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Alternative Dispute Resolution in Africa: Is ADR the Bridge Between Traditional and Modern Dispute Resolution?

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**Alternative Dispute Resolution in Africa: Is ADR the Bridge Between
Traditional and Modern Dispute Resolution?**

By: Catherine Price

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I. INTRODUCTION

Many African citizens have lost faith in their judicial system’s ability to provide timely or proper access to justice. As a result of backlogged court dockets, claimants may wait years, or even more than a decade, before going to trial.¹ Consequently, African citizens have lost faith in their courts’ formal channels, which may lead to societal conflict or political instability.² Alternative Dispute Resolution (“ADR”) has arisen as an increasingly popular alternative to the formal legal channels, particularly in resolving less serious disputes, promising efficiency, and increasing the perception of justice.³ Particularly in Africa, where post-conflict and fragile states are common, timely resolution is essential. In the absence of timely, accessible, affordable, and trusted methods, conflict may arise and create a system of violence and vigilante justice.⁴

Formal litigation is restricted by the adversarial system in establishing fairness and satisfaction. Lack of confidence in the courts significantly impacts the government.⁵ Despite initiatives of modernization, many nations have found difficulty in establishing an efficient and trusted court system.⁶

¹ Ernest E. Uwazie, *Alternative Dispute Resolution In Africa: Preventing Conflict And Enhancing Stability*, 16 AFR. SECURITY BRIEF 1, 1 (Nov. 2011), <http://africacenter.org/wp-content/uploads/2016/06/ASB16EN-Alternative-Dispute-Resolution-in-Africa-Preventing-Conflict-and-Enhancing-Stability.pdf>.

² *Id.*

³ *Id.*

⁴ *Id.* at 2 (noting that even in a formal process, courts may overlook key elements of a case as their focus is not on dispute resolution).

⁵ Uwazie, *supra* note 1, at 2 (finding a strong correlation between confidence in the government and confidence in the judicial system).

⁶ *Id.* at 2.

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The biggest problem in Africa is the backlogged court dockets.⁷ Many judges have more than 100 cases each day and the impossibility of adjudication leads to delays, which increase the court's susceptibility to manipulation and exploitation.⁸ As a result of this backlog and insufficient justice, a separate judicial system may emerge. Modernization of the courts has diminished the power of the traditional judicial system.⁹ ADR has emerged as an increasingly popular channel outside formal procedures to resolve disputes in a timely manner, while restoring the parties' sense of justice.¹⁰

Alternative dispute resolution is not a new concept to African states.¹¹ Unfortunately, as countries became colonized, government-controlled dispute resolution replaced the customary law systems.¹² Some of these traditional dispute resolution mechanisms continued, but mostly in informal systems and lower courts.¹³ Modernly, both traditional dispute resolution and formal legal channels exist; the problems we face are first, how to reconcile these two spheres, and second, whether alternative dispute resolution is a viable alternative.

The legal system and social context of African nations is quite different from Western culture. African countries have complex legal systems, applying state law, which was implemented by colonists around a century ago, and also customary law.¹⁴ Africa adopted ADR from Western nations, where it is understood as an "alternative" to the law in countries.¹⁵ However,

⁷ *Id.*

⁸ *Id.* (mentioning an additional increase in expenses, in both time and money).

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ Jasmine Dickerson, *Overview of Commercial Alternative Dispute Resolution in Africa*, BUSINESS CONFLICT MGMT., LLC (June 21, 2012), <http://www.businessconflictmanagement.com/blog/2012/06/adr-in-africa/#more-1075> (noting that reconciliation is the traditional means of resolving disputes and traditionally, African societies resolved disputes through a negotiated settlement).

¹² *See Id.*

¹³ *See Id.*

¹⁴ *See* Sandra F Joireman, *Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy*, U. OF RICHMOND POL. SCI. FAC. PUBLICATIONS 1, 3 (2001), <https://scholarship.richmond.edu/cgi/viewcontent.cgi?article=11116&context=polisci-faculty-publications>.

¹⁵ Dominik Kohlhaagen, *Alternative Dispute Resolution and Mediation: The Experience of French-Speaking Countries*, DHDI 1, 6 (2007), www.dhdi.free.fr/recherches/etudesdiverses/articles/kohlhaagenmediation.pdf. (noting that some states in Canada require mediation prior to court litigation in family law)

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Western countries primarily have only one legal system, whereas many African countries are pluralistic nations, meaning traditional concepts of dispute resolution are already in place.¹⁶ Thus, modern ADR must integrate traditional forms of dispute resolution.¹⁷

This article advocates for using Ghana's introduction of ADR as a model for other African countries. Like Ghana, most African countries have adopted a form of ADR based on Western nations; however, as African culture and legal systems are quite different than Western culture, modifications are necessary.¹⁸ Ghana's experience shows that modern ADR can be adopted into African countries, but an understanding of the traditional mechanisms is necessary.

Part II of this article provides an introduction of ADR and its historical context in Africa. Part III examines customary and modern dispute resolution. It looks at the relationship between the two systems, the competing tensions, and possible intersection. Part IV looks to Uganda's experience in implementing ADR, and the challenges that have emerged. Part V looks at Ghana's success in incorporating ADR into its system. Part V provides a comparative analysis, looking at lessons learned from Ghana's experience and how to effectively apply ADR in other African countries, specifically Uganda. The section concludes with a discussion on the potential success of implanting ADR into Uganda. Part VI considers recommendations in utilizing and developing the ADR process, and the incorporation of the traditional and modern methods of dispute resolution.

II. ALTERNATIVE DISPUTE RESOLUTION IN AFRICA

We have decided to take another measure since government has failed to address our case Yes, the only system I can try now to work is violence to carry on hostility, organize my brothers because we are hurt and the government is not sensitive to our feeling. We will go and jump on the perpetrator and kill him in the same way.¹⁹

¹⁶ *Id.* at 10 (noting that in the United States and in Europe, unlike Africa, traditional notions of dispute resolution were implemented via ADR).

¹⁷ *Id.* at 7. This may include seeking advice from traditional leaders during mediation or referring cases to local courts to proceed in arbitration. *See Id.* at 10.

¹⁸ *Id.* at 6.

¹⁹ Uwazie, *supra* note 1, at 1 (Brother of victim of alleged ritual killing in Liberia).

Today, many African states have a dual legal system that includes dispute resolution by traditional methods and a formal legal process.²⁰ In response, ADR is increasingly becoming more popular in and recognized by African countries.²¹ Common methods include: mediation, conciliation, and arbitration. However, this new wave of dispute resolution has faced resistance within the current legal system. ADR would appear to be a natural response for the continent considering its emphasis on flexibility and informality.²² However, ADR is not widespread and remains largely underdeveloped in the commercial sector.²³ Several countries in Africa are implementing mandatory mediation or conciliation procedures into civil litigation processes.²⁴ However, ADR is generally not mandatory unless specified in a contract between the parties, which is very rare.²⁵ ADR is currently undergoing significant reform throughout Africa.

A. Introduction

ADR is an extrajudicial approach to resolving disputes and was first developed in North America.²⁶ In the United States, it was first practiced in commercial situations as a result of two factors: expense of litigation and desire to maintain business relationships after court.²⁷ Subsequently, ADR expanded from North America to Europe, and then to Africa.²⁸

Benefits of ADR include: reducing the backlogged court docket, decreasing costs, and increasing access to justice in a non-hostile, non-adversarial manner.²⁹ Specifically, within African contexts, ADR leads to

²⁰ *Id.* at 3.

²¹ *Id.* at 3-5.

²² Herbert Smith Freehills, *Dispute Resolution in Africa: Legal Guide*, HERBERT SMITH FREEHILLS 1, 11 (Sept. 2016), <https://www.herbertsmithfreehills.com/file/17381/download?token=WkKVBh83> [hereinafter *Legal Guide*].

²³ *Id.*

²⁴ *Id.* (noting the examples of Algeria, Chad, Equatorial Guinea, Gabon, Ghana, Malawi, Namibia, Nigeria, Republic of Congo, Rwanda, Senegal, Sierra Leone, Tanzania, and Uganda).

²⁵ *Id.* at 11.

²⁶ Kohlhagen, *supra* note 15, at 1-2 (noting that some states in Canada require mediation prior to court litigation in family law).

²⁷ *Id.* at 1 (noting that ADR was later expanded to cover “community mediation” in family and neighborhood conflicts). ADR expanded to Canada, where it was implemented first in family law and eventually to civil and non-family situations, and then to Europe. *Id.* at 1-2.

²⁸ *Id.* at 2.

²⁹ *Id.* at 10.

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increased efficiency, particularly regarding feasibility and time-effectiveness.³⁰ An additional benefit of ADR to Africa is that it fits naturally in the complex countries across Africa, such as Uganda, where dispute resolution has existed for centuries.³¹ It is seen as a complement to formal legal systems; notably in enhancing access to justice as a result of its impact on time and costs.³² Commercial disputes in particular could significantly benefit from ADR, given the typically overburdened commercial courts and high costs of conducting business in Africa.³³

According to Professor Janine Malin, Managing Editor of the African Journal on Conflict Resolution, the “magic ingredient” in dispute resolution is “the willingness of disputing parties to reach an agreement—especially when it seems impossible.”³⁴ Unlike court litigation, ADR allows the parties to create this willingness as they reach an agreement on their own.³⁵

There are several different types of ADR available in Africa, including: negotiation, mediation, conciliation, and arbitration. Most notable are conciliation and mediation, which often seek to restore the balance of power and maintain business relationships.³⁶ Arbitration is considered the last effort

³⁰ Priyal Singh, *Alternative Dispute Resolution and Peace Studies in Africa: Lessons, Prospects and Challenges*, ACCORD 1, 5 (Feb. 1, 2015),

https://drive.google.com/uc?export=download&id=0ByMc18Au_16UWHA2YIF2QzhJTEE(noting how it is unlike court procedures).

³¹ *See, e.g., Id.*

³² *Id.* at 5. “Moreover, given that access to justice is a cornerstone of sustainable peace, ADR is a significant emerging avenue which African communities and states are considering to complement established litigation-based processes, and to infuse and bolster traditional justice systems.” *Id.*

³³ *Id.* at 8. According to Professor Jannie Malin, key reasons why ADR needed to be mainstreamed include: “generally voluntary adherence, . . . varying degrees of greater control over the conflict resolution process, . . . non-punitive and restorative emphasis, . . . [and] less rigid, lower-cost and time-efficient aspects of ADR in relation to litigation.” *Id.* He further notes the discrepancy between knowledge of court proceedings versus ADR practices and emphasizes the need to understand traditional dispute resolution, while applying ADR to broader contexts. *Id.*

³⁴ *Id.* at 9.

³⁵ *Id.* “[T]his [willingness] . . . makes ADR favourable in cases where broader issues such as social cohesion and reconciliation are concerned.” *Id.*

³⁶ Dickerson, *supra* note 11 (providing the following definitions: negotiation is defined as “a voluntary and informal process in which the parties seek out the best options for each other,” mediation is “usually sought out when parties to a dispute are ready to discuss the issues openly and honestly,” conciliation is “used when the parties of a dispute have the wiggle room to cure the breach or make up and salvage the relationship,” and arbitration “views the dispute as a legal analysis and seeks a solution based on entitlement and rights”).

before turning to litigation.³⁷ It is important to note that ADR was created as a mechanism outside the formal court process. Arbitration may combine efforts with other ADR mechanisms; but, arbitration results in a final and binding award whereas the other ADR mechanisms do not result in finality without the consent of the parties.³⁸

B. Historical Context of ADR in Africa

Over the last couple decades, ADR is being implemented across Africa, notably in emerging democratic countries to provide greater access to justice.³⁹ African countries are seeing significant changes to their civil justice systems as modern dispute resolution becomes more and more established throughout Africa.⁴⁰ ADR provides a response to common problems of spiraled rates of litigation, backlogged cases, and perceived lack of access to justice by citizens.⁴¹ In response, ADR provides the benefits of flexibility and efficiency and increased access to justice.⁴² The concept of dispute resolution is not new to Africa nations, and many have a long history of using customary dispute resolution processes to resolve conflicts.⁴³

The use of customary law to resolve disputes, discussed in the next section, shows an ability for African nations to use their traditional dispute resolution methods in a more directed and commercialized nature. The term “commercial” has been broadly interpreted to include, “matters arising from all relationships of a commercialized nature, whether contractual or not . . . the simple supply or exchange of goods and services.”⁴⁴ Accordingly, ADR can even be implemented in a small-scale manner and bring benefits to village relationships.⁴⁵ This is evident in Uganda’s 1995 Constitution,⁴⁶ which incorporated the customary law into the trial process by mandating

³⁷ Dickerson, *supra* note 11.

³⁸ *Id.*

³⁹ See generally Jacqueline Nolan-Haley, *Mediation and Access to Justice in Africa: Perspectives from Ghana*, 21 HARV. NEGOT. L. REV. 59 (2016).

⁴⁰ *Id.* at 60-61.

⁴¹ *Id.* at 61.

⁴² *Id.*

⁴³ *Id.* (noting deep-rooted connections between modern west and traditional African dispute resolution models).

⁴⁴ Dickerson, *supra* note 11.

⁴⁵ *Id.*

⁴⁶ See CONSTITUTION OF THE REPUBLIC OF UGANDA Oct. 8, 1995, art. 133(1)(b).

reconciliation for all commercial disputes, and in the 2000 Arbitration and Conciliation Act that created new judicial powers for judges to send cases to mediation.⁴⁷ Each of the ADR mechanisms addressed throughout this article can provide benefits to the people and varying judicial systems across Africa.

III. INTERSECTION BETWEEN CUSTOMARY AND MODERN DISPUTE RESOLUTION

A. Customary Dispute Resolution

As noted earlier, modern ADR is not Africa's first experience with ADR.⁴⁸ Even before colonialism, methods of dispute resolution were used by villages and tribes.⁴⁹ When colonialism began, some areas were free to practice ADR, but many areas were required to adopt the Western rule of law and court system.⁵⁰

This customary dispute resolution sought consensus and socially-sanctioned compromise.⁵¹ A typical ideal of African village justice, often referred to as the inspiration for ADR is the "meeting under the tree," where disputes are resolved through community consensus and restorative justice.⁵² This customary law is generally unwritten and seen as the accepted norm within a community.⁵³ Resolution and reconciliation is still a common way to solve disputes in Africa.⁵⁴ Elders or the Chief would assume the role of an arbitrator and resolve matters with the peace of the community in mind.⁵⁵ Customary dispute resolution was not private and, instead, was meant to socialize the entire community, thus involving the whole society.⁵⁶

⁴⁷ Dickerson, *supra* note 11.

⁴⁸ Nolan-Haley, *supra* note 39, at 61.

⁴⁹ Anthony P. Greco, *ADR and a Smile: Neocolonialism and the West's Newest Export in Africa*, 10 PEPP. DISP. RESOL. L.J. 649, 661 (2010).

⁵⁰ *Id.*

⁵¹ Richard C. Crook, *Alternative Dispute Resolution and the Magistrate's Courts in Ghana: A Case of Practical Hybridity*, 3 (Afr. Power & Pol., Working Paper No. 25, 2012), <http://www.institutions-africa.org/filestream/20120703-alternative-dispute-resolution-and-the-magistrate-s-courts-in-ghana>.

⁵² *Id.*

⁵³ Dickerson, *supra* note 11.

⁵⁴ *See Id.* (noting that in Kenya 51% prefer to report problems to community leaders as opposed to the police).

⁵⁵ *See* Dickerson, *supra* note 11.

Enforcement of the award was not a problem because of societal involvement and pressure.⁵⁷ While each method of ADR, including arbitration, mediation, negotiation, and conciliation, is complementary to the process, conciliation is the most similar to African customary law.⁵⁸

B. *Modern Dispute Resolution*

Modern Dispute Resolution varies across African countries, from highly complex to basic.⁵⁹ Many countries have developed ADR practices in their commercial industry and enacted legislation to reduce litigation in court.⁶⁰ This shows the different ways in which ADR can be implemented. For example, in Ghana the legislation stipulates certain provisions when the need for ADR arises.⁶¹ Where country specific solutions are not available, regional institutions will often serve as a gap filler.⁶²

Early use of modern ADR predominantly dealt with violent ethnic conflicts.⁶³ Mediation is often sought as an alternative when both formal law and customary law are present.⁶⁴ A separate generation of ADR has been developed in court systems that already had established ADR.⁶⁵ In many countries, mediation is required in the civil justice system or incorporated into civil litigation.⁶⁶ This enthusiastic support across Africa is a result of case

⁵⁶ Bolaji Owasanoye, *Dispute Resolution Mechanisms and Constitutional Rights in Sub-Saharan Africa*, DOCUMENT SERIES NO. 14: ALTERNATIVE DISPUTE RESOLUTION METHODS UNITAR 15, 18 (2001), <https://www.unitar.org/pft/sites/unitar.org.pft/files/DocSeries14.pdf>. “Parties could arise from the whole process and maintain their relationship and where one party got an award the whole society was witness and saw to it that it was enforced.” *Id.*

⁵⁷ *Id.* “Social exclusion or ostracism was a potent sanction for any erring party therefore enforcement of an award was not a problem.” *Id.*

⁵⁸ See Dickerson, *supra* note 11. Conciliation implies “a more interventionist approach by the Neutral who may suggest options for settlement.” *Id.* Despite Uganda’s Arbitration and Conciliation Act, it is rare for a Ugandan to refer to conciliation as opposed to mediation. *Id.*

⁵⁹ *Id.* (noting that implementing ADR varies from well-established and complex efforts, such as in South Africa, Nigeria, Egypt, and Ghana, to emerging and simple efforts, such as in Benin).

⁶⁰ See Dickerson, *supra* note 11.

⁶¹ See *Id.*

⁶² See *Id.*

⁶³ Nolan-Haley, *supra* note 39, at 74.

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

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backlog, lack of access to justice, and belief that ADR is a way to enhance access to justice.⁶⁷

C. Critique of the Modern Dispute Resolution

As ADR is implemented in local dispute resolution systems, the intersection between customary and modern dispute resolution processes became significant. Traditional values of reconciliation and forgiveness are incorporated into modern ADR processes.⁶⁸ However, there is still a significant difference between the two systems, including the Western values of individualism, confidentiality, and neutrality.⁶⁹

First, the United States is a highly individualistic culture, whereas African countries embody a collective culture. Regarding African countries, “[ADR] in traditional societies cannot be understood without introducing the societal structure, relationships among groups and particularly the relationship between the individual and the group.”⁷⁰ Second, modern mediation proceedings are supposed to be in private and confidential, unlike customary dispute proceedings, which emphasize a transparent process.⁷¹ Third, neutrality is valued in the modern mediation process. The Western-inspired Model Standards of Conduct for Mediators state: “A mediator shall conduct a mediation in an impartial manner and avoid conduct that gives the appearance of partiality.”⁷²

Despite the tension between traditional and modern dispute resolution, the two systems do not have to be mutually exclusive. ADR is effective in leading to peace-building and conflict resolution in both interpersonal and community levels.⁷³ By reducing distrust in the judicial system and minimizing the perceived need to take justice into their own hands,

⁶⁷ *Id.* at 75.

⁶⁸ Dickerson, *supra* note 11.

⁶⁹ Nolan-Haley, *supra* note 39, at 77.

⁷⁰ Elisabetta Grande, *Alternative Dispute Resolution, Africa and the Structure of Law and Power: The Horn in Context*, 43 J. AFR. L. 63, 66 (1999).

⁷¹ See Nolan-Haley, *supra* note 39, at 77.

⁷² MODEL STANDARDS OF CONDUCT FOR MEDIATORS STANDARD II.B, (AM. BAR ASS’N, Sept. 2005); see also *Mediation Principles and Guidelines*, U.N. (July 7, 2010),

http://www.un.org/en/ombudsman/pdfs/Mediation_Division.pdf (stating that “[a] mediator is impartial and independent and does not have any personal interest in the potential outcome”).

⁷³ Uwazie, *supra* note 1, at 4.

ADR reduces the inherent violence and conflict in practice today.⁷⁴ Further, ADR is invaluable to stabilization and state-building efforts.⁷⁵ Simultaneously, this allows more complex restructuring and long-term development of the judicial system.⁷⁶

IV. ACCESS TO ADR: UGANDA'S EXPERIENCE

A. *Introducing ADR into Uganda's Legal System*

Uganda's legal system is based on the Constitution of 8 October 1995, legislation, common law, doctrines of equality, and customary law.⁷⁷ In Uganda, there is a recent trend toward implementing ADR, specifically arbitration and mediation.⁷⁸ Piloted in the Commercial Court, ADR is being considered and implemented by other divisions of the High Court, specifically the Civil Division, Family Division, and Land Division, as well as Magistrates' Courts.⁷⁹

Parties to arbitration are not required to submit to ADR before or during proceedings.⁸⁰ Parties to litigation in the Commercial Court are required to enter court-annexed mediation after the closure of pleadings.⁸¹ This mediation is conducted by court-accredited mediators and is set for twenty-one days.⁸² Only if mediation fails will the case be tried by another judge.⁸³ ADR is currently being considered and implemented by other divisions of the High Court.⁸⁴

⁷⁴ *Id.*

⁷⁵ *Id.* (noting that from land disputes in Liberia to conflict over resources aggravated by displaced in Africa's Great Lakes region, ADR provides quick relief to recurrent "conflict triggers" in fragile contexts).

⁷⁶ *Id.* at 4-5.

⁷⁷ *Legal Guide*, *supra* note 22, at 285.

⁷⁸ Anthony Conrad K. Kakooza, *Arbitration, Conciliation and Mediation in Uganda: A Focus on the Practical Aspects*, UGANDA CHRISTIAN U. 1, 1 (2010).

⁷⁹ *Legal Guide*, *supra* note 22, at 290.

⁸⁰ *Mediation Rolled Out to All Courts*, THE JUDICIARY, (Mar. 18, 2015), <http://www.judiciary.go.ug/data/news/164/2489/Mediation%20Rolled%20Out%20to%20All%20Courts.html>, [hereinafter *Mediation*].

⁸¹ *Legal Guide*, *supra* note 22, at 290.

⁸² *Id.* (noting the timeline may be extended by consent of the parties).

⁸³ *Legal Guide*, *supra* note 22, at 290.

⁸⁴ *Id.*

B. ADR Efforts in Uganda

Uganda looked to Western legal systems to find a solution to its problem of backlogged court dockets. In 2003, a pilot project was created to test compulsory mediation in the Commercial Court.⁸⁵ This program referred cases to CADER, which trained recent law school graduates in mediation; these decisions were legally binding by court order.⁸⁶ Traditionally, Uganda litigated all commercial disputes, which not only helps explain the resulting resistance but also why court-ordered mandatory mediation was likely necessary. In addition to this “historical layering effect,” resistance could have been due to concerns with the mediator’s experience.⁸⁷ Although CADER used recent law graduates due to the unavailability of court personnel, an absence of a trained judge caused apprehension.⁸⁸ This apprehension was further promulgated by Uganda’s history of using elders and community leaders to resolve conflict and the emphasis on respecting elders.⁸⁹

Despite this resistance, the pilot program found success, and out of 778 cases, 450 were mediated and removed from the trial schedule.⁹⁰ The program led to an increase in court productivity and confidence in the judicial system as the Court could instead focus on cases not suitable for mediation.⁹¹ The success of the program led to the enactment of mandatory mediation rules for the Commercial Court in 2007.⁹² In 2013, mediation was officially adopted with the enactment of the Judicature (Mediation) Rules.⁹³ As a result of successful mediation cases, the Judiciary vowed to bring mediation to all the courts as a way to reduce case backlog and increase access to justice.⁹⁴

⁸⁵ Greco, *supra* note 49, at 666-68.

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ *Id.*

⁸⁹ *Id.*

⁹⁰ *Id.*

⁹¹ *Id.*

⁹² *Id.*

⁹³ *Mediation, supra* note 80.

⁹⁴ *Id.*

C. Challenges

As of 2016, the judiciary had 114,512 cases where mediation was an attributed cause of the backlog.⁹⁵ In one High Court, there were over 1,000 cases pending mediation, but only one mediator.⁹⁶ Challenges include: a lack of money, unwillingness of lawyers to practice mediation despite training, and insufficient allocation of time.⁹⁷

The civil division of the High Court has over 9,000 cases pending with only four mediators.⁹⁸ As a result, the principle judge, Justice Barnwine, is tasked with mediating the big cases and rarely hears cases in court.⁹⁹ Further problematic is the absence of a mediation registry or a mediator room in the Civil Division.¹⁰⁰

The Family Division, which implemented mediation in 2014, had settled only twenty-five out of 228 registered cases as of 2015.¹⁰¹ At the time of this article, there was only one full time mediator at the court, an American, who considers the attitudes of the litigants as the reason for such few settlements.¹⁰² Unlike the Commercial Court, the Family Division does not have a complete mediation registry and, even worse, is in the Land Division where no mediation statistics have been reported. While mediation is considered an

⁹⁵ Derrick Kiyonga, *Uganda: Is Mediation Programme Backfiring on the Judiciary?*, THE OBSERVER (May 4, 2016), <http://allafrica.com/stories/201605040866.html>.

⁹⁶ *See Id.* According to Amos Kwizera, the Nakawa court deputy registrar, mediation is not being facilitated correctly and mediators are fleeing, stating: “[w]ith one mediator, we cannot do a lot of work because now mediation is left to the registrar and the judge, who cannot mediate every case.” *Id.*

⁹⁷ *See Id.* Alli Innocent Balupe, who resigned as mediator of Nakawa in 2015, describes how the program made him broke, “[Mediators] were not given any money. I had to use my own airtime, fuel, food. So, I had to use my money to support a whole branch of government like the judiciary,” concluding that the program was not tenable. *Id.* Further, Balupe believes that none of the people who were trained as mediators ever mediated due to the working conditions and difficulty in balancing private work. *Id.* Balupe, in clarifying the insufficiency of allotted time, states: “[Mediators] were told to give mediation six hours a week,. . . [which] cannot be enough when you compare it with number of mediation files. . . . every day more cases are filed and they must go through mediation.” *Id.*

⁹⁸ *See Id.*

⁹⁹ *See Id.*

¹⁰⁰ *See Id.*

¹⁰¹ *See Id.*

¹⁰² *See Id.* (finding that “[m]ost people come here [for mediation] because it is mandatory but they prefer the judge to resolve the matter than settling it out of court . . . there is need for sensitization . . . and even if the number of mediators increased . . . [few] cases will be mediated partly because there is only one room allocated for mediation”).

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established fixture in court, its success is challenged by a lack of government funding. According to Justice Banwine, a successful mediation program requires Uganda “to train more mediators, sensitize the public, . . . build separate mediation centres [requiring] a substantive amount of investment.”¹⁰³

V. ACCESS TO ADR: GHANA’S EXPERIENCE

A. *Introducing ADR into Ghana’s Legal System*

Ghana enacted its most comprehensive ADR legislation in 2010,¹⁰⁴ called “The Act,” to provide access to justice and promote domestic and foreign investment.¹⁰⁵ The Act incorporated both customary ADR processes and statutory ADR into the legislation, expanding customary arbitration and mediation into Ghana’s civil justice system.¹⁰⁶ Notably, this was the first time mediation had been included in Ghana’s legislation. The statutory definition of mediation reflects notions of individual autonomy and party self-determination, exhibiting a change from the communal values of customary ADR practiced by mediation.¹⁰⁷ This individualistic focus of modern mediation diverges from what was traditionally a collective culture.

1. Understanding Traditional Dispute Resolution

Ghana has a legally pluralistic justice system where both common law and customary law exist.¹⁰⁸ The use of arbitration and mediation in Ghana dates to pre-colonial times, where individuals living in remote areas without transportation to the courts were more likely to participate in customary dispute resolution than the formal court system, and the main parties were family heads, tribal chiefs, and queen mothers who resolved the issue through settlement processes.¹⁰⁹

¹⁰³ *See Id.* (noting this lack of funding has been attributed to the Judiciary’s errors).

¹⁰⁴ *See generally* Alternative Dispute Resolution Act: Act 798, (2010) [hereinafter The Act].

¹⁰⁵ Jacqueline M. Nolan-Haley and James Kwasi Annor-Ohene, *Procedural Justice Beyond Borders: Mediation in Ghana*, 2014 HARV. NEGOT. L. REV. 1, 1 (2014).

¹⁰⁶ *Id.* at 1-2.

¹⁰⁷ *Id.* at 2.

¹⁰⁸ Customary law is defined in Ghana’s Constitution as “the rules of law, which by custom are applicable to particular communities in Ghana.” CONSTITUTION OF THE REPUBLIC OF GHANA Apr. 28, 1992, amend. 527, § 11(3).

¹⁰⁹ Nolan-Haley & Annor-Ohene, *supra* note 105, at 3.

2. Modern Dispute Resolution

Ghana is considered the pioneer of modern ADR programs and the mediation process.¹¹⁰ Ghana's formal legal process had many problems common across African countries: inefficiency, expensive costs, case backlogs, insufficient resources, and corruption.¹¹¹ These problems were the driving force for the development of modern ADR in Ghana.

The development of modern ADR in Ghana began with the passing of the Courts Act of 1993 (Act 459), which promoted the use of ADR in the courts.¹¹² This Act and subsequent ADR events placed Ghana as a model for ADR. In 1996, the Ghana Arbitration Centre was established to resolve commercial issues.¹¹³ In 2001, the ADR Task Force was created to make recommendations for implementing ADR into the judicial system.¹¹⁴ It was followed by court-directed ADR programs.¹¹⁵ In 2003, the Labour Act was enacted to guide labor disputes through ADR.¹¹⁶ Also in 2005, the Lord Chief Justice directed a policy to implement ADR followed by the creation of a five year "Strategic Plan for ADR Program."¹¹⁷ Since 2005, the District Court has provided court-connected mediation with successful results.¹¹⁸ The Chief Justice created a National ADR Directorate in 2009 to manage all ADR activities within the Judicial Service.¹¹⁹ These efforts culminated in the passage of The Alternative Dispute Resolution Act in 2010, the most

¹¹⁰ The Chief Justice of Ghana urged courts to "make full use of ADR as an effective tool in justice administration." Georgina Theodora Wood, *Keynote Address by Lady Justice Georgina Theodora Wood, Chief Justice of The Republic of Ghana at the Catholic University, Fiapre, Sunyani on the 1st of August, on the Occasion of the Inauguration of the ADR Training Institute*, MARIAN CONFLICT RESOL. CTR. (Aug. 1, 2011), http://mariancrc.org/wp-content/uploads/2011/09/MCRC_openingKeynote.pdf.

¹¹¹ Nolan-Haley, *supra* note 39, at 85-86.

¹¹² Nolan-Haley & Annor-Ohene, *supra* note 105.

¹¹³ *Id.* at 3-4.

¹¹⁴ *Id.* at 4.

¹¹⁵ See Tanya Southerland & Gwenann Sez nec, , *Alternative Dispute Resolution Services in West Africa: A Guide for Investors*, U.S. DEP'T OF COMM. 1, 18-20 (2003), <http://www.mediationworld.net/download.php?path=20091026145929.pdf&name=ADRin%20west%20africa%20baseswiki%20article.pdf&mime=application/pdf>.

¹¹⁶ See generally Acts of Ghana: Labour Act 2003, (Act 651), (Oct. 10, 2003).

¹¹⁷ Nolan-Haley & Annor-Ohene, *supra* note 105, at 4.

¹¹⁸ Nolan-Haley, *supra* note 39, at 86.

¹¹⁹ *Id.*

comprehensive ADR legislation, including arbitration, conciliation, mediation, and negotiation.¹²⁰

3. Merger of Customary and Modern Dispute Resolution

A critical part of the Act is its incorporation of customary mediation and arbitration into the legislation, expanding these processes into the formal civil justice system.¹²¹ Customary mediation is defined as negotiation for settlement,¹²² and these agreements are non-binding.¹²³ This is a “facilitative process in which the parties discuss their dispute with an impartial person who assists them to reach a resolution,”¹²⁴ and even though the process is based on party consent, the court may send parties to mediation.¹²⁵ Any settlement agreement reached has the same status as an arbitral award.¹²⁶ Customary arbitration is defined as “the voluntary submission of a dispute, whether or not relating to a written agreement for a final binding determination.”¹²⁷ Customary arbitration is guided by “natural justice and fairness,”¹²⁸ not specific rules, and unlike modern arbitration is not fixated on writing.¹²⁹

B. Experiences with Mediation as Vehicle to Success

1. Resistance to Settlement

The court-connected ADR mediations primarily are in line with popular values. Parties emphasize an importance on a truth seeking, balanced process, which is line with ADR procedures.¹³⁰ The fact that agreements could be enforced by the courts as consent judgments created assurance that the ADR procedure was as secure as a trial in court because a primary motivation for

¹²⁰ *Id.*

¹²¹ *See generally* The Act, *supra* note 104, at §§ 2-3.

¹²² Nolan-Haley & Annor-Ohene, *supra* note 105, at 4.

¹²³ *Id.* at 5.

¹²⁴ *Id.* at 3-4.

¹²⁵ The Act, *supra* note 104, at § 64 (1).

¹²⁶ Nolan-Haley & Annor-Ohene, *supra* note 105, at 5.

¹²⁷ The Act, *supra* note 104, at § 135.

¹²⁸ *Id.* at § 93 (1).

¹²⁹ Nolan-Haley & Annor-Ohene, *supra* note 105, at 4.

¹³⁰ Crook, *supra* note 51, at 11.

seeking court is to obtain a particular and enforceable remedy.¹³¹ However, the emphasis on compromise at the cost of legal rights neither resonated with a large number of the litigants nor with a general belief about the need to accept fault.¹³²

Ultimately, this emphasis on the search for reconciliation, compromise, and mutual agreement resulted in resistance. The personal commitment of mediators may cause them to impose increased pressure on the parties to agree to a settlement, despite any hostility or reluctance.¹³³ Resistance may also have been created by the involvement of relatives and other parties, in one case worsened by the lack of private rooms.¹³⁴ The most common cause of resistance to settlement is the degree to which high stakes were involved, especially for land and inheritance disputes or bitterness in the dispute.¹³⁵ Thus, ADR was not as effective as expected even though it was speedier and cheaper than trial in court.

2. Experiences of Procedural Justice

One way to measure success in achieving access to justice is the extent to which the parties experience procedural justice.¹³⁶ A study of parties who had participated in modern mediation reported high degrees of procedural justice in mediation on the issue of voice, respect, and fairness, but lesser degrees of procedural justice on the issue of satisfaction with the mediation outcome.¹³⁷

C. Challenges

There are many challenges that must be overcome in order to achieve successful ADR implementation. These challenges include inadequate political support, human resources, legal foundations, and sustainable financing.¹³⁸ Often implementing ADR into developing countries requires donations because governments are frequently slow to realize the importance

¹³¹ *Id.*

¹³² *Id.*

¹³³ *Id.* at 9.

¹³⁴ *Id.* at 10.

¹³⁵ *Id.* at 10-11.

¹³⁶ Nolan-Haley & Annor-Ohene, *supra* note 105, at 8.

¹³⁷ *See Id.* at 2-3. The study is a project of the Marian Conflict Resolution Center in Ghana.

¹³⁸ Uwazie, *supra* note 1, at 5.

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of ADR.¹³⁹ A lack of government support from both the local and national level hinders institution-building and ultimately constrains the development of personnel and a lasting legal framework.¹⁴⁰ Further, lawyers lacking familiarity with ADR, may view it as a threat to their career and judges may perceive it as a threat to their control over non-litigation resolutions or out-of-court settlements.¹⁴¹

V. A COMPARATIVE ANALYSIS

A. *Success in Ghana*

Ghana is seen as a leader in its successful implementation of ADR, paving the way for ADR in African contexts.¹⁴² Ghana has built on the traditional court system to make access to justice easier and more efficient. Between 2008 and 2014, 34,701 cases were mediated, out of which 16,913 resulted in a settlement agreement, or a 49% settlement rate.¹⁴³

ADR is established in sixty-seven district and circuit courts throughout Uganda with three mediators assigned to each, totaling 215 mediators for the sixty-seven courts practicing ADR.¹⁴⁴ This program is largely funded by the UNDP, the Judicial Service, GTZ, and MIDA; however, the Judiciary has established an independent fund to maintain the program.¹⁴⁵ Further, the

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.*

¹⁴² See Wood, *supra* note 110.

¹⁴³ Alhassan Abdul-Rafiu, *The Institution and Challenges of Alternative Dispute Resolution in West Africa: The Case of Ghana* U. OF GHANA 1, 66 (July 2015), <http://ugspace.ug.edu.gh/bitstream/handle/123456789/8624/The%20Institution%20and%20Challenges%20of%20Alternative%20Dispute%20Resolution%20%28Adr%29%20in%20West%20Africa%20The%20Case%20of%20Ghana%20-2015.pdf?sequence=1&isAllowed=y>. In 2015, 3,318 cases were mediated out of which 1,432 resulted in a settlement, resulting in a 43% settlement rate. Mildred Siabi-Mensah, *ADR Promoted as Best in Dispute Resolution*, GHANA NEWS AGENCY (June 25, 2016), <http://www.ghananewsagency.org/social/adr-promoted-as-best-in-dispute-resolution-105184>.

¹⁴⁴ *Alternative Dispute Resolution (ADR) Week Launched in Accra*, GHANA NEWS AGENCY (Dec. 1, 2015), <http://www.ghananewsagency.org/social/alternative-dispute-resolution-adr-week-launched-in-accra--97674>.

¹⁴⁵ Siabi-Mensah, *supra* note 143.

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Judiciary has initiated several education and sensitization programs to increase ADR awareness and interest.¹⁴⁶

B. Lessons Learned from Ghana's Experience

Ghana's experience provides important lessons for other African countries considering ADR, including the importance of gaining official support and financing, establishing relationships between mediators and traditional chiefs, and instituting the enforceability of out-of-court settlements or mediation agreements.¹⁴⁷

The new Court-connected ADR program in Ghana was successful in offering a process that is both informal and accessible to ordinary people and additionally corresponding with local views of justice and providing remedies that respond to the demands of the parties. Further, ADR fulfills public desire for settlements to be truth seeking and balanced, while providing an opportunity to admit fault and make apologies; the agreements are enforceable as court decisions, which is a motivation for those seeking state justice, and the codes used in settlement correspond with popular shared norms, including Christianity and respect for the elderly. However, compromise is not as might be expected, and mediators face much difficulty in making progress because parties are sometimes in a state of mind that is hostile to amicable settlement; even the cost-saving and time-saving factors do not change the determination of the majority of disputants to seek a legal remedy.

In light of these limitations, the role of state is essential to the process in maintaining an "informal, popular, and accessible form of dispute resolution."¹⁴⁸ It would be very difficult for a private organization to create an informal dispute resolution with comparable authority, skills, and recognition.¹⁴⁹ The ability to give ADR resolutions the same force as a state court's ruling is significant; however, so is the ability to provide a form of mediation that incorporates popular values and expectations while balancing equal standards.¹⁵⁰ This hybrid approach is essential to the success of ADR despite its lack of success in changing the culture of resistance to settlements.

¹⁴⁶ *Id.* In one survey, over 90% of disputants expressed satisfaction with the dispute resolution process, an intention to use it again, and a willingness to recommend ADR to others. Uwazie, *supra* note 1, at 3.

¹⁴⁷ Uwazie, *supra* note 1, at 4.

¹⁴⁸ Crook, *supra* note 51, at 16.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*

Ghana is an emerging democratic country in Africa that has implanted ADR successfully in recent years. Ghana's experience serves as a model framework on which other countries in Africa would be well served to use as a platform in the development of their own ADR. It is necessary to adapt ADR to the needs and unique socio-cultural complex of each country, so the successful pioneering that has occurred in Ghana would be a very useful framework.¹⁵¹

1. Understanding Traditional and Local Values

Ghana, like Uganda, welcomed modern ADR and its promise of greater access to justice. However, Ghana's experience has shown that modern ADR must not ignore traditional dispute resolution and its values. While Ghana embraced ADR and its modification of traditional dispute resolution, Ghana exceeded its limits in making mediation compulsory. Specifically, Ghana responded to mandatory mediation by resisting settlement.¹⁵² This experience cautions against ADR that devalues consensual decision-making. While mandatory mediation was seen by courts as expanding on traditional dispute resolution, resistance occurred because values were compromised: particularly consensual decision-making.

Uganda has similarly had an encouraging response to ADR, promising a change in the overburdened courts and lack of access to justice.¹⁵³ Uganda has referred to ADR as a "magic wand" to counteract the issues of case backlog in the courts.¹⁵⁴ Uganda is one of many African countries that have adapted modern dispute resolution to incorporate traditional values.¹⁵⁵ However, Ghana's experience informs Uganda and other African countries of the need to consider context and culture in implementing ADR. In Ghana, resistance occurred when the values of consent were ignored.¹⁵⁶ Similar to the experience in Ghana, resistance to mediation occurred in Uganda when

¹⁵¹ See *Kiyonga*, *supra* note 95 (noting that in the fiscal year of 2015/2016 10 billion shillings were spent providing benefits to retired judges). According to CEO of Legal Brains Trust (LBT), Isaac Kimaze Ssemakadde, "[b]efore rolling out mediation to other courts, [the Judiciary] should have known better that they don't have capacity to implement it without funds." *Id.*

¹⁵² Crook, *supra* note 51, at 1.

¹⁵³ Nolan-Haley, *supra* note 39, at 75.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.*

¹⁵⁶ *Id.* at 103.

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the court failed to recognize the value of respect for elders.¹⁵⁷ A court mediation program in Uganda rejected the use of young law students as mediators because the court was accustomed to elders serving as mediators in traditional mediation.¹⁵⁸ Traditional and local values, such as consent and respect for elders, must be incorporated into the ADR process.

2. Traditional Dispute Resolution

Uganda has also made mediation compulsory and would benefit from understanding Ghana's experience.¹⁵⁹ Compulsory mediation is a Western notion: part of ADR in Europe and the United States.¹⁶⁰ However, Ghana's experience cautions against mandatory use of ADR in light of the high percentage of litigation over enforceability of mediation agreements. Ghana's experience teaches Uganda and similar countries that the parties are more likely to honor the mediated agreement if they consent to the process. While compulsory mediation is largely considered to be successful in Uganda, Ghana's experience teaches us about the risks of too much compulsion. Policymakers must listen to disputants and avoid compelling mediation.

C. *Potential Success of ADR in Uganda*

One of the main benefits of implementing ADR is the potential to drastically reduce the case backlog. The success found in establishing the Centre for Arbitration and Dispute Resolution and the required mediation in the Commercial Courts show Uganda's future ability to achieve that benefit.¹⁶¹ In 2013, mediation proceedings handled 623 cases and resulted in 383 cases being finalized: a 60.7% disposal rate.¹⁶² Additionally, several cases that went to court resulted in settlements before completion of trial as a

¹⁵⁷ *Id.*

¹⁵⁸ *Id.*

¹⁵⁹ *Id.* at 75 n.97.

¹⁶⁰ *Id.* at 105.

¹⁶¹ Ephraim Kasozi, *All Civil Disputes Set for Mediation- Judiciary*, DAILY MONITOR (Nov. 3, 2014), <http://mobile.monitor.co.ug/News/All-civil-disputes-set-for-mediation--judiciary-says/2466686-2238594-format-xhtml-qbxqhe/index.html> (noting that 33% of the referred cases were successfully mediated).

¹⁶² *Id.* Justice Kavuma stated that “[o]utside that percentage, other cases went on to be settled in court before completion of trial partly as a result of the work initiated in that mediation project, applying rules, the court through its registrar continued to offer mediation as an alternative to litigation.” *Id.*

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result of the prior mediation, allowing the court to save time and focus on cases not suited for mediation.¹⁶³

Potential benefits of ADR in Uganda include reducing case backlog and improving public confidence in the courts. Chief Justice Steven Kavuma described such benefits, stating, “[r]esolution of disputes is faster. The parties design their own solutions rather than have one impose [sic] upon them and a win-win situation is created” and ultimately “[r]econciliation, which is a cardinal principle . . . is therefore achieved.”¹⁶⁴ Further, efficiency is increased because compliance with the resolution is unlikely to lead to additional proceedings.¹⁶⁵

VIII. RECOMMENDATIONS

An effective ADR system must have flexible design structure that is rooted in satisfying the interests of parties and in the administering of justice in a culturally sensitive manner. For effective and lasting ADR mechanisms, I suggest the following recommendations.

First, enact proper legislation. Most courts may permit the judge to recommend that parties settle the issue out of court. However, enacting legislation will elevate the status of ADR before a skeptical party, boost public confidence, and increase the utilization of ADR and encourage ethical practices.¹⁶⁶ Legislation will be helpful in establishing a framework for review and reform and in providing for education and professional training.

Second, local and national governments and international partners should invest in capacity-building through the training and support for the development of ADR advocates and providers.¹⁶⁷ Internal capacity-building initiatives should include “training of legal professionals, local and religious leaders, traditional authorities and chiefs, election officials, police and security personnel, human rights organizations, public complaints bureaus or

¹⁶³ *See Id.* Justice David Wangutsi, the Head of High Court Commercial Division, in describing how mediation increases court productivity, stated: “satisfaction and confidence of court users in the justice system is enhanced in line with this year’s commitment to render justice to all manner of people through timely adjudication of disputes without discrimination.” *Id.*

¹⁶⁴ *See Id.*

¹⁶⁵ *See Id.*

¹⁶⁶ Uwazie, *supra* note 1, at 5.

¹⁶⁷ *Id.*

the office of the ombudsman, and women and youth leaders.”¹⁶⁸ Developing the ADR skills of these target groups will increase the country’s mitigation or prevention capacity and reduce the backlog of cases, freeing up the court’s time and resources to focus on more suitable cases.¹⁶⁹ Particular attention should be directed towards conflict prone and post-conflict countries, which can result in improved conflict mitigation.¹⁷⁰

Third, create incentives for lawyers and judges for ADR use and development.¹⁷¹ In order to expand ADR, the contributions to stakeholders must not be ambiguous.¹⁷² For lawyers, ADR serves as an additional tool for successful case resolution leading to efficiency, increases in revenue, and satisfaction for the lawyer and the client. For a judge, performance reports should include the cases resolved through ADR and the amount of time taken from case filing to mediation. Awards or recognition by the legal profession, including national merit honors, will replicate the support and use of ADR among members of the bar and bench.

Fourth, measure progress. To maximize the collaboration and efficiencies of ADR with the official judicial process, a systematic monitoring process should be in place. Key quantitative and qualitative data should be measured and used to adjust the focus of ADR efforts. Indicators may include ADR usage, percentage of cases filed and processed via ADR versus court litigation, the average time spent on the case, the number of settlements, acceptance by the community, and satisfaction by the parties. The ultimate test of an effective ADR system is how much it affects a country’s conflict vulnerability and mitigation capability.

Fifth, target youth early.¹⁷³ With almost 70% of the African population thirty years old or below, youth restiveness is inevitable and is of great concern to criminal justice systems unable to manage excessive incarceration. ADR techniques for lower level offenses could replace more costly and punitive approaches. Additionally, ADR methods to affect youth unrest and violence based on peace building efforts should be integrated into school programs. One pilot program in Nigeria where schools launched peer

¹⁶⁸ Ernest Uwazie, *Introduction: ADR and Peace-Building in Africa*, in *ALTERNATIVE DISPUTE RESOLUTION AND PEACE-BUILDING IN AFRICA* 1, 5 (Ernest Uwazie ed., 2014).

¹⁶⁹ *Id.* at 4.

¹⁷⁰ *Id.* at 5. ADR pilot programs achieved high levels of community participation and legitimacy, which supports ADR’s role in post-conflict transitional justice contexts. *See Id.*

¹⁷¹ *Id.*

¹⁷² Uwazie, *supra* note 1, at 5.

¹⁷³ *Id.* at 6.

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meditation programs resulted in reductions in school violations and gender biases, increases in school attendance and critical skills, and popularity among school faculty and students.¹⁷⁴

Last and perhaps most important, is to create an interwoven relationship between formal ADR institutions and informal traditional networks. This will likely increase access to justice and establish a lasting system of conflict resolution and mitigation. This should be a flexible design, capable of applying ADR in all modalities of disputes, whether between groups or individuals. The advantage in using ADR is its adaptability to the people and the existing dispute, and it is equally beneficial in formal legal systems, traditional mechanisms, and broad-based conflicts.

VIV. CONCLUSION

Alternative dispute resolution is gaining popularity across African countries. Many African countries have enacted legislation related to arbitration, mediation, and negotiation. Although there are challenges in a lack of resources, involvement of donors and government can overcome these challenges.¹⁷⁵ The most critical issue is establishing legitimacy within the country's current judicial framework, particularly in countries that use both traditional and modern dispute resolution. Successful implementation of ADR methods must consider the unique culture and needs of each country, incorporating traditional methods into modern dispute resolution.

Successful implementation offers the promise of concrete resolutions to disputes in a timely manner and a reduction in court backlogs while simultaneously providing dispute resolution in a more efficient and effective manner. The expertise and professional skills of mediators may be used without requiring the extensive training of a lawyer or judge. An effective system will also increase confidence in modern ADR among lawyers and traditional authorities or chiefs.

ADR offers a bridge between traditional and modern dispute resolution, creating a mutually supportive, collaborative relationship between the formal legal system and the non-formal, traditional dispute resolution processes. ADR, properly used in this framework, will promote national economic

¹⁷⁴ *Id.*

¹⁷⁵ One regional ADR coordinator from the Volta area said that ADR had been particularly helpful in settling family land disputes "devoid of the hassles associated with the courts." *ADR System of Adjudication Catching is Successful*, GHANA NEWS AGENCY (Apr. 15, 2012), <http://www.ghananewsagency.org/social/adr-system-of-adjudication-catching-is-successful-42090>.

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development efforts and increase access to justice. Its success will depend on its ability to incorporate traditional dispute methods into modern dispute resolution. As an alternative to the formal legal process, ADR seeks to resolve disputes in a timely manner and increase access to justice, ultimately preventing violence and enhancing stability.

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