

## **MEDIATION AS AN OPTION UNDER ALTERNATIVE DISPUTE RESOLUTION: THE CASE OF GHANA**

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### **ABSTRACT**

The paper carries out a detailed discussion on mediation as one of the options under the Alternative Dispute Resolution mechanism in Ghana. It looks at the historical basis and its connection with the culture and tradition of the people as well as the legal framework for the practice of Mediation. It also looks at issues of jurisdiction, capacity, and role of the court system. On the whole, the paper indicates that mediation in Ghana is regulated by law, founded on the basis of consensus by parties; agreements or awards out of mediations are binding, final, and enforceable. The paper indicates that mediation is deeply rooted in the customary laws and usages of the people as their foremost mode of conflict resolution mechanism before the introduction of the formal court system and litigation. Notwithstanding, mediation is ever-present as a tool for conflict resolution in every Ghanaian home and community of people.

**Keywords:** Ghana, Alternative Dispute Resolution, Mediation, Consensus, Facilitative process

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## INTRODUCTION

The paper is a qualitative study that takes an interdisciplinary approach, where statutory legislation, conventions, case laws, legal research, and other relevant literature are considered. It starts with a brief look at the framework of Ghana's legal system which lays the foundation for the practice of mediation. It attempts to look at the historical antecedence of the Alternative Dispute Resolution (mediation) in Ghana. It discusses a host of enacted legislations providing for mediation. Focus is also given to the practice and practitioners of mediation. The special Court-Connected Alternative Dispute Resolution concept is also discussed thoroughly.

## A BRIEF OVERVIEW OF THE GHANA LEGAL SYSTEM<sup>2</sup>

### *Supremacy of the Constitution*

The Republic of Ghana has a pluralistic and dualist legal system. It is a common law country, which operates the doctrine of the supremacy of the constitution against the supremacy of parliament as is the case of some common law countries such as the United Kingdom.

According to Article (1) Clause (2) of the Constitution<sup>3</sup>:

The Constitution shall be the supreme law of Ghana and any other law found to be inconsistent with any provision of this Constitution shall to the extent of the inconsistency, be void.

2. (1) A person who alleges that - (a) an enactment or anything contained in or done under the authority of that or any other enactment; or (b) any act or omission of any person; is inconsistent with, or is in contravention of a provision of this Constitution, may bring an action in the Supreme Court for a declaration to that effect.

It is therefore trite law in Ghana when it comes to the Supremacy of the Constitution that any legislation by any entity or person(s), whether by the legislature, or any other institution or an act or omission that contravenes any provision of the constitution is null and void and of no effect. This Supreme Court of Ghana has stated quite clearly without any ambiguity that Article 2(1) has "*in-built repealing mechanisms*".

This was the position of the Supreme Court per Acquah JSC in the case of *Amidu v President Kufour* [2001 - 2002] SCGLR 86, where the court held that:

Article 1(2) of the 1992 Constitution is the bulwark which not only fortifies the *supremacy of the Constitution* but also makes it impossible for any law or provision inconsistent with the Constitution to be given effect to. And once the Constitution does not contain a schedule of laws repealed by virtue of its provisions, whenever the constitutionality of any law vis-à-vis a provision of the Constitution is challenged, the duty of this court is to determine the authenticity of the challenge. And in this regard, the fact that the alleged law has not been specifically repealed is totally immaterial and affords no validity to that law. *For article 1(2) contains a built-in repealing mechanism which automatically comes into play whenever it is found that a law is inconsistent with the Constitution.* It therefore follows that the submission based on the fact that the [refulation] 3(1)...of L I 239 [has] not been specifically repealed, and therefore valid, misconceives the effect and potency of article 1(2), and thereby underrates the *supremacy of the 1992 Constitution*.<sup>4</sup>

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<sup>2</sup> Bimpong-Buta Seth Yeboah. *The role of the supreme court in the development of constitutional law in Ghana*. Diss. University of South Africa (2005). 33 - 72

<sup>3</sup> 1992 Constitution of Ghana

<sup>4</sup> *Ibid* (n2) at pp 107 -108

Similarly, in a unanimous decision, the Supreme Court in the case of *Adofo v Attorney General & Cocobod*<sup>5</sup>, held that:

This constitutional provision unequivocally and authoritatively establishes a doctrine of supremacy of the Constitution in the Ghana jurisdiction. This doctrine implies that the supremacy of Parliament is limited and that enactments by Parliament and those of previous legislatures are subject to the supremacy of the Constitution. This supremacy of the Constitution implies the assertion that constitutional clauses granting an effective indemnity against the provisions of the current Constitution, which exist under the terms of the transitional provisions of the 1969, 1979 and 1992 Constitutions, are also supreme. Those clauses therefore establish an effective indemnity.

The constitution has provided an open door for both natural<sup>6</sup> and artificial<sup>7</sup> legal personalities to carry out this patriotic constitutional duty envisioned in defence and protection of the Constitution. This means that both natural and artificial persons have the full capacity under the 1992 Constitution.

From above, the Constitution<sup>8</sup> has provided under Article 11 the laws of Ghana:

- (1) The laws of Ghana shall comprise: (a) this Constitution; (b) enactments made by or under the authority of the Parliament established by this Constitution; (c) any Orders, Rules and Regulations made by any person or authority under a power conferred by this Constitution. (d) the existing law; and (e) the common law. (2) The common law of Ghana shall comprise the rules of law generally known as the common law, the rules generally known as the doctrines of equity and the rules of customary law including those determined by the Superior Court of Judicature. (3) For the purposes of this article, "customary law" means the rules of law, which by custom are applicable to particular communities in Ghana.

Similarly, Josiah-Aryeh (2006)<sup>9</sup> indicates in his articles that:

Article 11 of the constitution of Ghana defines the laws of Ghana to include English common law, the doctrines of equity, the Constitution, and the "customary law of Ghana". The customary law of Ghana is defined to include rules existing within the various communities of Ghana. In origin, these were ethnic-based rules which had over time developed to constitute an essential part of the corpus of Ghanaian law. They were an essential part of the colonial system of adjudication for section 87 of the Supreme Court Ordinance 1876 provided that in the adjudication of cases in the erstwhile Gold Coast (the former name of Ghana) European judges were to take account, in appropriate cases, of "native laws and customs" particularly in the areas of marriage, succession, and property.

The Customary law of Ghana is par excellent in the sense that it is the manifestation of the various customs, norms, and usages of the various societies making up the state called Ghana. They form the foundation of customary law tradition and growth. These customs, norms, and usages are manifest within the body of communities, families, traditional councils, mediation, and arbitration committees. In addition are pronouncements

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<sup>5</sup> [2005-2006] SCGLR 42

<sup>6</sup> Article 2(1); *Agyei Twum v. Attorney-General & Akwetey* [2000] SCGLR 403

<sup>7</sup> *New Patriotic Party v Attorney-General (Ciba Case)* [1996-97] SCGLR 729, the Supreme Court held that both natural and artificial bodies can bring an action for the enforcement of the 1992 Constitution under Article 2(1).

<sup>8</sup> *Ibid* (n2)

<sup>9</sup> Josiah-Aryeh Nii Armah. *Customary Law in the Twenty-First Century: A Survey of Ghanaian Customary Law* (2006)

of chiefs and heads of families as well as informal judicial bodies. These are the grounds where customary law lives and grows (Harvey, 1964).

Fundamentally, the supremacy of the Constitution has established in Ghana the rule of law. Therefore, the practice of Mediation (ADR) is anchored on this footing with the Alternative Dispute Resolution Act, 2010 (Act 798) as its main legal instrument supported by some others of parliament, regulations, and policies. It follows that any mediated settlement that is inconsistent with the Constitution shall be void.

### ***Historical Perspective on Alternative Dispute Resolution in Ghana***

Conflict and disputes are inevitable and are as old as human existence. As long as humans co-exist, differences, misunderstandings, and disputes are bound to exist. And would therefore need to be resolved for stability, peaceful co-existence, and development to prevail, without which they would be chaos and total disaster.

Malan (1997) provides that “as human beings on this planet, we enjoy a very interesting existence in a fascinating environment. One of the most gripping elements of human life is the everywhere-present phenomenon of conflict. We dislike it, but we also need it.”<sup>10</sup> This underscores the inevitability of conflict in human existence no matter the jurisdiction.

Human survival in any nation is cardinal to its development. This becomes very difficult in the presence of disputes; hence the institution of various laws and mechanisms to deal with them in an amicable and swift manner even though these mechanisms may grind slowly. The essence of legal regimes and policies are therefore established to serve as tools for social engineering and development, which is not the preserve of only some nations but all nations. Hence international advocacy for the adoption of various conflict resolution mechanisms of the Alternative Dispute Resolution (ADR), has been very much welcomed in Ghana.

Fiadjoe (2013), provides that the mechanisms of ADR are those which have their origin in the fabric of the tradition of various societies. He states that:

The origins of ADR trace to traditional societies. Traditional societies, without the trappings and paraphernalia of the modern state, had no coercive means of resolving disputes. So, consensus building was an inevitable and necessary part of the dispute resolution process. The court system only developed as a necessary by-product of the modern state. Societies in Africa, Asia, and the Far East were practicing non-litigious means of dispute resolution long before the advent of the nation-state, for the building of long-term relationships was the bedrock on which those societies rested.<sup>11</sup>

It means the use of mediation dates far back and was a non-coercive approach to resolving disputes based on consensus. Above lends credence to the narrative espoused by Malan (1997). Under his discussions on Conflict and Conflict Resolution, attention is drawn to the traditional African setup in which traditional or tribal leaders and elders serve as conflict resolution practitioners termed interveners. He indicates that:

During the thousands of years of traditional leadership the situation outlined above (pp 4-6) could have prevailed in Africa, as elsewhere in the world: typical types of conflict arising out of typical causes, and leading to basic patterns of conflict resolution - fighting and/or talking. For the greatest part of this very long period, the setting of such conflicts and their resolution must have been predominantly local. The events took place between individuals, village communities, or tribes who lived in the same or adjoining areas. The people who became involved as “interveners”<sup>12</sup> were probably mostly local elders and/or tribal leaders. When kingdoms developed (about the 50th century BCE in Egypt, and

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<sup>10</sup> Malan Jannie. *Conflict resolution wisdom from Africa*. (1997).

<sup>11</sup> Fiadjoe Albert. *Alternative dispute resolution: a developing world perspective*. Routledge. (2013) 2

<sup>12</sup> Traditional conflict resolution practitioners

about the 8th century BCE in West Africa) stronger and wider authority came onto the scene, but the traditional methods of instigating and resolving conflict probably underwent little change.<sup>13</sup>

This suggests that these mediation processes were led by respected community elders and chiefs when it came to disputes within their traditional jurisdictions. The case of Ghana is not any different from this historical narrative. ADR was the main legal regime that was used in conflict management and resolution until the advent of the introduction of the court system which brought about litigation that is founded on rights, and who is at fault, and not necessarily based on building on consensus for an amicable resolution of a dispute (Fiadjoe, 2013). He indicates:

In the case of Ghana, for example, there is abundant evidence showing the historical existence of ADR processes. In the Privy Council case of *Kwasi et al v Larbi*, [1953] AC164 there is the discussion in the judgment of the Board on the question of whether there is a right to resile from arbitration after the award has been made. Reference was made to Sarbah's *Fanti, Customary Laws (Gold Coast)* published in 1887 and the case of *Ekua Ayafie v Kwamina Banyea*, [1884] Fanti LR 38 reported in 1884.

Also, in the present-day customary law regime of Ghana, there is still recognition of non-litigious modes of dispute resolution whereby the parties to a dispute may refer their disagreement to conciliation, mediation, or arbitration, outside of the formal court system, *to a chief or some respected elder of the community*. In a general sense, this respect for a non-litigious process of dispute resolution was underpinned by a society that was then largely culturally homogenous. Respect for the lineage, the household and personal abhorrence of crime, and the focus on community rather than personal interests, all served, in large measure, to preserve the equilibrium of the society. The introduction of the court system, as part of the modern state, was an indication of the loss of society's homogeneity through the growth of internal fecundity or external admixture. In that kind of a mix, old sanctions tended to become inadequate to the new needs of maintaining law and order.<sup>14</sup>

This narrative appears to give a detailed historical perspective of the evolution of the alternative dispute resolution mechanism in which chiefs and respected elders as third-party neutrals played a significant role. Similarly, Brobbey (2008)<sup>15</sup> indicates that the chieftaincy institution in Africa came with the mandate of governing or ruling people within a particular traditional sitting. And that system was the major legal framework<sup>16</sup>. It is stated that:

Chieftaincy is traceable from the period in the history of Africans in the then Coast. Before the arrival of the colonialists<sup>17</sup>, life was organised by and revolved around the leaders or heads of the community. The headmen or leaders in their respective communities governed the Africans...they were given names and titles in the African dialects by those whom they governed. The names and titles connoted those who ruled, governed or headed the people as rulers, governors or leaders...the primary function of *the leader or chief was to govern or rule to ensure social stability and order*.<sup>18</sup>

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<sup>13</sup> Ibid (n 10) pp 13 - 14

<sup>14</sup> Ibid (n 10) at pg. 5

<sup>15</sup> Brobbey Stephen Alan. *The law of chieftaincy in Ghana: Incorporating customary arbitration, contempt of court, judicial review*. (Advanced Legal Publications, 2008)

<sup>16</sup> Gedzi Victor. *Principles and practices of dispute resolution in Ghana: Ewe and Akan procedures on females' inheritance and property rights*. (2009) 166-169. Traditional Judicial structure in Ghana

<sup>17</sup> In the case of Ghana (Gold Coast), it was colonized by the British

<sup>18</sup> Ibid (n 15) at p 2

In sum, respected heads of families, elders, tribal chiefs, and queen mothers, as third-party neutrals were the major actors/practitioners of customary dispute resolution through arbitration, mediation, and other settlement processes.<sup>19</sup> Therefore the conflict resolution processes and techniques which were used to resolve disagreements or disputes were outside of litigation.<sup>20</sup>

### **African Regional Conference on ADR Curriculum Development and Teaching**

This said conference, was the maiden conference on Alternative Dispute Resolution organised in Accra, Ghana under the auspices of the International Bar Association. The event took place between 20<sup>th</sup> – 22<sup>nd</sup> July, 1998, with Sam Okudzeto, Esq of Sam Okudzeto & Associates as the Chairman, a Ghanaian Law Firm. It was an African Conference with participants coming from almost all the parts of the African continent particularly Nigeria, Zimbabwe, Tanzania, Mozambique, Malawi, Benin, Namibia, The Gambia, Swaziland, Kenya, South Africa, Sierra Leone, Zambia, Ethiopia, Botswana, Cameroon, Uganda, Burkina Faso, Republic of Angola including Ghana. These countries included those with both common law and civil law jurisdictions. Other international participants included England, Italy, Germany, The Law Society of Scotland, UK, the National Judicial College, USA as well as Australia.

It must be noted profoundly that Ghana was heavily represented<sup>21</sup> by persons from various fields of practice, such as the legal fraternity, politicians and state actors, academia, commerce, the chieftaincy institution, etc. who participated in the conference. The focus of the conference to build capacity in conflict analysis, prevention, management and resolution; the advantages of an alternative mechanism to litigation as well as equip participants with basic skills in negotiation and mediation. Participants were also taken through skills in arbitration and the difference that exists between ADR and other peace modules.

The conference empowered participants and provided the platform to learn about the modern trend in the development of ADR in its various forms and most importantly its benefits. This, fortunately, fell in line with the traditional setting and practices as well as the legal system of participants but was without an established legal framework. Based on the above discussions, the Alternative Dispute Resolution concept<sup>22</sup> of Ghana must be understood to be founded on these underlying historical antecedents, principles, and awareness.

## **LEGISLATIONS PROVIDING FOR MEDIATION IN GHANA**

Mediation in Ghana is regulated by law. Several enactments have made room for the use of mediation as an option in resolving disputes when they occur. It must be noted that before the enactment of the parent Act, the Alternative Dispute Resolution Act, 2010 (798), various enactments which predate it, provided for mediation. Legislations that provide the legal basis for the practice of Mediation in Ghana include the following:

### **Courts Act, 1993 (Act 459)**

The Courts Act provides the promotion of reconciliation of disputes in civil and criminal matters. It requires the courts and tribunals to assist parties to resolve their disputes amicably without having to go through litigation as much as possible, where it appears practical. The Courts Act, 1993 provides that:

Section 72: Courts to Promote Reconciliation in Civil Cases

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<sup>19</sup> Nolan-Haley Jacqueline M., and James Annor-Ohene. *Procedural justice beyond borders: mediation in Ghana*. Harvard Negotiation Law Review Online, Forthcoming, Fordham Law Legal Studies Research Paper 2384666 (2014).

<sup>20</sup> Adjei Dennis Dominic and Ackah-Yensu Frances Barbara. *Alternative Dispute Resolution*. Buck Press. Accra. (2021)

<sup>21</sup> about 70% of the participants were Ghanaian citizens in various fields and enterprises.

<sup>22</sup> Emphasis of this paper would be limited to only Mediation

(1) Any court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

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

Section 73: Reconciliation in Criminal Cases.

Any court, with criminal jurisdiction, may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment cases of compensation or on other terms approved by the court before which the case is tried, and may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.

Section 73 largely is founded on the principles of Victim-Offender Mediation (VOM) or Restorative Justice coined by Albert Eglash<sup>23</sup> which has become essential in the criminal justice system.

The jurisprudence of the criminal justice system appears to view crime as having been committed against the State, as opposed to against the immediate victim and the community at large. Hence appearing to neglect the victim's preferences and needs when prosecuting and sentencing the offenders of the acts committed against them<sup>24</sup>. The Alternative Dispute Resolution (ADR) mechanisms have mediation as one of the approaches. VOM is a type of Mediation used to resolve non-aggravated criminal offences. Victim-offender mediation is also referred to as Restorative or Transformative justice. Restorative practices involve addressing criminal justice issues placing emphasis on repairing the harm done to victims and relationships rather than only punishing offenders<sup>25</sup>. Kaul indicates that therapeutic VOM within the niche of the traditional criminal justice process has a high potential for rehabilitation of the criminal offenders, giving them the opportunity to redress whilst correcting their wrongs under the alternate dispute resolution philosophy<sup>26</sup>. Kaul states that "ideally, any judiciary's opinion about restorative justice depends on their belief of how much potential a criminal offender to rehabilitate himself, and whether the level of seriousness of his crime even gives him access to this method of mediation"<sup>27</sup>. Similarly, Adjei and Ackah-Yensu indicate that Victim-Offender Mediation is rooted in the belief that accords with the concept of individualism that pervades modern society. They indicate that:

The key concern is that the criminal justice system should be centered on the victim rather than the State since the offender may end up living in the same community as the victim and also the need to consider the feelings of the victim with the intention of restoring and transforming both parties to continuously live in social peace and harmony. ...this is accomplished by usually a meeting, in the presence of one or two trained facilitators, between victim and offender<sup>28</sup>

Section 73 of Act 459 therefore, empowers the Court to refer a criminal case to mediation if it is of the opinion that the case is non-aggravated and amenable. A party may also request the court for mediation, which the court may grant considering the circumstance of the case.

<sup>23</sup> Ibid (n 18) at p 100

<sup>24</sup> Ravinsky Laura. *Reducing recidivism of violent offenders through victim-offender mediation: a fresh start*. Cardozo J. Conflict Resol. 17 (2015): 1019.

<sup>25</sup> Van Sluytman Margot, and B. A. Poet. *Sawbonna: victim-led restorative justice*. (2020).

<sup>26</sup> Kaul Tulika. *A Guide to Victim-Offender Mediation: An Alternative to the Criminal Justice System*. Ct. Uncourt 6 (2019): 19.

<sup>27</sup> Ibid (n2)

<sup>28</sup> Ibid (n 18) at p 106

### **High Court Civil Procedure Rules 2004 (C.I 47)**

Order 58 of C. I. 47 deals with commercial court matters such as disputes arising from trade and commercial transactions. Order 58 Rule 4 provides that after a Reply has been filed or the time for filing the Reply has elapsed, the Administrator of Commercial Court shall, within three days assign the case to one of the Commercial Court Judges, to conduct a pre-trial settlement conference, which is also known as Case Management Conference.

The parties are invited to settle issues for trial and effect settlement of the dispute and may be represented by their counsel. Order 64 rule 1 also provides for reference to arbitration.<sup>29</sup> This has found its way into the Practice Direction of Her Ladyship Sophia Akuffo, C.J (2018)<sup>30</sup> with the overriding objective of ensuring that criminal cases are resolved fairly, justly, efficiently, and expeditiously. Of which provision is made for Case Management Conference, where the Judge or Magistrate must consider whether the offence in question is amenable to amicable settlement under the law and if it is, then amicable settlement ought to be vigorously explored and the court must refer the case to ADR<sup>31</sup> and adjourn<sup>32</sup> for the outcome of the amicable settlement subject to the provisions of Section 169 (2) of Act 30<sup>33</sup>.

### **High Court (Civil Procedure) (Amendment) Rules, 2020 (C.I. 133)**

C. I. 133 under Order 1 amends Order 32 of High Court Civil Procedure Rules 2004 (C.I 47) under Application for directions. Order 1 of C.I. 133 provides that a party to a civil case before the court, when applying for directions may request the court for the proceedings to be stayed for the parties to attempt a settlement of the case through Alternative Dispute Resolution (ADR) (Mediation) or other means of an amicable settlement. During the hearing of the Application for Directions, the presiding judge may ask the parties if they are willing to submit their case to ADR or other means to attempt an amicable settlement if the case before the court is amenable to ADR. If the parties agree to settle by ADR, a period of one month will be granted and may be extended if required to enable any possible settlement. Upon successful resolution of the dispute; the Terms of Settlement will be drawn for parties to sign. The Terms of Settlement will be entered as consent judgment by the Court. On the other hand, if the mediation process could not resolve the dispute, the stay of proceedings is revoked and then the judge will give a hearing to the application for directions. From which the case takes its normal course of a full trial.

### **Labour Act, 2003 (Act 651)**

Sub-Part II of the Labour Act, 2003 provides for the Settlement of Industrial Disputes in the working environment or labour front. According to section 153, parties to an industrial dispute are under an obligation to negotiate in good faith with a view to reaching a settlement of the dispute in accordance with the dispute settlement procedures established in the collective agreement or contract of employment governing parties. Section 154 is specifically on Mediation. It states that subject to the time limit in respect of essential services, if parties fail to settle a dispute by negotiation within seven days after the occurrence of the dispute, either party or both parties by agreement may refer the dispute to the Labour Commission and seek the assistance of the Commission for the appointment of a mediator.

### **Domestic Violent Act, 2007 (Act 732)**

Under Act 732, the Court is expected to promote reconciliation under section 24. It provides that "if in a criminal trial in respect of domestic violence which is not aggravated or does not require a sentence that is more than two years, where (a) the complainant expresses the desire to have the matter settled out of Court, the Court shall

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<sup>29</sup>Westchester Resources Ltd v. Ashanti Goldfields Co. Ltd & Africore (GH) Ltd v. Ashanti Goldfields Co. Ltd (Consolidated) Suit No. J4/63/2013; 11 November 2015 (Unreported)

<sup>30</sup>Practice Direction (Disclosures and Case Management in Criminal Proceedings) (2018)

<sup>31</sup>Victim-Offender Mediation

<sup>32</sup>Section 169 (2) of Criminal Procedure Code, 1960 (Act 30)

<sup>33</sup>Ibid (n 27)



refer the case for settlement by an alternative dispute resolution method, or (b) the Court is of the opinion that the case can be amicably settled, the Court may with the consent of the complainant refer the case for settlement by an alternative dispute resolution method.” This makes room for the restoration of a broken domestic relationship affected due to the offence. But what needs to be noted quite clearly is that the offence must not be aggravated and the victim must voluntarily consent to the willingness to undergo the mediation. The objective of this provision is seeking to restore a broken family rather than inflicting penal consequences such as a custodial sentence which may further destroy the existing domestic or family bond as well as attendant societal implications.

### ***Children’s Act, 1998 (Act 560)***

The Children’s Act provides under section 28, the functions of the Child Panels, a non-judicial function to mediate in criminal and civil matters which concern a child. Section 31 provides that a Child Panel may mediate in any civil matter concerned with the rights of the child and parental duties. Furthermore, section 32 also creates room for criminal matters. It states that a Child Panel shall assist in victim-offender mediation in minor criminal matters involving a child where the circumstances of the offence are not aggravated. It shall seek to facilitate reconciliation between the child and any person offended by the action of the child. Similarly, the Court would consider whether the offence committed is non aggravated, if it is the opinion of the court that is it aggravated such as defilement, it shall not grant mediation. On the other hand, if it is non aggravated it may call for mediation as an approach toward restoring reconciliation.

### ***Ghana Investment Promotion Centre Act, 2013 (Act 865) - (GIPC)***

The Ghana Investment Promotion Centre<sup>34</sup> is a state entity engaged in facilitating national and international investment and commercial transactions for economic growth and development. Act 865 regulates the operation of GIPC, it provides under section 3 as an objective of the institution, which has to do with enhancing a transparent and responsive environment that is conducive to promoting investment in Ghana. Section 33 is dedicated to the Dispute Resolution Procedures. It indicates that (1) where a dispute arises between a foreign investor and the Government in respect of an enterprise, an effort shall be made through mutual discussion to reach an amicable settlement; (2) A dispute between a foreign investor and the Government in respect of an enterprise to which this Act applies which is not amicably settled through mutual discussions within six months may be submitted at the option of the aggrieved party to arbitration...unless there is an arbitration agreement to the contrary, the method of dispute settlement shall be mediation under the Alternative Dispute Resolution Act, 2010 (Act, 798). A close look at the established mode for resolving investment disputes at GIPC is mediation even to the exclusion of Arbitration unless there is an agreement to that effect, this is so because of the spirit of creating an enabling environment for investment. Therefore, when it comes to international disputes under GIPC, the focus is placed on resolving disputes amicably through mediation as the first option.

### ***Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) (CHRAJ)***

CHRAJ<sup>35</sup> is a state institution with the mandate of protecting the fundamental human rights of citizens, administrative justice, and issues bordering on corruption as well as ensuring good governance has been empowered under Act 456 to adopt mediation as one of the mechanisms in resolving its disputes. Section 7(d) of Act 456 provides for the Commission to take appropriate action to call for the remedying, correction, and reversal of instances specified in paragraphs (a), (b), and (c) of section 7<sup>36</sup> such means as are fair, proper and effective,

<sup>34</sup> <https://gipc.gov.gh/the-centre/>

<sup>35</sup> <https://chraj.gov.gh/>

<sup>36</sup> Section 7—Functions of the Commission.

The functions of the Commission are: (a) to investigate complaints of violations of fundamental rights and freedoms, injustice, corruption, abuse of power, and unfair treatment of any person by a public officer in the exercise of his official duties; (b) to investigate complaints concerning the functioning of the Public Services Commission, the administrative organs of the State, the offices of the Regional Co-ordinating Council and the District Assembly, the Armed Forces, the Police Service and the Prisons Service in so far as the complaints relate to the failure to achieve a balanced structuring of those services or fair administration in relation to those services; (c) to investigate complaints concerning practices

including negotiation and compromise between the parties concerned. This is in line with facilitating industrial harmony and reconciliation.

### ***Securities Industries Act, 2016 (Act 929)***

Act 929 establishes the Securities and Exchange Commission<sup>37</sup> with the mandate of regulating and promoting the development of efficiency, fairness, and transparency in the securities industry conducive for investors. Section 19 provides for the submission of complaints and examination of issues within the securities industry. It empowers a complaint to dispute, or a violation to seek any redress before the courts. However, it requires the case to be submitted to the Commission for hearing and determination and when not satisfied the complaint may proceed to court.

### ***The Copy Right Act, 2005 (Act 690)***

The Ghana Copy Right Office<sup>38</sup> is established under Act 690, which is empowered to implement copyrights, investigate and redress issues of infringement, and resolve disputes that arise out of the Act. Dispute resolution is provided for under section 48. It requires parties to a dispute to undergo negotiation among themselves as the first option and when that fails, appear before the Copyright Administrator to facilitate a meditation between the parties for an amicable resolution. However, it makes room for seeking review at the court of competent jurisdiction should they feel unsatisfied with the decision.

### ***Matrimonial Causes Act 1971 (Act 367)***

The Matrimonial Causes Act, 1971 is enacted to regulate marriage and its attendant challenges such as matters concerning divorce or broken marriage. It encourages the use of mediation to resolve such disputes if they are not beyond reconciliation. Section 8 of the Matrimonial Causes Act provides for the Promotion of Reconciliation. It states that on the hearing of a petition for divorce, the petitioner or his counsel shall inform the court of all efforts made by or on behalf of the petitioner, both before and after the commencement of the proceedings, to effect reconciliation. If at any stage of the proceedings for divorce it appears to the court that there is a reasonable possibility of reconciliation, the court on its own motion may adjourn the proceedings for a reasonable time to enable attempts to be made to effect a reconciliation and may direct that the parties to the marriage, together with representatives of their families or any conciliator appointed by the court and mutually agreeable to the parties, attempt to effect a reconciliation. Therefore when it comes to disputes pertaining to divorce among spouses before the courts, the court encouraged facilitating an amicable resolution through mediation of the disputes if it deems it fit.

## **THE ALTERNATIVE DISPUTE RESOLUTION ACT, 2010<sup>39</sup>**

### ***Mediation under the ADR Act***

In his lecture<sup>40</sup> on ADR, Nene Amegatcher indicates that mediation is derived from the Latin word “mediare” which means “heal”. A process that brings about healing. Unlike other dispute resolution methods, its major goal is to accomplish healing and restore relationships of disputing parties. The basic function of mediation is facilitating communication using a neutral third party to assist parties to arrive at their own resolution on consensus.

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and actions by persons, private enterprises and other institutions where those complaints allege violations of fundamental rights and freedoms under the Constitution.

<sup>37</sup> <https://sec.gov.gh/>

<sup>38</sup> <https://www.copyright.gov.gh/>

<sup>39</sup> Alternative Dispute Resolution Act, 2010 (Act 798)

<sup>40</sup> Ghana Bar Association Annual Conference Continuous Legal Education Workshop Elmina-Tuesday 20th September 2011, A Daniel Come to judgment: Ghana’s ADR Act, a progressive or retrogressive piece of legislation?

Mediation places ownership of the process with the parties with the mediator as a facilitator or moderator. The parties control the outcome<sup>41</sup>. Mediation is different from litigation or arbitration which are contest dispute resolution mechanisms. The mediator as a facilitator does not make decisions for the parties nor declare a party judge guilty or liable for a wrong nor declare the innocence of a party. It, therefore, means the mediator basically serves as a facilitator who assists the parties to make their own decision on the basis of consensus without being unduly influenced by the mediator.

Sections 63 – 88 of Act 798 provide for mediation. A party may with the consent of the other party submit any dispute to “*an institution or a person agreed on by the parties*”.<sup>42</sup> Communication between the parties towards an agreement to refer a dispute to mediation could take the form of telephone, emails, or any other verbal mode of communication<sup>43</sup>. The court on its own motion<sup>44</sup> before which an action is pending may at any stage in the proceedings if it is of the view that mediation will facilitate the resolution of the matter or a part of the matter in dispute, may refer the matter or that part of the matter to mediation<sup>45</sup>. A mediator can be a natural person or an entity of one or more mediators.<sup>46</sup>

The *ethical standards* required of the mediator(s) include *independence and impartiality*;<sup>47</sup> *disclosure of any likelihood of bias* that would affect the mediation proceedings devoid of any conflict of interest.<sup>48</sup> Act 798 also guarantees confidentiality, it provides under section 78 that:

(1) A record, a report, the settlement agreement, except where its disclosure is necessary for the purpose of implementation and enforcement, and other documents required in the course of mediation shall be confidential and shall not be used as evidence or be subject to discovery in any court proceedings.

(2) A mediator shall not disclose information given in the course of the mediation to a person who is not a party to the mediation without the consent of the parties.

(3) Without limiting the effect of subsection (1) a party to mediation shall not rely on (a) the record of the mediation; (b) statement made at the mediation; or (c) any information obtained during the mediation as evidence in court proceedings.

From above, a mediator<sup>49</sup> cannot serve as an arbitrator or representative or counsel for one of the parties in arbitration or judicial proceeding or serve as a witness to any of the parties<sup>50</sup> or be joined as a party or liable for acts and omissions in the discharge of his functions unless it is proven that the mediator acted in bad faith.<sup>51</sup>

Another ethical requirement is the power of the mediator. Section 74<sup>52</sup> gives the mediator the power to act independently and impartially in the conduct of mediation such as conducting joint or separate meetings

<sup>41</sup> See Barnes and Obeng on Mediation as a Court-Connected ADR (2021).

<sup>42</sup> “an institution or a person agreed on by the parties” this suggest that qualification of who serves as a mediator is at large but most significantly is based on the consent and consensus of parties, agreeing to submit their dispute to such a person or institution for a mediation to be conducted. It is therefore clear that it is not necessarily dependent on one’s professional or academic qualification; however, S. 115 (d) of Act 798 also empowers the ADR Centre to keep a register of arbitrators and mediators.

<sup>43</sup>Ibid (n 28) s. 63

<sup>44</sup> Ibid (n 29) s. 83 (Resort to arbitral or judicial proceedings) The parties shall not initiate, during the mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject-matter of the mediation proceedings., Stay of proceedings.

<sup>45</sup>Ibid (n 28) at s. 64

<sup>46</sup> Ibid (n 29) at s. 65

<sup>47</sup> Ibid (n 29) at s. 67

<sup>48</sup> Ibid (n 29) at s. 68

<sup>49</sup> The mediator(s) become *funtus officio* upon the termination of the mediation proceedings.

<sup>50</sup> Ibid (n 29) at s. 84

<sup>51</sup> Ibid (n 29) at s. 86

<sup>52</sup> Power of mediator, s. 74 of Act 798

(caucusing), be guided by the principles of objectivity, fairness, and justice in the proceeding, and has the power to end the mediation whenever the mediator is of the opinion that further mediation between the parties will not help to resolve the dispute.

In sum, the mediator is to exhibit professionalism when it comes to compliance with the ethical requirements in order to conduct successful mediation to become enforceable which would stand the test of time without the risk of being set aside. These professional principles include confidentiality, integrity and independence, impartiality, and diligence. Others are comportsment, dignity, and avoidance of conflict of interest through full disclosure of anything likely to bring about bias before and in the course of proceedings.

Mediation is terminated when the dispute is *resolved amicably* by consensus with a settlement agreement.<sup>53</sup> It can also be terminated by the mediator for *non-payment of a deposit by parties* or when upon a reasonable assessment in consultation with the parties to the effect that *further mediation is not worthwhile and would not resolve the dispute or where a party or parties jointly terminates* the mediation proceedings. *This notice may be in writing or by word of mouth (oral).*<sup>54</sup>

## THE ALTERNATIVE DISPUTE RESOLUTION CENTRE

The ADR Act, 2010 (Act 798) has provided for the establishment of an Alternative Dispute Resolution Centre<sup>55</sup> by the State, which shall be a separate legal entity that can sue and be sued. Its functions shall include facilitating the practice of ADR and providing facilities for the settlement of disputes through arbitration, mediation, and other voluntary dispute resolution procedures. The Centre shall also keep a register of arbitrators and mediators, examine and provide guidelines on rules and fees for arbitrators and mediators. Other responsibilities include conducting research, education, and issuing specialised publications on all forms of alternative dispute resolution and amicable settlements in advancing the practice of ADR in Ghana.

## COURT CONNECTED ALTERNATIVE DISPUTE RESOLUTION (CCADR)

Irene-Charity Larbi, JA<sup>56</sup> in an address to mark the launch of the yearly National ADR Week Celebration<sup>57</sup> for the 2021 Legal Year Term, gave a detailed presentation on the background for the institutionalization of the Court-Connected ADR concept and its relevance in contemporary legal jurisprudence and the court system. She stated that:

Alternative Dispute Resolution was instituted in the year 2005 as an intervention to ease pressure on the regular court system and to create a platform that would offer disputants the opportunity to play a key role in resolving their disputes. To promote and entrench this intervention, a one-week in every legal year term is set aside to sensitize the General Public. *Our Court Connected ADR Programme uses Mediation mainly*<sup>58</sup> for the resolution of cases. ADR<sup>59</sup> has a lot of benefits that support quality justice delivery over conventional litigation such as privacy, helping parties to willingly comply with agreements, providing a healthier method for resolving disputes, decongest the courts by reducing the backlog of cases, financial and emotional relief to parties, cuts down cost as compared to the cost to litigation and thereby makes justice more accessible to a greater number of people, empowers parties due to flexibility, beneficial to lawyers in the sense that they tend to

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<sup>53</sup> Ibid (n 29) at s. 82, (Status and effect of settlement agreement) Where the parties agree that a *settlement is binding*, the settlement agreement has the same effect as if it is an arbitral award under section 52.

<sup>54</sup> Ibid (n 29) at s. 80, End of Mediation

<sup>55</sup> Ibid (n 29) ss 114 -115

<sup>56</sup> Her Ladyship Justice Irene-Charity Larbi, is Justice of the Court of Appeal and Judge-in-Charge of ADR

<sup>57</sup> At Bolgatanga in the Upper East Region of Ghana, dated Monday, 19<sup>th</sup> July, 2021

<sup>58</sup> Emphasis: The Court Connected ADR of Ghana is focused mainly in Mediation to the exclusion of Arbitration and Customary Arbitration which are other options to ADR under the ADR Act, 2010

<sup>59</sup> ADR used here is in the light of Court Connected ADR (Court Connected Mediation Practice)

have happier clients, greater professional satisfaction, broader problem-solving skills than litigation and to make quality justice real and accessible to all, especially the poor and vulnerable.

Her Ladyship, Irene-Charity Larbi<sup>60</sup> indicated that two major activities are carried out during the ADR Week Celebration, namely the use of mediation to resolve cases where mediators are assigned to each court to help resolve cases that are amenable<sup>61</sup> to mediation and referred by Judges and Magistrates; and secondly, creation of public awareness to educate the citizenry on the use of ADR.

The CCADR Programme is practiced in one hundred and thirty-one (131) courts across Ghana with at least five mediators assigned to one Court. The CCADR programme has six hundred and thirty-five (635) registered mediators.<sup>62</sup>

Adjei and Ackah-Yensu (2021)<sup>63</sup> provide that the Court-Connected Mediation is any program or service, including a service provided by an individual, to which a court refers cases on a voluntary or mandatory basis, including any program or mandatory basis, or any program or service operated by the court. This approach<sup>64</sup> has been adopted by many countries as an alternative to conventional litigation for the benefit of reduction of cost, access to justice<sup>65</sup>, reduction of caseload and delays<sup>66</sup> before the courts, and restoration of a broken relationship<sup>67</sup> as well as for personal satisfaction of parties based on its participatory approach<sup>68</sup>. There is also a national and international drive in transforming local and international conflict into peaceful agreements.<sup>69</sup>

### ***The National ADR Secretariat of the Judicial Service of Ghana***

The ADR Programme is coordinated under the National ADR Secretariat headed by a Justice of the Court of Appeal In-Charge of ADR. Table 1 below shows the general performance of CCADR since its institutionalisation in Ghana from 2007 – 2020.

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<sup>60</sup> Ibid (n 43)

<sup>61</sup> Ibid (n 19) at pp 276 - 277

<sup>62</sup> Ibid (n 43)

<sup>63</sup> Ibid (n 19) at pp 232 -233

<sup>64</sup> Mediation

<sup>65</sup> Ibid (n 19) at p 249

<sup>66</sup> Ibid (n 19) at p 252. Also see Yin and Seiwoh (2021) on costs and delays in accessing justice.

<sup>67</sup> Ibid (n 19) at p 255

<sup>68</sup> Ibid (n 19) at p 256

<sup>69</sup> Ibid (n 19) at p 257

**Table 1: Breakdown of Annual Performance (2007-2020)**

Year	Month	Cases Mediated	Cases Settled	Percentage %
2007	January – December	853	466	53
2008	January – December	1,723	807	47
2009	January – December	5,358	3,871	72
2010	January – December	3,754	1,633	43
2011	January – December	4,392	2,025	46
2012	January – December	5,924	2,722	46
2013	January – December	6,668	2,806	42
2014	January – December	4,416	1,999	45
2015	January – December	1,464	635	43
2016	January – December	1,372	605	44
2017	January – December	3,486	1,571	49
2018	January – December	4,112	2,075	50
2019	January-December	6,384	3,041	49
2020	January-December	5455	2312	42
<b>Total</b>		<b>55,361</b>	<b>26,568</b>	<b>48%</b>

Source: National ADR Secretariat, Judicial Service, Ghana, 2021

It is evident from Table 1 that on the average 48% of cases brought before mediation every year, got a successful settlement. This speedy output is based on a year-on-year basis. This data does not include cases handled by private entities and persons engaged in the practice of Mediation. This output needs commendation as same cannot be said of litigation<sup>70</sup> which travels several years before a resolution is achieved due to technicalities and the complex nature of litigation.

### ***Court-Connected Alternative Dispute Resolution (CCADR) - Practice Manual, 2010***

In taking appropriate steps in the development of the practice of Mediation (ADR) in the Court System, apart from enacting the New ADR, 2010<sup>71</sup> the Judicial Service of Ghana, per its policy direction, with the support of the United Nations Development Programme (UNDP) developed the CCADR Practice Manual. This was a novelty as it sought to streamline and provide a well-structured procedure and processes required for the practice of ADR before the Court, such as with the use of the High Court (Civil Procedure) Rules, 2004 (C.I 47) in the litigation of Civil Matters. It must be noted that the ADR Act, 2010 has no Regulation to it, however, this practical manual has provided even more detailed direction and guidance than some traditional Regulations.

According to the Manual,<sup>72</sup> the Court-Connected ADR refers to the various methods of resolving disputes that are available to the court other than court trial<sup>73</sup> processes. These methods include Negotiation, Mediation,

<sup>70</sup> For example, *Adu v. Kyeremeh* 1987-88 GLR 137. This case was in court for about 26 years.

<sup>71</sup> Loosely called the New ADR Act, even though it is a decade old and counting (enacted in 2010)

<sup>72</sup> Court-Connected Alternative Dispute Resolution Practice Manual, 2010

<sup>73</sup> Litigation

Conciliation, Arbitration, Customary Arbitration, Mediation-Arbitration (Med-Arb), and Neutral Case Evaluation. *Mediation*<sup>74</sup> however is the main method used for the CCADR.<sup>75</sup>

The characteristics of the CCADR include confidentiality, privacy, relatively fast, relatively cheap, restoration and preservation of relationships between parties, and also the fact that agreements or awards are final and binding.<sup>76</sup> However, the manual acknowledges the challenges to the practice of CCADR to include the lack of detailed and procedural protections and the lack of review mechanism or appeal by dissatisfied parties including limiting the scope for the development of legal precedence. Other challenges of CCADR are the misuse of confidential information disclosed during the mediation process as well as others using such information as a strategy for buying time and testing the strength of their case, should they venture into the realm of litigation.

## CASES AMENABLE TO ALTERNATIVE DISPUTE RESOLUTION

When it comes to cases that are amenable to ADR, the Alternative Dispute Resolution Act, 2010 has not generally provided for matters which can be handled through the various options of the ADR mechanism as envisaged by the preamble to the Act. The preamble to states that:

AN ACT to provide for the settlement of disputes by ARBITRATION, MEDIATION, AND CUSTOMARY ARBITRATION, to establish an Alternative Dispute Resolution Centre and to provide for related matters.

However, notwithstanding the above, part one of the Act is dedicated to Arbitration, section 1 under arbitration agreement provides for the scope of cases that are not amenable to the Act without attempting to mention some of the cases which are amenable, it states under section 1 that:

This Act applies to matters other than those that relate to a) the national or public interest; (b) the environment; (c) the enforcement and interpretation of the Constitution; or (d) any other matter that by law cannot be settled by an alternative dispute resolution method.

Based on the above, it is argued that the Act has not provided explicitly for cases that are not amenable to Mediation under Part Two and Customary Arbitration under Part Three but only for Arbitration under Part One. However, it is construed “loosely”<sup>77</sup> that section 1 of Part One applies to Part Two and Three, but without any strict legal basis, since the Act has not expressly mentioned that. This understanding is supported by the Latin maxim “*expression unius est exclusion alterius*”<sup>78</sup> this is a legal principle under statutory construction or interpretation, which means that “when one or more things of a class are expressly mentioned others of the same class are excluded.” However, the CCADR Practice Manual has provided a broad list of cases that cannot undergo ADR in general, and not only Arbitration as in the case of the ADR Act, 2010 as follows:

(a) Child custody cases in which sexual, physical, mental, psychological or allegation of verbal abuse; (b) disputes raising some constitutional, human rights or important public law and order issues; (c) disputes involving interpretation of statutes or documents; (d) civil disputes in which substantial fraud, forgery or stealing is alleged; (e) where the court has reasonable cause to believe that the parties intend to use the ADR process to delay the court process; (f) dispute out of which a precedent should be set; (g) a case that is a felony or aggravated assault and; (h) disputes pertaining to jurisdiction.<sup>79</sup>

<sup>74</sup> Emphasis of the Manual when it comes to CCADR is Mediation

<sup>75</sup> Ibid (n 58) at p 1

<sup>76</sup> Ibid (n 58) at pp 1 - 2

<sup>77</sup> Emphasis mine

<sup>78</sup> <https://www.merriam-webster.com/legal/expressio%20unius%20est%20exclusio%20alterius>

<sup>79</sup> Ibid (n 58) at p 3

It can therefore be concluded that cases that can be submitted to ADR in general, are “at large” in Ghana based on the combined strength of section 1 of this Act (ADR Act,2010); and Sections 72<sup>80</sup> and 73<sup>81</sup> of Courts’ Act, 1993 (Act 459) as well as the CCADR Practice manual<sup>82</sup> serving as the legal parameters, limitations, and framework. But what needs to be noted is that all civil cases can be submitted for ADR. Non-aggravated criminal offences may also be submitted to victim-offender mediation if the judge deems it appropriate.

### ***The Role of the Court in Mediation***

When it comes to the practice of CCADR, the Court plays a significant role since they are clothed with the capacity to determine which case is amenable to mediation at any time before final judgment is delivered and to also refer such a matter for mediation. All courts<sup>83</sup> have the capacity and jurisdiction to carry out this mandate.

## **JURISDICTION TO THE PRACTICE OF MEDIATION**

Jurisdiction is significant when it comes to the practice of law, and when not properly invoked, may not be given a hearing or even if given a hearing per incuriam, the outcome<sup>84</sup> of such proceedings may risk being set aside for want of jurisdiction. The practice of mediation is not any different, most especially with CCADR. It must be invoked in accordance with the law. However, its scope is wider beyond the parameters of the formal court system into private practitioners and entities.

### ***ADR Service Providers***

The practice of ADR (mediation) is conducted by state-established entities, private corporate entities as well as individuals. The following include some of the statutorily established bodies which have the capacity to conduct mediation. All Courts in Ghana, namely District/Magistrate Court, Circuit Court, Court of Appeal, Supreme Court as well as specialized courts such as Commercial Courts. Other quasi-judicial State entities that conduct mediation are the Labour Commission, Commission of Human Rights and Administrative Justice (CHRAJ), Lands Commission, Domestic Violence and Victims Support Unit (DOVVSU) of the Ghana Police Service, Department of Social Welfare, Legal Aid Scheme and the National Peace Council.

On the other hand, Private practitioners of ADR (Mediation) include both corporate entities as well as any person(s) selected by both parties to the meditation by consensus. Some private ADR service providers in Ghana include the Centre for Citizens Empowerment (CCE), Ghana Association of Chartered Mediators and Arbitrators (GHACMA), Gamey & Gamey, Ghana Arbitration Centre (GAC), West Africa Dispute Resolution Centre (WADREC), Federation of International Women Lawyers (FIDA-Ghana), The Ghana ADR Hub, Global Mediation and Arbitration Centre (GLOMAC), Apuko Counseling Services (ACS), etc.

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<sup>80</sup> Section (72) Courts to Promote Reconciliation in Civil Cases: (1) Any court with civil jurisdiction and its officers shall promote reconciliation, encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

<sup>81</sup> Section (73) Reconciliation in Criminal Cases: Any court, with criminal jurisdiction may promote reconciliation, encourage and facilitate a settlement in an amicable manner of any offence not amounting to felony and not aggravated in degree, on payment cases of compensation or on other terms approved by the court before which the case is tried, and may during the pendency of the negotiations for a settlement stay the proceeding for a reasonable time and in the event of a settlement being effected shall dismiss the case and discharge the accused person.

<sup>82</sup> Ibid (n 62)

<sup>83</sup> See: Ss 72 & 73 of the Court Act, 1993; Order 58 Rule 4 of High Court Civil Procedure Rules 2004 (C.I 47); S. 64 of the ADR Act, 2010; p. 24 of CCADR Practice Manual, 2010

<sup>84</sup> Agreement or Award



## CONCLUSION

In sum, the paper draws the following conclusion as significant factors to note when it comes to the practice of Mediation in Ghana.

Ghana is a common law country that operates supremacy of the constitution and rule of law that provides equality before the law. It has not provided through it or enactment under it for special right or capacity to any person(s) over any other or on the basis of citizenship, natural or artificial legal personality, etc. when it comes to undergoing mediation. Parties to mediation proceedings are co-equals and the process is founded on consensus.

Before the introduction of the formal legal regime and court system into Ghana (Gold Coast then), several customary practices, principles, laws, and usages were used as strategies and techniques by respected traditional or tribal leaders, Chiefs, Queen mothers, heads of families, and elders in the resolution of misunderstanding, disagreements, and disputes. However, the name or concept "Alternative Dispute Resolution (ADR)" was not popular, but it has turned out that all those customary strategies, practices, and usages fall under the various mechanisms of ADR. It is safe to state emphatically that ADR (mediation) has been in practice over decades informally before colonisation in Ghana and other African countries. Ghana has a parent act, the Alternative Dispute Resolution Act, 2010 (Act 798), and other supporting legislations that serve as the legal basis for the practice of ADR in Ghana.

Victim-Offender Mediation which is a mode of restorative justice has statutory backing. It focuses on building reconciliation and restoring broken relationships especially when it comes to matters of domestic relations and other relationships which are non-aggravated disputes but are still under a developing pace.

Natural and artificial person(s) (corporate body or firm) can conduct mediation that would result in an amicable resolution between the parties in the form of an agreement or award that is binding, final, and enforceable in any competent court of jurisdiction in Ghana and international as a consent judgment.

Finally, Ghana has established a CCADR programme. All courts in Ghana have the jurisdiction and capacity to entertain such cases. The CCADR encourages any court with criminal (non-aggravated cases) and civil jurisdiction to promote reconciliation and facilitate the settlement of disputes in an amicable manner between parties.

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- Constitution of Ghana, 1992
- Commission on Human Rights and Administrative Justice Act, 1993 (Act 456)
- Criminal and Other Offences (Procedure) Act, 1960 (Act 30)
- Court Act, 1993 (Act 459)
- Domestic Violent Act, 2007 (Act 732)
- High Court Civil Procedure Rules 2004 (C.I 47)
- Ghana Investment Promotion Centre Act, 1994 (Act 478)
- Labour Act, 2003 (Act 651)
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Ekua Ayafie v Kwamina Banyea, [1884] Fanti LR 38

Kwasi et al v Larbi, [1953] AC164

New Patriotic Party v Attorney-General (Ciba Case) [1996-97] SCGLR 729

Westchester Resources Ltd v. Ashanti Goldfields Co. Ltd

## **INTERNATIONAL CONVENTIONS AND TREATIES**

United Nations Convention on International Settlement Agreements Resulting from Mediation (The Singapore Convention on Mediation)

New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention, 1958).