

**IS ALTERNATIVE DISPUTE RESOLUTION A
SOLUTION TO INTERPERSONAL AND
GROUP CONFLICTS IN WEST AFRICA? THE
CASE OF GHANA**

BY

JULIANA ABOKUMA EDZII

10381116

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DECLARATION

I hereby declare that except for the references to other people's work, which have been duly acknowledged, the study presented here was written by me, under the supervision of Dr. Ken Ahorsu. It is a record of my own research and has not been previously presented in any form whatsoever in any application for a Degree elsewhere. All sources of information collected and materials used have been duly acknowledged by means of references and bibliography.

.....

Juliana Abokuma Edzii

(Student)

.....

Dr. Ken Ahorsu

(Supervisor)

DATE.....

DATE.....

DEDICATION

I dedicate this work to the Almighty God who has been my Deliverer and my Help in ages past. I also dedicate this work to my awesome parents for their undying support, love and care throughout my entire study period.

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ABBREVIATIONS

ADR	-	Alternative Dispute Resolution
BATNA	-	Best Alternative to Negotiated Agreement
CHRAJ	-	Commission on Human Rights and Administrative Justice
EU	-	European Union
FDI	-	Foreign Direct Investment
LECIAD	-	Legon Centre for International Affairs and Diplomacy
MDC	-	Multi-Door Courthouse
MNC	-	Multi National Cooperation
OMC	-	Oil Marketing Companies
UCDP	-	Uppsala Conflict Data Programme
UNCTRAL	-	United Nations Commission on International Trade
UNDP	-	United Nations Development Programme
USAID	-	United States Agency for International Development

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	ii
ACKNOWLEDGMENTS	iii
ABBREVIATIONS	iv
TABLE OF CONTENTS	v
LIST OF TABLES	vii
ABSTRACT	viii
CHAPTER 1	1
INTRODUCTION	1
1.1 BACKGROUND TO THE STUDY	1
1.2 STATEMENT OF THE PROBLEM	5
1.3 RESEARCH QUESTIONS	6
1.4 RESEARCH OBJECTIVES	6
1.5 SCOPE	6
1.6 RATIONALE OF THE STUDY	6
1.7. HYPOTHESIS	7
1.8 CONCEPTUAL FRAMEWORK	7
1.9 LITERATURE REVIEW	13
1.10 SOURCES OF DATA AND METHODOLOGY	20
1.11 ARRANGEMENT OF CHAPTERS	21
CHAPTER TWO	25
AN OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION IN WEST AFRICA	25
2.0 Introduction	25
2.1 Causes of Conflicts in West Africa	25
2.2 Consequences of Conflicts in West Africa	30
2.2.1 The Socio-Economic Impact of Conflict in West Africa	31
2.2.2 Economic Legacy of Interpersonal and Group Conflicts in West Africa	32
2.3 The Challenges of the Formal Judiciary Courts	33
2.4 Traditional Methods of Conflict Resolution in West Africa	36
2.5 An Overview of ADR as a Conflict Resolution- Mechanism tool in West Africa	41
2.6 Main Principles of ADR	45

2.6.1 <i>Informality</i>	45
2.6.2 <i>Equity</i>	46
2.6.3 <i>Direct Participation</i>	46
CHAPTER 3	51
AN ASSESSMENT OF ADR IN GHANA	51
3.0 Introduction	51
3.1 Historical Overview of ADR in Ghana	51
3.2 The Philosophy of ADR and Its Legislation in Ghana	53
3.4 ADR Methods in Ghana	59
3.4.1 <i>Negotiation</i>	59
3.4.2 <i>Mediation</i>	61
3.4.4 <i>Arbitration</i>	63
3.4.5 <i>Customary Arbitration</i>	64
3.4.6 <i>Early Case Evaluation</i>	65
3.4.7 <i>MED-ARB</i>	66
3.5 Effectiveness of ADR in Resolving Conflicts in Ghana	66
3.5.1 <i>ADR and Magistrate Courts in Ghana</i>	66
3.5.2 <i>ADR and the Commission on Human Rights and Administrative Justice (CHRAJ)</i>	71
3.5.3 <i>The Legal Aid Scheme and the ADR Institution</i>	73
3.5.3 <i>ADR Institution Centres in Ghana</i>	75
3.8 Successes of ADR in Ghana	84
3.9 The Challenges of ADR	87
CHAPTER 4	93
SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS	93
4.1 Summary of Findings	93
4.2 Conclusion	95
4.2 Recommendations	96
BIBLIOGRAPHY	99
APPENDICES	109
APPENDIX I	109
APPENDIX II	110

LIST OF TABLES

Table 3.1: Breakdown of Annual ADR performance in Ghana’s Magistrate Courts (2007-2016)	69
Table 3.2: Annual Breakdown of ADR Mediated Cases for the Legal Aid Scheme (2012-2017) within Districts in Greater Accra	75
Table 3.3: Annual Breakdown of Mediated Cases at the Ashaiman Inter-Community Mediation Centre (2011 -2014).....	78
Table 3.4: Detailed Breakdown of Cases for the Year 2017	79

ABSTRACT

Despite great strifes at resolving civil wars and political crisis in West Africa, interpersonal and group conflicts continue to threaten the stability and security of states within the sub region. Contemporarily, these states are described as having weak institutions, poor infrastructure and poor human resource capacity necessary for resolving the root sources of the conflicts. Given the aforementioned structural and agency difficulties, the study set out to investigate the efficiency of ADR in West Africa employing Ghana as a case study. Donor partners such as the UNDP and the World Bank have prescribed ADR as a solution for managing the dysfunctional nature of the conflicts with its multifaceted mechanisms. In Ghana, since 2005, the Judicial Service has adopted ADR mechanisms as part of its comprehensive structural reforms. The ADR Act 798(2010) is the legal framework for ADR aimed at promoting justice for all by delivering timely, quicker and more affordable services to help restore faith in the formal justice delivery system. The study proved that largely ADR is popular among Ghanaians and is effective in resolving interpersonal and group conflicts by restoring, reconciling and repairing strained relationships among disputants. Disputants are prepared to recommend ADR to others once their case is resolved. Despite highlighting the advantages of ADR, its application remains constrained because of limited resources, insufficient centres, continuous political interference and lack of trained professionals. Given the immense advantages of ADR mechanisms, the study recommended more education and sensitization among Ghanaians, further training especially among prospective lawyers, reviewing the laws to amend the provision on the governing board and disassociate ADR from politics.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

In the early post-cold war era, the West African sub region experienced series of civil wars as seen in countries like Liberia, Sierra Leone and Ivory Coast. The civil wars, which started in the 1960's, lasted for years and led to the loss of millions of lives.¹ Contemporarily, the civil wars have largely subsided within the sub region but even the more stable countries like Ghana, Nigeria and Senegal continue to experience civil conflicts such as ethnic, religious, commercial, political and chieftaincy conflicts.² In Ghana, communal, chieftaincy and religious conflicts have resulted in disruptions of properties and lives. For instance, the Konkomba –Nanumba conflict and the Dagbon Chieftaincy conflict in the north-eastern part of Ghana in 1994 saw more than a thousand people dead.³

Equally, West African communities and societies experience natural resource conflicts, which often border on the joint use, resource depletion and border conflicts.⁴ Ghana and Ivory Coast had contested their maritime boundaries largely due to oil and gas that is found in the Gulf of Guinea.⁵ Climate change, ecological degradation and natural resource depletion are at the centre of the Fulani herdsman farmer conflicts in the littoral West African states.⁶ Conflicts also often occur between private companies because of conflictual interpretation of contracts and challenges associated with carrying out their daily commercial activities.⁷ Natural resource and commercial conflicts in particular are often not amenable to the orthodox judicial system. This is because the courts do not often afford the privacy, quick adjudication and conciliatory measures that are

essential for the continued interdependence of communities and businesses that have to depend on each other after the resolution of the conflict.

A common source of goal incompatibility in West Africa is the siting of administrative capitals and other institutions especially when it comes to where their headquarters have to be located.⁸ This has resulted in inactivities or delay in the implementation of government policies and in serious cases undermines government's legitimacy, fuels violence and heightens disrespect for the rule of law. Again, a major source of conflict and lack of social cohesion in West Africa is group, however, defined and interpersonal conflicts. The group conflicts are closely related to communal conflicts. The interpersonal conflicts often border on relations, property and familial conflicts such as marriage, custody and property ownership issues. Traditional authorities, government agencies and non-governmental organizations are some of the institutions that manage these conflicts. However, the most common medium of resolving interpersonal and group conflicts in West Africa is mainly through the orthodox court (hereinafter referred to as courts). Nevertheless, the courts are particularly weak in handling these conflicts since they are not conciliatory and often justice is served without peace.⁹

At the courts, the above conflicts are often resolved through judgements that take the form of winner takes all. Although justice is attained, peace is, however, not achieved.¹⁰ Given the resource-constrained circumstances such as non-availability of sufficient administrative staff and logistics, the prosecution of conflicts at the courts are often delayed leaving a backlog of cases that constrain the timely and efficient delivery of justice.¹¹ Some cases have delayed at the law courts for over a decade.¹² Such delays often influence disputants to take the law into their own hands and as such conflicts that have laid dormant sporadically occurs. Again, justice at the law court often depend on parties' access to legal representation and as such, the cost of prosecuting conflicts

at the courts are quite expensive.¹³ The procedures are also cumbersome and unfriendly to the ordinary citizen due to the anglicized nature of the courts, especially; the use of English during proceedings at court prevents people from resorting to such means in resolving their differences. Of late, there has been accusation of corruption with justice being sold to the most influential bidder.¹⁴ For the above reasons, since the 1990's Alternative Dispute Resolution (ADR) has been increasingly sold as a solution to the West African public.¹⁵ The case for the institution of ADR has been promoted by the United States Agency for International Development (USAID) and the European Union (EU) for the institution of ADR to speed up the resolution of commercial disputes, strengthen governance and promote effective delivery of justice. The argument is often made that the weak, corrupt and nostalgic nature of the judicial court in West Africa serve as a disincentive for attracting Foreign Direct Investment (FDI) for the West African sub region.¹⁶ This is because corporate entities often prefer a speedy and amicable settlement of commercial dispute to prosecution at the law court

Menkel –Meadow therefore argues that due to the psychological, exacerbating and dysfunctional nature of conflict, it calls forth the need to find creative ways of managing conflicts to prevent them from escalating.¹⁷ Furthermore, it is believed that such creative ways as ADR would promote greater reconciliation and restoration among disputants especially when they continue to be interdependent on each other. It is often said that ADR is not a new concept as it shares certain key philosophies with the traditional African method of resolving conflicts. Both methods thrive on trust, transparency, relationship building and above all reconciliation, which are very important in a culture oriented sub region where societies continue to build stable and enduring social systems. Ahorsu and Ame, posit that traditional African traditions such as kinship systems are still strong in Africa and have remained unchanged with majority of the citizens' resorting to their

traditional rulers to have conflicts resolved.¹⁸ Furthermore, given the limited reach of African families and traditional authorities to reap the full benefits of full-scale court processes and the persistent traditional outlook of African societies, it is prudent to blend both traditional and western methods of mediation in resolving civil conflicts at various levels of societies synonymous with the culture of the citizens.¹⁹ According to Atua, ADR is not meant to replace the judicial system but only act as an alternative to full-scale court processes. He argues that in traditional African societies where cultural norms often subordinate the rights of women especially in the traditional Ghanaian communities, ADR can aid in protecting their rights since its primary objective is to promote justice for all.

Subsequently, since the early 1990's, USAID and EU through the pioneering effort of Professor Ernest Uwaize has promoted ADR in West Africa. In Ghana, he worked through such institutions as the Law Faculty and the Legon Centre for International Affairs and Diplomacy (LECIAD) of University of Ghana, Ghana Judicial System and the Bar to promote ADR in West Africa and around the world. Since 1996, ADR has been practiced in several levels in Ghana with the help of the USAID and prominent persons such as the former chief Justice of Ghana Her Ladyship Georgina Wood, Prof Henrietta Mensa - Bonsu and Nene Amegatcher. Ghana consolidated its ADR when it passed into law the ADR Act of 2010(278).

Today, Ghana boasts of such commendable ADR mediation centres such as the Ashaiman Mediation Centre, Centre for Peace, Gamey and Gamey Mediation Group and Marian Conflict Resolution Centre, which mediate cases across the length and breadth of Ghana. The former Chief Justice of Ghana, Her Ladyship Georgina Wood during a lecture at the California University Peace Awards Dinner (2013) asserted that indeed ADR has become an integral part of Ghana's legal and judicial system And that, ADR is providing easier and faster mechanisms for conflict resolution.

This has helped reduce the caseloads associated with the orthodox judicial systems. ADR has served as an attractive economic feature for development by attracting corporate investment in Ghana. On the other hand, Ahorsu and Ame argue that though the ADR Act (798) 2010 makes room for traditional modes of mediation, what obtains in Ghana is purely a western concept of ADR. They further argue that West African societies despite social change and globalization are still very traditional and cultural in outlook and practice. Therefore, there is the need to incorporate traditional African mediation values into the practice of ADR in order to achieve greater efficiency in West African societies, where levels of consciousness differ from place to place, community to community and person to person. Given the debate surrounding the feasibility, effectiveness and efficiency in the institution of ADR as a conflict mechanism institution in West Africa, this study evaluates how effective ADR has been so far as a solution to group and communal conflicts in Ghana.

1.2 STATEMENT OF THE PROBLEM

As stated earlier, Her Ladyship Georgina Wood has made the case that ADR has become an integral part of Ghana's legal and judicial system and that it provides a cheaper, faster, more efficient and reconciliatory conflict resolution mechanism. On the other hand, Ahorsu and Ame strongly made the case that despite the obvious merits of ADR , transposing a purely western concept to a traditional and cultural sensitive West African society where rationality and consciousness are often tempered with kinship, religious, ethnic, intersubjective meanings necessarily undermines the utility of ADR's present form in Western African societies. Given, the above concerns and debates about the efficacy of the application of ADR in Ghana, this study seeks to evaluate the effectiveness and efficiency of ADR in Ghana.

1.3 RESEARCH QUESTIONS

1. Why the need for ADR in Ghana?
2. What are the main principles, norms and values of ADR?
3. What are the structural, cultural and agency challenges faced in the institution of ADR as a conflict resolution mechanism in Ghana?

1.4 RESEARCH OBJECTIVES

1. To review the conflict management mechanism in West Africa.
2. To examine the main advantages and principles of ADR.
3. To evaluate the operationalization of ADR in Ghana from 2011 to 2017.
4. To make suggestions based on findings to address the challenges if any as a means of resolving ADR in Ghana.

1.5 SCOPE

This study evaluates the need and effectiveness of ADR since its adoption in West Africa. It employs Ghana as a case study and it specifically assesses the utility of ADR as a conflict utility mechanism from 2011 to 2017. This timeframe has been chosen because the ADR legislation in Ghana was passed in 2010 being Act 2010 (798) and thus gives a good opportunity for its adoption to be analysed objectively.

1.6 RATIONALE OF THE STUDY

In terms of violent conflicts, West Africa has made great stride in resolving civil wars and political crisis in West Africa. Despite the decrease of conflicts in West Africa, however, group and

communal conflicts still undermine the peace, security, stability and development in West Africa. ADR has been seen largely as a solution in resolving group and communal conflicts though not without challenges. It is therefore, hoped that the findings of this study will go a long way in helping West Africa improve in the operationalization of ADR in Ghana and beyond.

1.7. HYPOTHESIS

Despite the structural and cultural challenges, ADR has performed creditably well.

1.8 CONCEPTUAL FRAMEWORK

Alternative Dispute Resolution (ADR), which is sometimes referred to as informal justice or privatization of judicial proceedings, in general refers to a set of approaches and techniques aiming at resolving disputes in a non-confrontational way.²⁰ The ADR movement, which gained momentum in the United States in the 1970's as a solution to manage and resolve disputes before they escalate into violent conflicts as well as reduce backlogged cases that have flooded the courts has evolved over the years. It covers a broad spectrum of approaches, which are used in resolving conflicts at the international, national, communal and personal levels. It ranges from party-to-party engagement in negotiations as the most direct way to reach a mutually accepted resolution, conciliation, facilitation, neutral evaluation, fact-finding, mini-trial, summary jury trial, judicial reference, collaborative law, mediation to arbitration, and adjudication at the other end, where an external party imposes a solution. ADR has been used in recent times to resolve disputes in West Africa ranging from commercial, religious and family disputes among many others.

ADR in principle is characterized by resolving conflicts among parties with or without the help of an intermediary or a third person.²¹ In cases where a third party is required, it is essential that he gains the trust of all parties to ensure that parties fully partake in the activity and freely bring out

hidden grievances at the core of the conflict. Voluntary ADR processes require that individuals be permitted to decide whether they would like to participate in the process. Decisions arrived at are not forced or imposed upon the parties and so parties are allowed to arrive at decisions on their own with the mediator in extreme cases suggesting solutions to both parties when there is an inability to arrive at working decisions for both parties. This fosters easy communication, encourages trust, provides an atmosphere for reconciliation and above gives parties the feeling that they are a part of the decision making process and they also own the process according to Uwaize.²²

Arguments made for the need and institutionalization of ADR in West Africa can be classified under two main points. The first being the inevitability of constant outburst of communal conflicts which at times threaten the survival and stability of countries as in the case of West Africa. *Laura Nader and Elisabetta Grande* make the case that the causes of these conflicts are rooted in deep historical problems of structural variation and cultural pluralism mostly because of colonialism.²³ Neo- colonialism brought about differences in interests and pressing issues such as religious transformation of kinship and marriage, nationalism as against trans- nationalism, changing roles of men and women, classes among many other issues based on conflicting interests and identities.²⁴ Due to these differences and conflicting interests, the likelihood that conflicts are bound to occur are higher in such societies hence the need for timely and more effective means of managing conflicts like ADR to reduce interpersonal and group tensions before they escalate into violent conflicts.²⁵ When conflicts are not properly managed, they become destructive and destroy lives as well as cause economic damages and losses. However when creative ways are incorporated to manage conflicts they can become constructive to the extent that it becomes an engine for growth and development as according to Menkel - Meadow.²⁶

Further, ADR has been argued by the USAID as a solution for West Africa's judicial, economic and conflict related problems. ADR as a conflict resolution mechanism tool is meant to complement the weak institutional problems like the judiciary system faced by societies in West Africa. Also due to the frequent occurrence of communal, inter group and communal conflicts which at times become violent, there is urgent need to find faster means of managing them due to the already existing high tensions present in most of these societies as a result of previous wars which have occurred in some of these countries.²⁷ Uwaize argues out the need for ADR as it is timely, affordable, quick, reduces caseloads backlogged for years in the official judicial court setting which instills a sense of justice in the people.²⁸ In high tensioned societies, it is important that cases be resolved on time and appropriately to avoid a culture of vigilantism and violence²⁹. It is for this reason that ADR is strongly advocated for, since it does not only resolve issues quickly and creatively but also employs ADR to resolve disputes which are multi-dimensional in nature with the aim of promoting harmony and confidence in the governance system as compared to the formal judicial court system.

There are also ADR connected court processes.³⁰ Judges can refer cases to be resolved using ADR processes where appropriate. The court may agree to ADR as a means to resolve conflict when one party through written or oral communication makes their intention known in preference for amicable terms of settlement. The court may agree and encourage disputants if the other party agrees to resolve their disputes within a specific given time and return to court within a given period. Disputants are asked to choose a neutral third party from the register of neutral persons or ADR service providers. Disputants who resort to ADR service providers would have to bear the cost for the service delivered. Judges may act as neutral third parties in extreme cases.

Mediation or Conciliation is the most common way of resolving conflict using normal ADR processes. A neutral third party who helps the disputants to arrive at a decision without imposing the decision on them does the facilitation. It usually begins with exchanges of initial statements by disputants. The mediator then evaluates and advises the parties involved. He assists them to develop and generate options for possible settlements. The process may however be terminated when it becomes obvious that terms of settlements cannot be attained.

Arbitration on the other hand is similar to litigation and mostly used during commercial disputes.³¹ The process can be voluntary or mandatory. Mandatory arbitration are resorted to by the decision of the court. Proceedings during arbitration are legally binding on disputants as they agree to abide by the decisions of the arbitrator. The arbitrator reviews evidences given and imposes the decision on parties to which they have to accept. Arbitration is different from mediation or conciliation, as disputants during arbitration have limited rights during the process.

Although the international community advocates for the implementation of ADR in West Africa, scholars like *Nader et al* are of the view that ADR is not alien to the West African society and Africa as a whole.³² They argue that conflict resolution has been a part of Africa since the pre-colonial days. Conflicts were resolved using traditional African methods of conflict resolution, which involved using a neutral third party in consultation with council of elders who were in good standing in society and were highly respected. The main aim was not to just resolve conflicts between the parties but to ensure healthy living in the community at large. Thus, the main aim was to ensure a smooth reintegration of disputants and the community at large, which fostered forgiveness and re-established relationships built.³³ However, today, courts have come to replace these traditional modes of resolving conflict. The court was introduced into West Africa during the colonial days to help resolve conflicts by appropriating the necessary punishment to persons

found guilty before the law. Nevertheless, due to the inability of the court to necessarily instil peace and order due to various delays and technical problems associated with the formal judicial process, ADR, in recent times, has been repackaged to solve the gaps in the judicial system. Scholars in this field, however, are of the view that ADR is not a new concept but an already existing concept, which shares strong ties with the traditional methods of resolving conflicts in West Africa but only repackaged to suit the existing challenges in West Africa.³⁴

Critics say that although ADR shares certain similarities with the traditional methods of conflict settlement in West Africa, there are issues still regarding the implementation of ADR in West African societies and hence hindering it to reach its full potential.³⁵ For instance, in West Africa, despite all the various changes in the modern social formation that have occurred, kinship and cultural ties remain unchanged.³⁶ The West African society still bears its traditional outlook with strong faith in its Chieftaincy institutions, respect for customary laws, the belief in the concept of family and community bound relationships.³⁷ Culture continues to play a key role in the lives of the people. There are still strong traditional beliefs in a supreme being and other deities who are believed to punish people who err in society and thus the need to pacify the gods when something goes wrong in society. In addition, the Pouring of libation and initiating greetings such as the shaking of hands before commencing with a traditional meeting are still important and they are seen as a stepping-stone to build trust and start a relationship with people in the traditional setting. The Western ADR concept seems to have ignored such key philosophies that still exist in West African societies. Western ADR is limited in terms of relationship building and reconciliation of disputants not only among themselves but also among the community during the process of reintegration after a conflict. Thus, there is the need for a blend of traditional cultural appropriate philosophies and the western style of mediation to ensure that ADR reaches its full potential.³⁸ A

blend of the cultural touch gives room for common goals and interests to be exploited to ensure efficiency and ease during the conflict resolution process.³⁹

Therefore, ADR though a laudable idea, based on these ideological and conceptual differences has come under serious criticisms. For instance, Ahorsu and Ame have argued that ADR has been an importation from the west with no regard for the development gaps as well as the differences in socio-cultural practices between the West and Africa.⁴⁰ They therefore advocate for a blend of both the western and traditional style of mediation.

ADR has been globalized in Ghana and in West Africa without consideration for certain cultural problems and differences, which plagues the continent as discussed earlier. Atua has also argued that ADR has also fallen short in certain areas for the very reasons for which it was promoted and sold to the West African society.⁴¹ Given the inability of certain groups of people like women to reach full-scale court processes due to cultural limitations, ADR has not been fully able to address such issues, which discriminate against certain groups of people in society.⁴² This is because during the mediation of family disputes such as issues concerning battle for custody brought forward by women, decisions arrived at during the proceedings are not legally binding during mediation. Consequently, such issues are therefore not entirely resolved as guilty parties might accept conditions given but not necessarily abide by the conditions making the decisions null and void. Despite these challenges however, women still resort to this mode of resolving conflicts because some do not want to bring their families to shame or have their issues discussed in the full glare of the public. Thus, some weaknesses inherent in the formal judicial system remain unresolved as seen in the case of women who are unable to reap the full benefit of the court due to the stigma associated with it by society on such women after visiting the court. Hence, ADR has still been unable to resolve properly issues of culture, which undermine certain groups in society

like women, and its potential is yet to be exploited fully with more room for changes in its implementation to meet the challenges of society.

Despite the criticisms levelled against ADR, it remains very relevant to this study. West Africa owing to its heterogeneous nature is often plagued with conflicts despite the decrease in political crises and civil wars. Conflicts arising at the community levels between individuals to group conflicts have the tendency to escalate to devastating violent conflicts of national concern. These violent conflicts play key roles in destabilizing States in the sub region. These conflicts have the capacity to destroy, resort in loss of lives and prevents the enjoyment of sustainable peace. Therefore, there is a strong need to find creative ways of resolving conflicts in areas like there are threats, which not well managed with the least provocation, could lead to violent conflicts. ADR with its multi-dimensional approaches used in resolving conflicts and existing cultural similarities with the traditional African style of conflict settlement poses as a good solution in the management of disputes in West Africa and a solution to interpersonal and group conflicts.

1.9 LITERATURE REVIEW

In “Mediation with a traditional flavour,” Ahorsu and Ame, advocate for a blend of Western and African mediation and arbitration processes as a solution to manage communal conflicts in developing countries such as Ghana. In their article, “Mediation with a traditional flavour,” they argue that the importation of ADR as a prescribed conflict resolution mechanism in Africa has been wholly a western perspective. ADR has been transferred into the African setting with little consideration for the differences existing in terms of development gaps between the developed and developing countries.⁴³ Levels of consciousness, rationality and socio-cultural differences are different from the developed countries.⁴⁴ In addition, most African scholars have often argued that

the concept of ADR is not new to Africa since before its recent adoption, the ‘so called’ western alternative measures were long practiced centuries ago in Africa.⁴⁵

That notwithstanding, *Ahorsu et al* acknowledge that ADR has proven efficient in resolving conflict by saving time, being less costly, reducing the rates of litigation and provides a platform for disputants to feasibly work out greater joint solutions. Therefore, what is most important in terms of cultural relevance is a blend of Western and African styles of mediation processes.⁴⁶ The stress on this method of resolving conflicts is embedded in the principle of conflict resolutions, which aims at finding sustainable solutions to conflicts, preventing conflict and the building of renewed relationships. Thus understanding the socio-cultural locales of a conflict is an important factor in resolving conflicts. The argument being made here is that it is not adequate using neither African nor Western mediation principles singlehandedly but rather to achieve greater efficiency, there is the need to blend both methods.

Mediation with a traditional flavour is a proven and efficient resort to managing communal conflicts used in resolving a conflict in Fodome in the Hohoe Municipality in Ghana. It is built around the Ewe philosophy of peace and conflict. It depicts how a conflict, which has been in existent since 1940, was resolved using the concept of the mediation with a traditional flavour propounded by the authors. Having faced difficulty in resolving the issue in court, drawing on traditional philosophy, institutions, symbols, practices and norms in mediation, the conflict was successfully in 2009. Drawing on the success achieved by the blend of both Western and Traditional mediation processes, the articles remains relevant to this work in explaining the need to regard the cultural setting of West Africa to reap the full benefits of ADR.

In making the case for ADR, Atua in his article, “Alternative Dispute Resolution and its Implications for Women’s Access to Justice in Africa”, questions the extent to which ADR has

proven beneficial in tackling gender related issues in Ghana and Africa as a whole.⁴⁷ He critically examines how ADR has promoted access to justice especially in representing women. The author argues that, ADR was sold as a solution in the promotion of access to justice in developing countries. Nevertheless, with little regard to the historical and cultural related problems pertaining to Africa, ADR has been imported into African countries. Gender related issues frequently springs up in most African societies. Certain groups of people such as women, children and people with special needs are frequently faced with discrimination. However, Atua in his article, pays critical attention to issues faced by women especially during cases of divorce, land disputes, family disputes, domestic violence just to mention a few. The author in his argument stipulates the inability of such frustrated women to reap the full benefits of the formal judicial systems as certain biases such as subordination of women found in the traditional setting are embedded in the customary laws of the judicial system. Thus, the laws found in the judicial systems are less sensitive, unresponsive and ineffective in ensuring justice is served on issues concerning the discrimination against women. This makes women feel frustrated and victimized.⁴⁸

For this reason, ADR holds the potential to fight against such forms of discrimination levelled against certain groups like women. The process is unique, responsive and brings about some of satisfaction to the victim. Nevertheless, the implementation of ADR has been made without addressing the same cultural issues embedded within the formal judicial system. There are issues pertaining to compensation with regards to guilty parties and issues relating to the stigma associated with the mediation of certain issues. For instance, issues pertaining to spiritual issues like witchcraft, sorcery just to mention a few also prevents women from fully assessing these mediation processes. The article is a relevant one as it challenges the institution of ADR to bring out more culturally attuned remedies, which are needed for the African society. Furthermore, it

highlights the similarities in weaknesses found within both the formal judicial system and ADR. Given that ADR processes brings about some form of emotional relief to victims, it remains a necessary tool in addressing interpersonal and group conflicts relating especially to family disputes. Some family dispute are fought between widows against their spouses family concerning lands, property rights, cruel widowhood rites, domestic abuse just to mention a few. This strains the relationship between parties and the aggrieved parties might resort to violence as a solution when they feel cheated. Hence should the cultural and structural deficiencies inherent in ADR processes be resolved, they can help to address issues pertaining to a culture of discrimination and the need resort to violence as a solution in West Africa.

In Fisher, Ury and Patton's "Getting to yes", negotiating agreement without giving in", they challenge the traditional style of negotiating and provide alternatives as to how to achieve success in negotiating. "Getting to yes", highlights certain key errors negotiators make during the process of negotiation. Often, during the process of negotiation, disputants concentrate so much on their differences, which clouds their sense of judgement.⁴⁹ They are therefore unable to recognize common goals and interests, which might be mutually beneficial to all parties. Therefore, the mediator or negotiator needs to find creative ways to helps bring out the compatible goals or interests shared by conflicting parties which they might have ignored. Simply put, since individuals will continually be faced with opposing differences in interests and goals, there is the need to find creative methods of resolving such differences without resorting to 'war' or straining communication.

In the bid to achieve this, negotiators must learn put aside the attitude of using the 'fixed pie' mentality where some few solutions are arrived at prior to negotiation and hence must be forcibly achieved even when it is proving futile. This leads to deadlock situation without steady progress.

Rather, negotiators should give themselves adequate and sufficient time to come out with a wide range of solutions, which could be considered when other means fails. With the help of derived approaches known as Best Alternative to Negotiated Agreement (BATNA). It therefore suggests that, negotiators must learn to detach people from the problems by focusing on interests and not positions, which promotes neutrality. This enables the negotiator to look at issues objectively.

During negotiations, individuals will strongly fight for decisions, which will favour their interests. Furthermore, negotiation and mediation processes involve people from diverse cultures and background coming in with their varying opinions of life. For a negotiator to exploit fully the opportunities available, which might be compatible for all parties, creativity is a necessity in achieving this objective. The individuals must not feel that their interests have been shunned rather they should feel important as being a part of the decision making progress only then will they open their mind to other means of looking at the problems at hand. The authors advocate for this style of negotiation, which promotes the advantages of the interests, and do away with situations, which do not prove to yield any fruit. Getting to yes is a relevant book necessary for this study because it outlines clearly the principles of negotiations to practitioners, which they can best use to resolve issues effectively by saving time. It promotes relationship building and guarantees some amount of fairness acceptable to all parties without taking sides. This is an important principle necessary in the West African contexts. People feel strongly attached to their ethnic groups, religious sects and families emotionally and unwilling at times during conflicts to understand the needs of others belonging to other sects. This is a major reason why communal, interpersonal and group conflicts are on the rise in West Africa. With the help of BATNA, West African mediators and negotiators can find multi-diverse approaches in resolving conflicts of this nature while encouraging relationship building and ensuring fairness to both parties by promoting mutually beneficial goals.

Tsikata and Seini and, “Identities, Inequalities and Conflicts in Ghana”, highlight numerous communal conflicts, which occasionally flare up in countries usually seen as stable such as Ghana.⁵⁰ They argue that while these communal conflicts though similar in nature to those of Ghana’s neighbouring countries such as Nigeria might not have blown out of proportion, is still complex, destructive and detrimental to the State.

“Identities, Inequalities and Conflicts in Ghana,” brings out the causal agents conflicts which occurs within Ghana. It brings out a strong link between activities of government and institutions, which discourages peace in already complex society. The argument centres on government’s inability to enhance economic development and natural resources evenly among citizens, which frustrates certain groups of people within the society. This makes the deprived persons view the actions of the government as bias and in favour of some few in society, which leads to tensions within the society. Furthermore, governments’ failure to put in place appropriate conflict resolution mechanisms to deal with such tensions leads to the break out of violent conflicts. In Ghana, analysts say that there is a wide disparity between the Northern and Southern part of the country in terms of economic development.⁵¹

Nevertheless, this disparity is yet to break out as a violent conflict in Ghana but it still rears its ugly head in different forms within the country. It involves issues such as inter-ethnic conflicts concerning land ownership and other resources, issues of sovereignty regarding succession in the chieftaincy institution, intuitional disputes such as the police against communities arising from communal and interpersonal conflicts during the process of enforcing law and order.⁵² The most significant arises out of the fact that these conflicts are times inter-linked and this makes the process of resolution difficult since they can reinforce and complicate roles.

The article is important to this study because it highlights the diverse problems Ghana encounters within the State. Moreover, since the study employs Ghana as a case study, *Tsikata et al's* gives a perfect ground to understand why a stable country like Ghana within the West African sub-region needs to take important measures to prevent violent conflicts from destabilizing the state. It also helps to understand how the actions of governments can promote violence and the need to find appropriate conflict resolution mechanisms, which can calm down existing communal tensions before they escalate.

Uwaize in *Alternative Dispute Resolution in Africa*, "Preventing Conflict and Enhancing Stability," advocates the need for the institutionalization of ADR across the length and breadth of Africa as it fits perfectly in the traditional African setting due to its core value of reconciliation.⁵³ The author posits that in Africans in general have lost faith in the legal system due to the inability of courts to offer timely delivery of justice and provide just measures to their problems. Also in most post –conflict societies like some countries in West Africa such as Liberia, tensions are usually high while the justice systems do not function properly and thus with the least provocation, conflicts are likely to break out. For the above reasons, there is need to provide prompt conflict resolution mechanisms to prevent citizens from taking the law into their own hands especially when they have lost confidence in the justice system.

Courts have often come under attack in most African societies as delaying in effecting justice with some cases delayed for years.⁵⁴ The general impression given therefore depicts the inability of claimants to seek justice through the official channel. Thus aggrieved persons are left with no choice than take justice into their own hands, which can instigate and promote the break out of violent conflicts such as communal and group conflicts.⁵⁵

Due to the difficulties encountered by the formal channel of seeking redress, ADR holds the potential to reduce the occurrence of violent conflicts within societies in West Africa.⁵⁶ This is because ADR has proven very creative, effective, less costly and rapid in giving timely results. Most citizens in Ghana for instance have alluded to the fact that they feel they have had their time in court after resorting to ADR since they feel they own the process. With the help of a mediator who acts as a neutral third party, parties involved each have a say with the mediator acting as a facilitator. This helps to build trust, strengthen relationship and timely justice often served. For the aforementioned reason, Uwaize's articles points out the need to exploit the potential of ADR in West African countries for that matter where communal and group conflicts are likely to break out due to the loss of trust by citizens for the formal judicial system. This would prevent the outbreak of violent conflicts and culture of vigilantism within the West African society.

1.10 SOURCES OF DATA AND METHODOLOGY

This study employed the qualitative method of analysis. This approach was selected because of the explorative nature of the research. It was deemed appropriate because a robust qualitative research approach is important when a research seeks to throw more light on a phenomenon. The explorative nature of the research helped to throw more light on the efficiency of ADR in resolving interpersonal and group conflicts as just some few works have been done in this regard.

To this end, the data for the research was collected from both primary and secondary sources. The Primary data was collected from four accredited ADR centres in Ghana, 10 beneficiaries of ADR and luminaries of ADR. Interviews were also conducted through purposive sampling of interviewees. Permission was sought from institutions in order to access the information from officials whose input would be beneficial to the study. It was firmly stated that, the recordings and information gathered would be privy to the researcher alone and all personal details would be

excluded from the research unless the respondent stated otherwise. The intent of the research was clearly spelt out for the respondents that their inputs were for academic purposes. The aim was to find out progress made in promoting ADR since its adoption, their challenges and by way of statistics, ascertain the years covered. The four centres were selected for their leading roles in promoting the institution of ADR in Ghana and their high settlement rates in the resolution of conflicts through either court connected ADR programmes or cases brought to them by disputants themselves. These vital information were used in analysing the institution of ADR in Ghana and its performance in Chapter 3.

Secondary sources were also gathered through books, journals, articles, reports from libraries of the LECIAD and Balme Library of the University of Ghana. Other viable internet sources such as JSTOR, google scholar and other search engines were used extensively.

1.11 ARRANGEMENT OF CHAPTERS

Chapter 1 constitutes the introduction to the study. This includes the background to the study, statement of the problem and the objectives for the study. It also highlights the conceptual framework underpinning the study and its relevance to the study. The scope, rationale and hypothesis, sources of data and research methodology were equally considered. Chapter 2 provides an overview of ADR in West Africa. Chapter 3 deals with the institution of ADR in Ghana and its performance whilst Chapter 4 constitutes summary of the research, conclusion and recommendation for the use of ADR in West Africa and Ghana in particular.

ENDNOTES

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CHAPTER TWO

AN OVERVIEW OF ALTERNATIVE DISPUTE RESOLUTION IN WEST AFRICA

2.0 Introduction

This chapter looks at an overview of conflicts in West Africa and the consequences thereof. The Second part of the chapter examines the customary or traditional means of conflict resolution in Africa. Ultimately, it delves into ADR as a conflict mechanism tool in West Africa while assessing the development of ADR internationally.

2.1 Causes of Conflicts in West Africa

The West African region is the portion of Africa bordered by the Atlantic Ocean, to the South and West and the Sahara desert to the North.¹ States in the sub region are blessed with numerous natural resources such as gold, diamonds and oil. There are about 356 million people living in the sub region and each of them identify with a unique culture.² There are approximately 886 living languages in the sub region spoken by different ethnic groups.³ The sub region was also colonized by European powers, notably Britain and France. These states have their own national languages with French and English as the major ones. In addition, Christianity and Islam are the major religions found in West Africa and fall along a north–south divide. While the countries of the Sahel and Sahara are predominantly Muslim, Christianity is more widespread in the southern coastal countries. Nevertheless, traditional religious beliefs are strong.

A critical look at the demography of West Africa depicts a region full of diversity ranging from culture, common historical antecedents of colonial heritages, and diverse languages to rich resources. Yet simultaneously, these diversities have more often than not, been more of a source

of conflict to the sub region. There are conflicts ranging from interpersonal, communal and group conflicts mostly based on issues concerning chieftaincy, family, land ownership, inter communal clashes, religious intolerance, civil strife and corporate disputes between employers and employees. These cause economic losses in the sub region and impede development. Conflict, in this context, refers to disagreement, arising between persons or within a group whereby the beliefs or actions of one or more members of the group either are resisted by or are unacceptable to one or more members of another group.⁴ These disagreements are usually goal incompatibilities concerning wants and needs.

At the heart of most conflicts in the workplace are pertinent issues regarding differences in economic and goal incompatibility.⁵ Such conflicts can occur between two workers or among all actors in a formal or informal work setting. Conflicts are usually over issues concerning poor human relations between workers and management, non-involvement of staff in key decision making, lobbying and backbiting among workers.⁶ This strains relationships among workers, prevents free flow of communication, affects output of workers and in turn leads to high financial losses and unhealthy rivalry.

In extreme cases there have been issues regarding differences in religious beliefs. For instance, employers' failure to recognize the hijab for Moslem women have sometimes led to conflict. Conflicts occur because of peoples diverse ethnic and religious backgrounds. These conflicts, at times, affects workers efforts, as some are denied well-deserved promotions based on certain affiliations, backdoor politics- where round pegs are put in square holes based on people's background -which lead to frustrations.⁷ These frustrations have an effect on the employees' relations with colleagues and family.

There are also organizational conflicts, which take place between industries and communities such as the Niger-Delta conflict in Nigeria. There are frequent clashes between the locales and the Multinational Corporations (MNC'S) such as Total, Exxon Mobil and Shell.⁸ The MNC'S are in collusion with the Nigerian government to steal the oil and feed off its profits to the detriment of the Nigerian citizenry.⁹ Although the oil is found within the community, the locals continue to live in poverty and their communities remain underdeveloped. This frustrates the youth particularly those from the Ijaw ethnic group who are the fourth largest ethnic group in Nigeria.¹⁰

Ethnocentrism in West African communities are more detrimental. Often ethnic conflicts arise due to ethnocentrism. Ethnic conflict arise due to the belief that one's culture is superior to other cultures, with the practice of judging the cultures of others by the standards of one's own culture.¹¹ In Nigeria for example, ethnic conflicts have been one of the major causes of conflict within the state. This makes it difficult for the government to smoothly run its affairs. Nigeria is continually faced with ethno-religious politics such as the Hausa-Fulani versus the Ibo.

West African states have national demarcations inherited from colonialism and bear little or no resemblance to the pre-existing African relations and associations. Some African States in West Africa continually encounter instability as certain ethnic groups in the quest for self-determination threaten to break away from the main state such as Biafra in Nigeria since 1966 to date.¹² The balkanization of Africa among the colonial powers in 1884 took mainly into account European trade interests leading to the neglect of a careful study of the demography of the African continent.¹³ People of different ethnic groupings in certain instances had to cohabit with other groups while in other cases people of the same groupings lost their families due to the creation of boundaries. In present-day Cameroon, English-speaking Cameroonians frequently threaten to secede from French speaking Cameroonians on bases of biases and uneven development.

Since the pre-colonial era, most West African communities have had their inter-community customary land ownership structures between communities altered by successive legislations by their governments.¹⁴ Therefore, land tenure arrangements between communities become contestable and in extreme cases, violence occurs, as communities come up with claims of ownership grounded in conflicting oral traditions. When such cases are sent to court, often, the losing party ends up feeling dissatisfied and cheated. They sometimes resort to violence that interrupts the peace in the community and in the extreme cases leading to the loss of lives.¹⁵ Some examples of land disputes include the Konkomba-Nanumba Conflict in the Northern part of Ghana and the Amuleri and Aguleri in South East Nigeria.

Land disputes at times are closely linked to Chieftaincy disputes. The Chieftaincy institution before the colonial era, though it came with prestige, had not been politicized. Succession was easy as there were people put in charge to ensure transparency. Royal families were aware of the next of kin. Nevertheless, with the introduction of the indirect rule by the colonial masters came contradictions in chieftaincy matters.¹⁶ Ghana, one of the most stable countries in the sub region, is periodically faced with these type of challenges. The Dagbon chieftaincy dispute is a typical example. The Dagbon crisis, a traditional matter has become the main subject of local politics as well as issue of national politics.¹⁷ Climate changes, ecological damage and depletion of natural resources is another source of conflict in West Africa.¹⁸

Religion, originally instituted to bring peace and unite people, has rather become another source of conflict in West Africa. Islam, Christianity and the African Traditional Religion are the major religions found in the sub region and at times followers of the various denominations do not see eye to eye. These clashes among the various religious bodies promotes communal violence and incites inter-group conflicts leading to loss of lives and properties. In Nigeria, its religious conflicts

can be termed as ethno-religious conflicts.¹⁹ With a population of over 175 million people, a rich multi-ethnic and religious background, religious affiliations seem to be closely linked with the various ethnic groups hence towing a North-South divide.²⁰ Whereas those in the North are highly likely to be Moslems, those in the South mainly, tow the path of Christianity while others mix up both religions with the traditional African religion.²¹ The Boko Haram Islamic fundamentalism, which is against western education and Christianity, has exacerbated the conflicts already in existence.

Equally, in Ghana, there have been clashes between the traditionalists and Christians on grounds of differences in religious beliefs. In 1998, about 50 persons attacked the Lighthouse Chapel International located in Korle-bu, Accra.²² The attack was initiated because the church is alleged to have violated the ban on drumming which is a traditional belief of the Gas observed each year to welcome their traditional festival, “Homowo”.²³ Following accusations by both parties in the media, the Ghana Pentecostal Council declared the ban on drumming a violation of the rights of Christians while on the other side, the church, was accused of not respecting the traditional culture of the Gas.²⁴

The civil wars that plagued West Africa in the in the 1990’s might be over but the impact of its destructive nature cannot be forgotten. Countries in West Africa like Sierra Leone, Ivory Coast and Liberia saw many of their citizens displaced and introduction to the spread of small arms and light weapons and introduction of weapons for warfare introduced into the country. Reintegration after the conflict unite both civilians and ex-combatants, but the chance of relapsing into violence remains real. Thus, the need to promote sustainable peace by putting in place timely and effective conflict resolution mechanism tools to resolve conflicts before they escalate.

The issues confronting West Africa now are more related to internal conflicts as discussed above such as land and chieftaincy disputes, ethno-religious and political conflicts, organizational conflicts among other inter group conflicts. This therefore calls for creative conflict management tools to resolve conflicts as soon as possible.

2.2 Consequences of Conflicts in West Africa

Conflicts in West Africa have resulted in several loss of lives especially during the civil wars that took place in the 1990's. In 2003, Liberia recorded about 1,000 civilian deaths due to the civil war. Similarly, some months before the occurrence of the Liberian crisis, Ivory Coast and Guinea had experienced the same fate that resulted in the loss of lives.²⁵ The impact of these civil wars were immensely felt after the wars. Remobilizing resources to recover and stabilize the state has never proven to be easy because the lives lost are the very people needed to ensure sustainable development.

Furthermore, the contemporary use of small arms during group conflicts can be traced back to the civil wars.²⁶ The inability of government to effectively demobilize ex-combatants and successfully reintegrate them into the civilian system is a cause for concern. Weak institutions such as the judiciary system in such countries worsen the situation as prosecution of criminal offences delays and hence citizens would have to resort to other means of defending themselves.²⁷

According to the Institute for Security Studies (ISS), communal and group conflicts are on the increase in West Africa. They are characterized by riots, social violence, and political conflicts.²⁸ Conflict has been responsible for more death tolls and displacement than natural disasters such as famine or flood in West Africa.²⁹

There is an increase in internal displacement of persons in Africa in general.³⁰ In 2000, almost 11 million people in Africa were displaced internally and statistics indicate that these internally displaced persons currently outnumber refugees by a ratio of three to one.³¹ Together refugees and internally displaced people account for about 14 million Africans that remain displaced. Epidemiological projections indicates that by 2020, injuries caused by Conflicts will become the eighth most important factor, after tuberculosis, sustaining a disease burden on society.³²

In West Africa, majority living within the rural areas depend on Agricultural activities as their main means of survival economic wise. However, during communal conflicts for instance, warring factions resort to the manipulation of access to food and livestock.³³ This leads to a concern over food insecurity. The Food and Agricultural Organization (FAO) in 2004 stated that communal conflict have cost Africa over 120 billion dollars over food production. Communal conflicts have been associated with the increasing rate of famine in Sub Saharan Africa.³⁴ According to the United Nations (UN), violence affects a country's ability to produce trade and gain access to food.³⁵

Moreover, conflicts in general can hinder the regional development agenda for economic and security integration.³⁶ The conflicts weaken states and left challenges like high poverty rates, political instability and high risks of human insecurity.³⁷ One of the best ways to find remedies to these challenges is integration.

2.2.1 The Socio-Economic Impact of Conflict in West Africa

Over 80% of interpersonal and group conflicts occurred within low-income countries with about half of them being African countries.³⁸ Research has proven that conflicts of this nature act as determining factors in economic development and performance of countries and thus can impede development.

Communal and group conflicts in West Africa have undermined personal safety of citizens, their health, education and other areas of economic life, which affects both individual and national productivity.³⁹ This has had a negative impact on trade, economic growth and development as well as the happiness of individuals within such states.⁴⁰ Interestingly, although communal and group level conflicts do not frequently occur at the state level and are sometimes of a short duration with few casualties, research proves that they have the potential to cripple the overall performance of states.⁴¹ These conflicts have resulted in undermining the full potential of the most significant sectors within states such as investments and the various financial markets.⁴²

Occurrences of conflicts have promoted trauma and retaliation among concerned parties.⁴³ For instance, studies show that farmer-herder conflicts and identity conflicts in particular have followed in this trend. This is because victimized communities and ethnic groups who have been attacked by another group of people end up retaliating by attacking neighbouring communities who might share some bond with the offenders in order to feel appeased.⁴⁴ In an interview conducted with a pastoralist, he tells how he was attacked by indigenes in another community because a previous pastoralist had attacked the people in the concerned community.⁴⁵ These happenings lead to a culture of violence and promotes hatred for others. Thus, communal conflicts disrupts their social lives forcing them to move into uncomfortable ventures in order to survive.

2.2.2 Economic Legacy of Interpersonal and Group Conflicts in West Africa

Right from the Cold War era, due to the various conflicts that plagued the West African region, the international community among other non-governmental organizations have sought for reforms to help the sub-region grow once again. These programmes were believed to have the potential to raise standards of living and promote the economic growth rates of various member

states in the sub region.⁴⁶ The programmes range from economic policies, to trade policies and governmental policies. The International Monetary Fund (IMF), USAID, UN and EU are among the top advocates for reforms in West Africa.

The USAID and EU on the other hand, have tried to help West African countries bounce back up through governance reforms. They believe by strengthening the judiciary and other governance sectors, it will promote investments in these countries and promote peace, as it is a necessary factor for stability. Among the reforms is the promotion of ADR as a solution to deal with interpersonal and group conflicts in West Africa in order to complement the major challenges faced by formal court institutions.

2.3 The Challenges of the Formal Judiciary Courts

Several countries in West Africa, have strived to promote the rule of law and access to justice for citizens. In order to promote a just, safe and secured society, the rule of law must be effective.⁴⁷ A stable, timely and effective legal system is said to be key in resolving conflicts at all levels in society. West Africa has lost out a lot in all areas of development especially economic wise which is among the top reasons why its citizens are constantly in conflict with each other. These conflicts have also destroyed various infrastructure and increased crime rates. An effective and trustworthy legal institution is therefore needed to address these issues. An ineffective judiciary system can put the country into a state of turmoil.

In addition, effective laws and judiciary institutions are necessary in accelerating and sustaining growth.⁴⁸ A good legal system promotes accountability and transparency in society and can promote investors into the country, which in turn promotes development.⁴⁹ This is because

transparency and accountability promotes the ease of doing business. Furthermore, when citizens trust the legal system, they have faith that justice would be awarded to guilty parties and hence would formally lodge all complaints through these formal institutions.⁵⁰ For citizens, formal judicial courts are places of last resort for resolving conflicts as they turn to other alternatives. Courts are therefore key in promoting and ensuring peace in societies. However, the modern courts of today have had their importance undermined by various challenges confronting the institution and therefore unable to deliver effective justice.

Poverty among citizens have hindered the ordinary person's access to justice.⁵¹ Most citizens are unable to utilize the courts due to the high charges on legal and professional fees. Filing a case in the court and the payment of a professional lawyer to actually stand in on the ordinary persons behalf have become troubling thus, justice is said to often be sold to the rich.⁵² This has brought about allegations levelled against the courts involving issues of corruption. Furthermore, the inaccessibility of courts by ordinary citizens who normally reside in the rural areas restricts them from accessing the courts since the courts are located in the urban areas.⁵³ This makes the process involved in acquiring justice frustrating and cumbersome for the ordinary citizen.

The court as an institution also faces serious challenges like understaffed professionals comprising of judges and judicial administrators⁵⁴. Africa, and West Africa to be specific, is said to have the least judges per capita than any part of the world.⁵⁵ Fewer judges usually mean the rate of processing cases would be slow. This is a serious hindrance because the success of a case depend mostly on the rate at which it is processed.⁵⁶ Owing to the delay associated with the courts, over time, victims lose their trust and witnesses lose their commitment as finding witnesses to testify becomes tiring.⁵⁷ The result has normally been that aggrieved persons take matters into their own hands to ensure justice is done which undermines the rule of law within the state.

It is also common to see many people in the various prisons not because they have been prosecuted but because they await their trial.⁵⁸ This leads to anger and frustration as some of these people are sometimes innocent and see their lives waste away due to delayed processing of their cases. Usually, due to the inability of the imprisoned person to service high bail fees, they have no choice than to await their trial, as their lives rot away, which can take years to be addressed in court.⁵⁹ This also means a huge backlog of cases are left unattended to by the judiciary.⁶⁰

Resource constraints in the judiciary system also leads to politicization of the judiciary and hence its inability to act as an independent body. This leads to non-transparency and unaccountability. This has the potential to drive away investor and usually affects the commitment, cooperativeness and trust among citizens within the State itself.⁶¹ Lack of trust in the judiciary systems is quite troubling as crime rates continually increase but fewer criminal cases are formally recorded.⁶² Thus at the end of the day the records do not give a clear picture of happenings in the society. This can also lead to a culture of vigilantism as citizens at times form watch groups in their various communities to deter criminals from attacking them. In the longrun, this becomes dangerous, as criminals when caught are beaten to death since there are no effective mechanisms put in place to deliver justice.⁶³

In addition, the court when successful in resolving issues, takes a winner takes all approach. When cases are resolved, some aggrieved persons who believe they have been wronged and justice denied them would have to live the rest of their lives feeling upset with mounting hatred for the opposing party.⁶⁴ This means that there is an unending trend in resolving the conflict and this could possibly lead to revenge. Hence, reconciliation and reintegration of conflicting persons is something that the court has been unable to address effectively.⁶⁵

Owing to the aforementioned challenges faced by the formal judicial system, there is the need to find alternative means of resolving conflicts effectively, as justice delayed is said to be justice denied. Thus, most West African countries have now embarked on various reforms to address the growing challenges faced by their judicial institutions. Furthermore, customary laws, which could have complemented the modern courts, lost their significance during the colonial era. Thus, member states are now revisiting traditional ways of resolving conflicts through the promotion of ADR.

2.4 Traditional Methods of Conflict Resolution in West Africa

Mainstream Western policy makers have often ignored traditional conflict resolution mechanisms in Africa when drawing up policies.⁶⁶ Nevertheless, conflict experts posit that traditional methods of conflict resolution in West Africa do have the potential to transform contemporary conflicts in West Africa. Although ADR has been promoted as a solution to these conflicts, empirical evidence suggests that pre-colonial Africa had as its core principle the notion of peacebuilding and conciliation during the process of resolving conflicts long before the promotion of ADR in West Africa.

The literature on traditional conflict resolution suggests that traditional modes of resolving conflicts are important in understanding contemporary conflicts facing West African society. Conflicts are no longer in connection with only the state and organized groups but also with non-state actors that hold different needs altogether. In understanding what their needs are, it is important to understand the traditional notion of conflict in pre-colonial Africa and the various means used to resolve such disputes. Conflicts are now fought within the state, include actors such as the families, ethnic groupings, religious groupings, customary disputes among chiefs, and inter-communal conflicts. The State has been unable to understand these conflicts using the western

style of resolving conflicts such as the law courts. Thus there is the need need to take some lessons from the past.

Conflict in the traditional context refers to any unwelcome interference within the community.⁶⁷ As its core principle, restoration of order and harmony were paramount in communities. Reconciliation in the traditional society was viewed as a long-term goal. Its focus went beyond punishing guilty parties to encompass appeasement among all stakeholders involved in the conflict to prevent the outbreak of such occurrences in the future.⁶⁸ Thus, it holds primacy in reconciliation and restitution. In Senegal for example, Dieng reports that the traditional idea of justice in Senegal was based on sociological reasoning taking into account the idea of a community in a traditional society.⁶⁹

Reconciliation was important in pre-colonial West Africa because it restored and built social harmony within the community, especially between conflicting parties. Reconciliation also went beyond the physical world to include the spiritual world. Most traditional societies believed that every action taken would go with either a reward or punishment by the ancestors and gods of the land. Hence there was the need to pacify them when there was a wrongdoing in the society.⁷⁰ The belief was that the spiritual beings were present during the process of reconciliation and therefore peace building is believed to be impossible without the invitation of such spiritual beings. This process of resolving conflicts in the traditional society was hence seen as restorative justice whereas contemporary western forms of resolving conflicts in the courts are geared more towards mere punitive measures.⁷¹ In Liberia, for instance there was the trial by ordeal popularly known as Sassywood. Sassywood is the belief in ancestral spirits by native Liberians and a tribal justice system that has been in practice for generations.⁷² This method was used in cases involving robbery, death or sorcery.⁷³ In the case of murder, the accused persons were to drink some mixture

of herbs, failure to do so represented guilt thus the accused was banished from the land. In the case of theft or witchcraft, the accused was shamed in public and had to acknowledge responsibility for his actions. He had to show remorse and sincerely plead for forgiveness. He was also required to compensate the aggrieved persons and inability to pay meant he had to work on the farm or perform house chores to make up for his crime.⁷⁴ The accused party is then reconciled with the victim's family and the community at large.⁷⁵ This aspect is important because it promotes forgiveness and reconciliation. It helps avoid the escalation of the conflict situation, as the guilty persons understand why they have been punished.

Negotiation was an important aspect of resolving conflicts in the West African societies. The belief was that in order to correct the future, the past had to be addressed to bring about full understanding of the conflict.⁷⁶ Hence, conflicting parties during the process of conflict resolution had to negotiate at length by understanding why parties involved took up certain actions they did. When a consensus had been arrived at, the guilty parties would then agree, apologize and ask for forgiveness.⁷⁷ This meant fact-finding and revelation of the truth. Among the Akans in Ghana for instance, conflict resolution was seen as healing technique during the pre-colonial era. It could be termed as a truth and reconciliation approach.⁷⁸ Disputing parties had to be truthful about their feelings and be honest to reveal what really ensued among them. They were to discuss until each party understood themselves before a final decision is arrived at. This helps parties understand the actions of the other and speeds up healing. This also encouraged transparency and dispels the notion that one party has been favoured over the other.

In turn, the victim(s) was supposed to accept the apology and forgive. The guilty party then through compensation showed remorse for his wrongdoing and the victim had to accept the compensation. Compensation were usually in the form of cattle, goat, pigs, foodstuff or other

material goods.⁷⁹ This act was very important because it signified that there would be no act of reciprocity in the form of retaliation and that all parties were at peace with each other. This prevented a vicious cycle of violence and hence compensation replaced retaliation.⁸⁰

Conflicts were also settled in accordance with the customary laws and practices of the land. Usually, settlements took place using oral laid down rules by their ancestors and enforced by their chiefs, gods and priests.⁸¹ The process was a public process and parties could resort to these authorities or negotiate directly among themselves. This was carried out by family heads, extended families and village communities. The neutrals were accountable to these persons who acted as neutral third parties. They were people who were highly respected, well accustomed to the traditions of the land and had wealth in diverse experiences.⁸² Among the people of Esanland, in pre-colonial Nigeria, there were customary laws, which covered activities such as cohabitation, relationship between husband and wife or father and children, inheritance, adoption, justice, land tenure among others.⁸³ Within the household for example, the father who was the head was supposed to have a character worthy of emulation and only then would he be respected as a mediator in the household setting. In addition, sanctions placed on guilty persons were in the form of shaming, cursing and stigmatizing in extreme instances. Parties could however reject such actions when they were not in agreement with decisions arrived at and as sanctions could only be enforced with such agreement.

Ceremonies were held to bring an end to conflict in these communities. These ceremonies were of high spiritual importance with several rituals involved. The ceremony was held for the entire community as a symbolic act, which signified trust in the resolution mechanism and cooperation among the people. It also signified that truly the conflict was over and would never be revisited.⁸⁴ Spirits and ancestors of the land were invoked for pacification and help to cleanse the land. Prayers

and sacrifices were also made to the gods and then there was merrymaking to signify and seal the end of the conflict.⁸⁵ The Akans in pre-colonial Ghana were known to believe in appeasing the spirits, therefore, reconciliation often required symbolic gestures and rituals including exchange of gifts, and slaughtering of animals such as goats, chickens, sheep and cows.⁸⁶ Conflict resolution in this system was meant to repair relationships between the spirits and man since the spirits are the link to the past, present and future hence any offensive error could come at a cost to the community.⁸⁷

Although these traditional methods of resolving conflicts cannot be termed as ADR, they bear certain traits with the indigenous methods of reconciliation such as peace building, reconciliation and forgiveness, which are among the core principles of ADR. However, colonization undermined the traditional methods of resolving conflicts in West Africa and instead replaced it with the formal judicial court systems. Reconciliation, harmonious living, cultural beliefs such as beliefs in a deity or ancestors were lost through the formal structures although such phenomena continue to characterize most African societies. The judicial courts are still in existence after more than 60 years after the end of colonization. It has proven quite expensive making it difficult for an ordinary person to gain access to the courts as compared to pre-colonial methods of resolving conflicts, which were free and accessible to all. Due to the shortcomings of the formal judicial systems, such as delays, complex bureaucracies and under equipped courts, it has become quite clear and relevant for the need for alternative means of resolving conflicts that are in harmony with the African society. Hence, International bodies and the various states in West Africa are now in search for efficient and timely means of resolving conflicts. This has led to the promotion of ADR to help make up for the short falls of the formal judicial system.

2.5 An Overview of ADR as a Conflict Resolution- Mechanism tool in West Africa

ADR as a conflict mechanism tool for conflict management in Africa is not a novelty. It shares strong ties with the pre-colonial methods of resolving conflicts specifically in relation to the goals and principles.⁸⁸ ADR scholars, such as Ahorsu and Atua opine that the current methods of ADR are not modern alternatives, but merely a return to earlier modes of dealing with disputes in traditional African societies, which were unique and peculiar to the African culture.⁸⁹ Therefore, while Western or modern forms of ADR were established as a response to the difficulties and deficiencies associated with court proceedings, traditional Dispute Resolution processes were not an “alternative” to anything according to Atua.⁹⁰ The only difference between ADR and the indigenous methods of conflict resolution lies in the fact that the traditional modes were not institutionalized or highly formalized in comparison to ADR, which now forms a critical part of the formal judicial court system.⁹¹

The ADR movement was launched in the United States in the 1970's. It began as a social movement to resolve community based civil rights disputes using mediation.⁹² It however, gained the legal recognition due to the delay, high expenses and the overcrowded court dockets. The assumption was that ADR had the potential to address these issues that affects the early and timely delivery of Justice. Today, ADR has been institutionalized in the U.S after being successfully used as an experiment in resolving especially issues concerning litigation particularly. Subsequently ADR has grown rapidly with the help of the American Bar Association, academics and the government.⁹³ Consequently, ADR was seen as a solution to reducing costs and delay in the federal courts as it was institutionalized in the 1990 in response to the Civil Justice Reform Act.⁹⁴ The U.S therefore, has a rich experience in court connected ADR with high rates of citizen participation

and the workloads in courts decreased. Accordingly, ADR has evolved and has been championed as a solution to court related problems in various developing countries around the world. ADR is a multifaceted industry constituting professionals from fields such as law, political science, psychotherapy, religious movements among many others.

ADR in general constitutes processes such as negotiation, mediation and arbitration. ADR process can also be binding or non-binding on parties depending on the type of process being used. Negotiation, mediation and conciliation processes are non-binding and depend on the voluntary acceptance of the parties to participate in the process.⁹⁵ Arbitration programmes on the other hand can be either binding or non-binding. While in the binding arbitration, participants must accept the decision arrived at by the arbitrator, non-binding arbitration gives room for participants to reject decisions suggested to them by the arbitrator.⁹⁶ ADR processes can also be mandatory or voluntary. Mandatory ADR is usually recommended by the formal courts to enable parties to directly negotiate through various ADR processes to enable them come up with solutions prior to a final verdict to be given by the court. Voluntary ADR processes are arrived at when one party decides to resolve the issue amicably using alternatives other than the courts.

Owing to the various challenges, facing developing countries such as those found in West Africa and Africa as a whole, ADR was promoted and viewed as having the potential to resolve such challenges. The argument has often been that in West Africa, frequent occurrences of conflicts in the various states and at various levels of its society have impeded growth and development. Various institutions in these countries have been weakened such as governance, judiciary, investments and security services. Therefore, in order for development and growth to thrive; there must be effective rule of law.⁹⁷ However, plagued with unforetold challenges within the Judiciary, most West African countries have had increased crime rates as justice is often delayed or is costly

and ineffective due to overcrowding of dockets. In addition, the courts are understaffed with few judge who are unable to speed up the process.

ADR processes can also aid in promoting economic development, development of civil society groups; fight for disadvantaged groups such as women and above all resolve disputes. In communities in West Africa where the cultural norms discriminates against women at times, ADR can resolve such discriminations and promote women's access to justice.

African governments have therefore strived to revive their judiciary systems by incorporating ADR into its formal judicial setting and establishing of various private ADR centres within these states. These countries have put in relentless efforts to incorporate the use of ADR for the purposes of resolving disputes and creating better access to justice. Court connected mediation and the use of arbitration are becoming frequent in many African justice systems.⁹⁸ Some African countries have also introduced ADR into the upper court of the formal justice system and merged traditional justice systems into the formal justice system so that they are used at the lower court level to become the first court of instance in resolving disputes. The UN supported this approach in 2004 when Kofi Anan suggested that due regard should be given to traditional justice systems in the settlement of disputes to ensure that their survival is not outlived due to the important role they play in resolving disputes.⁹⁹ Hence, he called on the international community to help raise the standard of traditional justice systems to meet the international standard. Fusing traditional justice into the formal justice system has been very helpful as it is gradually reducing case backlogs, promoting easy access to justice as they bear resemblance to the traditional African setting.

The Gacaca in Rwanda is an example of how traditional justice systems, if well managed to meet international standards, can help resolve conflicts as it has proven to be timely, cost effective and enhances relationship building. This method was used after the 1994 genocide in Rwanda, where

out of the 785 judges who were active before the genocide, only 224 remained after the genocide.¹⁰⁰ In addition, the state was challenged with a reduction of 22 out of 197 criminal investigators as well as 12 out of 50 prosecutors remaining after the ordeal.¹⁰¹ This immensely affected the formal judicial sector creating a huge backlog. The Gacaca court system ensured that communities at the local level elected judges to hear trials of suspects accused of all crimes exempting the planning of genocide. This was based on the traditional way of resolving conflict using respected persons in the community, acting in the capacity of judges, to deal with these crimes. The success story of Gacaca lies in the fact that about 2 million cases were resolved between 2001 to 2012 whereas it was estimated to take 200 years with the formal justice system.¹⁰²

In West Africa, Nigeria has made headway in the sub region. Nigeria is known to have made a comeback in its judicial proceedings with the adoption of the arbitration law modelled after the United Nations Commission on International Trade Law (UNCITRAL) in 1988.¹⁰³ Nigeria is also recognised to have the first court-linked ADR centre in Africa popularly known as the Lagos Multi-Door Courthouse (MDC) established in 2002. MDC's were initiated with the belief that it could boost the private sector as the process is quicker, cheaper and has the potential to maintain the relationship between the parties involved hence the support for development of commercial ADR mechanisms which also boosts the ease of doing business. It employs multi-dimensional approaches to dispute resolution such as arbitration, mediation and early neutral evaluation. These processes handle cases ranging from commercial, land, contract and even cases involving multinational corporations. The MDC approach is highly commended due to its ability to utilize about a year in resolving cases concerning arbitration and an average of 3 months in relation to mediation as compared to the formal judicial court, which can take 5 to 20 years.¹⁰⁴

ADR is defined by Miller *et al* as a wide range of methods and approaches other than litigation that aim to bring about resolution to conflict by ensuring that there is mutual acceptance by conflicting parties.¹⁰⁵ It focuses on resolving both interpersonal and group conflicts such as commercial, international, family, religious and community conflicts just to mention a few. It therefore employs the use of processes such as arbitration, conciliation, mediation, mini-trials and negotiations and attending to conflicts.

2.6 Main Principles of ADR

As already discussed in previous sections, the case for ADR is greatly supported by Western donor partners and African states based on its distinctive features, which resemble the traditional African society where customary systems continue to play a vital role in its development. Therefore, in societies such as those in West African societies exist to help resolve conflicts and other cultural deficiencies, which undermine their development objectives.

2.6.1 Informality

Informality remains a distinctive feature of ADR. Most ADR procedures are less formal than the formal judicial court processes.¹⁰⁶ Normally, the rules of ADR are flexible without formal pleadings. In addition, there are hardly extensive written documentation or evidence. Informality is important for ADR proceedings because its main aim is to make access to justice more flexible to the ordinary person who may be intimidated by the formal law courts or do not have the necessary financial resources to seek justice. Furthermore, it aids in reducing the delays associated with the bureaucracy in the formal judicial setting.¹⁰⁷

2.6.2 Equity

ADR programmes are also conducted on the principle of equity rather than the rule of law.¹⁰⁸ Neutral third parties acting as mediators are employed in ADR proceedings or the parties involved are allowed to choose how proceedings should go based on how comfortable they feel. This is quite different from the mainstream court where there are standardized laid down rules and hence participants have no say in proceedings. ADR mechanisms are efficient due to its principle of equity over consistent norms of justice. Nevertheless, should the parties based on the outcome of the proceedings remain unconvinced; they are allowed to refer the matter to the judicial courts. However, due to the win-win goal of mediation, where parties deliberate until each has felt like he has had his day in court, seldom do they do go back to the formal court unless in extreme cases where one party feels cheated. In societies where large parts of the population do not receive any real measure of justice in West Africa, ADR can be very useful in providing timely and efficient justice under the principle of equity, which speeds up the process of conflict resolution.¹⁰⁹

2.6.3 Direct Participation

ADR also seeks to give room for reconciliation and healing of relationships through direct participation.¹¹⁰ Reconciliation through direct participation is particularly important for the African society where communal spirit is placed above individualistic style (western style) of living. As disputants negotiate through direct communication with each other, it gives room for reconciliation and healing.¹¹¹ This ensures confidentiality, trust, sincerity, understanding and a better appreciation of the issue at hand. Disputants are able to hear themselves out and detect where each party has erred and how the dispute can be resolved. In addition, since the process is held in private with no formal documents needed, it allows creative methods to be used in resolving the

conflict with various options available as solutions. There is also no imposed formal authority to impose decisions hence this gives room for fair resolution of the conflict. This remains distinctive from mainstream proceeding where the lawyer with the best case and evidence win without giving room for disputants to analyze the issues at hand for themselves.

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CHAPTER THREE

AN ASSESSMENT OF ADR IN GHANA

3.0 Introduction

This chapter examines the institution of ADR in Ghana and its performance since its adoption in 2010. In assessing its performance, the chapter discusses the legal framework behind ADR in Ghana and the ADR mechanisms adopted in the Act 798(2010) taking into consideration the techniques used. Most importantly, the chapter examines the effectiveness of ADR in achieving its stated goals as a conflict resolution mechanism, its advantages, the structural, cultural and implementation challenges facing the institution in Ghana.

3.1 Historical Overview of ADR in Ghana

The history of ADR in Ghana traces its roots to Professor Uwaize often referred to as the father of ADR in Africa.¹ In 1996, under his able leadership, 12 selected legal professionals from Nigeria, Senegal and Ghana underwent ADR training in the U.S. Among the selected Ghanaian representative were three prominent legal professionals in the persons of the former Chief Justice Georgina Theodora Wood, Mr. Nene Amegatcher who represented the Ghana Bar Association and Professor Henrietta Mensa- Bonsu from the faculty of law, who became the pioneers of ADR in Ghana.² On completion of their training, they were charged with the responsibility of creating ADR awareness in Ghana. The team was to train interested persons and retain them after a successful training session.³ Former Chief Justices, Kwame Wiredu and George Kingsley Acquah vigorously put in place various policies to aid the development of ADR in Ghana.⁴

Subsequently, 10 other legal professionals were trained to help develop the institution of ADR in Ghana.⁵ With the help of these trained professionals, ADR was introduced on pilot basis to examine the likelihood of its adoption and examine its effectiveness in resolving disputes within the country. The piloting of ADR was part of the comprehensive measures taken by the Ghana Judicial Service to address some challenges facing the institution in order to promote effective delivery of justice.

Major administrative stakeholders in the justice delivery system identified the need for reforms within the judiciary to serve the needs of the business sector.⁶ The court was faced with serious hurdles such as unfriendly procedural rules, difficult enforcement mechanisms, outmoded practices and poor conditions of service leading to poor work ethics.⁷ This led to loss of confidence in the judicial system by the public.⁸ In addition, court expenses and lengthy delays in settling commercial and land disputes and litigation, in general became frustrating.⁹ The reforms were hoped to transform the judicial service and improve the administration of commercial and investment laws.¹⁰

The government of Ghana, with the help of the World Bank, commissioned a team to identify the weaknesses and gaps embedded in the Judicial Service that needed urgent attention.¹¹ The team scrutinized Ghana's Administrative laws on Arbitration Procedures and ADR Mechanisms, and fully endorsed the recommendation to integrate ADR into the justice delivery system.¹²

A task force was set up in 1998 that assisted in piloting the ADR programme and formulated a standalone bill for the passage of ADR into law.¹³ The programme was first tested in 2003 in Accra to demonstrate its feasibility.¹⁴ The process saw an overwhelming 300 cases pending in court resolved within 5 days.¹⁵ A survey conducted revealed that 90% of disputants who had their cases resolved with satisfaction with the process were willing to recommend it to others. There were

follow up programmes held in 2007 and 2008.¹⁶ Out of 155 cases resolved in 2007, 100 commercial and family cases were successfully resolved within 4 days; while in 2008, 50% of over 2,500 cases were successfully resolved. This demonstrated the potential of ADR mechanisms to resolve and reduce backlogs in court.¹⁷

The experience led to the establishment of two important programs within mainstream court processes. These were the introduction of court connected ADR programs in the district, magistrate and high courts; and the launch of the media week.¹⁸ The media week is an annual program registered on the calendar of the judicial service that is observed by all judges, lawyers and ADR practitioners. It is a week set aside for the mass resolution of cases, which have spent years in court but fall under the ADR umbrella, and hence ADR mechanisms are utilized in resolving the cases. They usually concern child custody cases, matrimonial cases, debt recovery and land disputes. Eventually in 2010, the ADR Act 798 (2010) was enacted and adopted as part of the conflict resolution mechanisms mainstreamed into the justice delivery system in Ghana.

3.2 The Philosophy of ADR and Its Legislation in Ghana

The main philosophy of ADR in Ghana is to increase access to justice for all through its mechanisms. The settlement mechanisms practiced in Ghana include mediation, arbitration and customary arbitration which are guided by the ADR Act 798(2010). The objectives for ADR include reducing the burden on the court system and promoting a more efficient court system. Promoting efficiency means providing less expensive services, ensuring timely resolution of disputes and increasing disputants' satisfaction by ensuring mutual benefits for all. The hope of

embarking on the reform programmes within the justice delivery system was to address the challenges it faced and to restore disputants' faith.

Prior to the enactment of the ADR Act 798(2010), the ADR process had hitherto operated within Ghana's court setting.¹⁹ According to the former Chief Justice Georgina Theodora Wood, the Court Act of 1993 (Act 459 as amended) served as the basic legal framework for ADR practice in Ghana.²⁰ It carried within it provisions that encouraged out of court settlements. Sections 72 and 73 of the Act specifically empowered courts in promoting reconciliation in matters concerning criminal and civil offences. This was realized by encouraging and facilitating amicable means of settling disputes among disputants over whom the court has jurisdiction. Furthermore, cases pending in courts were encouraged to seek resolution through amicable terms of settlement with the court facilitating the reconciliation process. It is based on the sections that ADR processes such as court connected arbitral processes are used as resorts in resolving disputes. Aside issues of felony all other cases could seek resolution through this procedure. In resorting to this type of procedure, the case must first be filed in court. Disputants may then consent to resort to ADR in settling their issue. When the case is amicably resolved, it becomes a court order but when parties fail to come to an agreement on terms of settlement, it proceeds to trial.

The enactment of the ADR Act 798(2010) was a major step taken by parliament to formalize and broaden its legislation in Ghana. Its enactment brought the governing law on arbitration in harmony with international conventions, norms and practices in arbitration. This provided the legal and institutional framework needed to facilitate and encourage the settlement of disputes through ADR procedures in Ghana. The sole purpose of the Act is therefore to achieve a negotiated approach acceptable to both parties. This is important because the major goal of ADR is to resolve conflict in a non-adversary manner.

3.3.1 The Structure of the ADR legislation

As stated earlier, the ADR Act 798 (2010) contains the rules and procedures that govern ADR proceedings for its practitioners. The act is divided into five main parts and each part is further divided into various sections.²¹ Part 1 of the Act looks at Arbitration as an ADR method is resolving conflicts. The Act commences by making provisions regarding issues exempted from the use of Arbitration. It categorically exempts issues pertaining to the national interest, crimes that amount to felony, environment and interpretation of the constitution from the use of arbitration.²² It then discusses in the subsequent sections, the use of arbitration as a method of resolving conflict and highlights circumstances for which one may opt for this method. Part 1 is further divided into 62 sections. These sections give detailed information on proceedings regarding arbitration. It looks at pertinent issues such as who qualifies to be an arbitrator, the role of an arbitrator, appointment of an arbitrator, fees and immunity of the arbitrator, the conduct of the arbitrator, revocation of an arbitrator's authority, the role parties also play in the arbitral process and the authority of the high court in relation to an arbitral award.²³

It is worth noting certain key features highlighted in Part 1 of the Act. Firstly, the Act is highly commended for the power it gives to parties by encouraging party autonomy. Section 5, the Act empowers parties to appoint an arbitrator of their choice; while in section 16 parties have a chance to seek redress in the court of appeal should they remain unconvinced on the agreed terms of settlement. In section 32, the preferred language used during settlements, are to be at the digression of the parties. Furthermore, in section 31, parties are at liberty to agree on procedures for settlement and have the power to agree on the form of reward to be granted at the end of the day. The aforementioned privileges as stipulated in the Act remain relevant because they touch on the objectives for adopting ADR into the justice delivery system. As part of its primary objectives, it

is to resolve issues in a non-adversarial manner. Hence, parties, given such privileges in the Act, remain significant as it is a step forward in resolving disputes as parties play a crucial role in the decision making process. Having the privilege to select an arbitrator of their preference and the power to decide on rewards to be awarded makes parties' feel a part of the decision making process. This promotes confidence and builds trust during settlements and hence disputants are more likely to abide by the decisions taken during settlements.

The Act puts in place clearly the type of written agreement that can be used as criteria to call for an arbitration in the first place. Thus in section 2, it lists forms of written agreements that qualify as a call for arbitration as a method of settlement. This include emails, letters, telex or any others means which shows records of the said Agreement by both parties.²⁴ To reiterate this provision, in section 3, the Act continues to give primacy to the existence of an arbitral clause incorporated within an agreement by ensuring that even when an agreement is pronounced invalid, the clause remains active. The clause overrides the agreement and gives a party interested in the use of arbitration the chance to call for arbitration with the consent of the other party. This provision is vital because it prevents ambiguity pertaining to what should involve a written form of arbitration.²⁵ This takes away delays that may otherwise occur due to inappropriate interpretation of other forms of written communication in the process of arbitration. This achieves the objective of preventing delays and the avoidance of frustrations usually associated with courts. It is also investor friendly as it promotes ease of doing business for foreign investors and is cost effective.²⁶ Moreover, to ensure that the Act is apt to international standard, practice and norms, in section 24, the arbitral tribunal is granted the power to rule over its jurisdiction without an interference from the court.²⁷ The goal is to promote the autonomy of ADR as an important conflict resolution

mechanism. This empowers the arbitrator since he can function independently without interference from the court.

Part two of the Act discusses mediation as a method of resolving conflicts. It encompasses section 63 to 88 and examines the powers of the mediator, requirement of confidentiality and the effect of mediated settlement. In section 63, party autonomy is stressed on once more. It stipulates that a party can opt for mediation as a means to resolve a dispute with the consent of the other party. Parties are therefore at liberty to select the number of mediators they would like to settle their case although normally, most resort to a single mediator.²⁸ Parties then have the opportunity to decide on how proceedings should take place and are at liberty to withdraw from a mediation process whenever they deem fit. Party autonomy is relevant in choosing mediators as it enhances faith and trust in the neutrality of the mediator as capable of resolving issues without being impartial. This ensures transparency which is mostly absent in the court.

Party 2 also highlights the medium through which communication can be established to commence the mediation process. It can either be through written, verbal or any other electronic means of communication such as the use of a telephone.²⁹ As a requirement, should a verbal communication be established, parties are expected to follow up in writing, their names, addresses, email addresses, phone numbers and what the dispute is about. Nevertheless, failure to state in writing does not invalidate the process. This makes the process less stringent and friendly for all.

Consequently, section 78 grants the mediator an opportunity with the permission of the disputants to seek advice or technical expertise from other experienced mediators to enable him resolve issues should the parties be willing to cater for additional expenses. This provision is relevant because, some complex cases require other experienced persons to assist in resolving the dispute using their technical expertise. This feature remains significant as it ensures that right decisions are taken even

in complex situations to achieve mutual benefits. To ensure that decisions are binding and properly enforced, section 82 gives disputants the opportunity to insist on proper implementation of arrived decisions by giving the mediator the power to come up with a decision which is considered binding on all parties. This is significant because it promotes enforcement of the law and paramount to accountability should parties refuse to abide by the ruling.³⁰

On the otherhand, Part 3 of the Act, which commences from section 83 to 113 centres on customary arbitration. It looks at the commencement and ending of a customary arbitration process. It highlights concerns on who qualifies to be a customary arbitrator and the general rules, which govern arbitration. During the process, parties are given the opportunity to choose and power to revoke whom they entrust as a customary arbitrator to resolve their issue. In section 45, the Act protects parties' interests by ensuring that disputants are not coerced under any circumstance to partake in the process. Furthermore, to ensure that rewards or decisions made are enforced, a customary reward must be registered at a district court, circuit or high court where appropriate for the purposes of record keeping.³¹ Customary arbitration reiterates the objective of ADR as alternative to full-scale court processes because it is best suited to meet the cultural demands of the country as it gives it primacy to the traditional rulers. Traditional rulers and traditional norms continue to play key roles in the lives of Ghanaians as most people resort to such means in resolving conflicts since time immemorial. It is also important in corporate governance due to the prevalent land disputes within the country. Companies usually have to contest with traditional families over lands since most lands are stool lands. Hence resorting to customary arbitration is best suited in resolving issues of this kind and thus worth commending.

Part 4 of the Act lays emphasis on the establishment of an ADR Centre for Ghana. This covers section 112-124 of the Act and aims at providing administrative support for the growth and

development of ADR in Ghana. As stipulated in the Act, there must be an establishment of a governing board with a chairperson. The chairperson must therefore be a practicing lawyer with over 12 years' experience. The governing board must constitute a member each from the Ghana Chamber of Mines, Bar Association, Institute of Surveyors, the Judiciary, Institute of Chartered Accountant and a woman nominated by the President.³² There must also be representatives from the Organized Labour and the Executive Secretary of the Centre who are to ensure the smooth running of the Centre³³. These provisions prevents ambiguities and ensure smooth succession. This promotes easy facilitation of activities regarding ADR and prevents future conflicts.

Part 5 of the Act, commences from section 125 to 137. This looks at the establishment of an ADR fund for the Centre, for the purposes of human resource development, research and study for the centre.³⁴ It further highlights the management of fund, financial report requirements, staff appointments, interpretation, savings and transitional provisions.³⁵ This part ensures that there is continuous provision made for the smooth running of ADR activities without bringing its activities to a sudden halt.

3.4 ADR Methods in Ghana

There are various ADR mechanisms used presently in Ghana for the resolution of conflicts. They have varied philosophies, principles and rules governing their operation. This section examines the various mechanisms adopted to help in the resolution of conflicts within the country.

3.4.1 Negotiation

Negotiation is any form of direct or indirect communication used jointly by parties of opposing interests to help them manage and resolve their issue.³⁶ It is the most available process among the ADR processes that anyone can utilize. It can be used in resolving already existing disputes or for

laying the foundation for future relationships between parties.³⁷ It can take place at the individual, corporate, national and international level.

Negotiation is therefore the first step most disputants take in resolving a conflict without resorting to a third party.³⁸ Negotiation is a voluntary process and hence nobody must be coerced into. Since it is a voluntary process, parties at any point can withdraw from the negotiation process and reject any form of decision arrived at which might not be in their favour. Parties can directly negotiate with each other or can be represented by selected family members, lawyers or other persons whom they deem fit to represent them. Parties are however, given autonomy during the negotiation process.³⁹ They control the process by choosing the time, venue and agenda for the meeting. They also set the rules and regulations for governing the negotiation process. They are therefore at liberty to choose the kind of approach needed to arrive at an ideal decision that benefits all parties. Due to the flexible nature of negotiation, parties can adopt a position or interest based approach.⁴⁰

The negotiator on the otherhand, who is often an attorney, must be an experienced person who facilitates the process by guiding parties to take an interest based approach in resolving the conflicts. He must also prepare disputants by encouraging them to seek further redress in the event that they are unable to arrive at peaceful terms of settlements. He must not impose any decisions on parties but rather facilitate the process by helping disputants to draw up an agenda for the negotiation, time, venue and setting rules for the process.

Negotiation as an ADR process has many benefits. It is cheaper, faster and prevents unnecessary delays. Many experts take advantage of its flexibility to adopt the interest-based approach in resolving conflicts as it guarantees a win-win approach for involved parties. Moreover, since only parties involved in the dispute are allowed to partake in the resolution process, they can shape the decisions to meet their needs or interests without hindrances. Furthermore, negotiation enhances

relationship building especially for commercial entities since they are able to talk and arrive at mutually beneficial outcomes that profits both parties and hence rebuilds the ruptured relationship among parties.

3.4.2 Mediation

Mediation is the process, whereby, a neutral third party helps conflicting parties arrive at decisions, mutually beneficial to all parties' interest without imposing any decision on them.⁴¹ Mediation is a voluntary process and parties have the choice to choose their own mediator acting in the capacity of an impartial third party guiding involved parties to arrive at amicable terms of settlements. The mediator's ultimate goal is to ensure mutual benefits for all parties by adopting an interest based approach of resolving conflicts. This is attained by encouraging parties to concentrate on their needs and what they seek to gain at the end of the mediation process. Disputants on the otherhand have the power to partake in the process by choosing the time, date, venue and agenda for the meeting with the help of the mediator. After the parties and the mediator have agreed on the rules necessary for mediation to take place, the mediator commences with the mediation process. Mediation therefore takes a more formal and organized process in comparison with the negotiation process.

Acting in the capacity of a mediator is a technical job and requires all the acquired skills and tools to help disputants to resolve their conflicts. According to Mr. Gamey, the technical expertise and experience of a mediator comes to bear during these moments. He therefore refers to a technique termed as POWER used in mediation to help resolve issues among disputants.⁴²

“P” refers to Paraphrasing. The mediator should be in the position to always paraphrase the submissions of disputants to ensure clarification on behalf of parties. This prevents the occurrences

of misinterpretation, which can be a hindrance to the mediation process and cause unnecessary delays. The “O” refers to using open-ended questions, which leads to better clarifications. For instance, “Madam, can you help me understand what you meant by freedom?” This opens room for more specific hidden details to be uncovered. This is important because often, disputants might refuse to open up on issues and only talk on peripheral issues while ignoring details at the heart of the conflict. “W” represents “Wait”. This signifies patience. The mediator must be patient and listen for hidden messages during the submissions to enable him ask relevant questions, which can help, bring about finality. “E” stands for “Empathy.” The mediator put himself in the shoes of both parties and show genuine concern without taking sides. Hence, it is often said that a mediator must be empathetic but not sympathetic. Sympathy breeds partiality as emotions can be misleading. Empathy however, brings about trust and confidence, which makes disputants trust in the judgment power of the mediator. Finally, “R” stands for reframing statements for parties, which could lead to misunderstandings and delay the resolution process. When a mediator uses the steps according to Mr. Gamey, he is sure to help disputants come up with good solutions.

Furthermore, mediation as a process for resolving conflict is important because it saves time, less expensive and has the ability to rebuild relationships among disputing factions. According to Mr. Fancis Kwabla Nanevi, a mediator at the Ashaiman Inter-Community Mediation Centre, as disputing parties talk about their concerns it helps heal them emotionally and calms them down to see reason.⁴³ It helps disputants concentrate on mutual interests and avoid concentrating solely on the problem. In addition, to instill the principle of confidentiality, there are no recordings of mediated cases according to Mr. Nanevi. Symbolic items with meanings peculiar to the Ghanaian culture are also used in facilitating the process. Items such as water and Kola nuts are used to signify peace. According to him, disputants are able to understand the use of such items once

introduced to them since they are synonymous to the traditional Ghanaian concept of conflict resolution.

3.4.4 Arbitration

Arbitration refers to the process by which a neutral party known as an arbitrator helps the disputants to arrive at decisions.⁴⁴ The decisions are however binding on both parties. Arbitration is employed as an ADR method in resolving especially commercial cases. It is used in oil and gas business, construction, property and land disputes especially among MNC'S. Parties have the power to appoint an arbitrator. An arbitrator is a person who parties trust and respect his judgments.

Arbitration is a voluntary process. Nevertheless, unlike mediation, one party cannot unilaterally decide to withdraw from an arbitral process rather it is a consensual process. Decisions arrived at are binding and usually easy to enforce.⁴⁵ A judge can also choose to refer an issue in court for arbitration depending on the nature of the case. In such instances, after the case has been resolved, the arrived terms of settlement must be referred to the Judge at a specific given date but on failure to come to an agreement, the case is taken to trial. Gradually, arbitration has become a common method in resolving conflicts especially among business entities. Most companies have resorted to Arbitration due to its privacy policy and the advantages involved.

This assertion is confirmed by Mrs. Serwaa Ofori who is a lawyer working with one of the biggest Oil Marketing Companies (OMC) in Ghana by sharing her experience.⁴⁶ She gave a detailed account of how the legal department was burdened with various cases at courts, which had taken so many years to be resolved. "It is time wasting and expensive," she said. The procedures involved in filing cases at courts are also cumbersome. Due to the challenges involved in resorting to the courts, the court encourages companies to employ services of arbitration in resolving issues.

Companies can however refer to the court on failure to come to amicable terms of settlement once arbitration fails. For her, arbitration has been ideal because of its confidential nature, which respects privacy.⁴⁷ Thus, it has helped save and rebuild lasting relationships with other companies. This is critical because, usually during inter-company conflicts, long-term business parties are likely to have their relationships strained. Moreover, arbitration reiterates the principle of equity.⁴⁸ Whatever the company loses, due to the conflict, arbitration offers the chance for parties to receive compensation either partially or fully with the same value for damages caused. This promotes restoration and equity. Furthermore, arbitration has helped improve relationship with customers who at times become offenders by falling prey as debtors.⁴⁹ They are able to negotiate for settlements during the process. Thus, arbitration holds the potential to boost economic performance and promote investments.

3.4.5 Customary Arbitration

Customary Arbitration takes place when disputants resort to a third party who acts as an arbitrator in the capacity of a traditional leader such as a Chief. The decisions arrived at are legally binding and in order to keep records of the rewards and enforcements, it is supposed to be registered at the nearest district, circuit or high court where appropriate. Nobody can coerce parties to resort to this form of arbitration hence it instills power in the hands of the parties. They also have the power to revoke the authority of customary arbitrator where they deem fit. This type of arbitration is essential for a cultural oriented state like Ghana where property and other culture related conflicts such as child marriage continue to plague the country.⁵⁰ Moreover, Chiefs continue to play a vital role in various communities across Ghana and most people continue to trust in their judgments.

3.4.3 Conciliation

Conciliation is used interchangeably with mediation in certain countries. In Ghana, conciliation is different from mediation. Conciliation refers to the process by which parties resort to a neutral party known as the conciliator to help them resolve their conflicts.⁵¹ The parties select him by themselves and in turn, he is expected to help parties find amicable terms of settlements to their problems. His decisions are not legally binding and parties can reject them when they are not in accord with it. The conciliator helps resolve the conflicts by meeting the conflicting parties separately to help them resolve their differences through a purpose called caucusing.⁵² Conciliators use their technical expertise to resolve the conflict by reducing tensions between parties. They also interpret issues and explore various solutions to bring about a negotiated settlement.

Conciliation is relevant because it saves times, repairs relationships and is interest based. This gives room for creativity to enable the conciliator come up with various ideas, which disputants can explore to help come to amicable terms of settlement. On the request of parties, the conciliator is given the opportunity to come out with binding judgments.⁵³ Nevertheless, disputants are at will to seek redress at the court of appeal.

3.4.6 Early Case Evaluation

Early case evaluation usually takes place after a case has been filed in court. After cases are filed, they are forwarded to experts to analyse based on the given facts. The expert then critically analyses the case and returns with a feedback. He interprets his findings to the disputants and indicates their chances of winning or losing the case should they decide to opt for a hearing in court. Thus, on hearing the analysis given, the disputants weigh their chances with majority resorting to other terms of settlements. This is helpful because it eases the rate at which cases get crowded in courts and helps disputants find other substantive means of resolving their disputes.⁵⁴

This is however, a rare process used by disputants due to the lack of trust. In some cases, the party who is likely to win the case in court takes advantage of the situation anyway still by continuing with proceedings in court to the detriment of the other party.

3.4.7 MED-ARB

Med-Arb is a joint approach used in resolving conflicts. It is the joint use of arbitration and mediation processes as methods in resolving conflicts. The nature of certain conflicts, require the use of such an approach. Often, extra initiatives must be employed to reduce tensions and preserve the relationship of parties depending on the nature of the interests at stake.

During Med- Arb, parties choose a neutral third party who acts first in the capacity of a mediator and when there is a failure in arriving at a decision, acts as an arbitrator. His decisions are binding on both parties. In order to prevent the parties from rejecting the decision, before commencement of the process, the mediator makes known to the parties that on failure to arrive at a decision, he is obliged to take decisions on their behalf as an arbitrator. This process is mostly lengthy and expensive.⁵⁵ Nevertheless, it promotes efficiency. This is because where mediation fails to arrive at a solution, arbitration fills the gap.⁵⁶ It prevents parties from resorting to another arbitrator, as the same neutral mediator is capable of giving a fair judgment after hearing the case from the initial stages.

3.5 Effectiveness of ADR in Resolving Conflicts in Ghana

3.5 .1 ADR and Magistrate Courts in Ghana

Magistrate courts, formally known as district courts, form the lowest level of court systems in Ghana.⁵⁷ These courts were built to assist in reducing the backlog of cases within the higher courts

by resolving indictable cases within the communities. These cases include both criminal and civil cases. Civil matters constitute interpersonal disputes such as landlord – tenant relations, matrimonial cases and land cases where the value of the land does not exceed 5000 cedis. ⁵⁸ Criminal cases on the otherhand include assault, threatening conduct and theft with a maximum fine of 500-penalty point equivalent to a 2-year term in prison.⁵⁹ However, the magistrate courts are exempted from resolving issues relating to murder, manslaughter and rape, which are serious criminal offences, meant to be tried at the higher courts.⁶⁰ There are currently 153 district courts present in all regions across Ghana.⁶¹

As part of recommendations made to improve on the legal services within the country, in 2005, Ghana took a huge step by integrating ADR methods within the mainstream justice delivery system known as the court connected ADR process on pilot basis. This was done through the magistrate courts and was first piloted in some district courts within Accra and when successful was extended to other parts of Ghana.

Court connected ADR processes take place firstly by disputing parties filing their cases in court. The Judge critically analyses the case and where applicable, recommends ADR to them as conflict resolution mechanism. ADR can only be an option when the parties have agreed to resort to such means to resolve the conflict. The process begins with the ADR coordinator or judge explaining to the parties the importance of ADR and how the process is conducted. When they agree, they are asked to select a mediator who explains to them in details the process once more.

The mediator then involves the disputants in setting the rules for the mediation process to take place. They then decide on the time and agenda for the mediation. As part of the rules, the mediator usually encourages disputants to show mutual respect towards each other by calling each other by their first names and talk only when invited to do so. They are required to keep a calm tone and

avoid threats. Gradually he helps them arrive at decisions beneficial to parties by using the power of a series of good questions, poses open ended questions to the disputants to help bring out the essential issues and to seek clarity where necessary. When an agreed settlement is arrived at, parties then refer the settlement to the magistrate who approves of it as a consent judgment giving it a legally binding status. Hence, refusal to abide by the terms of settlement by a party could lead to a possible penalty to ensure enforcement. However, If they are unable to arrive at a decision the case proceeds to court for trial.⁶²

In the bid to popularize ADR to the public, there are no charges taken since the assumption is that disputants have already paid for the services once their case is filed in court.⁶³ According to Crook, in a research he conducted on the use of court connected ADR programmes in Ghana, he noticed that magistrate judges and coordinators were doing their best to fulfil the mandate for the formulation of the policy in the first place.⁶⁴ They do so by ensuring that all applicable cases without hesitation are recommended to involved persons. He, however, observed that most of the cases, often referred to ADR processes, were matrimonial cases.⁶⁵

Since the enactment of the ADR Act, the use of ADR court-connected programmes operate officially with a supported legal framework and now present in 87 district courts.⁶⁶ This has led to a tremendous improvement in the resolution of cases, which might have otherwise taken years to resolve in court. According to Mr. Nanevi, a court connected ADR mediator, most of the cases he has resolved, pertain to rent disputes between property owners and tenants, child custody, marital disputes between husband and wife and labour related issues.⁶⁷ He was of the view that conflicts at this nature are capable of escalating into violence and hence the need for ADR programmes. He explained that, disputing parties often arrive for mediation with so much hatred

for each other. Some people threaten the lives of others while others who have had their issues sent to court for about 2-5 years without any amicable solution arrived at the centre frustrated.

However, when the ADR court connected programme are introduced to them, although initially in doubt of the process on suspicion of lack of trust, they have often left happy than they originally came. In less than an hour, their disputes are resolved with many who had vowed never to talk to each other, often feeling sorry for their actions. The main achievement according to him was the aspect of reconciliation and healing.

It is evident that during confrontations people are often led by their emotions, making them lose all sense of reasoning. Secondly, disputants seem frustrated with the back and forth involved in the court procedure and hence at any point in time might be tempted to take the law into their own hands. However, court connected ADR processes affords them the chance to talk out their issues and repair their damaged relationships; while they concentrate on achieving their interests, which favour both parties.

Since the enactment of the ADR Act 798 (2010), many cases have been resolved from 2011 to 2017. The table below gives detailed cases mediated and settled, from 2011-2016 which also includes the piloting years.

Table 3.1: Breakdown of Annual ADR performance in Ghana’s Magistrate Courts (2007-2016)

YEAR	MONTH	CASES MEDIATED	CASES SETTLED	PERCENTAGE
2007	JAN-DEC	853	466	-
2008	JAN-DEC	1,723	807	47%
2009	JAN-DEC	5,358	3,871	72%
2010	JAN-DEC	3,754	1,633	43%
2011	JAN-DEC	4,392	2,025	46%

2012	JAN-DEC	5,924	2,722	46%
2013	JAN-DEC	6,668	2,806	42%
2014	JAN-DEC	4,416	1,999	45%
2015	JAN-DEC	1,464	635	43%
2016	JAN-DEC	1,373	605	44%
	TOTAL	35,925	17,569	49%

Source: ADR Daily, 2018

The table above indicates that settlement rates have been quite impressive right from the piloting stages, which were the years 2007 to 2009.

In 2009, out of 5,358 cases that were registered, 3,871 were settled successfully representing 72% of settled cases. Although this was in the piloting stages, it remains the highest settlement rate achieved in Ghana since ADR was formally introduced and integrated into the national laws. After the enactment of the Act in 2010 however, the ADR performance has been quite stable with settlement rate alternating within the range of 42% to 46%.

However, the performance seems to have declined a bit after its enactment as an Act in 2010 as compared to the piloting years, which are 2007 to 2009. The first two years after its enactment, saw a stable performance of 46% settlement. In 2011 out of 4,392 cases registered, 2,025 were resolved and in 2012 out of 5,924 cases registered, 2,722 were settled with both years representing 46% settlement rate.

In 2013 and 2014, there was a drop in settlement rate but the data suggests that the settlement rate in 2014 was fairly better than that of 2013. While out of 6,668 cases registered in 2013 witnessed 2,806 settled representing 42% settlement rate, there was a 3% more settlement rate in 2014, which is 45%. This is because out of 4,416 registered cases, 1,999 cases got resolved.

2015 and 2016 slightly reduced by 1% and 2% respectively as compared to 2014. Out of 1,464 cases registered in 2015, 635 cases were resolved representing 43% settlement rate, which was

slightly lower than that of 2016 by a 1% decrease. In 2016, out of 1,373 registered cases, 605 cases were resolved representing 44% settlement rate, 1% higher than that of 2015.

In 2017, between January to June out of the 1,995 mediated cases, 612 cases were resolved representing 51% settlement rate. Settlement rate after 2010, have therefore been a bit stable alternating around the region between 42% to 50%. Thus, ADR has been effective in resolving conflicts and hence given the necessary boost, it is likely that ADR might reach its full potential in the coming years.

3.5.2 ADR and the Commission on Human Rights and Administrative Justice (CHRAJ)

CHRAJ is an independent and autonomous body created in 1993 in accordance with Chapter 18 of the 1992 Constitution of Ghana.⁶⁸ Its primary mandate is to investigate human right violations against citizen, abuse of power and malpractices among government Agencies. In the 1990's the institution received about 4000 to 5000 cases per year.⁶⁹ The civil cases revolved around family property disputes, landlord-tenant relations, women, and child abuse. However, in recent times, the institution has employed the services of ADR mechanisms such as mediation in resolving conflicts. Their services have been useful in promoting access to justice for citizens. Beneficiaries of their mediation activities have mostly been women and children who are often regarded as the most marginalized in society.⁷⁰ The mediation services are free and take place in the District Directors Office. The mediators are trained professionals who mediate cases throughout the week. The mediation process is synonymous to the court connected mediation process. The process begins with the selection of an impartial third party who acts as the mediator. He first explains in details the steps involved in the mediation. He gives room to the parties to select their own date,

time and agenda for the mediation. He then listens attentively to each party's case and their expectation of an appropriate outcome at the end of the process.

The mediator plays a vital role by ensuring that the atmosphere for the mediation is a conducive one and each party feels comfortable. He sets the rules for the process. The rules include the use of good language among disputants, respect for the views of others and only talking when one has been granted the permission to do so. However, *Crook et al* observed that calming down tensions among disputants especially concerning child custody proved quite difficult due to the sensitive nature of the matter. For instance, men who were labelled as irresponsible because they shirked their responsibilities reacted more aggressively whenever they were questioned, as they felt antagonized.⁷¹ In cases where selected family members were selected to represent respective parties, some acted rather rudely and reigned insults against each other. In worse cases, there were death threats made and mediators had no choice than to threaten to report to the police as sign of caution to the disputants.⁷²

He also points out the mediators were persistent in ensuring that disputants attended meetings and followed up keenly on the implementation of agreements made.⁷³ Mediators were insistent because the rights of children were mostly at stake and agreements made were geared towards their best interest.⁷⁴ Parents were therefore forced to compromise on certain issues even though they were unhappy with the decisions since it did not go in their favour.

Mediation at CHRAJ is also used in resolving culture related issues such as early marriage in the Northern part of Ghana.⁷⁵ Hence, during mediation for such cases, mediators use negotiations simultaneously with education to help parties involved to understand the risks involved in such acts. However, although negotiation and education are necessary in facilitating the process, the primary goal at the long run should protect the rights of the women or girls. The issues mediated

involved girls and women centred on mostly issues concerning young girls who had been impregnated with the men absconding or denying responsibility for the pregnancy and disputes concerning ladies cohabitating with men for years with the men eventually breaking up with them.

Mediation as a conflict resolution mechanism at CHRAJ has been very effective because it has proven relevant in tackling culture related issues such as child marriage that prevents women from filing cases in courts in the first place for fear of being stigmatized. The language used is equally important as they resort to the use of local languages when disputants opt for them. The setting is informal and not stringent as in the case of courts where proceedings are formal and anglicized. The enforcement of implemented decisions are also worth mentioning as it ensures respect for the justice delivery mechanism and restores trust in the system. The use of ADR in CHRAJ is therefore highly commendable.

3.5.3 The Legal Aid Scheme and the ADR Institution

The original mandate of the Legal Aid Scheme was to provide justice and promote access to justice for all. Usually referring to themselves as a social justice institution, the lawyers within the institution defend clients at courts who do not have money to pursue justice. In 2007, the Legal Aid Institution in Ghana was among the few privileged institutions in Ghana selected to pilot the ADR programme in Ghana under the auspices of the United Nations Development Programme (UNDP). Today, aside the role of lawyers in promoting justice through the free services given, ADR has become equally relevant if not more in promoting effective justice among the people of Ghana.

Prior to 2010, the Legal Aid Scheme resorted fully to court process until 2007 when the UNDP supported the institution to resort to ADR as a more effective way of resolving dispute. Research conducted indicates that one major challenge the institution faced was that lawyers available to

represent clients were less than the clients. Court processes also took months if not years to resolve. Despite the challenges faced by the institution such as lack of funds, ADR has proven effective in resolving disputes. In an interview with the ADR coordinator for the institution, Mr. Mbazor Aboni describes the experience as, “Phenomenal in transforming conflicts within the Legal Aid Scheme”.⁷⁶ He indicated that about 70% of resolved cases in the scheme have been ADR related cases.⁷⁷ The cases often concern domestic issues relating to child custody, child maintenance, land disputes and disputes concerning debt recovery.

The ADR process takes place by first sending letters inviting concerned parties for mediation after one party comes to report the case. Clients usually respond positively although majority are often under the impression that it is a court summon.⁷⁸ Probably mistaking the emblem of justice, used by the scheme for a court summon. This gets clients on board the ADR programme unlike other institutions, which face challenges in ensuring compliance from clients. The mediation here is similar to those of other institutions where clients choose an impartial third party to represent them and are given room to decide on how to arrive at settlements.

A success story of the scheme has been its ability to ensure enforcement due to the dedicative nature of its lawyers. Despite the fact that an issue has been referred to ADR and settlement is achieved, should one party report non-enforcement on the part of the other, the lawyers immediately send the case to court for trial. Mr. Aboni praised the ADR mechanisms and asserted that, “ADR has proven quicker, accessible to all and absolutely free regardless of the financial status of clients as far as they are willing to submit and above all promoted peaceful living among clients as they revisit their old way of living after conflicts have been resolved”. ADR holds the potential to restore and repair relationships.

The table shows the breakdown of annual ADR performance for the Legal Aid Scheme from 2012 to 2017 within the districts in Greater Accra.

Table 3.2: Annual Breakdown of ADR Mediated Cases for the Legal Aid Scheme (2012-2017) within Districts in Greater Accra

YEAR	NUMBER OF MEDIATED CASES	NUMBER OF RESOLVED CASES	PERCENTAGE
2012	2094.3	1466.01	70%
2013	1961.1	1372.8	70%
2014	2324.7	1627.34	70%
2015	2604.6	1823.2	70%
2016	3124.8	2187.4	70%
2017	3039.3	2127.5	70%

Source: Legal Aid Scheme 2018

The above table indicates that mediated cases within the institution has been remarkable and probably recording the highest cases within the country with a constant 70% rate in resolving issues referred to ADR within the Institution. With the right support, it is likely to reach its full limit in resolving conflicts and promoting the rule of law.

3.5.3 ADR Institution Centres in Ghana

Although the ADR Act stipulates that there shall be an establishment of a National ADR Centre, this requirement is yet to be realized. Nevertheless, there are individual ADR centres established within the country to help with the enforcement of ADR processes. For this study, the Gamey and Gamey Mediation Academy in Tema and Ashaiman Inter-Community Mediation Centre in Ashaiman were employed to aid in the study.

Gamey and Gamey Mediation Academy is a private ADR institution headed by Mr. Austin Gamey who is the CEO of the centre. In April 2018, aside the Mediation Academy, he officially launched an ADR Mediation Centre. The Centre does not only help resolve conflicts within the communities but also trains people to become ADR practitioners. They also offer a professional training course in ADR through its Executive Master of ADR programme. This is open to people in the security services, pastors and other individuals interested in being trained.

In an interview with Mr. Gamey, he said he began his mediation services as far back as 1974. He has played a vital role in resolving labour related conflicts in Ghana through the National Labour Organization. He was a part of the team, which drew up the ADR Act 798 (2010) of Ghana. He was also a part of the initiators of the Multi door house approach used in Nigeria. The government of Ghana has hailed Mr. Gamey and his institution for their contribution towards the promotion of ADR and the prevention and management of conflicts both at the personal and group level.

According to Mr. Gamey, his institution has helped at the inter-personal level of resolving conflicts by providing training programmes for personnel in the working sector especially the banking sector. They have helped managers and employees to practice self-mediation. He believes due to the interdependent nature of employers and employees, should their relationship be strained, it is the customer and the Ghanaian economy as a whole, which suffers. The institution has helped reduce strike actions by employees in protestation of poor working benefits by encouraging them to employ the use of negotiation before embarking on such acts.

The institution as a whole has helped in resolving family related conflicts pertaining to divorce especially. The institution is currently taking a serious interest in the training of religious leaders such as pastors. He was of the view that, pastors can help reduce the rate at which divorces are on the increase by experiencing first hand professional training. Beneficiaries of this training include

Rt. Rev. Bishop Osabutey who is the Methodist Bishop of Accra and Rt. Rev. Offoe Wright who is one of the heads of the Methodist Church of Ghana.

Aside the Centre's contribution to reducing labour and interpersonal conflicts in Ghana, they have also played a vital role in reducing group conflicts especially at the communal level. Their greatest achievement at this level has been resolving the Chieftaincy conflict among the Teshie people of the Ga clan in Ghana. The 22 years old war denied the people of Teshie of a chief but for the timely intervention of Professor Kofi Quashigah and the Gamey and Gamey Mediation Academy led by Mr. Austin Gamey, the conflict would have gone on for years.⁷⁹ A careful analysis indicates that the conflict had a negative impact on the socio-economic activities of the women especially and disrupted the activities of ordinary citizens within the vicinity.

Many also lost their lives with the police often involved in clashes with conflicting parties. Today, the heads of the town have publicly announced to end the conflict for the sake of peace. To Mr. Gamey this is the power of ADR. It has brought about, "Peace, restoration and reconciliation among conflicting parties".

The Ashaiman Inter Community Mediation Centre in Ashaiman is an inter-community mediation institution located right beside the Ashaiman Police Station. The Centre, which was set up in 1999, strives to deliver effective justice to the people within Ashaiman.⁸⁰ Owing to the nature of the Ashaiman community, which is a densely populated settlement with occurrences of all forms social vices, the presence of a mediation centre remains relevant in delivering timely resolution of conflicts.

Hence, the Centre continues to play a vital role in reducing conflicts pertaining to land- tenant disputes, marital conflicts, child custody and minor monetary issues among others within the

Ashaiman Municipality. Often, these conflicts are successfully resolved. The people located in this area are also normally not well to do and hence frequent the mediation centre where their services are mostly free. The table below highlights the Centre’s achievement for the years 2011 to 2014.

Table 3.3: Annual Breakdown of Mediated Cases at the Ashaiman Inter-Community

Mediation Centre (2011 -2014)

YEAR	NUMBER OF CASES RECEIVED	NUMBER OF CASES RESOLVED
2011	1,056	1,022
2012	778	755
2013	1,065	1,019
2014	1,173	1,123

Source: Ashaiman Intercommunity Mediation Centre 2018

The above performance is impressive within 2011 to 2014. Out of 1,056 cases received in 2011, only 34 remained unresolved with 755 successfully settled while in 2012 out of 778 cases 23 cases remained unresolved.

In 2013, the performance was also equally good with 1,064 resolved cases and 46 cases unresolved out of 1,065 cases recorded. In 2014 also out of 1,173 cases registered, 1,123 cases were resolved with 50 cases unresolved.

It is for this impressive record that the Ashaiman police unit and the Domestic Violent unit continue to refer non-criminal cases to the centre. Below is the 2017 performance of the centre with detailed information.

Table 3.4: Detailed Breakdown of Cases for the Year 2017

CASES	NUMBER OF CASES REGISTERED
Rent	495
Land	48
Marriage	32
Child maintenance	34
Recovery of debts	367
Labour disputes	4
Commercial contracts	6
Expectation of Estate	11
Total number of registered cases	997
Total number of unresolved cases	17
Total number of resolved cases	980

Source: Ashaiman Intercommunity Mediation Centre 2018

The above data for the year 2017 is very impressive. Despite the huge number of cases registered, majority of the cases were resolved. Out of 997 registered cases, 980 were resolved with only 17 remaining unresolved. Moreover, the data indicates that rent and debt recovery issues are rampant occurrences within the community with 495 and 367 cases registered respectively. Nevertheless, ADR remains a vital conflict management tool within the Municipality for resolving non-criminal cases. Despite the high settlement rates, the Centre faces serious infrastructural and monetary challenges, which might hinder the performance if not properly addressed.

3.7 ADR BENEFICIARIES IN ACCRA

The objective of the research to the study was to enable the researcher examine the main advantages and principles of ADR as a conflict resolution tool in resolving interpersonal and group conflicts in Ghana since the Act 2010 was incorporated into the laws of Ghana. To find answers

to these questions, 10 interviewees were selected who have benefitted from ADR within the Greater Accra Municipality. Using open-ended questions and semi structured interview guidelines, interviewees were asked series of questions to aid the researcher assess the efficiency of ADR in Ghana in resolving conflict. It was also the researchers aim to investigate the popularity of ADR among the populace.

Interviewees were first asked how they were introduced to ADR as a conflict resolution tool. Majority of the interviewees alluded to the fact that friends had introduced them to the ADR processes. However, they indicated that they did not initially buy into the idea. This is because they were aware and comfortable with the court processes due to the assurance of yielding results although they were aware of the stringent challenges associated with the court. A careful study of their responses indicates that despite the achievement of ADR as a reliable conflict resolution mechanism, it needs to be marketed vigorously to encourage disputants to resort to it. There is the need to highlight on its advantages, which facilitates effective measures in resolving conflicts.

Participants were further asked whether they were familiar with the ADR process. In answering this, one interviewee who is a renowned pastor in one of the popular churches, affirmed this assertion and indicated that the ADR process is synonymous to the Christian way of resolving conflicts. He was of the view that the only difference between ADR and the Christian method of resolving conflict is the formalization of the ADR process into the justice delivery system of the country. To prove that ADR practices such as mediation are familiar processes, he quoted Matthew 18:15-17 from the Bible, which states,

“If your brother sins go and show him his fault in private. If he listens to you, you have won your brother but if he does not listen to you, take one or two more with you so that by the mouth of two

or three witnesses every fact may be confirmed. If he refuses to listen to them, tell it to the church and if he refuses to listen to even the church, let him be as to you as a Gentile and tax collector”.⁸¹

This means that even in the religious sects, non- adversarial measures are encouraged as means of resolving conflicts with the intention of promoting reconciliation. Other interviewees asserted that this process was quite new to them and that they were used to the normal court processes.

Interviewees were once more asked if the ADR process was similar to the Traditional resolution process. Majority of the interviewees responded positively that the process was similar. Interviewees, who had previously asserted that the process was not familiar to them, at this point made a comparison to the role of traditional rulers and that of mediators. It was evident that the interviewees were now coming to the realization that ADR is indeed an old process and had not given much thought to it.

When asked how different ADR processes were different from court processes, all the interviewees answers indicated that ADR processes were different from the court systems. Majority of the answers pointed to the informality of ADR processes and how they felt more at ease during mediation processes. Thus, they confirmed the principle of informality embedded in ADR processes.

When interviewees were probed further on the advantages of ADR, there were similar responses from respondents based on their experiences. According to one of the respondents, she encountered serious challenges when she assumed position in her new office. She spent most of her time at courts mostly pursuing debtors and resolving land disputes. These matters took years to resolve and at times, some debts eventually became bad debts. She therefore resorted to ADR. Through phone call discussions, she was able to convince debtors to pay their debt. The company has also

maintained healthy relationships with other companies due to the arbitral clause embedded in most agreements signed by the company. Hence to her ADR is time saving, maintains relationships, cheap and promotes healthy relationship between debtors and the company without ruining business relations due to their indifferences.

The pastor on the other hand, after having gone through the professional ADR training at Gamey and Gamey Mediation Academy, asserted that, he has been able to help couples resolve issues not at the peripheral level but investigate the root causes of issues. This has helped minimize the rate of divorces in his church. There has also been an increase in couples resorting to the church in resolving their family differences due to the confidentiality associated with the process according to him. One other interviewee, who was involved in a quarrel with her property owner, constantly praised the use of ADR by the practitioners. She said ADR is a good conflict resolution tool because her issue was not only resolved but also the anger she felt had totally dissolved even before the mediation process ended. She had previously resorted to rent control for two years without yielding any significant result but upon the insistence of a friend she visited the ADR Centre and had her issue resolved.

Two other respondents, who had been in conflict for two years in court, saw their issue resolved in less than an hour. The most amazing experience for them was how the mediators used water to calm their nerves, which gave way for the tensions to calm down, and have their issues resolved.

Hence, the assertions above confirm that ADR is cost effective, fast and saves time. Moreover, its confidential nature instils confidence in the process. The use of water to calm disputants' nerves is symbolic in Ghanaian societies. In the Ghanaian society when people visit others or before the commencement of a meeting, water is served as a symbol for welcoming people and paves way for discussions to take place. The use of water here was well understood by the two parties in

conflict who were suddenly halted in the heat of the moment to drink some water to encourage them to talk and resolve the issue.

In questioning respondents on the disadvantages of the process, majority responded negatively to the assertion. Two others, who were all women, however had some disadvantages pointed out. One believed that certain issues though resolved suffers proper enforcement. This is because issues pertaining to especially childcare at times though remains resolved, the agreement arrived at is shirked by the party concerned. This becomes a bit frustrating because the resolved dispute seems to yield little fruit and not harnessing its full potential.

The other respondent believed that the principle on non-record keeping during mediation processes for instance makes it difficult to send the right signals to certain groups of people who continually commit certain offences. This means that ADR suffers some level of enforcement on judgements passed after resolving the conflict.

When respondents were asked if their conflicts were resolved, 9 out of 10 responded positively that the conflict had been resolved, while 1 said it had been resolved to some extent. This was pertaining to an issue of debt recovery. The offending party had paid half of the money and was yet to redeem himself fully. This shows how effective ADR has been in resolving interpersonal and group conflicts.

Interviewees were also asked if they faced some challenges during the process with majority answering no. A few others complained about how lengthy the process could be since people refused to focus on the main issues at hand and would rather beat around the bush to gain sympathy. This means that mediators must do their best to bring their expertise to bear to ensure delays are avoided. Majority of the interviewees believed education and marketing of ADR to the

Ghanaian public was the key to creating awareness when asked what recommendations they would like to make to strengthen the process. Finally, respondents strongly agreed to recommend the process to others when asked if they would recommend the process to others.

The interview helped to reiterate the advantages of using ADR as a conflict resolution mechanism. Responses from respondents confirm that indeed ADR is fast, cost saving and strengthens reconciliation. The cases involved marital disputes, commercial disputes, monetary issues, which all fall within the interpersonal and group conflict zone and ADR proved effective in managing these conflicts over the court systems though not without challenges. It also suggests that ADR principles such as confidentiality and reconciliation have the potential to prevent such conflicts from escalating into state centric conflicts. It therefore calls for the need for government and private organizations to get on board in strengthening the process.

3.8 Successes of ADR in Ghana

Although ADR is a relatively young institution in Ghana, it has played a vital role in settling conflicts at the interpersonal and group levels of societies. This section therefore examine the success and strengths of ADR in Ghana since 2010.

The introduction of ADR within the courts have aided in achieving its primary mandate of reducing the backlog of cases, reducing cost, promoting the ease of doing business and avoiding delays associated with the formal courts. A worthy step taken in achieving this goal is the observation of the media week. In an interview with Mr. Nene Amegatcher, a managing partner at Okudzeto and Associates, he was particularly impressed with the success rates of settlement recorded during the media week. It has promoted access to Justice for all especially the less

privileged in society. Furthermore, it has strengthened the trust in the judicial system as capable of delivering timely and efficient justice, which has helped in reducing crime rates within the country according to Mr. Nene Amegatcher.

The Act, by incorporating the customary arbitration Act has strengthened the role traditional leaders' play in resolving disputes in their capacity as Arbitrators. This is highly commendable as it supports and reiterates the role traditional leaders play in resolving conflicts at both the national and community level. Traditional rulers such as the Otumfuor Osei Tutu II have played vital roles mitigating cross-cultural conflicts such as the Dagbon chieftaincy conflict in the Northern part of Ghana. In Mr. Nene Amegatcher's view, Due to such important roles played by such personalities in ensuring peace is restored in the various communities, it is highly impressive that the Act has taken into consideration the cultural orientation of the Ghanaian society to help give legal backing to such leaders.

ADR has also promoted the willingness of people to resort to other alternatives for resolving their conflicts. This is because the anglicized nature of the courts prevented most people from pursuing justice due to the stringent procedures, which were unfriendly to ordinary citizens. Hence, to promote the interest of such persons to seek justice and peace, ADR has, as part of its principles the observation of the principle of informality during procedures for settlement of cases. Parties are given autonomy to partake in the decision making process, in the appointment of an arbitrator, making rules for proceedings and deciding on awards to be awarded. This is distinct from the court system where a judge presides over proceedings and passes judgments. Judgment often favours one party over the other, which promotes ill feelings and a culture of retaliation. Thus, ADR has undoubtedly promoted access to justice for all. The language also used during the processes has been made friendlier for all. Instead of resorting to English, clients are encouraged to choose a

comfortable language of their preference to enhance effective communication. This helps participants to freely express themselves and bring out the core issues pertaining to the conflict.

ADR has helped boost economic activities within the country by providing workers, through training, with the requisite skills needed to resolve conflicts both at home and the work places. This has helped strengthen the relationship among employees and employers. This has prevented workers from constantly embarking on strike actions, which disrupts economic activities within the country.

The laws of the country also make provisions for the protection of people classified as marginalized groups within the national laws of the country such as children and women. For instance, the Children's Act of 1998 protects children, while the Interstate Succession law of 1985(PNDC Law111) protects widows by enhancing access to their husbands' properties after their husbands pass away. Although the law remains strong, ADR has helped enhance their efficiency. Mr. Nene Amegatcher explained that owing to the sensitive nature of such cases, Judges mostly referred such cases and that of divorces to be resolved through ADR. They advise lawyers to ensure that all alternative means such as ADR have been utilized before resorting to the court. This is quite important in matters where children are also involved such as conflicts pertaining to custody rights of children. ADR has helped protect marginalized groups such as women and children by using its principle of confidentiality and privacy. People are, therefore, able to voice out their real concerns knowing the process is not being recorded.

The business Amendment Act and pre- trial sessions which are novelties embedded in ADR processes such as arbitration serve as guarantees for protecting workers from facing unemployment due to conflict between top officials at the managerial level within and among companies. The Act stipulates that until all other means of resolving the conflict have been

exhausted, companies cannot resort to the court. In an interview with Mrs. Serwaa Ofori, she posited that due to these processes associated with ADR, they have helped maintain business ties with other big companies. The processes she believes enforces the principle of relationship building. Mrs. Serwaa Ofori was of the view that pre-trials or case management trials have helped in avoiding bad debts, which are associated with litigation in courts.

Equity as an ADR principle has also contributed in preventing unforeseen financial or material difficulties. People do not only experience damages because of lengthy years spent in courts but also experience sentimental losses. However, the principle of equity and restoration found within the ADR processes, ensures that parties are compensated if not in equal measure then in some part to make up for losses. This helps healing to take place and prevents conflicts from reoccurring. Moreover, ADR give room to resolving issues to the core as compared to the court where important reasons underpinning the conflict might be ignored hence giving room to a culture of retaliation even when judgement has been passed according to Mrs. Serwaa Ofori.

3.9 The Challenges of ADR

Political interference remained the top most challenge hindering the implementation of ADR especially pertaining to resolution of group conflict. Mr. Austin Gamey and Mr. Nene Amegatcher in an interview alluded to this fact. They were both of the view that politicians have been a major engine for refuelling conflicts at this level. This is a major challenge because the objective of ADR is to restore faith in the justice delivery system by encouraging disputants to be a part of the settlement process. For this reason, disputants are given autonomy in selecting a neutral third party whom they trust to help them resolve their conflicts. However, politicians prevent the realization

of this objective by constantly meddling in the resolution of group conflicts. Majority of the ongoing conflicts such as the Dagbon Chieftaincy dispute remain unresolved because politicians have imposed mediators of their preference to disputants. Although, often the mediators are high profiled citizens of the country, they lack the requisite skills needed to resolve the conflict. They are often insensitive in understanding the needs of the people. Mr. Gamey asserted that politicians have stakes in the conflict due to the benefit which comes along with it. This is usually the time to buy the sympathy of citizens through votes should they announce that they were successful in resolving the conflict. To Mr. Austin Gamey, until politicians learn to disassociate themselves from such conflicts, they will remain unresolved and threaten the peace and security of the state.

Furthermore, despite the high number of ADR professionals within the country, it is unfortunate that their skills are yet to come to bear on resolving conflicts. In this regard, Mr. Nene Amegatcher posited that in Ghana and West Africa as a whole, governments resort to the expertise of security services in managing conflicts rather than relying on ADR practitioners. In such events, security often use curfews to calm down tensions within such communities. The danger is that such conflicts never die away and will keep recurring until trained professionals are employed to resolve these cases using their technical skills.

Although informality remains an integral principle of the ADR process, it is also an institutional hiccup. Often, it undermines the institution because people take this principle for granted. Many people continue to revere the court due to the punitive provisions made for clients who falter by disobeying judgments passed. A person could be charged with contempt when he refuses to comply with laid down procedures. However, ADR due to its flexibility sees people delay in response to summons sent to them by mediators. The institution of ADR should be strongly pushed

with penalties attached; people are more likely to respect the institution, which would also promote enforcement.

Lack of funds, infrastructural deficiencies and poor logistics are equally challenging in the institutionalization of ADR. Mediation Centres such as the Ashaiman intercommunity mediation centre continue to operate in wooden structures. This hinders the centres effectiveness in handling disputes and in worse cases, threatens the existence of the centre as it could shut down at any point in time. Furthermore, there are no provisions made for the ADR professionals assigned to courts. Mediators for instance are called only when needed. In Mr. Nanevi's view, efforts made by the USAID to provide proper infrastructural facilities for the smooth running of the Centre has proven futile as there are some people who impede the realization of such efforts by the external development donors.

For instance, the ADR institution within the Legal Aid Scheme programmes shares an office within the building with the lawyers. Although the initial agreement was to set up an office on its own. This has hindered the otherwise success story of the scheme. Lack of support from the government and the willingness to help promote such institutions has become troubling. Out of 216 districts, ADR services under the Legal Aid Scheme are present in only 19 districts. This has affected the recruitment process, as the institution is unable to recruit more professionals or provide training for interested persons to assist in the activities of the institution.

Remuneration is also a problem faced by most practitioners because majority of citizens who benefit from the ADR services are mostly unable to foot the bill. Majority of the mediators are therefore not motivated to give off their best. Interestingly, they continue to encounter opposition from lawyers and judges who constantly refuse to advise clients to resort to ADR services due to benefits associated with litigation.

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CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSION AND RECOMMENDATIONS

4.1 Summary of Findings

From the study, the West African sub region despite great stride made in resolving civil wars and political crisis, interpersonal and group conflicts continue to undermine its stability, peace and security. These conflicts have led to loss of lives, disruptions in the lives of ordinary people and impeded development within states in the sub region. There is the need therefore to find appropriate conflict mechanism tools that are timely and effective in resolving conflicts.

ADR has received worldwide recognition as an appropriate conflict mechanism tool used outside the courts to resolve conflicts especially in West Africa. Donor partners such as the UNDP and the World Bank introduced ADR in West Africa. In West Africa, Ghana has the most comprehensive Act, which is the ADR Act 798(2010) often praised as a model worthy of emulation by other states in the sub region since it covers a broad range of ADR methods. The Ghanaian Judicial Service adopted the Act as part of its structural reforms to promote timely and effective delivery of justice.

The adoption of the act was due to the tremendous settlement rate it achieved during the piloting years of 2005 to 2010. After its adoption in 2010, it has yielded significant results in resolving interpersonal and group conflicts in Ghana, which has contributed in the promotion of peace using its multifaceted approaches. Currently, ADR is functional in 87 magistrate courts with 490-trained mediators with 5 each assigned to the courts.

After its enactment, ADR has chalked many achievements. It has succeeded in reducing caseloads and backlogs associated with the courts. Furthermore, it has proven quicker, timely and cost

effective hence promoting access to justice for all persons. Most significantly, it has promoted peace by reducing occurrences of interpersonal and group conflicts in Ghana and hence contributed in providing the enabling environment for developmental projects.

Moreover, the introduction of the media week as part of the reforms also played a vital role in assisting the courts realize the goal for the adoption of ADR. The media week, which is celebrated annually, involves a massive mediation of selected cases, which has been pending in court but fall within the criteria for ADR services. There have been tremendous settlement rates during this period that has resulted in the promotion of the media week by successive judges.

It is highly commendable that customary arbitration has been recognised as part of the Act. This strengthens the traditional Chieftaincy institution as having the mandate in equally resolving disputes legally. Thus, to assist in appreciating the similarities between the two conflict resolution mechanisms, the study examined the traditional conflict resolution mechanisms in Africa and their core goals such as reconciliation, restoration and peace promotion, which are the goals ADR, seeks to achieve as well. Hence, owing to the principles of the traditional system of resolving conflicts, which are equally, embedded in the ADR processes, it makes ADR a flexible conflict management tool that can be used in resolving conflicts among families, organizations, governments, national and international societies West Africa.

To assist in the study, 4 ADR institutions namely CHRAJ , Legal Aid Scheme, Ashaiman Inter-Community Mediation Centre and Gamey and Gamey Mediation Academy were reviewed. The findings suggest that Judges and other ADR practitioners have made it a practice to promote ADR where suitable. In most instances, the cases have mostly been resolved and parties go back living harmoniously as they previously used to live. Hence stressing on the principle of reconciliation,

cooperation, confidentiality and restoration as advantages of employing ADR mechanisms in resolving conflicts over the court system.

Generally, there seems to be a rise in the awareness of ADR in Ghana although most people are still familiar with the court processes and the culture of litigation. However, people who have found themselves involved in ADR processes have recommended the process to others with majority discarding the idea of visiting the courts in the first place.

Nevertheless, despite the successes achieved through the adoption of ADR in Ghana, the institution has faced many challenges. Lack of funding continues to be a major problem hindering ADR from reaching its full capacity. Lack of funds have led to less training of potential ADR practitioners and decreased the recruitment of practitioners when eventually trained.

Furthermore, findings suggest that lawyers and other law enforcement Agencies often oppose ADR since it reduces the rate of making money through litigation and threatens their profession. In addition, Politicians' involvement in the ADR institution in Ghana seems to account for the low numbers in the resolution of group conflicts in Ghana. The use of inappropriate and unskilled persons in the resolution of conflict continues to impede the development of ADR in Ghana.

4.2 Conclusion

The study has demonstrated that ADR is a solution to interpersonal and group conflicts in West Africa and in Ghana using the various methods of resolving conflicts such as arbitration, customary arbitration and mediation.

It has helped to reduce the caseloads in the courts and promoted access to justice for all by delivering cheaper, faster and timely justice. Its principles of informality, confidentiality and equity continue to make it an attractive means of seeking justice.

The challenges confronting the institution such as lack of funds, opposition from legal professionals and poor remuneration for practitioners, if addressed would promote ADR in reaching its full potential as a conflict resolution tool.

4.2 Recommendations

- The work recommends that the Judicial Service of Ghana and other policy makers help strengthen the institution of ADR in Ghana.
- That successive researchers might take an interest in the study and conduct other researches to evaluate the effectiveness of the ADR mechanism in the coming years to enable policy makers to also improve the institution of ADR in Ghana and beyond.
- That successive governments must make a deliberate effort to market and sensitize the general public on the advantages of ADR in delivering effective and affordable and timely delivery of justice. It is apparent from the study that the programme needs to be vigorously marketed to achieve its stated goals. This can be achieved through schools by introducing ADR as a course within the curricular activities of these institutions. This would help students appreciate the power of self-evaluation before getting involved in conflicts with other people. This has the potential to reduce the high rates of interpersonal and group conflicts in Ghana. ADR should also be introduced to more organizations. This will further reduce employee and employer conflicts and promote an enabling environment for productivity to take place. This would promote the overall economic power of the state and reduce strike actions within the country.

- That governments must actively engage in the promotion of ADR by funding the respective centres and ensuring that more people are trained. Proper infrastructural development must be pursued to promote access to justice especially in the rural and deprived areas where access to justice is limited. Furthermore, as the mechanism has proven worthy, in eradicating culture related issues such as early child marriage that has been one of the primary goals of most external development agencies; it would be prudent to put measures in place to improve its performance. Hence, government must purposefully allocate funds to support mediators who give their services freely and run the activities of the institution.
- That politicians must ensure that trained ADR practitioners have their skills brought to bear when matters arise especially relating to communal conflicts. Conflicts of this nature must be properly managed. It is often said that ADR is a language and only a few know how to speak the language. Until politicians' handover completely conflicts to experts, communal conflicts might continue to be a menace to the Ghanaian society.
- That lawyers and other law enforcement agencies be advised to desist from attempting to resolve conflicts using ADR mechanisms when they are not properly trained. Despite their role as law enforcers, ADR requires a special skill and only trained professionals can fully utilize its power to yield the right results. It is highly commendable that ADR has been added to the faculty of law's syllabus in the University of Ghana. It runs both at the undergraduate level as a degree programme and at the masters level. Nevertheless, a theoretical approach is not sufficient in handling such complex issues and hence ADR must be pursued professionally to yield the right results by involving practical activities. Prospective students must be encouraged to visit ADR facilities to observe and if possible partake in the resolution conflicts.

- That there should be an annual if not quarterly monitoring and evaluating mechanism to promote the development of ADR in Ghana. This would ensure that unlike other policies that have failed due to improper implementation policies, this would not be a standing block for the development of ADR in Ghana.
- That government fulfills its mandate of building the national ADR Centre as stipulated in the Act. This would prevent ADR officers from sharing the offices of other institutions. Government's failure to provide for the national ADR Centre, accounts for the low level of respect for mediators. Given well-planned offices for ADR officers just as courts have been well constructed for court practitioners, ADR officers would gain more respect.
- That the Act should be revised to achieve its stated goals. As such, the governing body mandated by the Act to run the day-to-day affairs of the ADR services must be reexamined because its nominated members continue to be government representatives. This must be addressed because government officials have lost favour in the sight of the people and their appointment defeats the purpose of restoring faith in the justice delivery system. Addressing this challenge would not be difficult since the body is yet to be established. To rectify this government should select leaders within the Association of ADR practitioners who have already won the trust of the people.
- That West Africa put in place policies as a regional body to address potential conflicts, which might soon arise due to climate change hence leading to environmental conflicts. The most pressing would be the farmer - herder conflicts among various states in West Africa. ECOWAS as a regional body must put in place early and timely conflict management mechanisms such as ADR to help address this menace as it has the potential to increase the probability of interstate conflicts in the sub region.

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APPENDICES

APPENDIX I

INTERVIEW GUIDE FOR STAKEHOLDERS

This interview is conducted to obtain information on “Is Alternative Dispute Resolution a solution to Interpersonal and Group Conflicts in West Africa? The Case of Ghana.” This is purely for academic purposes in fulfillment of an M.A degree at the Legon Centre for International Affairs and Diplomacy. You are assured of confidentiality of any information that you may provide. I hope you kindly grant me your outmost cooperation and assistance

Name

Institution

Office Position

GENERAL QUESTIONS

1. What is Alternative Dispute Resolution (ADR)?
2. Is ADR popular among the Ghanaian population?
3. Do you resort to ADR to resolve commercial disputes in your company and the work place?
4. What are some of the disputes that resorted to ADR processes as a means to resolve both inside and out of the work place?

5. Who can request for ADR services?
6. Which groups of people frequently resort to ADR?
7. What is the difference between ADR connected court programmess and private ADR processes?
8. Between the two, which of them do participants resort to and why?
9. What are the disadvantages of ADR?
10. Between the court and ADR Processes, which of them do the participants prefer and why?
11. Has ADR been able to resolve certain cultural difficulties faced by the traditional courts?
12. What are some of the challenges facing ADR ,
 - a. In its implementation
 - b. Cultural related issues
 - c. Structural problems
13. Do you think ADR has reduced inter personal and group conflicts in Ghana?
14. What has been some of the challenges associated with the institutionalization of ADR in Ghana?
15. What recommendation can you make to strengthen the ADR processes?

APPENDIX II

GENERAL QUESTIONS FOR ADR BENEFICIARIES

1. How did you get to know about ADR?
2. Are you familiar with the ADR Processes?

3. Is ADR similar to the Traditional Ghanaian conflict resolution process?
4. How different is ADR from court processes?
5. What are the advantages of ADR?
6. What are the disadvantages of ADR?
7. Has your case been settled?
8. What are the challenges you faced during the process?
9. What recommendation can you make to strengthen the ADR process in Ghana
10. Would you recommend ADR to others?