

**A COMPARATIVE STUDY OF THE AFRICAN
AND WESTERN MEDIATION MODELS:
THE CASE OF GHANA**

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DECLARATION

I, Anita Jade Swaniker do hereby declare that except for the references to other people's work which have been duly acknowledged, this study was conducted and written by me, under the supervision of Dr. Kennedy Ahorsu. It is the result of my own research and has not been previously submitted in part or in whole for an award of a degree in this university and any other institution. All sources of information and views from other people have been duly acknowledged in the form of references and bibliography.

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DEDICATION

I dedicate this work to the Almighty God for His grace and divine favour on me throughout the course, my family: my mum and sister in particular for their endless love, support, sacrifices as well as their prayers through the entire study period which contributed in making this work a reality.

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LIST OF ABBREVIATIONS

ADR	-	Alternative Dispute Resolution
AU	-	African Union
COMESA	-	Common Market for Eastern and Southern Africa
EAC	-	East African Community
ECOWAS	-	Economic Community of West African States
GNPC	-	Ghana National Peace Council
IMF	-	International Monetary Fund
LECIAD	-	Legon Centre for International Affairs and Diplomacy
MED-ARB	-	Mediation and Arbitration
NCCE	-	National Commission on Civic Education
UN	-	United Nations

TABLE OF CONTENTS

DECLARATION	i
DEDICATION	ii
ACKNOWLEDGEMENTS	iii
LIST OF ABBREVIATIONS	iv
TABLE OF CONTENTS	v
ABSTRACT.....	vii
CHAPTER ONE	1
INTRODUCTION	1
1.1 Background to the Study.....	1
1.2 Statement of the Research Problem	5
1.3 Research Questions	6
1.4 Research Objectives.....	6
1.5 Scope of Study	7
1.6 Rationale of the Study.....	7
1.7 Theoretical Framework.....	7
1.8 Literature Review.....	10
1.9 Sources of Data and Research Methodology	25
1.10 Arrangement of Chapters	25
ENDNOTES	26
CHAPTER TWO	29
AN OVERVIEW OF THE AFRICAN AND WESTERN CONCEPTION OF CONFLICT	29
2.0 Introduction.....	29
2.1 Conflict and Conflict Theories.....	29
2.2 African Conception of Conflict.....	36
2.3 Western Perspective of Conflict and Conflict Resolution	44
2.4 Conclusion	48
ENDNOTES	49
CHAPTER THREE	51
A COMPARISON OF THE AFRICAN AND WESTERN MEDIATION MODELS.....	51
3.0 Introduction.....	51

3.1	Historical Overview of Ghana	51
3.2	Mediation	52
3.3	African Mediation	55
3.3.1	Mediation Among the Akans	59
3.3.2	Mediation Among the Gas.....	60
3.3.3	Mediation Among the Adaboya Traditional Area	62
3.3.4	Mediation Among the Buems	63
3.3.5	Mediation Among the Xhosa in South Africa.....	64
3.3.6	Strengths and Weakness of African Mediation	65
3.4	Western Mediation.....	66
3.4.1	Western Mediation Case Samples.....	68
3.4.2	Strengths and Weaknesses of Western Mediation Model.....	69
3.4.3	Similarities and Differences of Western and African Mediation Models	71
3.5	African Arbitration.....	71
3.5.1	Arbitration Among the Ashantis	74
3.5.2	Arbitration Among the Gas of Ghana.....	74
3.5.3	Arbitration Among the Adaboya Traditional Area.....	76
3.5.4	Arbitration Among the Buems Of Ghana	76
3.6	Western Arbitration	77
3.7	Conflict Prevention and Resolution	78
3.8	How Mediation is Built into Conflict Resolution	79
3.9	Diplomacy in Conflict Resolution	81
3.9.1	Thoughts and Analysis of African and Western Mediation.....	82
3.10	Conclusion	91
	ENDNOTES	92
	CHAPTER FOUR.....	95
	SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS	95
4.0	Introduction.....	95
4.1	Summary Findings	95
4.2	Conclusions.....	98
4.3	Recommendations.....	99
	BIBLIOGRAPHY	Error! Bookmark not defined.
	APPENDIX.....	106

ABSTRACT

Mediation, a mechanism for the resolution of dispute, has been an ancient practice for several civilizations. Mediation was a form of resolving disputes in Africa, Ghana in particular before the coming of the Europeans. In recent times, the origin of ADR mechanism has been a debate among the conflict resolution fraternity and academicians. Owing to the fact that mediation has been used in diverse civilizations, the conduct and process varies and usually tends to suit the cultural context of the people. Mediation, as part of the ADR spectrum, has been structured in a wholly Western perspective with no room for cultural variations. Given the above-mentioned trends the study aims at finding the relations between African and Western mediation models, what is common between the two models, disparities between them and how the similarities and disparities qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western world. The research utilized the qualitative research method with data from both primary and secondary sources. The study revealed that both Africans and Westerners do have their own approach to mediation, it also revealed that the differences and commonalities qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western world. The study shows that both models of mediation has the same aim thus to resolve conflict amicably. The study recommends that a blend of both mediation models has a high tendency of resolving disputes peacefully especially when parties have different cultural orientations.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Conflict is one of the main causes of instability in the world. Differences in orientation and values, competition for value and often scarce resources, and struggle for power constitute the fault line along which violence occurs. Violence is often triggered by the attendant perceptions of injustice, unfairness, inequality, misunderstanding and misinterpretation of daily socio-cultural, economic and political exigencies. Defining the concept of conflict is difficult, yet we see and experience it in our daily lives. Given the different sources of conflict, conflict is often defined to suit the situation and the context in which they emerge. However, a more widely accepted definition of conflict is the emergence of goal incompatibility between or among two or more groups. Fisher (2012) defines conflict as an incompatibility of goals or values between two or more parties in a relationship, combined with attempts to control each other and antagonistic feeling towards each other.¹ Joseph Nye defines conflict as the study of incompatible goals between and among groups leading to protest and contestations, which sometimes aggravate into war.² Conflicts have been a common social phenomenon whenever and wherever two or more persons, groups, and organizations interact with each other.

Likewise, the need and desire for the design and evolution of peaceful mechanisms for conflict resolution have been a predominant goal of individuals, families, institutions and states, given the context. Plausibly, no time in the annals of the world has there been the need for more efficient models of peaceful resolution of conflicts. Contemporary high global population with its

accompanying competition for resources, climate change, increased social change and the attendant adulteration of socio-cultural values, and the unprecedented feats in transport and communication technologies, among others, have engendered massive conflicts in all spheres of life across the world. However, while peaceful resolution of conflicts remains a much sought-after mechanism for peace, no one mechanism for conflict resolution fits or suits all conflict situations. The need for, and exigencies for efficient mechanisms for peaceful resolution of conflicts differ from place to place. While the post-Cold War upsurge in conflicts are ubiquitous, communities and societies in Africa have been one of the main locations of the world's violent and recurrent conflicts. Africa's predisposition to conflicts have proverbially been attributed to the structural weaknesses of its societies, low level of economic development, lack of the necessary technology, and weak structures for conflict resolution. The mainstay of Africa's conflict resolution mechanism is the imported orthodox system of adjudication which was introduced to Africa by its former colonialists.³ Africa's traditional systems of conflict resolution models, though surpassed by the orthodox European, have survived and persisted to date.

Africa has had its fair share of conflicts ranging from international, regional, political, ethnic, organizational and inter-personal conflict. Most of these conflict degenerates into violent conflicts. Conflict has become very destructive, leading to the loss of thousands of lives, destruction of properties, environmental degradation and disruption of daily activities in general due to the insecurities created. Africa has always had traditional mechanisms for the resolution of disputes between parties. These methods were not perfect but efficient and the process suited the people.⁴

Whenever there was a conflict between people, chiefs, elders, clan heads and family heads acted as intermediary to hear both sides of the case at hand and reconcile the conflicting parties. Traditional conflict resolution aims at a peaceful settlement and healing of relationships to ensure harmonious existence of conflicting parties, as they live in a community and were dependent on each other. The orthodox system of resolving conflict, thus the court system of litigation was introduced during the colonial era. Though the African traditional methods have survived, in terms of hierarchy, the orthodox mechanism is considered as a top notch and more legitimate because of its legal basis.

Although the orthodox system of resolving conflict is considered more appropriate, it has its own shortcomings. The orthodox system of resolving conflict is costly in terms of both time and resources, creating a backlog of cases and Time consuming. The orthodox system of conflict resolution aims at serving justice, while relegating peaceful coexistence.⁵

Africa is a dual society made up of the formal and informal sectors and the orthodox system seems to favour the formal sector. Due to the weaknesses of the orthodox system, there was a need to explore other means of resolving conflict, which led to the introduction of Alternative Dispute Resolution (ADR) to support the court system of litigation which was overly loaded with cases to be adjudicated. Alternative Dispute Resolution has gained a widespread acceptance since its introduction in the mid 1970's during the post-Cold War period and has been increasingly prescribed for African societies as most suitable for the resolution of conflicts.⁶

Alternative Dispute Resolution (ADR) can be defined as a set of mechanisms for resolving conflict, which includes mediation, negotiation and arbitration. Uwazie defines ADR as encompassing a series of mediation mechanisms for the resolution of conflicts that are linked to but functions outside formal court litigation processes.⁷

Bercovitch, defines mediation as "a process of conflict management, related to but distinct from the parties' own negotiations, where those in conflict seek the assistance of, or accept an offer of help from, an outsider (whether an individual, an organization, a group, or a state) to change their perceptions or behavior, and do so without resorting to physical force or invoking the authority of law."⁸ African Traditional mediation can be defined as the type of mediation used by traditional African societies in the resolution of conflicts. On the other hand, Western mediation can be described as a type of mediation model employed by Europeans in resolving conflicts. According to Farris, "Western mediation serves the needs of self-existent, individual and autonomous societies that are equipped with the service of a complex commercial sector and court system."⁹

Almost all courts in West Africa recommend mediation, arbitration and negotiations as a part of the settlement process. Lawyers, traditional leaders and mediators have been trained to assist in the resolution of dispute through ADR mechanisms. In Ghana ADR began after the Court Act 1993 was passed. The ADR act was passed in Ghana in the year 2010, and spells out the process of mediation, arbitration, negotiation and customary arbitration as an alternative dispute resolution mechanism, with the aim of helping the court to reduce the backlog of cases and to reconcile parties in conflict.¹⁰ The history of Ghana with regards to dispute resolution has links to mediation, negotiations, reconciliation as well as other settlement processes. For this reason, mediation is not

new to Ghana, notwithstanding how it was referred to. The people of Ghana, the then Gold Coast, had effective systems in place for resolving conflict before the coming of the British and other Europeans. Chiefs, elders and clan heads acted as mediators who helped the parties in dispute reach a settlement regarding their case. Western mediation has deep roots in traditional mediation although they vary in some aspects.

ADR mechanism are employed in some cases alongside the court system. However, there is an ongoing debate about the origin of ADR. Africans claim that ADR is an old tradition since they used these mechanisms before the colonial era in resolving conflict while the Europeans also claim that the ADR is purely Western, that they created the ADR as a mechanism for conflict resolution. Consequently, some writers have argued that there is a difference between Western and African mediation with the Western system being more objective and the African system though objective is equally Subjective. This work is a comparative study of the African and Western mediation.

1.2 Statement of the Research Problem

As stated earlier, conflicts are universal and inevitable. According to Vivienne Jabri, there is no universally accepted mechanism for conflict resolution: no mechanism is exhaustive.¹¹ Alternative Dispute Resolution has been applauded for many reasons, some of which are: quick settlement, cost effectiveness, mutually beneficial outcomes, reconciliation and healing of relationships. Likewise, it has been criticized for various reasons. According to Ahorsu & Ame, “these conflict resolution mechanisms have often been structured in wholly Western in perspective, transferred to African settings with little regard for the development gaps, consciousness, rationality, and sociocultural differences between the developed nations and the developing ones”...¹²

Given the above argument, this work therefore seeks to examine African (Traditional) and Western mediation models taking into consideration the role of culture in each approach, the differences and similarities between the two models, and how best these commonalities and differences qualitatively affects the effectiveness of mediation in Africa and the Western world. The research also seeks to bridge the gap of the wholly Western structure and tailored mediation process by bring to limelight African form of mediation, exploring the mediation process, structures in Africa and Western societies and how their cultures influence mediation in general.

1.3 Research Questions

- What is the African concept of mediation?
- What is the Western concept of mediation?
- What are the similarities and differences between African and Western mediation?
- How does the similarities and differences qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western world?

1.4 Research Objectives

The study will:

- Examine the African concept of mediation.
- Examine the Western concept mediation.
- Examine the similarities and differences between African and Western mediation.
- Examine if the differences and commonalities qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western world.

1.5 Scope of Study

The study in general concerns mediation of conflict but specifically looks at African traditional mediation system and the western concept of ADR with Ghana as a case study.

1.6 Rationale of the Study

Mediation has become an important tool in the resolution of conflicts especially international conflict. Africans and Westerners have embedded their norms and values into mediation and other conflict management approaches to suit their context and culture. There are several determinants that affects the process and outcome of mediation and one important factor is the culture of the disputants. Although there are universal code of conduct in mediation processes, there are also specific codes and norms for individual communities and groups. For this reason, it is very necessary to understand the commonalities and differences of cultures between parties or groups in conflict to effectively manage and resolve conflict amicably. The findings hope to improve the literature on mediation and the influence cultures has on mediation processes and outcomes, the research also seeks to assist mediators in choosing the appropriate approaches and processes of mediation in the management and resolution of conflicts between two different cultures and also add to existing literature.

1.7 Theoretical Framework

Cultural relativism serves as the guiding theory for this research. Cultural relativism as a theory holds that the beliefs, values, practices and judgment of a culture is strictly dependent on that culture. “Cultural relativism is in essence an approach to the question of the nature and roles of

values in culture”.¹³One of the major proponents of cultural relativism is Francis Boaz. Cultural relativism tries to explain human values, beliefs, perception based on the culture of a people. The way of life of a particular people is determined by their culture, history and communal organization. According to Herskovits, “Judgments are based on experience, and experience is interpreted by each individual in terms of his or her own enculturation”¹⁴ Truth, right and wrong is relative from a cultural point of view and for this reason there are different practices and models of explaining reality. In the same vein there are different mechanisms for the resolution of conflicts and the models reflects the cultural orientation of the people. Owing to this, Africans have their own mediation models as well as other ADR mechanisms used in the resolution of conflicts whereas Western states also have their own models that reflect their cultural orientation. Culture prescribes what is right or wrong to a distinct group, it does not necessarily mean that the conceptions and practices of other cultures are wrong but it is just specific to a group.

Cultural relativism believes that no conception of a group is better than the other. Cultural relativism suggest that every community has its own codes of conduct that direct its people, and for this reason every culture must be examined in terms of its own cultural structures and values instead of being judged by universal rules. Culture is often central in conflict and conflict resolution especially between two groups. The culture and identity of people or groups in conflict is necessary in terms of understanding the conflict and finding mechanisms of managing and possibly resolving the conflict. No two conflicts are the same and for this reason one approach cannot and will not be appropriate to resolve all other conflicts regardless of the people involved. Huntington in his article, *Clash of Civilization* (1996), brought culture to the fore that in conflict analysis in the post-Cold War era “the most important distinctions among people are not

ideological, political or economic; they are cultural.”¹⁵ The culture of both the parties in conflict and the mediator is relevant in the resolution of conflict because a clash in culture will possibly lead to further misunderstanding. In the context of cultural relativism, reality is not objective but subjective, depending on the perceiver. Mechanism for resolving conflict must be understood by the people in order to effectively resolve conflict and reach settlement. “All experience is culturally mediated. There is no reality known to man beyond, or in addition to, culture reality.” It follows a priority that all modes of perception and all value judgments are also culturally conditioned. This thesis implies that culture is an absolute reality and that all modes of human experiences are relative thereto because they are functions of culture and dependent on it for their form and content.”¹⁶

Cultural relativism has been criticized for ruling out objective and universal standards of bounded cultural values. Appropriate standards should cut across irrespective of culture. There are rules and structures that are common to every culture. The assessment of the culture of others is not always influenced by the assessor’s moral or cultural orientation but by other factors outside of the culture of the assessor. According to Kwame Gyekye the denial of objective and universal assessment is a mistaken position.¹⁷ For him, although there are some truth in the anthropological thesis that there are differences in cultural practices among cultures, the differences are merely peripheral. Humans share a common experience which informs their cultures. The fact that the cultural values differs from one society to another implies that they should be treated and assessed differently, an accused and defendant or a murder and a victim of murder cannot be treated equally under law because they are two different concepts. Regardless of the defense for the plausibility of cultural relativism, the theory faces challenge on intercultural dispute resolution, in the sense that if there

are no transcultural values then there will not be a common standard by which dispute amongst different cultures can be resolved.

Notwithstanding the criticisms of cultural relativism, the research will employ its use because, the research is comparing the Western and African mediation, two different models with different cultural background and different values. African societies as a whole is considered in almost if not completely the same values and worldview which differs completely from the Western worldview. For instance, it has been argued that Africans assert the two entities if the universe (spirit and matter) to be complementary with each other whereas the West (Cartesianism) is of the view that spirit and matter are opposing forces. Hence the use of cultural relativism as a theory will give a clear understanding on the models used by the African and Western societies. This is because the culture of a group informs and guides the group on how to go about a conflict, whether to focus on justice or settlement that heals the relationship between the parties in conflict.

1.8 Literature Review

According to Jacqueline Nolan-Harley in her article ‘Mediation and Access to Justice in Africa: Perspectives from Ghana’, mediation and other ADR mechanisms such as arbitration and negotiation has been promoted in many developing countries and there has been steady progress and development of these mechanisms.¹⁸ Many developing countries have revised their system to make room for Alternative Dispute Resolution. Some countries like Ghana and Nigeria have adopted ADR into the legal system and it is used side by side with the court system. The article throws light on the mediation regime in Ghana, where the term mediation is frequently referred to as ADR. She examines traditional and modern dispute resolution practices in democratic African countries with particular reference to Ghana. She explains how mediation is important in the access

to justice movement in terms of the neutrality of the mediator, the power of the parties to determine the outcome voluntarily, potentials for creative solutions, fairness, timeliness, streamlined processes, informality and how local customs and traditions are integrated in mediation processes.¹⁹ The author stresses that mediation and other ADR mechanisms is not new to African states. Ghana in particular, have always practiced informal resolution of conflicts with chiefs, clan heads and family heads facilitating the process. According to her, African traditional mediation and other dispute resolution processes operate within a communitarian framework.²⁰ She hailed Ghana for being the lead in sub Saharan Africa in modern ADR. The author describes the Ghanaian legal system as dual in nature making use of both the customary Ghanaian laws and modern laws. The Ghanaian customary law of resolving conflicts includes mediation, negotiation and arbitration. The processes are chaired by chiefs, queen mothers, clan heads, family heads among others.

The main assertion of her article is that the success of mediation and other Alternative Dispute Resolution mechanism to the access to justice movement depends chiefly on how local custom and traditional values are taken into consideration in the process of conflict resolution. She argues that modern mediation can be advantageous when it takes into account the African context and culture. This is because, at times modern mechanisms put in place may conflict with local customs and traditions which brings negative consequences. Consent, voluntarism and reconciliation are important values in mediation. She emphasizes that ADR processes such as mediation must be guided by genuine consent in order to promote mediation in developing countries. Consent and voluntarism confers legitimacy of agreement and settlement on the disputing parties, reconciliation also heals relationship that has been broken due to the conflict, parties are encouraged to apologize to each other and any other person who has been offended to restore relationships.

Mediation and other Alternative Disputes Resolution processes have been criticized for overlooking individual legal rights and focusing on settlement which consistently inhibits a person's right to access justice. Jacqueline Nolan Haley's article is of relevance to this thesis because it gives an account of the growth of ADR in the Ghanaian legal system, the benefits of mediation and also brings out some challenges; where values such as consent and voluntarism has reduced as parties are referred to try settlement and reconcile. She also explains some differences between modern mediation, thus the Western mediation, and traditional African dispute resolution, one of which is: Western mediation focuses on individualism while traditional African mediation is rooted in collective culture.²¹ The author highlights the role of government in creating awareness and improving financial infrastructure where mediators are paid for their services and the right tools are available for effective and efficient conflict resolution.

In 'Mediation with a Traditional Flavor in the Fodome Chieftaincy and Communal Conflicts', Ahorsu and Ame examine the relevance of culture in conflict resolution with the case study of Fodome chieftaincy and communal conflict. They campaigned for the use of indigenous cultural values in the resolution of disputes. The authors merged the traditional African and Western mediation processes in resolving the chieftaincy and communal conflicts in Fodome to achieve a good result. Culture is very essential in the resolution of conflict. Values and practices of a people helps in conflict resolution. They laid emphasis on the fact that although African communities have experienced some changes in the organization of their societies since the coming of the Europeans some societies still hold cultural values and traditional practices in high esteem. In Ghana particularly, kinship, lineage, extended family and common bond is evident in African

social and political organization and have survived modernization. These cultural values exist side by side with modern systems and are used by the people. The authors made a case that commitment to these values and practices can be used as avenues for the resolution of conflicts.²² The main thrust of their article argues that since the introduction of ADR to developing countries the mechanism have been structured in a wholly Western perspective without considering the development gaps, consciousness, rationality and sociocultural differences between the Western countries and African countries.²³

They also outlined some advantages of ADR in terms of time saving, lowering litigation rates and allowing factions to work for greater joint solutions. The authors made some distinction between Mediation in African countries to that of the Western countries in terms of individualism for the Western countries and communalism for the African countries but it is important to blend the two models for greater solution. ‘Mediation with a traditional flavor’ is linked to culture and ethnography practices of a group. It aims at reconciling, healing relationships and promoting fairness in the resolution of conflict. Ahorsu and Ame concluded that the success of Mediation with a Traditional Flavor in the Fodome Chieftaincy and Communal Conflict was dependent on the fact that traditional Ewe philosophy of conflict and peace, traditional discourses, symbolic order, values and ADR principles were used in the resolution of the chieftaincy and communal conflicts.²⁴ Traditional institutions and structures still have relevance in conflict resolution and administration. Culture gives a narrative of a group of people who they are, what they believe in, why they are in conflict and possibly find ways of resolving or managing conflict.

The authors asserted that although there are differences between the African traditional mediation process and the Western mediation process, the advantages of combining both models to resolve a conflict is enormous. Ahorsu and Ame's article is relevant to the thesis because it highlights the importance of culture and tradition in the peaceful resolution of disputes and explains the importance of employing both traditional and Western mediation models in today's world. Also, the article clearly makes a distinction between Western and African mediation which is the main focus of the thesis.

Uwazie Ernest, in his article 'Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability', suggests that many citizens in Africa have lost interest in the court system in resolving dispute and granting justice in time. According to him, despite modernization, many African countries are still struggling to establish effective and efficient judicial systems.²⁵ The delays with court proceedings, the cost involved in seeking justice, inadequate logistics such as computers, stenographers, lack of personnel and the use of only manual archiving creates opportunities for manipulation in the court.²⁶ Uwazie's position is that, in post conflict societies, grievances are high and can escalate into disastrous conflicts. For this reason, well-structured dispute resolution mechanisms must be put in place to resolve those grievances and tensions early enough to avoid it degenerating into broader and violent conflict. Uwazie stated that the courts are generally not interested in reconciliation and mending of relationship but only address legal issues and questions.²⁷ The court system sometimes escalate conflict as the moment the judge declares one a winner and the other fined or sentence, it sparks a new conflict. He asserts that the justice system goes hand in hand in determining the nature of governance. Also, the level of confidence the citizens have in the government reflects in the citizen's confidence in the justice system.

ADR is made up of several mechanisms. Mediation focuses on the interest of the parties' voluntary settlement options and is more flexible as compared to the court system. Uwazie pointed out that mediation is usually effective for conflict that involves several parties who have been in long term relationship, with the aim of not only solving the conflict but to heal and restore their relationship.²⁸

Ghana as a pioneering force in ADR held a mediation week and mediated on some three hundred pending cases in five days, which otherwise would have been in court waiting for redress and increasing tension between the parties. He concluded that ADR can strengthen dispute resolution and bridge the gap between the legal system and the traditional conflict resolution process since ADR mechanisms employ both the legal and traditional conflict resolution processes such as reconciliation and mediation. Also, Uwazie recommended that there should be legislations that will elevate the status of ADR, where judges will recommend disputants to settle their issues outside the court through other alternative dispute resolution like mediation, negotiation and reconciliation. More so, ADR processes should be monitored to see the growth rate, recognize challenges and find ways of improving these processes to resolve conflicts amicably between disputants. Uwazie's article is relevant to this thesis because it stresses on the important of ADR mechanism, particularly mediation in the resolution of conflicts and he suggests ways of improving these processes to avoid delays and quick settlement. He also links mediation and other ADR processes to African traditional conflict resolution processes and how these processes can be legalized and added to the court system so that disputants can rely on mediation rather than going to court.

Nina Meierding, in her article 'Mediation: Staying Culturally Relevant in Multicultural World', brings to fore that there are many international programs and non-profit organization from the United States of America assisting and organizing training programs in effective conflict resolution.²⁹ Also, mediators travel to other countries to assist in the resolution of disputes ranging from ethnic conflict, social conflict and religious conflict, among others. She stressed on the fact that most mediators in the United States are trained solely within the Western framework although the United States is made up of people from different countries and cultures and as such the model should be flexible to include other cultures. She argues that the whole concept of ADR which includes mediation, negotiation, and arbitration has been structured in a Western style. This model mirrors Western practices and norms, thereby neglecting other cultures and their views regarding conflict resolution. This makes the Western model culturally insensitive when dealing with issues that involves different cultures as it does not take into consideration the practices of the parties in dispute resolution.³⁰ She stressed that the use of Western mediation process does not necessarily mean that the mediation will not be successful and Western mediation is not culturally insensitive but it will be appropriate if the values and practices are employed. She continued to make distinctions between two different models (Western and African) of mediation in theory and practice. One of the difference that came out was that the Western style mediation focuses on the goals of the mediator regarding neutrality and voluntarism where the mediator does not interfere or dictates to the parties which way they should go, the parties arrive at their settlement voluntarily, while other cultures make use of elders as mediators because of their knowledge and respected positions.³¹

Mediators from other cultures persuade parties to settle their problems and makes them understand the need for reconciliation since they live in a closely-knitted society and the fact that people will always need the help or assistance from one other when in trouble. Furthermore, the author points out that Western mediators usually employ the use of “reality testing” to help parties in a conflict reach a settlement but the mediators are not aware that there are different concept of what reality and fairness connotes.0000 For the Western model, fairness and reality is guided by laws, code of conduct, and the effort, time and energy will determine if a settlement is fair. However, in African cultures fairness is something collective; that which serves the common good of the community and it is in line with religious teachings, scriptures and tradition. Again, in the Western model, mediators focus on signed agreement at the end of a successful mediation whereas other models of mediation from other cultures do not look at signed agreement after ending a mediation process. In her final remarks, she mentioned that there are just a few ways that cultural difference can influence the basic understanding and concepts of mediation. She emphasized on the importance of understanding, history, beliefs and values of cultures for successful mediation processes.

Albert Fiadjoe in his book ‘Alternative Disputes Resolution: A Developing World Perspective’ explains Alternative Disputes Resolution from the developing world point of view and experience.³² He underlines the changes in the Caribbean justice system from litigation to Alternative Dispute Resolution and gives an account of the development of Alternative Dispute Mechanisms; Mediation, Negotiation, Arbitration and Reconciliation. The author laid emphasis on the effect of globalization on civil justice and conflict resolution where culture is transferred from country to country with its own challenges. With regards to mediation, Albert Fiadjoe stated that mediation is the most popular among the ADR processes. He further added that under the

mediation process there are conciliation and consensus building involved. Mediation is an old process used under the ADR umbrella; it has been used in Africa from time immemorial.

Fiadjoe posit that cultural values, beliefs among others usually affect the process used. Depending on the cultural setting, a particular process is adopted which is in line with the values and culture of the parties in dispute. He made reference to African countries where chiefs, elders, and clan heads serves as mediators in multiple conflict situation such as interpersonal conflict commercial and ethnic conflict among others. He made the point that the growing popularity of mediation as an alternative dispute resolution method is as a result of public outcry and disaffection with the litigation system in term of backlog of cases, its cost and time. Despite the history of the mediation and link to African culture, it only became formalized in the mid 1990's.³³ In the case of Ghana there is clear evidence of the use of mediation and other ADR process in resolving disputes. Fiadjoe further brought to fore the effort of America in formalizing ADR methods. The mediator facilitates the process with the consent and help of the disputants. He also sets the ground rules that directs the settlement process.

The author identified some advantages and disadvantages of mediation. The advantages includes its relative inexpensive cost, informality of the process, and encouragement of the parties to come out with their own solutions, swiftness in resolving conflicts, among others. The disadvantages however include absence of procedural protection for the parties and the absence of opportunities to measure the objectiveness of the process. Again, consensual nature of the process implies that parties can walk away from the mediation process anytime and once one party walks away, it ends the process because both parties must be in agreement to move the process forward.³⁴ More so, the

ability of a strong and powerful party to bully the other to a settlement, the absence of procedural protection for the parties and the absence of opportunities to measure the objectiveness of the process add to the disadvantages.

Ajayi, Adeyinka Theresa in her article 'Methods of Conflict Resolution in African Traditional Society' examines mechanisms used in the resolution of conflict in traditional African societies.³⁵ The author particularly looked at three ethnic groups in Africa: the Yoruba of Nigeria, the Igbo of Nigeria and the Pondo tribe of Zulu in South Africa. Ajayi describes conflict in traditional African Society as a natural phenomenon which occurs when there exists incompatible events and may result in win-lose character.³⁶ Ajayi stressed on the principle of conflict resolution in traditional African societies, where those who wanted their conflict resolved submit it to a tribunal made up of elders, chiefs, priests and priestesses. Truth was a major principle in the resolution of conflict; both the parties in dispute and the mediator must be truthful and the presence of ancestral forces was a factor that made the parties speak the truth. She minutes the benefits of conflict resolution in traditional African societies which offers avenues for the parties to communicate with each other, promote consensus building, reconciliation and maintains order in the society.

According to Ajayi, among the Yoruba people, settlement of disputes is derived from wisdom and traditional knowledge of the forbearers.³⁷ Elders sit under a tree and settle disputes because they are the powerhouse of wisdom and knowledge. Normal disputes between people were settled by passers-by. Conflict resolution among the Igbos was settled by the Amala, thus council of elders, Okpara, thus the eldest male, the ohanaeze, meaning the assembly of the people and the king, among others. With regards to the Pondo tribe of Zulu in South Africa, there are several

methods of conflict resolution. Reconciliation of the parties was the main method of resolving conflicts and was opposite to that of the western model which was intended to blur the litigants.³⁸ Furthermore he noted that mediation is an ancient mechanism used in conflict resolution and bordered by secrecy. It involves the non-coercive intervention of a mediator and has been a mechanism that is so critical in traditional African society.³⁹ Peace, harmony and healing of relationship is crucial in African society and mediation serves the purpose. He concluded by making the point that traditional methods of conflict resolution which were used in the past provides greater results and ensures peace and stability in post conflict periods as compared to modern mechanism of litigation.

In 'Mediation in African Conflict: the Gap between Mandate and Capacity', Lauri Nathan expresses her opinion on the fact that despite the number of peacemaking agenda undertaken in Africa, there is little dialogue and education about the art of mediation.⁴⁰ However, more time and energy is shifted on other forms of peace building processes like methods and strategies of military peace making operation.⁴¹

The African Union and other regional bodies like the ECOWAS, EAC and COMESA have the mandate and power to initiate mediation as a form of peace building process when the need arise on the continent. This is as a result of state membership to these regional bodies and the role of these organizations to maintain peace and security in the sub-region. Although, the regional bodies have shown interest and commitment in the use of mediation to resolve conflict in the sub-region they do not have a structured mediation unit, and a designed process that will be used to resolve conflict in Africa. She brought to fore that specialists and expertise in this field are lacking, as a

result of the gap created. Peace operations suffer from lack of skilled mediators and expertise who have the capacity, technical know-how and overall support from the regional bodies making peace missions in Africa a difficult one.⁴² Laurie Nathan further explained how insufficient number of mediators, inadequate institutional support for mediators, absence of training and learning and the absence of a viable concept of mediation affects peace-making in the sub-region.⁴³ She first addresses the issue of insufficient mediators and in her opinion, domestic mediation has gained ground in individual African states and people pursue mediation as a profession and in recent times have formed professional bodies.

Mediation comprises theories, skills, techniques and case studies that are used by mediators to engage parties in dispute to reconsider their interest and position which will lead to reconciliation. According to her, the case is the opposite in international mediation. States and international organizations do not recognize that international mediation has a field that needs specialized skills in handling mediation in the international system between states and international organizations. She asserts that international mediation is used as a form of diplomacy when there are disputes that disturb the international system whereby mediator use persuasion, leverage and bargaining to reach a compromise without little regard for the use of appropriate mediation skills. This reinforces the practice of appointing international mediators on the basis of their political status and reputation than on their competency.⁴⁴ She cautions that mediators who are skilled and experienced will not be successful in all instances but are more likely to succeed and do better than unskilled mediators.

Laurie Nathan stresses on the need for institutional support for mediators because international mediation process involves a number of actors; those who have a stand in the mediation and those who do not.⁴⁵ These actors influence the progress of the mediation be it actively and inactively, influencing the party's decisions and positions. The support that mediators need include mediation expertise support, thematic expertise, intelligent expertise, country and regional expertise, communication expertise, management, and financial expertise. She made known that there are no standing mediation units at the AU and other regional organizations, there are no records of mediations, and mediators use their will to facilitate the process. Not realizing that conflicts are dynamic and must be addressed on a case by case basis. According to her, there are hardly discussions in the AU and regional organizations as a result there is no articulate and viable conception of mediation in Africa.

Mediators deployed by states and multinational organizations frequently focus more on the solutions to a conflict than on the process of peacemaking. They formulate solutions, endeavor to win the parties consent thereto, and press for rapid results through a combination of persuasion and leverage. They might adopt this approach because they regard the solution as fairly obvious and consider the demands of one or more of the parties to be completely unreasonable. They might also be concerned about the high level of fatalities and the financial cost of a drawn-out engagement, whatever their motivation, however, a mediator's confidence that he/she can quickly bring the parties to their senses is both naive and arrogant.⁴⁶ (Nathan 2005)

She suggested that the AU and other regional organizations can solve the issues raised if they viewed preventive diplomacy and mediation as a specialized field and set up units to handle conflict properly.⁴⁷ The unit can be structured into conflict prevention and conflict resolution with sub-divisions. Laurie Nathan concluded that, mediation should not be equated to coercive diplomacy but a specialized field, that require skills, techniques and competence to successfully resolve conflicts.

Bercovitch, J and Elgstrom, O in their article “Culture and international mediation exploring theoretical and empirical linkages” examine the relation between culture and mediation as well as the impact of culture on mediation process and outcomes.⁴⁸ According to them culture has not been held highly in international relation due to the realist nature of the international system, however idealist recognize the important of cultural factors in international conflict management. The authors categorizes three group with differing points of views regarding culture and mediation, firstly the skeptics who argue that culture is superficial in conflict management owing to the fact that tangible factors like power, national interest and security takes precedent in any decision a country or group makes.⁴⁹ Also, mediation process is universal and culture only affects the mannerism and style which is not appreciable. The second school of thought being the proponent’s argues that culture does affect mediation by explaining the link between culture and behaviour, because culture informs the positions and strategies of the disputants or parties. The last group, the middles-roaders with the view that culture matter in some circumstances and does not matter on other circumstances.

The authors further analyzed existing data to determine the impact of culture on mediation. Five cultural dimensions which are: religion, level of political rights, level of civil liberties, type of political system and geographical proximity. The author’s findings reveals that there is a strong linkage between culture and mediation outcomes using those dimensions. Parties with high culture difference tends to have less successful rates of conflict management whereas parties with similar culture values have high successful rates of conflict management including mediation because of their mindset and approach to conflict resolution.

Wall, J, Stark, J and Standifer, R in their article “Mediation: a current review and theory development” review the literature on mediation.⁵⁰ The author’s state that the literature available

have improved in linearly with a part that focus on the descriptive nature and a part the focus on the theoretical aspect of mediation. In reviewing the literature of the past the decade, the author's addressed six frameworks which are: determinants of mediation; which basically examines the role norms and laws plays in mediation among countries and communities. They are usually laid down laws on how to go about mediation and resolve issues. The second framework mediation per ser is the mediation itself. It involves the types of mediation and techniques to employ in mediation. The third framework is approaches, it explains the approach a mediator uses to facilitate the mediation process, the approach used usually determines of the posture of both parties to the resolution of the conflict. The fourth framework is the determinants of the mediator approach. The authors point out that certain factors influences the mediator's choice of approach that is the environmental factor, the mediator, thus his training and what he is used to and the disputants factor: the relationship between the parties and interest all account to the approach to be used. The fifth framework addresses the mediation outcomes, the outcomes of mediation affects the disputants, mediator and third parties if there are any, the outcomes includes satisfaction, improved relationships, reputation on the part if the mediator and peace for third parties. The final framework that is the outcome of the determinants. This framework explains how level of conflict, the availability of resources, type of issues and commitment influences the outcomes of mediation.⁵¹

The author's belief that when the literature on mediation is organized properly it will assist in theory development and also mediation should be used in combination with other third party processes like consultation, counselling among others.

1.9 Sources of Data and Research Methodology

The data for this research was collected from both primary and secondary sources. The primary source of information was gathered from interviews conducted from selected resource persons with extensive knowledge and experience in the study area. The interview schedule contained mainly open ended questions and the interviewees were selected from accredited mediation centers, arbitration centers and other practitioners. The purpose of the interviews was to know what mediation is, what African mediation is, what Western mediation is and whether or not they are differences and similarities between the two mediation models and how the differences and commonalities qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western world. These information were used in comparing the African and Western mediation models. Secondary data on the other hand were sourced from books, journals, articles and scholarly writings. The research utilizes the qualitative research method, to gain an in-depth knowledge of the topic. Interviews were conducted and purposive sampling was employed because it is a specialized area and I wanted to interview the people in the field to get an in-depth knowledge. The facts gathered from the interview and documents were analyzed and a conclusion was drawn from it.

1.10 Arrangement of Chapters

The research is organized in four Chapters; chapter one constitute the introduction, Chapter two provides an overview of conflicts and conflict theories, African perspectives of conflict and Western perspectives of conflict. Chapter three focuses on what mediation is, African mediation and Western mediation, African Arbitration and Western Arbitration, diplomacy in conflict

resolution and how mediation is built into conflict resolution. Chapter four constitutes the summary of findings, conclusions and recommendations.

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51

CHAPTER TWO

AN OVERVIEW OF THE AFRICAN AND WESTERN CONCEPTION OF CONFLICT

2.0 Introduction

This chapter examines conflict theories and provides an overview of the African philosophies and conception of peace, conflict and conflict resolution. It also looks at socialization of conflict in African communities and traditional structures of conflict resolution. It further looks at the strengths and weaknesses of the use of African traditional dispute resolution mechanisms. The chapter also examines the Western perspective of conflict and conflict resolution and the strengths and weaknesses of the Western conflict resolution mechanisms thus the orthodox court system and Alternative Dispute Resolution mechanisms.

2.1 Conflict and Conflict Theories

Conflict have been defined differently by scholars, the term conflict has wide and varying connotation for people in different contexts.¹ The definition of conflict fall within two schools of thought subjective and objective.² There are those who view conflict from the subjective perspective; focusing on the individual or the people involved in a conflict. On the other hand, there are those who define conflict from the objective point of view; laying emphasis on the external and objective qualities of conflict.³ From the subjective perspective of conflict, Morton Deutsch explains that the presence or absence of conflict is never rigidly determined by the objective state of affairs, conflict is determined by what is valued in the dispute by the parties, the psychological factors among others.⁴ Conflict can be defined from the objective perspective as a phenomenon that occurs when one or more parties perceive incompatible goals and then equally

perceive interference from the other in their desire to obtain or achieve their goal.⁵ Lewis Coser defines conflict as the clash of values and interests, the tension between what is and what some groups feel ought to be.⁶ Austin, D (1976) defines conflict as a disagreement between two or more individuals or groups, with each individual or group trying to gain acceptance of its views or objectives over others.⁷ According to Slabbert (2004), conflict is a process that begins when one party perceives that another party has negatively affected, or is about to negatively affect something that the first party cares about.⁸

The framework by which conflict is defined has an impact on how conflict is resolved, for instance, if conflict is defined as an inevitable phenomenon in society, there will be no need to actually think through mechanisms to resolve conflict knowing it is a trait of humans.⁹

Conflict occurs at different levels. Conflicts can occur between individuals, groups, employees within an organization and factions within families. A person or society without conflict is dead. Conflict is the means by which we learn through feedback from the environment and the people in the community. A conflict in an environment will tend to either be functional or dysfunctional depending on how we respond and react to the feedback from conflict in our environment.¹⁰ According to the objectivist school of thought, there are usually certain situations and events that necessitates conflict, once those conditions are present there is conflict.¹¹ The class divisions of lower and upper, rich and poor in societies are necessary conditions for conflict regardless of whether the people confirms that there is a conflict. A major criticism against the objectivist school of thought on conflict is the dilemma of awareness one faces in analyzing conflict. This is because if the people in conflict are not aware that there is conflict and they have not accepted that there is

conflict, a third party cannot force conflict on the people. This creates problems for conflict resolution practitioners and researchers in understanding and analyzing conflict.¹² On the other hand, the subjective perspective of conflict is dependent on the parties or individuals in conflict. Again, a critic of the subjective school of thought is that in order to know about a particular conflict one has to depend on the opinion of parties in dispute. Since it is subjective, at one point an individual can take the stand that there is indeed a conflict but at the same time, another party can say there is no conflict.¹³

The disparity in thought creates difficulties for anyone interested in that conflict to be able to analyze and come up with solutions. The types of conflict that usually occur can be grouped into intrapersonal, interpersonal, intergroup, regional, and international conflicts. Intrapersonal conflict is a type of conflict that occurs within an individual; it is an internal conflict regarding the individual's actions, thoughts, emotions and values.¹⁴

An intrapersonal conflict is usually experienced as a psychological battle of an individual's actions and inactions. For instance, a person might pass by a stranger he/she fails to help and might go back thinking whether he/she made the right decision. This becomes a form of conflict within oneself as to the action taken and whether to go back and make amends or not. An interpersonal conflict is a type of conflict that occurs between two individuals, usually due to differences in personality and the effort made by one party to interfere in the plans made by another party in achieving his goals. Individuals in this type of conflict feel their needs, values and identity are threatened by another party, hence an interpersonal conflict.¹⁵ Interpersonal conflict occurs among individuals, family members, employees, among others.

Intergroup conflict is another type of conflict that ensues when there is misunderstanding between groups as a result of goal incompatibility and shared scarce resources. Groups tend to be hostile towards each other as a result of identity clashes. Examples include conflict between religious, ethnic and organizational groups.

Intragroup conflict is also another type of conflict that occurs within groups due to difference in values, practice, opinions among others. An example of intragroup conflict is the conflict within the Islamic religion with groups having different values, practices and codes that members must abide, which conflicts with the teachings of other Islamic sects or groups.

Regional conflict is also a type of conflict that occurs which is usually economic, political and social in nature as regional bodies push for the growth and wellbeing of their people to the neglect of other regions. This is a common type of conflict between rural and urban areas. International conflict is a type of conflict that occurs at the international level between states. The Israel-Palestinian conflict is a type of international conflict that occurred between states and influences the international system. The United Nations (UN), states and other organizations play important roles in negotiating with the parties in dispute.

Conflicts occurs everywhere; in communities, between states and among individuals. Wherever there are two or more people with incompatible goals and difference in identity, conflict can occur. As a result, there are different means of resolving conflicts available in communities and states, these mechanisms can be traditional or legal mechanisms. Every society, based on its culture and values, prescribes a mechanism for the resolution of conflict, which is used by members in conflict

resolution as it suits and appeals to them as a people. The socialization and the level of development of a people informs the type of mechanisms that are put in place to assist in the peaceful resolution of conflict. Conflict resolution mechanisms can be unique to a group, directing people on how to resolve and manage conflict situations. In some situations, conflict resolution mechanisms can be generalized. Conflict resolution as an academic field is largely Western based. Western thought and society development have shaped the nature and practice of conflict resolution.¹⁶ There are several theories that explain why conflict occurs and how to handle specific conflicts. These theories of conflict include structural theory of conflict, realist theory, psychological theory, economic theory, biological theory, Marxist theory and international capitalism theory of conflict.¹⁷

Structural theory of conflict explains conflict as a result of tensions between groups who compete for scarce resources.¹⁸ For instance, tensions between the bourgeoisie and proletariat, blacks and whites, among others. This stems from failed social structures, where state structures fail to evenly distribute national resources and the struggle to secure a part of the scarce resource leads to tensions and conflicts. Such environment creates certain conditions that leads to conflict, some of which are inequalities, social exclusion, gender imbalances, economic exploitation and racial exclusion. The main subject of the structural theory of conflict is that the structure of the society creates conflict.

The explanation of conflict from the realist perspective is that conflict is an intrinsic character of man.¹⁹ So long as man exists with his own goals and emotions, which are different from the goals of others in the society and consistently competes with them, conflict is bound to occur. Man is

naturally egoistic and self-centered pursuing his own happiness at the expense of others. Tendencies for competition are high, leading to conflict in society.

Psychological theory of conflict explains another dimension of conflict which attributes conflict to the psychological make-up of man. People naturally react to unpleasant situations, which the frustration aggression theory further explains.²⁰ The main premise of the frustration aggression theory is that humans show actions of aggression when they are frustrated, when something prevents them from achieving their goals and objectives as individuals.²¹ This is demonstrated in our environment, when things do not go our way and we feel there is an obstruction we are immediately angered out of that frustration as time goes on, the anger is manifested in our actions and inactions in terms of aggressions towards people. Usually, humans tend to be aggressive towards those who are perceived to have caused their frustration. However, there are instances where aggression out of frustration is transferred to external people who are in no way responsible for the frustration.²² Owing to the psychological make-up of humans and the part where man can no longer hold in and control his anger, the result is conflict. These natural manifestations of violence are often mitigated through socialization channels such as education, upbringing, nurturing, and systems of rules and punishment.

The biological theory of conflict is another explanation of conflict linked to the biology of humans. This scientific reason details how conflict occurs in man's engagement with others. From the biological understanding, character traits are transferred from one generation to another, just as parents transfer certain traits to their children, both good and bad.²³ Conflict is seen as genetic and runs through the genes of humans, which are transferred from one generation to another hence

there is always conflict in the world. The argument is that our predecessors were violent people by nature, and because we evolved from them, we share those characteristics, which are in the genes and transferred from one generation to the other.

The Marxist theory of conflict also gives an explanation to conflict as a result of class in society. The rich and poor who are in constant struggle for power. The rich control the means of production and the poor work in those industries.²⁴ The rich continue to be rich and the poor continually experience poverty. Capitalism according to this theory is a system of growth and is very exploitative since the poor are exploited on a regular basis at the benefit of the rich who continue to amass wealth.

The final theory of conflict, the international capitalist theory of conflict, explains conflict as a result of colonialism and imperialism. Industrial revolution in the Western world created platforms for conflicts. The search for raw materials, new markets and surplus capitals and the race among the Western states to secure vast territories in the global south firstly led to conflict between themselves.²⁵ Again, colonization and the policy of joining cultures and civilization with the aim of controlling and administrating the natives led to several conflicts as a result of identity and cultural clashes. Colonialism and its policies created international structural inequalities and conflicts. International capitalism, where western financial institutions continue to fund and assist projects in developing countries with the intention of influencing and exploiting the beneficiary countries.²⁶ The gap and imbalances created between the North and South, and the efforts made by developing states to rise and develop their economy creates tensions and conflict in the international system. Colonialism and capitalism created universal commodity production,

commodification of labour and individualism, often devoid of superstition and primordial sentiments. Post-colonial states at independence differed markedly from the Western nations with superstition and primordial sentiments underlying their relations.

2.2 African Conception of Conflict

Conflict in Africa is not a recent phenomenon. The African region has been hit by several conflicts ranging from interpersonal, communal, civil wars, political, religious, and ethnic conflicts. Present-day Africa is faced with the reality of numerous evolving states that have to grapple with the inevitability of conflict.²⁷ However, Africa has had a very rich traditional conflict resolution processes based on the nature of conflict, where the conflict is found or occurred, whether it is within the family, community, or even between ethnic groups. The enduring role and influence of traditional leaders and traditional African institutions is hard to overlook.²⁸ These practices and mechanisms existed before colonialism. Colonialism in Africa led to the infusion of most of Western thought and practice into the African culture and values which has impacted the traditional African conflict resolution mechanism. However, these Western conflict resolution mechanisms have not totally replaced the traditional African conflict resolution mechanism, it has rightly been used in African communities. There is literature on the African philosophy of conflict and conflict resolution tracing back to time immemorial and for future use, the literature explains the importance of traditional mechanisms in resolving conflicts in Africa. Thus African solutions to African problems and it is effective for the people. Conflict has become a defining characteristic of the African continent. Conflict in Africa has led to the loss of thousands of lives, destruction of property and has slowed down the pace of development leading to poverty in the African sub-region.²⁹

Conflict in Africa have a wide range of causes including economic hardships, inequality, shared natural resources, political crisis and social conditions. Africans view conflict, violence and crime from a very holistic approach, looking at the whole make-up or structure of the conflict, addressing the conflict from the grass-root cause and providing a long lasting resolution.³⁰ Africans perceive conflict as an abnormal state and for this reason measures are put in place to restore the community to its normal state. Conflict indirectly affects the community, land, ancestors and the gods. The land, ancestors and gods in Africa are regarded as holistic and when there is any abnormality there is a need to respond and address the situation. Land in Africa is an important resource of livelihood for the African people and it is held in esteem. Land has a spiritual connotation and underpinning, it is seen as a birthright in Africa, a gift from the gods and ancestors, making lands in Africa sacred.³¹ In many traditional African communities the umbilical cord of babies are buried beneath lands, ancestors are also buried on land making it sacred.³² Members of a community are entrusted with land and expected to share its resources. Land has been the main source of livelihood in Africa, even in areas with scarce land. Major economic activities is dependent on availability of land.³³ Agriculture is the main economic activity of Africans, subsistence farming is practiced in most rural areas to meet the needs of family members.³⁴ Land provides food, water, plants, shelter and life in general. Conflict therefore has a great impact on the land where the conflict occurred and this explains why in certain traditional areas, the land is pacified during conflict resolution.³⁵ While conflict is between two parties or more however defined, there is a need for peaceful settlement between the parties in conflict. Africans live in a communal environment with each person depending on the other for necessities and survival. The Ubuntu spirit exists in African community: “I am because we are and we are because I am.” Social relations is an undertaking to which every person is committed to.³⁶

Conflict, crime and violence in Africa is judged to affect the nucleus group, that is, the family, the nuclear family, extended family and the community as a whole. When there is conflict in the nuclear family it basically affects the parents and more especially children. Family heads resolve conflicts, which in this case may be the father or the eldest son. This is done as fast as possible to save the image and dignity of the family as well as prevent the protraction of the conflict. At the extended family, the family or the clan head brings the parties in conflict together and resolves the issue, depending on the area and practices of the people. In cases where the family head faces difficulties and is not able to resolve the conflict it goes to the next step, that is, the sub chief to resolve the conflict. At the communal level, the conflict is handled by the elders and the chief of the traditional area. The chief and elders are revered, respected and their decision carry weight. The elders and chiefs who are responsible for handling disputes are noted for their wisdom, wise counsel and impartiality.

The traditional council gets involved in some cases, particularly when the parties are from different ethnic groups. Also, when there is conflict, crime or violence and it involves blood shedding and serious injuries it affects the extended family and goes beyond to affect the community and even the earth due to the shedding of blood and destruction of properties. The gods are consulted in such instances. When there is conflict between friends in an African community the senior most person initiates the resolution process. Africans associate conflict to have a spiritual connotation. The role of the gods and ancestors in African ontology has been an important feature in explaining conflict in the African community.

When conflict and violence occur in an African society no matter their form and grievances, they are judged to affect the gods, ancestors, mother earth and the Almighty God.³⁷ Pacification is therefore necessary in the process of resolving the Conflict. Africans link conflict with spirituality and it is therefore necessary for offenders to pacify and ask for forgiveness from the spiritual world. In African communities the two parties invariably are blamed for their role in the conflict through their actions and how it infuriated the conflict. The land (earth) is pacified, the community ancestors must be pacified, smaller gods and the Almighty God must also be pacified and forgiveness must be sought. Pacification here is often done through punishment, usually corporal punishment in terms of lashing or assigning hard labour work in the community to the offender. Sometimes punishment is in a form of restitution, where offenders are made to pay fines. The person involved in the conflict and the severity of the crime customarily determines the type of punishment. After the recalcitrant have accepted his/her wrongdoing and have been punished there is the need for pouring of libation to plead or win the gods indulgence, forgiveness, guidance and protection, before the recalcitrant is educated in the dimension of the conflict grievance. In cases in which the parties in conflict curse each other as is very typical in traditional African societies, the gods are approached and asked to reverse those words spoken against each other, if not done appropriately, even after the conflict has been resolved the effect of those words will be seen in the lives of the conflicting parties. The parties are therefore entreated to retrieve words said and apologize for their actions.

According to Bozeman (2015), African conception of conflict has been modelled into illiteracy, a concept of undifferentiated time and tribalism.³⁸ Where non literacy has created a culture of conflict and has made Africans pleased with the present without looking at what the future holds.

For this reason, when there is conflict it becomes difficult to find a lasting solution as Africans do not look beyond the magnitude of effect the conflict has on the continent to even think of resolving conflict. Conflict in the African community is seen as a communal problem rather than a private issue regardless of the parties involved in the conflict because the effect of two people fighting or a misunderstanding between two people can trigger a family and an extended relation to get involved.

The conflict resolution process in traditional African society is either heard and settled indoors depending on the nature of the conflict and the parties involved in the conflict or is settled in the open like a forum usually at the entrance of the chiefs palace where members of the community are welcome to take part in the deliberation and find peaceful ways of resolving the conflict. Before the advent of slavery and colonialism, traditional African societies had developed their own indigenous mechanisms and processes to manage and resolve conflict in their localities. These well-established mechanisms and processes were effective and efficient.³⁹ Members of the community respected and abided by the terms of settlement. These mechanisms were developed through the culture, values, beliefs and traditions of the people. For this reason, it was easier for the parties to understand and appreciate these processes.

Conflict management involves processes that aims at controlling and maintaining relative peace while limiting the effect of the conflict and preventing the conflict from escalating. Whereas conflict resolution is the process of making peace and settling dispute between parties, it involves putting in mechanisms to prevent the conflict from reoccurring. Conflict management is usually temporary measures but conflict resolution brings lasting solution to the issue. Michael (2006)

defines conflict resolution as a process which occurs by listening to and providing opportunities to meet the needs of all parties, and to adequately address interest so that each party is satisfied with the outcome.⁴⁰

Traditional conflict resolution aims at healing relationship between the parties or groups in conflict.⁴¹ The process of managing and resolving conflict in a traditional community varies from one community to the other, every ethnic group has structures that directs and helps disputants resolve their conflict. It usually involves the family heads, clan heads, linguist, chiefs, queen mothers and other elders in the community using traditional values in managing and resolving conflict in African societies. Conflict management however defined is considered as a holistic and total process in the sense that the wider family and society has to be reconciled.⁴² African traditional societies live in a communal environment and depend on each other for sustenance and basic necessities. For these reasons the lives of members of the community is important to the community and leaders therefore makes efforts in making sure there is peaceful coexistence of members, hence when a person wrongs the other the whole community takes interest in restoring that relationship and healing parties from any hurt they might have towards their neighbour.

2.3.1 Strengths and Weaknesses of African Traditional Conflict Resolution Mechanisms

The African traditional conflict resolution process has proven to be beneficial in many ways. One of the main strength of the African traditional conflict resolution is the fact that it is less time consuming as compared to the Western conflict resolution mechanisms, the process is fast with no delays.⁴³ When conflict flares up in African communities, there are quick responses and actors find lasting solution within a short time; there is no back and forth with appeal, issues are resolved

quickly to avoid escalation of the conflict. More so, conflict resolution in the African setting aims at peace. It emphasizes on peace than on justice, and reconciliation of the parties involved is paramount. African conflict resolution process heals relationships no matter how much the conflict has damaged the relationship that existed between the parties. African conflict resolution is rooted in the supremacy of the social order, over and above the individual in conflict. The community in which the incidence happened is hurt when the conflict is not resolved. Apart from the individual relationship that African conflict resolution seeks to heal, it also heals the wounds and pains of an entire community and restores the social order and harmony in communities: “when two elephants fight it is the ground that suffer.”⁴⁴

Africans believe in communalism; they live together, perform ceremonies and traditional practices together (funerals, festivals), among others and for this reason, it is important to live at peace with ones neighbours. A more important advantage of the African traditional conflict resolution is the fact that it is less expensive as compared to Western mechanisms.⁴⁵ Disputants do not spend much money and resources in having their grievance heard and resolved. Usually a small token is paid in terms of buying drinks (schnapps), kola nuts and fines charged at the end of a settlement. This is relatively cheap compared to modern Western conflict resolution mechanisms. Mediators are not paid for their services, as chiefs, elders and heads of family perform those function as part of their duties in the community and as people in authority without seeking for personal gains in the form of payment. Again, another benefit of the African traditional conflict resolution mechanism is that it appeals to the people, Africans can identify themselves with the process and this makes it easy in settling disputes. The values and practices of the people are embedded in the process and a lasting solution is achieved. It is effective and guarantees the interest of both parties.⁴⁶ The

African traditional conflict resolution mechanism is corrective in perspective. It aims at correcting the wrong done, encourages parties to turn a new leaf and reconciles relationships.⁴⁷

The African traditional conflict resolution has some weaknesses despite its strengths. One main weakness in this is the fact that seniority is over emphasized. Seniority is revered in the African traditional communities and since the values of the people are embedded in the conflict resolution process, credence is given to elder people. The weakness here is that when there are issues that involve a younger person and an adult, in the first place the younger one is wrong for his/her role played in the conflict. Younger ones are not to exchange words and argue with their seniors or elders and this puts the younger one at a disadvantage even before the facts of the matter is heard. In such cases, even when the younger one is not at fault he/she is made to apologize.

Again, justice and punishment are not stressed in the African conflict resolution process. The disputants are not punished, rather the process corrects the wrongdoing and this makes other people fall victims with the idea that they can go away with crime. Punishment is subjective depending on the mediator; chief, elder, or a family head. The process is sometimes not fair, it depends on class system; people in authority are handled differently from ordinary people. With the end of colonialism and increase globalization, African conception of conflict and conflict resolution has changed and adopted many modern conflict resolution methods like the court system as a result of colonialism and ADR. There has been an increasing relationship and interaction between traditional conflict resolution processes and modern institutions responsible for the resolution of conflicts.⁴⁸

2.3 Western Perspective of Conflict and Conflict Resolution

The Western conception of conflict and conflict resolution evolved and developed through their advancement and need to find solutions to conflict. Despite the fact that most literature on conflict and conflict resolution is skewed towards Western thought and understanding, Kelvin Avruch (2002) described how culture influences people's action on a subconscious level and explains how Western culture has dominated conflict resolution methods through the glorification of western standards.⁴⁹

The Western conflict resolution process started from the African perspective where family heads mediate in conflicts. However, with the evolution of Nation-State, social contract, universal commodity production, universal commodity relation, development and removal of superstition from society among others, emphasis was placed on individualism, human rights and justice. The Western perspective of conflict and conflict resolution is analytical in nature, result oriented and the resolution process is seen as linear. The focus is not on building and restoring relationships but serving justice in its pure form.⁵⁰ This led to the development and introduction of modern mechanisms to meet the needs of people and help in the resolution of conflict to maintain peace and stability in the Western world.

Conflict is regarded as a private affair on case to case basis, with focus on the individual or people in conflict due to their stake in the conflict. The Western world views conflict and individuals as an autonomous entity hence treated as such.⁵¹ Western conception of conflict and conflict resolution is more focused on objectivity and justice than from the African perspective of peace. This led to the development of the orthodox system; an adjudication system to monitor and resolve

conflict in the Western world. Concerns over the rule of law where individuals are either right or wrong led to the emphasis on objectivity in analyzing and resolving conflict to clear doubt and give justice.

The Western world is concerned with justice and punishment than the African perspective of peace and reconciliation. Justice to them is objective; if anyone is to be punished for a crime committed then another person in the same situation must be punished for the said crime. The orthodox court system was thus established to handle conflicts between parties and settle conflict peacefully by awarding justice that is objective with judges being impartial. The court has been the main institution that is charged with conflict resolution in the Western world and parties in dispute seek the services of a lawyer to represent their interest and the issues are heard by a judge who administers justice after hearing both sides of the conflict. Justice from the Western point of view is categorized into retributive justice, deterrent justice and restorative justice.⁵²

Retributive justice takes the moral dimension of justice where perpetrators of a crime deserve to be punished for their acts.⁵³ Deterrent justice stresses that punishment for wrongdoing is in the right direction to prevent and scare people from committing or getting involved in similar crimes, setting the right standard for others to follow.⁵⁴ Restorative justice aims at restoring relations, thereby punishment will be in a form of compensation, correcting the acts of the culprit and reconciling the disputants.⁵⁵

2.3.1 Strengths and Weaknesses of Western Conflict Resolution Mechanisms

The court system has compelling strengths which has led to the increased patronage by disputants. Parties in conflict are assured of justice, which is a major strength of the court system. After a trial, the party found culprit of crime or breaking a law is punished or fined, and justice is served. There is usually win-lose cases where the winner, based on evidence and fact before the court is declared free and the loser is either fined or punished.

The orthodox court system also enforces that rewards and judgment given after a trial is carried out and achieved. Due to the support of the law, parties in dispute are bound to go by the dictates of the judges. This practice strengthens the power and authority of judges and the court system. Again, impartiality is a feature of the orthodox system which means that both parties in conflict are treated equally regardless of their class, and there is a collective punishment for various crimes. Notwithstanding its strengths there are a number of weaknesses in the use of the orthodox court system. The court system has been criticized as being costly in terms of paying for the service of a lawyer, filing of cases, paying appearance fee and the resources that are put into gathering facts and evidence to be used in court against the opponent.⁵⁶ The cost of the orthodox court system goes a long way in pushing away the less privileged from seeking justice regardless of the fact that their cases may actually go far and win eventually. Criminals who are very well to do use their resources to get the best lawyers and even bribe people to serve and testify as witnesses.⁵⁷ This implies that only the rich and well to do get their way. Furthermore, the orthodox court system is associated with delays and unwarranted adjournment of cases.⁵⁸ Judges may be changed and new ones will have to take the case which usually delays the process because new judges have to study the case thoroughly. There are huge numbers of backlog cases to be heard and tried at the court.

The delay in settling and administering justice by the courts encourages and intensify conflict as the parties are not called to order promptly and they continue abusing themselves.

More so, the orthodox court system utilized laws within the legal framework and precedence without taking into consideration the healing of the relationship that existed between the parties prior to the conflict. The system often than not worsens the conflict even after trial and judgment due to declaration of a winner and a loser.⁵⁹ The conflict escalates further and the friction between the two sides will still exist because the court fails to reconcile and restore the relation that existed before the conflict. Owing to the weaknesses of the orthodox court system in the resolution of conflict in Western societies and the need for an alternate means to support the court system led to the introduction and development of Alternative Dispute Resolution (ADR). Alternative Dispute Resolution includes several mechanisms designed to assist disputants in settling issues by reaching a compromise.⁶⁰ The process is less informal as compared to the orthodox court system and it encourages parties to make their own decisions, with both parties arriving at a mutually beneficial outcome. Alternative dispute resolution includes negotiations, mediation, arbitration, conciliation, among others.⁶¹ Each mechanism takes a unique structure and form.

Negotiation is defined by Goldberg, Sander and Rogers (1992) as “communication for the purpose of communication.”⁶² It is the process in which parties to a dispute discuss possible outcomes directly to each other. Mediation is usually referred to as ADR.⁶³ Mediation as an alternate mechanism for resolving conflict is a process that employs a neutral/impartial person or persons to facilitate. Mediation is basically facilitated communication using a third party, who is neutral to help the parties arrive at their own mutually agreeable resolution.⁶⁴ Negotiations are made between

the parties in a dispute in an effort to reach a mutually accepted resolution. Parties to a conflict voluntarily make their own decision and are responsible for the consequences.⁶⁵ Arbitration is a process wherein parties to a dispute agree to submit their dispute to a neutral third party, who will decide their case. Conciliation is a process in which a third party brings together all the sides of the conflict for discussions among themselves.⁶⁶

The Western perspective of conflict resolution is gradually changing. With the Western individualistic and developed society there has been calls for a more friendly and creative approaches to justice and conflict resolution processes. Policy makers and stakeholders are making efforts to restructure justice and conflict resolution processes to include more subjective point of view and a more holistic way aside the normal conflict resolution process.

2.4 Conclusion

In conclusion, the chapter discusses conflict theories and the types of conflicts which assist researchers and conflict resolution practitioners in analyzing and resolving conflict. It also looked at both African and Western conceptions of conflict and the strengths and weaknesses of both African and Western conflict resolution mechanisms.

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CHAPTER THREE

A COMPARISON OF THE AFRICAN AND WESTERN MEDIATION

MODELS

3.0 Introduction

This chapter critically examines the concept of mediation, African mediation and Western mediation. It further examines mediation in Ghana, with particular reference to various ethnic groups' mediation that exist and are practiced in African communities. The chapter also discusses arbitration in Africa and arbitration in Western states, conflict prevention and conflict resolution in general and diplomacy in conflict resolution. The subsequent discussion will focus on comparative analysis of the Western and African mediation models.

3.1 Historical Overview of Ghana

The republic of Ghana, the then Gold Coast gained independence from the British colonial government on the 6th of March 1957. Ghana was the first colony of the British government to have gained independence and its name was changed from Gold Coast to Ghana after independence. Ghana is situated in West Africa and shares its borders with Togo in the East, Burkina Faso in the North and Cote D'Ivoire on the Eastern borders. Dr. Kwame Nkrumah was the Prime Minister and first President of Ghana. After the overthrow of Dr. Kwame Nkrumah, Ghana has been ruled under both military and civilian governments. The country Ghana is rich in mineral deposits such as gold, silver, bauxite, manganese, natural gas among others. Agriculture is the main economic activity in Ghana; farming, fishing and forestry are the main source of employment for most people. Cocoa is the main agricultural export of Ghana. Ghana is a

heterogeneous country made up of people from different ethnic groups and with different languages. The major ethnic groups include: the Akan, the Ewe, the Mole Dagbani, the Ga Adangbe, and the Guans, amongst others. The Languages spoken include Twi, Ewe, Dagbani, Ga, Fante, with English as the country's official language. Ghana is praised internationally as a peaceful country with a stable democracy. Ghana is a religious country made up of three main religious groups: Christianity, Islam and traditional religion. Majority of the population are Christians, followed by Muslims and then traditionalists. Owing to the heterogeneous nature of the Country, identical differences toppled by colonial grievances and scarce resources, Ghana has recorded a number of conflicts ranging from communal conflict, ethnic conflicts and political clashes. Most of these conflicts are resolved through indigenous mechanisms. Prior to the coming of the Europeans and globalization Ghana like many other African states had their own traditional institutions that handled conflict situations and resolved conflicts amicably between disputants at different levels, depending on the nature of the conflict and the people involved in the conflict. These traditional mechanisms were used before the introduction of the orthodox court system and more recently, Alternative Dispute Resolution (ADR), which comprises mediation, arbitration, negotiations and reconciliation. It is on this basis that the study compares the African and the Western mediation models.

3.2 Mediation

Mediation is a mechanism under Alternative Dispute Resolution, and it is employed in the resolution and settlement of conflict. Mediation is the most popular and most employed mechanism under the ADR spectrum.¹ Mediation is derived from the Latin word 'mediare' meaning to be in the middle, it is structured to resolve dispute, heal disputants in conflict and

restore what has been lost in the process of the conflict. Mediation is a non-binding process in which an impartial third party, called the mediator facilitates the negotiation process between disputants.² The process is voluntary, decision making is arrived at solely from the disputants without any force from the mediator.³ The mediator facilitates and controls the process to avoid misinterpretation, misunderstanding and shifting of attention to other matters which are not relevant to the dispute at hand. Mediation is a consensual process in which a neutral third party helps others to negotiate a solution to a problem.⁴ A mediator, unlike a judge or an arbitrator has no legal power to render judgment or an award, he only use persuasion and goodwill to enable the parties in conflict arrive at a mutually beneficial settlement.⁵

Mediation is usually a win-win process and for this reason most people in conflict prefer mediation where the issue at stake is not out of order and can be settled amicably. Mediators act as facilitators of the whole mediation process and therefore they arrange for the parties to meet and convene information to the parties in dispute.⁶ He/she acts as an educator by educating the parties on the mediation process; the do's and don'ts regarding the process, among others.⁷

The mediator also translates between the parties by rephrasing and reframing questions, in order to clear doubts and encourage understanding between the parties.⁸ Mediators generally have some distinct qualities that make them good at their job. Some of these qualities are empathy, trustworthiness, creativity, intuition and emotional control. Principles that guides mediators in their role includes confidentiality, competence, impartiality, self-determination, voluntariness and have no conflict of interest.⁹ Although, mediators do not determine settlement and parties arrive at their own decision, they have the power and authority to influence the parties through their

credibility and expertise throughout the process. Mediation in general can be right-based or interest-based, depending on the parties and the issue at stake.¹⁰ With the right based mediation, the parties in dispute appeal to the neutral third party, the mediator, to provide them with his opinion of the legal rights of the parties as well as an independent assessment of a possible outcome in case a settlement is not reached through mediation and must be settled at court.¹¹

The parties can therefore decide the best course of action based on the assessment provided. In right based mediation, only mediators who have substance expertise on the particular issue are chosen to give an assessment and opinion. For instance, a mediator who is an expert in commercial disputes will be chosen to mediate a dispute between two business parties in order for the mediator to use his/her expertise to give an advice and a likely outcome of the case. It is important that a mediator in a right based mediation must declare his/her expertise in order to lead the parties to a good settlement.

The other type of mediation, interest based, is the most popular type of mediation used by disputants. Interest based mediation focuses on the interest, goals, and needs of the parties rather than on the possible outcome of the litigation.¹² The mediator facilitates communication between the parties and emboldens them to focus on their interest, to generate options that will help them in achieving those interest and settling their differences.¹³ This type of mediation process puts the parties in charge of the outcome and settlement made. The mediator only advises and encourages them to point out their interest in order to make concessions and arrive at a good settlement with a win-win for both parties. The orange case explains and demonstrates how interests are separate from positions. The mediator makes the parties voice their interest and why they are taking that

position. As the process goes on there are trade-offs and prioritization of interest.¹⁴ Interest based mediation is attributed to the Harvard Negotiating Team.¹⁵

Mediation can be structured and unstructured, every mediator has their own style within the standard mediation format.¹⁶ Mediators chooses which way to go to arrive at a mutually beneficial settlement. Caucusing is a technique used by mediators in order to listen to both sides of a case. Parties are met separately by the mediator to get an insight of the opinions of the disputants. The meeting is done in confidence and mediators are expected to respect that confidence and trust assigned in them. Mediation process can start by the agreement of both parties to allow a neutral party handle their dispute. Another way to begin a mediation process is by reverting mediation clauses in a contract in case there is a breach.¹⁷ Mediation can also be recommended by a law court and sometimes a mediator is chosen or recommended to start the process.¹⁸ Again, a mediation process can start by an independent organization showing interest in the dispute, and offering assistance. Both parties to a mediation must be committed to having their issue settled, once one party withdraws from a mediation process it automatically ends the mediation process and nullifies all efforts made.

3.3 African Mediation

According to Helen Alves of Trinidad and Tobago, mediation has had a long and varied history and has traditionally been used as a means of dispute resolution and as a means of ensuring, in several cultures, that societal cohesion was maintained in the face of individual and communal conflicts.¹⁹ CW Moore in his book, 'The Mediation Process' expresses a similar thought, where many indigenous cultures all have extensive and effective traditions of mediation practice.²⁰

African communities and states employ mediation processes in resolving different types of conflicts; dispute between individuals in a community, family dispute, inter-ethnic conflict, land disputes, commercial disputes, inter-state disputes, among others. The culture and values of Africans are embedded in the mediation process and the process is structured to suit the African people. Despite the established historical background of mediation, the process became formalized in the mid 1990's and has gained ground as an institution and as a developing profession.²¹ Mediation is a major tool used in Africa and it has been used to resolve and to prevent a number of conflicts. Actors who mediate disputes in African States and communities include lawyers, mediators (practitioners), respectable members in communities and states, opinion leaders, traditional leaders (chiefs, queen mothers, elders), international organizations, regional bodies, among others. Each type of conflict or dispute will determine the actor suitable and the parties' agreement in having a third-party handle and facilitate the process, and this is crucial to the success of the mediation. Mediation in African culture has always existed regardless of how it was called and framed. It is impossible for people to ignore conflict and allow it to escalate and become destructive. Many African commentators have observed that mediation as it is now practiced in the West has deep roots in black Africa.²²

African states had their own system of governance and administration before the coming of the Europeans. There were institutions and indigenous laws that guided the way of life of the people. Conflict resolution in Africa took a different perspective from that of the Western concept. Each African state modelled its conflict resolution process with cultural values, traditions and indigenous knowledge. Mediation in Africa has a tradition of collectivity or togetherness in the process. Traditional notion of collectivity plays an important role on African mediation. Africans

consider themselves a whole or a group and for this reason approach issues collectively and holistically. Conflicts are not recognized as isolated events and all relevant information on the conflict is taken into consideration. The consequences of the conflict on the individual and that of the family and community is emphasized in the mediation process. Africans live together in communities and belong to a knitted group and the Ubuntu values influence African mediation in the sense that an issue does not only affect the individual but the whole core group of people and each person is dependent on the other for growth and sustenance. “I am because we are and we are because I am” is an African Ubuntu philosophy; the belief of a universal bond of sharing and that connects all humanity.²³ Professor Elisbertha Grande stresses that mediation and negotiation in traditional African communities cannot be understood without introducing the societal structure, relationships among groups and particularly relationships between the individual and the group because the individual does not exist outside the group but in the group.²⁴ African mediation is conducted by both trained and untrained mediators. Some personalities who act as mediators in African mediation are trained and professional mediators. Some chiefs and traditional leaders are trained to facilitate mediation processes while other actors are also not trained but rather act within their own capacity because they are regarded as wise people full of wisdom, integrity and are knowledgeable in the traditions and culture of the people.²⁵

In African mediation, a mediator need not be only professional to help parties in a conflict to reach a settlement. When there is a conflict, indigenous traditions have already laid down laws that prescribes who to approach first to assist in a peaceful resolution of a conflict. Mediators in African mediation are usually familiar with the parties in conflict because they live together and are privileged to know the characters of the parties.²⁶ A family head who acts as a mediator in a

family dispute is familiar with his family members and knows them very well. In the same vein, an elder or opinion leader in a particular community will have a little information on the parties before entering into mediation. Again, the African mediation process is conducted mostly in the open, at the entrance of a chief's palace or at an open place in a family house.²⁷ This method encourages the general members of the community to participate in the mediation process by asking questions and giving advice on the issue because individual conflicts are seen as affecting the core group of the community. However, in some cases mediation is conducted behind closed doors depending on the issue and the people involved in the conflict. African mediation's main objective is to restore social harmony, reconcile party's interest instead of punishments. The process is informal, and disputants are encouraged to feel free as much as possible in order to voice out their stand and find a lasting solution to their conflict.

According to Malan, mediators in African societies perform various functions and can play the role of a passive actor where they only facilitate the mediation process and do not influence the outcome of the settlement.²⁸ They can change their roles as and when necessary to arrive at the ultimate aim of peaceful settlement and reconciliation of the party's relation.²⁹ This shows that African mediation can either be right based mediation or interest based mediation. Mediation in Africa is characterized by norms and values; disputants are supposed to live in a particular way in the community and when the order or norm of the people is broken and ignored due to conflicting interest they are reminded of those values and norms throughout the mediation process.

Consent from the parties is crucial in decision making because disputants can choose not to abide by the outcome of the mediation process. While mediating chiefs or elders do have the authority

to make final decision on the issue in the African context, the consent from the parties and that of the community is what truly validates the final decision taken.³⁰ Mediation is compulsory among Africans; it is evident that Africans often than not will try and resolve conflict on their own through mediation before going to court. In marital conflict family elders try to resolve the conflict between the couples before seeking a service of a lawyer to represent them at court when there is the need for a separation or divorce. In contemporary times, with globalization and the dominance of Western States in ADR, African mediation has seen a gradual fusion with western mediation models. Mediation has increasingly become a profession and people are trained to become professional mediators. Traditional leaders and other opinion leaders are also trained. Below are instances and processes of traditional conflict resolution in which mediation is used as a tool in resolving conflict in traditional Ghanaian ethnic groups and other traditional groups in Africa, each group with its unique model.

3.3.1 Mediation Among the Akans

The Akans are made up of several states which include Ashanti, Akyem, Kwahu, Akwapim, Assin, amongst others, with the Asantehene as their overlord. The main actors or mediators in the traditional resolution of conflict among the Akans, particularly the Ashantis are the Asantehene, Apakanhene (sub-divisional chiefs), Dwanetohene (mediation chief), odikro, Abusua Panyin (Head of Clan), Afiepanyin (Family Head) Obaa Panyin (female head at the family level) The Asantehemaa (queen mother) also plays an important role in the resolution of conflict among the Ashantis.³¹ There are several ways of mediation; a mediation chief known as Dwanetohene can go to the complainant and plead on the other party's behalf after he has agreed his fault and seek

mediation. The chief may refer parties to mediation and he may ask an elder to mediate the case. Also, a case pending at the chief's court may be withdrawn and mediated on.³²

Mediation starts from the basic level, that is, the family level depending on the type of conflict. When there is conflict between siblings, the head of the family mediates in the conflict by hearing both sides of the case, using norms and values to reach a point of settlement and reconcile the parties. This type of conflict is normally solved at the family or clan level. When the family head finds difficulty in resolving the conflict, the clan head is next in line and he summons the two parties and makes an effort in resolving the conflict. Some of these conflicts might be disputes relating to property distribution, sibling rivalry among others. Disputes progress when it is not being resolved at either the family, clan or divisional chief's level, till it finally reaches the chiefs court. The chief, together with his elders mediate conflict and find lasting solutions, by helping parties to come to a conclusion. After a successful mediation and resolution of a conflict, the parties are reconciled.³³ However, when mediation fails and the parties refuse to reach an agreement, the chief, by virtue of his power decides on the case and the disputants have no alternative than to go by the dictates of the chief.³⁴ There are penalties for personal shame and supernatural powers are used for sanctioning, as well as physical sanctions.³⁵

3.3.2 Mediation Among the Gas

In the Ga state, several traditional conflict resolution mechanisms exist. Mediation is the major mechanism used for resolving dispute between people, especially disputes that can be handled and settled at a very basic level. Mediation takes a hierarchical form, in terms of who starts a mediation process. Heads of family are the first point of reference who act as mediators on family and sibling

conflicts. Next in line is the Weku Nukpa, then the Clan Head, Sub-Chiefs (Mantsemei) and the paramount Chief (Manste Nukpa).³⁶

When there is a conflict or dispute between two individuals, the first point of resolution is the parents of the parties involved in the conflict. The parents serve as the first point of call to try and resolve the conflict between their children in a form of mediation. In cases where the immediate parents of the parties in conflict fails or are unable to settle the issue, either of the parents usually approaches an elderly person in the area or community to help resolve the conflict between the two people due to their wisdom, integrity and knowledge in the traditions and norms. When the elderly person or people around are also unable to resolve the conflict, the issue is reported to the head of family (Weku Nukpa) usually a male, who invites the parties, sets a date and hears out the issue to find appropriate means of resolving the conflict. The chief of the community or area known as divisional chiefs are next in line when the Weku Nukpa is unable to resolve the conflict. The issue is heard at the Chief's palace (Mantse Shia), where the family head narrates the issue at hand to the chief, the chief consults his elders to decide on the case and sets a date to invite the parties to appear before him. Each state in Ga has its own chief; Osu Manste, La Manste, Nungua Manste, Teshie Mantse, among others and they play an important role in the resolution of conflict in the Ga community. Certain conflict or disputes between two houses, for instance a conflict between Asere and Gbese clan are sent straight to the Ga Manste to mediate. He hears the disputant's issue and sets the ground for mediation. This is done at the chief's palace. Some cases are held indoors while others are in the open and residents can observe the process. This is done by the chief and his elders at the palace. More so, queen mothers (Manyemei), as part of their duties in the Ga traditional area, are involved in the settlement of disputes through mediation. Some of the cases

ranges from marital disputes to inter family disputes, petty stealing, infidelity, hatred, back biting amongst others. The concept known as ‘ayaabiyoomo’ which literally means ‘seeking advice and counsel from the old lady’ is used by the Ga people; not just an old lady but a good old lady.³⁷ Issues are referred to queen mothers because of their knowledge, wisdom and experience in resolving conflicts. The old lady is referred as good because she is always able to give very good counsel, leading to amicable settlement of disputes.³⁸

3.3.3 Mediation Among the Adaboya Traditional Area

To begin with, mediation is a mechanism used in resolving conflict in the Adaboya Traditional Area of Ghana. Examples of conflict that normally break out in Adaboya includes family disputes where there is misunderstanding between family members, land disputes where people, individual or families fight over land and places cattle graze, accusation of witchcraft by people based on their actions and character, chieftaincy disputes, among others. Conflict resolution in Adaboya resides in the Naba (chief) Pog-naba (queen mother) Kiduma (sectional heads), Yidanduma (family or clan heads), Tendana (custodian of the land) and fetish priest in cases where curses and oath swearing is involve.³⁹

The resolution of conflict starts at the family level, headed by the family head or clan head, based on the type of conflict. When the family head is unable to solve the dispute, the issue is referred to the next hierarchy till the case reaches the chief (Naba) who has the final say in all matters.⁴⁰ The Pog-naba (Queen mother) usually handles marital disputes like adultery, divorce, fertility issues of couples among others. The people of Adaboya have two main mechanisms for the resolution of conflict: the Kima system and the Posiga system of dispute settlement.⁴¹

With regards to the Kima system, it is made up of elders: Yindanamu, Kinduma and the Naba. It is basically a mediation process where cases are settled without any form of punishment to the offender. The Yindanamu starts the process of settling the dispute and if he is unable to resolve it, he refers the issue to the Kinduma and finally the Naba. However, during the process of resolving the conflict the Yindanamu and Kinduma reports to the Naba, briefing him on the process and when they encounter difficulty, they seek advice from the Naba. Most cases are settled at the initial stages without having to reach the Naba's court where cases are arbitrated, and judgment given.

3.3.4 Mediation Among the Buems

The Buem traditional area is a politically centralized chiefdom, with traditional institution that oversees the general administration of the community. Conflicts are part of the Buem-Kator social life and there are traditional mechanisms for resolving conflict. The existence of mediation is evident in the conflict resolution of the Buems where the chief, his elders, divisional chiefs and queen-mothers perform the role of mediators in settling conflicts.⁴² Anthropologist have observed the mediating roles of the chief and his elders using conventions, norms and moral principles. The chief has his court where he mediates conflict normally in his house or in the open-air space. The need to settle dispute in the Buem traditional area is motivated by the fact that members of the community are linked together in a social and economic relationship. Members of the community will one way or the other have to deal with each other in the future. This calls for good relationship with one's neighbours, hence mediation as a means of settling disputes. The most common traditional mechanism in Buem-Kator is 'benyaogba ukpikator' which has a close meaning to mediation.⁴³ Lineage elders, medicine men, priests, and prominent persons acknowledged for their skills, wisdom and integrity in dispute settlement handle mediation cases. Buems like other

indigenous African communities believe that “house matter must not be allowed to be heard by outsiders and for this reason, elders and family heads are the first point of contact in mediating conflict between individuals in the community.⁴⁴ Mediation (benyaogba ukpikator) affords the Buem people a platform to reconcile interest and peacefully convince each other that whatsoever the issue may be, on the bigger picture the issue is not as important as living peacefully and together. This process is devoid of long deliberation and winner-loser mentality. Both parties are considered winners for finding means of addressing their own issue with the assistance of a mediator.

3.3.5 Mediation Among the Xhosa in South Africa

Mediation serves as a means of resolving conflict among the Xhosa of South Africa. The roles of the chiefs, counselors, herdsmen and elders are recognized, and attributed to as mediators.⁴⁵ Conflict between individuals, families and members of a tribe are referred to the family heads, clan head or chief, depending on the nature of the conflict to mediate and settle the conflict. The mediator interrogates the parties and finds out the truth of the issue. Series of discussions are made, and an agreement is reached, which is binding on the two sides. The accused is also heard and his point of view is taken into consideration to enable both parties accept the decision made by the ‘inkundla’, the mediator.⁴⁶ The entire society is involved and interested in the settlement at every level of the conflict resolution process. The main lesson from this type of mediation is not to declare one person as a winner and the other loser but to attain a win-win situation which is very possible. The chief serves as a unifying force who brings disputants together and peacefully resolves disputes. The herdsmen settle minor disputes but refer cases they cannot handle to the chief. The chief performs his mediation role with the assistance of advisors, who are elderly men of

repute, old men with court experience, men who were known for their wisdom and skills in handling disputes.⁴⁷

3.3.6 Strengths and Weakness of African Mediation

A major strength of African mediation is that, it promotes reconciliation and heals the pains especially on the aggrieved party, it promotes unity and emphasizes on the notion of belonging to a group.⁴⁸ African mediation promotes cultural norms and values. Mediators employ the use of values and traditions in resolving conflict which also serves as a means of passing knowledge about the people from one generation to the other. Another strength in African mediation lies in the way and manner in which members in the community are willing and interested in settling issues between parties in dispute. The communal nature of the African is an advantage as neighbours are always ready to mediate and help each other.⁴⁹

Again, African mediation is less costly, and in some cases, disputants do not pay for the process. Traditional leaders, opinion leaders and mediators offer their services for free because it is their responsibility to help resolve conflicts in communities. Nonetheless, African mediation has some weaknesses, one of which is partiality. Since mediators are people who already have relationships with the disputants, some tend to be bias and settle the case in a way that one party might be aggrieved after the process. Also, decisions are sometimes forced on disputants making them reluctant in going by the settlement plan. Again, the mediator might not have substance knowledge on the case, which hinders the whole process and best result may not be achieved.

More so, the communal and traditional basis on which mediation is conducted may no longer be significant in modern African communities because most people live private lives and are not as

communal as before.⁵⁰ Another critique of African mediation is that it does not encourage peer mediation, where young people are allowed to mediate in conflict times which will serve as a training ground for those who choose to pursue mediation as a profession, in the first place, children and younger ones in African communities are not given such opportunities. Even when an older person and a younger person have a misunderstanding, the younger one is chastised making younger ones feel inferior and less valued. Another limitation of African mediation is that, African mediation is gendered. Africans are patriarchal in nature and this plays out in mediation, especially in family mediation, where women are not seen as equals, and this affects decisions taken in resolving conflicts.

3.4 Western Mediation

Western mediation is a conflict resolution mechanism used by the Western societies, predominantly Europeans and Americans. This mechanism has been structured to suit the needs of the Western society and it is employed as an alternative to the main conflict resolution system, which is the court system of adjudication, where litigants refer their cases and settlements are made.⁵¹ The idea of Western mediation grew and became popular in the mid 90's as part of the ADR spectrum which consists of mediation, arbitration, negotiation and reconciliation.⁵²

Mediation as practiced now in Western society is purely European in perspective and tilted towards the growing Western society. It is practiced by Western states and also used by Americans. Western mediation is consistent and characterized by Western norms of conflict and selfhood.⁵³ The Western society stresses on individualism as against communalism of Non-Western societies. The individual or the self is an assumed category or entity.⁵⁴ (Primary emphasis is laid on the

individuals in conflict; the values and contract between them. This is because the conflict only affects the individuals and does not go beyond to involve other people. Social behavior and attitudes are determined and dictated by individuals. The interest and position of the disputants are all that matter, and the mediator find means of addressing those issues. A distinguishing feature of Western mediation from that of African mediation is that, Western mediation is a profession. Mediators are trained solely to mediate disputes and accreditation are given to mediators.⁵⁵ This means that not every person can mediate in disputes except those who have been trained and are practitioners. Mediators have substance knowledge in certain areas; there are those who are expert in family mediation, commercial mediation, and international mediation.⁵⁶

Competence is key in Western mediation. Mediators are paid for their services, owing to the fact that it is a profession. Western Mediation is generally structured and takes a particular style with ground rules that guides the mediators in the process of mediation.⁵⁷ Each stage of the mediation process is properly utilized, however Western mediators on certain occasions go with the flow of the mediation process with the ultimate aim of arriving at a settlement that is beneficial for all. Mediators from the Western perspective are encouraged to play only facilitative roles and not to influence the parties in making a decision. In right based mediation, mediators only give an assessment of the case and do not have the power to dictate what should be done or what he will have done if he was in the same situation. In examining Western mediation, it has been observed that most individual mediators do not have prior relationship with the parties in dispute.⁵⁸ Mediators may be recommended or the parties themselves usually come to an agreement that they will seek the service of a neutral third party. Few mediators have a prior relationship with their disputant. For instance at a workplace, the manager may act as a mediator and he/she might be

familiar with his employees. Western mediation is conducted privately in an enclosed area. The disputants and their issues are treated as a private issue and therefore it is done in seclusion to allow the parties express themselves properly without interference from other people who do not have interest in the issue. Among the core principles of Western mediation is confidentiality. Mediators are expected to keep the mediation processes and information confidential, issues discussed must remain just between the parties and the mediators.⁵⁹ For information to go outside the mediation corridors it has to be agreed on by both parties. Information received by mediators from caucusing must remain between them unless otherwise agreed on.

The objective of Western mediation is that consensus is reached, and this gives a chance for settlement.⁶⁰ Reconciling the parties' relationship is not significant due to the fact that they are autonomous and do not depend on each other. Neutrality is another overarching norm of Western mediation.⁶¹ Mediators are to conduct mediation in an impartial manner and shun gestures that can be implied or interpreted as partial treatment. Both parties at mediation are equal and deserve to be treated as such in order for the parties to have a level ground to come out with suitable settlement.

3.4.1 Western Mediation Case Samples

Case One

Problem: The dispute was on religious defamation; the claimant was demanding damages of \$100 from the defendant for speaking words that put the claimant's character into disrepute. A mediation process was arranged to settle the dispute between the parties. However, it was realized that there were several underlying issues alongside the slander issue, this made the mediation quite difficult.

Upon deliberation an agreement was reached, damages paid by both parties and an oral and written apology was to be exchanged by both parties. The mediation cost the parties less than they would have spent if they continued with a more formal action and it was fast.

Case Two

Problem: The dispute was a neighbour shared driveway. Peter and Linda were neighbours and shared a common driveway. Both of them had cars but Linda's boyfriend sometimes parks her car on the driveway making it difficult for Peter to move in and out on the driveway. Peter lived with his father who was very old, owing to the parking situation he usually parks nearby and walks his father to the house, and this was an issue for Peter. Peter met Linda and confronted her in a harsh way without even explaining what the issue was. Linda report the case to her boyfriend and he also confronted Peter which nearly turned into a fight. Mediation was arranged between the parties; Peter made his problem known and admitted he went about it the wrong way. Linda also apologized for the behavior of her boyfriend and admitted the parking space was not a problem but can be resolved quickly. Both apologized to each other and agreed to park well and not to inconvenience each other. Mediation took one day, and the parties paid for just the service of the mediator.

3.4.2 Strengths and Weaknesses of Western Mediation Model

One major strengths of Western mediation model are that, it produces long lasting agreements. Due to the fact that disputants draw out their own agreements, terms and condition, decisions are not forced on them; they tend to go by the agreement reached. Parties have absolute control on the decisions made at mediation.

Western Mediation model is not age bias. Children can be involved and heard in Western mediation and it serves as a means of encouraging children to speak up on issues and know the rights. In family mediation it helps children understand the issues on the ground and how it affects them. This helps children in such situations make informed decisions on the parents and family.⁶² More so, Western mediation makes room for peer mediation where peers mediate in conflict situations among friends and colleagues. Western mediation, compared to litigation is less costly and affordable making most people opt for mediation in cases that can be resolved at a lower level without having to go through the due process of the law, it is faster in terms of settlement rate and effective.

Again, Western mediation can be structured to meet a particular context; each type of conflict is addressed as with a different approach. Despite its numerous strengths, Western mediation has some limitations, one of which is that it does not take into consideration the cultural orientation of parties in dispute, their background and how they address issues. Again, mediation may not always be appropriate for children because it exposes children to knowing too much at a tender age when the conflict has to do with family issues.

In addition, a limitation of Western mediation is that mediation takes the efforts of the two parties to make it a success and for this reason, once one party refuses or walks out of mediation, it ruins the whole process and the efforts of the mediator. That will mean that the mediator has to go back to address certain issues if they decide to continue again. The power vested in the parties sometimes makes the mediation process tedious.

3.4.3 Similarities and Differences of Western and African Mediation Models

Both African and Western mediation models have the same aim and purpose that is to settle disputes amicably. Cases are referred in both models, the type and stage of the conflict will determine the appropriate mediator. In African mediation, disputants may be referred to see an elder or chief depending on the issue. Similarly, with the Western mediation, when the mediator does not have the necessary expertise he/she may refer the disputant to another mediator to assist them in settling their issues. They both aim at finding lasting solution to a conflict and assist disputants in settling their differences. Both African and Western mediation is conducted in an informal setting, and parties are encouraged to speak up and clear their thoughts from doubts.

The differences lie in the processes in terms of how the mediation is conducted, the personalities or actors in mediation, the expertise of the mediators, and the values and standards employed by the mediators, which reflects their beliefs and culture. Another difference has to do with the extent to which a settlement is binding on disputants and the sanctions used by mediator.

3.5 African Arbitration

Arbitration in African states and communities has been an old practice. There are traditional structures, and individuals engage disputants through arbitration processes in order to resolve conflict. Traditional African arbitration is another mechanism used in the resolution of conflict in traditional African communities. Customary arbitration; arbitration as an ancient practice was facilitated by traditional leaders, chiefs, elders, clan heads, and family heads as well as opinion leaders.⁶³

Arbitration serves as a second means of solving disputes when mediation in traditional African societies fails. Leaders often than not use arbitral powers when they realize the parties are not agreeing to settle their issues. Customary arbitration as practiced in Africa is characterized by both trained and untrained arbitrators and traditional leaders. In remote traditional African areas, leaders who act as arbitrators have no formal training in arbitration. They lead the arbitration process based on their wisdom, their knowledge in traditions and culture of the people and the desire to promote peace and live in harmony. However, in recent time arbitrators in Africa, Ghana in particular, are properly trained. They are trained on the process and the skills needed to act as an arbitrator. This has promoted arbitration and it is now a profession.

Apart from customary arbitration that is practiced by traditional societies, there are court-connected arbitration. The court-connected arbitration is an evolving practice in Africa. On such cases, the court recommends arbitration of cases and this can be done in the courthouse, private places or the offices of arbitrators. This type of arbitration is done by lawyers and judges who have the requisite skills. The number of arbitration centres across Africa is growing, and lawyers are developing specialist skills to serve in this field. African arbitration has existed before the introduction of ADR. Parties in a conflict do not necessarily agree that they will seek the help of a third party rather one party can report a conflict to an elder upon which the elder decides whether or not to summon both parties to settle the issue through mediation or report at the chiefs court for arbitration.⁶⁴

Again, a person who is not a party to the conflict but is aware of the relationship between the parties and has information of the breakdown of the relationship can also report the case to a third

party to have the disputant called to order by means of arbitration. It is the duty of other members of the community to assist and resolve conflict because Africans are communalistic. A more unique feature of the African arbitrator in traditional African communities is the fact that arbitrators are not paid for their services; they serve as arbitrators and give judgment because it is their responsibility to maintain peace and order as leaders in the community however professional arbitrators in court charge for their services. The values, traditions and norms of the people guides the arbitration process and it is evident in the process. Chiefs and other traditional leaders employ basic cultural knowledge in the settlement of disputes. In giving judgment, the truth of the case is forced out of the disputants. ⁶⁵

Truth in African philosophy is one and in deliberation the arbitrator by wisdom will know the truth even when the accused fails to say the truth.⁶⁶ Fines are imposed on the person found guilty and he/she is expected to accept the judgment. In settling the issue, traditional arbitrators emphasize on reconciliation which is an important ingredient in fostering good relation between the disputant. Decision made by the chief's court in terms of arbitration is binding on the parties. Chiefs use phrases like "stamping of feet" to mean that they have actually settled the case and have given their verdict. Another striking characteristic of African traditional arbitration is that, there are spiritual connotations to conflict and conflict resolution. Sanctions are made binding by the invocation of gods and spirits. Most disputants comply by the dictates because of the fear of going against the dictates of the gods. Spirituality forms a part of traditional customary dispute resolution, particularly customary arbitration. Below are customary arbitration processes among some ethnic groups in Ghana and other African countries.

3.5.1 Arbitration Among the Ashantis

Traditionally, the Chief's court is the final decision-making institution and litigants usually obey the dictates of the Chief because of his authority and the sacredness of his office. The chief and his elders settle issues and give judgment at the Chief's court.⁶⁷ The parties in dispute are called upon in turns to narrate their side of the story. They are cautioned to speak the truth, and nothing but the truth, in order to be able to solve the conflict. The Chief is sometimes assisted at his court by a panel of elders who give their thought regarding the case before a verdict given. In cases which involves curses and witchcraft, among other spiritual characters, fetish priest, deities and soothsayers are sought after and asked for directions. Any party that cursed the other is asked to reverse the curse and certain rituals are performed by the priest or priestess to reverse the curse. The Asantehemaa has her own court where disputes regarding petty quarrels, divorce issues, incest and rape, among others are settled and judgment given. An example of a case that was brought before the Asantehemaa regarding siblings' accommodation, Case title Kofi Vs. Ama, where Ama ejected his brother from the house and the case was ruled over by the queen mother.⁶⁸ The traditional conflict resolution aims at healing and restoring the relationships of the parties in conflict.

3.5.2 Arbitration Among the Gas of Ghana

The traditional court of arbitration is known as *Mojawe* among the Gas; disputes are settled there as well as the Chief's court.⁶⁹ Initially, the court, *Mojawe* was purposely used to settle conflicts regarding war conflicts, as the court was made to handle cases relating to bloodshedding, murder, oath swearing and curse related conflict. The main traditional court in the Ga community is located in Gamashi Abola in Accra. Major issues in the Ga state are tried in this court. The jury in this

court is made up of seven elders known as Akwashon of the seven clans, the Gamashie Akwashontse (Judge), Shipii and Asafoiatseimei (military officers) in Gamashi. The Akwashontse is the chairperson or the main judge. The chiefs and his elders advise the jury on how to go about settling the case as and when necessary. The father, uncle or senior brother will lead and accompany the parties in conflict to the court for deliberation, this is because the crime committed is regarded as a disgrace to the whole family and the father or any male in authority has to receive a part of the blame and disgrace.⁷⁰ The father or family head pays the fine on behalf of the accused and family because it is a disgrace to the whole family. Punishment is usually in a form of a compensation such as a fowl, goat, sheep and cash with a drink (a bottle of schnapps), given to the non-guilty party. The elders usually take a bottle of Schnapps and share. In cases where the offender continues and does not stop the criminal acts, he is banned from some things; for instance when he is a fisherman he is banned from going to the sea, a farmer may be stopped from farming and his land taken from him because the land is for the Ga state and others who show gross disrespect are exiled from the Ga community.⁷¹

The court ‘Mojawe’ was known for its fair judgment, integrity of the members and impartiality towards parties in conflict. Along the line, the court became vulnerable to bribery and favoritism and was dissolved by the Europeans in 1910. Gas on the other hand are not so much enthused about going to court so they more often than not settle conflict between parties at the basic level. Apart from the traditional court mojawe, the chief (Mantse) settles disputes in his palace with assistance from his council of elders. He hears the sides of the story from the disputants, and upon deliberation and consultations known as ‘ayaabiyoomo’, gives judgment. A fine is imposed on the guilty and he is asked to extend an oral apology to the other party.

3.5.3 Arbitration Among the Adaboya Traditional Area

Arbitration is a continuation of conflict resolution through mediation; when parties to a conflict do not agree to mediate their dispute, and the case escalates to a point where it can only be resolved through arbitration by the Naba at his court. The Naba gives the final verdict on a case and disputants are expected to obey.⁷² At the Naba's palace disputants are given a chance to narrate their side of the story and for the elders to determine the party who is at fault. After the verdict is given, the loser is usually asked to pay fines in the form of money or in presenting animals such as goats, cattle, sheep, among other forms of compensation depending on the gravity of the offence committed to the victim.⁷³ Again when the dispute is between a young person and an elderly, and the young person is found guilty, he or she is made to pay a fine known as luia to the elder.⁷⁴ Disputants are made to eat together in the same bowl or dance together as a form of reconciliation and forgiveness, again disputants are made to drink and share cola nuts. The parties in disputes are reconciled and asked to forgive each other and live peacefully.

3.5.4 Arbitration Among the Buems Of Ghana

The Buems use the phrase 'bate kate' to refer to arbitration. The process of bate kate can be conducted at the Lineage heads court or at the chiefs palace depending on the nature of the conflict.⁷⁵ 'Bate kate' is a more detailed process than mediation, 'benyaogba ukpikator'. This is because it involves several cross examinations and narration of events as they unfold into the conflict as well as questioning of witnesses. Serious cases are sent for arbitration, for instance, murder, treason and crime committed against chiefs and elders. Court deliberations are open to anyone whether or not one has an interest in the case and observers are allowed to question the disputants and make suggestions as well. After both sides have been heard and the evidence

analyzed, the jury go into seclusion referred to as 'adzina' to decide on the verdict of the case. By secluding themselves and deciding on the case, they are said to be consulting the old lady, 'abrewa'.⁷⁶ The abrewa is a fictitious old woman who is considered as endowed with wisdom and knowledge in all things. After consultation the jury return to give verdict of the case a fine is imposed on the guilty party and the exonerated party is apologized to. The fines include an amount of money, schnapps, goats, fowls among others. In some cases, the guilty party bears the cost of the entire process.

3.6 Western Arbitration

Western arbitration is basically court-connected arbitration and used as an alternative to the normal court litigation. Arbitration is a private means of resolving dispute by an independent third party. Most commercial and international disputes are settled through arbitration to maintain international peace and security.⁷⁷ Parties to a dispute decides to hand over their dispute to an arbitrator to settle the dispute, a court may refer disputants to arbitrate their dispute. Again, a contract between individuals may spell out that incase a conflict arises, the dispute should be settled or resolved through arbitration. Awards given after arbitration is binding and enforceable by law courts.⁷⁸ Parties give their consent from the beginning of arbitration to accept the final verdict of an arbitrator. Arbitration in the Western world is held at any location that is convenient for the parties; it can be held at the arbitrator's office, a court or a private place. Since it is a private and confidential process it is only by the consent of the parties that external participants will be invited to witness the process. The disputants can be represented by a lawyer if need be. Western arbitration is a professional field; arbitrators are trained on principles, skills and techniques. Arbitrators charge for their services depending on the case and the time used in completing the

whole process; parties usually agree on the fee with the arbitrator.⁷⁹ Western arbitrators use the law, principles and contract agreement to decide on cases. In some cases, arbitration awards may be appealed if the judgment was biased.

3.7 Conflict Prevention and Resolution

Conflict prevention and resolution has been an agenda pursued to maintain world peace. Conflict prevention and resolution is aimed at reducing the impacts of conflict and to prevent the outburst of conflict.⁸⁰ In Africa, efforts from natives, international actors and institution have been tremendous in preventing conflict in Africa. Traditional Africans are religious by nature⁸¹ and this is demonstrated in their assumption on conflict prevention. Religion and spirituality form the basis in interpreting conflict prevention methods. Members of the community strive to observe moral values and code of conduct to prevent conflict as well as resolve conflict.⁸²

Religious leaders prayed and counseled people to live at peace in order to prevent conflict in communities. In recent times, African religious leaders are seen and heard praying for Africa and preaching peace thereby preventing conflicts and tensions on the continent. Peace building is promoted across the continent and peaceful co-existence among groups is paramount to Africans in preventing conflict. Neighbours forgive each other and the mistake is no longer recalled. Professor Ali Mazuri once said, “Africans generally have a short memory for hate and always seek peace.”⁸³ In contemporary times the AU has played a pivotal role in promoting peace, human security and good governance in order to prevent conflict. The ‘panel of the wise’ continue to build mechanisms to prevent conflict and resolve conflict in the region.⁸⁴

In the Western world, conflict prevention and conflict resolution is a critical part of the objectives and initiatives of nation-states and international organizations like the United Nations. The transformation in the international system after the cold war brought about changes in the approach to conflict prevention and resolution. States are interconnected due to globalization and it is prudent to handle conflict appropriately to avoid spill-over effects in other states. More interactive approaches and traditional diplomacy approaches are used in preventing and resolving conflict in recent times. Human rights, rule of law, and international law is promoted and respected by states, which helps in reducing conflicts.

3.8 How Mediation is Built into Conflict Resolution

Mediation as a conflict resolution process is built to resolve conflict in various ways. Aside parties in disputes agreeing to submit their issue to be settled through mediation, other processes start as a result of contract agreements. In business contract agreements, there are sections that stipulate what action should be taken in case there is a conflict. Such agreements build mediation as a form of conflict resolution and for this reason, once there is conflict, reference is made to the contract and the conflict is mediated.

Mediators who facilitate these types of contractual mediation usually ask the parties to submit a copy of the terms and conditions of the contract agreement so they can all refer and agree before the mediation process starts. In other instances, the mediator's details will be available in the contract or the organization that will facilitate the mediation process will be indicated in the contract document to ease the process in terms of the parties deciding on who to mediate. All these provisions are agreed upon from the beginning of a contract. Some appointment letters also provide

sections for mediation at the workplace or institution in the event of a conflict arising. More so, mediation as a mechanism for resolving conflict is built into conflict resolution owing to the fact that in resolving conflicts, there are processes that one must use before seeking redress from the law court if necessary. This makes it important for disputants to exhaust all internal processes available to resolve the conflict before looking out for other measures. Mediation is usually part of internal conflict resolution processes and disputants are encouraged to make use of it to resolve and settle their indifferences. Cases that skip or miss the use of these internal processes for resolving conflict are referred back to exhaust all the internal process. For instance, in an organization when there is conflict between two employees the disputants are not to go straight to the Managing Director for him to resolve the conflict, rather the issue can be reported to the immediate boss or other superiors to try and settle the issue before going to the next line of authority. This shows the importance of exhausting all internal process in conflict resolution. In the same vein, mediation must be attempted to resolve the conflict before arbitration and court trial depending on the case.

Another mode through which mediation is built or put together in conflict resolution is through the court. The court makes way for disputants to utilize mediation as a conflict resolution process through referrals. Court connected mediation is a mode by which courts build mediation into conflict resolution, the courts encourage disputants on certain cases that can be resolved at the basic level to seek the assistance of a third-party mediator to help them in finding a peaceful settlement for their dispute. Conflict resolution as a concept promotes mediation as a conflict resolution process due to the importance of solving disputes at an earlier stage and the value of preventing conflict from degenerating into serious ones.

3.9 Diplomacy in Conflict Resolution

Diplomacy is used by people all over the world in their relations with others and in the resolution of conflicts.⁸⁵ According to Robert Smith (1977), “diplomacy is the fundamental means by which foreign relations are conducted and foreign policy implemented, far from being an invention of capitalism of modern nation state, or classical Antiquity either, found in some of the most primitive communities and seems to have been evolved independently by people in all parts of the world.”⁸⁶

Diplomacy as a tool for conflict prevention and resolution continues to be employed in conflict situations. States and institutions use diplomacy to conduct mediation, consultation and monitoring, among others. In traditional African societies, when conflicts arise, there are people who use diplomacy in the resolution of a conflict by employing certain moral codes, ethical ideals and legal principles to appeal to the disputants on the need to move beyond the conflict, to unite and forgive each other. Marriage was a form of diplomacy which was used in traditional African communities in preventing conflicts.⁸⁷ Marriage was not just seen as a union between two people, but it unites families and brings together people with different ethnic backgrounds together. Peace and cooperation are promoted through marriages and friendships. The exchanges of gods, clan ties and establishment of friendship were some of the diplomatic instrument used in preventing conflicts in African states.⁸⁸ Diplomatic relationships between the Dwaben state and Krakye state in the Volta region of Ghana started with the establishment of a shrine for the two states.⁸⁹ In Western societies, different types of diplomacy are employed in conflict resolution. Shuttle Diplomacy and Hard Diplomacy are employed to convince and appeal to parties on peace and resolution of conflicts.⁹⁰

3.9.1 Thoughts and Analysis of African and Western Mediation

Interviews were conducted at some selected ADR and mediation centres to gain an in-depth knowledge on the subject matter. Gamey and Gamey Group was one of the institutions I conducted the interview. Gamey and Gamey Group is a well-known ADR centre noted for mediation and arbitration processes.

An interview with the head of ADR at Gamey and Gamey gave an insight into what African mediation is, as well as Western mediation, their similarities and differences, among others. According to Mr. Saeed, the head of ADR at Gamey and Gamey, he is not completely convinced whether there is a something strictly known as African mediation and Western mediation which has its own distinctive characteristics and similarities. In his view he can understand that academicians and some writers would want to frame mediation into these context as African and Western mediation.⁹¹ He asserts that mediation itself is something that seems to be confused by lot of people, especially by our traditional leaders.

Most traditional leaders tend to engage parties using customary arbitration, the traditional leaders use terms that suggest that they have indeed solved the issue, for instance ‘ya ka ama ano esi’, which literary means ‘we have settled the issue’; in other words the parties have come to agreement. In terms of narrative and language it appears that they are mediating a conflict but when one carefully looks at the technicalities and processes used, it appears that it is not mediation but arbitration at the customary level. However, there are some traditional leaders who use mediation as a tool in resolving disputes, allowing the parties to come out with their own settlements. Some disputes settled through mediation include family disputes, land sale disputes,

chieftaincy disputes among others. Recently most traditional leaders have been trained and are experts in mediation.

On the whole traditional leaders, opinion leaders among others normally use arbitration in resolving disputes. They judge the cases and use expressions like ‘stamping of feet’ which means he settled the issue and brought the issue to an end. Mediation as a tool in resolving conflict is in different forms: structured and unstructured. A mediator can follow a particular format in addressing and helping parties reach a mutually beneficial settlement. The mediator using this type of mediation travels through the process to get to the end of the issue.

Writers do talk about styles in mediation but the style, whether structured or unstructured does not necessarily classify mediation as African style and Western style mediation. In his view, either style ultimately aims at bringing parties together and help them resolve the issues amicably. Either style employed by a mediator has its own advantages and limitations. For instance, using a structured mediation can inform the mediator on the issue at stake and how to go about it. On the other hand, in cases where the parties from start are in agreement already and want to make efforts to reach a settlement, there is no need going through the whole structured process. Adjustments in styles will be needed as and when necessary for an effective settlement process. According to him, there are instances that opinion leaders, traditional leaders and mediators combine different mechanisms; mediation, arbitration and conciliation in resolving disputes and this makes it difficult to put a straitjacket and say this process is mediation or arbitration. In the case of the Abudu and Adani dispute, different mechanisms were employed at each stage of the resolution process by the traditional leaders to resolve some of the minor and side issues of the conflict. In

his opinion what needs to be done is to train people: traditional leaders, individuals and opinion leaders, on alternative dispute resolution to become experts in the field in order to know what tool would be appropriate for different types of conflict. Many people mistake ADR to mean mediation because arbitration is more associated to the court system because it means the arbitrator judges the conflict just like court judges decide on a case.

Diplomacy in conflict resolution to him is a two-edged sword; it can be beneficial, and it can sometimes worsen the conflict. It is a peaceful tool to achieve co-operation, international peace and development. However, it has the tendency to cause more harm. Diplomacy is essential in international conflict resolution: a fine craft that has been used in resolving most conflicts in the world. His view on how mediation is built into conflict resolution lies in contractual schedule or relationship between parties in business. Parties usually have mediation in their dispute resolution clause that directs them, and in the event that conflicts arise, they will opt for mediation against the court system. Again, employment or other work appointments also have mediation as a process to resolve conflict when it happens. Aside these, parties do agree to settle their disputes through mediation more often than not in recent times. Advocacy on ADR is key and it will be appropriate if we educate the public on these alternative dispute resolution mechanisms and to encourage disputants to settle basic disputes that can be resolved at a lower level than opting for court litigation.⁹²

According to Mr. George Amoah of the Ghana National Peace Council, Africans had their own system of resolving conflict before the coming of the Europeans. The governance structure was the traditional system, and it worked well.⁹³ These traditional structures mediate in conflict

situations; there was the Paramount Chief who was the overlord, the Chief who attempts mediation at the larger community level, the Odikro who attempts to resolve conflict at the community level and the family head who mediates in conflict at the family level. He stated that traditionally, Africans did not distinguish between mediation, negotiation, arbitration or reconciliation. All they knew and practiced was conflict resolution. However, traditional leaders and opinion leaders acted as mediators in conflict times to settle disputes between people. One main difference between the African and Western mediation has to do with the style. In the traditional African mediation, there was nothing like a structured mediation that one has to follow.

Traditional mediators settle disputes based on their wisdom on the subject matter as well as values and custom of the community. There were no laid down guidelines and principles to follow. On the other hand, Western mediation is structured, some were written, and others were unwritten. Regardless of the style employed in Western mediation, a mediator had a method or procedure at the back of his mind to use. Again, there was nothing like voluntary mediation in traditional African communities where parties voluntarily come or submit their disputes to a third party to help them resolve their conflict. He mentioned that what existed was that chiefs, elders and opinion leaders had the power to summon parties, and the parties could not decline the call. It was not the norm for members in the community to disobey and refuse to see an elder or chief when he is being called upon. Respect for authorities was a norm. However, Western mediation is voluntary, parties agree to seek the help of a mediator to help them talk out their issue. This type of mediation as practiced currently in Africa is new and increasingly growing with the introduction of alternative dispute resolution mechanisms. Another difference has to do with the sanctions that comes when a party fails to go by the agreement. With the African form of mediation, the traditional leaders

who were in charge could punish the recalcitrant party through fines in the form of money, drinks, goats among others and he will be forced to do the needful. On the other hand, when a party fails to go by their settlement plan, the court can take action against the defaulting party.

On similarity, both the African and Western mediation have a process that is followed. According to Mr Attoh Okai, the senior programs manager at the Ghana National Peace Council, the style of mediation used in resolving conflict qualitatively affects the outcomes of the process.⁹⁴ For instance with Western type of mediation, due to the fact that parties are allowed to come up with their own settlement they mostly go by what they have agreed to conversely. With African mediation, because the settlement is brought up by the mediator; whether a traditional leader or an opinion leader, more often than not, one side, usually the party who feels the settlement is not in his favour, will go against it, making the mediation unsuccessful. In his view African ADR is mixed up; there is usually confusion as to what type of ADR is being used in a particular conflict resolution process.

Customary arbitration and Western arbitration are similar in the sense that they both listen to the parties and give verdict upon hearing the case. In Western arbitration, the parties can choose who to be present, but in customary arbitration the panel is already made without the approval of the disputants. Diplomacy as a tool is used in resolving conflict. Diplomacy is used in mediation, reconciliation and other ADR processes. Sometimes a mediator will have to meet with each side separately to diplomatically talk and indulge them, in some conflict situation certain opinion leaders and influential people are called on as a form of diplomacy to try and convince the parties to reach a beneficial settlement and avoid conflict. Diplomacy is first used and if it fails, force is

used in resolving conflict. He emphasizes that conflict can be prevented when certain mechanisms are put in place. According to him, there is a need for behavioral changes in order to prevent and avoid conflicts, also certain values must be inculcated and practiced to prevent conflict. Some of the values include tolerance, where people with different ideological backgrounds or people with different identities understand and accommodate opposing views, trust where people open up to each other. In his opinion, conflict in itself is not bad. It is our responses to conflict that makes it bad when it degenerates into an uncontrollable violent one, and that is when it becomes a problem. Conflict can be resolved by developing local mechanisms; we should understand our context and bring up measures that will explain and address the context of the conflict.

Also, mediation can be built into conflict resolution through advocacy. The general public must be educated that there are other means of resolving conflict, that is, the ADR's aside court litigation. When this is done people will refer more cases to mediation and other forms of conflict resolution and the outcomes will be mutually beneficial to the disputants because two wrongs do not make a right.

According to Mrs. Justina Ativor, who is a court-connected mediator at the Ashaiman mediation centre, there is nothing like African mediation in her opinion because mediation as it is being practiced in Africa was copied and learnt from the Westerners.⁹⁵ In her opinion, we learnt mediation from them and so there is no difference between what is practiced in Africa and what model of mediation is practiced in the Western world.

Mr. Kutiname, also at the Ashiaman mediation centre shares the same observation. He asserted that what is practiced by traditional leaders in Africa is not mediation but arbitration because it is not voluntary and decisions are forced on disputants, and the chief will generally judge the case and give a verdict.⁹⁶ What they practice at the centre is that when a one person reports an issue at the centre for it to be mediated, an invitation letter is sent to the other party and a date is scheduled for a meeting. Before the mediation starts, a consent form is given to both parties to sign and grant their consent to the mediator in charge to guide them through the process, and when the parties finally comes out with their own settlement they sign an agreement form which is binding on them and it is enforced by the court should any party fail to render his/her part of the agreement.

Mrs. Ativor mentioned that there are some traditional leaders and opinion leaders who really practiced mediation in Africa even before the introduction by the Western world. Again, with regards to mediation as a profession, most mediators rarely charge for their services as compared to the Western world; for them they only charge a token and help the parties resolve their issues and even offer free consultation. Conflicts can be prevented when we learn to tolerate other people and ignore confrontations that will lead to conflict. There should be education on conflict prevention and resolution by NGO's and other organizations.

In an interview with Kwesi Asiedu Kwakye Esq, there is nothing really like African or Western mediation but to some extent it can be categorized as such looking at the formalities, with African form of mediation being informal and Western mediation categorized as formal. Again, Western mediators are usually trained in specific areas like sports, commerce and family mediation whereas African mediators gain experience from the number of years they work as mediators with no

specialized training. Western mediation is guided by criteria and African mediation does not follow any laid down rules. He mentioned that, customary arbitration or African arbitration in recent times is getting close to litigation, they are both binding on the parties. Diplomacy is very important in ADR because third parties go by soft means to bring the parties together, unlike litigation where parties battle out opinions. The government and stakeholders can put in mechanism to bring people together to tolerate one another, enhance education and promote advocacy by encouraging people to solve disputes peacefully than resulting to violence. Mediation is built into conflict resolution spontaneously aside documenting it in contracts and encouraging people.

In an interview with Justice. Eric Kyei Baffour of the high court of Ghana, he explained that mediation basically is to have a neutral third party who tries to make peace in the event of a dispute. He stated that mediation has played a critical role within the African and Ghanaian context in particular at different levels. African mediation begins from the family, clan, and continues to the village level. It derives its meaning and process from the context of Africans and the respect for authority. As a result, an elder can summon or invite you to settle a dispute. It can be voluntary at some cases and at other times it is not voluntary but the other party appears before the neutral third party due to respect. However, Western mediation is voluntary, parties agree to submit their disputes to a mediator for mediation. Western mediation is usually in commerce and family but in Africa there are series of cases that are brought for mediation. The difference lies in the socio-cultural context of Africans and the culture of Westerners as well. Again, African mediation can be voluntary or not whereas Western mediation is always voluntary, and parties come up with their own settlement plan. Africans rarely charge for their service, but parties sometimes offer a token

as a thank you which is referred to as “aseda” in twi. The similarities between African and Western mediation is that they both have the same aim and purpose, which is to resolve dispute and reconcile parties. More so, mediators in both cases are professionals. In the case of personalities who conduct African mediation, professionalism is not in terms of certificates or degrees but experience in mediation and that of Western mediators are trained professionals.

In his opinion the commonalities and differences affect the outcome of mediation one of which is that in the African context because it is not always voluntary one party can choose not to perform his/her part of the agreement but with Western mediation, parties usually go by the settlement plan. In addition, African arbitration is meant to be voluntary and there must be acceptance by disputants. In Western arbitration parties agree to arbitration, they choose their arbitrators who in turn chooses a third arbiter who becomes the chair and the awards are binding. It is only in few cases that one can set aside an award.

He asserted that diplomacy is important, and it is used in conflict resolution. The type of diplomacy used will depend on the level of sophistication of the parties, their education, among others. He noted that conflict can be prevented by education on tolerance, respect, among others and conflicts can be resolved in a number of ways, and that is what they do at the court. Conflicts can be resolved through mediation, negotiation, arbitration and litigation. Most people do not want to mediate or negotiate in dispute leading to backlog of cases in the court, the culture of fighting for things makes it difficult in recommending ADR to disputants.

3.10 Conclusion

In conclusion, the chapter discusses mediation in general and compares the African and Western mediation models with particular references from some ethnic groups in Africa, Ghana in particular as well as some Western case studies of mediation. It looked at the strengths and weaknesses as well as similarities and differences of both mediation models. The chapter also looked at arbitration in the African and Western point of view which is equally important owing to the confusion in drawing the line between mediation and arbitration in many African Traditional communities. It continued to examine conflict and conflict resolution, how mediation is built into conflict resolution and role of diplomacy in conflict resolution and finally analyzed findings from interviews conducted.

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CHAPTER FOUR

SUMMARY OF FINDINGS, CONCLUSIONS AND RECOMMENDATIONS

4.0 Introduction

The study examined the African and Western mediation models, how mediation is conducted from the African perspective and the Western style of mediation. It looked at the differences in terms of personalities, process, values and culture of the two models. The study also looked at the strengths and weaknesses of both the African mediation model and the Western mediation model. It continued with arbitration in Africa and Western arbitration, what they entailed as well as conflict prevention and resolution and diplomacy in conflict resolution. This chapter provides the summary of findings, conclusions and recommendations on the comparative study of African and Western mediation models.

4.1 Summary Findings

In summarizing the major findings of the research, it is important to look at the questions that guided the study:

- What is the Western concept of mediation?
- What is the African (traditional) concept of mediation?
- What are the similarities and differences between African and Western mediation?
- How does the similarities and differences qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western world?

The following are summaries of the major findings based of the research questions asked.

- From the study, it was gathered that Africans had their own mechanisms that was used to resolve conflicts before the introduction of ADR in Africa of which mediation was part. These mechanisms used to resolve conflict in traditional African communities were not Classified as mediation, arbitration and negotiation. Rather all these mechanisms were employed as and when necessary in the process of resolving conflict and parties are usually encourage to use mediation as a starting point in resolving conflicts. Mediation was therefore one of the main ways through which disputes were settled in Africa. On the other hand, the study revealed that Western mediation came to be an alternative to the court system. Mediation is part of the Alternative Dispute Resolution spectrum (ADR) and is used as an alternative; it was not used as a main dispute resolution mechanism as existed and practiced in African communities.
- The study revealed that the personalities who acted as mediators in both African and Western mediation differed. Traditional rulers, elders, family heads and religious leaders acted as mediators in Africa, until recently when people started pursuing mediation as a profession. Western mediation had nothing like traditional leaders but trained professionals, mediators, lawyers and judges.
- The study showed that, both models of mediation has the same aim and purpose that is to settle disputes peacefully between parties.
- Also, the study identified that mediation in Africa and Western societies is conducted in an informal setting.
- The study revealed that the similarities and differences between the two models qualitatively affect the outcome of the effectiveness of mediation in Africa and the Western

world, the approach employed by a mediator has an impact on the outcome of the entire mediation process. It contributes to the success or otherwise of the mediation process.

- Again, the study revealed that there is confusion between mediation and arbitration in Africa and most people refer to ADR as mediation not knowing that ADR involves other mechanisms.
- More so, the study showed that very few people seek the services of a mediator in Africa to assist them in settling their disputes, most people, especially those in urban areas prefer going to court to get justice while rural area dwellers sometimes make use of traditional leaders in conflicts.
- The study showed that most traditional leaders and opinion leaders in Africa, Ghana in particular have received some training on how to conduct mediation and arbitration. They are also trained on how to combine both mechanisms in certain cases usually referred to as med-arb to arrive at a good settlement.
- Another significant exposure from the study was that a section of experts believe that there is an African form of mediation where the actors use traditions, values and norms to mediate. Another section believe that there is nothing like African mediation because, in their opinion, mediation as practiced now was learned from the Europeans through ADR although some traditional leaders performing something that was close to mediation though strictly not it, and had some components of arbitration in it. However, majority are aware that there is an African mediation which is different from Western mediation in terms of processes, personalities and structure of mediation.
- The study showed that the ADR act has encouraged disputants to make use of mediation as a mechanism in resolving conflicts as well as other mechanisms under the ADR

spectrum. Interviews conducted at selected ADR centres revealed that mediation as a mechanism is growing in Ghana and performing well in terms of settlement rate; community ADR centres like the Ashaiman mediation centre settles most disputes in the community some of which are child maintenance, tenant disputes and family disputes, among others.

- Again, the study revealed that most political misunderstandings and conflicts were resolved through mediation and negotiation.

4.2 Conclusions

The study has evidently proved that mediation as a conflict resolution mechanism is in different models. It is practiced differently by cultures and it is usually designed to suit the needs and context of a particular culture and people. Mediation has contributed in resolving a number of conflicts at the community level, state level and at the international level and there are series of personalities who mediate and assist parties in resolving disputes. The model of mediation used by African and the Western world has led to the terming and promotion of what has come to be known as African mediation and Western mediation because there are modifications, differences and similarities of mediation. A blend of the African mediation and Western mediation is important owing to how globalized the world is currently. Both mediation models have potentials in resolving conflicts in the world and reducing the backlog of cases in the court. A blend of the two mediation models under study will qualitatively affect the outcomes of conflict resolution and increase settlement rate across the world.

4.3 Recommendations

- The study recommends that the conflict resolution fraternity and the judicial service should support the promotion of mediation as an alternative dispute resolution mechanism as well as other ADR mechanisms since it has high settlement rates. This can be done through the referral of cases by judges on certain cases to go for mediation instead of court settlement.
- The government, international organizations and non-governmental organization must sensitize and educate the general public, both rural and urban dwellers, on the need to resolve disputes through mediation and explain the advantages of mediation over court litigation. It is evident from the study that very few people are aware of ADR mechanisms and seek the services of a neutral third party in resolving conflict. Public education can by the NCCE and other institution can push this agenda.
- Mediators and other conflict resolution experts must be encouraged to welcome and employ the use of other values from other cultures in the process of mediation, especially when the parties have different cultural orientations (i.e. religion, ethnic), in order to understand the needs and wants of the parties for effective conflict resolution. This can be done through cross cultural conflict resolution and avoiding stereotypes when mediating.
- Mediators must be properly trained in order to help disputants appreciate the value and worth of peace to all mankind. Mediators must make disputant aware of the possible consequence of disputes if not settled amicably, this will
- The institution of ADR must be branded and made attractive for people to venture into conflict resolution as professionals in order to have more hands in helping disputants settle their disputes. Governments, Judicial services and other stakeholders can offer scholarships to deserving students to further their studies and become professionals who will assist in

settling disputes. Also, the study of ADR can be introduced as a course at undergraduate and at the Post-graduate level in universities.

- Young people across the world, Africa in particular must be given opportunities by their government to take part in mediation and other conflict resolution mechanism as a form introduction and training to equip them with real life experience in conflict resolution.
- Government, civil societies and international organizations must support in the construction of ADR centres especially in developing countries. Dilapidated ADR community centres must be rebuilt. In Ghana, the Ashiaman mediation centre is in a bad state; services are provided in a wooden structure which is not convenient for workers and disputants. The government of Ghana must fulfil its promise on the building of a national ADR centre to oversee the operations of all district and regional centres as stated in the ADR Act 2010.

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Musah-Khaleepa, Saeed Head ADR at Gamey and Co. ADR Centre. North Dzorwulu, Interview 26th June 2019

APPENDIX

QUESTIONNAIRE

The interview conducted to gain information that will assist me in the completion of my thesis on “A Comparative Study of the African and Western Mediation Models: A Case of Ghana” at the Legon Centre for International Affairs and Diplomacy (LECIAD). You are guaranteed of outmost confidentiality on any information given. Counting on your cooperation.

Name of Respondent.....

Institution of Respondent.....

Title of Respondent.....

Date of Interview.....

1. What is mediation?
2. Do we have types of mediation?
3. Are you aware that there is an African form of mediation and Western mediation?
4. What is African mediation?
5. What is Western mediation?
6. What are the differences between African and Western mediation?
7. What are the similarities between African and Western mediation?
8. Do you think the differences and commonalities qualitatively affect the outcome of mediation?
9. How is mediation different from arbitration?
10. What is African/Customary arbitration?
11. What is diplomacy in dispute resolution and what does it involve?

12. What is conflict prevention and conflict resolution?

13. How is mediation built into conflict resolution?