and practices which unite into one single moral community called a church, all those who adhere to them” 24 and for Frazier, religion is “the propitiation or conciliation of powers superior to man which are believed to direct and control the course of nature and of human life”. 25 The emergence of religion and religious institutions continue to play an important role in the settlement of disputes. This institution explains the unknown to man to allay man’s fear. Man’s existence is explained by this same institution as well as explaining occurrences that cannot be explained by scientific or other means. Characteristic of most religious preachings and rituals is about tolerance, forbearance, patience, forgiveness after trauma, reconciliation among other virtues. An individual who is not at peace with himself seeks religious deliverance from revered men of God or spiritually inclined individuals. African societies have witnessed the scale of religious proliferation, explained in part with the advent of colonialism. The Christianity and Islamic religions thus became remnant of the colonial phenomenon. With an inveterate traditional system with local faithfuls, these two religions marshaled all necessary and courting strategies to win most Africans to follow their dictates, and thus, offer a new lease of religious life for the newly converted.

For African traditional religion, the belief in the supernatural, smaller gods, ancestors and other deities always unencumber faithfuls to seek refuge in solving problems in all facets of life. In cases of murder, sex, robbery, and other forms of violence against other members of the society, the only safe haven for the trial or resolution of conflict for the maintenance of law and order in the society. Again, Nukunya’s narration is worthy of mention:

“...the belief is that the fear of the particular cult or deity will force the alleged offender or the accused to admit his guilt. In situations like this the priest himself or his representative serves as the judge. This is resorted to when a man feels that his opponent’s veracity cannot be guaranteed in the chief’s court. In some other cases, a person who has lost his property or has been robbed will just report the case to the deity or cult house and ask for either the return of the property or the punishment of the culprit.
Some deities are so notorious for this that not only the culprit himself but also his family and other relatives may fall victim to this punishment.”

Furthermore, individuals use other means of resolving conflict or cases by summoning the community or town deities or gods to intervene and bring the supposed culprits to justice. This thus, put pressure on the community heads and members as a whole. Brokensha succinctly gives a scenario worthy of narration in Larteh, a town in the Eastern region of Ghana, where a husband suspecting his wife of adultery exclaimed “Let any person who has had sexual connexion with my wife, and fails to report it, be killed” Brokensha notes that “such a threat obliges both political authorities as well as the shrine to take action. It also brings considerable pressure on the alleged adulteress to admit her guilt, if indeed she has something to admit.”

Individuals and faith-based organisations from various religious backgrounds are consistently and increasingly making frantic efforts to bring an end to conflicts and to ensure post-conflict reconciliation among disputing parties.

Peaceful co-existence and love for each other, emblematic of Islamic religion, continues to shape the moral behaviour of members. Moslem clerics or scholars, revered for their role in dispute resolution, especially mediation, engages parties in spiritual counselling by reminding them of the need to be at peace with one another, neighbours and the community at large. Islamic interveners in resolving disputes most often engages the service of others in the society who in their estimation and assessment, can provide legitimacy, sustainability and effectiveness to the resolution process. Conflict resolution in the Christian setting is not very different from the Islamic perspective. This is because members of this religious fraternity tend to church elders or senior members of the congregation to resolve conflict between and amongst members for the continuity of the fraternity.
The senior pastor or head of the church is assisted ably by its council members in the administration of the church. In resolving a conflict between two parties, the church council summons both parties for amicable settlement of the conflict. When all parties are satisfied, and wrongs accepted, prayers are offered for God’s protection and non-occurrence of the issue again.

It is worthy of mention that, apart from the influential religious leaders leading in the resolution of conflict, there are equally important organisations established by these religions, with the preoccupation of resolving conflicts and providing peace-building techniques. These faith-based organisations have their religious nerves from which forms the nuances of their operations. These organisations are usually manned by religious individuals with huge experience in conflict and peace building techniques.

Mediation works have been undertaking by religious individuals and most often, faith based organisations in Africa and West Africa which are yielding results.

2.7 The Orthodox Court System and its Conflict Resolution Mechanisms

With the advent of colonialism in Africa and the sub-region several decades ago, African societies witnessed mammoth social change in all spheres of life and indeed affected the very socialisation of the African. The African was thus, influenced by potent factors like education, religion, trade and commerce, amongst others. The chieftaincy institution was not spared of this wave of transformation, although it managed to remain relevant after several ramifications. Two main religions influenced the African greatly, Christianity and Islam and each had its varying effects on professed members - most Africans adopted foreign names and neglected their traditional names.
The educational front ably disseminated and offered Africans the opportunity to learn numeracy and writing, as well as instilling Western values in them.

The chieftaincy institution’s prowess of maintenance of law and order, custodian of lands and natural resources, upholding societal integration and conflict resolution consistent with communal social norms violently gave way to the independent sovereign state. The traditional chieftaincy institution ceded control of these roles and responsibilities to the state and now performs relatively less powerful role, though its existence still performs influential role in nation building. The state’s functions in administration, formulation of policies, making laws and interpretation of laws are seen in the executive, legislature and judiciary respectively. The judiciary arm of the state basically interprets the laws passed by the legislature and interprets them where need be. It functions around chains of legal institutions such as supreme, appeal, high, district and magistrate courts. This court system is supposed to resolve all manner of disputes irrespective of differences in culture, customs and practices of disputing parties thus earning the title orthodox.

2.8 Operations of Judicial System in West Africa

The judiciary recently assumed very important role in most African societies, especially in post-independence Africa. This arm of government has averted numerous political conflicts owing to its handling of election-related disputes amongst political parties. A seemingly preferred dispute resolution mechanism hub. It must be noted that, African societies have dual legal systems - formal and informal, with their attendant procedural architecture. The African informal legal system or regime operates basically at the community, town and to a large extent, regional level, with traditional rulers superintending and aiding the practices. According to Bolaji\textsuperscript{29} “the attraction of
African traditional conflict management mechanisms is therefore traceable to their peculiar attributes and practicability, which make them relevant in resolving the complex and localized conflicts. This is particularly true of African states due to the fact that society pivots around religion and politics.”

This defies the formal system because beneficiaries of this system barely struggle to meet stringent conditionalities in the filling processes, coupled with its accessibility and fast-track nature. These amongst others appeal to beneficiaries for which it continues to enjoy higher patronage. Cases ranging from morality, good conduct, property, to land issues, flood the domain of the informal system and are often amicably dealt with. It is also worthy of mention that, the vibrant nature of this system in Africa is not only patronized by community members, but the elite class resident in the urban areas. This is because, the most traditionally-sensitive cases which the formal system cannot handle, is adequately handled by its informal counterpart. This avow efficiencies of the informal system do not immune it from weaknesses- bribing and corruption, shielding the opulent and powerful in the society from wrong doings, amongst others.

The formal access to Justice mechanism in Africa is through the orthodox court system. The processes of formal litigation in courts in West Africa, and to a large extent, Africa, are modelled on the common law adversarial system by which the parties strive to establish their cases in a usually hostile fashion while the court plays, to a large extent, the non-interventionist role of an umpire. This formal system of conflict resolution is largely a vestige of colonial antiquity. Despite different jurisdictions in the administration of legal duties, it is emblematic of many West African countries to harbour hierarchy of courts, often, performing specific duties for the maintenance of
law and order. These include, the supreme or superior court, the highest court in most West African jurisdiction; with subordinate courts such as, appeals, high, magistrate, circuit, district, amongst others, following in that order. There are also specialized courts, established in these jurisdictions for the purposes of attending to specific cases. These include, commercial court; dedicated to dealing with commercial-related issues, human right court; for dealing with human right abuses of individuals/citizens, juvenile court; for trying juvenile/children cases, traffic court; dealing with traffic-related offenses, constitutional court; for interpreting aspects of the constitution where parties want further clarification. When all these specialized court units perform their respective roles, that peace and tranquility can be achieved.

It must be noted that services provided by the court system is not for free. Disputing parties contract their respective counsels/lawyers at a fee as filing cases attract fees at the law courts. When this barrier is passed, then the case in contention commences hearing at the court and counsels from both sides advance their respective arguments to ascertain the guilty or otherwise of their clients. Fees charged for legal services are overwhelmingly high and the ordinary citizens may not afford these services. Thus, the law court has become a prestigious place to opulent clients, who can afford legal services to the detriment of clients who cannot afford, yet with genuine and winnable cases. Can this affect justice delivery in favour of the rich against the poor? The exorbitant legal fees charged coupled with long court procedures, piled documents, incessant adjournments, have acted as a watershed in search of alternative dispute resolution (ADR) mechanisms.
2.9 Shortcomings of the Orthodox Court System of Resolution

Though with many compelling attributes as an internally recognised mode of justice delivery, the courts system is fraught with many challenges. The hostility created during court proceedings by contesting parties often leaves an antagonistic scare on both parties, especially the vanquished. As Kwesi Appiah opines “in the adversarial system of administering justice, the burden is placed on the parties to establish their cases, most often than not in a hostile fashion, with the court playing the role of an umpire. This not only leads to a situation where the better resourced party becomes right but also leads to situations where the adversarial nature of litigation is carried from the courts to homes thus affecting family and community relations. It is common knowledge that our deepest disputes have disturbing relational meanings. It is for this reason that there is currently a fast growing ADR industry in Ghana.”

The incessant adjournments of cases coupled with pile up of dockets go further to frustrate the parties involved, leading to the backlog of cases - a common phenomenon in most West African courts. Again, Appiah asserts that “…most of the backlog of cases in our courts and the delays in administering justice are due mainly to legal tactics (often sanctioned by the complex rules of procedure) that lawyers use to increase their fees, and to adjournments that are borne out of the inability of clients to pay lawyers for drafting processes and for attending court.”

More often than not, socio-cultural values are far removed during court procedures as attention is given to only legal determinants. These go a long way to prevent or undermine justice delivery. Uwazie’s point is worthy of note here, “even when courts are involved—while they may address the legal question, since they are not focused on conflict resolution or mitigation—they may miss
the underlying catalyst. At times, court judgments can escalate disputes. As one Nigerian lawyer noted, “when the judge proclaims a winner that is the beginning of the real conflict.” Formal litigation, grounded in an adversarial process, is limited in ensuring fairness and satisfaction for disputants.”32

The cost in legal administration is far exorbitant and could deter citizens, especially those at the margins of economic sphere to effectively and properly utilize the court system. From consultation of a counsel till the day the case is finally dispensed, involve heavy financial resources and only financial resourced-laden citizens can afford the legal marathon. Kwesi Appiah agrees with this phenomenon as he asserts “…Cost is therefore a major challenge for persons seeking to use the formal court processes to access justice.”33 This means adequate resources, especially on the part of the poor to access justice on a level playing ground.

Although litigation follows due process in awarding judgement at the end of verbal exchanges from counsels, it lacks the ability to adequately and effectively scan the scope of disputes under consideration and thus making judgement constable often times at a higher court. Feinberg rightly opines that “…litigation focuses on narrow issues determined by prefabricated legal doctrines. The outcome is limited by prior decisional criteria and by narrow, predefined legal remedies. These limitations rarely permit a full exploration of the factors underlying the dispute and a resolution of the problems in the relationship that led to the dispute between the parties. Indeed, the objective of litigation is not to resolve the dispute so much as it is to arrive at a decision about who is right and who is wrong.”34
The above lapses about the litigation and the dual nature of African societies have necessitated the institution of ADR to complement the formal or orthodox court system to ensure prudent, timely, effective, and efficient mechanisms for addressing disputes for all categories of persons and disputes.

2.10 ADR and Nigerian Experience

Africa’s economic hegemon, Nigeria, was the first country on the continent to incorporate ADR in its judicial regime, in the 1980s. As noted by Kidane, “the principal centre for international commercial arbitration is the Regional Centre for International Commercial Arbitration – Lagos” and “The Centre’s rules enable parties to have complete flexibility on rules and procedures and contain unusually strong provisions for impartiality of arbitrators and for confidentiality.”

Indeed, Nigeria’s court-connected ADR centre called Lagos Multi-Door Courthouse (MDC), established in 2002 and uses dispute resolution mechanisms such as arbitration, mediation and early neutral evaluation. The product of a private-public partnership between the State High Court and Negotiation and Conflict Management Group, a non-profit organisation, led to the establishment of the Lagos MDC. The conflict resolution mechanisms of arbitration, mediation and neutral evaluation, are effectively and efficiently patronised by the citizens.

Throughout its operations, ADR has endeared itself for handling and settling cases. For example, between 2002 to 2011 as opined by Onyeame, “94 per cent of cases were settled by mediation and 6 per cent by arbitration, but only 30 per cent of the mediations were resolved, with the rest unresolved or withdrawn” and “it handled 888 cases, compared with more than 40,000 civil cases handled by the High Courts and Magistrate Courts, and more than 77,000 by the Citizens’
Mediation Centre”³⁹ Onyeame further noted that “Capacity constraints in the mainstream court system mean that civil cases can take 5 to 20 years, while arbitration through the Lagos MDC can take up to a year and mediation takes an average of three months.”⁴⁰ These impressive records and success, should find appropriate space in West African judicial domains as ADR can potently provide legal services for the benefit of the citizens.
ENDNOTES

2 Ibid
6 Ibid.
9 Ibid., p. 16
10 Ibid.
11 Ibid., p. 17
12 Ibid.
13 Ibid., pp. 17-18
14 Ibid p18
18 Ibid.
19 Ibid.
20 Ibid.
21 Nukunya, G. K., op cit.
23 Nukunya, G. K., op cit.
26 Nukunya: op cit.
28 Ibid.
31 Ibid
33 Kwesi Appiah, op. cit.


Ibid.


Ibid.

Ibid.
CHAPTER THREE

THE INSTITUTION OF ADR IN GHANA AND ITS PERFORMANCE

3.0 Introduction

This chapter critically examines the institution of Alternative Dispute Resolution (ADR) in Ghana and its performance, and thus, mirroring its experiences in the West African sub-region. The chapter also discusses the adoption of the ADR mechanisms in Ghana taking into consideration the legislations, techniques or mechanisms used, the perceptions, effectiveness and impact with regards to meeting its goal as an appropriate dispute resolution mechanism for, Africa and West African states.

3.1 Historical Overview of Ghana

The Republic of Ghana gained independence in March 1957 from the then British Colonial Government. It is a West African country sharing borders with three other countries in the sub-region. To the north is Burkina Faso, Ivory Coast to the West and Togo to the east. The south of Ghana however, is marked by the Gulf of Guinea and the Atlantic Ocean. The total land area of Ghana is 238,540 square kilometres. The fifth census in the country, conducted in 2010, established a total population size of 24,658,823 representing an increase of 30.4 percent from the 2000 census which stood at 18,912,079. By way of distribution among the ten administrative regions of Ghana, Ashanti region is the most populous with a percentage of 19.4, followed by Greater Accra 16.3 percent, the least populous regions being the Upper East and West regions with a percentage of 2.8 and 4.2 respectively. Ghana is characterised by many ethnic groups. The major ones however, are the Akan, Mole-Dagbani, Ewe, Guan and Ga-Adangbe. These divisions also
have subdivisions, indeed, over 100 linguistic and cultural groups sharing common heritage, history and origin. The belief system is also characterised by three major religions; the African Traditional Religion, Christianity and Islam. Christianity is the most prevalent followed by Islam and African Traditional Religion.

Taking the above information into consideration, Ghana is a heterogeneous country and has recorded nerve-racking conflicts resulting from inter and intra-ethnic differences, claims over ownership of resources (especially land and livestock), chieftaincy, religious and a host of politically-induced violence. Conflicts like the Kokomba-Nanumba war in February 1994, the Bawku Mamprusi-Kusasi conflict, the Alavanyo-Nkonya conflict, Dagbon and Nanun(Bimbila) chieftaincy disputes, intra and inter faith conflicts, communal conflicts, among others, have led to unfortunate loss of lives, destruction of properties and dislocations of several thousands of people.

Ghana is lauded as a beacon of democracy and worthy of emulation by its African counterparts, owing largely to its political stability and overall peace, despite found in a complex and perpetual conflict-infested West African sub-region. The pockets of conflict catalogued above and host of others and their unabated nature, depicts the absence of an appropriate and time bound dispute resolution mechanisms to effectively and efficiently bring these disputes to a closure. As a result of this, the use of ADR mechanisms have been recommended to African states as a solution to their many years of protracted conflicts and violence. These mechanisms have been accepted and adopted by the African continent in general and West Africa sub-region, in particular.
3.2 Historical Background of Ghana’s ADR

Ghana’s ADR shares almost the same history with two of its West African counterparts (Nigeria and Senegal) with Ernest Uwazie playing a very instrumental role, as stated earlier. Justice Georgina Theodora Wood, the Chief Justice of the republic of Ghana, noted that professor E. Uwazie together with his ADR project partner Attorney Daniel Yamshon (and others) gave birth to the ADR movement as the engaged in “capacity of ADR in the sub-region as well as throughout Africa.” Prior to her ascension to the office of Chief Justice of Ghana, her two distinguished predecessors; Justices Kwame Wiredu and George Kingsley Acqua, had worked with professor Uwazie and initiated policies towards the institution of ADR in Ghana.

After the training of the Chief Justice and two others in California University, another ten (10) individuals, made up of five (5) judges and lawyers respectively, were sent to the same institution to be trained. Upon their return, the group together with CAPCR conducted a feasibility study to determine whether ADR can be successfully institutionalised in the country. This was followed by the training of several traditional rulers and opinion leaders engaged in the resolution of disputes in their respective areas.

The ADR programme was central in the decidedly determined efforts by the judiciary service to among others, nip in the bud the burgeoning court dockets, the seeming disaffection in the adversarial dispute resolution process and perceived corruption in the justice delivery system in order to ensure efficiency in the dispensation of justice. The programme was first tested in Accra, Ghana in 2003 and witnessed the resolution of an overwhelmingly 300 cases pending in some selected courts within five (5) days. A great percentage of the parties were not only satisfied, but
expressed their willingness to recommend the process to others. Motivated by the success chalked from the 2003 initiative, a follow up ADR round was carried out in 2007, and saw the successful mediation of 155 commercial and family cases from ten districts in Accra within four days. This also resulted in an expansion of the program in 2008 where over 250 cases pending in seven districts courts in Accra were mediated showing over 50 percent of the disputes amicably settled.

The prudency of ADR in reducing both cost and backlog of cases and ensuring a win-win resolution was therefore manifested in these programs. This therefore resulted in the setting up of court-connected ADR programs in the magistrate, district and high court levels.

The positive experience has further influenced the finalization of a landmark ADR legislation (ADR Act 798(2010)) which has gone through almost ten years of consultation, bill drafting, and consensus building, among others.

### 3.3 The Philosophy of ADR and Its Legislation in Ghana

ADR rides on the philosophy of providing legal aid, without stringent conditions and difficulties to clients, who hitherto have seemingly lost confidence in the formal judicial process. ADR provides a legal worldview consistent with citizens who can afford its services and progressively offering benign resolution strategies for mutual beneficial ends. Prior to the enactment of ADR Act, Act 798(2010), the process had hitherto operated within Ghana’s court setting. As noted by Georgina Wood, “the Courts Act 1993, Act 459 (as amended) served as the basic legal framework for ADR practice. Pertinently, its predecessors all carried the provision which encourages out-of-court settlements, as we are sometimes used to describing them. It vests in the courts the general
power to promote reconciliation in civil and criminal cases. In particular sections, 72 and 73, (quoted in part) empowered the court to:

(1) ... promote reconciliation and encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

(2) When a civil suit or proceeding is pending, any court with jurisdiction in that suit may promote reconciliation among the parties, and encourage and facilitate the amicable settlement of the suit or proceeding.”

Court-connected ADR is provided for under section 73 of the Courts Act 1993 (Act 459) and requires any Ghanaian courts exercising criminal jurisdiction ‘to promote reconciliation, encourage and facilitate a settlement in an amicable manner’ but only in the case of misdemeanours.

The dispute in question is required first to be filed at the court, after which the disputing parties may consent to refer their matter to ADR to attempt a resolution. Where an agreement is reached, the terms of the agreement become an order of the court. However, if a solution is not found, the dispute goes to trial.

Thus, in entrenching and providing a broad legal framework for efficient and effective operations of the ADR in Ghana, the Parliament of the Republic of Ghana, formally passed the ADR Act, Act 798, of 2010. The purpose “is to bring the law governing arbitration into harmony with international conventions, rules and practices in arbitration, provide the legal and institutional framework that will facilitate and encourage the settlement of disputes through alternative dispute resolution procedures; and provide by legislation, for the subject of customary arbitration which we have been practicing for years”

Uwazie notes that, ‘the ADR Act 798 is the most comprehensive ADR legislation of its kind in Africa.’ This Act sets out a comprehensive legal
framework for ADR practice. For Emilia Onyema,\textsuperscript{10} the provisions in the Act, especially those pertaining to arbitration and the other methods of ADR are based on internationally recognized principles, such as autonomy of the arbitration agreement and the supremacy of the arbitral agreement. It however, pushes the boundaries of current standards of international arbitration by granting the appointing authority an enhanced role in the process.

Significantly, the Act breaks new grounds by first legislating on customary arbitration and secondly by granting the settlement from mediation proceedings an enhanced status equal to an arbitral award. In her view then, the new Act is a comprehensive, modern and forward looking and it is worthy of emulation within the sub-Saharan Africa. Essentially the Act also makes provision for an ADR Fund and a national ADR Centre.\textsuperscript{11}

### 3.3.1 Structure of the ADR Legislation

The Act is segmented into five main parts, namely, part one, part two, part three, part four, and part five. These parts deal specifically with issues that ADR is mandated to address.

Part one highlights the procedural regime of arbitration and embedded are 62 sections which critically deal with important and cross-cutting issues such as, the arbitration agreement, qualification and appointment of arbitrators, impartiality and challenge of arbitrator, revocation of arbitrator’s authority, vacancy in the tribunal, fees and immunity of the arbitrator from legal liability, jurisdiction of arbitral tribunal, the Arbitral process, and powers of the high court in relation to the award.\textsuperscript{12}
Key central themes in this part worthy of note include, party process, power of arbitrator and written arbitration agreement. The proficiency of the Act with regards to party processes makes it possible for the establishment of party autonomy. The Act states in section 5 that “a party with a dispute in respect of which there is an arbitration agreement may subject to the terms of the arbitration agreement refer the dispute to a person, or institution for arbitration or the ADR Centre established under Part IV to facilitate the arbitration” and under Sections 16 and 17, “parties are free to agree on a procedure for challenging the appointment of an arbitrator, and “may agree also on the circumstances under which the appointment of an arbitrator may be revoked,” respectively. Furthermore, under Section 31, “parties are at liberty to agree on matters of procedure” and “parties are also free to agree on the language to be used in the arbitral proceedings” under Section 32.

These provisions are legal-friendly and further appeal to prospective clients or patrons to opt for ADR. The rear privilege given to disputants to identify to resolving the conflict is overwhelming and thus, gives greater transparency in the resolution process. This transparency trait is indeed, a prerequisite in facilitating without delays, the resolution process and thus gives both parties the vigour to make the process worth embracing and participating. Again, this process is akin to the aspect of the traditional court system, where filing and proceedings are not rigid, but easily accessible. Moreover, the trials are made transparent as possible and each party given the opportunity to openly interact for possible resolution of the problem.

With regards to power of the arbitrator and which it is an achievement, specifically in section 24, is the alignment of the Act to meet an international standards, by granting “the arbitral tribunal
power to rule on its own jurisdiction particularly in respect of the existence, scope or validity of the arbitration agreement”. This clearly defines the autonomy of the ADR processes as the arbitral tribunal discharges its functions without recourse to any court, especially that of jurisdiction.

Furthermore, Section 2 of the Act, which stipulates arbitration agreement in writing when calling for arbitration is also worthy of mention. It explains writing to include letters, telex, fax, e-mail or other means of communication which provide a record of the agreement. The section defeats rigidity and complexity of documentation, an emblematic of the court system, and provides flexibility for documents to be tagged as a written arbitration agreement before arbitration commences and further increases exchange communication between parties.

The second part focuses mainly on mediation and envelopes critical sections in the areas, such as, powers of the mediator, requirement of confidentiality, and effect of mediated settlement. Thus, sections 31, 32, 33, 34, and 35 which stipulates “parties to mediation agree on the number of mediator(s)”, “who to appoint as a mediator, be it a person or institution”, “appoint another mediator to replace a mediator”, and “determine the place for the mediation subject to the mediator choosing a convenient place”, and “a party to mediation may also withdraw from mediation at any time before mediation ends by making a declaration to the mediator and the other party that the mediation is terminated”, respectively, gives parties autonomy throughout the mediation process. Moreover, it animates satisfaction between contesting parties which prepares the way for positive compliance of settlement, a feature inconsistent with the court system.
Customary arbitration, sufficiently discussed in part three specifically concentrates on commencement of customary arbitration, qualification of customary arbitrator and rules which govern customary arbitration. Centrally, this part professes the arbitration processes, responsibilities of parties, amongst others. Section 45, stipulates that “no party can be coerced or forced by another person or institution or authority to submit to customary arbitration.” ¹⁹ That is, no party is forced to enter into arbitration. The inclusion of customary arbitration and its ultimate popularization by the Act, goes to affirm the cultural needs of Ghana. The customary arbitration has been entrenched in West African traditional and religious nexus. It is used in the traditional courts of most West African societies and thus being practiced since time immemorial. The Act’s recognition of this important aspect of Ghana’s cultural heritage is worthy of mention and explains how a traditional relic can be incorporated into mainstream conflict resolution mechanism.

Part four of the Act enumerates the establishment of ADR centre and consequently providing the administrative support for the growth and development of ADR in Ghana. Appointment of an executive board, executive secretary, and functions of the centre are the main central themes of this part. Section 52 clearly states categorically that “the object of the Centre is to facilitate the practice of alternative dispute resolution.”²⁰ As a relatively new quasi legal regime, ADR needs robust and vigorous wheels to ride on to realise its objectives of complimenting the judicial system in an effective and efficient manner, consistent with the needs of clients. The provision of administrative structures and logistical support, in addition to top notch human resources will assist tremendously in making ADR’s operations in Ghana, a centre of excellence for the West Africa sub-region in particular, and the African continent as a whole.
This approach is not different from the West African traditional court system, where courts are established for the purposes of resolving conflicts in the society. The traditional courts should equally receive the level of administrative and logistical assistance in order to function properly.

The last part of the Act, critically looks at financial, administrative and miscellaneous matters with the establishment of a management fund, financial reporting requirements, staff appointments, interpretation, repeals and savings; and transitional provisions, given major prominence. Section 54 demands the establishment of a fund to be known as the Alternative Dispute Resolution Fund.\(^1\)

The legal regime is capital intensive for which the solicitation of funds for the ADR administration is not out of place. The funds should be properly managed to meet its aspirations, for the sustenance of ADR in Ghana. Indeed the funds solicitation should not elude practitioners to burden prospective clients with huge legal fees or services, so as not to defeat the purpose of ADR, which is gaining grounds as an efficient and effective conflict resolution tool.

Finally, the Act empowers the Magistrate Courts to handle minor criminal matters pertaining to the following kinds of cases: monetary claims for recovery, minor assault, family maintenance claims, offensive conduct, landlord/tenant disputes, defamation, threat of harm or damage to property, unlawful entry and minor land disputes.\(^2\) Furthermore, Section 1 of the Act, sets out the applicability of the Act, and states clearly that the Act applies to all matters with the exception of issues relating to:

(a) “the national or public interest”;

(b) “the environment”;

(c) “the enforcement and interpretation of the Constitution”; and

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\(^1\) University of Ghana http://ugspace.ug.edu.gh

\(^2\) University of Ghana http://ugspace.ug.edu.gh
(d) “any other matter that by law cannot be settled by an alternative dispute resolution method.”

Accordingly, there are potentially wide categories of dispute which might be deemed to fall outside the scope and application of the Act. According to Section 82 of the ADR Act 2010, mediation agreements are recognized as binding and enforceable as court judgments.

3.3.2 Types of ADR Methods in Ghana

ADR is a collective term, where several methods/mechanisms can be explored in the quest for solution to a particular dispute without litigation. Thus, disputes or conflicts have their own resolution philosophy and accordingly recommended to parties involved. The following are the foremost ADR conflict resolution mechanisms and the Ghanaian experience in the utilisation of these mechanisms;

3.3.3 Negotiation

In negotiation, parties or their representatives resolve to discuss matters pertaining to their dispute with the main purpose being to settle their dispute without seeking the assistance of third party. Negotiation is among the most used ADR which Colosi and Berkeley defined “as a process that affords the disputants an opportunity to exchange promises and commitments in an effort to resolve their differences and reach agreement” and for Goldberg, Sander, and Rogers, negotiation is “communication for the purpose of persuasion.” The common theme in these definitions is trust, where disputants believe would help in resolving disputes.
Despite efforts by counsels who offer assistance to disputants during the negotiation process, negotiations take place every day without legal representation, making them a very attractive form of ADR to disputing parties. Negotiations vary in level of formality, with some taking place over the course of a few informal meetings or phone conversations, and others through a series of written settlement offers issued pursuant to a pending lawsuit. Whatever the formality, by far the biggest advantage of negotiation is that the parties completely control the process in this form of ADR.

In addition to controlling the level of formality, parties to a negotiation also control the tempo of their discussions, the settlement options they entertain, and the ultimate outcome of their dispute. Although the level of preparation necessary for negotiation will vary depending upon the complexity of the issues at stake, the first step in any successful negotiation must be an in-depth review of the relevant facts. Parties should take care to not only review the facts relevant to their side of the argument, but also to those of all other parties, to ensure that they are fully aware of all possible issues. Next, the parties should determine who should be their main negotiator: the parties themselves, their attorneys, or some other representatives. The primary negotiator should be experienced in negotiation, very familiar with the dispute, and/or very familiar with the opposing party. Once selected, the parties should work with the negotiator to determine a varied range of settlement options, while keeping in mind the best and worst alternatives and the parties’ ultimate goals. The parties should also evaluate what their next step will be in the event negotiations prove unsuccessful. The study’s interview revealed that most practitioners in Ghana used negotiation mainly in resolving labour-related or trade union issues, especially at the NLC. This was because
parties find it appropriate and convenient to discuss the grievances and needs in detail during the negotiation process.

Its relevance and benign processes are endearing to the disputants and always resorted to. However, its commonness and accessibility should not reduce its potency but rather consolidate and entrench its potentials for the growth as a conflict resolution mechanism. The traditional court system uses this medium in the settlement of disputes, especially where the dispute is minor in nature.

3.3.4 Mediation

Goldberg, Sander and Rogers, observed that “mediation is an assisted and facilitated negotiation carried out by a third party”\(^\text{27}\) and “as a voluntary process within which the mediator facilitates the disputants to negotiate their own solution to their dispute by assisting them to systematically isolate the issues in dispute, to develop options for their resolution and to reach an agreement that accommodates the interests and needs of all parties.”\(^\text{28}\) As noted by the two definitions, in mediation, a neutral third party helps the parties come to an agreement on how to resolve the case in contention. The mediator has no authority to impose a solution on the parties. Instead, he/she goes back and forth between sides to help them come to an understanding about how the case could be resolved to their mutual satisfaction. A mediator is as important in helping parties evaluate their case realistically, as the mediator can point out which facts or arguments s/he believes or rejects. When courts order parties to try ADR, they most often order mediation. Although it still allows disputing parties considerable flexibility in reaching a resolution, mediation is quite a bit more
structured and formalized than general negotiation because it employs a neutral, third-party mediator to assist the parties with reaching a consensual agreement.

However, the mediator’s role is not to unilaterally decide on the appropriate resolution to the parties’ dispute. Instead, the mediator acts as a facilitator who guides disputing parties’ discussions in order to assist them with “understanding the nature of the problem, the underlying interests of all parties, and the various options that may exist which can help resolve all, or part, of the problem.” By doing so, the mediator is often able to help the parties uncover the interests underlying each party’s positions, and thereby assist the parties with formulating a collective settlement agreement that satisfies each of the parties to the fullest extent possible. Mediation has increasingly become a viable conflict resolution mechanism consistently and persistently referred to by attorneys, especially in out-of-court, settlement case(s). In Ghana, mediation is mostly used in the resolution of family and social issues as well as labour issues. Interview conducted on the Central ADR in Ashaiman revealed that mediation is frequently used in resolving disputes, especially those pertaining to marital problems, debt collection and child maintenance, amongst others.\(^{29}\)

### 3.3.5 Arbitration

Historically, arbitration is seen as one of the most popular method of ADR worldwide. It is professionally viewed as “The submission of a dispute to an unbiased third person designated by the parties to the controversy, who agree in advance to comply with the award—a decision to be issued after a hearing at which both parties have an opportunity to be heard.”\(^{30}\) In these situation, a neutral third party known as the arbitrator is responsible for running the process and making the
decisions necessary to resolve the dispute. Unlike a judge, the arbitrator is often a private person chosen by the parties due to his or her expertise in the area of dispute and sometimes legal training is required depending on parties’ specification. In this sense, arbitration is a creature of contract, and the terms of the parties’ particular arbitration agreement are generally controlling. Before any dispute has arisen, parties often engage in an agreement to arbitrate and can also be made after a dispute has arisen, as the result of a negotiation between parties already in conflict. Binding arbitration in lieu of judicial adjudication is voluntary in the sense that it is only by agreement that one is required to arbitrate; but once there is an agreement it is involuntary in the sense that courts will enforce it against a reluctant party by refusing to adjudicate disputes which are within the scope of the arbitration agreement and thus require arbitration. In an arbitration proceeding, the procedural rules may be set by the parties in their arbitration agreement. Pre-trial discovery is typically limited or eliminated, and each party is given an opportunity to present proofs and arguments at a hearing where the procedures are typically much less formal than those found in court. Depending upon the parties’ agreement, the arbitrator may or may not be asked to render a principled decision supported by a reasoned opinion. Often the arbitrator is free simply to announce the award without any explanation. In “final-offer” arbitration, by agreement of the parties the arbitrator is required to resolve the dispute by choosing one or the other of the “final-offers” submitted by the disputants the arbitrator lacks all power to impose any other result.

Arbitration, in the case of West African societies, has been part and parcel of the politico-traditional structures and offered and still offers the wheels on which societal justice, peace and tranquillity ride on. The traditional and political leader acts as the arbiter who strives to handle the case brought before him. The traditional undertones used coupled with vast experience in the
societal cultural flavours, provide the basis for amicable settlement and for overall benefit of parties and to extension, the entire society. Ghana’s inclusion of this important aspect in the ADR Act is imperative as prominence is given to the country’s cultural and traditional nuances.

3.3.6 Conciliation

Conciliation is a process by which the parties to a dispute, with the assistance of a third party, identify the issues in dispute, develop options, consider alternatives and endeavour to reach an agreement. The conciliator may advise on the content of the dispute or the outcome of its resolution, but not determine the dispute. The conciliator may advise on or determine the process of conciliation may make suggestions for terms of settlement, give expert advice on likely settlement terms and actively encourage the participants to reach an agreement. This conflict resolution mechanism is akin to mediation, as the conciliator assists parties by proposing strategies of resolving the conflict and how they could resolve the dispute. The conciliator is involved and remains neutral throughout the process.

It must be noted that the ADR Act does not emphasise on conciliation. This was confirmed by the study’s interviews with various practitioners who opined that conciliation is rarely used in Ghana’s conflict resolution process.

3.3.7 Neutral Case Evaluation

By this mechanism, parties together with their legal representatives make an appearance before a neutral party and present their cases, arguments or evidence to support their positions. Dutifully, the neutral party makes a non-binding evaluation or assessment of their positions and offer an
opinion concerning the possible outcome of the case should litigation be opted for. The parties are then left with a choice of which mechanism to opt for in order to reach a joint solution. A professional explained that: “the parties consult a practitioner or expert for advice on how their case might result if they move to court.” Recommendations by the neutral or conciliator remains unbinding. The inherent disadvantage associated with this mechanism however is that, the party at advantage or likely to win unduly delays the process for a long time. This medium is usually opted for in situation where there is deep distrust among disputants.

3.3.8 MED-ARB

ADR makes it possible to explore an array of mechanisms or hybrid procedures for effective resolution of disputes based on the parties’ desires and consent. Since ADR is aimed at an amicable settlement of disputes, a combination of two mechanisms can be used to ensure smooth resolution. One of such amalgamated mechanisms is Med-Arb.

In pursuance with its name, the process combines mediation and arbitration methods. Because it is a blend of mediation with its persuasive force and arbitration with its guarantee of an assured outcome it is seen as getting the best of both worlds. Upon arriving at an agreement, parties sign to it and are bound to adhere to the terms of resolution. In situation where there is a failure in reaching an agreement however, the mediator assumes the role and powers of an arbitrator and pronounce either a binding or non-binding award. This usually ensures an acceptable resolution among parties as parties feel a sense of participation in the resolution process. A possible problem may arise in this mechanism in situations where same person act as mediator and arbitrator as there can be an element of bias in the resolution especially if the person is not meticulous. A professional
poignantly noted that in certain instances there is reluctance on the part of parties to freely speak to mediators especially in private due to his or her possible decision of the case should mediation fail. This he suggests defeats the most vital objective for choosing ADR process—free communication with the neutral third party.\(^{35}\)

It should be made clear that the above conflict resolution strategies are not mutually exclusive of each other, as they can be used as complementary mechanisms without losing their respective traits. In situations where people agree to use these complementary procedures, it will create the room to accommodate the view that conflicts are complex, endemic and unpredictable, and require different strategies in combating them from all fronts. When all stakeholders accept this common, but important view, that conflict resolution mechanisms, that which ADR offers will continue to be relevant in the social, economic and cultural paths of Ghana, in particular, and the West African sub-region as a whole.

3.4 ADR and the Magistrate Courts Dichotomy in Ghana

Since the introduction of ADR in Ghana, a symbiotic relationship has been developed between Ghana’s judicial court system, especially, the magistrate courts and its quasi-judicial counterpart—Alternative Disputes Resolution (ADR). Ghana has a total of 153 Magistrate courts distributed across the ten administrative regions of Ghana.

The Magistrate courts constitute the lowest courts of adjudication in Ghana. The jurisdiction of the Magistrate’s Court covers both civil and criminal matters.\(^{36}\) The civil matters include nuisance, landlord-tenant relations, matrimonial matters, land cases, child maintenance, neighbour dispute,
amongst others. On the other hand, the criminal jurisdiction of the magistrate’s court is limited to summary offences such as assault, offensive or threatening conduct and theft, where the maximum fine is 500 penalty points or a prison term not exceeding two years. Since 2005 the Magistrate’s Courts have become the venue for an important experiment in ‘Court-connected ADR’.

Under Ghana’s court connected ADR, litigants are referred to ADR by the Magistrate or judge only after they have filed their case at the court and made an appearance before him or her, and with their consent. With the view to making ADR attractive to disputants, no fee is charged beyond the filling fee. Accordingly, cases that have not been filed at the courts cannot be dealt with under the court connected ADR. In such instances, the parties in dispute can go to a private practitioner to have their case heard and settled. To promote the patronage of ADR, magistrates or judges consistently remind disputing parties on the availability of an amicable resolution mechanism during their first court appearance.

Once the parties opt for ADR, the court ADR coordinator explains the system to them in more detail, emphasizing the voluntary nature of the whole process but that once an agreement has been reached it will be ratified by the Magistrate as a judgement of the court, and that there is no appeal. To reduce tensions, various styles are used by the mediator. A common practice is the mediator urging the disputants to address each other by their names, to show respect and not interrupt each other. This helps the mediator guide the discussion in the direction which is most likely to result in a mutual settlement. According to one of the ADR practitioners interviewed, once a case is settled under the ADR procedure, the parties return to court for the Magistrate to enter the agreement as a ‘consent judgement’. This gives it the status of a legal judgement which
can be enforced by the court. Hence, if a party fails to honour the agreement the party can be compelled to do so. In instances where the mediator is unable to resolve the dispute, the case is sent back to the courts for the normal litigation to begin.\(^{43}\)

Currently, 57 of the 333 Magistrate’s courts offer ADR services in Ghana, and it is hoped that by 2017 all magistrate courts would offer ADR services. Furthermore, it is worthy of mention that from 2014, 34,701 cases were mediated out of which 16,913 representing 49\% were settled.\(^{44}\) For the 2012-2013 period, “court-connected mediation programmes handled 4,918 cases, of which 46 per cent were settled; longer term data show 52 per cent of mediation cases were settled.”\(^{45}\) From this statistics, ADR process is showing promises as more cases are mediated and settled in a relatively speedy manner. For instance, from 2012 to 2013, settlement rate of 52\% was achieved. Then it is very impressive, and more resources should committed in making ADR, more pronounced across the country. The table below gives detailed cases mediated and settled, from 2006 to 2010.

**Table 1: ADR Cases and Settlement in Ghana’s Magistrate Courts, 2006-2010**

<table>
<thead>
<tr>
<th></th>
<th>2006-7</th>
<th>2007-8</th>
<th>2008-9</th>
<th>2009-10</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cases Mediated</strong></td>
<td>853</td>
<td>1,723</td>
<td>5,358</td>
<td>3,764</td>
</tr>
<tr>
<td><strong>Cases settled</strong></td>
<td>466</td>
<td>807</td>
<td>3,871</td>
<td>1,633</td>
</tr>
<tr>
<td><strong>Settlement Rate</strong></td>
<td>55%</td>
<td>47%</td>
<td>72%</td>
<td>43%</td>
</tr>
<tr>
<td><strong>Settlement rate in Courts: civil</strong></td>
<td>N/A</td>
<td>38%</td>
<td>42%</td>
<td>53%</td>
</tr>
<tr>
<td><strong>Settlement rate in Courts: criminal</strong></td>
<td>N/A</td>
<td>30%</td>
<td>38%</td>
<td>56%</td>
</tr>
</tbody>
</table>
From Table 1, 2006-7 saw 853, 466, 55%, represents cases mediated, cases settled and settlement rate, respectively as ADR cases settled as % of total pending and ADR cases settled as % of civil pending were 0.47% and 0.8%, respectively.

During the 2007-2008 time frame, cases mediated, cases settled, and settlement rate, were 1,723, 807, and 47%, respectively with 38%, 30%, 0.68%, and 1.0%, were recorded, for settlement rate in court (civil), settlement rate in court (court), ADR cases settled as % of total pending and ADR cases settled as % of civil pending, respectively.

For 2008-2009, cases mediated, cases settled, and settlement rate, were 5,358, 3,871, and 72%, respectively with 42%, 38%, 3.5%, and 6.0%, were also recorded, for settlement rate in court (civil), settlement rate in court (court), ADR cases settled as % of total pending and ADR cases settled as % of civil pending, respectively.

For the 2008-2009 period, 3,764, 1,633, 43%, were cases mediated, cases settled, and settlement rate, respectively with 53%, 56%, 2.0%, and 3.3%, were also recorded, for settlement rate in court
(civil), settlement rate in court (court), ADR cases settled as % of total pending and ADR cases settled as % of civil pending, respectively.

From the above, the settlement rates from 2006-2010 for ADR cases were very impressive, compared to the rate of its magistrate counterpart. ADR recorded its highest settlement rate of 72% between 2008-2009 compared to the magistrate courts which recorded 42% and 38% for settlement rates in courts for both civil and criminal cases, respectively. However, ADR recorded its least settlement rate of 43%, compared to 53% and 56% settlement rates in courts for both civil and criminal cases, respectively for its magistrate court counterpart from 2009 to 2010.

3.5 ADR Institutions/Centres in Ghana

The ADR’s Act succinctly stipulates the establishment of ADR centres as wheels on which ADR services would be carried on. Although the State is yet to establish its own ADR centres, in meeting this requirement therefore, accredited independent ADR centres have been established to offer ADR services. These are attached to institutions dealing in dispute-related issues such as the courts, labour institutions especially the National Labour Commission (NLC), amongst others. For the purpose of this study, three accredited ADR centres, namely, Central Alternative Dispute Resolution Centre (ADR) in Ashaiman, Gamey and Gamey Academy of Mediation (GGAM) in Tema and West Africa Dispute Resolution Centre (WADRC) in Adabraka have been examined. These centres continue to offer immeasurable assistance in the settlement of disputes either through the court-connected programme or cases brought to them by disputants themselves. Established in September 2000, Central Alternative Disputes Resolution Centre, Ashaiman was established as one of the pilot ADR agencies to serve Ashaiman and its environs. Prior to its
establishment, in 1999, about 33 selected elders, councillors, headmen, opinion leaders and tribal chiefs in Ashaiman availed themselves with the opportunity to be trained by Ghana Association of Certificate Mediators and Arbitrations (GHACMA), under the patronage and sponsorship of the United State Embassy. The centre prides its self in handling cases such as rent disputes, neighbour disputes, land/family property issues, debt recovery, child custody/maintenance, petty crime and other assault cases that are common in the socio-economic settings of Ashaima. The centre continues to deliver on its core mandate of dispensing justice and animating pacific values between disputing parties. Statistically, the cases received and settled from 2009 to 2013 are presented in the table below;

**Table 2**

<table>
<thead>
<tr>
<th>YEAR</th>
<th>NO. OF CASES RECEIVED</th>
<th>NO. OF CASES SETTLED</th>
</tr>
</thead>
<tbody>
<tr>
<td>2009</td>
<td>849</td>
<td>832</td>
</tr>
<tr>
<td>2010</td>
<td>902</td>
<td>895</td>
</tr>
<tr>
<td>2011</td>
<td>1,056</td>
<td>1,022</td>
</tr>
<tr>
<td>2012</td>
<td>778</td>
<td>755</td>
</tr>
<tr>
<td>2013</td>
<td>1,065</td>
<td>1,019</td>
</tr>
<tr>
<td>TOTAL</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Source: Central ADR, Ashaiman, 2012

From the table above, 2009 saw 832 cases settled out of 849 received, whilst 2010, 2011, 2012 and 2013 saw 902, 1,056, 778, and 1,065 cases received and consequently 895, 1,022, 755 and 1,019 settled respectively. The settlement cases are commendable and ably offer amicable solution to disputes, taking into account the huge clientele the centre responds to. Ashaiman and its environs are cosmopolitan in nature and readily settling case at a relatively fast pace, comparing cases received and settled.
In detailing the specific cases handled, the following statistics are worthy of note as presented in table 3 below:

<table>
<thead>
<tr>
<th>CASES</th>
<th>NO. OF CASES RECEIVED</th>
<th>REMARKS</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>2012</td>
<td>2013</td>
</tr>
<tr>
<td>Rent</td>
<td>759</td>
<td>826</td>
</tr>
<tr>
<td>Debt</td>
<td>214</td>
<td>140</td>
</tr>
<tr>
<td>Child Maintenance</td>
<td>9</td>
<td>10</td>
</tr>
<tr>
<td>Marital Problems</td>
<td>5</td>
<td>13</td>
</tr>
<tr>
<td>Land Litigation</td>
<td>4</td>
<td>16</td>
</tr>
<tr>
<td>Minor Assault</td>
<td>-</td>
<td>4</td>
</tr>
<tr>
<td>Neighbor Dispute</td>
<td>3</td>
<td>6</td>
</tr>
<tr>
<td>Dispute over Utility Bills</td>
<td>59</td>
<td>36</td>
</tr>
<tr>
<td>Petty Crime</td>
<td>4</td>
<td>3</td>
</tr>
<tr>
<td>Miscellaneous</td>
<td>-</td>
<td>11</td>
</tr>
</tbody>
</table>

Source: Central ADR, 2012.

From the table above, the rent cases settled between 2012 and 2013 increased by 67. The reason for the increase stemmed from disagreement between tenants and landlords/ladies. According to the centre’s 2012 annual report, “…tenants could not either pay for high rent advances charged them after initial rent agreement had expired or had lost their jobs and could therefore not be in a position to pay for their rents and in some cases, utility bills.” This led to disputes between these two parties and therefore resort to ADR services. The economic and social predicaments of citizens often disable tenants to fulfil their obligations to their respective landlords/ladies.
Debt compliant saw a reduction by 74 was as a result of both parties, especially the defendants, propose settlement terms. It should be noted that these debt case arise primarily due default by one party who contract loans from another party and when the recovery of the loan because very difficult. Hence, the last resort for the settlement of the dispute is through the ADR.

The child maintenance case which increased by 1 under review comprises the maltreatment meted out children by their parents. Demands made on parents by children often infuriate parents who in turn unleash their anger on these children and thereby hurting them in the process.

Marital cases, stemming from spousal abuse, infidelity, amongst others, also increased by 8. These issues frequent the centre but consistent mediation skills, they are ably solved for peaceful co-existence between spouses.

Land litigation, a dispute-laden area often times emanate from acquisition of land from different individuals, land boundaries, amongst others. Its case increased by 12 and the centre was apt in handling these cases to the best of its ability. The cosmopolitan nature of Ashaiman and its environs such as Tema, Nungua, Teshie, amongst others, often makes land acquisition and lease a very lucrative venture. That is, land is a valuable asset in these areas and one can make a lot of money out of it. With this notion, many prospective land buyers are constantly robbed on the pretence of getting them land. This often leads to dispute between parties involved and then resort to a dispute resolution avenue for redress. ADR services with respect to land cases is impressive owing to the fact that entrenched interest in land cases; makes the case prolong especially in judicial court system.
Minor assault recorded a zero increment, meaning assault occurring in various households in form of beatings, quarrelling, maltreatment remained unchanged. Neighbour dispute comprising excessive noise, poor waste disposal, non-payment of bills, amongst others. This increased by 3. Although these are inevitable in households, the availability and accessibility of ADR services means readily resolution of these disputes on a timely basis. Dispute over utility bills which increased by 23, is an inevitable sources of disputes in most households in Ghana. Bills ranging from electricity, water, waste and maintenance, continue to create disputes amongst and between householders, especially during the collection of these monies from other householders. Householders who are unable to pay resort to insult and thereby creating dispute.

Petty crimes committed in the households reduced by 1, as defendants were able to reach agreement with complainants for settlement.

Another centre noted for mediation processes, is the Gamey and Gamey Academy of Mediation (GGAM). Its Chief Executive Officer (CEO) and senior partner, Mr. Austin Gamey is credited for mediation, arbitration and negotiation of labour disputes in Ghana. There are also six partners in the administration of the academy. The academy was privately funded and receives no funding from government and external agencies. The main source of funding comes for the academy is through its training programmes, consultancy services and fees from resolutions. The source of the expertise and skills of the partners is attributed to its association with Professor Dan Dana and the Mediation Training Institute of USA. Since then, the academy has engaged in numerous training practitioners and awards a Diploma in mediation to practitioners who have gone through their respective training within the stipulated training.
In 2007, the academy formally affiliated to the People Using Language Skills Effectively (PULSE) institute, Cadbury, Canada and currently runs a mediation programme in conjunction with Pentecost University College, Koforidua, Ghana. The academy prides itself as trainer of practitioners and utilises negotiation, mediation, arbitration, med-arb and other hybrids of ADR as the main methods of dispute resolution. The academy uses mediation in labour-related, marital, family and social issues, whilst negotiation is used for also labour issues as well.

The academy has engaged in and resolved several cases since its inception, especially on the labour front, through the National Labour Commission. It also offers its services voluntarily in the resolution of cases.

The West African Dispute Resolution Centre (WADRC) was established in 2002, and formally started work in 2004/2005 with the objective of ensuring peaceful resolution of disputes outside the judiciary or law courts and also engage in training other people, especially traditional rulers to improve on their resolution expertise, since they resolve a lot of disputes at their respective jurisdiction. It is privately owned and thus receives no funding from any governmental and non-governmental sources, although several appeal for funds from donor agencies have proved futile. According to the senior consultant of the centre, in the person of Madam Georgette Francois, partners of the centre use their personal funds in running the centre and only get additional funding through ADR consultancy services and practices. Her extensive knowledge and experience in ADR stems from her being selected as one of the few judges sent for training at the University of California, Sacramento in 2002 and was also part of the GHACMA who engaged in the training of ADR practitioners, especially those in Ashaiman.
The centre has three (3) active practitioners and about ten (10) non-permanent associates outside the centre who are contacted on temporarily basis, especially at the regional level. As part of their practice and consultation, the centre uses mediation- mostly used on relationship issues, fact finding, early neutral case evaluation, med-arb, expert appraisals, amongst others. Uniquely, the centre engages in what it calls mobile mediation; where practitioners move to disputants at the comfort of their homes and sometimes farms to engage in mediation. When this is done, “disputants feel they are brokering the peace and this has help tremendously.”\textsuperscript{50} The centre consulted for the Millennium Development Authority (MiDA) in a mediation discourse with other disputants in the Upper East region of Ghana. This was very successful.

These mediation agencies/centres continue to contribute to the growth of ADR in Ghana. Government and other non-governmental organisations should readily assist these centres in resolving disputes which could escalate to into full conflicts, so that peace and tranquillity can be given priority.

3.6 Successes/Performance of ADR in Ghana

The successes/performance of ADR in Ghana can adequately be judged by its ability to fulfil its core mandate of enhancing accessibility to justice delivery in Ghana, especially for the poor and vulnerable, in order to provide legal aid benign to animate confidence in Ghana’s overall judicial system. The following are the successes of ADR in Ghana:

A monumental success achieved, so far, is the cost-effective nature of ADR. Clients, especially from poor backgrounds can now afford to pursue cases at relatively cheaper cost, and seeking
justice will never be a mirage. As noted by Mr. Akafia “…for example, if you are doing a case with the National Labour Commission, say for a category of people, you may spend two or three hours per sitting and two or three sittings will be enough. Whereas if you go and take a lawyer for the same case, with all the adjournments and so on, you can compare the cost involved…it gives you an idea of the sort of cost-effectiveness we are talking about. ADR is cheaper.” With Ghana’s Court connected ADR, no fees are charged beyond the filing fees. It does not involve expert fees or courts costs. This is because, as indicated earlier, the parties are not charged any further fees after paying their basic ‘filing fee. ADR has thus contributed in eliminating a “monstrous” impediment and widening the judicial governance in the country.

Speedy nature in the resolution of conflict through the ADR processes is very impressive. Lengthy delays, fuelled by umpteen adjournments, backlog of cases, delay in the presentation of witnesses, evidence, amongst others; characteristic of the judicial court system, continue to frustrate clients whose cases can delay for months, and even years, and thus, resort to ADR for speedy delivery of justice. Factors accounting for the speedy delivery of justice in ADR processes are “ADR can be arranged by both parties and panellists as soon as they are able to meet. A mediator has about 30 days to settle each case and if a case is still pending after the ultimatum, then the mediator would have to refer the case back to the court but in most instances, the cases are resolved after two sessions and at times a week to settle such cases.

Confidentiality, an important component in conflict resolution mechanism, is given utmost importance in ADR. Thus, this endears prospective clients to resort to ADR as it is designed to ensure privacy of both parties throughout the entire proceedings, as against the judicial court
system where parties expose each other in public in order to earn more scores to possibly win the case. “With ADR, your secrets remit in the room…between parties and mediator.”

Another success worthy of mention is the entrenched and the continuity of the usage of indigenous language in the resolution processes. Clients are allowed to express themselves in their respective native languages, thereby enabling individuals, especially the poor and the marginalised experience the legal system. It further fastens the resolution process as intermediaries-interpreters are conspicuously eliminated; whereas in the case of the judicial courts system where English is the main medium of expression and native languages rarely used, unless in a very serious cases. The use of native languages in ADR is proper and as it responds to the socio-cultural ambiance of the society with respect to protecting native languages from being extinct.

With regards to control, another success area chalked by ADR process, is its ability to provide disputing parties the opportunity to “control” and “own” the process as parties dictate the type of mechanism to pursue, the choice of the neutral party, amongst others, are within the ambit of the parties. These processes are however, absent in the judicial court system where the judge representing the court, superintends over the entire process and only gives parties the opportunity to decide when opting for mediation, for the settlement of the case.

Furthermore, another endearing attribute of ADR, is the use of neutral panellists or third parties, who facilitate in the resolution process. These professionals are used for disputes related to their area of expertise and thus, provide professional impetus in the process which at the end of the day will be beneficial to both parties. However, the expertise of the judge in the court is only limited
to his/her legal field and specialisation, and will not appropriately appreciate cases brought outside
his/her specialisation.

Cooperation is highly demonstrated under ADR, especially between parties. ADR services take
place in a more informal, less confrontational environment. This is more conducive to maintain a
positive business relationship between the two parties. With mediation, specifically, the result is
collaboration between the two parties. Therefore ADR is a process that looks into the best interest
of both parties in order to conclude a compromised mutual decision.

As indicated earlier, flexibility is entrenched and becoming a good characteristic of the ADR
processes. This success stems from the fact that legal and non-legal disputes can be addressed
during this process proving it to be more flexible. Some may think this is a suitable package in the
sense that it takes into account fundamental concerns of the parties and offers remedies consistent
with the interest of parties, which are not available when at court.

The last success story of ADR is its reconciliation approach, as its preoccupation is animating a
compromise solution, satisfactory to both parties. ADR proceedings allow parties ample
opportunity to own and control the process; thereby allowing them accept judgement thereof, for
mutual beneficial ends.

The understanding and cooperation enjoyed by both parties from the beginning of the process are
transferred into reconciliatory gestures, after final judgement. This is, however, not the case in
judicial court proceedings which create a “winner-vanquish” situation. Antagonism starts right
from the beginning of the process and even beyond the judgement, when both winners and vanquished are declared, through the court verdict. The reconciliation approach provided by ADR, goes further to promote peace and unity, prerequisite for development in the community and nation as a whole.

### 3.7 Challenges of ADR in Ghana

Funding continues to impede the programmes’ successful implementation and completion. ADR is not immune from this financial web. From its humble beginnings, ADR activities were funded through the benevolence of development agencies. These included German International Cooperation (GIZ), Danish International Development Agency (DANIDA), United Nations Development Programme (UNDP) and Millennium Development Authority (MIDA). Funding, however, has not been forthcoming from these development agencies, when Ghana attained a middle-income status, and thus making it difficult for the Judicial Service (JS) to take financial responsibility in the overall operations of ADR in Ghana. Funding-trapped JS, has not be able to shoulder these responsibilities to perfection as payment to mediators and other facilitators have not been consistent and leading to apathy to ADR activities by mediators. This constraint was also corroborated by interviews with practitioners, especially in ADR centres. A mediator recounted thus “we used to be given GHC 5 per case mediated, however, for about a year now, we have not been paid.”\(^55\) Another mediator also confirmed that she has never being paid for mediating a case in the courts.\(^56\) The sustainability and expansion of ADR could therefore be put under threat.

Another major challenge is the seeming scepticism by lawyers to the effect that ADR is a threat to their legal profession. This stems from the notion amongst most lawyers that frequent referral of
cases to ADR services might affect their revenue streams. This belief can definitely not allow the survival and flourishing of the ADR activities in Ghana, in particular, and the West African region as a whole.

Also related, is inadequate awareness creation on the existence of ADR for patronage by clients. Many Ghanaians do not even know the existence of ADR, its process and benefits. This starves vast majority who could have patronised its services than resorting to the judicial court system. Effective Public Relations (PR) is missing in terms of educating the public on the need to resort to ADR services.

An equally important challenge is the training deficits of practitioners. This stems from inadequate funding and logistic constraints needed to train such practitioners and the effect being that few practitioners are attending to numerous cases. International best practice opines that a third party or mediator must undergo a compulsory training to be equipped with the right skills to prudently and professionally handle cases to the admiration of all parties.

Infrastructure and logistical provisioning for effective functioning and sustenance of ADR in Ghana is woefully inadequate. This inadequacies were witnessed at the Central ADR Centre in Ashaiman, where centre is housed in a two-office dilapidated wooden structure with stationeries such as computers, photocopiers, furniture, amongst others were missing. This has led to the printing of confidential documents at commercial centres, which breach confidentiality code of conflict resolution.
Lack of Legislative Instrument (LI) to support the Act also militates the effectiveness of ADR. A mediator noted that though the Act made provisions for the establishment of ADR centres, these have been not done and Government does not see the need for it because there is no LI to enforce it.

The ADR system also seems to be in competition with other resolution agencies like rent control and Domestic Violence and Victims Protection Unit (DOVVSU), Social Welfare (SW), despite the fact that they area agencies with respective functions.
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CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

The study addressed the difficulties of decongesting the traditional courts, the high costs involved in litigation and often the dispensation of justice without peace. It looked particularly at the need for and the institution of ADR as a solution to the problems the settlements of disputes have been faced in West Africa as a whole and Ghana in particular. It looked specifically at advantages, successes and the challenges the implementation of ADR has faced in Ghana. It started with the hypothesis that ADR has modestly contributed to judicial accessibility and judicial governance in West Africa as a whole and Ghana in particular despite the challenges it is facing. This chapter constitutes the summary of findings, conclusions and recommendations.

4.1 Summary of Findings

From the study, the institution of ADR came as a result recommendation from Africa’s development and donor partners to adopt alternative means of resolving disputes to speed up Africa’s drive to development. Professor Uwazie of California University and the Centre for Africa Peace and Conflict Resolution were very instrumental in making this a reality. He, together with the CAPCR first engaged in the Training of Trainers (ToT) who were made up of representatives of West African Judicial Service. This was followed by the training of lawyers, judges, traditional rulers and opinion leaders. The courts in Ghana, seeing the feasibility of ADR with regards speedy resolution of disputes and reducing backlog of cases, streamlined lined it into it resolution and termed it a court connected ADR. To ensure uniformity of ADR practice, Ghana passed a comprehensive ADR Act in 2010 which states
among others the establishment of a national ADR centre and others throughout the regions. This study has shown that despite the challenges the ADR is facing as a new institution, it has assisted West African Countries especially Ghana in meeting their conflict resolution efforts and improving judicial governance.

From a review of three (3) ADR centres in the study area, the study observed that ADR is performing wonderfully well with regards to settlement rates, especially the Central ADR centre at Ashaiman in Accra. The study also found that many people still see litigation as a foremost option in seeking resolution due mainly to lack of knowledge on the effectiveness of ADR which can be blamed on inadequacy of awareness on the effectiveness of using ADR to resolve conflicts particularly in settings where people will continue to be interdependent. The study has however achieved its general objective of establishing the need for the institution of ADR in West Africa as a whole and Ghana in particular. The Nigerian and Ghanaian experiences are modestly impressive and thus the institution of ADR in these West African countries has positively opened judicial floodgate to all manner of individuals in the society to seek justice delivery through a pro-poor ADR mechanism. Another important need as observed is the incorporation of traditional African adjudication processes like customary arbitration, in ADR’s processes. This makes ADR, culturally-sensitive and thus, easily acceptable by not only citizens, but traditional and political leaders as well.

The study also looked at the regimes and mechanisms for conflict resolution in West African countries especially before colonisation and still partly been practiced, explaining their respective procedures and administration. It further exposed the weaknesses of both African indigenous conflict resolution practice and the modern judicial resolution system. The judicial
procedure is particularly expensive, frustrating and ensures or delivers justice but not peace. The use of ADR therefore comes in handy since reconciliation is important.

The study observed that despite the growing influence of ADR in reducing the backlog of cases at the courts and ensuring speedy resolution of disputes, funding is a serious constraint. The wooden structure in which the Central ADR Center is operating is small and dilapidated, old furniture, woefully inadequate computers and stationary resulting in limiting the number of mediators and cases settled.

4.2 Conclusions

The study has evidently proved that ADR is a potent conflict resolution mechanism strategy in Ghana in particular, and the West African sub region. Thus, the resultant successes in the areas of affordability, speedy adjudication of cases, confidentiality, usage of indigenous language, cooperation, reconciliation, and flexibility cannot be overemphasised. Its challenges of funding constraints, lawyers laxity in advising clients to opt for ADR, perceived as a threat to their revenue, lack of ADR awareness, inadequate training for mediators, and inadequate infrastructure and logistics should be addressed for ADR to be a strategic partner, able to effectively compliment the judicial system in the delivery of justice for all, and thus improving and entrenching judicial governance in Ghana in particular and West Africa as a whole.

4.3 Recommendations

The following recommendations should be considered by the Judiciary Service and by extension government of Ghana to make ADR a truly conflict resolution mechanism:
First, despite the dedication of a week celebration by the JS to promote ADR activities, there should be rigorous information, education and communication campaign to disseminate more ADR activities and information to the general public in order to generate interest on ADR.

Efforts must also be made to pass a Legislative Instrument to enforce the requirements of the ADR Act. This will bring uniformity to the ADR practice and also boost public confidence in the use of ADR.

More practitioners should be trained to offer their expertise in the resolution of conflicts. Inadequate practitioners means working under pressure to complete cases and could lead to backlog of cases which can defeat one of its characteristics of speeding up cases.

There is the need to allocate financial resources into the ADR sector to help in training and motivation of practitioners. The revelation of the study was that, Mediators, especially those attached to the courts are less paid and sometimes not paid at all. This has a potential of stifling the smooth operation of ADR if care is not taken.

There is the need also to engage in periodic monitoring and quality control of mediators or practitioners especially the court connected ones to ensure that its processes do not easily assume the character of litigation.

Finally, there is the need to expedite action on the setting up of the arbitration centre (ADR centre) as stipulated in ADR’s act, Act 798 of 2010. This will further help decentralise ADR activities for efficient and effective justice delivery.
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