APPROPRIATE VERSUS ALTERNATIVE: LITIGATION IN THE CONTEXT OF DISPUTE RESOLUTION METHODS IN GHANA

by

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DECLARATION

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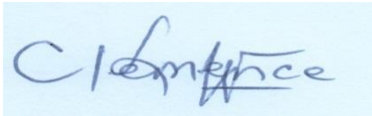
I do hereby declare that this thesis entitled "**Appropriate versus Alternative: Litigation in the context of dispute resolution methods in Ghana**" is my own work and that all materials referred to in the course of this work have been fully acknowledged.



Clemence Kotochie

25 – 07 - 2023

Date

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ABSTRACT

The study sought to accomplish three main tasks. These were to clarify 'appropriate dispute resolution method', design a mechanism for selecting an appropriate dispute resolution method for use in resolving disputes and finally, settle the age-old debate as to which dispute resolution method is the most appropriate one in Ghana. While quantitative methods were employed in the pursuit of the first two tasks, mixed methods research, that is, sequential explanatory design was used for the third task.

The findings are that, the appropriate dispute resolution method is that which delivers a just, fair, and enforceable outcome. Also, disputants should select dispute resolution methods that ensure reconciliation, fairness, relationship preservation, attainment of expected outcome(s) and decision enforceability. Lastly, this study found that there is no absolutely appropriate dispute resolution method in Ghana. The findings revealed that it is the type and stage of dispute, issues in dispute, disputant's circumstances, the legal framework, and the dispute resolution practitioner that collectively determine the most appropriate dispute resolution method at any point in time.

It is therefore suggested that policy makers in Ghana should consider amending Sections 1 and 113(c) of the Alternative Dispute Resolution Act 798 of 2010 to allow for use of the other methods to resolve disputes relating to matters of the environment and those of public interest and make negotiation agreements binding. Furthermore, it is suggested that a central authority should be set up to certify, train and regulate other dispute resolution practice in Ghana.

Finally, it is proposed that disputants should consider the type of dispute and stage of the dispute, the dispute resolution practitioner (if it is ascertainable), disputant's circumstances, issues in dispute, and the dispute resolution legal framework for selecting the most appropriate dispute resolution method to settle their disputes.

Key terms: Appropriate dispute resolution, litigation, other dispute resolution methods, dispute resolution mechanism, negotiation, mediation, and arbitration.

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LIST OF ABBREVIATIONS

ADR	Alternative Dispute Resolution
CCADR	Court Connected Alternative Dispute Resolution
CCG	Christian Council of Ghana
CHRAJ	Commission on Human Rights and Administrative Justice
DOVVSU	Domestic Violence and Victims Support Unit
GHACMA	Ghana Association of Certified Mediators and Arbitrators
GPCC	Ghana Pentecostal and Charismatic Council
GNAAP	Ghana National Association of ADR Practitioners
NLC	National Labour Commission
ODR	Other Dispute Resolution

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CHAPTER ONE

INTRODUCTION

1.1 Background to the study

Disputes are part of human activities. This makes dispute among humans inevitable even within the self. However, dispute does not lend itself to easy definition and hence has varied definitions. Dispute is disagreement over values and resources (scarce resources, status, power, among others) with the intention to injure or eliminate one's rival.[1] However, intention to injure or eliminate an 'opponent' (another) may not always be present. That is why some scholars have defined dispute as differences or perceived differences in interests, and incompatibility in needs and values of parties.[2] This study aligns with this definition because conflict (this work used conflict and dispute interchangeably) is divergence in views or interests.

Disputes predate human birth; in fact, they start from the womb and end in the tomb. This explains why Olaosebikan disagrees with Ajayi that the regularity of disputes has become a distinct feature of Africa.[3] Olaosebikan argues that Africa has no monopoly over disputes, for disputes are noticeable in the entire world. Sources of dispute include nature of man; competition for scarce resources; conflicting interests and values; confrontational roles; quest for power; ill-defined responsibilities; change; unhealthy organizational environment; basic needs denial; and competitive systems.[4] Disputes could have very dire consequences. That is why Olaosebikan bemoaned the unprecedented number of lives and properties lost in Africa to disputes and their impact on the available human resources.[5] Even though disputes and their consequences are

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1 Lewis A. Coser, *Social Aspects of Conflict* (International Encyclopaedia of Social Science New York 1957) 25.

2 Eleanor H. Wertheim, A Love, C Peck and Littlefield L, *Skills for Resolving Conflict* (Eruditions Press Victoria 1998) 12; Gregory Tillet, 'Conflict and its Resolution' in Afe AE *Theory of Conflict Resolution* (2nd edn, Charles Sturt University 1998) 15.

3 David Haig, 'Transfers and transitions: Parent offspring conflict, genomic imprinting, and the evolution of human life history' in *Colloquium Papers* (Colloquium of the National Academy of Sciences of the United States of America Washington DC January 26 – 29, 2010) 1731 – 1735; AJ Olaosebikan, 'Conflicts in Africa: Meaning, causes, impact and solution' (2010) African Research Review 549.

4 Johnnie PB and Nwasike JN, *Organizational behaviour and advanced management thought: An Epistemological Analysis* (University of Lagos Press 2002) 12.

5 Johnson Aremu Olaosebikan, 'Conflicts in Africa: Meaning, causes, impact and solution' (2010) African Research Review 549.

varied, Obojo categorised dispute consequences into three: (1) insecurity; (2) humanitarian; and (3) socio-economic.[6] Humanitarian consequences include loss of lives and property, population displacement and food insecurity. Socio-economic consequences include unemployment, poverty among others. Insecurity consequences could be civil wars, violent extremisms, threat to the peace, destruction of lives and property, among others.

These dire negative consequences of disputes make their resolution a matter of necessity but with caution. Dispute resolution is the art of ending a dispute. It could be a third party assisted process to facilitate or resolve a dispute.[7] This is so because disputants can resolve their own disputes with no third-party assistance. Disputants' perception of dispute is critical as this determines their approach to a resolution. Zero-sum perception of disputes leads to assumption of combative positions.[8] This is where disputants perceive that the only way to get more is for the other party to get less. However, positive-sum perception is where disputants are confident, they can each get more without anyone (any party) getting less and hence leads to integrative solutions ("expanded pie").[9] Expanded pie is increased options and opportunities for improved party satisfaction. A dispute resolution method is required if a dispute is to be resolved. The Association for Conflict Resolution defined a dispute resolution method as a mechanism crafted for identifying the root causes of disputes and having a suitable system for their resolution.[10] Sander's many doors advocacy at a Conference in 1976 for varied dispute resolution methods to use for different disputes seemed to have opened the floodgates for the numerous dispute resolution methods we have today.[11] These methods have been classified into two, namely litigation and other dispute resolution methods[12] (which some refer to as ADR). Ury, Jeanne and Goldberg identified three

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6 Luka Hakim Y Obojo, 'The social impact and effects on the development of South Sudan' (Master's thesis, Pan African Institute for Development West Africa 2015).

7 Carolyn Manning, 'Defining Conflict Resolution' <http://www.dialmformediation.com.au/Defining%20Conflict%20Resolution.pdf> accessed 24 April 2020.

8 Jonathan R Cohen, 'A Genesis of conflict: the zero – sum mindset' [2016] Cardozo Journal of Conflict Resolution 427.

9 Cohen (n 10) 427.

10 Association for Conflict Resolution, 'Finding lasting solutions to conflicts'(Association for Conflict Resolution, 2010) <https://acrnet.org> accessed 19 October 2018.

11 Lee M Moffitt, 'Before the Big Bang: The Making of an ADR Pioneer' (2006) Negotiation Journal 437.

12 Davide Carneiro, *Traditional and Alternative ways to solve conflicts* (Springer International Publishing Switzerland 2014) 11.

determinants of dispute resolution.[13] These are: (1) disputants' interests; (2) disputants' rights; and (3) disputants' power.

They explained interest as everything that is of concern to disputants – economics, relationship, and values. Disputants must reach common grounds on such matters to arrive at a resolution. Dispute resolution methods have been grouped based on different criteria. *Interest-based dispute resolution methods* include mediation and use of Ombudsman, among others. These methods yield the best outcomes.[14] The argument made is that this is so because interest is at the core of every dispute. *Rights-based methods* are those focused on assertion and demand of one's rights, and procedural justice, but provide limited solutions. *Rights-based methods* include arbitration, litigation, among others. *Power-based methods* are those that employ power in dispute resolution. The disputant with the most advantage, resources, higher status, political power, etc. stands at an advantage in the process. This creates the impression that dispute resolution methods hinge solely on disputants and their unique circumstances. However, this may not always be the case or is not absolute. This is because certain dispute resolution methods are designated for resolving specific disputes. The Alternative Dispute Resolution Act 2010 of Ghana for instance, prohibits using other dispute resolution methods to resolve environmental, enforcement and interpretation of the Constitution, national or public interest matters.[15]

It is necessary to use the most suitable method to ensure effective dispute resolution and sustainable peace. However, the question of the most appropriate resolution method remains largely unanswered. Cheung and Suen posit that the few studies that attempted answering this question have failed to do so satisfactorily.[16] The other dispute resolution methods have been described as alternative methods.[17] However, some scholars posit that the so-called *other methods* are rather the main and indeed traditional means of settling disputes hence they are the appropriate

13 William Ury, Jeanne M Brett and Stephen B. Goldberg, *Getting disputes resolved: designing systems to cut the cost of conflict* (Jossey-Bass Publications San Francisco 1988) 13.

14 Ury W et al (n 15) 14.

15 Alternative Dispute Resolution Act 798 of 2010 of Ghana, section 1.

16 Sai-On Cheung and Henry C. H. Suen, 'A multi-attribute utility model for dispute resolution strategy selection' (2002) 20 Construction Management and Economics 557.

17 Scottish Civil Justice Council, 'Access to Justice Literature Review: Alternative Dispute Resolution in Scotland and other jurisdictions' (2002) 20 Construction Management and Economics 557.

dispute resolution methods and litigation is the alternative.[18] It is therefore not surprising that Bireiji argues that, other dispute resolution methods present an opportunity for South Africa to use a more flexible and better accessible process to replace a poorly performing litigious system.[19] Bireiji added that litigation is the last resort for dispute resolution and that it is only resorted to in cases of absolute necessity. Some have also argued that litigation is ideal for laying the legal framework for the other methods to resolve some of the disputes.[20]

The Constitution of Ghana, the Criminal Act, the Alternative Dispute Resolution Act and other relevant legislations provide for the use of Litigation to resolve criminal matters; and matters relating to the interpretation and enforcement of the Constitution, the environment, among others.[21] A reading of these and other like-minded legislations gives one the impression that litigation is appropriate for resolving disputes relating to these matters. However, Lack questions how litigation, which applies the formula '*fact + law = outcome'* could be described as the most appropriate dispute resolution method.[22] This is because it is seen as binary, producing only two outcomes – winning and losing which is inadequate for dealing with complex and emerging disputes. Again, Litigation has been criticised as ignoring the fundamental causes of disputants' actions and focusing on the visible aspects of disputes thereby giving superficial and cosmetic solutions to disputes. Interestingly, the Limitation Act of Ghana bars certain courses of action after specific periods.[23] Does this mean the appropriateness of litigation for resolving these disputes is tied to a defined period?

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18 Consortium for appropriate dispute resolution in special education, 'Initial review of research literature on Appropriate dispute resolution (ADR) in special education' (Department of Education, 2007) <https://files.eric.ed.gov/fulltext/ED498823.pdf> accessed 19 October 2018.

19 Petrina Ampeire, 'ADR in South Africa: a brief overview' <https://ww.globalpound.org/2017/12/09/adr-south-africa-brief-overview> accessed 17 August 2018.

20 Such as environmental disputes. See the work by C Stukenborg, 'The proper role of ADR in environmental disputes' (199)] University of Dayton Law Review 1305.

21 Article 19 of the 1992 Constitution of Ghana for instance stipulates how the court should handle criminal cases to ensure fair trial; and Alternative Dispute Resolution Act 798 2010 s 1.

22 Jeremy Lack, 'Appropriate Dispute Resolution (ADR): The spectrum of Hybrid techniques available to the parties' in Arnold Ingen-Housz (ed) *ADR in business: Practice and issues across countries and cultures* (Kluwer Law International BV The Netherlands 2011) 399 – 379 <http://www.imimediation.org/wp-content/uploads/2017/09/adr-the-spectrum-of-hybrid-techniques-available-to-the-parties-by-jeremy-lack.pdf> accessed 28 June 2018.

23 Limitation Act NRCD 54 1972. Slander and seduction cases for instance would not be entertained after 2 years. Certain torts will also not be encouraged after 6 years.

Carrie-Meadow posits that the description of litigation as *appropriate* and ADR as *alternative* is not founded in literature. Carrie-Meadow therefore prefers to call the *other dispute resolution methods* as '*appropriate dispute resolution*' stressing that the various methods may be appropriate for different disputes in different settings. It is imperative to note that Fuller argues on the lack of a single absolutely appropriate dispute resolution method but that different dispute resolution methods are appropriate for resolving different disputes.[24] For instance, Georgette Francois – an ADR Consultant, posits that ADR is the ideal method for settling land disputes.[25] In fact, to Dieng the 'A' in 'ADR' could be 'amicable', 'alternative' or 'appropriate'.[26] Fiadjoe however, makes the point that it would be more precise to describe the 'other dispute resolution methods' as not alternative to litigation but appropriate method in dispute resolution generally.[27] This is especially so because some legislations permit the courts to allow disputants to use these other methods to resolve their disputes.[28] The courts are allowed to facilitate settlement of disputes at the initial stages of the litigation process.[29] Would it be correct to deduce that litigation is appropriate for resolving some disputes at a later stage of the dispute or dispute resolution process? Tonn prefers to call these other methods *Appropriate Dispute Resolution (ADR) methods*.[30] Similarly, the British Columbia Ministry of Justice added its voice to the debate by saying that the term '*ADR*' means '*appropriate dispute resolution*'.[31]

It is clear from the above that there is disagreement on the appropriate dispute resolution method, in fact, different schools of thought exist. While some argue litigation is the appropriate dispute

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24 As cited in Cohen (n 11) 427.

25 Georgette Francçois, 'ADR is best option for land disputes' < http://www.ghana.gov.gh/index.php/media-center/regional-news/1455-adr-is-best-option-for-land-disputes> accessed 22 August 2018.

26 A Dieng, as cited in A Ingen-Housz 'ADR in business: practice and issues across countries and cultures' (2011) Kluwer Law International BV 611.

27 Anthony Fiadjoe, *Alternative dispute resolution: a developing world perspective* (Cavendish Publishing Limited London 2014) 2.

28 The Courts Act 1993 (Act 459) as amended, enjoins courts to promote reconciliation and settle disputes amicably in both civil and criminal matters (see section 72 and 73); the High Court Civil Procedure Rules 2004 (C. I. 47) Order 58 allows disputes to be settled at the pre-trial stage; the Alternative Dispute Resolution Act 2010 permits the use of other dispute resolution methods to resolve disputes except those on constitutional interpretation and enforcement, those relating to national interest (see s.1); criminal matters (see s.89(2), etc.

29 Courts Act 459 1993 sections 72 and 73 and High Court Civil Procedure C. 1. 47 2004 Order 58 rule 4.

30 Greg Tonn, 'Appropriate Dispute Resolution for Immigrant Newcomers' (2010) Scoping Review 13.

31 British Columbia, 'Reaching resolution: a guide to designing public sector dispute resolution systems' <http://www.ag.gov.bc.ca/dro/publications/guides/design.pdf> accessed 30 April 2020

resolution method,[32] others argue it is the group of dispute resolution methods other than litigation.[33] There is also another group of scholars who argue that it is inappropriate to lump dispute resolution methods other than litigation, which are different irrespective of how similar they may appear and give them a single definition – appropriate or alternative.[34] The last school of thought posits that the litigation-other/alternative dispute resolution methods distinction is unnecessary. In fact, they argue that litigation contains elements of the 'other dispute resolution methods'. In fact, some of these 'other methods' are phases in litigation.[35] Hence, the strenuous attempt at a distinction is uncalled for. Menkel-Meadow[36] - the mother of ADR on her part called for a re-examination of litigation as the ideal dispute resolution method.[37]

It is clear from the foregoing that there are different and confusing definitions proffered for the '*appropriate*' description. There is therefore no universally accepted definition of '*appropriate*'. While some scholars defined it in absolute terms, others defined it in dispute-specific terms.[38] The argument is further made that the situation and circumstances, taking into consideration

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32 Patrick M. Garry, *A Nation of adversaries: how the litigation explosion is reshaping America* (Springer 1997).

33 Best in closely knitted communities. See Jerold S. Auerbach, 'Justice without Law' (1983) 33(2) Catholic University Law Review 517

34 The reason is that for instance, negotiation and mediation are phases in litigation hence cannot be lumped together and described as alternative, see William Twining, 'Alternative to What? Theories of Litigation, Procedure and Dispute Settlement in Anglo-American Jurisprudence: Some Neglected Classics' (1990) 56 The Modern Law Review 380. Therefore, O/ADR is part of a longer process of dispute resolution see J. Griffiths, 'The General Theory of Litigation - A First Step' (1983) 4(2) The German Journal of Law and Society 145

35 William Twining, 'Alternative to what? Theories of litigation, procedure and dispute settlement in Anglo-American Jurisprudence: some neglected classics' (1993) The Modern Law Review 387.

36 Carrie Menkel-Meadow, 'The trouble with the adversary system in a postmodern, multicultural world' (1996) William & Mary Law Review 32.

37 Carrie Menkel-Meadow, see Carrie Menkel-Meadow, 'Alternative and Appropriate Dispute Resolution in context formal, informal, and semiformal legal processes' in Peter T Coleman, Morton Deutsch and Eric C Marcus (eds), *The Handbook of Conflict Resolution: Theory and Practice* (John Wiley & Sons Incorporated 2014).

38 Specific disputes can best be resolved using specific methods. For instance, mediation is the commonest and most effective dispute resolution method for resolving land disputes (see Dominic Tuobesaane Paaga and Gordon Dandeebo, 'Assessing the Appeal of Traditional Dispute Resolution Methods in Land Dispute Management: Cases from the Upper West Region' (2014) 4(11) International Institute for Science Technology and Education. Where disputes reach crisis levels showing irreconcilable differences, another method becomes the ideal option. That is why a party dissatisfied with the decision of the Board (the governing body) of the National Pensions Regulatory Authority is permitted to seek a resolution using an appropriate method (see section 127 of the National Pensions Regulatory Authority, 2008).

disputants' expected outcomes and other relevant variables determine the dispute resolution method to describe as '*appropriate*'. This therefore makes it a subjective description.

The foregoing is compounded by the lack of a standardised mechanism for determining the appropriate dispute resolution method. Literature proposes the use of relevant goals, acceptable principles among others as criteria for assessing dispute resolution methods and for determining appropriate dispute resolution method. Some scholars identified fairness, outcomes, efficiency as well as stability as components of an ideal method.[39] Susskind proposed the use of fairness, efficiency, and outcome quality as considerations for choosing a dispute resolution method.[40] Ury and others on their part identified cost, outcome satisfaction, relationship (maintenance, enhancement, or destruction), dispute recurrence or otherwise as elements of a sound dispute resolution method.[41] Merchant and Costantino, recaptured the following as qualities of a robust dispute resolution process.[42] These are: (1) efficiency; (2) effectiveness – outcome as well as its durability, and its impact on a conflict's environment); (3) relationship, process, and outcome satisfaction. Stephanie Smith and Janet Martinez argued that the best dispute resolution methods are those with specific features.[43] These features are: (1) diversified options-oriented; (2) flexibility for disputants to shuttle between various options as and when necessary; (3) considerable stakeholder involvement in system design; (4) neutral third party-aided voluntary and confidential disputants' involvement; (5) transparent and accountable system; (6) mechanism to have its stakeholders well informed about available options. A critical look at the foregoing reveals a multiplicity of methods. One does not get the impression that Smith and Martinez were referring to a single method only, they had in mind single methods as well as a series of methods in a system. Conformity to legal and societal norms is another critical factor for an appropriate dispute method.[44] Justice or fairness is another attribute. Justice entails fairness, validity and being

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[39] L Susskind and J Cruikshank, *Breaking the impasse: consensual approaches to resolving public disputes* (Basic Books New York 1987) 38

[40] Susskind (N 33) 40.

[41] Ury (n 15) 7.

[42] Cathy Costantino and Christina Sickles Merchant, 'Designing management systems: a guide to creating productive and healthy organizations' (1995) Negotiation Law Review 176.

[43] Stephanie Smith and Janet Martinez, 'An analytic framework for dispute systems design' (2009) Harvard Negotiation Law Review 147.

[44] Smith (n 37) 153.

right.[45] Bingham identified various forms of justice such as distributive justice, procedural justice, retributive justice, and deterrence, corrective among others.[46] The various attempts at describing these dispute resolution methods have used mechanisms deemed fitting for purpose by various scholars.

A careful literature review reveals the following deficiencies. The first is that no study has been published in Ghana on the topic. However, some have looked at the preferred methods for resolving chieftaincy and ethnic disputes.[47] Others have considered the effectiveness of other dispute resolution methods in specific disputes[48] including resolving interpersonal and intergroup disputes in Ghana.[49] Second is that the problems enumerated above have been looked at from the perspective of disputants/users alone. Third, there is no standardised yardstick for determining the appropriate dispute resolution method. Indeed, researchers have used those convenient to them. The fourth is the contradictory findings on the subject.

A study of the appropriate dispute resolution method to use is important for several reasons. First is that it allows for better understanding of the major dispute resolution methods available for use by dispute resolution stakeholders. Second, disputants and dispute resolution experts have a tool for use. Third, the study has hopefully put an end to this debate at least in Ghana. Fourth, dispute resolution experts have been equipped to improve/innovate on existing methods. Fifth, policy makers have been better informed to engineer creative policies that would enhance the performance of the dispute resolution field. This study was done in Ghana using stakeholders in dispute resolution as respondents. Again, the various mechanisms proposed for use in selecting a dispute resolution method were harmonized, making it very comprehensive.

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45 British Columbia, 'Reaching resolution: A guide to designing public sector dispute resolution systems' <http://www.ag.gov.bc.ca/dro/publications/guides/design.pdf> accessed 30 April 2020.

46 Lisa Blomgren Bingham, 'Designing justice: legal institutions and other systems for managing conflict' (2008) Ohio State Journal on dispute resolution 43.

47 Steve Tonah and Sulemana Alhassan Anamzoya, *Managing chieftaincy and Ethnic conflicts in Ghana* (Woeli Publishing Services Accra 2016) 23.

48 Perpetua Francisca Midodzi and Imoro Razak Jaha, 'Assessing the effectiveness of all the alternative dispute resolution mechanism in the Alavanyo-Nkonya conflict in the Volta region of Ghana' (2011) International Journal of Peace and development studies 198.

49 Juliana Abokuma Edzii, *Is Alternative Dispute Resolution a solution to interpersonal and group conflicts in West Africa? The case of Ghana* (MA thesis, University of Ghana 2018).

Overall, the study sought to determine the appropriate dispute resolution method in Ghana.

1.2 The Problem Statement

Dispute resolution methods are culture specific.[50] What this means is that dispute resolution methods are designed to fit the dynamics of specific cultures even though similarities can be seen among the different dispute resolution methods. Therefore, it is not surprising that scholars have challenged the fundamental assumptions of litigation such as objectivity, neutrality, arguments and counter-arguments as well as responses and fairness.[51] This is especially so because Bob-Manuel[52] has argued that Western conflict resolution methods have not been successful in Africa because of their failure to take into cognisance African traditional values. In the alternative, some of these indigenous values have been replaced with 'strange' (Western) values.

It is argued that the judge is educated and trained in the colonialist relic – the rudiments of dispute resolution by common law system standards (in the common law system). The various legal regimes such as the Supreme Court Ordinance of 1853 which established the Supreme Court of her Majesty's forts and settlements in the Gold Coast; CAP 99 – 106 of the Laws of the Gold Coast 1951 Native Courts Ordinances;[53] the Criminal Offences Act,[54] the Courts Act,[55] among others have been modelled closely along those in the West. Again, the laws (including customary laws and even those deemed contextualised) are interpreted using foreign lenses.[56] In fact, the procedure rules at the various courts such as the High Court Civil Procedure Rules[57]; District Court (Civil Procedure) Rules, 2009; and the Supreme Court Rules, 1996[58] have been designed

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50 Carrie Menkel-Meadow, 'The trouble with the adversary system in a postmodern, multicultural world' (1996) William & Mary Law Review 32.

51 Jerold S. Auerbac, 'Justice without law' [1983] as cited in C Menkel-Meadow, 'The trouble with the adversary system in a postmodern, multicultural world' (1996) William and Mary Law Review 8.

52 I Bob-Manuel, 'A cultural approach to conflict transformation: an African traditional experience' [2000] <https://citeseerx.ist.psu.edu/viewdoc/download?doi=10.1.1.460.8109&rep=rep1&type=pdf> accessed 22 November 2021.

53 1935, 1944 and 1949; see also the Local Courts Act 1958 (Act No.23); the Courts Act, 1960 (C.A.9).

54 1960 (Act 29).

55 1993 (Act 459) as amended by Act 620 of 2002.

56 Andrew Chukwuemerie, 'The internationalization of African customary law' [2006] African Journal of International and Comparative Law 144.

57 C. I. 47.

58 C. I. 16.

to entrench the adversarial system of dispute resolution bequeathed Ghana.[59] Again, modern customary laws have been modelled after western ones with some having been largely lifted substantially and placed in African jurisdictions.[60]

Therefore, it has been said that the test of giving effect to customary law which is on the basis of natural justice, equity and good conscience or compatibility with written laws has relegated indigenous customs and traditions to the background.[61] The Western-style dispute resolution system is premised on individualism and is designed to protect and defend individuals' rights. In fact, the rights of individuals are placed above those of communities (in some cases).[62] This is at variance with that of communalism in Africa which hinges on collectivism, communal harmonious living and the need to protect the collective good sometimes at the detriment of the individual. Reconciliation and social healing and cohesion are at the heart of indigenous dispute resolution processes. The imported system on the other hand focuses on fact/evidence and the law to determine disputes.

This system delivers predetermined remedies, deliver winner/loser solutions, has disregard for future relationships, is filled with delays, enables the truth to be hidden (with its excessive legalese), exacerbate disputes, cumbersome, costly, and focuses on only substantive components of disputes thereby giving superficial and unsustainable remedies (at times).[63] That is why it is accused of producing binary outcomes.[64] Attempts at a blend with the indigenous dispute resolution methods have not achieved a perfect fit as visible incompatibilities exist accounting for huge dissatisfaction among disputants. Criminal offences are handled by the state as though they are committed against it.[65] The entire state machinery is then unleashed against the offender to

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[59] Paul F. Kirgis, 'Status and Contract in an emerging democracy: the evolution of dispute resolution in Ghana' (2014) Cardozo Journal of Conflict Resolution 112.

[60] Refer to Ghana's Alternative Dispute Resolution Act, 2010 (Act 798). Specifically, the First Schedule of the Act inserted some Articles in Section 59(1) (c) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (New York Convention) verbatim.

[61] Olusegun Obilade, *Nigerian Legal System* (Spectrum Law Publishing Ibadan 1979) 18.

[62] Adenike Aiyedun and A Ordor, 'Integrating the traditional with the contemporary in dispute resolution in Africa' (2016) Law, democracy and development 163.

[63] Aiyedun and Ordor (n 56) 159. This system produces binary outcomes, see C Menkel-Meadow, 'What is an appropriate measure of litigation? Quantification, qualification and differentiation of dispute resolution' 2020 *Onati Socio-Legal Series* 324.

[64] Menkel-Meadow (n 54) 324.

[65] See the Criminal Offences Act 1960 (Act 29).

deal with an offence. Punishment, imprisonment or even death usually attend upon such offences with the superior courts having the power to punish for contempt even in the absence of an offence being defined in a written law and punishment being defined.[66] How just is it to punish when the offence (act or omission) has not been defined in a written law and punishment prescribed? Yet this provision remains in our laws.

The principle "*nullum crimen, nulla poena sine lege* demands that there ought to be a clearly written law based on which punishment can be meted to offenders. However, contempt of court (whether civil or criminal) gives the superior courts the power to punish even though there is no written offence and punishment stated.[67] Contempt of court is conduct that defies the authority or dignity of the court.[68] It could also be defined as conduct that interferes with or undermines the administration of justice.[69] To the extent that the superior courts have been clothed with the power to commit for contempt in the Constitution of Ghana, it is clear that there is an offence known as contempt of court.[70] However, one needs to comb through the decisions of the court on the subject to determine the exact conduct that constitute contempt since 'any conduct that interferes with or undermines administration of justice or that undermines the authority or dignity of the court' may be quite ambiguous. These conducts could be disobedience to the court, opposing or despising the authority, justice or dignity, acting contrary to what one is enjoined to do or failure to do as commanded by the court to do.[71]

In the recent case of Kpessa Whyte, the contemnor was cautioned and discharged having been found guilty of contempt of court for scandalizing the Supreme Court; bringing into ridicule the dignity, respect and stature of the Supreme Court; and inciting prejudice against the Supreme Court. The contemnor tweeted that "The highest court of the land has been turned into a stupid court. They have succeeded in turning a Supreme Court into a stupid court. Common sense is now a scarce commodity. A major element in the death of democracies is partisanship in the delivery

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[66] This is contrary to Constitution of Ghana 1992, Article 19(11).
[67] See Article 19(12) of the 1992 Constitution of Ghana.
[68] Black's Law Dictionary 7th ed. P.313 (get citation right).
[69] Stephen A. Brobbey, *The Law of Chieftaincy in Ghana* (Advanced Legal Publications 2008).
[70] Article 19(12) of the 1992 Constitution of Ghana.
[71] Miller v Knox (1838) 132 ER 910, 916.

of justice".[72] The court would certainly not countenance such conduct. Again, the conduct could also be wilful disobedience of a court order.[73] In essence, any conduct or omission that interferes with or is likely to interfere with justice administration could amount to contempt of court.[74]

The objective of contempt of court is to uphold the sanctity and authority of the courts by deterring unjustifiable interference in justice administration.[75] The punishment for contempt of court could be a fine, imprisonment, or as the court deems fit. A curious aspect of contempt of court is how the summon is usually couched. Offenders are summoned to appear before the court to show cause why they should not be punished. This appears contrary to the Constitutional provision that an accused person (in criminal matters) is presumed innocent until proved guilty or has pleaded guilty.[76] However, in contempt of court matters, an accused is presumed guilty until proved innocent.

Menkel-Meadow challenged the assertion that litigation is the appropriate dispute resolution method. She called for another examination of this position and dared the proponents of this view to prove to the world that litigation is the ideal (appropriate) dispute resolution method in a multicultural and postmodern world.[77]

Again, there is no empirical validation of the claim that litigation is the ideal and most effective dispute resolution method.[78] The argument is further made that various methods may be appropriate for achieving specific goals. Menkel-Meadow argues that litigation should be used when appropriate and in fact, it should be the very last resort.[79] In the same vein, Muigua posits that the other dispute resolution methods are the most appropriate for resolving some disputes.[80] Some scholars have identified mediation as the appropriate dispute resolution predating

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72 Michael A Nimfah v James Gyakye Quayson and AG Contemnor: Michael Kpessa Whyte J1/11/2022 (May 31 2023) SC (Unreported).

73 Republic v High Court, Accra; Ex parte Laryea Mensah [1998-99] SCGLR 360.

74 *Helmore v Smith* (No. 2) (1887) 35 Ch D 449, 455.

75 Attorney General v Times Newspapers Limited [1974] AC 273, 302.

76 See Article 19(2)c) of the 1992 Constitution of Ghana.

77 Menkel-Meadow (n 44) 12.

78 John Thibaut and Laurens Walter, 'Procedural Justice: a psychological analysis' [1975] as cited in Menkel-Meadow n 47) 14.

79 Menkel-Meadow (n 47) 23.

80 Kariuki Muigua, 'Effective justice for Kenyans: Is ADR really alternative?'(Kariuki Muigua and Company Advocates,2014)<http://www.kmco.co.ke/attachments/article/125/Alternative%20Dispute%20Resolution%20or%20Appropriate%20Dispute%20Resolution.pdf.> accessed 18 August 2018.

litigation.[81] Again, some scholars specifically posited that negotiation and mediation, which were the predominant dispute resolution methods in pre-colonial Africa, are the appropriate dispute resolution methods.[82] This was because these methods afforded disputants the opportunity to exercise great control over these processes, and offered solutions that were cheaper, quicker and mutually beneficial to the parties.[83] Again, ODR is said to be better at dispensing justice than litigation.[84] Additionally, ODR is seen as superior qualitatively to litigation.[85] The above confusion in literature prompted Muigua to state unequivocally that the time to determine whether ODR is alternative to litigation is now.[86]

Fuller's advocacy for a standard decision mechanism for selecting dispute resolution methods is apt. Mulolo and others posit that there are no well-designed criteria for determining the appropriate dispute resolution method.[87] In the same vein, Bingham posits that, 'there is inadequate study on the most suitable factors that form the basis for adopting, designing and functioning of dispute resolution methods and the dispute resolution method that yields the best outcome'.[88] Menkel-Meadow argues that the best determinant of an appropriate dispute resolution method is the choice of disputants.[89] However, dispute repercussions go beyond disputants. It is amply clear from the above that there is lack of a standardized mechanism for determining appropriate dispute resolution method and this is a concern.

Lastly, even though there are varied indigenous dispute resolution methods in addition to litigation, there is no determination as to which of these is the appropriate dispute resolution

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81 Juliana Edzii Abokuma, 'Is alternative dispute resolution a solution to interpersonal and group conflicts in West Africa? the case of Ghana' (Master of Arts thesis, University of Ghana 2018) 76.

82 Kingsley Affrifah, 'Alternative Dispute Resolution as a Tool for Conflict Resolution in Africa – Ghana as a Case Study' (Master of Arts thesis, University of Ghana 2015) 43; EJ Abokuma (n 51) 76.

83 Affrifah (n 52) 78.

84 Report of the Ad hoc panel on dispute resolution and public policy 'Paths to justice: major public policy issues of dispute resolution' 1984 as cited in Brunet E, 'Questioning the quality of alternate dispute resolution' (1987) Tulane Law Review 41.

85 Jethro K. Lieberman and James F. Henry, 'Lessons from the Alternative dispute resolution movement' [1986] University of Chicago Law Review 424.

86 Lieberman and JF Henry (55) 432.

87 F Mulolo, H Alinaitwe and JA Mwakali, 'Choice of Alternative Dispute Resolution Process in Uganda's construction industry' (2015) 2 International Journal of Techno science and Development 32.

88 LB Bingham, 'Employment Dispute Resolution: The Case for Mediation' [2004] Conflict Resolution Quarterly 158.

89 Menkel-Meadow (n 48) 36.

method in Ghana. The other methods: negotiation, mediation, arbitration, etc., allow for party control, flexibility, creativity in outcomes, speed, relationship preservation and reconciliation. In essence, these traditional dispute resolution methods are administered by persons with rich knowledge of the dispute environment, opportunity for disputants to speak their own languages, access to a solution that restores peace in accordance with local customs and traditions because these solutions are compatible with the indigenous cultural ideologies.[90] Litigation on the other hand has been hailed for its precedent setting, finality in dispute resolution (this is not always the case), interpretation and enforcement of the Constitution, ability to enforce its decisions, among others. The other dispute resolution methods have been accused of lacking proper regulation, failure to apply due process and not being able to compel compliance with its outcomes. Litigation has also been accused of being costly, having inbuilt delays (Justice Kwasi Anin-Yeboah - the immediate past

? Chief Justice of Ghana, refers to this as the DNA of litigation), complex, unable to consider all components of disputes (emotional aspects of disputes for instance) and producing binary outcomes (winner/loser). The availability of varied dispute resolution methods should lead to justly, timely and cost-effective dispute resolution outcomes. However, the use of inappropriate dispute resolution methods has led to unwelcome delays, unnecessary expense as well as inappropriate commercial judgments and indeed injustice.[91]

1.3 Research Questions

The study posed the following questions:

1. What does *appropriate dispute resolution* mean in the context of the legal framework for dispute resolution in Ghana?
2. What is the most suitable legal mechanism for determining an appropriate dispute resolution method?

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[90] Aiyedun and Ordor (n 56)161.

[91] Scott W. Minehane, 'Dispute Resolution Techniques and Approaches' (ITU-MCMC International Training Program held in Lumpur Kuala 28 August 2015) 17.

3. Does an analysis of the legal framework for resolving disputes in Ghana reveal any dispute resolution method as appropriate for resolving all disputes in absolute terms?

1.4 Purpose of the Study

The overall purpose of the study was to discover the most appropriate dispute resolution method in Ghana. This work aimed at contributing to current knowledge on dispute resolution in Africa generally and Ghana in particular. Practically, this work intended fashioning a very handy tool for use by dispute resolution practitioners to determine the most appropriate dispute resolution method to use in resolving disputes. This tool will also serve as a guide to disputants as to where to turn to when in dispute.

1.5 Objectives of the study

The objectives of the study were, to:

1. explain the meaning of *appropriate dispute resolution* in the context of the legal framework for dispute resolution in Ghana.
2. identify the most ideal legal mechanism for determining an appropriate dispute resolution method.
3. determine whether an analysis of the legal framework for resolving disputes in Ghana would reveal any dispute resolution method as appropriate for resolving all disputes in absolute terms.

1.6 Hypotheses

The winner takes all approach adopted by litigation in addition to its primary focus on individual interest (some public interest elements exists) is enticing to many disputants causing them to prefer litigation. Some disputants do not therefore feel encouraged to employ the other dispute resolution methods. The question therefore is how does law, policy or communities ensure that people are obliged to use other methods? This has been compounded by the fact that some of the other methods deliver outcomes that are not enforceable or that are very difficult to enforce. A fairer playing field is required to enhance party satisfaction and sustainable peace. Even though

some laws do not permit using other methods to resolve certain disputes coupled with the inability or difficulty in enforcing the outcomes delivered by these other methods, some disputants prefer to use them in resolving their disputes. Additionally, some laws also back the use of these other dispute resolution methods. It is therefore fair to posit that each of the methods is preferred.

The study therefore had the following hypotheses:

-H1: Litigation would be the appropriate dispute resolution method in Ghana

-H2: Negotiation would be the appropriate dispute resolution method in Ghana

-H3: Mediation would be the appropriate dispute resolution method in Ghana.

-H4: Arbitration would be the appropriate dispute resolution method in Ghana

-H5: Alternative Dispute Resolution Act, 2010 (Act 798) would be the most suitable legal mechanism for determining an appropriate dispute resolution method

-H6: Analysis of the legal framework for resolving disputes in Ghana would reveal no dispute resolution method is appropriate for resolving all disputes in absolute terms

1.7 Research methodology

Research questions one and two were answered using quantitative research methods. The third research question was answered using mixed methods research (explanatory sequential design). This was because one method could not answer all the research questions satisfactorily.

The population of the study was 3,274 primary dispute resolution stakeholders in Accra. This consisted of chiefs, religious leaders, district court judges, lawyers, disputants, and other dispute resolution practitioners. The sample size was made of 728 respondents. Out of this, 526 persons participated in the study, which constituted 72% response rate.

The data was collected using a structured questionnaire and an interview guide. These instruments were adapted from relevant literature on the phenomenon understudy, principal among them was

the ten-point instrument designed by Cheung et al.[92] The use of the structured questionnaire was to allow for all respondents to answer the same questions by selecting the most ideal option from those provided. This was to allow for as much objectivity as possible from respondents.

Respondents were selected using purposive sampling technique. This was done because the researcher wanted to discover, understand, and gain insight hence the need to select persons with the requisite information to answer the research questions to attain the study's objectives.

Semi-structured interviews were conducted for as much details as possible to be elicited from participants. Data was collected via zoom, over the telephone, email and face-to-face with the respondents as was convenient to the respondents.

The quantitative data collected was analysed using Statistical Package for the Social Sciences (SPSS) version 24.0. The data was presented in tables, graphs and pie charts. Qualitative data was analysed using Atlas.ti 7. Themes were identified and analysed.

Prior permission was sought from respondents, they also had the option to withdraw at any time in the course of the study. There were no personal identifiers in the data collected. Data collected was treated confidentially and for academic purposes only and so shall it remain.

1.8 Definition of concepts

Concepts such as dispute, dispute resolution, dispute resolution methods, appropriate dispute resolution method, and alternative dispute resolution method appear to derive their colour, contents, and meanings from their context. In this respect, the following meanings were assigned to the following words and terms in this study:

Disputes are disagreement over substantive issues, emotional issues, or beliefs and values.

Dispute resolution is the use of a suitable resolution method to transform disputes positively to ensure justice, healing, and improved relationships.

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[92] SO Cheung, HCH Suen and TT Lam, 'Fundamentals of alternative dispute resolution processes in construction' (2002) Journal of Construction Engineering and Management 412.

Litigation is the use of the court system alone to settle a dispute.

Negotiation is where disputants engage each other with the view to resolving their dispute.

Mediation is where a third party is used to facilitate dispute resolution and reconciliation of disputants.

Arbitration is where a third party resolves a dispute for the disputants. This resolution is final and binding.

Dispute resolution mechanism is a process for selecting an appropriate dispute resolution method, which mirrors disputants' context and is interwoven with disputants' quest for justice, relationship restoration, and harmonious communal living.

Appropriate dispute resolution method is a dispute resolution method which delivers a just, satisfactory, and enforceable outcome, and which reconciles the disputants and ensures harmonious living.

Alternative dispute resolution method is that method considered secondary to an appropriate dispute resolution method.

1.9 Thesis Outline

The overall objective of this work was to determine the appropriate dispute resolution method in Ghana. In this respect, secondary data representing previous studies as well as relevant pieces of legislation, case law, dispute resolution method selection criteria, litigation and other dispute resolution (ODR) methods were reviewed to establish the problem necessitating the study and to link the study to previous works in the field. Quantitative Methods and Mixed Methods approaches were used sequentially as the framework for the study. Primary data were then collected from dispute resolution stakeholders in Ghana. The findings were thereafter analysed, and the results presented.

The work was presented in chapters. Chapter one introduced the study, identified the problem statement, outlined the study's objectives and the hypotheses postulated. Chapter two focused on

theories underpinning the study. Chapter three presented a literature review on dispute and its components, and indigenous dispute resolution methods in Africa. Chapter four presented literature review on dispute resolution in Ghana, the legal framework of dispute resolution in Ghana, dispute resolution methods in Ghana, appropriate dispute resolution, alternative dispute resolution, factors considered in selecting an appropriate dispute resolution method and criteria for evaluating alternative dispute resolution. Chapter five outlined the research methodology of the study. This spelt out the research design of the study, data collection method, the population and sample size of the study, sampling technique, data collection methods and ethical considerations. Chapter six presented and analysed the findings of the qualitative phase of the study. Chapter seven outlined the findings and analysis of the qualitative phase of the study. Discussions of findings of the quantitative and qualitative phases on the third research question are presented in chapter eight. Chapter nine ended the journey by presenting a summary of the findings, the researcher's recommendations based on the findings as well as conclusion.

1.10 Conclusion

Disputes have destroyed lives and properties, displaced millions, rendered many destitute and crushed economies hence the need for them to be resolved.[93] However, there has been an unending debate over the most appropriate method for resolving disputes. Some argue it is Litigation, others say it is the *Other Methods* (hence referred to as Alternative Dispute Resolution Methods, which the researcher will refer to as Other Dispute Resolution Methods). Some also argue that no dispute resolution method can be described as appropriate in absolute terms because specific factors determine the appropriate dispute resolution method (I agree with this school of thought) whilst others also make the point that the so-called other methods are embedded in Litigation hence the call for description is misplaced. Again, there is no standardized mechanism for use to determine the most appropriate dispute resolution method. Lastly, there appears to be ambiguity about what 'appropriate' dispute resolution method means. The purpose of the study therefore was to determine the most appropriate dispute resolution method in Ghana. While doing that, clarity was

[93] Nancy Annan, 'Violent Conflicts and Civil Strife in West Africa: Causes, Challenges and Prospects' [2014] Stability International Journal of Security and Development 9; BT Afolabi, 'Peace-making in the ECOWAS Region: Challenges and Prospects' in *conflict trends* (Accord Durban 2009) 28.

brought to bear on what 'appropriate dispute resolution method' means and a mechanism for determining the most appropriate dispute resolution method was designed.

Theories on the phenomenon under investigation as well as empirical studies undertaken outside Africa were presented in chapter two.

CHAPTER TWO

THEORETICAL FRAMEWORK

2.1 Introduction

The theories, models and conceptual frameworks that support a research enterprise collectively constitute the theoretical framework.[94] With reference to law, an approach adopted is to see law as politically designed sanctions.[95] To some, it refers to a set of principles developed by legal decisions of which authority, general applicability, obligation and sanction are essential components. There have been attempts by some scholars to develop indigenous substantive law using these essential components. This was in response to the growing demands for easy reference of indigenous law in the courts of justice. However, these theoretical perspectives are not easily identifiable in most indigenous laws and indigenous dispute resolution practices in Africa. That is why it has been said that indigenous law lacks close resemblance to the linguistic, conceptual and theoretical underpinnings of western fashioned law.[96] Despite this assertion, dispute resolution processes exist universally to ensure law and order and ensure harmonious communal living irrespective of the legal system. This explains the argument that law and indeed dispute resolution arrangements ought not be judged from the lenses of a perceived standard. The reason is that, dispute resolution arrangements and their underpinnings hinge on the culture and aspirations of specific communities and people. That is why it is important to use indigenous concepts as prerequisites for a good understanding of unfamiliar communities and their dispute resolution processes. Therefore, it is advisable not to use a different lense when seeking to understand specific dispute resolution processes but to do so from the perspective of members of that community.[97]

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94 Samuel Atindanbila, *Research methods and SPSS analysis for Researchers* (BP Publishers Accra 2013).

95 Atindanbila (n 78) 47

96 S Roberts, 'Law and the study of social control in small-scale societies' (1976) The Modern Law Review 39(6) 667.

97 P Bohannan, *Justice and judgment among the Tiv* (Oxford University Press: London) 47.

2.2 Dispute Resolution

The complexities of disputes (multiple issues, different actors; different cultures or decision processes) call for very robust dispute resolution methods. These methods need to hinge on suitable theories. Therefore, this chapter presents modern conflict theory, African Humanistic model, needs theory, and justice theories, which underpin dispute resolution.

2.3 Modern Conflict theory

Modern conflict theory started in the 1970s.[98] Just like conflict theory, this theory recognises the inevitability of disputes. While modern conflict theory accepts conflict theory's proposition that man has a natural inclination towards disputes, it emphasises the handling of disputes. It argues that effective or appropriate resolution of disputes stirs and enhances innovation and creativity.[99] Increased vitality of the human resources ensures increased organizational performance. This theory disagrees with the traditional conflict theory that the existence of dispute is an indication of defect in or failure of management.[100] Proponents argue that the nature of dispute consequences is dependent on how disputes are managed and that this is what determines whether a positive or negative outcome is obtained.[101] Negative dispute outcomes include diversion of synergy and energy from the task, threat to psychological wellness, waste of resources (time, energy, and money), division, and increase in hostility and aggressive conducts.[102]

Modern conflict theory is of the view that not all disputes are negative. It argues that disputes present opportunity for new idea generation, stimulation of creativity and innovativeness, promotion of vitality, and indication of problems as positive outcomes of disputes. Specifically, it argues that functional or constructive disputes are positive and beneficial. Functional dispute is

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[98] HN Al-Rajhi, 'Roles of organizational politics in the management of organizational conflicts' (PhD thesis, Naif Arab University 2008) 78.

[99] Stephen P. Robbins and Timothy A. Judge, *Essentials of Organization Behaviour* (9th edn, Pearson Prentice Hall New Jersey 2008) 43.

[100] IF Altira Attitudes of the subordinates towards conflict management styles in the Libyan oil organizations (Master's thesis, University of Garyounis Benghazi 2008) 72.

[101] Jack Maxwell Wood, *Organisational Behaviour* (4th edn, John Wiley and Sons Limited Australia 2016) 34.

[102] Debra L. Nelson and JC Quick, *Organizational Behaviour: foundations, Realities, and Challenges* (5th edn, Thomson/South-Western Mason Ohio 2006) 53.

one that aids the attainment of an entity's goals. To this end, benefits such as generation of analytical thinking, creation of a peaceful atmosphere, engendering competitive spirit, ensuring harmonious communal spirit, building dispute resolution resilience, stimulation of change and bringing challenges to the fore are associated with functional disputes.[103] The right approach is required for sustainable and beneficial dispute resolution. However, the question is, how does one determine what a constructive or functional dispute is? Modern conflict theory fails to tell us this.

Modern conflict theory is inadequate to serve as the foundation for this study. The first reason is that it does not tell how to manage disputes in a manner that would deliver positive or desired outcomes. Second is that it does not provide a clear blueprint on identifying disputes that are positive. These deficiencies are critical to this study if its objectives are to be attained. This necessitated the addition of the African Humanistic Values and Harmony Model, the Needs Theory and Justice Theories to the framework of this study.

2.4 African Humanistic Values and Harmony Model

The African Humanistic Values and Harmony Model was fashioned on the fundamental values of the African. The humanistic value can be seen in *Ubuntu.*[104] This he identifies as hinging on human interconnectedness. In his view, communal integration, and regard for the dignity of personhood are the bedrock of *Ubuntu*. This respect for human dignity informs a reconciliatory mindset and approach to dispute resolution. Dignity is seen as indivisible. It is indeed whole and total, that is, spiritual, physical, cultural as well as material wellness. As a result of the concept of human interconnectedness, the model sees disputes as disrupting the social harmony that exists. Nabudere posits that African humanistic value philosophy makes it natural and easy to respond to conflict situations in a manner that ensures reconciliation as a step towards restoring social harmony and cohesion. The model focuses on reconciliation and restorative justice as opposed to using the law to establish who is right and who is not. The model is therefore therapeutic ensuring

103 KJ Singh, 'What is functional conflict?' (MBA 10 September 2012) <https://www.mbaofficial.com/mba-courses/human-resource-management/management-of-conflict/what-is-functional-conflict/> accessed 1 July 2022.

104 John Faris, 'The African Harmony model for Dispute Resolution' (Chartered Institute of Arbitrators, 2017) < http://www.ciarb.org/docs/default-source> accessed 17 October 2018.

peace and social cohesion.[105] One can therefore safely say that the African humanistic values and harmony model has a two-thronged objective of restoration and ensuring social harmony. Indeed, disputes need to be transformed to ensure restoration. This model advocates for the use of apology, compensation, and performance of appropriate rituals to signify the end of a dispute. This is the surest way to ensuring restoration. This is a time-tested humanistic principle founded on African way of life expressed in *Ubuntu*.[106]

Indigenous dispute resolution is rich in the most fundamental ideals of human co-existence, and relationships, critical of which is *Ubuntu* and collectiveness.[107] The need for increased focus on indigenous dispute resolution methods in Africa is because litigation is expensive, has not worked as expected, and has been inherited from the West. The efficacy of these indigenous dispute resolution mechanisms is what made Mollema argue for their integration into the South African criminal justice system.[108] The African customary law systems, which solidify indigenous dispute resolution as seen in the African Humanistic Values and Harmony Model, share common traits across the continent.[109]

2.5 Theory of Needs

Maslow, a clinical psychologist, identified five types of needs inherent in every human being. These he placed in a hierarchical order from lowest to the highest. Kaur has reclassified them into two groups which are *deficiency needs* and *growth needs*.[110] Kaur stated that deficiency needs are the psychological, safety, and social needs on the other hand growth needs refer to esteem, and self-actualization needs. The deficiency needs are satisfied first before proceeding to satisfy the growth needs. The first from the lowest level of the scale is *physiological needs*.[111] These needs

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[105] Faris (n 73).

[106] Andreas Velthuizen, 'Applying endogenous knowledge in the African context towards the integrated competence of dispute resolution practitioners' [2012] Africa Insight 82.

[107] Letzadzo Kometsi, 'Utility of indigenous methods of dispute resolution in intra-African Trade' (LLD thesis, Northwest University 2017) 14.

[108] N Mollema, 'Integrating traditional dispute resolution mechanisms with the criminal justice system' (De Rebus, 2017) <derebus.org.za> accessed 19 September 2021.

[109] Kometsi (n 91) 16.

[110] A Kaur, 'Maslow's Need Hierarchy Theory: Applications and Criticisms' [2013] Global Journal of Management and Business Studies 1068.

[111] Kaur (n 94) 1067.

are the lowest and most basic. They are very basic necessities of life such as food, air, water, and shelter. These are essential for human existence.

The second classification done by Kaur is *safety needs*. These needs pertain to secure environment which is devoid of harm or threats. The next are *social needs* which have to do with quest for affiliation. This refers to the need for love and acceptance by other people.[112] The fourth level of needs is *esteem needs*. This refers to the need for self-respect and others' approval. Recognition of distinguished achievements is a key component. The fifth level of needs is *self-actualization*. This need is at the apex of the hierarchy of needs. This need is the quest for attainment of an individual's capabilities and development of one's fullest potential.[113] The need to reach one's ultimate is the essence.

While Alderfer's ERG Theory agrees with Maslow on hierarchical nature of needs, it disagree with him on the number. Alderfer argues that there are three scales of needs namely are existence, relatedness, and growth. In the view of Murray's Manifest Needs Theory, needs may be either manifest or latent. Latent needs are inhibited, not seen. However, Manifest needs are active and actual behaviour. The need for achievement theory underpins human behaviour. How individuals act is dependent on their individual needs. However, there is no single theory of human needs that can fully explain all human motivations.[114]

2.6 Justice theories

Justice is the totality of conditions under which the will of an individual is conjoined with that of another based on a universal law.[115] The challenge is the determination of these conditions. An unjust act is a violation of another's rights. Therefore, my freedom, for instance, is restricted for the sake of yours and yours restricted for the sake of mine. However, Kant argued that it is only legally constituted authority which if operates in accordance with the law, can use coercion on others. He proceeded to say that a properly constituted court is the only institution that can justly

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112 Fab O. Onah *Human Resource Management* (4th edn, John Jacob's Classic Publisher Limited Enugu 2015) 13.

113 FO (n 81) 14.

114 Paul Rosenfeld, Amy L. Culbertson and Paul Magnusson, 'Human Needs: A Literature Review and Cognitive Life Span Model' (Defense Technical Information Centre, 1992) <https://apps.dtic.mil/dtic/tr/fulltext/u2/a250073.pdf> accessed 20 April 2019.

115 Immanuel Kant, *The Metaphysical Elements of justice* (Bobbs-Merrill Indianapolis 1965) 34.

punish after finding one guilty and culpable. The reason is that a crime goes beyond the accused's freedom and that it infringes on others' rights.[116]

Justice has two principles, which are that it demands equality in assigning rights and duties, and equality in social and economic affairs.[117] Social and economic inequality is only justified if it leads to compensatory benefits to all especially the least advantaged in society.[118] Five specific liberties of Rawl's two principles are identifiable. Liberties under Rawl's first principle are: (1) Political liberty, which is basically the right to vote and to be voted for; (2) Freedom of speech and assembly; (3) Liberty of conscience and freedom of thought; (4) Personal freedom and that to own property; (5) Freedom from arbitrary arrest and seizure in accordance with rule of law. Justice requires all individuals to enjoy the same rights. On decision making in uncertain conditions, Rawls propounded what he called the maximin rule. By this rule, alternatives are to be ranked based on their unfavourable outcomes. The selection criterion is the alternative with the best worst outcome. Specific liberties under Rawl's second principle are: (1) greatest advantage of the least advantaged; and (2) principle of fair equality of opportunity.

On the other hand, Aristotle's theory of justice categorises justice into two that is, general justice and particular justice. General justice is where one's act is completely virtuous in the eyes of all others while particular justice, on the other hand, is treating others in an equitable manner.

Justice demands use of an equalizing standard, which is seen as the only objective criteria.[119] Justice is vindicated when punishment and offence are equal. Offei captured two positions on punishments.[120] The first is that, the severity of punishment should be equal in degree to the gravity of the act, for instance, the loss imposed on the offender should be commensurate with the loss suffered by the victim. The second is that, the severity of the punishment should be fixed in relation to the comparative gravity of the act or harm done, but not necessarily in equal amount.

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[116] Stephen Offei *Jurisprudence and Legal Philosophy* (Ashmetro Prints Kumasi 2013) 243.
[117] John Rawls *A Theory of Justice* (Harvard University Press Cambridge 1971) 23.
[118] Rawl (n 97) 27.
[119] Kant (n 99) 36.
[120] Offei (n 85) 248.

Retributivists make the point that punishments can be ranked in accordance with the severity of the acts committed.

In essence, to ensure justice, there ought to be opportunity to defend oneself in a legally recognised forum, appropriate policing, legal aid in cases of unaffordability of legal services, impartial and fair determination, and equality before the law, among others. Procedural justice and outcome justice are in tandem and must be viewed as such. Justice should not only be done but should be manifestly seen to be done.

While Barsky sees justice from the lenses of retribution and restoration, Gunning sees it as fairness. In this respect, speed in the dispute resolution process, settings of a dispute resolution process, process' responsiveness to disputants needs, as well as accessibility to disputants are measures of justice.[121] Justice is seen in the trial process (litigation) from two angles, that is, natural justice and procedural justice.[122] Natural justice is concerned with the procedures in the trial process whilst procedural justice relates to substantive justice or what comes out of the trial process. Justice in the litigation process is a standard of rights and obligations of disputants. However, this standard may not well fit mediation since disputants are at liberty to determine their settlement based on their circumstances and needs.[123] The parties' sense of justice is paramount. In fact, justice may not be a factor at all. That is why some people argue that justice is sacrificed for compromise in mediation. It is concerned with using parties' sense of justice that has been termed as 'individualized justice'.[124] This act blurs the lines between mediation settlement success and how parties perceive justice.[125] Therefore, justice based on disputants' agreement can be nothing but elusive and at best subjective.[126] This is because notions of justice differ from

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121 Laurence J. Boulle and JV Goldblatt, *Alternative dispute resolution: Principles, Process, Practice* (Butterworths Wellington New Zealand 1998) 23.

122 D Tumushabe, 'Role of alternative dispute resolution in reducing case backlog' <https://www.academia.edu/23131485/role_of_alternative_dispute_resolution_in_reducing_case_backlog_chapter_one> accessed 3 February 2020, 19.

123 National Alternative Dispute Resolution Advisory Council 'A Framework for ADR Standards, Report to the Commonwealth Attorney-General' (National ADR Council, 2015) <https://www.nationalsecurity.ag.gov.au introduction.html> accessed 3 February 2020.

124 JM Nolan-Haley, 'Court Mediation and the search for justice through Law' [1996] Washington University Law Quarterly 57.

125 VB Gramberg, 'The Rhetoric and Reality of workplace Alternative Dispute Resolution' [2006] Journal of Industrial Relations 189.

126 Tumushabe (n 106) 20.

individual to individual and is dependent on factors such as values and beliefs, which are shared by the disputants. Nevertheless, the consensual agreements (settlements) arrived at by disputants cannot be said to be unjust.[127]

Four factors have been identified as influencing disputants' assessment of the fairness of a dispute resolution process.[128] These are: (1) being able to participate in the process, (2) third party neutrality, (3) level of third-party respect for disputants, and (4) outcome quality (ought to be fair). This is important because unfair processes lower disputants' trust as well as their compliance with the final decisions or outcomes of the dispute resolution process.[129] Three aspects of justice, which is procedural, distributive as well as interactional justice together, constitute the components of a just decision.[130] These three components provide a sense of satisfaction to disputants.[131]

2.7 Conclusion

This chapter presented theories relevant to the phenomenon under study. The first theory underpinning the study is *needs theory*, which posits that inability to satisfy needs, leads to disputes. The second is *African Humanistic Values and Harmony Model*, which reflects the African way of life and is seen in Ubuntu, which hinges on humaneness and interconnectedness, reconciliation and restoring social harmony. The third is the *modern conflict theory*, which states that dispute is inevitable; and that appropriate resolution of conflicts stirs and enhances innovation and creativity.

Chapter three presents literature review on non-Ghanaian African dispute resolution processes. It also highlights works done on dispute, appropriate dispute resolution, alternative dispute resolution, and indigenous dispute resolution methods.

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127 Tumushabe (n 106) 21.
128 Tom R Tyler, Critical issues in social justice: The social psychology of procedural justice (Plenum Press New York 1988) 23.
129 Boulle and Goldblatt (n 105).
130 Morton Deutsch, 'Distributive Justice: A Social-Psychological Perspective' [1987] American Journal of Sociology 1262.
131 Bernadine V Gramberg, 'The Rhetoric and Reality of workplace Alternative Dispute Resolution' [2006] Journal of Industrial Relations 182.

CHAPTER THREE

LITERATURE REVIEW ON DISPUTE RESOLUTION IN AFRICA

3.1 Introduction

Man is a social being hence harmonious communal living is a plausible desire. However, disagreements abound. These disagreements, which are referred to as disputes, exist both in intra-personal and inter-personal relations. Many scholars have sought to understand and explain dispute. While some argue that it is as a result of opinion and rules incompatibility, others posit that it is due to disagreement over specific claims, or interests.[132] Interestingly, some assert that a dispute properly so-called arises only when a claim is asserted and contended against by another. Contextualisation of dispute resolution processes is required if sustainable solutions are to be attained. That is why every community has its own specific approach and design for resolving disputes. Traditional African dispute resolution procedures are characterised by simplicity and less formality, reliance on own methods of unearthing the truth, use of common sense in problem-solving instead of legalistic approach, primary focus on reconciling the parties rather than using rules to settle overt dispute, and the involvement of religious and ritual beliefs in the determination of legal responsibility.[133]

3.2 Dispute definition

Dispute is perception of either differing interests or inability to meet aspirations at the same time.[134] Disputes are the result of competition over scarce resources and opposing goals as well as pursuit of incompatible goals.[135] They are feelings experienced because of tension between

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[132] VS Gedzi, 'Principles and practices of dispute resolution in Ghana' (D.Phil thesis, International Institute of Social Studies, The Netherlands 2009) 24.

[133] Aiyedun and (n 56) 168.

[134] JZ Rubin, DG Pruitt and SH Kim, *Social Conflict: Escalation, Stalemate, and Settlement* 2nd ed (McGraw-Hill New York 1994) 23.

[135] RW Mack and RC Snyder, 'The analysis of social conflict – toward an overview and synthesis' [1957] Journal of Conflict Resolution 234; LR Pondy, 'Organizational conflict: concepts and models' [1967] Administrative Science Quarterly 316; SM Schmidt and TA Kochan, 'Conflict: toward conceptual clarity' [1972] Administrative Science Quarterly 367; J Galtung, *Theories of conflict: definitions, dimensions, negations, formations* (4th edn, University of Hawai Press Manoa 1973) 24.

parties.[136] Disputes are present where there are competitive and cooperative interests.[137] Paradoxically, inherent in such an environment are what fans refer to as the dispute and what engineers term a resolution. Dispute is where an individual's act is viewed as competitive to another.[138] Again, disputes are the result of perception of goal incompatibility and interference in goal attainment.[139] It is also seen as negative emotional reactions arising out of perception of both goal attainment interference and goal disagreement.[140] Interestingly, what generates and fuels the dispute is the competitive element whilst the cooperative element presents an incentive for a resolution.[141] Inability to meet man's physical and psychological needs can lead to dispute.[142] These are basic needs and include food, clothing, shelter, love, affection, safety, and security needs. Another source of disputes is power imbalance.[143] Factors promoting disputes include wrong perceptions, ineffective communication, antagonistic attitudes, wrong judgments and demonstrating a competitive spirit.[144]

While different definitions on what dispute is have been offered, three themes are identifiable. These themes are *disagreement, interference*, and *negative emotion.*[145] Disagreement is the result of opposing needs, values, interests, goals, and opinions. Acts such as debates, backstabbing, hostility, and destruction, among others are behaviours associated with disputes.[146] Fear, jealousy, anger, frustration, and anxiety are affective states in the dispute continuum. These themes are manifestations of the various dispute components, which are the *affective, behavioural,* and

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136 CKW De Dreu and LR Weingart, 'Task versus relationship conflict, team performance, and team member satisfaction: a meta-analysis' [2003] Journal of Applied Psychology 741.

137 R Walton and RB McKersie, *A Behavioral Theory of Labor Negotiations* (McGraw-Hill New York 1965) 59.

138 M Deutsch, *The Resolution of Conflict* (Yale University Press New Haven 1973) 63.

139 R Lewicki R, Saunders DM and Minton JM, *Essentials of Negotiation* (Irwin Chicago 1997) 49.

140 H Barki and J Hartwick 'Conceptualizing the construct of interpersonal conflict' [2004] International Journal of Conflict Management 232.

141 M Deutsch and RM Krauss, 'Studies of interpersonal bargaining' [1962] Journal of Conflict Resolution 64.

142 T Nair, 'Conflictual overtones and human predicaments: A postcolonial evaluation of Kamala Markandaya and Bharati Mukherjees fiction' (PhD thesis, University of Kota 2016) 29.

143 Nair (n 124) 29.

144 Nair T (n 123).

145 H Barki and J Hartwick, 'Interpersonal Conflict and its Management in Information Systems Development' [2001] MIS Quarterly 246.

146 Jon H and Henri B, 'Conceptualizing the Construct of Interpersonal Conflict' [2002] *Ecole des HEC* 12.

cognitive components.[147] Disagreement, interference with or opposition to goal attainment, and negative emotions are manifestations of cognitive, behavioural, and affective states of disputes.[148]

Disputes do not just erupt out of nowhere, they are planted, they germinate, grow and bear fruits. These fruits may be poisonous both to man and his environment. The *iceberg of conflict* illustrates the nature of disputes.[149] This captures the components of disputes. They identified *objective* and *subjective* aspects of disputes. The objective part is the one that is apparent (evident in facts, relevant law or party positions) and the subjective is the non-apparent part (misunderstandings, perceptions, emotions, interests, concerns, feelings, beliefs, values). The most appropriate dispute resolution method is required if these components are to be dealt with exhaustively. Ignoring the subjective parts produce only cosmetic solutions.

Dispute has five stages namely discomfort, incident, misunderstanding, tension, and crisis. The discomfort stage is where one senses or becomes aware that all is not well. Incident is a stage where a minor event occurs. The negative connotation given to this event may lead to a feeling of tension or mistrust between the parties. Misunderstanding - various interpretations placed on previous incidents creates confusion in the mind. The fourth stage - characterised by deep suspicion of one another, every action is viewed with deep suspicion, tensions rise, behaviours are entrenched. The fifth stage is that of crisis - outright hostility between the parties, dispute is heightened where a third-party neutral is required to help transform the dispute.

3.3 Dispute components

Emotions are key components of disputes.[150] Temperament type determines how one feels and reacts to situations. Some scholars have argued that disputes cannot be separated from the personalities in dispute and that disputes have both substantive and emotional components.[151]

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[147] Jon and Henri (n 130) 14.

[148] Barki and Hartwick (n 129).

[149] Glasner and Lack As cited in J Lack, 'Appropriate Dispute Resolution: The spectrum of Hybrid techniques available to the parties' in Arnold Ingen-Housz (ed) *ADR in* business: Practice and issues across countries and cultures (Kluwer Law International BV, The Netherlands 2011) 399. <http://www.imimediation.org/wp-content/uploads/2017/09/adr-the-spectrum-of-hybrid-techniques-available-to-the-parties-by-jeremy-lack.pdf> accessed 28 June 2018.

[150] Dan Dana, *Managing Difference* (4th edn, MTI Publications Kansas 2006) 87.

[151] Emmanuel Hopeson, *Understanding Human Behaviour in Conflict Resolution* (Askia Publications Accra 2012) 46.

Five emotional issues are identifiable in disputes.[152] These issues are: (1) power issues – need for control and influence over others as well as social status; (2) approval issues – originating from need for affection; (3) inclusion issues – arising out of the need for acceptance into social groups. The remaining ones are: (4) justice issues – arising out of the need for fair, equal, and equitable treatment; (5) identity issues – emanating from the need for autonomy, self-esteem, positive self-image, self-determination, and personal values affirmation. Five pure temperaments can be identified in humans.[153] These are melancholy, choleric, sanguine, supine, and phlegmatic.

The melancholy has an unquenchable thirst for knowledge, prone to being a genius, very creative, tends to work overtime, constantly going over past events, hardly shows emotions, among others. Their approach in dispute is avoidance. Their emotional motto in dispute is 'peace at all cost'.[154] The choleric on the other hand has a very strong desire to succeed in whatever s/he does and seeks profit at all cost. She/he does not care stepping on others' toes to achieve his/her goal. The approach of the choleric in dispute is 'competing and assertive'. Their motto in conflict and life is 'profit at all cost'.[155] The sanguine is the third personality type. The sanguine is fun loving, prefers having fun to getting task done, very sociable, and never wanting to grow up. Their approach in dispute is 'to give in for mutual concession'.[156] Supine as a personality type, loves doing things for others, enjoys people, but is very shy, and indirect. Their approach in dispute is 'concerting'. Their motto is 'service at all cost'. The Sanguine is indecisive and sacrifice everything to collaborate.[157]

The second component of disputant disposition is financial status. The financial strength of a party can either prolong a dispute or not. This same factor is also a key determinant of the type of dispute resolution method to use to resolve disputes. This is because each dispute resolution method comes at a cost and this varies greatly. A disputant's perception of the dispute is key. This is key in the definition of dispute. Disputant's expectation about the dispute is also important.

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152 Dana D (n 130) 127.
153 RG Arno and PL Arno, *Creation Therapy: A biblically based model for Christian counselling* (The Sarasota Academy of Christian Counselling 1993) 48.
154 E Hopeson (n 136) 46.
155 E Hopeson (n 136) 63.
156 E Hopeson (n 136) 98.
157 E Hopeson (n 136) 125.

Substantive issues constitute the second component of dispute and are the matters in dispute, that is, those matters over which the parties are in dispute. They are the problems to be resolved.[158] These are the triggers of the disputes.[159] They may not be the real issues causing the dispute. Substantive issues relate to the positions taken by the disputants. In essence, they are what the parties want, what they are fighting over or what is in dispute. This occurs in a setting, which is known as dispute setting. Dispute does not occur in a vacuum, it occurs in an environment, a context. Disputant's cultural background or the context of the dispute in question is equally important. Many studies have established relationships between contextual parameters and dispute handling style. In this regard, there is a relationship between culture and dispute handling style.[160]

There are also those who argue that there is, yet another component of disputes called pseudo-substantive issues, which are emotional issues, disguised as substantive issues.[161] These are presented as substantive issues when in fact they are emotional issues. These issues need to be dealt with tactfully.

Some scholars also argue that beliefs and values can hardly be divorced from disputes. These two are part of disputes.[162] He argued that one's beliefs and values serve as lenses through which they view others' actions, decisions, and behaviours. What this means is that beliefs and values have the tendency to colour an otherwise colourless deed. This colouring can present a very distorted view of events inflaming passions leading to destructive tendencies.

3.4 African Dispute Resolution

Dispute resolution methods of African origin and which are described as indigenous African dispute resolution methods are time-tested.[163] Traditional or indigenous dispute resolution

158 Dana (n 134) 126.
159 Dana (n 134) 134.
160 Kozan MK, 'Subcultures and Conflict Management Style Management' [2002] International Review 89.
161 Dana D (n 130) 131.
162 Emmanuel Hopeson, 'Components of conflicts' (Alternative Dispute and Conflict Resolution Foundation programme organized in Accra by the Centre for Peace and Reconciliation on 11 March 2020).
163 Pryles as cited in LI Kometsi *Utility of indigenous methods of dispute resolution in intra-African trade* (LLD thesis, North-West University 2017) 47.

methods have been with Africa since time immemorial.[164] Traditional dispute resolution is one that has its roots in indigenous structures of societies existing preceding colonialism which has been practiced since time immemorial.[165] Traditional conflict resolution processes are entrenched in Africa. While indigenous dispute resolution in Africa comes in various forms, they are based on customary laws and demonstrate the norms, customs, values and traditions of specific communities.[166] The dispute resolution procedures are adopted from daily life experiences as well as the culture of the people cultural life. That is why Uwazie has extolled the important role traditional conflict resolution methods play in resolving disputes.[167] This is because their focus is to repair broken or strained relationships, correct wrongs and ensure that justice is restored. Full integration of offenders into the society is the desired outcome. The fundamental belief is that dispute between individuals is not just about them but affect the entire community.[168] Osongo recounts that these methods enable access and delivery of justice. These methods achieve and promote social justice and inclusion.[169] They recognise these indigenous dispute resolution processes and courts. Customary law can aid indigenous dispute resolution processes. These are rules of law applicable to particular communities being the custom of the people.[170] Reconciliation is at the core of these methods.[171] Emphasis is laid on brotherliness, unity, and community or communal living.[172] Traditional conflict resolution methods aim to include social norms and customers that ensure social cohesion by ensuring sustainable relationships to enhance attainment of societal objectives.[173] Shared values and relationships constitute the foundation of

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164 Jackson Maranga, 'Oath taking, law and order in colonial Gusiiland' [2017] Journal of Arts and Humanity 76.

165 Ernest Uwazie, 'Alternative Dispute Resolution in Africa: Prevention conflict and enhancing stability' [2011] Africa Security Brief 1.

166 F Kariuku, 'Conflict resolution by elders in Africa: successes, challenges and opportunities' (Chartered Institute of Arbitrators, 2015) <www.ciarb.org/docs/defaultsource/centenarydocs/speaker-assets/francis-kariuku.pdf?sfvrsn=0>accessed 18 November 2020.

167 D Osongo, 'Traditional dispute resolution is justice' *Daily Nation Newspaper* (Nairobi, 4 March 2016) 8.

168 M Cappelletti and B Garth 'Access to justice: the newest wave in the worldwide movement to make rights effect' (Maurer Faculty Paper, 1978) <http://www.repository.law.indiana.edu./facpub/1142>.

169 E Hunter, 'Access to justice: to dream the impossible dream?' [2011] The comparative and International Law Journal of Southern Africa 424.

170 Constitution of Ghana 1992 article 11(3).

171 LJ Myers and D Shinn 'Appreciating traditional forms of healing conflict in Africa and the world' [2010] Black Diaspora Review 9.

172 Maranga (n 164)

173 B Fred-Mensah, 'Nugormesese: an indigenous basis of social capital in a West African Community' <http://www.worldbank.org/afr/ik/default.html> accessed 26 June 2018.

these methods.[174] Kwaku Osei-Hwedie and Morena Rankopo added empathy, cooperation and sharing to these principles.

Two objectives of indigenous dispute resolution methods are identifiable. The first is to correct wrongs, restore justice and mend broken relationships.[175] The second is full reintegration of disputants into their communities and ensuring cooperation. In effect, his view is that the purpose of dispute resolution is to move away from accusations and counter-accusations, heal wounds and reach a determination that assures of future relationships.[176] Brock-Utne identified simplicity, participation, flexibility, relevance, and comprehensiveness as determinants of method effectiveness and outcome sustainability. These are firmly rooted in indigenous dispute resolution methods.

Africans rely on the wisdom and judicial skills of the elders to settle disputes.[177] The traditional leader, council of elders or another member of the community determines disputes. Interestingly, Macfarlane stated that some intellectual elites see these traditional dispute resolution methods as unsophisticated village processes, which are inappropriate in a modern multicultural society. However, Santos states that, "it is the expression of a claim to an alternative modernity".[178] It is little wonder therefore that despite these intellectuals' critique, Macfarlane posits that traditional or customary justice systems are more prevalent and significant in many parts of Africa than formal justice systems.[179] The people resort first (and in some cases only resort) to their established indigenous dispute resolution mechanisms in settling disputes.

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[174] TMS Boland, LJ Myers, P Richards and B Roy, *Re-Centring Culture and Knowledge in Conflict Resolution Practice* (Syracuse University Press Syracuse New York 2008).

[175] As cited in K Osei-Hwedie and MJ Rankopo, 'Indigenous conflict resolution in Africa: The case of Ghana and Botswana' [2012] Institute for Peace Science Hiroshima University 39.

[176] Kwaku Osei-Hwedie and MJ Rankopo, 'Indigenous conflict resolution in Africa: The case of Ghana and Botwana' [2012] Institute for Peace Science Hiroshima University 47.

[177] Cappelletti M and B Garth, 'Access to justice: the worldwide movement to make rights effective' in *Access to justice: a world survey* (Giuffre Editore 1978) 269.

[178] S Santos, 'The Heterogeneous State and Legal Pluralism in Mozambique' [2006] Law and Society Review 57.

[179] Macfarlane J, 'Working towards restorative justice in Ethiopia: integrating traditional conflict resolution systems with the formal legal system' [2007] Cardozo Journal of Conflict Resolution 497.

There is a firm belief among African scholars and dispute resolution experts that the only sustainable solution to Africa's challenges and disputes are those of African orientation.[180] In the same vein, Jean Ping (A former AU Commission chairperson) stated, "the solutions to Africa's problems are found on the African continent and nowhere else".[181] This has been strengthened when one considers Bob-Manuel's argument that western dispute resolution processes have failed to resolve conflicts in Africa.[182] He posits that these processes are not socially contextualized. African values, beliefs, suspicions, interests, needs, attitudes, and relationships should be taken into consideration to render any dispute resolution process effective and long lasting in Africa. Quinn argued that whereas western dispute resolution mechanisms mostly offer one form of justice, that is, either retributive, restorative or reparative, traditional dispute resolution methods combine all these together with other relevant elements with the view to upholding the values of their communities.[183]

The customary laws of Africans were seen as not worthy to be relied on by the colonialists because they were at variance with what they perceived to be law. However, these pre-colonial laws and customs were the bedrock of the indigenous systems of dispute resolution. Some scholars have doubted the potency of these dispute resolution processes and the enforceability of their outcomes. Interestingly however, in Re Southern Rhodesia, the English court held that the indigenous dispute resolution processes even though have different legal conceptions and development, produce equally enforceable outcomes as those under English law (litigation).[184] In fact, the law allows matters of law to be decided by the court and for a dissatisfied party to challenge a decision given by some of these processes in court.[185]

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180 AP Kasaija, 'The African Union's Notion of 'African Solutions to African Problems' and the crises in Cote d'Ivoire (2010-2011) and Libya (2011)' [2012] African Journal on Conflict Resolution 135.

181 Pambazuka News, 'AU seeks regional response to conflict. Audit of the African Union' <http://www.pambazuka.org/actionalerts/images/uploads/AUDIT_REPORT.doc> accessed 26 June 2018.

182 Immanuel Bob-Manuel, 'A cultural approach to conflict transformation: an African traditional experience' (A term paper written for Culture of Peace and Education European Peace University Stadtschlaining 2000).

183 JR Quinn, 'The Role of Informal Mechanisms in Transitional Justice' (A paper delivered at the Annual Meeting of the Canadian Political Science Association 2 June 2005 Ontario Canada).

184 In re Southern Rhodesia (1919) AC 211, 234.

185 See section 40 and 58 of the Alternative Dispute Resolution Act, 2010 (Act 798); a similar thing can be seen in Limpopo Province as presented by A Aiyedun, 'Fair trial and access to justice: how traditional tribunals cater to the needs of rural female litigants' (PhD thesis, University of Cape Town 2013).

Customary law had to meet the threshold of non-repugnancy to natural justice, equity, good conscience, in line with the constitution and in line with public policy before being recognised. These indigenous dispute resolution processes adhere to the legal standards albeit in their own way. This includes the requirement of fair trial. This includes the right to seek redress for human rights violations, innocence until proved guilty, right to defense and to be defended, and right to trial within a reasonable time.[186] Traditional tribunals also apply the *audi alterem partem* and nemo *judex causa sua*.[187] Some traditional processes go a step further to hear all sides and not just the other side. A contentious aspect however is latter part of Article 5 which prohibits inhumane or degrading treatment to offenders.[188] This is because some of these processes have been criticised as subjecting offenders to inhumane treatments. However, the perpetrators see it as applying principles in line with their customs.[189] Again, a lot of these traditional processes do not necessarily apply the 'equality before the law' principle of law in its strictest sense.

The power of traditional dispute resolution methods was greatly diminished by litigation (by the advent of the colonialists).[190]However, the unbearable delays, huge cost, susceptibility to manipulation, challenges with fairness and satisfaction, inability to deliver satisfactory justice, inability to reconcile disputants, among other factors led to loss of faith in litigation by many dispute resolution stakeholders.[191]*Sankɔfa* became the best guide in the search for an alternative.[192] The ODR which were replaced by litigation as Africans were colonized became the best allies, even though the two co-exist.[193] The reasons are not far-fetched – they (ODR) are on a whole faster, cheaper, ensure relationship maintenance, non-adversarial, opportunity to resolve own dispute or decide on who resolves it for parties, offer party control, fits naturally into the African context, among others. The complex legal systems of Africa, application of state and

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186 African Charter on Human and People' Rights 1981, Article 7.

187 Aiyedun (n 56) 154.

188 African Charter on Human and Peoples' Rights (n 167), Article 5.

189 Aiyedun (n 56).

190 Ernest E. Uwazie, 'Alternative dispute resolution in Africa: preventing conflict and enhancing stability' [2011] Africa Security Brief 1.

191 Catherine Price, 'Alternative Dispute Resolution in Africa: Is ADR the Bridge between Traditional and Modern Dispute Resolution?' (2018) 18(3) Pepperdine Dispute Resolution Law Journal 393; Uwazie (n 1).

192 *Sankɔfa* is an Akan word for going back to the past to pick something. It normally refers to going back to the past to pick something precious or valuable.

193 Jasmine Dickerson, 'Overview of Commercial Alternative Dispute Resolution in Africa' (2012) Business Conflict Management 12.

customary laws in most African countries, among others make Africa distinct.[194] It is understandable therefore that the traditional dispute resolution methods which were repackaged and brought back to Africa were described as 'alternative methods'. They are alternatives in the West because they are not perfectly compatible with the existing ones. This is due to the compliments they offer to litigation in terms of enhanced access to justice based on speed and less cost. However, in Africa, they (ODR) have always existed. That is why Kohlhagen says the 'alternative' in this context can only mean alternative to established state force.

ODR is said to have been developed in North America.[195] Most African Countries that received the formalized and codified ODR/ADR modelled it after the Anglo-Saxon Model.[196] ADR has been so accepted that in Ethiopia for instance, specialized conciliation tribunals have been given the jurisdiction to hear all civil law-related disputes and their records are confirmed by the court of first instance.[197] In Ghana, an arbitral award is enforceable in the same way as a judgment of the High Court.[198] This became possible by the enactment of the current Alternative Dispute Resolution Act which has been a trailblazer in the ODR codification in Africa.[199]

Again, many African countries are incorporating ODR into their civil litigation processes.[200] Some groupings have even opted for specific ODR methods. For instance, OHADA (Organisation for the Harmonization of Commercial Law in Africa) makes arbitration the preferred method for dispute resolution.[201] Efforts are underway to create a Centre for Arbitration and Mediation in Africa (CAMA).[202] Others have argued for codification, integration of local law, incorporation of

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194 Sandra F. Joireman, 'Inherited Legal Systems and Effective Rule of Law: Africa and the Colonial Legacy' [2001] University of Richmond Political Science Faculty Publications 3.

195 Dominik Kohlhagen, 'Alternative Dispute Resolution and Mediation: The Experience of French Speaking Countries' [2007] DHDI.

196 Ethiopia, and most Francophone African Countries, Ethiopia inclusive. See Dominik Kohlhagen, 'Alternative Dispute Resolution and Mediation: The Experience of French Speaking Countries' [2007] DHDI.

197 Dominik Kohlhagen, 'Alternative Dispute Resolution and Mediation: The Experience of French Speaking Countries' (How to make ADR Work in Ethiopia, Addis Ababa 17-18 April 2007.

198 Alternative Dispute Resolution Act, 2010 (Act 798) section 57(1).

199 Alternative Dispute Resolution Act 2010 (798).

200 Herbert S. Freehills, 'Dispute Resolution in Africa: Legal Guide' [2016] Herbert Smith Freehills 1.

201 Dominik Kohlhagen, 'Alternative Dispute Resolution and Mediation: The Experience of French Speaking Countries' (How to make ADR Work in Ethiopia, Addis Ababa 17-18 April 2007.

202 A projects by most West and Central African Countries.

local institutions, tolerated self-regulation, cooperation, and innovation among others as ways by which recognition can be given to ODR in Africa.[203]

3.4.1 Value - based dispute resolution: Ubuntu

Ubuntu is inherently African value oriented.[204] This is based on African traditions and knowledge systems.[205] Nabudere sees Ubuntu as humanness based on African philosophy. It is the foundation of life and belief in general.[206] Nabudere argued that this philosophy, which is reconciliatory in substance, informs dispute resolution daily. This philosophy is communal and is manifested in great recognition and respect for humanity. Nabudere argues that Ubuntu gives the African a sense of self-identity, self-respect, and accomplishment. This humaneness is what the African draws on to resolve dispute.[207] To Ramose, epistemologically, the *ubu* and *ntu* denote wholeness and oneness. It is what makes one and indeed the African whole. If it is what makes the African whole, then it makes us one. Beingness has been defined using metaphysics – a component of Ubuntu philosophy in very interesting terms by Nabudere. In his view, the African concept of being includes the "living", the "living-dead" and the "unborn". What this means is that all these 'three beings' are seen as one like the trinity in Christianity. There is therefore a seamless flow from one end of the being to the next, that is, from "unborn", to "born" to "living-dead". In fact, some people even believe that it is a cyclical movement. This seamlessness is what Ramose described as "ontology of invisible beings."[208] The argument is made that the visible being ("living-dead") plays a very important role in the life of the living. It is therefore no news when these beings are invoked or called upon to intervene in disputes to ensure reconciliation and harmonious communal living.

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203 Dominik Kohlhagen, 'Alternative Dispute Resolution and Mediation: The Experience of French Speaking Countries' (How to make ADR Work in Ethiopia, Addis Ababa 17-18 April 2007.

204 M Oobo and N Nyathi, 'Ubuntu, public policy ethics and tensions in South Africa's foreign policy' [2016] South African Journal of International Affairs 429.

205 DW Nabudere, M Garvey and V Andreas, 'Restorative justice and knowledge management in Africa: a multidimensional approach' [2011] Indilinga – African Journal of Indigenous knowledge systems 165.

206 DW Nabudere, 'Ubuntu philosophy. Memory and Reconciliation' (University of Texas, 2015) <https://repositories.lib.utexas.edu/bitstream/handle/2152/4521/3621.pdf?sequence=1&isAllowed=y > accessed 28 April 2020.

207 Nabudere (n 177).

208 Ramose as cited in DW Nabudere, 'Ubuntu philosophy. Memory and Reconciliation' <https://repositories.lib.utexas.edu/bitstream/handle/2152/4521/3621.pdf?sequence=1&isAllowed=y> accessed 28 April 2020.

Mokgoro just as Kaya and Mubangizi, sees Ubuntu as an African philosophy of life and survival.[209] The origin of Ubuntu can be seen in African idioms. Two of these are '*mothokemothokabathobabangwe*' and '*umuntungumuntungabantu*'.[210] The foregoing idioms mean 'A person is a person through other persons' and 'I am because we are or we are because I am'.[211] Ubuntu has been variously defined by scholars. Skelton defined it as a philosophy of humanity.[212] In the eyes of Murithi, Ubuntu is an African cultural worldview.[213] To Swanson, Ubuntu is the philosophy of being humane.[214] The Ubuntu spirit is seen in hospitality, friendliness, generosity, and compassion and caring for fellow humanity.[215] Issifu enumerated the Ubuntu philosophy as entailing restorative justice, empathy, love, and forgiveness.[216] Mkhize identified the elements of Ubuntu in 7Cs. [217] These 7Cs are communication, compassion, cooperation, camaraderie, conscientiousness, compromise, and consultation. Nussbaum on his part recounted humanity for community maintenance, human dignity, compassion, and reciprocity as components of Ubuntu.[218] Ubuntu, as a universal African philosophy, sets the stage for making other dispute resolution methods adaptable and relevant to Africa.[219]

Nabudere and Velthuizen have argued in their trans-dimensional knowledge management model (*TDKM-M*) that the Ubuntu principles which include humanness and togetherness are critical in ensuring restorative justice.[220] The Ubuntu spirit is a *sine qua non* for harmonious living and for restoring society. They posited that restorative justice takes time and argued for patience to ensure

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209 JY Mokgoro, 'Ubuntu and the law in South Africa' Potchefstroom Electronic Journal (1998) 1(1) 1.

210 Abdul Issifu Karim, 'Exploring Indigenous Approaches to Peace building: The case of Ubuntu in South Africa' [2015] Peace Studies Journal 59.

211 Karim (n 180) 60.

212 Ann Skelton, 'Restorative justice as a framework for juvenile justice reform: A South African perspective' [2002] British Journal of Criminology 496.

213 Timothy Murithi, 'Practical peace-making wisdom from Africa: Reflections on Ubuntu' [2006] Journal of Pan African Studies 25.

214 Dalene M Swanson, 'Ubuntu: An Africa contribution to search for a humble togetherness' [2007] Journal of Contemporary issues in Education 53.

215 Karim (n 180) 60.

216 AI Karim (n 180) 61.

217 K Mkhize, 'It's time to blend our cultures as cited in Nussbaum B 'Ubuntu: Reflections of a South African on our common humanity' [2003] Massachusetts Institute of Technology 21.

218 Barbara Nussbaum, 'Ubuntu: Reflections of a South African on our common humanity' [2003] Massachusetts Institute of Technology 21.

219 Rosalind English 'Ubuntu: the quest for an indigenous jurisprudence', [1996] South African Journal on Human Rights 641.

220 Nabudere, Garvey and Velthuizen (n 176).

true healing. They foresee it as ensuring balance in society and that it is an essential ingredient in preventing, managing, and resolving disputes. It is therefore safe to say that *Ubuntu* ensures healing of wounds, families, and communities. The *Ubuntu* spirit which gentle guides man to his humanity, to reflect his/her nature and being, is a very rich ingredient for ensuring sustainable peace and harmonious communal living.

This hinges on the need to maintain the sacred harmony between one's creator (a greater being), the living-dead and the living-living. It (*Ubuntu*) was chosen because it depicted the indigenous African community where even though there are no law courts appropriate indigenous dispute resolution mechanisms exist to resolve disputes of all shapes and colours. This is because even though there were no law courts in the Acholi community at the time of its inception, peace and social cohesion has been sustained since time immemorial.[221] Again, it is founded on truth which is the foundational virtue of the indigenous African dispute resolution mechanism.

3.4.2 Reconciliatory Practices – Mato Oput of the Acholi people in Uganda

The African believes in reconciliation and therefore carries out practices to ensure same. This is because division and disunity are things frowned upon in the African society. The reason is that it dissipates and retards progress and hard work. Nabudere posits that these practices are imbedded in the philosophy of life and way of life. He identified five characteristics of these practices. These are: (1) consensus on existence of dispute; (2) creative and flexible activity carried out for humanity; (3) acceptance of responsibility for wrong and commitment towards a resolution; (4) conflict transformation; (5) performance of a ritual, and public demonstration of a resolution as well as invoking the "living dead" to assist in reconciliation. Famous among these practices is *mato oput* of the people of Acholi in Uganda. Elders play a critical role in this exercise. These elders investigate the dispute identifying the root causes, interrogating disputants to identify areas they fell short or went wrong, getting disputants in the wrong to accept responsibility and getting

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[221] John Baptist Odama, 'Reconciliation process (Mato Oput) among the Acholi Tribe in Northern Uganda' (A commemorative address made during the ceremony for 21st Niwano Peace Prize Award in Japan', Tokyo, 2004)

the guilty party to a point of demonstrating remorse or repentance.[222] The next thing that is done is compensation. The elders involved determine the terms of compensation. Nabudere posits that the process is crowned by the drinking of a bitterroot extract drink from the same calabash by both disputants. This is known as the '*mato oput*'. In the case of groups, that is, if the disputing parties are groups, a delegation of elders is needed to investigate the dispute, establish guilt of disputing groups, elicit acceptance of wrongdoing, and determine compensation. Then there is what Nabudere describes as "bending of two spears" followed by the drinking of the bitterroot drink extract – *mato oput* signifying reconciliation. The *mato oput* ceremony is seen as *morally therapeutic*. It is not so much about proclaiming a disputant right or wrong, but it is about ensuring harmonious communal life through reconciling disputing parties.

There is also the Acholi traditional dispute resolution system. The Acholi process offers society an opportunity to craft appropriate and sustainable restorative justice. Wadada, Garvey and Andreas have succinctly captured the Acholi dispute resolution process.[223] The process, like other indigenous dispute resolution processes begins with discouragement of undesirable behaviours which are described as *kir* (taboo). These are prohibitive behaviours and include sexual taboos such as incest, adultery, and the likes; violent conducts; cursing another person or group, among others. Offenders are severely punished to serve as deterrent to others. If or when preventive steps fail and conflicts do occur, these disputes are quickly identified. Disputants are enjoined to observe some 'social distancing' (my own coinage) in their relationship for the duration of the conflicts until allowed to do otherwise.

The third stage is preliminary investigation and employing mediation to resolve the dispute. An elder of the community holds caucus mediation sessions with the disputing parties. The '*Rwot Moo*' representative together with his council investigate the circumstances if it is a murder case. In the event of a dispute between Acholi clans, the elders of the disputing clans are summoned to meet for discussions on the matter. These elders examine the facts and take witness statements with the view to establishing the truth. The fourth stage is agreement to meet. Experienced and

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[222] Dani W Nabudere, 'Ubuntu Philosophy. Memory and Reconciliation' (University of Texas, 2009) <https://repositories.lib.utexas.edu/bitstream/handle/2152/4521/3621.pdf?sequence=1&isAllowed=y> accessed 23 April 2019.

[223] Nabudere, Garvey and Andreas (n 176).

respected elders are assisted by the disputants to unravel everything concerning the dispute. These experienced elders do all they can to get to the root cause of the dispute.

The fifth stage is confession and revelation of the truth. The guilty party or offender accepts guilt. This unlocks the reconciliation door. Guilt acceptance is the fundamental principle in the Acholi dispute resolution process.[224] This is because until guilt is owned by the process will be fruitless. The sixth stage is compensation determination. Death sentence and banishment from the community are not sentences in the Acholi system. This is because the object is to re-establish harmonious communal living. Compensation is usually paid for wrongs committed.

The seventh and final stage is compensation payment and organising of reconciliation ceremony. Compensation is paid at a ceremony meant to reconcile the parties and restore good relations between them.

This hinges on the need to maintain the sacred harmony between one's creator (a greater being), the living-dead and the living-living. It was chosen because it depicted the indigenous African community where even though there are no law courts appropriate indigenous dispute resolution mechanisms exist to resolve disputes of all shades and colours. This is because even though there were no law courts in the Acholi community, peace and social cohesion has been sustained since time immemorial.[225] Again, it reflects truth which is the foundational virtue of the indigenous African dispute resolution mechanisms.

3.4.3 Oath taking in African Dispute Resolution

African traditional dispute resolution methods hinge on discovering the truth.[226] Oath taking is the major tool for ensuring that disputants tell nothing but the truth in its entirety since it incorporates the power and authority of the ancestors.[227] Affliction, sickness or death are

[224] Nabudere, Garvey and Andreas (n 176).

[225] Barney Afako, *Reconciliation and justice: 'Mato Oput' and the Amnesty Act* in Okello Lucima (ed), *Accord: Protracted conflict, elusive peace: Initiatives to end the violence in northern Uganda* (Conciliation Resources 2002).

[226] Grace Umezurike, 'Conflict Resolution and Restoration/Sustenance of Peace: An Appraisal of Oath Taking and Covenant Making in African Traditional Religion' [2022] Journal of Social Sciences and Humanities 12.

[227] Olaoba O B, *Ancestral focus and the process of conflict resolution in traditional African societies in perspectives on peace and conflict in Africa* (John Archers Limited 2005).

consequences dreaded by disputants.[228] It is one of the surest ways (if not the surest way) of discovering the truth in the African traditional society. That is why it cuts across the various dispute resolution methods in Africa. It is therefore imperative that oath taking is discussed in a study on traditional African dispute resolution.

Tyler defined an oath as an outward attestation or promise made as a sense of responsibility to God.[229] The oath taker acknowledges his/her maker as the one from whom nothing can be hidden – He sees the inner most parts and intentions of man. Azebre found *Nupore* – oath swearing as part of Adaboya people of Ghana's dispute resolution mechanism called *posiga*.[230] The disputants (oath taker) mention the name of an ancestor or a powerful god and makes a statement in oath taking. Oath taking signifies commitment to tell nothing but the whole truth. Oaths were used in dispute adjudication prior to colonialization and have remained with the African. Oath taking emphasises the spiritual perspective of indigenous/traditional dispute resolution. Oath taking is also seen as a conflict preventive tool. In this respect, it brings to bear truth, deterrence, and restraint.[231] The African is more concerned about what would befall him and his household if his testimony is adjudged false by a deity than by a court of law. Oath taking therefore compels him to tell the truth as the fate of those who fell victims of oaths, they took serve as deterrent to others. Consequences such as strange sicknesses, madness or death accompany the party that is found to have lied or who goes contrary to the oath she/he took.[232] Oaths are normally taken before divinities as a form of procuring justice.[233] Oath taking seeks to restore broken relationships with God, the gods, the spirits, the ancestors, family as well as the community.[234] It is also meant to

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[228] Christian O Ele, 'Conflict Resolution Strategies in Igbo Religion: The Oath taking and Covenant making perspectives' [2017] International Journal of Social Sciences and Humanities Reviews 21.

[229] JE Tyler as cited in JO Maranga, 'Oathing, law and order in colonial Gusiiland' [2017] Journal of Arts and Humanities 76.

[230] Abu I Azebre *Indigenous mechanisms of dispute resolution among the people of Adaboya traditional area* (MA thesis, University for Development Studies Wa 2014) 79.

[231] OB Olaoba, R Anifowose and AR Yesufu, 'Traditional African Societies Preventive Measures' <https://nou.edu.ng/sites/default/files/2017-03/PCR%20831.pdf> accessed 24 April 2020.

[232] Azebre (n 195) 82.

[233] Edwin Anaegboka, 'Resolving the prevailing conflicts between Christianity and African (Igbo) Traditional Religion through Inculturation' <www.semanticscholar.org> accessed 24 April 2020.

[234] ON Kealotswe, 'Acceptance and rejection: The traditional –healer prophet and his integration of healing methods' <http://www.ubrisa.ub> accessed 18 February 2019.

ensure relationships are never broken in the first place when one considers their deterrent and restraint feature.

Another process known as *lungre* is used to arrive at the truth in disputes involving accusations of witchcraft (*sonya*). Azebre discovered that the accused is made to swallow a stone, drink 'anointed water', swallow or break an egg or drink a concoction. All these are done to unravel the truth. These are practices that are tried and tested and are cherished by the Adaboya people.

3.5 Indigenous Dispute Resolution Methods in Africa

African dispute resolution methods have been in existence preceding, during and after its colonialization. It has been argued that morality and African religious ethics underpin its laws as well as its conflict resolution methods.[235] Musingafi and others argued that it is impossible to divorce law from customs, divinations, taboos, mediums, ordeals as well as expectations of harmony, sharing and good company.[236] Ayindo and Jenner made the point that it is quite difficult if not impossible to delink family, lineage, clan as well as solidarities from conflict resolution.[237] Moral pressure is what characterizes coercion or punishment. The courts also try as much as possible to maintain relationships for peaceful coexistence. The focus of a court judgment is conciliation and therapy.[238] However, this has been largely elusive as the courts have been accused of destroying relationships and not allowing the truth to come out sometimes.

Again, Murithi accused colonialism of destroying the foundations on which the African defined himself and using indigenous governance structures for the interest of the colonialist.[239] He proceeded to say that colonialism also corrupted Africa's indigenous dispute resolution methods. This is an incontestable fact. Obi reiterated the colonial legacies as constituting the basis of

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[235] Babu Ayindo and Janice Jenner, *Training of trainers manual: Conflict transformation and peace building in Rwanda (*United States Agency for International Development Rwanda 2008) 34.

[236] Musingafi MCC, Mafumbate R and Khumalo TF, 'Traditional conflict management initiatives in Africa: Wellness models for southern Africa and the Zimbabwean crisis' [2019] Journal of Culture, Society and Development 60.

[237] Ayindo and Jenner (n 201).

[238] Musingafi, Mafumbate and Khumalo (n 201) 60.

[239] Tim Murithi, 'African approaches to building peace and social solidarity' [2006] African Journal on Conflict Resolution 9.

violence in Africa through manipulations, and authoritarianism.[240] However, these legacies cannot be responsible for all the violence, conflicts, and problems in Africa. Whatever the cause may be, the African has his/her tried and tested methods of resolving disputes that ensures sustainable societal harmony.

3.5.1 *Dare* tradition

This is a traditional dispute resolution institution of the Shona indigenes in Zimbabwe.[241] This is where chiefs and sub-chiefs resolve disputes. Chiefs are assisted by their advisers to hear cases brought before them. The advisers are people with a lot of intelligence, wisdom and knowledge.[242] This community views a crime (*mhosva*) as negatively affecting it as a whole.[243] It is a traditional court that is located in the villages where the head of the village that is the chief, his advisors (council of advisors) and members of the community constitute the court. This local court has both civil and criminal jurisdictions. This means that the court hears cases of minor breaches of the law as well as those considered as major breaches of the law. Cases like theft, assault, rape, witchcraft, and ritual cases are first heard using customary law before proceeding to the formal courts. The hearings are done in public. Local community members, the village chief, as well as the council of advisors all come together in determining cases presented to the court. Mutinga and others made the point that the *dare* is recognised by the Zimbabwean Constitution.[244] They proceeded to say that the Constitution gives the *dare* the right to take a case to the formal court if the case is beyond the *dare*'s jurisdiction. The principal objective of this court system is social order and harmony. The court has ensured cohesion among the Shona indigenes for many years.

Dare (traditional courts) offer a lot of advantages and this includes accessibility, cost saving, familiarity with the applicable law (customary law), simplicity and informality, use of the local languages of disputants to resolve disputes, ensures reconciliation. Generally, community elders who derive their authority from the indigenous norms and values of the people heard cases. In

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[240] Obi Cybil, 'Conflict and peace in West Africa' in *News from the Nordic Africa Institute* Nordiska Afrikainstitutet 2005).

[241] Musingafi, Mafumbate and Khumalo (n 201) 64.

[242] Gombe (n 237)

[243] Ephraim T. Gwaravanda, 'Philosophical principles in the Shona traditional court system' [2011] International Journal of Peace and Development Studies 148.

[244] Musingafi Mafumbate and Khumalo (n 201) 66.

fact, sages (folk and philosophic) who are well versed in the customs, traditions and values of the community determine cases.[245] They are able to treat like cases alike and ensure that justice is served based on their deep appreciation of the customs and traditions as well as their rich experience. This ensures creation of balanced and inclusive community, sustainable peacebuilding, reconstruction, restoration[246] its focus is on relationship transformation. It ensures restoration. This is because the focus of any verdict of the court is to re-establish equilibrium and in effect restoration. In essence social harmony is sustainably pursued.

These traditional courts are not without limitations. The first is the possibility of inaccurate reasoning. Mistaken reasoning arising out of missing main point(s), being swayed by pity, inaccurate conclusion, among others may negatively impact the judgment of the court. Procedural inaccuracies may lead to loss of a case. For instance, a case was thrown out for inability to follow the proper reporting channel.[247] The second is the challenges of handling criminal cases bearing in mind the community's moral principles of harmony, forgiveness and peacebuilding. That is why some have argued that it is better to hand over cases involving grievous criminal offences to the state (national) courts to deal with since they are better trained and equipped.[248] The third is the danger of having persons accused of committing criminal offences move about in the community while their cases are being heard. The risk of some of these people absconding while the cases are still pending at these courts cannot be wishes away. The fourth is the exclusion of women (largely) from serving as judges in these courts. This reduces the amount of expertise that is available for use at these traditional courts. This affects the speed at which cases are heard and dealt with as well as its consequential effect on quality of decisions.

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[245] Enock Chikohora, 'Moral ambition within and beyond traditional justice: reflections on the effectiveness of traditional courts (dare) in conflict transformation in Madziwa communal area Zimbabwe' (2022) 10 Global Scientific Journals 2623.

[246] Chikohora (n 245).

[247] Bourdillon M F, *The Shona Peoples: An ethnography of the contemporary Shona with special reference to their Religion* (Gweko, Mambo Press 1981).

[248] Economic Commission for Africa, *The Relevance of African Traditional Institutions of Governance* (Publications and Conference Management Section 2007).

3.5.2 Traditional court system of the Shona people in Zimbabwe

The dispute resolution system is based on the African principle of *Unhu*, which means 'personhood' and is based on one's history and rooted in community.[249] It is a community that gives an individual 'personhood' status, defines traditional values as well as the ethics that regulate communal life.[250] The Shona people believe man has an intrinsically built sense of morality which is refined by societal beliefs and values and is jealously guarded by the chiefs. Violation of this leads to punishment. The Shona's chieftaincy applies the principle of *Unhu* in resolving disputes. There are a series of traditional courts that determine disputes. Cases are heard at lower stages before finding their way to the highest traditional court presided over by the traditional chiefs. The focus of this dispute resolution is restoration. Three stages are identifiable in this system.

Stage one comprises of the family court. This court is the lowest in the rank. A council of elders make up this court. Their jurisdiction is to resolve disputes within families. However, their jurisdiction is limited to minor offences. In this respect, cases such as theft (stealing), parents-children conflicts, ill treatment of spouse by his or her spouse, conflicts between a spouse and the in-laws, among others. However, members of the external family consisting of aunts, uncles, grandparents, brothers, and sisters could all be called upon to resolve these disputes.[251] Women could be advisors or judges. The intention behind the family court system is to preserve the family's integrity and dignity. This is what informs the choice of a judge. In this respect, family members who are custodians of family values, customs and those who are respected among the family are ideal candidates for the role of a judge.[252] The family court is also under duty to advise girls or women on the best way of taking very good care of their spouses and families, if they marry. In the same vein, the boys and men are also taught on how to occupy their positions as heads of their various homes with dignity. However, there is the tendency to place preservation of the family name and dignity above justice. Matavire cited a case where a girl was raped by her

249 Monica Matavire, 'Interrogating the Zimbabwean traditional jurisprudence and the position of women in conflict resolution. A case of Shona tribes in Muzarabani District' [2012] International Journal of Humanities and Social Science 218; Wright R, *African Philosophy* (University Press London 1986) 27.

250 Matavire (n 209) 221.

251 Matavire (n 209) 221.

252 Matavire (n 209) 222.

uncle. The case was treated as a family matter. Sadly, the trauma the girl went through, and her emotions were not considered in the court's decision. It was the uncle's reputation and standing in society as well as the family name that found favour with the family court.

Stage two has the *headman's court*. This is the first appellate traditional court. Cases from the family court are referred to this court. This happens where a disputant is dissatisfied with the ruling of a family court. Jurisdiction of this court is limited to claims for damages lower than $100.00.[253] The other side of their jurisdiction has to do with hearing minor cases such as stealing/theft, fighting, assault, among others. Village heads also known as *kraal* heads preside over these courts. These individuals are men since the numerous attempts at having women head these villages have not been that successful. Matavire argued that this practice has its roots *dare* (chief) in a concept predating colonialism.[254] The '*dare*' was a men's court with no female members even though these women could attend as victims, witnesses or as members of the audience who had to break a tie in the event of a stalemate by voting. The third stage is the court of the Chief. This is the second appellate traditional court and the final authority in this respect. This traditional court is presided over by the traditional chiefs.

3.5.3 *Gacaca* traditional dispute resolution in Rwanda

Gacaca (community-based tribunals) were set up in Rwanda to deal with the backlog of cases in the courts after the Tutsi genocide in 1994. However, these are a traditional judicial system of the Rwandan people predating their colonialisation.[255] These Gacaca courts were set up by the Organic Law of 1996 to handle genocide crimes and crimes against humanity committed between 1990 and 1994.[256] The objective was to facilitate reconciliation.[257] This was to be achieved by giving opportunity to offenders to tell the truth, admit their guilt, and ask for forgiveness from the victims paving the way for reconciliation. Ordinary people were to be at the centre of dispensing justice and ensuring reconciliation. These local judges heard cases from 2005 to 2010 (even

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253 Matavire (n 209) 222.

254 Matavire (n 209) 219.

255 Mary Thibodeau, 'Analysing the social impact of gacaca courts in the reconciliation process in Rwanda' [2020] Independent study project collection 3376.

256 Between 1st October, 1990 and 31st December, 1994.

257 Human Rights Watch, 'Justice compromised, The legacy of Rwanda's community-based gacaca courts' [2011] Human Rights Watch.

though Gacaca began in 2002). Interestingly, some of the perpetrators who were jailed by the Gacaca courts, while in jail, trusted that these courts could identify all the others involved and punish them accordingly.[258]

Anastase made the point that every Rwandan is a member of 18 common clans of the Rwandan genealogy.[259] Whether one is a Hutu, Tutsi or Twa is dependent on one's socio- economic circumstances and his proximity to the ruling class as well as the Monarch.[260] Local areas used *Gacaca* as the court of first instance for resolving disputes.[261] Persons of high integrity in society decided disputes in the communities.[262] *Gacaca* courts had jurisdiction to settle civil cases such as divorce, land disputes, defamation and other related misdemeanours.[263] *Gacaca* courts have been in existence since the colonial times.

The accused in the Rwandan genocide were mandated by a piece of legislation in 1996 and the 2003 Constitution. *Gacaca* means '*relaxing green lawn*'.[264] Families and neighbours gathered on these green and relaxing lawns to discuss matters affecting them.[265] The *Gacaca* is made up of respected elders in the community who constitute traditional councils and tribunals and whose responsibility is to ensure peaceful co-existence. Members of *Gacaca* were called *impfura* which stands for one of high moral integrity, a role-model, an adherent to the values, culture, and customs of the people.[266] In the past, *impfura* consisted of men advanced age, however, today, 21-year-olds and women are members of the *Gacaca* elected to serve as judges. They resolve disputes, administer justice, promote reconciliation, and ensure social cohesion. The *Gacaca*

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258 Peter Uvin and Charles Mironko, 'Western and local approaches to justice in Rwanda' (2003) 9 Global Governance 219.

259 Anastase Shyaka, *Home-grown mechanisms of conflict resolution in Africa's Great Lakes region* (Centre for Conflict Management Kigali 2015).

260 Musingafi, Mafumbate and TF Khumalo (n 202).

261 Mutisi M, *The abunzi mediation in Rwanda: Opportunities for engaging with traditional institutions of conflict resolution Policy and Practice Brief* (African Centre for the Constructive Resolution of Disputes Durban 2011) 48.

262 Ayindo and Jenner (n 201).

263 Musingafi et al (n 202) 64.

264 Musingafi et al (n 202) 65.

265 Karbo T and Mutisi M, 'Psychological aspects of post-conflict reconstruction: Transforming mind-sets: The case of the gacaca in Rwanda' (A paper prepared for the ad hoc expert group meeting on lessons learned in post–conflict state capacity: Reconstructing governance and public administration capacities in post conflict societies *2 – 4* October 2008 Accra) 26.

266 Anastase (n 214).

employs communal and participatory approach in its proceedings. The *Gacaca* obtains its legitimacy from the support of the community. There must be a minimum of 15 judges seating and 100 witnesses to render a *gacaca* session valid.[267] The Penal Reform International stated that a total of 11,000 *gacaca* courts were operational with each having a panel of 19 judges.[268]

Gacaca seeks to unearth the truth, dispense justice, deal with impunity, ensuring collective ownership of dispute, working towards reconciliation using mediation.[269] The foundation of Gacaca is hinged on truth, justice and ultimately reconciliation. As to which of these is the goal of *gacaca*, Karbo and Mutisi stated that reconciliation is the goal of *gacaca*.[270] Botchway on his part argued that the main aim of *gacaca* is to ensure social harmony or restore sane.[271] These foundational principles therefore determine what this traditional court does. Anastase quoted President Paul Kagame as saying that *Gacaca* has been uniquely crafted to ensure a proper balance between justice and reconciliation. *Gacaca* is also intended to ensure national cohesion.

Advantages of Gacaca include building justice, creating a sense of shared citizenship, speed, reconciliation, and reconstruction.[272] The focus of the courts was restorative justice where victims and offenders co-existed peacefully. Indeed, they were seen as the stabilizers of the Rwandan society.[273] However, fears lingered as to the genuineness of the remorsefulness exhibited by the perpetrators. Victims were unsure of their safety as these perpetrators moved back into their communities.[274] This was the basis for some scepticism about the sustainability of the peacebuilding and healing efforts.

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[267] Karbo and Mutisi (n 220).

[268] Penal Reform International, 'Gacaca courts and community service' (Penal Reform International's Research Report 2008) 34.

[269] Musingafi CCM et al (n 201) 66.

[270] Karbo T and Mutisi (n 221).

[271] Francis Kariuki, 'Conflict resolution by elders in Africa: successes, challenges and opportunities' (The Chartered Institute of Arbitrators Centenary Conference 'Learning from Africa, Victoria Falls Convention Centre, Zambia, 15th July 2015).

[272] Mark A Druml, 'Restorative justice and collective responsibility: lessons for and from the Rwandan genocide' [2002] Contemporary Justice Review 5(1) 5.

[273] Mary Thibodeau, 'Analysing the social impact of gacaca courts in the reconciliation process in Rwanda' [2020] Independent study project collection 3376.

[274] Philip Clark, *The gacaca courts, post-genocide justice and reconciliation in Rwanda* (Cambridge University Press 2010).

Successes of the Gacaca courts include discovery of the truth, ensured forgiveness of wrongs committed, resolved disputes, justice, and reconciliation[275] The gacaca courts did so well that they won the hearts of many Rwandans and became the preferred method of justice delivery in Rwanda. However, the Gacaca courts were not without challenges. The judges had a difficulty unearthing
lies and dealing with them. Another issue was perpetrators' inability to pay their victims for the property stolen or destroyed. Some perpetrators also managed to escape the arms of the gacaca courts, they escaped out of the country. There was also the issue of punishment not being deterrent enough. In fact, the punishments did not commensurate with the offences committed. This slowed the healing process of some victims. There were also accusations of being a judge in one's cause (of a sort) levelled against some of the people who were traumatized by the genocide serving as judges. Again, it was unable to properly deal with lies and revenge.[276]

Criticisms of gacaca are that it is not suitable for resolving very grievous offences (crimes), inability to deliver justice to some parties, perpetuation of impunity in some cases, perception of 'victor-justice' in some instances, impartiality, no legal training for judges in the gacaca courts, lack of legal representation for accused persons, inadequate protection for innocent parties(victims).

3.5.4 Bashingantahe in Burundi

The *Bashingantahe* is a body of people who have been given social, political and judicial power to maintain the peace at the village level in Burundi.[277] By virtue of this, they serve as peacemakers, resolving disputes as mediators and arbitrators.[278] It is thus a traditional grass-roots mechanism for ensuring harmonious communal living. Historically, the *Bashingantahe* have been the guardians of tradition and good behaviour of their communities.[279] The *Bashingantahe*

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275 Thibodeau (n 273).

276 Mary Thibodeaux, 'Analysing the social impact of gacaca courts in the reconciliation process in Rwanda' [2020] Independent study project collection 3376.

277 Alexander J Buszka, 'When Alternative Dispute Resolution Works: Lessons Learned from the *Bashingantahe'* (2019) 67(1) Buffalo Law Review 164.

278 Mutoy Mubiala, 'The contribution of African Human Rights Traditions and Norms to United Nations Human Rights Law' [2010] Human Rights and International Legal Discourse 210.

279 Nigel Watt, *Burundi: Biography of a small African Country* (Hurst and Company 2008).

institution began in the seventh century.[280] At the time, these individuals who were representatives of their *coline (hill(s),* were arbitrators and at the same time advisors to the Monarchy.[281] Their legitimacy is from their investiture as *Bashingantahe* and the moral contract they have with their communities.[282] This obligation is to model virtuous behaviour, conscientiously resolve disputes and protect the weak in their communities to the best of their abilities.[283] Their hierarchy of jurisdiction span from resolving family disputes to resolving disputes at the King's Court. Interestingly, the *Bashinganhate* institution was a check on the exercise of governmental power and its abuse.[284]

Colonialisation (of Burundi by Belgium) led to a weakening of the *Bashingantahe* by the state.[285] Social control power was shifted from the community to the administrative centre. The *Bashingantahe* institution was politicised with government appointing the *Bashingantahe.*[286] This notwithstanding, the *Bashingantahe* dispensed justice and spearheaded reconciliation at the community level. [287] The *Bashingantahe* continued to preserve the peace even at the time of the genocide. Even in the face of assassinations they protected victims and mobilised communities to arrest killers and looters.[288] They undertook reconciliation between offenders and victims. Sadly, reforms in 2005 stripped the *Bashingantahe* of their formal standing as well as the force of law which their decisions carried.[289] This was strange because this institution was complementary to the formal court system and all of a sudden it had no legal authority. However, it continues to resolve disputes in an informal capacity with the formal courts referring disputes to

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280 Assumpta Naniwe-Kaburahe, The Institution of *Bashingantahe* in Burundi in Luc Huyes and Mark Salter (eds), *Traditional justice and reconciliation after violent conflict: Learning from African Experiences* (International Institute for Democracy and Electoral Assistance 2008).

281 Dolive G. Kwizera, 'The Role of the Institution of *Bashingantahe* in nurturing good governance and socio-economic development in Burundi' [2017] International Journal of Innovation, Education and Research 151.

282 Patrick B. Litanga, 'Indigenous Legal Traditions in Transitional Justice Processes: Examining the Gacaca in Rwanda and the *Bashingandahe* in Burundi' (MA Thesis, Ohio University 2012).

283 Kwizera (n 278).

284 Naniwe-Kaburahe (n 277).

285 Naniwe-Kaburahe (n 277).

286 Bert Ingelaere and Dominik Kohlhagen, 'Situating social imaginaries in transitional justice: The *Bashingantahe* in Burundi' [2012] International Journal of Transitional 40.

287 Sarah-Jane Koulen, 'Traditional justice and reconciliation after violent conflict: Learning from African experiences' [2009] Journal of African Law 321.

288 Naniwe-Kaburahe (n 277).

289 Eric Scheye, 'Local justice and security development in Burundi: Workplace Associations as a Pathway Ahead' [2011] Netherlands Institute of International Relations Clingendael 17.

Bashingantahe before trial. Some litigants even use *Bashingantahe* as witnesses and experts with some of the *Bashingantahe* still retaining their legitimacy.[290]

The *Bashingantahe* system existed since time immemorial but was modernised to meet the ever-changing needs of society. This was because there was the need for the practice to be in conformity with the law. In this respect, many trainings were organised for some persons who were recruited to beef up this system. In the words of ActionAid, the *Bashingantahe* was re-established after recruiting and training many individuals in civil and penal procedures.[291] *Bashingantahe* continue to play a very critical role in Burundi especially in the local villages. Even though the *Bashingantahe* functions differently from community to community, generally the panel of *Bashingantahe* is convened at the various *colline* where cases are heard and disputes resolved amicably.[292] Morally and socially responsible men were selected by each village, traditionally. The requirement for *mushingantahe* is *bushingantahe*, which is integrity and respect for the common good.[293] Land disputes have been greatly reduced due to the efficiency of the *Bashingantahe*.[294] The *Bashingantahe* offer transparent proceedings and public accountability. It also offers efficient and fair dispute resolution. It offers accessibility, equity, fairness and effectiveness.

However, the *Bashingantahe* institution has been accused of bias and limited effectiveness. Again, it has been tainted with corruption and bias.[295] Interestingly, despite these criticisms most village dwellers see *Bashingantahe* as more accessible, independent, and trustworthy than the local administrators and formal courts.[296]

Despite variations in the *Bashingantahe* today, certain things remain intact. Even though some *Bashingantahe* are appointed by the government, this remains largely the preserve of local

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[290] Litanga (n 279).

[291] ActionAid, 'Traditional Peace building in Burundi' (News and press Release 12 December 2005).

[292] *Colline* means hill(s). Tracy Dexter and Henry Dunant, 'The Role of Informal Justice Systems in fostering the Rule of Law in post-conflict situations: The Case of Burundi' Centre for Humanitarian Dialogue 2005).

[293] Elizabeth A McClintock and Terence Nahimana, 'Managing the Tension between inclusionary and exclusionary processes: building peace in Burundi' [2008] International Negotiation 73.

[294] ActionAid (n 291).

[295] Kwizera (n 278).

[296] Tracy Dexter and Henry Dunant, 'The Role of Informal Justice Systems in fostering the Rule of Law in post-conflict situations: The Case of Burundi' Centre for Humanitarian Dialogue 2005).

communities.[297] Interestingly, the *Bashingantahe* is under obligation to resolve disputes even if he is uninvited. He is seen as being in the place of God and the King, is the straight path in which Burundi can trust, and is required to resolve any dispute he comes across.[298] The communities still select people with wisdom, high degree for the truth, hardworking, moderate in speech, high sense of fairness and justice, have the community at heart and socially responsible, among others.[299] The oath that is taken by a *Bashingantahe* to follow the institution's principles and core values, and which seals the moral contract between the *Bashingantahe* and his community remains. Engaging in corrupt practices, disclosing secrets, acting in one's own interest rather than the common good, or misconducting oneself amounts to violating the oath and could lead to temporary ban or one being disinvested.[300]

3.5.5 *Barza Intercommunautaire* in Eastern Democratic Republic of Congo

Initially, *the Barza Intercommunautaire,* which was established in 1997 to resolve disputes, operated as a branch of the *Commission de Pacification et de Concorde* (CPC) in the Kivu Province.[301] In 1998, it was re-established as an independent local justice institution led by the community and was non-partisan. *The Barza intercommunautaire* is a local mechanism for resolving disputes at the grassroots level of the North Kivu Province in the Democratic Republic of Congo. This serves to prevent disputes from becoming full blown violent conflicts. It had a three-fold purpose – to prevent violent conflicts, resolve disputes, and ensure healing of wounds occasioned by conflicts. It was made up of wise men from the different communities. Their aim was to prevent disputes and resolve them if they occur, heal those who sustain wounds in conflicts, and promote harmonious communal living.[302] It was based on two main pillars – truth telling and forgiveness. The *Barza Intercommunautaire* usually resolved inter-ethnic disputes. It has successfully resolved ethnic disputes over land in North Kivu between 1998 and 2004 for

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297 Dexter and Dunant (n 293).

298 Buszka (n 274).

299 Naniwe-Kaburahe (n 277).

300 Agnes Nindorera, '*Ubushinganhate* as a Base for Political Transformation in Burundi' (2003) Consortium on Gender, Security and Human Rights Working Paper No.102/2003, http://genderandsecurity.org/sites/default/files/*Ubushinganhate*_as_a_Base_for_Political_Transformation_in_Burundi' accessed 7 July, 2023.

301 Naruemol Tuenpakde, 'Transitional justice in times of conflict: A case of the *Barza Inter-Commubautaire* in the Kivus' (M.Phil Thesis, University of Cape Town 2019).

302 Shirambere P. Tunamsifu, 'Transitional Justice and peacebuilding in the Democratic Republic of Congo' [2015] African Journal on Conflict Resolution.

example. The *Barza Intercommunautaire* has greatly helped in rebuilding communities, consolidated peace, reconciled communities, among others. However, fears have been expressed about the ability of the *Barza Intercommunautaire* to remain independent of political influence and manipulation. Some have argued that there is the need for some reforms such as greater female participation, government and private/donor financial support, greater decentralisation in all six territories.[303]

The *Barza Intercommunautaire* was able to identify the root causes of disputes and therefore able to provide sustainable solutions. The process entailed admitting wrongful acts, asking for forgiveness, committing to not repeat the offence, and performing purification rites. Dialogue between disputants is at the heart of *Barza Intercommunautaire*. The parties normally sit under a tree, share food and drink from a common calabash and dialogue.[304] It thus provides the platform for offenders, victims and the community to dialogue towards sustainable solutions. However, serious crimes against humanity were transferred to the customary courts for redress since the *Barza* had no jurisdiction to determine such matters.

The *Barza Intercommunautaire,* some argued, should have been restructured and repositioned for enhanced performance.[305] However, it was successful at reintegrating and promoting pacification. The *Barza Intercommunautaire* has been so effective that it has been touted as a tool for dealing with the various armed conflicts and human rights violations.[306] Indeed, it has addressed some issues arising out of some armed conflicts that took place in the Kivu province from 2003 to 2006.[307] It has also resolved land and resource disputes, dealt with speech which had the tendency to incite ethnic hatred, social disturbances, illegal detentions, among others.[308] It had many successful mediation sessions with the warlords, transitional governments, armed groups and

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303 Tunamsifu (n 298).

304 Kamwimbi T Kasongo, 'Between peace and justice: Informal mechanisms in the Democratic Republic of Congo' in Ivo Aertsen and Kris Vanspauwen (eds), *Restoring justice after large-scale violent conflicts: Kosovo, DR Congo and the Israeli-Palestinian case*. (Willan Publishing 2008).

305 Tunamsifu (n 298).

306 Tunamsifu (n 298).

307 Naruemol Tuenpakde, 'Transitional justice in times of conflict: A case of the *Barza Inter-Commubautaire* in the Kivus' (M. Phil Thesis, University of Cape Town 2019).

308 Clark Phil, 'Ethicity, 'Leadership and conflict Mediation in Eastern Democratic Republic of Congo: The case of the *Barza Inter-Communautaire'* [2008] Journal of Eastern African Studies 1

communities.[309] In 2003, the *Barza* received formal recognition as being a part of the national strategy for reconciliation.[310]

Two factors accounted for the collapse of the *Barza* in 2005. The *Barza's* legitimacy and effectiveness were greatly undermined by political influence and control.[311] The second cause was the inter- *Barza* disputes. These disputes were inter-ethnic disputes that arose within the *Barza.* Deep seated division erupted between the Banyarwanda and the non-Banyarwanda people.[312] This was sad because the Barza was supposed to ensure cohesion, and communal harmony but it could not maintain same among its ranks. These issues prevented the *Barza* from dealing with the prolonged violent conflict after the second Congo war for instance. It was unable to deliver the justice and sustainable peace envisioned. Some argue that the *Barza*'s limited capacity made it impossible for it to hold the state accountable for some of the injustices occasioned.[313] Even though the *Barza Intercommunautaire* collapsed it is worth looking into its nature, structure, operations, successes, failures and the causes of its collapse to inform the design of better and sustainable mechanisms.

3.6 Conclusion

This chapter defined dispute and discussed its components. The chapter presented an up-to-date review of the phenomenon understudy from parts of Africa excluding Ghana. It highlighted previous works done on dispute, dispute resolution and African dispute resolution methods. The work demonstrated that the African philosophy of dispute resolution is restoration, healing, and harmonious communal living. The *Ubuntu* spirit is seen in the various dispute resolution methods across Africa. That is why many indigenous dispute resolution methods have been designed to restore broken relationships and ensure a harmonious society. The next chapter discusses the legal

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309 Jean C Kilaya, 'Utilising a traditional approach to restorative justice in the reintegration of former child soldiers in the North Kivu Province, Democratic Republic of Congo' [2016] Africa Insight 46.

310 Charles Villa-Vicencio, Paul Nantulya and Tyrone Savage, *Building Nation: Transitional justice in African Great Lakes Region* (African Minds 2005).

311 Kasongo (n 301).

312 Clark Phil, 'Ethicity, 'Leadership and conflict Mediation in Eastern Democratic Republic of Congo: The case of the *Barza Inter-Communautaire'* [2008] Journal of Eastern African Studies 1.

313 Tuenpakde (n 304).

framework for settling disputes in Ghana, the Ghanaian court system, types of disputes, dispute resolution methods in Ghana and conceptual framework underpinning the study.

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CHAPTER FOUR

LITERATURE REVIEW ON DISPUTE RESOLUTION IN GHANA

4.1 Introduction

Pre-colonial dispute resolution mechanisms which had traditional rulers (chiefs, kings and queens), elders and family heads as adjudicators were based on the need to maintain the social bond between people of defined communities. These dispute resolution individuals possessed unparalleled knowledge in the customary law and traditions of the people. Customary mediation and arbitration were the main dispute resolution processes employed by the people. Crimes considered grievous were resolved at the community level. This included murder or causing grievous bodily harm to another person, and destruction of property.[314] Customary law served as the legal framework for resolving disputes. The English brought with them the common law (litigation) which required strict rules of written laws, written procedures, judges determining cases based on the law and evidence, use of lawyers, among others. Precedent was applied in later cases. Later, litigation produced unbearable delays, became very expensive, very slow among others necessitated *sankofa* (to retrieve) the traditional dispute resolution processes that were relegated to the background on the coming of litigation. This led to attempts at integrating these indigenous dispute resolution processes into the justice delivery system.[315] The Alternative Dispute Resolution Act,[316] and provisions in some other legislations have fortified this position.[317] That is why Ghana's Supreme Court stated in *Asampong v Kweku Amuaku* that a dispute settled according to native law and custom is binding on the disputants and would be enforced by the Supreme Court.[318]

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[314] OB Nwosile, *Traditional models of bargaining and conflict resolution in Africa: perspective on peace and conflict in Africa* (John Archers Limited: Ibadan 2005).

[315] This can be seen in the Court-Connected ADR programme.

[316] 2010 (Act 798).

[317] See sections 72 and 73 of the Courts Act, 1993 (Act 459).

[318] *Asampong v Kweku Amuaka*

4.1.1 The Ghanaian Court System

The Ghanaian court system is a colonial inheritance. At the onset, this consisted of two court systems – one that administered customary law and the other British law.[319] At independence, there were different pieces of legislation, which allowed for Native Courts in Ashanti, the Colony, Northern Territories, as well as Togoland to dispense justice.[320] Interestingly, the decision to site a Native Court and the authority to grant it was the sole prerogative of the Governor. Members of these native courts were people who had sound knowledge of the native law and custom.[321] Persons and subject matter determined native courts' jurisdiction. Jurisdiction as it relates to persons was based on natives or persons of 'African descent'. However, persons who were not of African descent could come under the jurisdiction of these courts upon voluntary submission or official authorization. In the same vein, persons of African descent could leave the jurisdiction by opting for British law. In terms of *subject matter*, Native Courts had jurisdiction over civil cases under native customary law, some customary offences, minor criminal offences, and few cases under some ordinances.[322]

The following three mechanisms determined the relationship between Native Courts, the higher judicial order as well as the colonial administration. (1) Appeals were made to tribunals that are higher in the Native Court system and tribunals outside of it, in some situations; (2) cases were transferred from a Native Court to another or to a Magistrate court as the case may be; and (3) Court decisions were looked at and revised when necessary, by the District Commissioners or Judicial Adviser.[323] It is important to state that lawyers were not allowed to practice their trade in the Native Courts.

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319 William B Harvey, 'The evolution of Ghana Law since independence' [1962] Law and contemporary problems 581.

320 CAP 99 of the Laws of the Gold Coast 1951, Native Courts (Ashanti) Ordinance, No. 2 of 1935; CAP 98 of the Laws of the Gold Coast 1951, Native Courts (Colony) Ordinance, No. 22 of 1944; CAP 104 of the Laws of the Gold Coast 1951, Native Courts (Northern Territories) Ordinance, No. 31 of 1935; CAP 106 of the Laws of the Gold Coast 1951, Native Courts (Southern Section of Togoland), No. 8 of 1949; CAP 106 of the Laws of the Gold Coast 1951, Native Courts (Southern Section of Togoland), No. 8 of 1949

321 Harvey (n 232) 581 – 604.

322 Ibid

323 Ibid.

Ghana's independence in 1957 did not alter the existing Native Court system. There was, however, an attempt at revision via the Local Courts Act.[324] The intent of this reform was to have a uniform local court system in Ghana. The New court's jurisdiction was that of the old grade 'A' Native court. This included hearing minor civil cases, petty crimes, and jurisdiction in few ordinances. Jurisdiction in terms of a person was altered and one did not have to be of African descent to use these courts. However, customary law was still applied in these courts. The new Act focused on efficiency, inspection of court records, training for officers, reduced administrative control and effective supervision.[325] Interestingly, the Courts Act came with a new structure.[326] The new structure had two main layers – lower and higher judicial structures. The lower end of the scale had Magistrate courts with the Supreme Court, Court of Appeal, and the High Court at the higher end of the scale.

The 1992 Constitution also maintained this tradition and created two court categories, the Superior Courts, and the Lower Courts. The Superior Courts consist of the Supreme Court, the Court of Appeal, the High Court, and the Regional Tribunals.[327] The Lower courts consist of the Circuit Courts, District Courts and Tribunals. These courts have been clothed with various powers described as jurisdictions. However, some powers have been given exclusively to the Supreme Court. This includes interpretation and enforcement of the Constitution, among others. These courts handle both civil and criminal matters guided by civil and criminal procedures.[328] An aggrieved party is required to submit his case to the appropriate court and apply the requisite rules of court to obtain justice. A party dissatisfied by a court decision is allowed to file an appeal for redress.

The Civil Procedure Rules, Order 58 considerably aids the court in using other Dispute Resolution methods to dispense justice. Specifically, it requires the courts to have pre-trial conferences in a period of 30 days after written submissions by the parties. The judge then conducts mandatory mediations. These mediations have been very successful. Cofie stated that from 1st of March,

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324 1958 (Act No.23).

325 Harvey (n 233) 581.

326 Courts Act 1960, C.A.9.

327 See Constitution of the Republic of Ghana, 1992.

328 High Court (Civil Procedures) Rules, 2004 (C. I. 47) as amended by High Court (Civil Procedure) (Amendment) Rules, 2019 (C. I. 122), Criminal Procedure Code (Act) Act 30 of 1960.

2005 to 31st July, 2006, of the 403 cases submitted for pre-trial conference, 86 were resolved with the remaining cases still pending as at end of 2006.[329] Again, out of the total 665 cases filed at the courts within 17 months, more than 200 cases were disposed of either at trial or with default judgment constituting more than 40%.[330] The average time for resolving commercial dispute from filing the case to decision enforcement dropped from 552 days to 487 days. Cases are settled by mediation in three (3) months. Private firms are engaged for process service in the Commercial Court, Fast Track Court, Court of Appeal, and the Supreme Court. This has enhanced efficiency in process service.

Constant and continuous training of judicial personnel enables the courts to have personnel who are well abreast of current trends and well equipped to assist in speedy and efficient justice delivery. However, there are issues of lack of sufficient space, lack of access to computers and training for computer use, dilapidated court buildings among others.[331] Lack of funds impedes court reforms.

4.1.2 Legal Basis of Other Dispute Resolution use in Courts

Legislation which governs dispute resolution in Ghana include Ghana's 1992 Constitution; the Courts Act and as amended in 2002; the High Court Civil Procedure Rules and as amended by the High Court (Civil Procedure) (Amendment) Rules; Labour Act, Criminal Offences Act; Alternative Dispute Resolution Act, Juvenile Justice Act, Civil Procedure Act, among others.[332]

The Legal mandate for other dispute resolution use in the courts is primarily embedded in the Courts Act and as amended, and the High Court Civil Procedure Rules Order 58 as amended.[333]

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[329] Sandra Cofie, 'Ghana – Establishment of the Commercial Court' [2007] Smart Lessons in Advisory Services 2.

[330] Cofie (n 243) 3.

[331] Kwadwo Appiagei-Atua, 'Ghana – Justice sector and the Rule of Law' [2015] AfriMap 1.

[332] The Courts Act 459 of 1993 and as amended by Act 620 of 2002; the High Court Civil Procedure Rules C.I. 47 and as amended by the High Court (Civil Procedure) (Amendment) Rules, 2019 (C. I. 122); Labour Act 561 of 2003, Criminal Offences Act 29 of 1960; Alternative Dispute Resolution Act 798 of 2010, Juvenile Justice Act 653 of 2003, Civil Procedure Act 29 of 1960.

[333] The Courts Act 459 of 1993 and as amended by Act 620 of 2002 and the Judicial Service of Ghana *Court-connected Alternative Dispute Resolution (CCADR) Practice Manual* 2nd ed (Judicial Service of Ghana Accra n.d.) 4; High Court Civil Procedure Rules Order 58 Rule 4, C.I. 47

Specifically, the Courts Act, sections 72 and 73 recognize Alternative Dispute Resolution as a tool for resolving disputes.[334] Section 72 (1) and (2) enjoin the courts to promote reconciliation in Civil Cases, it specifically states that courts with civil jurisdiction and their officers are obligated to use appropriate means to settle disputes and promote reconciliation of disputants. Again, the Courts Act 1993, section 73 enjoins courts which have the power to hear criminal cases to promote reconciliation, encourage and facilitate amicable settlement of disputes concerning non-felony offences and offences that are not aggravated in degree.[335] In fact, the courts are allowed to stay proceedings and allow for settlement and have the case dismissed after settlement was reached by the parties.[336] Obviously, even in criminal cases the court can use other dispute resolution to settle disputes.

Order 58 of the High Court Civil Procedure Rules allows the High Court to have matters settled amicably during the pre-trial stage. The parties can have their dispute settled through mediation, negotiation or arbitration by the trial judge or any other external person the parties may agree on. Specifically, Rule 4(1)-(4) which talks about procedure said that within three days of filing a case or after lapse of time for filing a case, the Administrator of the High Court is required to allocate the case to a judge for pre-trial settlement conference.[337] Legal representation at pre-trial conference is allowed. The pretrial judge has thirty (30) days to invite parties to settle issues for trial and settle disputes. Trial judge is at liberty to invite experts to assist at the pre-trial settlement conference.

The period for settlement may be extended to another thirty (30) days by the pre-trial judge with the consent of the disputants if there is a settlement prospect.[338] A further fifteen (15) day extension is possible.[339] Terms of settlement must be read to the parties for their consent, if settled by an external body or person and these terms shall be treated as judgment of the court.

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[334] Sections 72 and 73 of the Courts Act 459 of 1993.
[335] Section 73 (n 242).
[336] Courts Act 459 of 1993.
[337] High Court Civil Procedure Rules Order 58, rule 4.
[338] Civil Procedure Rules Order 58 rule 5.
[339] High Court Civil Procedure Rules Order 58 rule 6(2).

Other dispute resolution methods are embedded in the court system because of their numerous advantages. These advantages include: (1) enhanced parties' satisfaction, (2) provision of comparative advantage, (3) reduction in backlog of court cases, (4) greater involvement of non-legal persons in dispute resolution, and (5) greater party control.[340]

4.2 Types of Disputes

Disputes relating to specific resources or issues abound and keep increasing by the day as modernization and globalization continue to increase. Type of dispute is determined by the subject matter of the dispute. These include land, labour, marital, contract disputes, among others. Some scholars have argued that the occurrence of chieftaincy, ethnic and land disputes are so rampant and consistent that they have been seen as the main threat to social peace, national stability, and a nation's democracy.[341]

4.2.1 Labour or Industrial Disputes

Industrial dispute refers to divergence of views by workers, employees and employers on terms of their working arrangement. There are various categories of labour disputes ranging from minor, major, and individual to collective. Causes of these disputes are many and include those on pay, unsafe or unhealthy work environment, preventing workers from forming or joining trade unions, unfair dismissal, among others.[342] The Labour Act 2003 established a special institution known as the National Labour Commission (NLC) and clothed it with the power to prevent, facilitate and settle industrial disputes, keep a record of mediators and arbitrators, work towards better labour-management relations, and perform any other functions as determined by the Labour Act or any other legislation.[343] The NLC has the powers of a High Court. In this respect, it can compel witnesses to appear before it, have them examined on oath, affirmation or any other means,

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340 Judicial Service of Ghana, *Uniform Practice Manual on court-connected Alternative Dispute Resolution (ADR) Practice* (Judicial Service Accra n.d.) 5.

341 Anamzoya S Alhassan, 'Chieftaincy conflicts in Northern Ghana: A challenge to national stability' in Tonah S (ed) *Contemporary social problems in Ghana* Accra (Yamens Press Accra 2009) 209 – 228.

342 International Labour Organization, *Labour dispute systems: guidelines for improved performance* (International Training Centre Turin 2013) 3.

343 Labour Act 651 of 2003, s 135 and 138.

compel documents to be produced. It also has the privileges and immunities that pertain to High Court proceedings.[344]

Indeed, the Act makes it mandatory for every collective agreement to provide for final and conclusive dispute resolution by using ODR methods. These methods include negotiation, mediation, and arbitration (including customary arbitration).[345] Arbitration could be voluntary or compulsory. The law recognises the outcomes of these methods and indeed they receive support and backing from the courts when necessary. In this respect the commission (NLC) receives complaints from workers and employers, exercises its statutory powers, takes oral evidence or documentary evidence, makes determinations, and publishes its awards.

Areas of dispute include collective bargaining and agreements and who has the right to bargain, unfair dismissal, discrimination, formation of trade unions and joining it, conditions of service, termination of employment, among others. In this respect, there could be individual or collective disputes based on issues, which can be described as legal disputes (rights based). These disputes hinge on application or interpretation of existing rights, or interest disputes (economic based) geared towards establishing individual or group rights.[346]

Act 651 places dispute resolution responsibility at the doorsteps of the National Labour Commission.[347] Section 153 of Act 651 mandates parties to an industrial dispute to use negotiation as a first step to have their dispute resolved. This however, has to be done in line with the procedure spelt out in both the contract of employment and the collective agreement. A party should also be properly clothed to negotiate. What this means is that a party should have the legitimacy and power to be able to negotiate. In some cases, a collective bargaining certificate is required to be able to negotiate for and on behalf of a trade union. A case in point was a dispute that arose between the National Association of Graduate Teachers (NAGRAT) and its employer, the Ghana Education Service (GES) on negotiation of their terms of employment and conditions

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344 Labour Act 651 of 2003, s 139(1), (2), and (3).

345 Labour Act 651 of 2003, part XVIII.

346 Obeng-Fosu O, *Settlement of Industrial disputes under Labour Act 2003, Act 651: Practice and Challenges* (Ghana Universities Press Accra 2013) 98.

347 Labour Act 651 of 2003, section 135 established the NLC and section 138(1)(a) – (c) empowered it to discharge this responsibility.

of service. NAGRAT called a strike action on the 6th day of May, 2005. The National Labour Commission (NLC) met with NAGRAT on the 11th, and 18th of May, 2005. However, NAGRAT failed to honour the 21st May meeting as scheduled. However, it was realized that NAGRAT did not have the right to negotiate (did not have the Collective Bargaining Certificate but GES had). The NLC asked NAGRAT to negotiate with the GES. However, NAGRAT rejected this and continued to strike. The NLC then ordered NAGRAT to return to work but NAGRAT remained adamant. Therefore, the NLC proceeded to the High Court on the 25th of May, 2005 to have its order enforced as contained in section 172 of the Labour Act. The High Court ruled in favour of the NLC and ordered NAGRAT to call off the strike action, return to the classroom and go to the negotiation table with their employer (GES) under the Joint Standing Negotiating Committee (JSNC).[348]

A party or the disputants may, by an agreement refer a dispute to the NLC for mediation if negotiation fails to resolve it. This will happen, in the case of essential services where a dispute remains unresolved after seven days of its occurrence.[349] This is because a dispute involving or affecting essential service workers ought to be settled within three days of its occurrence.[350] Essential services have been defined in Act 651 as areas in an organization, which are so critical to its operations, existence and the public that there will be a partial or total loss of life or danger to public health and safety and any other services as are determined by the Minister. Disputants are mandated to settle their dispute via negotiation within three (3) days. If the dispute remains unresolved after twenty-four (24) hours, it must be referred to NLC for compulsory arbitration. The NLC has fourteen (14) days within which to resolve the dispute. The award given by the NLC is binding on the disputants.[351]

There is the likelihood that some cases would however end up in the courts. That is why even though the Act specifies compulsory arbitration for persons and organizations providing essential services, and voluntary arbitration for non-essential service providers, a dissatisfied party can proceed to the courts. Interestingly, however, the International Trade Centre made the point that

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348 Obeng-Fosu (n 259) 74.
349 Labour Act 651 of 2003, s 154.
350 Labour Act 651 of 2003, s 162(1).
351 Labour Act 651 of 2003, s 162 (3).

the courts are the preferred forum for resolving labour disputes in most countries.[352] However, there has been no such pronouncement in Ghana.

4.2.2 Land Disputes

Land under English law means the soil and anything attached to or fixed to the soil. Under Ghanaian law, land includes anything on the Earth's surface, water and right in or over immovable property.[353] Indeed, land includes the airspace above the soil and depth of the soil to the centre of the Earth and not only its surface. As to ownership of land, the court in *Amodu Tijani v Secretary of Southern Nigeria*,[354] stated that land belongs to the community, the family or the village, never to the individual. In the same vein, the court explained in *Ababio v Kangah*,[355] that no land is ownerless, every vacant land is vested in the nearest stool for the community represented by the particular stool and is hence attached to it. However, a *usufruct* may be acquired. A *usufruct* is the interest a stool subject can acquire in a stool as an inherent right.[356] This is because lands in Ghana are owned by stools. People from a common ancestor owe allegiance to specific stools and these stools have designated lands which are held in trust for both the living and the dead. These individuals have the right to use the land but cannot on their own dispose these lands since they are for the entire stool. The acquisition and ownership of land has been a source of disputes in Ghana since time immemorial. Whilst an aggrieved party can take an action against the accused party for recovering land, the innocent party is barred from bringing an action for recovery of land after the expiration of twelve years from the date on which the right accrued.[357] The title of the innocent party expires after the expiration of the twelve-year bar.[358]

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[352] An agency jointly owned by the United Nations and the World Trade Organization in International Trade Centre *Settling business disputes: Arbitration and Alternative Disputes Resolution* (2nd edn, International Trade Centre Geneva 2016) 9.

[353] Land Act 1036 of 2020, s 281.

[354] (1921) 2 AC 399 at 404.

[355] (1932) 1 WACA 253.

[356] Samuel KB Asante, 'Interests in land in the customary law of Ghana – a new appraisal' [1965] The Yale Law Journal 848.

[357] Limitation Decree 1972 (NRCD 54), section 10(2).

[358] Limitation Decree 1972 (NRCD 54), section 30(3).

Chiefs serve as managers of customary lands by having these lands allocated and leases granted at market rates. These chiefs also maintain customary courts which settle land disputes.[359] Many studies identified increasing land conflicts, and disagreement between chiefs, agriculturalists, and some elites. Research carried out in Northern and Mid-Ghana revealed considerable upsurge in land use related disputes emanating from intense rivalry and competition between pastoralists and the indigenous people involved in tilling the land.[360] There is intense competition and scramble for fertile lands between the farmers and pastoralists. Sadly, some chiefs have seen it as an opportunity to enrich themselves by allotting huge parcels of land to pastoralists without the knowledge of the elders of their communities.

It has been found that most chieftaincy and communal disputes in urban and peri-urban areas of Ghana are often about the control and ownership of land.[361] One cannot also ignore those disputes caused by persons wanting to impose themselves on the people even though they do not hail from the right lineage or, when their time is not due with the connivance of some kingmakers.

The law requires the use of other dispute resolution methods to resolve land disputes.[362] The courts are to be resorted to only upon failure of these methods to resolve land disputes or disputes relating to interest in land.

4.2.3 Contract disputes

Contract refers to an agreement consisting of exchanged promises with enforceable rights and obligations.[363] Pollock on the other hand defines a contract as a promise or set of promises, which the law will enforce. Again, the American Law Institute, in its Restatement (Second) of contracts defined contract as '*a promise or a set of promises for the breach of which the law gives a remedy*

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359 Ubink M Janine and Amanor S Kojo, *Contesting Land and Custom in Ghana: state, chief and the citizen* (Leiden University Press Amsterdam 2008) 15.

360 Tonah and Anamzoya (n 43) 25.

361 Ubink and Amanor (n 272).

362 Land Act 1036 of 2020, s 98.

363 Dowuona-Hammond C, *The Law of contract in Ghana* (Frontiers Printing & Publishing Limited Accra 2011) 1.

or the performance of which the law in some way recognizes a duty'. In essence, a contract is an enforceable agreement.[364]

Osei-Kyei, in a comparative study on Ghana and China, found that poor governance and contract arrangement ranked higher in terms of causing disputes in Ghana compared to China.[365] Sithole identified misrepresentation, inappropriate drafting of contractual terms leading to biased terms, termination, variations in terms, breach of contract, defective quality, and ineffective quality control as the main issues causing disputes in contractual relationships.[366] Others have found uncertainty of execution, and behaviour deemed opportunistic.[367] In summary, issues brewing contractual disputes centre on drafting, management, human, communication, quality, and contract execution.

Contract disputes may be very costly. They destroy relationships built over time; substantially change the cost of contracts sometimes, negatively influence time value of money, and affect delivery quality.[368] Therefore, there is the need to resolve contract disputes promptly and exhaustively. The innocent party has a range of options to choose from in seeking redress of a breach of contract or dissatisfaction in contractual conduct. In some cases, parties to contract can resolve their own disputes without the involvement of any third party.[369] In some cases, they may require the assistance of others (a third party). This normally happens when the parties perceive they would not be able to resolve their dispute themselves or if they are not able to resolve their own dispute.

Disputing parties are at liberty to choose from a range of dispute resolution methods. These methods include litigation, negotiation, mediation, conciliation, mini-trial, summary jury trial,

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364 In the *American Restatement (Second) of contracts* 1981).

365 Robert Osei-Kyei, 'Root causes of conflict and conflict resolution mechanisms in public-private partnerships: comparative study between Ghana and China' <http://www.doi.org/10.10/6/j.cities.2018.10.001> accessed 27 April 2020.

366 Bryne M Sithole, 'Sources of disputes in South African construction contracts and the resolution techniques employed between clients and contractors' (MSc Thesis, University of Witwatersrand 2016) 25.

367 Mitropoulos P and Howell G, 'Model for understanding, preventing, and resolving project disputes' [2001] Journal of Construction Engineering and Management 223.

368 Mewett AW, 'The settlement of Government contract disputes – a comparative study' [1960] Catholic University Law Review 65.

369 Love PED, PR Davis, SO Cheung and Z Irani, 'Causal Discovery and Inference of Project Disputes' [2011] IEEE Transactions on Engineering Management 400.

private judging, expert fact-finding, neutral evaluation and adjudication.[370] An aggrieved party has to consider these options carefully including weighing the advantages and disadvantages as well as the likely outcome of each before selecting the most appropriate dispute resolution method for use.

4.3 Indigenous Dispute Resolution Methods in Ghana

Three approaches are employed to resolve disputes in Ghana. These are indigenous, endogenous, and exogenous.[371] Indigenous dispute resolution approach uses indigenous legal traditions and customs to resolve disputes with the aim of ensuring restorative justice.[372] The overall objective is to ensure sustainable peace. Indigenous approach uses highly respected community members who are well versed in the customs and traditions of the people. In this respect therefore, heads of families, heads of clans and priests (in-charge of land, among others) are used to resolve disputes. These respected individuals mostly serve as arbitrators. Some also serve as mediators. The next approach is the exogenous approach which uses state force to resolve disputes. A major method under this approach is litigation. Litigation, even though has some advantages including ability to ensure enforcement of its judgment, ability to compel attendance, among others has come under a barrage of criticisms. Cost, cumbersome procedures and long delays, destruction of relationships, offering superficial, binary, predetermined and limited remedies, very adversarial, among others are some of the criticisms against litigation.[373] For instance, argued that the ineffectiveness of litigation has served as impetus for the rampant conflicts in the Northern part of Ghana.[374]

Endogenous approach blends indigenous and exogenous approaches to resolve disputes. The objective is to use the good features of each and fuse them together for superior performance.

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[370] Jonah Orlofsky, 'Can Courts enforce contractual mediation provisions?' (American Bar Association, 16 September 2016) <https://www.americanbar.org/groups/alternative-dispute-resolution/practice-can-courts-enforce-contractual-mediation-provisions?> accessed 7 December 2022.

[371] Akudugu AM and Mahama SE, 'Promoting Community-Based Conflict Management and Resolution Mechanisms in the Bawku Traditional Area of Ghana' [2011] Peace Research 80.

[372] Jeffrey Hewitt, 'Indigenous restorative justice: approaches, meaning and possibility' [2016] Back to the Future 313.

[373] Carrie Menkel-Meadow, 'The trouble with the Adversary system in a postmodern, multicultural world' [1996] William and Mary Law Review 32.

[374] Akudugu AM and Mahama SE (n 285) 87

Endogenous approach to conflict resolution uses Community-Based Conflict Management and Resolution Mechanisms (COBCOMREMS).[375] These systems have gained a lot of respect because they deal with some of the most important matters affecting the people. For instance, in the Northern part of Ghana, these systems specifically deal with natural resource disputes, specifically land disputes.[376] In essence, conflicts are resolved in Ghana using the courts system or traditional/indigenous system.[377] Traditional or indigenous dispute resolution in Ghana is a cultural heritage.[378] To Kendie and Guri traditional connotes the norms, values, beliefs and indeed structures that regulate social interaction.[379]

Even though some disputants resolve disputes using avoidance and adjudication, the predominant dispute resolution methods in Ghana are negotiation, mediation, arbitration, and litigation. Avoidance is a style of dealing with disputes where a party decides not to engage or take any action about the dispute.[380] She/He pretends or appears to be indifferent or unconcerned with the hope that somewhat the dispute will be resolved by the passage of time.

The objective of indigenous dispute resolution, in the view of Asafo-Agyei, is to arrive at a wise and practical decision that improves disputants' relationship.[381] Two main processes are noticeable. The first is customary mediation. This is where a disputing party 'runs' to a third party for intervention. A plea is put on his behalf. Asafo-Agyei describes this as a *dispute abating process.*[382] The offending party may instruct the mediator to use assets such as land or valuable property to plead for forgiveness.[383] Animals are sometimes used for cleansing. People with integrity, experience, those who are recognized and with some level of standing in society are

375 Akudugu AM and Mahama SE (n 285) 92.
376 RS Rattray, *The Tribes of the Ashanti Hinterlands* (Clarendon Oxford 1932) 87 – 93.
377 Kwaku Osei-Hwedie and Rankopo Morena, 'Indigenous conflict resolution in Africa: The case of Ghana and Botswana' <https://home.hiroshima-u.ac.jp/heiwa/Pub/E29/e29-3.pdf> accessed 31 July 2018.
378 Osei-Hwedie and Morena (n 290).
379 Stephen B Kendie and Bernard Guri, 'Indigenous Institutions, Governance and Development: Community Mobilization and Natural Resources Management in Ghana' (Researchgate, 2012) <https://www.researchgate.net/publication/237480383> accessed 30 November 2018.
380 KW Thomas and RH Kilmann, 'Conflict Mood Instrument' <www.cpp.com> accessed 29 April 2020.
381 OK Asafo-Agyei, 'Toward global conflict resolution. Lessons from the Akan Traditional Judicial System' <http:www.findarticles.com/p/articles/mi_qa3823/is_2003/ai_nq304242> accessed 30 October 2018.
382 Asafo-Agyei (294).
383 Asafo-Agyei (294).

candidates for mediator roles.[384] A strategic, eloquent, and tactful mediator may be able to cause a case before the chief to be withdrawn for settlement at home. Mediators settle these disputes and report to the traditional court.

There is also modern mediation and arbitration that are basically customary mediation and customary arbitration repackaged in a foreign land and brought back. Isurmona posits that in mediation there is no victor and no vanquish.[385] These two methods have been formalized by the Alternative Dispute Resolution Act.[386] Even though Arbitration and Medaition are both ODR Methods, arbitration is an adjudicative process as the arbitrator pronounces on the guilt of one of the disputants. In fact, some scholars have argued that arbitration is disguised litigation. Stipanowich for instance unequivocally described arbitration as the 'new litigation'.[387] Ernest Uwazie (seen as father of ODR in Africa) has described Ghana's ADR framework and its usage as one of the best models in the world hence worthy of emulation.[388]

4.3.1 Development of Other Dispute Resolution in Ghana

A comprehensive dispute resolution system existed in Ghana (the then Gold Coast) prior to the coming of the colonialists (British). Even though, many ODR methods existed in the Gold Coast, arbitration was the main dispute resolution method used in the exercise of the chiefs' judicial powers and this was based on local customs.[389] Queen mothers, chiefs and their elders, including respected members of communities resolved disputes in the then Gold Coast. These persons had customary jurisdiction to hear and resolve all types of disputes. They were usually assisted by council of elders. These traditional rulers resolved disputes in their courts based on the customs and traditions of their communities. An aggrieved party had to go to his/her chief, head of family/clan/community elder to request for a hearing. The proposed arbitrator (in the case of

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384 Birgit Brock-Utne, 'Indigenous conflict resolution in Africa" (A paper presented at a week-end seminar held at University of Oslo Institute of Education Research, Oslo 23 – 24 February 2001).

385 VA Isurmona, *Problems of Peace-making and Peace Keeping. Perspective on Peace and Conflict in Africa* (John Archers Publishers Ltd Ibadan 2005).

386 Alternative Dispute Resolution Act 789 of 2010.

387 Thomas J Stipanowich, 'Arbitration: The "New Litigation" [2010] University of Illinois Law Review 34

388 Ernest Uwazie, 'Ghana's Arbitration practice is among the best in the world' *Ghana News Agency Report* (Accra, 1 November 2019).

389 Bakhita Mawuli Koblavie and Christopher Yaw Nyinevi, 'A review of the legislative reform of customary arbitration in Ghana' (2020) 45(4) Commonwealth Law Bulletin 15.

arbitration) then approached the respondent to ascertain if he had any objection to use of arbitration to resolve their dispute or to the proposed arbitrator.[390] When there is agreement, the arbitration process is carried out. In some instances, a customary "token" consisting of a drink and later in some communities, filing fee is required.[391] The parties had to take an oath to begin the proceedings.[392] A linguist still serves as the intermediary between the chief/queen mother and the parties. The local language of the village/town, etc. is the one employed in the proceedings. The complainant is first asked to present his/her case followed by the respondent. Opportunity is given to the parties to cross examine each other and any witnesses presented to the traditional court. Caucusing is an integral part of the process. Jurisdiction has been key in customary arbitration. The goals of these methods are reconciliation, re-integration and re-establishing harmony in the community.[393] Significantly, customary dispute resolution practitioners (adjudicators) employed values different from those of the West in resolving disputes even where the same processes are used.

Later, the Arbitration Ordinance 1928 (No. 9) was passed codifying the customary practice. Customary arbitration was recognized by the courts in 1959 in *Budu v Caesar*.[394] Justice Ollenu who presided pronounced the elements of a valid customary arbitration as voluntary submission of a dispute to arbitration, prior agreement by disputants to accept the decision of the arbitrator(s), the award is made after hearing the disputants, the procedure adopted is the one followed by the national court or as close to that as possible, and that the award is published.

Customary arbitration faithfully observes the rules of natural justice especially the principle of *audi alteram partem.* In *Republic v Adrie, ex parte Kpordoave III* the Court found that a panel of customary arbitrators did not hear the applicant before giving their award and also that some family members of the disputing parties were on the arbitral panel and that this constituted breach of natural justice.[395] Again, the Court found that arbitrators exceeded their jurisdiction in *Odartei*

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390 *Asare v Donkor & Serwah* II [1962] 2 GLR 176.

391 Paul F. Kirgis, 'Status and contract in an emerging democracy: the evolution of dispute resolution in Ghana' [2014] Cardozo Journal of Conflict Resolution.

392 Paul F. Kirgis, 'Status and contract in an emerging democracy: the evolution of dispute resolution in Ghana' [2014] Cardozo Journal of Conflict Resolution

393 Volker Boege, *Traditional approaches to conflict transformation – potentials and limits* (Berghof Research Centre for constructive conflict management 2006).

394 *Budu v Caesar* 1959 GLR 410.

395 *Republic v Adrie, ex parte Kpordoave* III [1987-88] I GLR 624.

III v Badoo.[396] Arbitral award is 'published' by openly declaring the outcome of a customary arbitration.[397]

The colonialists co-opted the Chiefs into the national government and gave them their blessings to continue hearing some cases using the indigenous legal system while 'formal' legal systems of the colonialists were imposed on the people.[398] These foreign systems (common law, specifically) were portrayed as superior to the indigenous legal system. The adversarial system dominated even though "Native" courts were set up. In this respect, customary law and common law co-existed in the case of Ghana. However, these customary laws which underpinned indigenous dispute practices had to be pleaded and proved since matters of law, if they arose in the courts are treated as such, matters of law. Customary rules and procedures were incorporated into the formal adjudicatory systems.

Ghana kept its pre-independence dispute resolution structures after independence.[399] That is why arbitration could be common law, statutory or customary. At independence (6th March, 1957) many arbitration cases had been dealt with by the courts.[400] Chiefs' right to serve as arbitrators under customary arbitration has been guaranteed by law.[401] The Chieftaincy Act 1961 preserved the power of the chiefs to arbitrate under customary law any disputes submitted to them.[402] The Chieftaincy Act 1971 allowed the above provision to remain.[403] Again, the 1992 Constitution gives Chiefs the power to resolve chieftaincy and chieftaincy-related disputes.[404] The Arbitration Act 1961 was passed to regulate arbitration practice and remained in force until the passage of the Alternative Dispute Resolution Act 2010.[405] Many enactments permit use of ODR to resolve specific disputes. This includes the Matrimonial Causes Act 1971, Copyright Law 1985, Land Title Registration Law 1985 and the Land Act 2020, among others. Significantly, the Criminal Offences Act of Ghana has been amended to allow for plea negotiations even in criminal offences.

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396 *Odartei III V Badoo* [1977] 2 GLR 1.
397 Stephen A. Brobbey, The Law of Chieftaincy in Ghana (Advanced Legal Publications, 2008).
398 William B. Harvey, *Law and social change in Ghana* (Princeton University Press 1966).
399 However, some traditional systems were abolished using statutes or judicial pronouncements (decisions).
400 Some include *Ankrah v Dabra & Olaga* (1956) 1 WALR 89; *Twumasi v Badu* (1957) 2 WALR 204.
401 Chieftaincy Act 2008 (759) s 30.
402 Chieftaincy Act 1961 (Act 81), s 5.
403 The Chieftaincy Act 1971 (Act 370).
404 The various Judicial Committees hear and determine chieftaincy disputes.
405 Alternative Dispute Resolution Act 2010 (Act 798).

It says that a person charged with a criminal offence may negotiate with the Attorney General for a plea agreement at any time before judgment.[406] Many independent countries including Ghana maintained their colonial legal system with its dispute resolution frameworks.

The journey of the current ODR/ADR began with an ADR training trip to the United States of America in 1996. The twelve (12) member team of seasoned legal professionals was led by the father of ADR in Africa – Prof. Ernest Uwazie, and consisted of Nene Amegatcher (who represented the Ghana Bar Association, now a Justice of the Supreme Court of Ghana), Prof. Henrietta Mensa-Bonsu (a Professor of Law at the time, now a Justice of the Supreme Court of Ghana), among others. The present ADR as codified and practiced in Ghana started with some mediation trainings held at the Marian Conflict Resolution Centre in Sunyani. These trainings were inaugurated by the then Chief Justice Georgina Theodora Wood who played a key role in the current ODR in Ghana. Participants included Professor Henrietta Mensa-Bonsu, a Professor of Law (now a Justice of the Supreme Court), Nene Amegatcher – the then President of the Ghana Bar Association and now a Justice of the Supreme Court of Ghana, and other renowned Ghanaians. Western styled ODR/ADR has been created in Ghana starting with the Arbitration Act 1961.[407] The current ADR Act was modelled on the UNCITRAL Model Law as amended in 2006. The Act was enacted to align Ghana's arbitral laws with international rules, practices and conventions, and provide the legal framework for using ODR including customary arbitration to resolve disputes. The Act brings together mediation, arbitration and customary arbitration. It codified the custom of having traditional heads and leaders resolve disputes. Interestingly the Act provides for both domestic and international arbitration

The Act hinges heavily on party autonomy, recognizes separability of arbitration agreements, *kompetenz- kompetenz* principle is provided for, it makes arbitral awards final and binding on the parties, made arbitral awards enforceable in the same manner as court judgments, among others.[408] Significantly, the Act makes mediation settlements binding where the parties agree that it should be.[409] Subsequently, the settlement will have the same effect as an arbitral award.[410]

406 Criminal and Other Offences (Procedure) (Amendment) Act, 2022 s 162A (1).
407 Arbitration Act 1961 (Act 38).
408 See sections 14, 31, 32.
409 Alternative Dispute Resolution Act 2010 (Act 798) s 82.
410 Arbitral awards are final and binding on the parties.

Indeed, these ODR have been so accepted in Ghana that the Supreme Court had no option than to caution the courts to be very slow and cautious in intervening unless the parties to an agreement have expressly provided for the court's intervention or it becomes absolutely necessary to do so.[411] Indeed, the Constitution of Ghana gives the mandate to the Judicial Committees of the various Houses of Chiefs to resolve chieftaincy disputes. It is only after exhausting the chieftaincy appellate hierarchy that a dissatisfied party can go to the Supreme Court for redress. Any act in relation to the judicial functions of the Regional or National Houses of Chiefs which if done to the High Court will amount to contempt of court is contempt of that House.[412]

Customary arbitration has been preserved by the Constitution of Ghana and Act 798, for instance. However, customary awards can be reviewed by the courts if they are made in breach of the rules of natural justice, if there was miscarriage of justice, or contradicts the customs of the area concerned.[413] ODR has gotten to the stage where arbitral awards are final and binding and where the Constitution of Ghana gives the traditional rulers (Chiefs) the power to settle chieftaincy disputes and it is only after a party is dissatisfied at the Judicial Council of the National House of Chiefs that an appeal can be sent to the Supreme Court.[414] Again, arbitral awards can be enforced in the same way as a judgment of the High Court.[415] Also, Mediation settlements could be binding if parties intend it to.[416] Additionally, Act 798 provides for enforcement of foreign arbitral awards.[417]

Constitutional/statutory bodies and private providers are the two main service providers in Ghana. Principal among the Constitutional/statutory providers are the National Labour Commission, and the Commission on Human Rights and Administrative Justice. Traditionally, chiefs and queen mothers' courts, designated clan and family meeting places, and community centres, have been long standing places for settling disputes. The advent of codification of ODR has led to heightened interest in ODR practice leading to the emergence of many private ODR centres over time. The Ghana Arbitration Centre specializes in arbitration (domestic and international). Many private

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411 *Republic v High Court (Commercial Division, Accra)* Ex Parte GHACEM Limited J5/29/2018.
412 Chieftaincy Act 2008 (Act 759) s 33(7).
413 Alternative Dispute Resolution Act 2010 Act 798, s 112(1).
414 Constitution of Ghana 1992, Article 273(2).
415 Alternative Dispute Resolution Act 2010 Act 798, s 57(1)
416 Act 798, s 82
417 Act 798, s 59.

ODR service providers exist and include the ADR Hub, Centre for Peace and Reconciliation, West Africa Dispute Resolution Centre (WADREC), Ashaiman Central ADR Centre, Zenu Liberty ADR Centre, among others.

4.3.2 Arbitration in Ghana

Customary arbitration predates modern arbitration. Customary arbitration is a dispute resolution method based on a people's customs and traditions.[418] It can also be defined as voluntary submission of disputes to chiefs or elders whose decisions are binding on the disputants.[419] The customary law of the seat of arbitration is used to resolve disputes.[420] The courts in *Budu II v Caesar,*[421] vividly captured the elements of a valid customary arbitration as: (1) voluntary submission of disputes for resolution; (2) prior agreement by disputants to accept the arbitral award; (3) judicious hearing of disputants leading to an award; (4) hearing in accordance with native court or tribunal procedures; and (5) award publication. A customary award even though does not have to be registered in court; it is binding on the parties.[422]

Arbitration is willing submission of a dispute to a neutral party for a final and binding decision.[423] A key feature of modern arbitration is its heavy regulation. The first piece of legislation in this regard dates to 1928 when Ghana (then Gold Coast) passed the Arbitration Ordinance (Cap 16). This was done to bring Ghana's arbitration legal framework up to speed with the 1923 Geneva Protocol on Arbitration. The Arbitration (Foreign Awards) Ordinance (Cap 17) was promulgated in 1943 to align existing legislation with the 1927 General Convention on the Execution of Foreign Arbitral Awards. The Arbitration Act was passed pursuant to the signing of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (better known as

418 Temitayo Adesina, 'Customary and modern arbitration in Nigeria: A recycle of old frontiers' [2014] Journal of Research and Development 50.

419 *Agu v Ikewibe* 1991 3 Nigerian Weekly Law Report 180 [385].

420 Ainuson Kwaku, 'Enforcement of international and national arbitration awards in Ghana – legal basis, challenges and obstacles' [2017] KAS African Law Study Library 407.

421 1959 11 GLR 410.

422 Alternative Dispute Resolution Act 798 of 2010, s 109.

423 Alternative Dispute Resolution Act (n 306) s 135.

the New York Convention). The provisions of the New York Convention were incorporated into the new Act.[424]

The Alternative Dispute Resolution Act set the legal framework for the practice of arbitration in Ghana.[425] This has been promulgated with the view to properly align arbitration practice in Ghana with the UNCITRAL Model Law Provisions as well as those of the New York Conventions. The ADR Act distinguishes between customary arbitration, common law arbitration and foreign arbitration.

The ADR Act set out the process of initiating arbitration. Schedule 2 Rule 7 of the ADR Act[426] outlined it as follows: the first step to take, if one intends using arbitration to resolve his/her dispute, is to give notice to the other party. The notice must include the following:[427] an agreement to arbitrate; a demand to refer the dispute for arbitration; party names and addresses; the arbitration clause or arbitration agreement being relied on; reference to the contract out of which the dispute emanates or relate; statement of claim containing the amount seeking (if any); and the remedy being sought or proposed number of arbitrators (if has not been agreed on). However, rule 7(3) states that the notice may also contain a proposal to appoint an arbitrator, a notification of the appointment of an arbitrator stating the full name, address, nationality, and qualification of same. The institution to arbitrate the dispute ought to be notified at the time of notifying the other party ('respondent'). The arbitration begins interestingly on the date of receipt of the notice by the respondent.[428] The institution to arbitrate the dispute has seven (7) days from the date of receipt of the notification to inform the other party (respondent). The respondent has fourteen days upon receipt of the notice to file an answer. A counterclaim, if any, ought to be in the response and shall include notice of same, the amount involved, (if any), and the remedy being sought. The appropriate fee must accompany a counter claim.

Rule 7(10) of the second schedule makes it clear that even though a failure by the respondent to file an answer to a notice and claim shall be deemed to be a denial of the claim it will not amount

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424 The full citation of the Act is Arbitration Act 1961.
425 Alternative Dispute Resolution Act (n 306).
426 Alternative Dispute Resolution (n 306) second schedule rule 7.
427 Alternative Dispute Resolution Act (n 306) schedule 2 rule 7(2).
428 Alternative Dispute Resolution Act 798 of 2010 schedule 2 rule 7(5).

to a stay of arbitral proceedings. What this means is that once the arbitration clause in the agreement or contract is triggered, there is no turning back.

However, the presence of an arbitration clause in a contract does not automatically oust the jurisdiction of the court. What the defendant can do is to enter appearance, notify the plaintiff, and make an application to the court to refer either the entire action or the part of the action that relates to the arbitration agreement.[429] What it also means is that the court can proceed to hear a matter notwithstanding the presence of an arbitration clause. The reason is that the right to arbitrate can be waived be it expressly or by inference from conduct. This waiver can be done where a party fails to request permission from the court for the matter to be referred to arbitration after entering appearance but goes ahead to take steps to defend himself/herself in the case.

The idea is that parties should not proceed with litigation if they do not desire to use it. In the absence of this, the court will proceed to hear the matter, and have it determined, and the parties would be bound by its outcome. The anticipation of section 6(4) of the Act is that by the time section 6(1) kicks in only interim measures would have been considered.[430] It is very interesting to note that the mere filing of a suit in court in the face of an arbitration agreement does not waive a party's right to arbitrate.[431] The Supreme Court of Ghana in *De Simone Limited v Olam Ghana Limited*,[432] made the point that this is in order because proceedings may be commenced in court to obtain interim reliefs an example of which is to preserve the subject matter of the dispute.

The concept of *arbitrability* is of paramount importance in arbitration. *Arbitrability* has been defined differently. Justin of the New York University sees it as *agreement to use arbitration to resolve disputes.* In other words, is the subject matter of the dispute part of the parties' agreement to arbitrate? It also hinges on the question of whether the dispute can be resolved by arbitration.[433] Again, Articles II(1) and V(2)(a) of the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958 (New York Convention) ,and Article 36(1)(b)(i)

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429 Alternative Dispute Resolution Act 798 of 2010, s 6(1).
430 *De Simone Limited v Olam Ghana Limited [2018] GHASC 22*.
431 Alternative Dispute Resolution Act 798 of 2010, s 54(2).
432 *De Simone Limited v Olam Ghana Limited [2018] GHASC 22.*
433 Mistelis LA and Brekoulakis SL, 'Arbitrability: International and Comparative Perspectives' [2009] Kluwer Law International 2009 3 – 4.

of the UNCITRAL Model Law, 1985 as amended in 2006 look at arbitrability from the perspective of disputes. They defined it as 'disputes which are capable of being settled by arbitration'. Hence, a question of arbitrability if raised is meant to say that a particular dispute or a dispute on a particular matter cannot be resolved using arbitration. Arbitrability could centre on: (1) whether an arbitration aagreement exists, its scope and its validity; (2) whether an agreement which relates to arbitration exists, and its validity, (3) whether the matter in issue is in line with the arbitration aagreement.[434] This could, if successful strip an arbitrator of a right to resolve a particular dispute.[435] On a broad scale, however, the ADR Act[436] stipulated that matters of the environment, those of national or public interest, those relating enforcement as well as interpretation of the Ghanaian constitution, and other prohibited by law cannot be resolved using ADR (arbitration inclusive).

Arbitral awards are binding and final.[437] What this means is that the decision of an arbitrator or arbitral tribunal is binding on the parties. Even though this is the position of the ADR Act, the situation on the ground may be different. Crook discovered on the ground that an arbitral award lacks backing and could not be enforced.[438] Even though section 52 of the ADR Act stipulates that arbitral awards are final and binding, such awards can be challenged. A challenge is likely to succeed if the court establishes that the subject matter of the dispute was not one capable of been settled by arbitration or that the arbitral award was procured by fraud.[439] An aggrieved party wishing to challenge an award must file an application at the High Court. A successful challenge will lead to the setting aside of the award.[440]

Ainuson challenged some of the claims made by proponents of arbitration.[441] He argued that the duration of an arbitration process could be longer than we have been made to believe defeating the popular belief that resolving disputes using arbitration is speedier than litigation. The

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434 Alternative Dispute Resolution Act 798 of 2010, s 24.
435 The Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958, Article V(2)(a); UNCITRAL 1985 as amended in 2006, Article 34(2)(b)(i).
436 Alternative Dispute Resolution Act 798 of 2010, s 1.
437 Alternative Dispute Resolution Act 798 of 2010, s 52.
438 Crook C Richard, 'Access to justice and land disputes in Ghana's state courts: The Litigants' perspective' [2006] Journal of Legal pluralism 1.
439 Alternative Dispute Resolution Act 798 of 2010, s 58(3).
440 Alternative Dispute Resolution Act 798 of 2010, s 58(3).
441 Ainuson (304) 407.

researcher agrees with this view since some arbitral matters may be very complex necessitating a lengthy process and duration. Sadly, it has been argued that the inclusion of lawyers in arbitration is responsible for the various procedural challenges as well as weights placed on exhibits and indeed the internal mechanisms of arbitration. This has contributed largely to the arguments by some scholars that arbitration is the 'new litigation'.[442]

4.3.3 Dispute Resolution by Chiefs

The 1992 Constitution of Ghana guarantees the chieftaincy institution and goes ahead to establish the national house of chiefs, regional houses of chiefs in each region.[443] The Constitution also goes ahead to define a chief as 'a person, who, hailing from the appropriate family and lineage, has been validly nominated, elected or selected and enstooled, enskinned or installed as a chief or queenmother in accordance with the relevant customary law and usage'.[444] The chief is therefore a person who is widely accepted and recognised with legitimate authority to superintend over the affairs of a particular geographical location. The chieftaincy institution has been clothed with the sole power, unless in appellate cases (where such cases can go to the supreme court), to resolve disputes on nomination, installation or withdrawal of an earlier recognition given to a person as chief.[445] It is only the supreme court that has been given the final appellate jurisdiction in determining these matters after a dissatisfied party has exhausted the chieftaincy dispute resolution channel.[446] In fact, parliament has been barred from enacting a law to take away this power from the chieftaincy institution.[447]

Chiefs serve as very rich resource units in dispute resolution in Ghana and continue to be one of the main actors in dispute resolution in Ghana.[448] This is because Traditional authorities perform very crucial functions such as land allocation, dispute resolution, maintenance of law and order, as well as upholding and defending traditional customs. The names of chiefs differ from one

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442 Thomas J Stipanowich, 'Arbitration: the "new litigation"' [2010] University of Illinois Law Review 1.

443 Constitution of the Republic of Ghana, 1992 article 270 (1); Constitution of the Republic of Ghana, 1992 article 271(1); Constitution of the Republic of Ghana, 1992 Article 274(1).

444 Article 277 of Ghana's 1992 Constitution.

445 Article 270(3)(1) of the 1992 Constitution of Ghana.

446 Article 273 (1) of the 1992 Constitution of Ghana.

447 Article 270(2)(a) of the 1992 Constitution of Ghana.

448 Osei-Hwedie K and Rankopo MJ, 'Indigenous conflict resolution in Africa: The case of Ghana and Botswana'< https://home.hiroshima-u.ac.jp/heiwa/Pub/E29/e29-3.pdf> accessed 31 July 2018.

locality to the other. While the Ewes call them '*Togbe or Torgbui*' the Akans refer to them as '*Nana*'; the Gas call them '*Nii*'. The chieftaincy structure in Ghana consists of the Village Chief, Sub-divisional Chief, Divisional Chief; and Paramount Chief.[449] Stoeltje posits that a chief's full title is coined from the gender, position in the chieftaincy structure and the specific location or stool he occupies.[450] Osei-Hwede and Rankopo recounted these in the Akan tradition as *Odikro*[451] (Village chief), *Akpakanhene*[452] (Sub-divisional chief), *Ohene*[453] (Divisional chief); and *Omanhene*[454] (Paramount chief). Other actors in traditional dispute resolution include the family head (*abusuapanyin*), queen mother (*Ohemmaa*),[455] traditional priests, herbalists,[456] opinion leaders, religious leaders, and clan heads.

Chiefs' courts are dispute resolution platforms of chiefs, their linguists, and elders distinct from the formal state courts.[457] Officers of these courts are therefore the presiding chiefs, other/supporting chiefs, linguists, and elders. Elders are matured indigenes, who are well versed in the traditions of the people and are highly respected by the community members. Chiefs' palaces, chiefs' residential homes or their courtyards are used for their seatings. This is simiar to Ethiopia where chiefs' courts are also used to resolve criminal cases despite the existence of formal courts.[458] Macfarlene added that most people in the rural areas prefer to have their disputes resolved by Chiefs' courts. Wojkowska discovered that between 80 to 90% of all disputes in Malawi are taken to the chiefs' courts for resolution. [459] This is similar to Sierra Leone where

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449 Osei-Hwedie and Rankopo (n 332).

450 Stoeltje J Beverly, 'Asante queen mothers: pre-colonial authority in a postcolonial society' [2003] Research Review 1.

451 Kwaku Osei-Hwedie and Morena Rankopo, 'Indigenous conflict resolution in Africa: the case of Ghana and Botswana' <https://home.hiroshima-u.ac.jp/heiwa/Pub/E29/e29-3.pdf> (Hiroshima, n.d.) accessed 31 July 2018.

452 Osei-Hwedie and Rankopo (n 335).

453 Osei-Hwedie and Rankopo (n 335).

454 Osei-Hwede and Rankopo (n 335).

455 BJ Stoeltje, 'Asante queen mothers: pre-colonial authority in a postcolonial society' [2003] Research Review 12.

456 Osei-Hwede K and Rankopo (n 335).

457 Renee AS Morhe, *Access to justice and Resolution of Criminal Cases at Informal Chiefs' Courts: The Ewes of Ghana* (DSc thesis, Stanford University 2010) 1.

458 John Macfarlene, 'Working Towards Restorative Justice in Ethiopia: Integrating Traditional Conflict Resolution Systems with Formal Legal System' [2007] Cardozo Journal of Conflict Resolution 487.

459 Wojkowska E, 'Doing justice: how informal justice systems can contribute" (United Nations and the Rule of Law, 2006) 12.

about 85% of the populace use the chiefs' courts for resolving disputes.[460] Macfarlane considered all the above and concluded that chiefs' courts are credible alternatives to state courts. [461] Indeed, the United Nations Development Programme has called for recognition of chiefs' courts in dispute resolution.[462] Morhe[463] posited that formal courts in Ghana are inadequate, have insufficient judges, ineffective legal aid system, delay in prosecution of cases, and long detentions in prison custody, sometimes for minor offences without hearings in court.[464] These are matters of grave concern to lovers of justice.

There is a hierarchy of chiefs' courts in Ghana. The paramount chief's court is the highest court of the Ewes.[465] Paramount chief's court is the highest court in the paramountcy and the highest appellate court in the area. The paramount chief presides over proceedings with his elders and trusted chiefs in attendance. These seatings are held at the Paramount chief's palace or his residence where there are no palaces. The divisional chiefs' courts are next in the hierarchy in a descending order. Every paramount area has divisions under it and these divisions have chiefs who also have courts for settling disputes. Divisional chiefs help the paramount chief in governing the area. These chiefs lead the battle in times of war; sit at durbars[466] together with the paramount chief but are principally chiefs of specific towns in the paramountcy.

Next in the hierarch is the sub-chiefs. The lowest court in the chieftaincy structure is the sub-chiefs' courts. These courts are presided over by the chiefs of the various towns and villages. These chiefs see to matters of etiquette, counsel divisional chiefs, maintain peace and settle disputes.[467] Hearings are held in public especially under trees unless where the matter concerns a child or married couples in which case hearings are *in camera.* Many institutions mediate disputes in Ghana. These institutions, which are mainly privately owned include the Alternative Dispute

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460 Wojkowska (n 343).
461 Macfarlene (n 342).
462 Macfarlene (n 342).
463 Morhe RAS, *Legal Aid in the Criminal Justice System* (JSM Thesis, Stanford University 2007).
464 Lowy MJA, 'Good name is worth more than money: strategies of courts in Urban Ghana' in Nader L and Todd HF (eds) *Disputing process – law in ten societies* (American Anthropologist 1980) 189.
465 Morhe (n 349).
466 These are special occasions where the chiefs, political leaders, opinion leaders and members of specific communities meet to deliberate on the development of their communities. Cultural displays also feature prominently at these events.
467 Morhe (n 349) 48.

Resolution Hub, Ashaiman Inter-community mediation centre, Zenu Liberty ADR Centre, Zenu Liberty Centre. Some have been looked at below.

4.3.3.1 Ashaiman Inter-Community Mediation Centre

This centre, situated adjacent the Ashaiman Police Station (in Greater Accra), was established in 1999. Due to the cosmopolitan and densely populated nature of the Ashaiman community it experiences a lot of disputes. These disputes, which range from child custody, marital, landlord-tenant, to minor offences have been successfully mediated by this centre. The challenge, however, is that majority of the people in the Ashaiman community are very financially challenged. This explains why this centre mediates some of the cases submitted to it without taking a *pesewa*.[468] Despite this, the centre has distinguished itself very well as can be seen below:

Table 1: Cases Received and Settled by the Ashaiman Inter-community Centre between 2011 and 2014

Year	*Cases Received*	*Cases Settled*	*Cases settled as a % of cases received*	*Cases not settled*	*Cases not settled as a % of cases received*
2011	1,056	1,022	96.78%	34	3.22%
2012	778	755	97.04%	23	2.96%
2013	1,065	1,019	95.68%	46	4.32%
2014	1,173	1,123	95.74%	50	4.26%
2017	997	980	98.29%	17	1.71%

Source: Ashaiman Inter-community Centre 2019

468 *Pesewa* is the smallest denomination of Ghana's currency.

This sterling performance demonstrates the efficacy of mediation and for that matter ADR in resolving disputes. It is not surprising therefore that some non-criminal cases reported to the Ashaiman Police Station and the Domestic Violent and Victims Support Unit (DOVVSU) are referred to the Ashaiman Inter-community.

Table 2: Break down of cases received by the Inter-Community Mediation Centre

Case Number	*Type of case*	*Number of cases received*	*Case type as a % of total cases received*
1	Rent	495	49.6%
2	Land	48	4.8%
3	Marital	32	3.2%
4	Child Maintenance	34	3.4
5	Debt recovery	367	36.8
6	Labour disputes	4	0.4
7	Contract disputes	6	0.6
8	Expectation of Estate	11	1.1
	TOTAL	**997**	**100**

Source: Inter-community Mediation Centre, 2019

The information above illustrates that landlord-tenant disputes are the most prevalent cases presented to the centre in the year under review. This can be seen in the fact that about half of all cases received in 2017 are rent related disputes (49.6%). The Head of the Centre, Mr Victor Kwablah cited inadequate education on rent laws and regulations as a major cause of these landlord-tenant disputes. This was followed by debt recovery disputes (36.8%). This is understandable because Ashaiman is the centre of most economic activities in the Tema District.

The dispute type with the lowest number recorded for the period was labour disputes. It is unclear why this is the case. The consequential question is whether this means very few labour disputes exist in the community or that disputants preferred other disputes resolution methods?

4.3.3.2 Ashaiman ADR Centre

This is a court - connected ADR centre specialized in settling disputes using mediation. The centre handles the most cases in the Ashaiman community but has only five mediators.

Table 3: Breakdown of cases received in 2017 by the Ashaiman ADR Centre

Case number	*Case description*	*Number of cases*	*Case description as a Percentage of total cases received*
1	Tenancy disputes	825	63.6%
2	Land disputes	51	3.9%
3	Marital disputes	35	2.7%
4	Child Maintenance	23	1.8%
5	Debt Recovery disputes	251	19.4%
8	Family Property disputes	49	3.8%
9	Unexpected pregnancy	10	0.8%
10	Miscellaneous cases	53	4.1%
TOTAL		**1,297**	**100%**

Source: Ashaiman ADR Centre

The table above illustrates that more than half of the cases received from disputants concerned tenancy disputes (63.6%). This means that many tenancy disputes occurred in the community in 2017. The second highest category of disputes had to do with debt recovery disputes (19.4%).

The type of dispute with the lowest number of cases received in 2017 was unexpected pregnancy disputes (0.8%). What is not clear is what accounted for the unexpected pregnancy cases recorded for 2017.

4.3.3.3 Zenu Liberty ADR Centre

This is the third ADR centre in the Ashaiman community. It is situated in Zenu near Ashaiman. This centre, just like the other two mentioned above, specializes in settling disputes. It is however, the smallest of the three dispute resolution centres in Ashaiman. This centre has only one mediator and has only one room, which it uses for mediation. It is therefore unable to handle many cases. Mr Isaac Yaw Mensah, the head of the Zenu Liberty ADR Centre stated that about fifty per cent (50%) of cases handled are done on *pro bono basis* (fee-free).

Table 4: Cases received and handled by the Zenu Liberty ADR Centre

Year	*Number of cases received*	*Cases settled*	*Cases settled as a % of cases received*	*Cases not settled as a % of cases received*
2017	299	290	96.99	3.01

Source: Zenu Liberty ADR Centre

The above exhibits a very impressive record of performance. To have ninety-six point ninety-nine per cent (96.99%) of cases received settled is an exceptional feat to chalk. It was only 3% of the cases received that were not settled.

Table 5: Breakdown of cases received in 2017 by the Zenu Liberty ADR Centre

Dispute number	*Dispute description*	*Number of cases*	*Case description as a percentage of cases received*
1	Tenancy disputes	183	61.2%
2	Child Maintenance	11	3.7%
3	Debt disputes	89	29.8%

4	Land disputes	10	3.3%
5	Marital disputes	4	1.3%
6	Family disputes	2	0.7%
TOTAL		**299**	**100%**

Source: Zenu Liberty ADR Centre

It can be seen from the table above that tenancy disputes topped the list of cases received by the centre in 2017. This accounted for 61.2% of the total cases reported to the centre for the period. Disputes related to debt collection ranked second. This constituted 29.8% of cases received for the year. Family disputes were the lowest in terms of numbers for the period, accounting for 0.7% of the entire cases received.

4.3.3.4 Enforcement of Cases Mediated outside of Court

The settlement arrived at after mediating a dispute could be binding on the parties. This can happen in two ways, that is, expressly or impliedly. 'Expressly' is where disputants agree that the settlement will bind them. The settlement agreement will therefore be final and bind the disputants as well as anyone claiming through or under them. The second is where the disputants sign the settlement agreement arrived at after a mediation exercise. Specifically, section 81 (3) of Ghana's ADR Act[469] – the main legal framework governing ADR practice in Ghana, states that disputants shall be deemed to have consented to being bound by the outcome of a mediation effort if they sign the settlement agreement.

Arbitral awards are binding and final on the disputants and all claiming through and under them.[470] The award is enforced in the same way as a court judgment.[471] This was exactly what happened in the case of *Labour Commission v Crocodile Matchet*,[472] where the National Labour Commission – a body clothed with both mediation and arbitration powers in labour related

469 Alternative Dispute Resolution Act 798 of 2010; Labour Act 651 of 2003, s 158.
470 Alternative Dispute Resolution Act 798 of 2010, s 52.
471 Alternative Dispute Resolution Act 798 of 2010, s 57(1).
472 *Labour Commission V Crocodile Matchet 2011 SCGLR (SC).*

disputes sought to enforce its earlier award. The National Labour Commission (NLC) had given an award in the nature of an order on the 20th of April 2006, which had not been complied with hence the suit to compel performance. This was based on section 172 of the Labour Act of Ghana.[473] The NLC, after hearing the parties in the case leading to the lawsuit, concluded that there was wrongful termination of one James Agyemang Badu and five others and that it was wrongful and unfair and gave some orders that were consequential. The NLC's order was not complied with by the company and the NLC took the matter to the High Court, Tema asking it to compel the Company to comply with its orders. The Commission's orders were upheld by the High Court and the company was ordered to comply with the Commission's orders. Interestingly, the company appealed against the High Court ruling and the Court of Appeal agreed with it, thereby overturning the High Court ruling. The NLC was dissatisfied with the Court of Appeal decision. An appeal was therefore sent to the Supreme Court.

4.3.3.5 Litigation

Litigation is the determination of a dispute by a judge in a court with or without legal representation.[474] There are two models of litigation – adversarial and inquisitorial models.[475] The adversarial model consists of extensive procedural rules where evidence is adduced with a jury rendering judgment based on a judge's direction (in some criminal matters) or by the judge(s) alone.[476] Whilst the adversarial model draws its source from constitutional law, case law, treaties, regulations, among others which are interpreted and applied by judges, the inquisitorial model relies heavily on codes and/or regulations.[477] Yoo identified some features of litigation as having strict/fixed and detailed rules, low consent of litigants, certainty and predictability derived legitimacy and fixed/rigid procedures with little room for discretion.[478] Madoff on his part identified two elements of litigation, which are: (1) determining a winner; (2) crafting a remedy.[479]

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473 Labour Act 651 of 2003 section 172.

474 Jones Doug, 'Building and construction claims and disputes' [1996] Construction Publications 93.

475 Nilgün Serdar Simsek and Kerim Bõlten, 'General overview as to the distinction between litigation and alternative dispute resolution methods' (GSG Attorneys at Law, n.d.) <https://www.gsghukuk.com> accessed 18 October 2019.

476 Lucille MP and Cavenagh TD, *Alternative Dispute Resolution in Business* (West Educational Publishing Company 1991) 4.

477 Simsek and Bõlten (n 359).

478 JC Yoo, 'In Defense of the Court's Legitimacy' [2001] University of Chicago Law Review 755

479 Ray D Madoff, 'Lurking in the shadow: the unseen hand of doctrine in dispute resolution' [2002] Southern California Law Review 161.

One party must win at the end of a litigation process. Once this outcome is reached, a suitable remedy that would hopefully offer relief to the innocent party is offered. Resnick added consistency, enforcement of relevant laws and norms and formality. Clermont[480] captured succinctly six phases of a lawsuit. These are: (1) forum selection; (2) pre-trial; (3) settlement; (4) trial; (5) judgment; and (6) appeal. The appeal is optional for an aggrieved party. The first thing a plaintiff does after deciding to litigate is to shop for the most appropriate forum (court) for hearing the case. A key determinant of the appropriate forum for a lawsuit is the subject matter jurisdiction of the court. This shopping must be done in the Mall of the Courts Act[481] and as amended.

Lord Mustill on his part identified eight characteristics of litigation. [482] These are: (1) it happens in a contest atmosphere; (2) the process becomes compulsory once invoked; (3) the state appoints the judges with the administrative framework used being also state-owned and state-run; (4) fixed procedures. The remaining characteristics are: (5) enforcement of procedures through sanctioning; (6) well-reasoned conclusions/decisions based on rules of law; (7) outcome is conclusive unless appealed against; (8) forum becomes '*functus officio*' upon rendering judgment. A higher forum (court) is where an appeal lies generally. These features are very apt.

Litigation has two main principles, which are: (1) *liberty* – each should have his/her day in court;[483] (2) *equality* – treating like cases alike. These principles are prerequisites if just outcomes are to be achieved. Acceptability of outcomes is dependent on extent of applicability of these elements. Indeed, it is not just having one's day in court but being given all the facilities and time needed to make or defend one's case.[484] Landes and Posner[485] proposed a model that influences the choice of litigation. This includes: (1) litigation costs; (2) litigation settlement costs (if a party

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480 Clermont M Kevin, 'Litigation realities redux' [2009] *CLFP* 1920.

481 459 of 2003.

482 Lord Mustill, 'Judicial processes and alternative dispute resolution' [1996] Israel Law Review 350.

483 Wright CA, Kane MK and Miller AR, *Federal practice and procedure* (3rd edn, Thomson Reuters Legal Solutions Eagan 1981) 72.

484 See Constitution of the Republic of Ghana 1992 Article 19(2)(e).

485 Richard Posner, 'An Economic Approach to Legal Procedure and Judicial Administration' [1973] Journal of Legal Studies 418; W Landes and R Posner, 'Adjudication as a Private Good' [1979] Journal of Legal Studies 235.

chooses to settle); (3) party stakes in the case; and (4) possibility of success at trial. In effect, an innocent party weighs his/her options before opting for litigation.

Litigation was a colonial legacy bequeathed Ghana by her colonial master – the British. This explains why it uses the adversarial system of adjudication. The speed with which faith in litigation eroded the time-tested indigenous dispute resolution mechanisms has raised a lot of concerns. This is in consonance with what Edward Wilmot Blyden[486] captured as the Westernized Africans seeing African values, traditions and customs as evil, retrogressive and unhealthy. A former Supreme Court Justice of Ghana, Justice Brobbey sums up the trial process in the Ghanaian courts whether superior or lower as follows: (1) presentation of evidence-in-chief; (2) cross examination; (3) re-examination; (4) addresses; (5) judgment.[487] A dissatisfied party can seek redress normally in a higher court in the court hierarchy.

Litigation heavily regulated with many legislations. These include the 1992 Constitution of Ghana, the District Court Rules, High Court (Civil Procedure) Rules, High Court (Civil Procedure) (Amendment) Rules, Criminal Offences Act, among others.[488] Even though court decisions are binding and enforceable but could be appealed against in a higher court. Interestingly, a Nigerian lawyer by name Kekaria Kenneaa stated at a training in Addis Ababa, Ethiopia on Alternative Dispute Resolution on December 29, 2007, stated that the real conflict begins after declaration of winner by a judge in a court case. This happens if a party feels dissatisfied with the process and outcome.

Maranga quoted Kenya's Chief Justice David K. Maraga as saying that even though modern institutions of law and order are seen as superior and better, they are grossly flawed.[489] A cause is that they have not been properly contextualised. Litigation does not allow for full ventilation by parties, it is costly, time consuming, breeds acrimony and malice; and hardly resolves the

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[486] An Afro Caribbean diplomat in N Nokukhanya, 'Africa: Alternative Dispute Resolution in a Comparative Perspective [2018] Conflict Studies Quarterly 36.

[487] Stephen Alan Brobbey, *Practice and procedure in the Trial Courts and Tribunals in Ghana* (2nd edn, Advanced Legal Publications Accra 2011) 581.

[488] The District Court Rules, 2009, C.I 59, High Court (Civil Procedure) Rules, 2004 (C.I. 47), High Court (Civil Procedure) (Amendment) Rules, 2014 (C.I. 87), Criminal Offences Act 29 of 1960.

[489] DK Maraga as cited in Maranga Jackson, 'Oathing, Law and Order in colonial Gusiiland' (2017) 6(5) Journal of Arts and Humanity 71.

underlying psychological issues of conflicts and hence gives cosmetic solutions.[490] In the same vein, Macfarlane makes the point that deep-seated mistrust of the formal justice system abound.[491] Menkel-Meadow on her part enumerated a litany of criticisms against litigation.[492] These include: (1) confrontational or contestable presentation of facts; and (2) distortion of facts by polarised atmospheres. These obstacles are deep-seated.

The court structures are enshrined in Ghana's Constitution and the Courts Act 459 of 1993. Ghanaians' rights to have their legal rights upheld have been constitutionally protected.[493] Sadly, the courts, which date back to the colonial period, are overburdened with cases leading to notoriously long delays, high court fees, and inefficiencies. Justice Brobbey, a former justice of the supreme court of Ghana concurred having observed two commonalities between the practice of law in the 19th Century and that of today as bureaucracy, formality, and slowness in legal processes.[494]

Atuguba is surprised that the modern Ghanaian has dumped his/her faith, culture, and essence of being on the altar of law and courts. However, Crook[495] seems to have an answer for the good Professor. Crook's research, which was carried out in the Goaso Magistrate Court, the Wa High Court, and the Kumasi High Court, revealed very interesting findings. He found that people go to court because of the need for an 'external force' or a 'neutral arbiter' to have a solution enforced. He further discovered that people go to the court because of the need for authority, and certainty in courts solutions. This is largely true.

On the contrary, the notion of wide enforceability of litigation outcomes has been challenged. Akudugu and Mahama found that the decisions of the courts in the Bawku, disputes are seen as

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490 Okechukwu D Nwankwo, Nnamdi Obikeze and Uche G Akam, 'Alternative/appropriate dispute resolution: the psychological facilitators' [2012] Research Journal in Organizational Psychology and Educational Studies 85.

491 Julie Marcfarlane, 'Working towards restorative justice in Ethiopia: Integrating traditional conflict resolution systems with formal legal system" [2007] Cardozo Journal of Conflict Resolution 487.

492 Colin Rule, 'Is ODR ADR? A response to Carrie Menkel-Meadow' [2016] International Journal on Online dispute resolution 7.

493 See chapter five of Ghana's 1992 Constitution.

494 As cited in Raymond Atuguba, 'Reform of civil litigation in Ghana' (Ghana Bar Association Conference Sunyani 12 September 2017) 2.

495 Crook CR, 'Access to justice and Land disputes in Ghana's state courts: The Litigants' perspective' [2006] Journal of Legal pluralism 17.

unfair and politicized and therefore have been disobeyed by losing parties.[496] Obviously, it is not in all cases that the decisions of the courts are enforceable or enforced.

4.3.3.5.1 Decision making in civil proceedings

Credibility is the main thing the court looks out for in civil proceedings. Various versions or sets of facts are presented to the court for evaluation in its proceedings. This Justice Brobbey[497] described as *deciding on issues of credibility*. The decision of the Supreme Court in *Ntim v Essien*[498] that it is the trial court that determines credibility, that is, which sets of facts are credible and hence ought to be relied on. The Evidence Act, Section 80(2) sets out the criteria for determining credibility.[499] Section 80(2) states that credibility can be determined by: (1) the demeanour of the witness; (2) the substance of the testimony; and (3) existence or otherwise of facts testified by witness. The remaining criteria are: (4) ability of witness to recollect or relate to any matter testified; (5) existence or otherwise of bias, interest, or other motive; (6) witness's character traits, that is, honesty, truthfulness; (7) conduct consistent with testimony given by witness at trial; (8) truthfulness or otherwise of witness's statement.

Judgment may be made by the court based on the demeanour of the accused, witness(es) or disputants. However, the impression a judgment refers to ought to be apparent on the record or be backed by evidence. Again, reasons must be adduced for relying on or not relying on those impressions.

The court held in *Ackom v The Republic*,[500] that the question of credibility or demeanour of a witness is within the peculiar preserve of a trial court. Interestingly however, the court in *Mensah v Donkor*,[501] held that it is not enough for the court to say that 'from the demeanour of the witness the court finds his/her testimony unreliable'. This means that the conclusion should be well founded other than that the decision can be challenged and set aside. The court has given some

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[496] Akudugu AM and Mahama SE, 'Promoting Community-Based Conflict Management and Resolution Mechanisms in the Bawku Traditional Area of Ghana' [2011] Peace Research 95.

[497] Stephen Alan Brobbey, *Practice and procedure in the trial courts and tribunals of Ghana* (2nd edn, Advanced Legal Publications Accra 2011) 135.

[498] [*2001 – 2002] SCGLR* 451.

[499] 1975 (NRCD 323).

[500] [1974*]* 2 GLR 419.

[501] [1980] GLR 825 at [830].

guidelines on determining credibility. This was outlined in the case of *Ayidichaw v The State*,[502] and includes: (1) overzealousness of witness; (2) exaggeration of circumstances; (3) assuming an air of defiance; (4) answering without listening to questions; (5) contradictions; (6) minutely remembering incontrovertible facts; (7) buying time to answer questions by feigning not hearing.

Interestingly, the court takes and evaluates traditional evidence. Justice Brobbey (as he then was), defined traditional evidence as a narration, statement, or object in historical perspective of the customs, cultures or events concerning a tribe, clan, among others. This normally features in litigation where two or more conflicting versions are offered which raise issues of rights, ownership, occupations, possession, or origins. Evaluation of traditional evidence offered by disputants or witnesses is a common issue, which confronts the court. The court stated the most appropriate method to adopt in the case of *Adjeibi-Kojo V Bonsie*[503] holding that:

> 'the most satisfactory method of testing the traditional history is by examining it in the light of such more recent facts as can be established by evidence in order to establish which of two conflicting statements of tradition is more probably correct'.

The courts religiously apply the principle of *ex nihilo fit* in its decision-making, which literally means "nothing can come out of nothing". In effect, for something to emanate from a thing there ought to be something. There ought to be a legal claim supported by the relevant laws and actions presented through the laid down procedures for a verdict to be given in one's favour.

Justice Gbadegbe[504] succinctly enumerated the journey of actions in the court from birth to death (the choice of words is mine) according to the Civil Procedure Rules. This has been captured as: (1) initiation of action; (2) determination of matters in dispute (pleadings); (3) discovery – fact-finding preceding trial; (4) interlocutories – orders preceding trial; (5) application or directions; (6) trial; (7) judgments and orders (as the case may be); (8) judgment enforcement. The objective of the Civil Procedure Rules - that outlines the broad legal framework for pursuing civil actions

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502 [1963] 2 GLR 297 at [298].

503 [1957] 3 WALR 257.

504 Sule Gbadegbe, 'Overview of the High (Court Civil Procedure) Rules, C.I. 47 in The Judiciary (Judicial Training Institute Accra 2009) 1.

is to ensure speed, justice, avoid delays and unnecessary costs, prevent multiplicity of actions; and final and exhaustive determination of matters in disputes.[505]

4.4 Differences between Litigation and Other Dispute Resolution Methods

Differences refer to points of divergence between these two broad 'methods'. ODR has less formality, length and complexity compared to litigation. Litigation takes a longer time, is quite complex and expensive.[506] Several points of comparison abound. *Process* - in the view of Shavell, the litigation process is more formal than ODR. Brobbey a former Justice of the Supreme Court of Ghana sums up the trial process in the courts in five stages.[507] These are: (1) evidence-in-chief; (2) cross examination; (3) re-examination; (4) addresses; (5) judgment. Briefly, the process entails evidence gathering, case presentation and judgment. The process in litigation is public but private in other dispute resolution. Confidentiality is assured in other dispute resolution but not so in litigation. Chereji and King see litigation as encouraging denial of responsibility by the accused whilst traditional dispute resolution methods being indirect and circumstantial are co-operative and encourage admission of responsibility by the accused.[508] This is partly because, the traditional African dreads the gods and therefore the oath taken in the traditional setting more than that taken in a Court of law professing to tell nothing but the truth. On dispute resolution personnel, in litigation - lawyers, judges are key players.

Other Dispute Resolution on the other hand has practitioners such as mediators, negotiators, arbitrators, chiefs, opinion leaders, clan leaders, among others playing leading roles. Outcome is another comparative criterion. Litigation offers a limited range of remedies, but this varies with the creativity of the parties and/or adjudicator in the case of ODR methods. In fact, litigation has predetermined outcomes. On comparison using Rules, litigation employs rigid laws and rules, but

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505 Order 1, Rule 2.

506 Steven M Shavell, 'Alternative Dispute Resolution: An Economic Analysis [1995] Journal of Legal Studies 67.

507 Stephen Alan Brobbey, *Practice and procedure in the Trial Courts and Tribunals in Ghana* (2nd edn Advanced Legal Publications Accra 2011.

508 Christian-Radu Chereji and CW King, 'West Africa. A comparative study of traditional conflict resolution methods in Liberia and Ghana' [2013] Conflict Studies Quarterly 3.

flexible rules abound in ODR. This is because parties coin the rules to suit them in most cases unless where limited by prevailing laws.

Another area of comparison is speed of resolution. Samuels and Smith stated that in litigation disputants spend a lot of time before they get the opportunity to make their case coupled with uncertainty in time of obtaining a decision.[509] A case is that of India where in 1996, 25 million cases were in the queue for the opportunity to be heard. [510] Some had been in this queue for a period more than 12 years.[511] An appeal lengthens the duration. Determining the evidence to admit, procedures outside of court (preparation for the case), time for obtaining judgment, among others may delay the process. In comparison with ODR methods. Collins presents the following findings as the timeframe for determining disputes: Mediation takes between 30 – 60 days; Arbitration: takes between 3 - 6 months; and Litigation: between 18 months - 3 years.[512] Using ODR to resolve disputes is quicker than Litigation.[513] Martinez and others[514] gave a shocking revelation of thirty million cases before the Indian courts waiting to be heard. They expressed the fear that given the slow rate at which cases are heard, it is likely to take more than 300 years to hear these cases. These delays are rife in the Ghanaian courts as well despite Order 37 of the High Court (Civil Procedure) Rules, 2004 which enjoins courts to determine cases speedily. However, ODR is appropriate if one uses speed of dispute resolution as determinant.

Bingham and others identified ODR's potency in dispute resolution expeditiously and cost-effective manner.[515] Their study revealed the following: (1) even though 29% of cases were settled

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509 Samuels D and Smith N 'Inside Asia's Courts', International Commercial Litigation (April 1997), 23 as cited in M Wang, 'Are alternative dispute resolution methods superior to litigation in resolving disputes in international commerce' [2000] Artificial Intelligence 192.

510 David B Lipsky and Avgar C Ariel, 'The conflict over conflict management' [2010] *ADR New* 37 – 48.

511 Samuels and Smith (n 395) 189.

512 Rohen C, 'Alternative Dispute Resolution - Choosing the Best Settlement Option' [1989] Australian Construction Law Newsletter as cited in M Wang, 'Are alternative dispute resolution methods superior to litigation in resolving disputes in international commerce' [2000] Artificial Intelligence 189

513 Rubin JZ, J Brockner and Small-Well, 'Factors affecting entry into psychological traps' [1980] Journal of Conflict Resolution 405.

514 Martinez J, S Purcell, H Shaked-Gvili and M Mehta, 'Dispute system design: a comparative study of India, Israel and California' [2013] Cardozo Journal of Conflict Resolution 808.

515 LB Bingham, Nabatchi T, Senger JM and Jackman MS, 'Dispute resolution and the vanishing trial: comparing federal government litigation and ADR outcomes' [2009] Ohio State Journal On Dispute Resolution 225.

without ODR, 65% were settled when ODR was used; (2) whilst only 50% of cases were settled when ODR was used mandatorily, 71% settlement record was reported when ODR was used voluntarily; (3) more tort related cases were settled than employment related crime cases. On cost and time saving, they discovered that significant time and cost are saved using ODR. In specific terms, a neutral's fees averaged $869.00 and in comparison, one saves about $10, 735.00 in litigation expenses. They also discovered that 88 hours were saved as well as 6 months of litigation time for a case. Interestingly, they found that there is no significant difference between the outcomes of litigation and those of ODR. In essence, ODR is better than litigation in terms of time saving and cost-effectiveness. This work confirmed that of Martinez and others. Chan and Suen after interviewing 40 dispute resolution practitioners in China found that arbitration was the most appropriate dispute resolution, followed by mediation, litigation, expert determination, adjudication, dispute resolution board, mini-trial, and med-arb.[516]

4.5 Determining the appropriate dispute resolution method

In some respect, that which is appropriate is that which disputants expect. Disputants expect: (1) a fair hearing/opportunity to be heard; (2) a process that does not exacerbate their pain/situation; (3) confidentiality or privacy (those who opt for ODR); (4) speed in resolution; (5) arrangements they see to be in their best interests; (6) flexibility of process/procedure; (7) justice; (8) resolution; (9) relationship preservation; (10) control of the process; (11) precedent (in the case of litigation); (12) restitution; (13) satisfaction; (14) enforceable decision; (15) healing; and (16) reconciliation. In determining these expectations, the appropriate dispute resolution method is the one adopted and adapted from the various dispute resolution methods to resolve disputes.[517] Various mechanisms are employed to adopt and adapt the appropriate dispute resolution method. Types of disputes as well as expected outcome of dispute resolution are used in selecting dispute resolution method. Five-point criteria has been proposed for use in determining the dispute resolution method.[518] These are: (1) nature of dispute; (2) issues in dispute; (3) resources available; (4) disputing

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516 Chan EHW and Suen HCH, 'Dispute resolution management for international construction projects in China' [2005] Management Decision 589.

517 Chan and Suen (n 402).

518 Shodgh G, 'Theoretical framework of dispute resolution' <http://www.shodhganga.inflibnet.ac.in/bitstream/10603/14889/7/07_chapter%203.pdf> (Shodhganga 2005) accessed 26 June 2018.

strategies; and (5) desired outcome. The impression one gets is that a specific or set of dispute resolution methods is/are appropriate for resolving particular disputes. Van Veen and others, on the other hand began their analysis of determining the appropriate dispute resolution method by saying that giving stakeholders a voice as well as control over the process is key. Brunet[519] proposed four-point qualitative criteria for determining the ideal dispute resolution method. These are: (1) adherence to substantive legal rules or principles; (2) accurate outcome delivery; (3) speed of delivery; (4) fair and balanced representation. Brunet, in essence, added party representation and following relevant rules and laws to the existing body of work.

Carneiro and others posit that the appropriate dispute resolution mechanism enables the disputants to be better at the end of the dispute resolution process than they were at the start of the process.[520] This could be in terms of what a disputant gains or losses and most importantly, they stressed, improved relationships between disputants. The understanding one gets from their argument is that the appropriate dispute resolution process may differ from disputant(s) to disputant(s), from dispute to dispute, time to time and from location to location. In addition, the nature of pre-dispute relations between the parties, the level of hurt or wounds (emotional, etc.) inflicted on a disputant, earnestness to restore/repair a bruised relationship, among others are critical in this process.

Margaret Wang makes the point that to determine which of these sets is appropriate demands a careful consideration of all factors relevant to disputants. [521] Wang therefore spelt out eight (8) factors. These were captured by Brunet[522] and Carneiro[523] as follows: (1) costs; (2) speed with which resolution is done; (3) confidentiality or privacy; (4) best interests of disputants; (5) flexibility; (6) perceived fairness; (7) effectiveness; and (8) impact on relationship continuation or preservation.

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519 Brunet E, ‘Questioning the quality of Alternative Dispute Resolution’ [1987] Tulane Law Review 1.

520 Carneiro Davide, ‘Traditional and alternative ways to solve conflicts’ [2014] Law, Governance and Technology Series 11.

521 Brunet (n 402) 36.

522 Brunet (n 404) 38.

523 Carneiro (n 403) 24.

Some other scholars have also come out with very interesting findings. Sanders[524] found confidentiality, procedure, third party, and degree of formality. York[525] on his part found degree of party control, confidentiality, flexibility (in both strategy and issue), relationship preservation, time, cost, and practical issues. David[526] discovered business relationship preservation, consensus, and impartiality. Researchers such as Cheung and Suen,[527] Cheung,[528] Brown and Marriot,[529] and Hibberd and Newman[530] identified sixteen factors, which were pruned down to eleven by Cheung and Suen. These are: (1) entire duration, (2) cost, (3) flexibility (in issue, strategy, and arrangement), (4) confidentiality, (5) relationship preservation, (6) degree of parties' control, (7) neutral control degree, (8) decision and its enforcement, (9) neutrality and fairness, (10) lawyer's influence (if any), (11) legal system.

The type of arrangement as well as the field also determines what qualifies as an appropriate dispute resolution method. Osei-Kyei[531] identified arbitration and negotiation as the most appropriate dispute resolution methods in public private partnerships in Ghana and China respectively. In specific fields and in the built environment in particular, negotiation, conciliation, mediation, adjudication, and arbitration have been found to be the appropriate dispute resolution methods in South Africa.[532] In effect, both adjudicative and non-adjudicative other dispute resolution methods. The non-adjudicative methods which involve disputants seeking compromises include negotiation, mediation, and conciliation. Adjudicative methods which

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524 Frank Sanders, Nancy Rogers and Stephen Goldberg, *Dispute Resolution: Negotiation, Mediation, and Other Processes* (2nd edn, Little Brown Boston) 18.

525 York S, *Practical Alternative Dispute Resolution (*Person Professional London 1996) 36.

526 David J, *Dispute Resolution for lawyers: Overview of range of dispute resolution processes* (Faculty of Law University of Sydney 1988) 24.

527 Cheung SO and Suen HCH, 'A multi-attribute utility model for dispute resolution strategy selection' [2002] Construction Management and Economics 557, 562.

528 Cheung SO, 'Critical factors affectingg the use of Alternative Dispute Resolution Processes in Construction, [1999] International Journal of Project Management 189, 191.

529 Brown H and Marriot A, *Alternative Dispute Resolution Principles and Practice* (2nd edn, Sweet & Maxwell London 1999) 15.

530 Peter R Hibberd and Paul Newman, *Alternative Dispute Resolution and Adjudication in Construction Disputes* (Blackwell Science Malden MA 2000) 23.

531 Robert Osei-Kyei, Chan PC, Chen C and Dansoh A, 'Root causes of conflict and conflict resolution mechanisms in public-private partnerships: comparative study between Ghana and China' <https://doi.org/10.1016/j.cities.2018.10.001> accessed 17 January 2019.

532 Zyl Van CH, Verster JJP and Ramabodu MS, 'Dispute resolution alternatives: Problems, preference and process' (The Royal Institution of Chartered Surveyors Conference on Construction, building and Real Estate Research Dauphine 2 – 3 September 2010).

involve the use of third parties to determine disputes, include adjudication and arbitration. Other scholars have identified factors such as time, cost, and relationship (nature and desire for maintenance)[533] as determining appropriate dispute resolution method in the construction industry.

The dynamics appear to be a little different when it comes to international trade and transactions. A survey conducted in 2018 using stakeholders such as arbitrators, lawyers, arbitral institutional representatives, experts, and academics revealed that 97% of respondents saw international arbitration as the appropriate dispute resolution method.[534] 99% of these respondents would gladly recommend international arbitration to other disputants in resolving cross-border dispute resolution Interestingly, 48% of respondents see it as appropriate when used alone and 49% saw it as appropriate when used with other dispute resolution methods. They cited award enforceability, avoidance of legal or national court (unfavourable country-specific laws), flexibility as well as disputants' ability to select arbitrators as basis for their choice. Arbitration has been criticized as being costly, ineffective sanctions during the arbitration process, lack of power concerning third parties, and slowness. However, mediation has been found to provide disputants with greater process control, better process control, more outcome satisfaction, relationship preservation, cost, and time efficiency.[535] This explains why Scott found that 88% per cent of respondents used mediation and 84% will use mediation in the future.

4.6 Criteria for evaluating 'alternative' methods

Criteria that is proposed for use in testing any dispute resolution process comprises four points and is described as 'alternative' to the main dispute resolution process.[536] In proposing the criteria, Posner implicitly described litigation as the main dispute resolution process without calling it the appropriate dispute resolution method. The first criterion he proposed is conformance to '*rational*

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533 Jelodar Mostafa Babaeian, Yiu Tak Wing and Wilkinson Suzanne, 'Multi-objective decision support system for selecting dispute resolution methods in the construction industry' [2014] Computing in Civil and Building Engineering 1642.

534 White and Case LLP and School of International Arbitration, 'The Evolution of International Arbitration' (ADR Daily, 2018) <http://www.adrdaily.com> accessed 20 January 2019.

535 Wolfe JS, 'Across the ripple of time: the future of alternative (or, is it appropriate) dispute resolution' [2001] Tulsa Law Journal 785, 798.

536 Posner (n 369) 366, 378.

litigation behaviour'.[537] He argued that the process must not suggest whether directly or remotely irrationality on the part of disputants and their lawyers. With all respect, I shudder to understand what he means by this. This rationality also entails determining whether to settle or go through full trial. In this regard, he proposed that a party settles if the price at which the plaintiff is willing to settle is lower than the highest price the defendant is willing to settle. There has to be a meeting point if a resolution is to be arrived at.

The second criterion is the ability to scientifically test the success or failure of an alternative's outcome. There should be the possibility of ascertaining such a process's performance scientifically. The third criterion is respect for relevant legal provisions including those of separation of powers. The last criterion proposed is moving the legal system in the 'right direction'. It means therefore that a mechanism for resolving disputes, which does not further the course of a legal system, cannot be considered an 'alternative'. The objectives of such a mechanism must be aligned to those of the legal system since the system exists to ensure harmonious living.

4.7 Conceptual framework

The researcher conceptualized the phenomenon understudy as follows. First, the researcher did not factor the notion that conflicts can be dealt with by avoiding them. In this respect therefore avoidance[538] as a dispute resolution strategy was not used in the conceptualisation. This is because avoidance has been seen as sweeping the problem under the carpet and running away from reality with the hope that time would heal the wounds or resolve the dispute. The researcher conceptualized that a disputant uses a dispute resolution mechanism to select the appropriate dispute resolution method for resolving disputes.

Dispute as the independent variable has been conceptualized to include substantive issues, emotional issues, and beliefs and values. Dispute type, dispute stage, and disputant disposition play a role in dispute resolution method selection. Disputant disposition consists of one's

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537 Posner (n 369).

538 Thomas KW and Kilmann RH, *Thomas-Kilmann Conflict Mode Instrument Profile and Interpretative Report* (CPP Incorporated CA 2001) 3.

personality type. Personality is part of disputes hence personality type determines dispute resolution style.[539]

Litigation, negotiation, mediation, and arbitration were the methods used.[540] These methods were used as mediating variables indicating that there was no direct link between the independent and the dependent variables. The dispute resolution methods have been selected based on the literature reviewed which showed that they are the dominant dispute resolution methods in Ghana. The researcher did not distinguish between customary mediation and mediation ('modern' mediation), also, they did not do the same between customary arbitration and arbitration. Indeed, some scholars have argued that modern arbitration is a rebranding of customary arbitration.[541] This is acceptable because the only difference is promulgation of laws to back these practices and the involvement of more and better educated practitioners. The dependent variable is outcome which is the result of a dispute resolution process. Conflict outcome was conceptualised as consisting of expected outcome (resolution, justice, peace, satisfaction). It is this outcome that would determine whether a dispute resolution method is appropriate or alternative.

The conceptual framework is presented below:

539 Philip J Moberg, 'Predicting conflict strategy with personality traits: Incremental validity and the five-factor model' [1998] International Journal of Conflict Management 258, 267.

540 This is because these methods are the main dispute resolution methods in Ghana. See Ahmed-Rufai I, 'Transforming the Dagbon Chieftaincy Conflict in Ghana: Perception on the use of Alternative Dispute Resolution (ADR) (Doctoral dissertation Nova Southeastern University 2018) 59.

541 Temitayo (n 302) 54.

Conceptual Framework

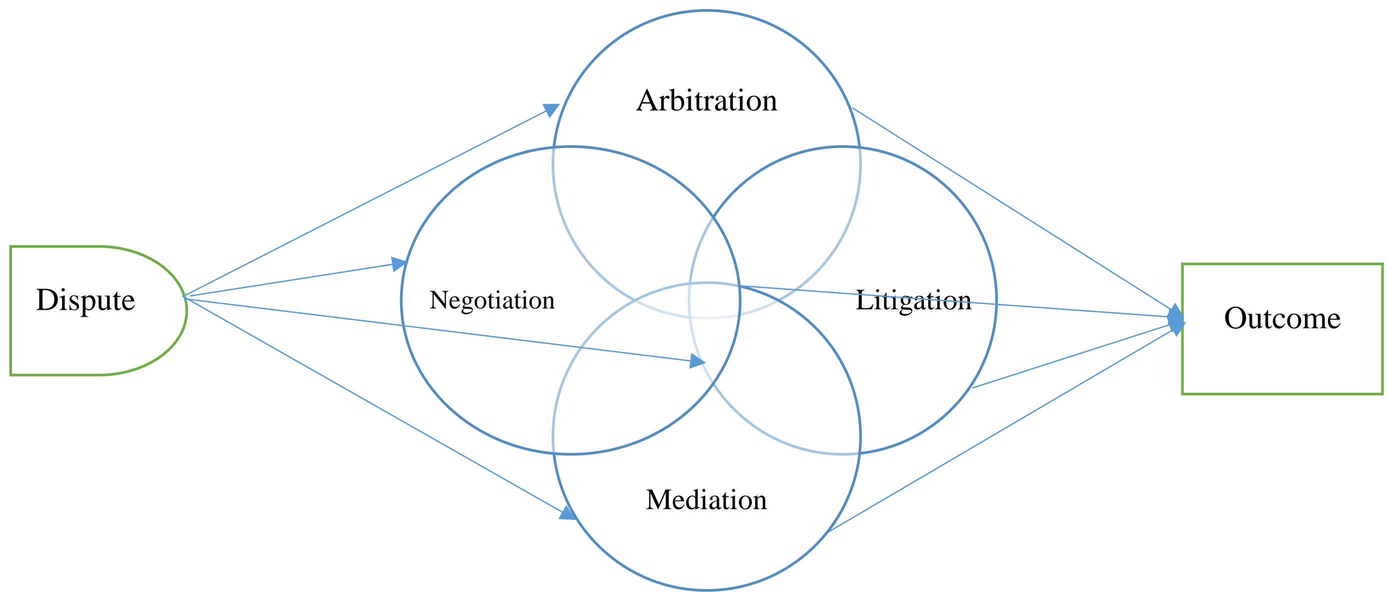

Fig. 1: Conceptual Framework

Source: Author's conceptualization from literature reviewed.

4.8 Conclusion

This chapter presented an up-to-date review of the phenomenon understudy from the perspective of Ghana. It was demonstrated that the Ghanaian's philosophy of dispute resolution is restoration, healing, and harmonious communal living. Many indigenous dispute resolution methods have been designed to restore broken relationships and ensure a harmonious society. Legal systems that are supportive of these ideals exist in Ghana was highlighted in this chapter. In fact, these indigenous dispute resolution methods have been incorporated into many pieces of legislation allowing for their use in resolving different disputes. The conceptual framework captured the phenomenon understudy. In this respect, a disputant selects a dispute resolution method to resolve disputes based on specific considerations. Negotiation, mediation, arbitration, and litigation were discussed. It is the process and the outcome of that process that will be used to determine whether a dispute resolution method is appropriate or alternative.

This chapter highlighted previous works done on dispute, dispute resolution, African dispute resolution, legal framework of dispute resolution in Ghana, alternative and appropriate dispute resolution, and conceptual framework. Chapter five presents the methodology of the study.

CHAPTER FIVE

RESEARCH METHODOLOGY

5.1 Introduction

This study sought answers to three research questions. The first was what *appropriate dispute resolution* meant within the confines of the dispute resolution legal framework in Ghana. Second was, what is the most suitable legal mechanism for determining an appropriate dispute resolution method. Lastly, was whether an analysis of the legal framework for resolving disputes in Ghana revealed any dispute resolution method as appropriate for resolving all disputes in absolute terms.

In order to answer the above questions, interdisciplinary approach where social science methodology is applied in the field of law was used in this study. Research questions one and two were answered using quantitative methods. The third research question was answered using mixed methods research. In this respect, explanatory sequential design was employed where interviews and a questionnaire were used to collect data. Mixed methods research was used to enhance data validation through cross verification to overcome the weaknesses and problems in a single method, and to identify what one method will not observe. The data was collected online via email, telephone and zoom.

The study's delimitations were that it was conducted in only one region of Ghana using 526 respondents. However, this did not affect its results because Accra is a representation of all the ethnic groups and people of Ghana. Again, Accra has the greatest number of District Courts (the largest court and the one, which handles the greatest number of cases), it has the greatest number of lawyers in the country and the highest number of 'other dispute resolution' practitioners. A second delimitation is the limited time and resources available for conducting the study. However, with proper utilisation of the limited resources, some good work was done leading to valid and reliable results.

5.2 Research Design

Research needs a design or a structure to be successful. Research design ensures enough evidence is gathered to answer the research questions.[542] The purpose of a study determines the appropriate research design. Fundamentally, analytical legal research was used to undertake a critical analysis of the various laws constituting the legal framework for dispute resolution in Ghana. This was done with the view to achieving the overall purpose of the study which is to determine the most suitable dispute resolution method in Ghana. Further, the researcher employed an interdisciplinary approach to the study. Interdisciplinary approach is the use of information and methodology outside the scope of law.[543] In this respect, social science research methods were applied in the field of law in this study. This was partly in response to the clarion call by Cotterrell that legal study must be undertaken from the social science perspective and the fact that it is very appropriate to elicit the relevant information for the study. [544] This choice was made considering the numerous criticisms of the principal methodology of legal research known as black-letter approach. Black-letter approach has failed to convey the workings of legal academics accurately and appropriately to the greater academic community.[545] To this end, it was inappropriate to use it in this study.

Modern legal scholars have accepted interdisciplinary approach as an important mix of other fields to that of law for legal knowledge acquisition.[546] All the processes involved in legal research methodology are pertinent in interdisciplinary legal research. Nkansah and Chimbwanda recounted some of these processes as legal claims making, use of legal authorities, and analytical reasoning .[547] The qualitative research methodology approach, which is one of the predominant paradigms in social science research was blended with the quantitative research methodology.

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542 Robert K Yin, *Applications of case study research* (2nd edn, Sage Publications London 2003a) 73.

543 Lydia A Nkansah and Victor Chimbwanda, 'Interdisciplinary approach to legal scholarship: a blend from the qualitative paradigm' [2016] Asian Journal of Legal Education 64.

544 Cotterrell R, 'Subverting Orthodoxy, making law central: a review of sociolegal studies' [2002] Journal of Law and Society 632 – 633.

545 Siems M, 'Legal originality' [2008] Oxford Journal of Legal Studies 147.

546 Nkansah and Chimbwanda (n 429) 63.

547 Nkansah and Chimbwanda (n 429) 66.

Creswell defined qualitative research as methodologically distinct tradition-based inquiry process aimed at exploring to understand a social or human problem. [548]

Quantitative research methodology was used to answer research questions one and two. This was because the researcher wanted to use statistical measures and statistical tests to have the research questions answered.[549] Another rationale was to allow for as many dispute resolution stakeholders to participate in the study. However, mixed methods research was used to answer the third research question. Mixed method research was adopted[550] to enhance data validation through cross verification from more than one source. Consistent with this, Creswell[551] has noted that weaknesses or inherent biases of a method, single observer and studies with a single theory can be overcome by a combination of these theories, methods, having multiple observations and empirical materials. Although mixed methods research is not free from criticisms, this study appreciated the superiority of mixed method over single method.[552] The first reason for deciding to use mixed methods research in this study is that it allowed for triangulation and ensured comprehensiveness and full explanation of the variables and constructs of the research. The second reason is that it allowed for a better understanding of research findings compared to a single method. Thirdly, what was not identified by one method was revealed by another method, thus ensuring consistency in the research.[553] Fourth, the choice of a combined approach is appropriate as previous researchers have supported the approach.[554]

5.3 Data Collection Method

Primary stakeholders in dispute resolution in Ghana provided data for this study. Specifically, lawyers, mediators, arbitrators, negotiators, chiefs, judges, disputants, Christian religious leaders in Ghana were the respondents. Mixed methods research tools were employed in collecting the

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548 John Creswell, *Qualitative inquiry and research design: choosing among five traditions* (Sage Publications California 1998) 23.

549 Romm Norma and Ngulube Patrick 'Mixed methods research' in Mathipa ER and Gumbo MT (eds) *Addressing research challenges: making headway for developing researchers (*Mosala-Masedi Publishers and Booksellers Noordywk 2015) 157.

550 Creswell John and Tashakkori A, 'Differing perspectives on Mixed Methods Research' [2007] Journal of Mixed Methods Research 303.

551 Creswell and Tashakkori (n 436) 303.

552 Denzin N, *The Research Act* (3rd edn, Prentice Hall New Jersey 1989) 12.

553 Creswell and Tashakkori (n 436) 304.

554 Robert K Yin *Case study research: Design and methods* (2nd edn, Sage Publications London 2003b) 67.

data needed for this work. The qualitative method involved data collection using interview of respondents in which interview guide was utilised. These interviews were conducted using telephone, email and zoom. Data was obtained from key informants to explain the quantitative data[555] and to serve as 'illumination' of the research problem.[556]

The study adopted the quantitative methods approach to answer the first two research questions. Creswell and Tashakkori identified three quantitative data collection techniques, which they referred to as experimental, unobtrusive, or documentary and survey measures .[557] All the methods are useful for data collection. However, experimental, and unobtrusive methods was ignored while the survey method was used as it is considered superior in this situation. This study used the survey method for two reasons: (1) considering the huge number of respondents that took part in the study the survey method is superior to the other methods.[558] (2) Survey data collection method has been widely used in social science studies with much success.[559] However, the survey method needs to be verified by the qualitative method for unquestionable results. The questionnaire was placed online, and a link sent to participants via email or WhatsApp to follow and respond to the items online. However, some hardcopies of the questionnaire were given to participants to fill.

Interviews and questionnaires were used for the data collection. The study questionnaire and interview guide for data collection were designed after consulting relevant works. The reasons for doing so are, to: ensure broad understanding of relevant literature on the subject; review earlier questionnaires and interview guides on the subject for enhanced understanding of the various components of a questionnaire; ensure that the instruments to design would meet acceptable standards in the field of study; ensure a deeper understanding of the constructs involved and exact wording in accordance with similar works done in similar context. The researcher collected data from dispute prevention, management, and resolution stakeholders in the Greater Accra Region of Ghana. This included disputants, dispute practitioners, judges, lawyers, elders, chiefs, religious

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555 Yin (n 431) 67.
556 Yin (n 431) 68.
557 Creswell and Tashakkori (n 433) 304.
558 RK Yin (n 431) 76.
559 RK Yin (n 431) 82.

leaders, and opinion leaders. This was to allow for the research questions to be answered satisfactorily from stakeholders' perspective.

5.4 Unit of analysis

Unit of analysis is the most elementary aspect of what is to study or under study.[560] The unit of analysis in this study entailed court judgments, disputants, dispute resolution experts/practitioners, dispute resolution institutions, lawyers, judges, and chiefs. Data was collected by reviewing peer reviewed scholarly articles on the subject matter. This constituted the foundation for the study. Primary data was collected from stakeholders in dispute resolution in the Greater Accra Region of Ghana. Primary data was collected online and face-to-face from dispute resolution stakeholders in Ghana.

5.5 Sampling Technique

Sampling is a representation of an entire population of a study sufficient for answering the research questions and solve the research problem. This must be done with the view to affording every element of the population a fair and equal chance of selection.[561] This could be interpreted to mean giving a voice to all including the marginalized – women, children, race, culture, and people living with disabilities. However, Etikan and others argue that there are nonprobability-sampling techniques that may be used.[562] Etikan and others explained these to be techniques, which do not offer all elements in a population equal chance of selection. These techniques include convenience and purposive sampling. Purposive sampling technique is the intentional selection of a participant of a study based specific criteria. Creswell and Plano[563] explained that the researcher chooses participants who have the requisite information or are well informed about a particular phenomenon. In essence, knowledge, experience, willingness, and ability to

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560 Patrina Patel, 'Introduction to Quantitative Methods' [2009] Empirical Law Seminar 1.

561 Henry T Gary, *Practical sampling* (3rd edn, Sage Publications London 1990) 43.

562 Ilker Etikan, Abubakar M Sulaiman and Alkassim R Sunusi , 'Comparison of Convenience Sampling and Purposive Sampling' [2015] American Journal of Theoretical and Applied Statistics 1 <http://article.sciencepublishinggroup.com/pdf/10.11648.j.ajtas.20160501.11.pdf> accessed 16 March 2019.

563 John Creswell and Vicki Plano, *Designing and Conducting mixed method research* (Thousand Oaks Sage California 2011) 51.

communicate among others are essential considerations for the participants' selection. Respondents for the interviews were selected using purposive sampling technique. This technique assumes that the intent is discovery, understanding, and gaining insight hence the need to choose a sample out of which the appropriate information could be obtained.[564] In this respect, people who had used a dispute resolution method before either as disputants or dispute resolution practitioners participated in this study.

5.6 Population and Sample size

Stakeholders in dispute resolution in Ghana constituted the population of the study. Stakeholder is the one who can affect and who is affected by the achievement of (an organization's) objectives.[565] In the context of this study, a stakeholder is anyone who is affected or who affects dispute resolution irrespective of how this occurs. In this respect, disputants, dispute resolution practitioners or experts, dispute resolution fora and the community constitute the stakeholders. Addition of the foregoing comprised the population of the study. Unfortunately, there is no reliable data for quantification of these stakeholders to determine the exact population in numerical terms.

However, in order to determine the appropriate sample size, criteria is required. These are level of precision, confidence level, and variability level.[566] Precision level, also known as sampling error, is the range where the actual value of the estimated population will fall. Confidence level refers to the rate of precision regarding the true value. The risk is reduced for 95% level of confidence. Degree of variability refers to the attributes of distribution in a population. The more heterogeneous the variables in a population the larger the sample size required to attain the level of precision required.[567] All these three were considered.

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[564] Merriam Sharan, *Qualitative research and case study applications in education* (Jossey-Bass Publishers San Francisco 2000) 83.

[565] Freeman R Edward, *Strategic Management: A stakeholder Approach* (Pitman Boston MA 1984) 34.

[566] George Miaoulis and Michener Dean, *An Introduction to Sampling* (Hunt Publishing Company Dubuque 1976) 64.

[567] Ajay S Singh and MS Masuku, 'Fundamentals of applied research and sampling techniques' [2012] International Journal of Medical and Applied Sciences 128.

The researcher used the most primary dispute resolution stakeholders per the criteria posited by Mitchell and Bradley[568] which considers the power to influence a dispute and its resolution, the legitimacy of relationship with dispute, and urgency of claim on the dispute and its resolution. In this regard disputants, judges in the district courts in Accra, lawyers in Accra, chiefs of the Greater Accra Regional House of Chiefs, Other dispute resolution practitioners, and Christian religious leaders. The lack of adequate and reliable data made it difficult determining the population of dispute resolution stakeholders in Accra. The following was therefore used to estimate the population.

The primary stakeholders were placed in two categories, that is, those for which the population was known and those for which the population was unknown. Six strata were used to determine the population for the study. These were judges, lawyers, religious leaders, traditional leaders, other dispute resolution practitioners, and disputants. The compositions of the known population included Lawyers – 2,800,[569] Religious Leaders – 9,[570] Chiefs 10,[571] Judges 35,[572] Other Dispute Resolution 420.[573] The total of these gave a figure of 3,274, and this constituted the known population. The population of the sixth stratum, that is, disputants was undeterminable.

Accra was preferred as the main location to conduct this study. The reason is that Accra is cosmopolitan and represents all the ethnic groups (all 16 regions) in Ghana. It is indeed a mirror of Ghana. The judges who participated in the study were District Court judges in Accra. The District Court was included because it is the largest court in Ghana[574] and handles the most

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568 Ronald K Mitchell, Agle R Bradley and Donna J Wood, 'Toward a Theory of Stakeholder Identification and Salience: Defining the Principle of Who and What Really Counts' [1997] The Academy of Management Review 863.

569 Ghana Bar Association, 'Members in good standing' (Ghana Bar Association 2020) <https://ghanabar.org/members-in-good-standing/> accessed 6 January 2020.

570 The Council Officers of the Christian Council of Ghana (4 in all), and the Principal Officers of the Ghana Pentecostal and Charismatic Council (5 in all).

571 All Chiefs of the Greater Accra Regional House of Chiefs (some seats were vacant at the time of this study).

572 See page Judicial Service of Ghana Annual Report 2017 – 2018 (Judicial Service of Ghana 2018) 43.

573 See Ghana National Association of ADR Practitioners 'Ghana National Association of ADR Practitioners membership' (Ghana National Association of ADR Practitioners 2020) <gnaapgh.com/membership/all-members> accessed 30 December 2020.

574 The District Court has 192 out of the 379 Courts in Ghana. See the 2017-2018 *Annual Report* of the Judicial Service of Ghana at 43.

cases[575], in fact it has jurisdiction in all the types of disputes of concern to this study. Since there were 35 District Courts in Accra at the time of the study, the total number of judges was taken to be 35.[576] To get the total number of ODR practitioners, the total registered members of the most recognized 'other dispute resolution' professional Association – Ghana National Association of ADR Practitioners was used. This number was 420.[577] This number consisted of Negotiators, Mediators and Arbitrators. On traditional leaders (Chiefs), the total number of the Greater Accra Regional House of Chiefs constituted the population of Chiefs. This number was ten (10) at the time of the study since some of the Paramount Areas did not have representation. The officers of the Christian Council of Ghana and the Ghana Pentecostal and Charismatic Council[578] were used to represent religious leaders. This was used because Christians constituted 71% of Ghana's total population.[579] The sixth strata (group) was disputants. There was no reliable way of determining the population of disputants.

Sample size calculation:

Separate sample sizes were calculated for the two groups (that for the known population and that for the unknown population). This was to ensure accurate representation.

1. Sample size for disputants (unknown population)

Sample representativeness is determined by: (1) sampling procedure; (2) sample size; and 3) response.[580]

Since the population of disputants was unknown, the following formula was used:

$$n = \frac{z^2 \, P \, (1 - P)}{C^2}$$

575 The District Court received 75,529 of the 110,550 cases filed in all the Courts in Ghana between July 2017 to June 2018. See page 75 of the 2017-2018 Annual Report of the Judicial Service of Ghana.

576 Judicial Service of Ghana *Annual Report 2017-2018* (Judicial Service of Ghana Accra 2018) 43.

577 Ghana National Association of ADR Practitioners, 2021.

578 Ghana Pentecostal and Charismatic Council, 'Principal Officers' (Ghana Pentecostal and Charismatic Council 2020) <https://gpccghana.org> accessed 12 April 2020.

579 Ghana Population and Housing Census 2010.

580 See Kanupriya Chaturvedi, 'Sample size determination' (University of Pittsburgh 2015). < https://www.pitt.edu> accessed 4 April 2021.

Where, n = sample size, z = standard normal deviation which is set at 95% confidence level, P = percentage of selecting a choice or response, c = confidence interval.

z = 1.96 (chi-square value at 95% confidence level)

P = proportion of population (taken to be 0.5 since it will provide the maximum sample size)

C = 5%.

Therefore, sample size:

$$n = \frac{z^2 * P(1 - P)}{C^2}$$

$$n = \frac{1.96^2 * 0.5(1 - 0.5)}{0.05^2},$$

$$n = \frac{1.96^2 * 0.5\ (1 - 0.5)}{0.05^2},$$

$$n = \frac{3.84 * 0.5\ (0.5)}{0.0025},$$

$$n = \frac{3.84 * 0.25)}{0.0025},$$

$$n = \frac{0.96}{0.0025},$$

n = **384**

Based on the above, the sample size for disputants was 384.

2. Sample size for known population

The population for five of the strata was 3,274 (Lawyers – 2,800; Judges – 35; Religious Leaders – 9; Chiefs – 10; other dispute resolution practitioners – 420).

Formula:

$$s = \frac{x^2 * NP\,(1-P)}{d^2(N-1) + x^2\,P\,(1-P)},$$

Where, s = sample size, x = chi-square value at 1 degree of freedom at the desired confidence level (1.96), N = population size, P = population proportion, d = degree of accuracy expressed as a proportion

X = 1.96, N = 3,274, P = 0.5, d = 0.05

$$s = \frac{x^2 * NP\,(1-P)}{d^2(N-1) + x^2\,P\,(1-P)},$$

$$s = \frac{1.96^2 * 3{,}274 * 0.5\,(1-0.5)}{0.05^2(3{,}274-1) + 1.96^2\,0.5\,(1-0.5)},$$

$$s = \frac{1.96^2 * 3{,}274 * 0.5\,(0.5)}{0.0025(3{,}273) + 1.96^2 * 0.5\,(0.5)},$$

$$s = \frac{3.84 * 3{,}274 * 0.5\,(0.5)}{0.0025(3{,}273) + 3.84 * 0.5\,(0.5)},$$

$$s = \frac{3.84 * 3{,}274 * 0.25}{0.0025(3{,}273) + 3.84 * 0.25},$$

$$s = \frac{3.84 * 3{,}274 * 0.25}{0.0025(3{,}273) + 0.96},$$

$$s = \frac{3.84 * 3{,}274 * 0.25}{8.18 + 0.96},$$

$$s = \frac{3143.04}{9.14},$$

S = **<u>344</u>**

Therefore, sample size for the known population was **344**.

Table 6: Summary of Population and Sample Size Determination

Number	Participant Group	Population	Sample Size
1.	District Court Judges in Accra	35	3
2.	Lawyers in Accra (GBA members)	2,800	292
3.	ODR Practitioners (GNAAP members)	420	45
4.	Disputants	Unknown	384
5.	Religious Leaders (Ex. of CCG & GPCC)	9	2
6.	Chiefs (Gt. Accra Regional House of Chiefs members)	10	2
TOTAL		**3,274**	**728**

Note: CCG stands for Christian Council of Ghana, GPCC represents Ghana Pentecostal and Charismatic Council and GNAAP stands for Ghana National Association of ADR Practitioners. The sample size for each category was determined using the formula for calculating known population as used above.

5.7 Data collection methods

Primary and secondary data were used. Secondary data refers to information extracted from works of other scholars as contained in peer-reviewed articles, textbooks, cases, and legislation. Dispute resolution laws in Ghana, predominantly the Alternative Dispute Resolution Act 2010 (Act 798) was considered. Relevant legislation on litigation such as High Court (Civil Procedure) Rules,

2004, High Court (Civil Procedure) (Amendment) Rules, 2014, and Criminal Offences Act 1960 were also be examined.[581] Where appropriate, cases adjudicated in court and other dispute resolution were looked at.

Primary data denote information gathered by the researcher from the respondents of interest in a study. Cross sectional research design which is exploratory in nature was used. The purpose is to ensure gathering of data via investigation of different constructs at a time.[582] Data was collected using structured questionnaires (mailed and self-administered) as well as interviews. Structured questionnaires were used as they allowed all respondents to answer the same questions coupled with provision of options to choose from.[583] The interviews were conducted using semi-structured interview schedule done via zoom, face-to-face, and telephone. Data from the interview were used to extract the themes for integration. Questionnaires were placed online and where appropriate emailed to respondents and some hand delivered. A link was shared with participants to follow to respond to the items. Once completed, the researcher automatically received the feedback with the responses.

A 5 variable Likert scale survey questionnaire was the main instrument for gathering quantitative data. This was to accommodate situations where respondents are indifferent about the item. It is also to make the instrument very sensitive to discriminate the behaviours as posited by some scholars.[584] A Likert scale provides an ideal technique for eliciting standardized responses from respondents. This was designed around a range of statements formulated to respond to the research questions.[585] Reliability and validity are cardinal principles in research. Joppe, as cited in Golashani[586] defines reliability as the degree of results consistency over time. The main characteristics of reliability are replicability and repeatability.[587] Three types of reliability have

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[581] The full names are: High Court (Civil Procedure) Rules, 2004 (C.I. 47), High Court (Civil Procedure) (Amendment) Rules, 2014 (C.I. 87), and Criminal Offences Act 1960 (Act 29).

[582] John W Cresswell and Plano Clark Vicki L, *Designing and Conducting mixed method research* (Sage Publications London 2011) 59.

[583] Cresswell and Plano (n 468) 60.

[584] Atindanbila Samuel, *Research Methods and SPSS Analysis for Researchers* (BB Printing Press Accra 1993) 47.

[585] Robert K Yin, *Case study research: Design and methods* (2nd edn, Sage Publications London 2003b) 23.

[586] N Golashani, 'Understanding reliability and validity in qualitative research' [2003] The Qualitative Report 597- 606 <http://www.nova.edu/ssss/QR/QR8-4/golashani.pdf> accessed 7 September 2019.

[587] Michael Tagoe, *A handbook for writing research proposals* (Ghana University Press Accra 2009) 39.

been identified in quantitative research. Kirk and Miller, as cited in Golashani[588] stated these as: (1) the extent of a measurement remaining the same; (2) the stability of a measurement over time; (3) the extent of similarity of measurements within a given period. Validity on the other hand, is defined by Tagoe[589] as the extent to which a measurement instrument measures what it is meant to measure. To ensure validity and reliability, the researcher adapted and adopted tried and tested instruments in the dispute resolution field. Principal among them is the ten-point instrument designed by Cheung et al[590] for dispute resolution system selection.

In this respect, there was adherence to the fundamental procedures for developing a Likert scale. The first was the identification of themes. This was made possible by literature review on the subject matter under review. This consisted of review of similar works done on the phenomenon gathered through academic journals, information from relevant textbooks, decided cases and statutes. The direct correlation between length of questionnaire (number of items) and quality of responses guided the questionnaire adaptation. [591] Measures of internal consistency were used to ensure reliability of the questionnaire. Cronbach's alpha coefficient was used to ensure that all items related to each other and indeed the total instrument. The values computed ought to range between 1 (this denotes perfect internal reliability) and 0 (this denotes no internal reliability at all).[592] Cronbach alpha co-efficient demonstrates the extent to which all the items in the questionnaire measure the same phenomenon or attribute.[593] A value of 0.80 is considered good if the instrument under consideration has a total item of 40 and above.[594] However, fewer items yield smaller reliability coefficients. In these instances, an internal reliability coefficient of 0.70 or a little below that are seen as reliable.[595] On the top layer, a Cronbach alpha coefficient of 0.9 is considered excellent.[596]

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588 Golashani (n 468).

589 Tagoe (n 469) 39.

590 Sai On Cheung, Suen C H Henry and Lam T I Ptrick, 'Fundamentals of alternative dispute resolution processes in construction' [2002] Journal of Construction Engineering and Management 409 – 416.

591 Earl Babbie and Mouton J, 'The practice of social research (10th edn, Oxford University Press Southern Africa Cape Town 2010) 83.

592 Andy Field, *Discovering Statistics Using SPSS* (3rd edn, Sage Publications Limited London 2009) 677.

593 Chris Welman, Kruger F and Mitchell B, *Research methodology* (3rd edn, Oxford University Press Southern Africa Cape Town 2005) 93.

594 Field (n 474).

595 Bryman Alan and Bell Emma, *Business research methods* (Oxford University Press 2015) 94.

596 Field (n 474).

5.8 Location of the Study

The study was carried out in the Greater Accra Region of Ghana. Greater Accra is the capital of Ghana. It has a population of 5,455,692 out of Ghana's total population of 30,832,019.[597] In effect, out of the 16 Regions in Ghana, 17.7% of the entire population live in Greater Accra. It has the most District Courts (the largest Court), largest number of lawyers, the most ADR practitioners, among others. Data was collected from the District Courts of Accra; Lawyers who are members of the Ghana Bar Association (Greater Accra Chapter); ADR Practitioners (Members of the Ghana Association of Certified Mediators and Arbitrators (GHACMA) and Members of the Ghana National Association of ADR Practitioners (GNAAP); Religious Leaders (Christian Council of Ghana and Ghana Charismatic and Pentecostal Council (some Executives); Ashaiman Central ADR; Disputants; and Court-Connected ADR practitioners. The key sites for the research have been illustrated on the map below:

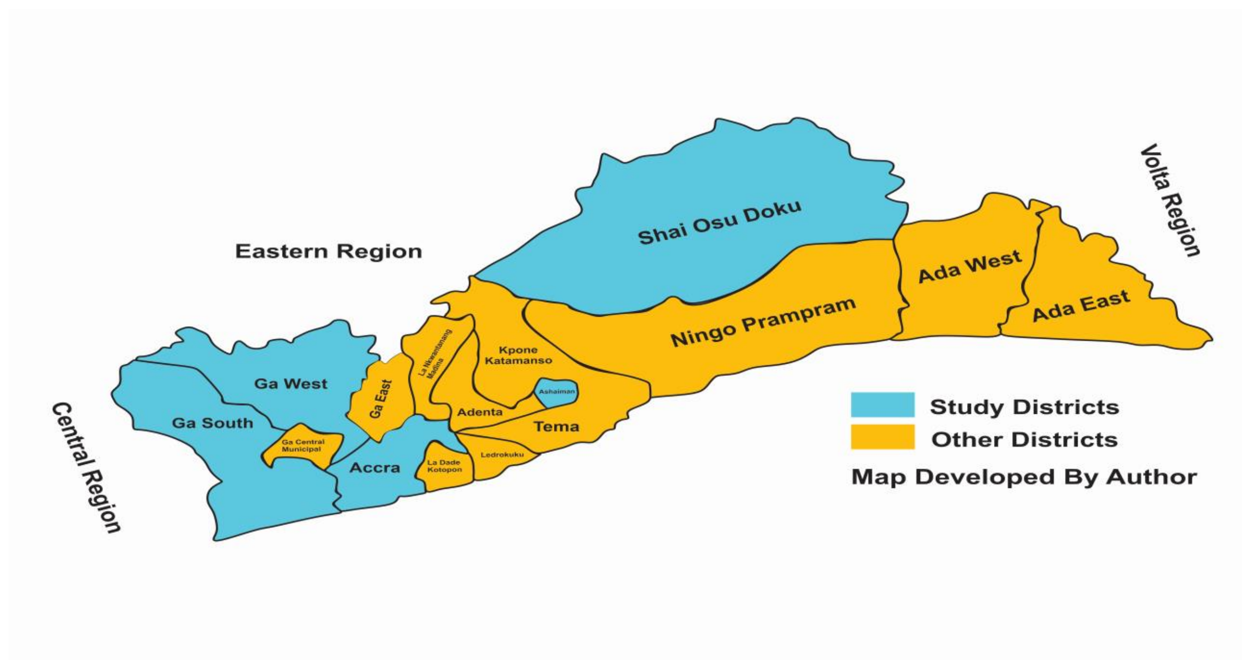

Fig. 2: Key Locations of the study

[597] Ghana Statistical Service, 'Ghana 2021 Population and Housing Census: General Report Volume 3A Population of Regions and Districts' 2021.

5.9 Data analysis

Data analysis is the process of coding the data collected, editing the data, entering data into computer system (software), and interpreting or making meaning of data so collected.[598] Data collected was analysed appropriately to determine the exact findings based on respondents' responses. Qualitative data was analysed by identifying thematic and contents responses. This was done with the help of Atlas.ti. The quantitative data collected was analysed using Statistical Package for the Social Sciences (SPSS) version 24.0. In this regard, graphs, charts, and pie chart were used to illustrate findings for ease of understanding, interpretation, and analysis.

5.10 Ethical Considerations

The study was conducted in strict conformity to UNISA's guidelines on ethical research. Ethical clearance was secured before starting the data collection process. The study was undertaken in a manner that ensured scholarly integrity, excellence and in an ethical manner. Respondents affiliated to specific institutions in the dispute resolution field were sent letters on UNISA letterheads. The purpose of these letters was to introduce the researcher, the study, and its purpose, invite addressees to take part in the study as well as state the reasons for the invitation. In addition, the role of the addressees, the fact that taking part in this study was not compulsory and that one would have to sign a consent form if he/she agreed to participate and would be informed that one was at liberty to withdraw from the study at any time one wishes.

Furthermore, all would-be respondents were notified of any benefits to derive as well as any negative consequences associated with their participation before agreeing to be a part of the study. The researcher took reasonable steps to limit any harmful effects likely to be associated with the study. The researcher was prepared to take responsibility for the consequences of the work on participants. In addition, respondents were assured of confidentiality and non-disclosure of one's identity. The researcher undertook not to plagiarize, falsify or fabricate results of the study. The results were thus a true and accurate representation of respondents' responses. Data collected has been stored securely electronically and in hardcopies (where hardcopies were used) where appropriate for five years. This would allow for re-use of the data collected in the future where

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598 Tagoe (n 469).

necessary. However, further Research Ethics Review and approval would be obtained before use. Respondents were given contact details to access the research findings if they so wish. Respondents had the opportunity to send their comments and suggestions, if they had any.

5.11 Conclusion

The study applied social science methodology in the field of law. The first and second research questions were answered using quantitative methods. However, Mixed Methods Research was used to answer the third research question exhaustively where interviews and a survey were conducted using a quantitative-qualitative sequential design. The data was largely collected online using telephone, email and zoom. Some data was also collected via face-to-face where appropriate. The population of the study was 3,274 with a sample size of 728.[599] These respondents were selected from the District Court judges in Accra, members of the Ghana Bar Association Greater Accra Chapter, other dispute resolution practitioners, Disputants, Religious Leaders, and Chiefs.

Qualitative data was analysed using Atlas.ti by identifying thematic responses as well as contents and report same. The quantitative data collected were analysed using Statistical Package for the Social Sciences (SPSS) version 24.0. Graphs, charts, and pie charts were used to illustrate findings descriptively.

Analysis of the findings of the quantitative phase of the study was done in chapter six (next chapter).

599 Robert V Krejcie and Daryle W Morgan, 'Determining sample size for research activities' [1970] *Educational and Psychological Measurement* 608.

CHAPTER SIX

FINDINGS AND ANALYSIS OF QUANTITATIVE DATA

6.1 Introduction

Presentation and analysis of the findings of the quantitative phase of the study undertaken was done in this chapter. It is the result of the research methodology employed in this respect. The analyses were done with the view to answering the questions posed by the research. Three research questions were pursued by this study. The first was what does *appropriate dispute resolution* mean in the context of the legal framework for resolving disputes in Ghana? Second is what is the most suitable legal mechanism for determining an appropriate dispute resolution method? Lastly, was whether if an analysis is done of the legal framework for resolving disputes in Ghana reveal any dispute resolution method as appropriate for resolving all disputes in absolute terms.

Mixed methods research was employed as demonstrated in chapter four. While quantitative methods were employed to answer research questions one (1) and two (2), qualitative methods were used to answer research question three (3) fully. This was because an explanatory sequential mixed methods was employed. The data collected using both quantitative and qualitative methods were presented, described, analysed, and interpreted systematically in this chapter. Some scholars have sought to distinguish qualitative data analysis from quantitative data analysis. Similarities between the two include but are not limited to evidence-based reasoning, which is used to arrive at an outcome; disclosure of study design; identifying similar aspects or patterns; and diligence at preventing mistakes, inaccurate conclusions and making wrong inferences.[600]

Differences between the two approaches are that while quantitative data analysis is highly standardised, qualitative data analysis is less standardized. Again, any of the two can precede the other where the two are combined in a study for explaining the findings of the other, for example. Whereas quantitative method tests hypothesis by manipulating numbers, qualitative method propounds theories and concepts by blending concepts that are abstract. Lastly, quantitative

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[600] Krueger Larry and Neuman L William, *Social work research methods: qualitative and quantitative approaches: with research navigator* (2nd edn, Pearson/Allyn and Bacon Boston 2006) 434.

method employs statistical relationships in its analysis while qualitative method uses words. Data analysis serves as the breeding ground for data interpretation. The fulcrum of qualitative data analysis is clear thinking by the analyst.[601]

The above views of scholars on the various research methods especially on data analysis and interpretation guided this study. Therefore, this chapter presents, and analyses data obtained using quantitative methods. In this respect, quantitative data analysis of the data collected using a questionnaire is presented. There is a strong connection between the quantitative data and the qualitative data because the interview guide was designed based on the questionnaire used for collecting the quantitative data. The process ended with some recommendations.
Quantitative methods were used to answer research questions one (1) and two (2). The researcher also began answering the third (3) research question with quantitative methods but used qualitative methods to answer it fully.

6.2 Findings of the quantitative phase

A cross-sectional survey was conducted. This was done with the view to eliciting as many responses as possible to respond to the research questions of the study. The findings from the study as it relates to practitioners on one hand, disputants on the other hand and a combination of same have been presented below:

6.2.1 Respondents' demographics

The first aspect of the data collected was that on the demographics of respondents. The study captured this separately for practitioners, disputants and the two stakeholders put together.

PRACTITIONERS

These included lawyers, judges, negotiators, mediators, arbitrators, religious leaders and chiefs.

Gender

[601] See the work of Robson C Real World Research (Blackwell Publishing Malden 2011) 1 – 608.

Table 7: Gender of respondents (practitioners)

Gender		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	114	50.9	50.9	50.9
	Female	110	49.1	49.1	100.0
	Total	224	100.0	100.0	

It can be seen from the table above that Males constitute 50.9% (114) of the total respondents whilst Females constitute 49.1% (110).

Disputants

Table 8: Gender of respondents (disputants)

Gender		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	175	57.9	57.9	57.9
	Female	127	42.1	42.1	100.0
	Total	302	100.0	100.0	

Majority of the respondents were Males (57.9%, that is, 175 respondents). Females were in the minority (42.1%, that is, 127 respondents).

Combined data (Disputants and Practitioners Gender)

Table 9: Gender of participants (practitioners and disputants)

Gender		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Male	289	54.9	54.9	54.9
	Female	237	45.1	45.1	100.0
	Total	526	100.0	100.0	

Out of the total respondents of 526, majority were Males (54.9%, that is, 289 respondents) with Females been in the minority (45.1%, that is, 237 respondents).

PRACTITIONERS

Age

Table 10: Age of respondents (Practitioners)

Age range		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	29 – 39	24	10.7	10.7	10.7
	40 – 50	84	37.5	37.5	48.2
	51 – 61	79	35.3	35.3	83.5
	61 and above	37	16.5	16.5	100.0
	Total	224	100.0	100.0	

The table above indicates that a greater number of the respondents fell within the age range of 40 – 50 (37.5%) years. This was closely followed by 51 – 61 years (35.3%); 61 years and above (16.5%) and 29 – 39 age range (10.7%).

DISPUTANTS

Age

Table 11: Age of respondents (disputants)

Age range		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	29 – 39	30	9.9	9.9	9.9
	40 – 50	97	32.1	32.1	42.1
	51 – 61	112	37.1	37.1	79.1
	61 and above	63	20.9	20.9	100.0
	Total	302	100.0	100.0	

Majority of disputants' stakeholder group respondents were between the age range of 51 to 61 years (37.1%, that is, 112 respondents). This was followed by 40 – 50 age group (32.1%, that is,

97 respondents); 61 years and above (20.9%, that is, 63 respondents); and 29 – 39 age range (9.9%, that is, 30 respondents).

Combined data on age of respondents (Disputants and Practitioners)

Table 12: Age of respondents (practitioners and disputants)

Age range		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	29 – 39	54	10.3	10.3	10.3
	40 – 50	181	34.4	34.4	44.7
	51 – 61	191	36.3	36.3	81.0
	61 and above	100	19.0	19.0	100.0
	Total	302	100.0	100.0	

Majority of respondents fell within the age range of 51 and 61 (36.3%). This was followed by 40 and 50 age range (34.4%); 61 and above (19.0%, that is, 100); and 29 – 39 age range (10.3%, that is, 54 respondents).

PRACTITIONERS

Table 13: Profession of respondents (practitioners)

Stakeholder Group		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Judge	2	.9	.9	.9
	ADR Practitioner	29	12.9	12.9	13.8
	Lawyer	189	84.4	84.4	98.2
	Teacher	1	.4	.4	98.7
	Religious Leader	2	.9	.9	99.6
	Businessman/woman	1	.4	.4	100.0
	Total	224	100.0	100.0	

Respondents consisted of individuals from varied professional backgrounds. A greater number of respondents were Lawyers (189 = 84.4%), followed by ADR Practitioners (29 = 12.9%), Judges

and Religious Leaders (2 each, that is 0.9% each); and a Teacher and Businessman/woman (1 each, that is, 0.4% each).

DISPUTANTS

Table 14: Profession of respondents (disputants)

Profession		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Accountant	17	5.6	5.6	5.6
	Administrator	75	24.8	24.8	30.5
	Businessman/woman	109	36.1	36.1	66.6
	Teacher	51	16.9	16.9	83.4
	Medical Doctor	3	1.0	1.0	84.4
	Other	47	15.6	15.6	100.0
	Total	302	100.0	100.0	

Most of the respondents were Businessmen/women (36.1%, that is, 109 respondents). This was followed by Administrators (24.8%, that is, 75 respondents); teachers (16.9%, that is, 51 respondents); Others (15.6%, that is, 47 respondents); Accountants (5.6%, that is, 17 respondents); and Medical Doctor (1.0%, that is 3 respondents).

Combined data on profession of respondents (Disputants and Practitioners)

Table 15: Profession of respondents (practitioners and disputants)

Stakeholder Group	**Practitioners**		**Disputants**		**Total**	
	Frequency	**Percent**	**Frequency**	**Percent**	**Frequency**	**Percent**
Judge	2	0.9	-	-	2	0.38
ADR Practitioner	29	12.9	-	-	29	5.51
Lawyer	189	84.4	-	-	189	35.93
Teacher	1	0.4	51	16.9	52	9.89
Religious Leader	2	0.9			2	0.38
Businessman/woman	1	0.4	109	36.1	110	20.91

Accountant	-	-	17	5.6	17	3.23
Administrator	-	-	75	24.8	75	14.26
Medical Doctor	-	-	3	1.0	3	0.57
Other	-	-	47	15.6	47	8.94
TOTAL	224	-	302		526	100%

PRACTITIONERS

Dispute Stakeholder Group

Table 16: Dispute stakeholder group (practitioners)

Stakeholder Group		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Mediator	12	5.4	5.4	5.4
	Negotiator	4	1.8	1.8	7.1
	Arbitrator	13	5.8	5.8	12.9
	Judge	2	.9	.9	13.8
	Lawyer	189	84.4	84.4	98.2
	Chief	2	.9	.9	99.1
	Religious Leader	2	.9	.9	100.0
	Total	224	100.0	100.0	

Seven primary dispute resolution stakeholder groups participated in this study. Lawyers constitute the largest stakeholder group (189 = 84.4%). This was followed by Arbitrators (13 = 5.8%); Mediators (12 = 5.4%); Negotiators (4 = 1.8%); Judges, Chiefs and Religious Leaders (2 = 0.9% each).

DISPUTANTS

Dispute Stakeholder Group

Table 17: Dispute stakeholder group (disputants)

	Frequency	Percent	Valid Percent	Cumulative Percent

Valid	Disputant	302	100.0	100.0	100.0

All the dispute resolution stakeholders captured in the table above were disputants (302 respondents).

Combined data on stakeholder groups (Disputants and Practitioners)

Table 18: Dispute stakeholder group (practitioners and disputants)

Stakeholder Group		Frequency	Valid Percent	Cumulative Percent
Valid	Mediator	12	2.28	2.28
	Negotiator	4	0.76	3.04
	Arbitrator	13	2.47	5.51
	Judge	2	0.38	5.89
	Lawyer	189	35.93	41.82
	Chief	2	0.38	42.20
	Religious Leader	2	0.38	42.58
	Disputant	302	57.41	100.00
	Total	526	100.0	

Majority of respondents were disputants (57.41%, that is, 302 respondents). This was followed by Lawyers (35.93%, that is, 189 respondents); Arbitrators (2.47%, that is 13 respondents); Mediators (2.28%, that is, 12 respondents); Negotiators (0.76%, that is, 4 respondents; and Judges, Chiefs, and Religious Leaders (0.38%, that is, 2 respondents each).

PRACTITIONERS

Stakeholder Duration

Table 19: Length of time in dispute resolution (practitioners)

Period		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0 - 5 years	29	12.9	12.9	12.9
	5.1 - 10 years	50	22.3	22.3	35.3

	10.1 - 15 years	62	27.7	27.7	62.9
	15.1 - 20 years	48	21.4	21.4	84.4
	20.1 years and above	35	15.6	15.6	100.0
	Total	224	100.0	100.0	

The table above indicates that the highest stakeholder group that participated in the study were those who have been dispute resolution stakeholders between 10.1 to 15 years (62 = 27.7%). This was followed by those between 5.1 to 10 years (50 = 22.3%); 15.1 – 20 years (48 = 21.4%); 20.1 years and above (35 = 15.6%).

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Stakeholder Duration

Table 20: Length of time in dispute resolution (disputants)

Duration		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	0 - 5 years	25	8.3	8.3	8.3
	5.1 - 10 years	67	22.2	22.2	30.5
	10.1 - 15 years	97	32.1	32.1	62.6
	15.1 - 20 years	73	24.2	24.2	86.8
	20.1 years and above	40	13.2	13.2	100.0
	Total	302	100.0	100.0	

The study revealed that most disputants have been dispute resolution stakeholders for 10.1 to 15 years (32.1%, that is, 97 respondents). This was followed by 15.1 to 20 years (24.2%, that is 73 respondents); 5.1 – 10 years (22.2%, that is 67 respondents); 20.1 years and above (13.2%, that is, 40 respondents) and 0 – 5 years (8.3%, that is, 25 respondents).

Combine data for disputants and practitioners

Table 21: Length of time in dispute resolution (practitioners and disputants)

Age range		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Percent
Valid	0 - 5 years	25	29	54	10.27
	5.1 - 10 years	67	50	117	22.24
	10.1 - 15 years	97	62	159	30.23
	15.1 - 20 years	73	48	121	23.00
	20.1 years and above	40	35	75	14.26
	Total	302	224	526	100.00

DISPUTANTS

Level of Education

Table 22: Respondents' highest level of education (practitioners)

Educational Level		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	PhD	2	.9	.9	.9
	Master's	55	24.6	24.6	25.4
	First Degree	81	36.2	36.2	61.6
	HND	61	27.2	27.2	88.8
	Diploma	25	11.2	11.2	100.0
	Total	224	100.0	100.0	

The highest level of education of practitioners was First Degree (81 respondents, that is, 36.2%). This was followed by HND (61 respondents, that is, 27.2%), Master's Degree (55 respondents,

which represented 24.6%), Diploma (25 respondents, which represented 11.2%). It was only 2 respondents (0.9%) who had PhD's.

Table 23: Respondents' highest level of education (disputants)

Qualification		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	PhD	2	.7	.7	.7
	Master's	24	7.9	7.9	8.6
	First Degree	75	24.8	24.8	33.4
	HND	77	25.5	25.5	58.9
	Diploma	69	22.8	22.8	81.8
	SSCE/WASSCE	50	16.6	16.6	98.3
	BECE	5	1.7	1.7	100.0
	Total	302	100.0	100.0	

HND was the highest qualification of disputants (77 respondents, which was 25.5%). This was followed by First Degree (75 respondents that is, 24.8%), Diploma (69, that is, 22.8%), SSCE/WASSCE (50 respondents, which represented 16.6%); Master's degree (7.9%, that is, 24 respondents); BECE (1.7%, that is, 5 respondents); and PhD (0.7%, that is, 2 respondents).

Combined data on highest educational qualification of respondents (Practitioners & Disputants)

Table 24: Respondents' highest level of Education (practitioners and disputants)

Qualification		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Cumulative Percent
Valid	PhD	2	2	4	0.76
	Master's	24	55	79	15.02
	First Degree	75	81	156	29.66
	HND	77	61	138	26.24
	Diploma	69	25	94	17.87

	SSCE/WA SSCE	50		50	9.51
	BECE	5		5	0.95
	Total	302	224	526	100

First degree was the highest educational qualification of most respondents (29.66%, specifically 156 respondents). This was followed by HND (26.24%, specifically 138 respondents); Diploma (17.87%, specifically 94 respondents); Master's degree (15.02%, specifically 79 respondents); SSCE/WASSCE (9.51%, specifically 50 respondents); BECE (0.95%, specifically 5 respondents); and PhD (0.76%, specifically 4).

PRACTITIONERS

Disputant Personality Type

Table 25: Disputant personality type (practitioners)

Personality type		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Melancholy	18	8.0	8.0	8.0
	Choleric	55	24.6	24.6	32.6
	Sanguine	57	25.4	25.4	58.0
	Supine	32	14.3	14.3	72.3
	Phlegmatic	38	17.0	17.0	89.3
	Unaware	24	10.7	10.7	100.0
	Total	224	100.0	100.0	

It was discovered that 25.4% of disputants were Sanguine by personality type. This was followed by Choleric (24.6% = 55 respondents); Phlegmatic (17.0% = 38 respondents); Supine (14.3% = 32); Unaware (10.7% = 24); and Melancholy (8.0 = 18 respondents).

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Table 26: Disputant personality type (disputants)

Personality type		Frequency (Disputants)	Frequency (Practitioners)	Valid Percent	Cumulative Percent
	Melancholy	28	18	9.3	9.3
	Choleric	82	55	27.2	36.4
	Sanguine	82	57	27.2	63.6
Valid	Supine	56	32	18.5	82.1
	Phlegmatic	41	38	13.6	95.7
	Unaware	13	24	4.3	100.0
	Total	302	224	100.0	

The data show that majority of disputants were either choleric or sanguine (27.2%, specifically 82 respondents for each). These were followed by supine (18.5%, specifically 56 respondents); phlegmatic (13.6%, specifically 41 respondents); melancholy (9.3%, that is, 28 respondents).

Combined data on personality of respondents (Practitioners & Disputants)

Table 27: Disputant personality type (practitioners and disputants)

Personality type		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Cumulative Percent
	Melancholy	28	18	46	8.75
	Choleric	82	82	137	26.05
	Sanguine	82	82	139	26.43
Valid	Supine	56	56	88	16.73
	Phlegmatic	41	41	79	15.02
	Unaware	13	13	37	7.03
	Total	302	302	526	100.00

Combined data from the two sets of respondents indicates that most disputants had sanguine personality type (26.43%, specifically 139 respondents). This was followed by choleric (26.05%, specifically 137 respondents); supine (16.73%, specifically 88 respondents); phlegmatic (15.02%, specifically 79 respondents); melancholy (8.75%, specifically 46 respondents); and unaware (7.03%, specifically 37 respondents).

PRACTITIONERS

Type of dispute

Table 28: Type of dispute (practitioners)

	Dispute Type	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Contractual dispute	59	26.3	26.3	26.3
	Marital dispute	44	19.6	19.6	46.0
	Land dispute	51	22.8	22.8	68.8
	Labour dispute	48	21.4	21.4	90.2
	Other dispute	22	9.8	9.8	100.0
	Total	224	100.0	100.0	

The dispute respondents have been involved in the most in the past five years has been contractual dispute (59 respondents = 26.3% of respondents). This was followed by Land disputes (51 respondents = 22.8% of respondents); Labour disputes (48 respondents = 21.4% of respondents); Marital disputes (44 respondents = 19.6% of respondents); and other dispute (22 respondents = 9.8% of respondents).

DISPUTANTS

Type of dispute

Table 29: Type of dispute (disputants)

Type of dispute		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Contractual dispute	82	27.2	27.2	27.2
	Marital dispute	100	33.1	33.1	60.3
	Land dispute	95	31.5	31.5	91.7
	Labour dispute	25	8.3	8.3	100.0
	Total	302	100.0	100.0	

Marital dispute was the commonest dispute response have had in the last five years (33.1%, that is 100 respondents). This was followed by land dispute (31.5%, that is, 95 respondents); contractual dispute (27.2%, that is, 82 respondents); and labour disputes (8.3%, that is, 25 respondents).

Combined data on type of dispute involved in by respondents (Practitioners & Disputants) in the last five years

Type of dispute

Table 30: Type of dispute (practitioners and disputants)

Dispute Type		Frequency (Practitioner)	Frequency (Disputants)	Total Frequency (Practitioners & Disputants)	Cumulative Percent
Valid	Contractual dispute	59	82	141	26.81
	Marital dispute	44	100	144	27.38
	Land dispute	51	95	146	27.76
	Labour dispute	48	25	73	13.88
	Other dispute	22		22	4.18
	Total	224	302	526	100.0

A combination of the data obtained from the two sets of respondents indicates that land dispute was the dominant one (27.76%, that is, 146 respondents). This was followed by marital dispute (27.38%, that is, 144 respondents); contractual dispute (26.81%, that is, 141 respondents); labour dispute (13.88%, specifically 73 respondents) and; other dispute (4.18%, specifically 22 respondents).

PRACTITIONERS

Emotional Issue Underlying Conflict

Table 31: Emotional issue underlying the dispute (practitioners)

Emotion issue		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Anger	11	4.9	4.9	4.9

	Shame	60	26.8	26.8	31.7
	Guilt	74	33.0	33.0	64.7
	Jealousy	49	21.9	21.9	86.6
	Fear	17	7.6	7.6	94.2
	Other	13	5.8	5.8	100.0
	Total	224	100.0	100.0	

From the table above, 33% (74 respondents) of respondents indicated that guilt was an underlying emotional issue of the dispute. This was followed by shame (26.8% = 60 respondents); jealousy (21.9% = 49 respondents); fear (7.6% = 17 respondents); other emotional issue (5.8 = 13 respondents); and anger (4.9% = 11 respondents).

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Table 32: Emotional issue underlying the dispute (disputants)

Emotional issue		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Anger	17	5.6	5.6	5.6
	Shame	87	28.8	28.8	34.4
	Guilt	106	35.1	35.1	69.5
	Jealousy	72	23.8	23.8	93.4
	Fear	20	6.6	6.6	100.0
	Total	302	100.0	100.0	

It could be seen that guilt was identified as the main underlying emotional issue of dispute identified by respondents (35.1%, specifically 106 respondents). This was followed by shame (28.8%, specifically 87 respondents); jealousy (23.8%, 72 respondents); fear (6.6%, specifically 20 respondents); and anger (5.6%, specifically 17 respondents).

Combined data on emotional issue underlying dispute (Practitioners & Disputants)

Table 33: Emotional issue underlying the dispute (practitioners and disputants)

Emotion issue		Frequency (Practitioners)	Frequency (Disputants)	Total Frequency	Percent
Valid	Anger	11	17	28	5.32
	Shame	60	87	147	27.95
	Guilt	74	106	180	34.22
	Jealousy	49	72	121	23.00
	Fear	17	20	37	7.03
	Other	13		13	2.47
	Total	224	100.0	526	100

It could be seen from the combined data above that the commonest underlying emotional issue of the selected dispute was guilt (34.22%, that is, 180 respondents). This was followed by shame (27.95%, that is, 147 respondents); jealousy (23%, that
Is, 121 respondents); fear (7.03%, that is, 37 respondents); anger (5.32%, that is, 28 respondents) and other (2.47%, that is, 13 respondents).

PRACTITIONERS

Differences in beliefs

Table 34: Did differences in beliefs underly the dispute? (practitioners)

Level of agreement or disagreement		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	38	17.0	17.0	17.0
	Disagree	80	35.7	35.7	52.7
	Neither disagree nor Agree	66	29.5	29.5	82.1
	Agree	35	15.6	15.6	97.8
	Strongly Agree	5	2.2	2.2	100.0
	Total	224	100.0	100.0	

52% (118 respondents) of respondents were of the view that differences in beliefs were not at the root of their dispute. However, 17.8% (40 respondents) agreed that it was at the root of their dispute.

DISPUTANTS
Differences in disputes

Table 35: Did differences in beliefs underly the dispute? (disputants)

Level of agreement or disagreement		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	57	18.9	18.9	18.9
	Disagree	115	38.1	38.1	57.0
	Neither disagree nor Agree	87	28.8	28.8	85.8
	Agree	38	12.6	12.6	98.3
	Strongly Agree	5	1.7	1.7	100.0
	Total	302	100.0	100.0	

The table above indicates that most differences in beliefs were not the underlying factor of disputants' disputes (172 respondents, that is by adding disagree figure (115 to that of strongly disagree (57)). This figure (172) exceeded that of 43 (those who agreed to the statement).

Combined data on differences in beliefs underlying dispute (Practitioners & Disputants)

Table 36: Did differences in beliefs underly the dispute? (practitioners and disputants)

Level of agreement or disagreement		Frequency (Practitioners)	Frequency (Disputants)	Total Frequency (Practitioners & Disputants)	Percent
Valid	Strongly Disagree	38	57	95	18.06
	Disagree	80	115	195	37.07
	Neither disagree nor Agree	66	87	153	29.09
	Agree	35	38	73	13.88

Strongly Agree	5	5	10	1.90
Total	224	302	526	100

It can be seen from the table above that respondents were of the view that beliefs did not constitute an underlying factor of their dispute (55.13%, that is, 290 where the figures for strongly disagree and disagree are added).

PRACTITIONERS

Differences in values

Table 37: Did differences in values underly the dispute? (practitioners)

Level of agreement or disagreement		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	23	10.3	10.3	10.3
	Disagree	27	12.1	12.1	22.3
	Neither Disagree nor Agree	24	10.7	10.7	33.0
	Agree	81	36.2	36.2	69.2
	Strongly Agree	69	30.8	30.8	100.0
	Total	224	100.0	100.0	

67% (150) of the respondents agreed that differences in values were at the root of their disputes. While 10.7% (24 respondents) of the respondents neither agreed nor disagree, 22.4% (50 respondents) of the respondents disagreed with the statement.

DISPUTANTS

Table 38: Did differences in values underly the dispute? (disputants)

Level of agreement or disagreement		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Strongly Disagree	25	8.3	8.3	8.3
	Disagree	36	11.9	11.9	20.2
	Neither Disagree nor Agree	53	17.5	17.5	37.7

	Agree	107	35.4	35.4	73.2
	Strongly Agree	81	26.8	26.8	100.0
	Total	302	100.0	100.0	

Most of the disputants agreed that differences in values was the underlying factor of their disputes (62.25%, that is, 188 respondents if those who agreed and those who strongly agreed are added).

Combined data on differences in values underlying dispute (Practitioners & Disputants)

Table 39: Did differences in values underly the dispute? (practitioners and disputants)

Level of agreement or disagreement		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Percent
Valid	Strongly Disagree	23	25	48	9.13
	Disagree	27	36	63	11.98
	Neither Disagree nor Agree	24	53	77	14.64
	Agree	81	107	188	35.74
	Strongly Agree	69	81	150	28.52
	Total	224	100.0	526	100.0

It can be seen from the table above that values underlied the disputes identified by disputants. This can be seen in 64.26% of respondents agreeing to the statement (64.26%, that is, 338 respondents).

PRACTITIONERS

Stage of dispute

Table 40: Stage of dispute (practitioners)

Dispute Stage	Frequency	Percent	Valid Percent	Cumulative Percent

Valid	Discomfort stage	20	8.9	8.9	8.9
	Incident stage	55	24.6	24.6	33.5
	Misunderstanding stage	58	25.9	25.9	59.4
	Tension stage	62	27.7	27.7	87.1
	Crisis stage	29	12.9	12.9	100.0
	Total	224	100.0	100.0	

Most of the disputes were in the tension stage (27.7% = 62 respondents). This was followed by those in the misunderstanding stage (25.9% = 58 respondents); incident stage (24.6% = 55 respondents); crisis stage (12.9% = 29 respondents); and discomfort stage (8.9% = 20 respondents).

DISPUTANTS

Table 41: Stage of dispute (disputants)

Dispute stage		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Discomfort stage	32	10.6	10.6	10.6
	Incident stage	80	26.5	26.5	37.1
	Misunderstanding stage	89	29.5	29.5	66.6
	Tension stage	70	23.2	23.2	89.7
	Crisis stage	31	10.3	10.3	100.0
	Total	302	100.0	100.0	

Most of the respondents had their dispute at the misunderstanding stage (29.5, that is, 89 respondents) before seeking a resolution.

Combined data on stage of dispute (Practitioners & Disputants)

Table 42: Stage of dispute (practitioners and disputants)

Stage of dispute	Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Percent

Valid	Discomfort stage	32	20	52	9.89
	Incident stage	80	55	135	25.66
	Misunderstanding stage	89	58	147	27.95
	Tension stage	70	62	132	25.10
	Crisis stage	31	29	60	11.40
	Total	302	224	526	100.00

A summary of information from respondents indicates that most of their disputes were in the misunderstanding stage (27.95%, that is, 147 respondents). This was followed by incident stage (25.66%, that is, 135 students); tension stage (25.10%, that is, 132 respondents); crisis stage (11.40%, that is, 60 respondents).

PRACTITIONERS

Motivation for getting involved in a resolution

Table 43: Motivation for getting involved in seeking resolution (practitioners)

Motivation		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Financial Benefit	74	33.0	33.0	33.0
	Emotional Benefit	31	13.8	13.8	46.9
	Relational Benefit	40	17.9	17.9	64.7
	Reputational Benefit	66	29.5	29.5	94.2
	Other Benefits	13	5.8	5.8	100.0
	Total	224	100.0	100.0	

Financial benefit was the main motivation for getting involved in seeking a resolution (33% = 74 respondents). This was followed by reputational benefit (29.5% = 66 respondents); relational benefit (17.9% = 40 respondents); emotional benefit (13.8% = 31 respondents); and Other benefits (5.8% = 13 respondents).

DISPUTANTS

Table 44: Motivation for seeking resolution (disputants)

Motivation		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Financial Toll	138	45.7	45.7	45.7
	Emotional Toll	27	8.9	8.9	54.6
	Relational Toll	44	14.6	14.6	69.2
	Reputational Toll	93	30.8	30.8	100.0
	Total	302	100.0	100.0	

It was discovered (per the table above) that Financial Toll was the main motivation for disputants' quest to seek a resolution of their disputes (45.7%, that is 138 respondents). This was followed by reputational toll (30.8%, that is, 93 respondents); relational toll (14.6%, that is, 44 respondents); and emotional toll (8.9%, that is, 27 respondents).

PRACTITIONERS

Financial Benefit

Table 45: Financial benefit is the motivation for resolution (practitioners)

Amount		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Below 2,500	6	2.7	2.7	2.7
	2,500 - 5000	38	17.0	17.0	19.6
	5,000 - 7,500	72	32.1	32.1	51.8
	7,500 - 10,000	70	31.3	31.3	83.0
	10,000 and above	38	17.0	17.0	100.0
	Total	224	100.0	100.0	

Respondents who indicated that financial benefit was their motivation for getting involved in seeking a resolution were further asked to indicate the amount involved. The responses indicated that majority of respondents expected it to fall within the range of GH¢ 5,000.00 – GH¢ 7,500.00 (32.1%, that is, 72 respondents). This was followed by GH¢7,500.00 – GH¢ 10,000.00 (31.3%,

that is, 70 respondents); GH¢2,500.00 – GH¢5,000.00; and GH¢10,000 and above (17%, that is, 38 respondents each); and amount below GH¢2,500.00 (2.7%, that is, 6 respondents).

Combined results

It is amply clear from the data above that, while financial benefit was the main motivation for getting involved in seeking a resolution (33% = 74 respondents), Financial Toll was the main motivation for disputants' quest to seek a resolution of their disputes (45.7%, that is 138 respondents).

DISPUTANTS

Financial Toll

Table 46: Financial Toll is the motivation for resolution (disputants)

Financial toll		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Below 2,500	14	4.6	4.6	4.6
	2,500 – 5000	53	17.5	17.5	22.2
	5,000 - 7,500	92	30.5	30.5	52.6
	7,500 - 10,000	94	31.1	31.1	83.8
	10,000 and above	49	16.2	16.2	100.0
	Total	302	100.0	100.0	

The study revealed that disputants were losing GH¢7,500.00 – GH¢10,000.00 (that is, 31.1% of the respondents) financially leading to a quest for a resolution for their disputes.

PRACTITIONERS

Practitioner Motivation

Table 47: Practitioner motivation for getting involved (practitioners)

Motion	Frequency	Percent	Valid Percent	Cumulative Percent

Valid	Resolution	72	32.1	32.1	32.1
	Justice	69	30.8	30.8	62.9
	Peace	52	23.2	23.2	86.2
	Precedent	31	13.8	13.8	100.0
	Total	224	100.0	100.0	

The main motivation for practitioner involvement in dispute resolution is resolution (32.1%, that is, 72 respondents). This was followed by justice (30.8%, that is 69 respondents); peace (23.2%, that is, 52 respondents); and precedent (13.8%, that is, 31 respondents).

DISPUTANTS

Table 48: Disputant motivation for seeking a resolution

Motivation		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Resolution	82	27.2	27.2	27.2
	Justice	103	34.1	34.1	61.3
	Peace	69	22.8	22.8	84.1
	Precedent	48	15.9	15.9	100.0
	Total	302	100.0	100.0	

In the view of disputants, justice was the main reason for seeking a resolution (34.1%, that is, 103 respondents), disputants wanted justice. This was followed by resolution (27.2%, that is, 82 respondents); peace (22.8%, that is, 69 respondents); and precedent (15.9%, that is, 48 respondents).

Combined data on motivation for seeking a resolution

Table 49: Disputant motivation for seeking a resolution (participants and disputants)

Motivation		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Percent
Valid	Resolution	82	72	154	29.28
	Justice	103	69	172	32.70
	Peace	69	52	121	23.00
	Precedent	48	31	79	15.02
	Total	302	224	526	100

The table above indicates that overall, justice is the major motivation for seeking a resolution (32.70%, that is, 172 respondents). This was followed by resolution (29.28%, that is, 154 respondents); peace (23%, that is, 121 respondents); and precedent (15.02%, that is, 79 respondents).

PRACTITIONERS

Dispute Setting

Table 50: Setting in which dispute occurred (Practitioners)

Setting		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Workplace	70	31.3	31.3	31.3
	Home	56	25.0	25.0	56.3
	Religious place	24	10.7	10.7	67.0
	Other place	74	33.0	33.0	100.0
	Total	224	100.0	100.0	

Majority of respondents had their dispute in an 'other place' (33%, that is, 74 respondents). This was followed by the workplace (31.3%, that is, 70 respondents); the home (25%, that is, 56 respondents); and religious place (10.7%, that is, 24 respondents).

DISPUTANTS

Dispute Setting

Table 51: Setting in which dispute occurred (Disputants)

Dispute setting		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Workplace	124	41.1	41.1	41.1
	Home	69	22.8	22.8	63.9
	Religious place	54	17.9	17.9	81.8
	Other place	55	18.2	18.2	100.0
	Total	302	100.0	100.0	

Majority of disputes occurred at the workplace (41.1%, specifically, 124 respondents). This was followed by the home (22.8%, specifically, 69 respondents); other place (18.2%, that is, 55 respondents); and religious place (17.9%, that is, 54 respondents).

Combined data on setting of dispute (Practitioners & Disputants)

Dispute Setting

Table 52: Setting in which dispute occurred (practitioners and disputants)

Dispute setting		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Percent
Valid	Workplace	124	70	194	36.88
	Home	69	56	125	23.76
	Religious place	54	24	78	14.83
	Other place	55	74	129	24.52
	Total	302	224	526	100

Combined data from respondents indicate that majority of respondents had their dispute in the workplace (36.88%, specifically, 194 respondents). This was followed by 'other place' (24.52%, specifically, 129 respondents); home (23.76%, specifically, 125 respondents); and religious place (14.83%, specifically, 78 respondents).

PRACTITIONERS

Choice of Dispute Resolution Method Used

Table 53: Dispute Resolution Method used (practitioners)

Resolution Method		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Negotiation	4	1.8	1.8	1.8
	Mediation	72	32.1	32.1	33.9
	Arbitration	76	33.9	33.9	67.9
	Litigation	72	32.1	32.1	100.0
	Total	224	100.0	100.0	

The study revealed that most respondents used Arbitration to resolve their disputes (33.9%, that is, 76 respondents). This was followed by Mediation and Litigation (32.1%, that is, 72 respondents each); and Negotiation.

DISPUTANTS

Choice of Dispute Resolution Method Used

Table 54: Dispute Resolution Method used (disputants)

Dispute Resolution Method		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Negotiation	15	5.0	5.0	5.0
	Mediation	102	33.8	33.8	38.7
	Arbitration	97	32.1	32.1	70.9
	Litigation	88	29.1	29.1	100.0
	Total	302	100.0	100.0	

Most disputants used Mediation to resolve their disputes (33.8%, specifically, 102 respondents). This was followed by arbitration (32.1%, specifically, 97 respondents); litigation (29.1%, specifically, 88 respondents); and negotiation (5%, that is 15 respondents).

Combined data on choice of dispute resolution method (Disputants & Practitioner)

Dispute resolution method used by respondents

Table 55: Dispute Resolution Method used (practitioners and disputants)

Dispute Resolution Method		Frequency (Disputants)	Frequency (Practitioners)	Total Frequency (Disputants & Practitioners)	Percent
Valid	Negotiation	15	4	19	3.61
	Mediation	102	72	174	33.08
	Arbitration	97	76	173	32.89
	Litigation	88	72	160	30.42
	Total	302	224	526	100

Combined data from the two sets of respondents indicate that majority of them used mediation (33.08%, that is, 174 respondents). This was followed by arbitration (32.89%, specifically, 173 respondents); litigation (30.42%, that is, 160 respondents).

6.2.2 **Objective 1:** Explanation of the concept 'appropriate dispute resolution method'

PRACTITIONERS

Opportunity was given to respondents to select the factors that best explain the concept of 'appropriate dispute resolution method'. Their responses were presented in the table below:

Table 56: Concept of appropriate dispute resolution method (practitioners)

Determinant of appropriate dispute resolution		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Undecided	34	15.2	15.2	15.2
	Fairness	44	19.6	19.6	34.8
	Justice	53	23.7	23.7	58.5
	User friendliness	41	18.3	18.3	76.8
	Enforceable outcome	52	23.2	23.2	100.0

	Total	224	100	100.0	
Total		224	100.0		

From the table above, majority of respondents are of the view that **justice (23.7%), enforceable outcome (23.2%),** and **fairness (19.6%)** together constitute appropriate dispute resolution method. This is because ranking the factors from highest to lowest and summing them and using simple majority to determine which ones collectively define an appropriate dispute resolution method will give you sixty-six-point five percent (66.5%). It is interesting to note that, 34 respondents, constituting 15.2% of all the respondents failed to state their preference. This the researcher found interesting.

DISPUTANTS

Table 57: Concept of appropriate dispute resolution method (disputants)

Component		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Undecided	54	18	18	18
	Fairness	82	27	27	45
	Justice	85	28	28	73
	User friendliness	9	3	3	76
	Enforceable outcome	72	24	24	100.0
	Total	302	100	100.0	
Total		302	100.0		

Justice (28%), fairness (27%), and outcome enforceability (24%) collectively constitute the components of appropriate dispute resolution method. These factors together constitute 79% (28 + 27 + 24) of the top three components of appropriate dispute resolution method. However, 54 respondents (18%) of the total respondents abstained from giving an answer.

Combined data on concept of appropriate dispute resolution method

Table 58: Concept of appropriate dispute resolution (practitioners and disputants)

	Component	Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Undecided	88	16.7	16.7	16.7
	Fairness	126	24.0	24.0	40.7
	Justice	138	26.2	26.2	66.9
	User friendliness	50	9.5	9.5	76.4
	Enforceable outcome	124	23.6	23.6	100.0
	Total	526	100.0	100.0	
Total		526	100.0		

Combined data from the respondents (disputants and practitioners) indicate that **justice (26.2%), fairness (24%),** and **enforceable outcome (23.6%)** collectively explain appropriate dispute resolution method since the three top collectively constitute seventy-three-point-eight percent (73.8%).

It is clear from the data above that, 88 (16.7%) of the 526 respondents did not answer the question. Even though this appears curious, the eighty-three-point three percent (83.3%) response rate far exceeded the seventy percent (70%) threshold set for results of such studies to be accepted.[602] The researcher though accepted this as valid, satisfies the minimum requirements and therefore answers the third (3) research question.
In essence therefore, an appropriate dispute resolution method is one that delivers a just, fair, and enforceable outcome.

6.2.3 Objective 2: A mechanism for determining the appropriate dispute resolution

PRACTITIONERS

[602] Atindanbila Samuel *Research Methods and SPSS Analysis for Researchers* (BB Printing Press Accra 1993) 47.

Table 59: Mechanism for selecting appropriate dispute resolution method (practitioners)

Item	N	Minimum	Maximum	Mean	Std. Deviation
Reconciliation	224	3.00	5.00	4.7232	.45830
Expected outcome	224	2.00	5.00	4.5804	.60102
Relationship preservation	224	3.00	5.00	4.3482	.58700
Decision enforceability	224	1.00	5.00	4.1116	.71565
Fairness	224	2.00	5.00	4.0313	.69843
Cost	224	1.00	5.00	3.8705	.92607
Speed	224	2.00	5.00	3.8214	.81151
Creative remedies	224	2.00	5.00	3.6429	.78503
Control	224	1.00	5.00	3.1563	.80784
Confidentiality	224	1.00	4.00	2.6964	.66749
Method flexibility	224	1.00	4.00	2.5625	.66671
Valid N (listwise)	224				

The Average Mean was calculated based on the means in the table above as follows:

Therefore:

$$\text{Average Mean} = \frac{\sum \mu}{\text{No. of items}}, \qquad \text{where } \sum \mu = \text{sum of the means}$$

$\sum \mu = 41.5447$, No. of items = 11.

Therefore:

$$\text{Average Mean} = \frac{41.5447}{11}$$

Average Mean = **3.77**

Table 1 above shows how Practitioners ranked the factors they consider when selecting an appropriate dispute resolution. Using each factor's mean value, the rankings are as follows:
The first factor is ***reconciliation*** ($\mu = 4.7232$); the second is ***expected outcome*** ($\mu = 4.5804$)***;*** the third is ***relationship*** preservation ($\mu = 4.3482$); the fourth factor is ***decision enforceability*** ($\mu = 4.1116$); the fifth factor is ***fairness*** ($\mu = 4.0313$). The remaining ones are ***cost*** (6th - $\mu = 3.8705$);

speed (7th - μ = 3.8214); ***creative remedies*** (8th - μ = 3.6429); ***control*** (9th - μ = 3.1563); privacy and ***confidentiality*** (10th - μ = 2.6964); and ***flexibility*** (11th - μ = 2.5625).

DISPUTANTS

Table 60: Mechanism for selecting appropriate dispute resolution method (disputants)

Factor	N	Minimum	Maximum	Mean	Std. Deviation
Mech_Reconciliation	302	3.00	5.00	4.7351	.44947
Expected outcome	302	2.00	5.00	4.5497	.63861
Relationship preservation	302	3.00	5.00	4.3874	.57544
Decision enforceability	302	1.00	5.00	4.1490	.71131
Neutrality & Fairness	302	1.00	5.00	3.7450	.94950
Creative remedies	302	1.00	5.00	3.5894	.88375
Speed	302	1.00	5.00	3.3609	.97077
Privacy & Confidentiality	302	1.00	5.00	3.1060	1.31514
Degree of control	302	1.00	5.00	3.0762	.84956
Cost	302	1.00	5.00	2.6921	1.11522
Mech_Flexibility	302	1.00	32.00	2.6821	1.87790
Valid N (listwise)	302				

The Average Mean was calculated based on the means in the table above as follows:

$$\text{Average Mean} = \frac{\sum \mu}{\text{No. of items}}, \quad \text{where } \sum \mu = \text{sum of the means}$$

$\sum \mu$ = 40.073, No. of items = 11.

Therefore:

$$\text{Average Mean} = \frac{40.073}{11}$$

Average Mean = **3.643**

Table 60 above shows how Disputants ranked the factors they consider when selecting an appropriate dispute resolution. Using each factor's mean value, the rankings are as follows:

The first factor is ***reconciliation*** *(*μ = 4.7351); the second is ***expected outcome*** *(*μ = 4.5497)***;*** the third is ***relationship*** preservation (μ = 4.3874); the fourth factor is ***decision enforceability*** *(*μ = 4.1490); the fifth factor is ***fairness*** *(*μ = 3.7450). The remaining ones are ***creative remedies*** (6th - μ = 3.5894); ***speed*** (7th - μ = 3.3609); privacy and ***confidentiality*** (8th - μ = 3.1060); ***control*** (9th - μ = 3.0762); ***cost*** (10th - μ = 2.6921); and ***flexibility*** (11th - μ = 2.6821).

Since both respondents answered the same questions, the researcher deemed it expedient to sum the mean figures for each factor to determine the average mean value for each. The results of this process were as follows:

Table Combined data on mechanism for determining appropriate dispute resolution

Table 61: Mechanism for selecting appropriate dispute resolution method (practitioners and disputants)

No.	**Factor**	**Mean for Disputants (μD)**	**Mean for Practitioner (μP)**	**Sum Mean: ∑μ = μD + μP**	**Average of the Sum Mean: $\frac{\sum\mu}{2}$**
1	Reconciliation	4.7351	4.7232	9.4583	4.72915
2	Expected Outcome	4.5497	4.5804	9.1301	4.56505
3	Relationship	4.3874	4.3482	8.7356	4.3678
4	Decision enforceability	4.1490	4.1116	8.2606	4.1303
5	Fairness	3.7450	4.0313	7.7763	3.88815
6	Creative remedies	3.5894	3.6429	7.2323	3.61615
7	Speed	3.3609	3.8214	7.1823	3.59115
8	Privacy & Confidentiality	3.1060	2.6964	5.8024	2.9012
9	Degree of control	3.0762	3.1563	6.2325	3.11625
10	Cost	2.6921	3.8705	6.5626	3.2813
11	Flexibility	2.6821	2.5625	5.2446	2.6223
Average Mean $\left(\frac{\sum\mu}{11}\right)$		3.643	3.77	3.7099	**3.7099**

The researcher used the average mean obtained from the table above (**3.7099**) as a benchmark for selecting the factors to constitute a mechanism for selecting an appropriate dispute resolution

method. This figure was obtained by adding the means for both disputants and practitioners and dividing the figure obtained by the total number of factors, that is, 11.

The total mean obtained was 40.8088. Dividing this figure (40.8088) by the number of factors gives a figure of 3.7099. Therefore, using 3.7099 as the benchmark, the factors which obtained mean scores of 3.7099 and above were selected to constitute a mechanism for selecting an appropriate dispute resolution.

These factors in a descending order are: **Reconciliation (4.72915); Expected Outcome (4.56505); Relationship (4.3678); Decision enforceability (4.1303); Fairness (3.88815)**. The researcher observed that all respondents (526) responded to the question posed. This amounted to hundred percent (100%) response rate which the researcher was very pleased with. This finding was therefore accepted as the answer to research question two. The findings are therefore that in selecting an appropriate dispute resolution method, reconciliation, expected outcome, relationship, decision enforceability and fairness are factors to consider.

6.2.4 Objective 3: Determination of appropriate dispute resolution method

Practitioners

Table 62: Descriptive Statistics

N Valid Missing		Mean	Median	Std. Deviation	Range	Minimum	Maximum
224	0	2.8469	3.0000	.85587	4.00	1.00	5.00

The table above presents a summary of responses on which dispute resolution method is the most appropriate one in Ghana. The total responses were 224 out of which the mean response out of a range of 1 to 5 was 2.8469. The median response was 3.000 with a standard deviation of .85587.

Appropriate dispute resolution method

A. Practitioners

Table 63: Appropriate dispute resolution method (practitioners)

Resolution Method		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Negotiation	2	2.0	2.0	2.0
	Mediation	38	38.4	38.4	40.4
	Arbitration	33	33.3	33.3	73.7
	Litigation	25	25.3	25.3	99.0
	Other	1	1.0	1.0	100.0
	Total	99	100.0	100.0	

The table above captured the responses of practitioners on the appropriate dispute resolution method. It is clear from the above that respondents are of the view that **Mediation (38.4%)** is the most appropriate dispute resolution method. Arbitration (33.3%), Litigation (25.3%), Negotiation (2.0%) and Other Method(s) followed in 2nd, 3rd, 4th and, 5th places respectively. It is remarkable to note that only 99 respondents responded to this question. This figure constituted only 44.20% of the total sample size of 224.

The pie chart below represents responses on appropriate dispute resolution method:

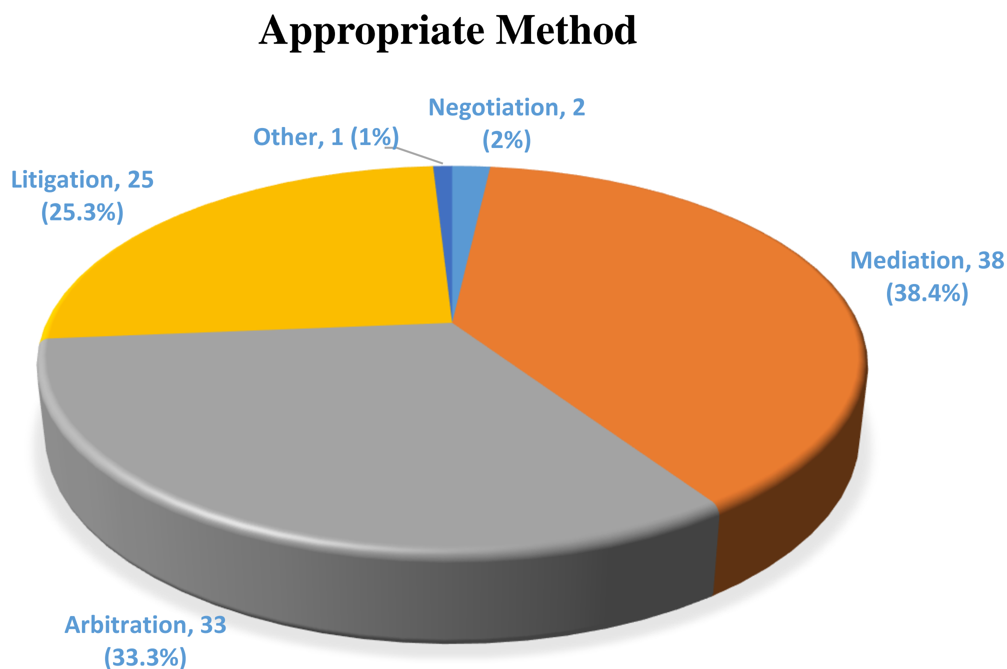

Fig. 3: Appropriate dispute resolution method (practitioners)

It is clear from fig. 1 above that 39% of the respondents see Mediation as the appropriate dispute resolution method followed by Arbitration (33%), Litigation (25%) and Negotiation (2%) respectively.

B. DISPUTANTS

Table 64: Descriptive Statistics

	N	Minimum	Maximum	Mean	Std. Deviation
Appropriate dispute resolution method	302	1.00	5.00	2.7748	.93063
Valid N (listwise)	302				

The table above amply illustrates that the mean response was 2.7748.

Appropriate Dispute Resolution Method

Research Question 3: Which dispute resolution method is the appropriate one in Ghana?

A. Disputants

Table 65: Appropriate dispute resolution method disputants

Resolution Method		Frequency	Percent	Valid Percent	Cumulative Percent
Valid	Negotiation	9	6.4	6.4	6.4
	Mediation	50	35.7	35.7	42.1
	Arbitration	44	31.4	31.4	73.5
	Litigation	35	25	25	98.5
	Other	2	1.5	1.5	100.0
	Total	140	100.0	100.0	

Data from the above table indicates that respondents see **Mediation** as the most appropriate method for resolving disputes (**35.7%)**, Arbitration (31.4%) followed, Litigation (25%),

Negotiation (6.4%) and other methods (1.5%) in that order. What is striking is that only 140 of the 302 respondents answered this question. This number constituted only 46.4%, meaning 53.6% did not respond to this question.

The two different sets of results obtained on the research question posed on which dispute resolution method is the appropriate one were later merged to ascertain the actual appropriate dispute resolution method. This was done as follows:

Combined responses from Disputants and Practitioners

Table 66: Appropriate dispute resolution method (practitioners and disputants)

Method		Disputants		Practitioners		Sum Freq.	Percent
		Frequency	Percent	Frequency	Percent	Sum Freq.	Percent
Valid	Negotiation	9	6.4	2	2.0	11	4.6
	Mediation	50	35.4	38	38.4	88	36.8
	Arbitration	44	31.4	33	33.3	77	32.2
	Litigation	35	25	25	25.3	60	25.1
	Other	2	1.5	1	1	3	1.3
	Total	140	100.0	99	100.0	239	100.0

Source: Data from the field

The data collated from the responses by disputants and practitioners from the table above indicate that **Mediation** is the most appropriate dispute resolution method having obtained **36.8%** rating by responses. **Arbitration** is the second with **32.2%**, followed by **Litigation** (**25.1%**) with **Other** Methods being the least in that order with **1.3**% in that order. What is interesting about this finding is that both groups (Disputants and Practitioners) gave the same verdict on the appropriate dispute resolution and in the same order of preference with the only difference being in the actual numbers and percentages.

Therefore, the response to the third objective is that Mediation is the appropriate dispute resolution method in Ghana. This aligns with previous studies conducted by Jones and Bodtker

which found that mediation produces greater satisfaction to disputants than any other method. Disputants saw both the process and the outcome as fair.[603]

The above notwithstanding, the researcher was at a loss as to why 287 respondents which constituted 54.6% of the total respondents of 526 did not respond to the question on which dispute resolution method is the appropriate one in Ghana. Only 239 responded to the item which constituted 45.4%. This fell below the 70% threshold for accepting findings of this nature.[604] The question therefore remains unanswered at this phase of the study. This necessitated the use of qualitative methods for further probe. Hence qualitative data was used to explain this occurrence and to exhaustively answer the third research question.

In view of the above findings of the quantitative study, hypotheses 1, 2, and 4 (see 1.6 at page 13) were rejected. However, hypothesis 3 has not been accepted at this stage.

6.2.5 Reasons for the choice of Appropriate Dispute Resolution Method

A. Practitioners

Rankings of factors considered by practitioners in selecting Mediation as the appropriate dispute resolution method is presented below:

Table 67: Factors for selecting mediation as appropriate method (practitioners)

Item Statistics

Factors	Mean	Std. Deviation	N
Method provides just process and outcome	4.6518	.51367	99
Method provides satisfactory outcome	4.4732	.57543	99
Outcomes are enforceable	3.7098	.80952	99
Preserves relationships	4.0893	.82074	99

603 Jones S Tricia and Bodtker Andrea, 'Satisfaction with custody mediation: Results from the York County Custody Mediation Program' [1999] Mediation Quarterly 185.

604 See the work done by Atindanbila Samuel, *Research Methods and SPSS Analysis for Researchers* (BB Printing Press Accra 1993) 47.

resolves disputes best	3.8080	.85952	99
reconciles disputants	3.5580	1.39706	99
I was satisfied with the entire process	3.3527	1.18499	99
Outcome was fair	4.4241	.63779	99
Cost was affordable	2.8705	1.00055	99
Method is Less costly	3.2321	.98856	99
Ensures privacy & confidentiality	3.6116	.74932	99
N = 224	41.7811		

Source: Field data, 2021

$$\text{Average Mean} = \frac{\sum \mu}{\text{No. of items}}, \quad \text{where } \sum \mu = \text{sum of the means}$$

$\sum \mu = 41.7811$, No. of items = 11.

$$\text{Average Mean} = \frac{41.7811}{11}$$

Average mean = 3.798

Therefore, the average mean was used as a benchmark in determining the top reasons for practitioners' choice of appropriate dispute resolution method. In this respect, factors with a mean of 3.798 and above were captured as reasons for the decision. The top five reasons given by respondents for their choice of appropriate dispute resolution are: Method provides a just process and outcome (4.6518); Method provides satisfactory outcome (4.4732); Outcome was fair (4.4241); Preserves relationships (4.0893); and Resolves disputes best (3.8080).

B. Disputants

Rationale for selecting Mediation as the appropriate dispute resolution method.

Table 68: Rationale for selecting Mediation as the appropriate dispute resolution method (disputants)

Rationale	Mean	Std. Deviation	N
Method provides just process and outcome	4.6391	.50794	140
Method is Less costly	3.1921	.89454	140
Method ensures Speedy resolution	3.5099	.90306	140
Method ensures privacy & confidentiality	3.7185	.77562	140
Method provides satisfactory outcome	4.4868	.55719	140
Outcomes are enforceable	2.9238	.85346	140
Preserves relationships	4.1788	.79103	140
Outcome was fair	3.2550	.83401	140
Able to craft creative remedies	2.7914	.79420	140
Gives disputants control over the process	3.5695	.91143	140
Resolves disputes best	3.6788	.85850	140
Reconciles disputants	4.5099	.70468	140

Source: Field data, 2021

The average mean was calculated and used as the benchmark for determining the exact factors ranked as the most important for selecting the appropriate dispute resolution method.

Average Mean = $\frac{\sum \mu}{\text{No. of items}}$, where $\sum \mu$ = sum of the means

$\sum \mu = 40.744$, No. of items = 11.

Average Mean = 40.744

11

Average mean = 3.704

Therefore, factors with mean scores of 3.704 and above were selected as the main factors disputants consider in selecting an appropriate dispute resolution method. These factors are: the method provides a just process and outcome (4.6391); reconciles disputants (4.5099); method provides satisfactory outcome (4.4868); it preserves relationships (4.1788); and ensures privacy and confidentiality (3.7185).

Combined rationale for selecting Mediation as the Appropriate dispute resolution method (Practitioners and Disputants)

Table 69: Rationale for selecting mediation as appropriate dispute resolution method (practitioners and disputants)

Method	Disputants		Practitioners		Total Mean
	Mean	Percent	Mean	Percent	Total Mean
Just process & outcome	4.6518	11.13	4.6391	11.39	9.2909
Satisfactory outcome	4.4732	10.71	4.4868	11.01	8.96
Fair outcome	4.4241	10.59	3.2550	7.99	7.6791
Preserves relationships	4.0893	9.79	4.1788	10.26	8.2681
Resolves disputes best	3.8080	9.11	3.6788	9.03	7.4863
Reconciles disputants	3.5580	8.52	4.5099	11.07	8.0679
Privacy & confidentiality	3.7185	9.13	3.6116	8.64	7.3301

Source: Field data, 2021

Note: the percentages were those obtained after analysing the data collected from disputants and practitioners differently as compared to the other factors.

To determine the main reasons for the choice of respondents' choice of appropriate dispute resolution method, the average mean was computed after which it was used as the yardstick for selecting the main factors for respondents' decision. This was done as follows:

$$\text{Average Mean} = \frac{\sum \mu}{\text{No. of items}}$$

Total Mean, that is, $\sum \mu = 57.08$, No. of items = 7

$$\text{Average Mean} = \frac{57.08}{7}$$

Average Mean = **8.15**

Therefore, 8.15 was used as the benchmark for determining the factors that mainly accounted for the choice of appropriate dispute resolution method. Therefore, factors with values of 8.15 and above were selected. These factors were: **provides just process and outcome (9.2909); provides satisfactory outcome (8.96); and preserves relationships (8.2681).**

Conclusion

The quantitative methods' findings enabled the researcher to answer the first two research questions as spelt out in chapter one of this study (see 1.3, page 12). The first research question was 'what does 'appropriate dispute resolution method' mean in the context of the legal framework for dispute resolution in Ghana? The study found that appropriate dispute resolution method is a method that delivers a fair, just, and enforceable outcome(s).

The second research question was 'what is the most ideal legal mechanism for determining an appropriate dispute resolution method'? The study discovered that the most suitable mechanism

for determining an appropriate dispute resolution method is the one that delivers fairness, relationship, reconciliation, expected outcome and decision enforceability.

The third research question was 'does an analysis of the legal framework for resolving disputes in Ghana reveal any dispute resolution method as appropriate for resolving all disputes in absolute terms? To this, even though the quantitative phase of the work found mediation to be the most appropriate dispute resolution method, this was rejected on the basis that the response rate (45.5%) fell short of the standard required for accepting such findings (70%) as postulated by Atindanbila.[605] The third research question was therefore answered by the qualitative methods as presented in the next chapter of this work.

6.3 Analysis of findings of the quantitative phase

The findings of the quantitative stage were analysed according to the research questions.

6.3.1 Research Question One: What does 'appropriate dispute resolution method' mean?

The results of the quantitative phase, which also constitutes the findings of the study on research question one, are that, an appropriate dispute resolution method is one that delivers a **just, fair and enforceable outcome**. The analysis was done on the key variables of this finding.

6.3.1.1 Justice

This is a very fundamental and vital ingredient of appropriate dispute resolution. The Ghanaian is seen as very religious hence the prevalence of many religious groupings. Interestingly, the concept of justice has been captured by the two most dominant religions in Ghana – Christianity and Islam in their holy books – the Bible and the Qur'an. In fact, seventy-one percent of the total population of Ghanaians are Christians. It is not for nothing that both the Bible and the Qur'an charge adherents of their faiths to dispense justice in resolving disputes. Adherents of these

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605 Samuel Atindanbila, *Research Methods and SPSS Analysis for Researchers* (BB Printing Press Accra 1993) 47.

religions see it as an instruction from a supreme being which they must always guard jealously especially in dispute.

Interestingly, justice is one of two pillars of Ghana's coat of arms, the other being freedom. This is how fundamental justice is to Ghana's democracy. It is therefore not surprising that justice was discovered to be a key variable in appropriate dispute resolution. this the judiciary takes seriously and that is why many steps have been taken in the past to ensure that the courts deliver nothing but justice. The Anti-corruption action plan for the judiciary and judicial service (2017 – 2019). The judiciary produced this document with the objective of uprooting corruption wherever it is found. Indeed, prior to this some of the judges who were found to have misconducted themselves by selling justice to the highest bidder as discovered by TIGEREYEP1 were dismissed.[606]

Procedural justice is a fundamental aspect of the appropriateness of dispute resolution. Indeed, it is said to be the most important determinant in dispute resolution method selection.[607] This can be seen in participation in the dispute resolution process (hearing from all sides instead of *audi alteram partem* (hearing the other side), dispute resolution practitioner neutrality, respect for disputants' impartiality as well as evidence-based decision. This is because it allows for easy acceptance of even an unfavourable dispute resolution outcome. In fact, procedural justice enhances disputants' satisfaction in a dispute resolution process. Procedural justice has been firmly grounded in the Ghana's Constitution. An alleged offender of a crime is and ought to be presumed innocent until proved guilty. This applies to civil cases as well. In essence, justice is dispute resolution hinged on law. However, justice extends beyond law. That is why it is said that justice must manifestly be seen to be done not only must it be done. What this means is that it is what the parties experience that is a true reflection of justice.

Disputants will be more willing to use a dispute resolution method if they perceive it to be fair.[608] Some disputants who prefer greater process control will be more comfortable with methods that

[606] TIGEREYEPI is a private investigative body headed by the renowned undercover investigative journalist Anas Aremeyaw Anas. This investigative piece was labelled 'Number 12'.

[607] Thibaut John and Walker Laurens, *Procedural justice: A psychological analysis* (Hillsdale Erlbaum New Jersey 1975) 13.

[608] Folger Robert and Cropanzano Russell, *Organizational justice and human resource management* (Sage Thousand Oaks 1998) 46.

allow them to do just that.[609] Also, Feng and Xie, standing on fairness heuristic theory, argued that perception of process control and procedural choice may be influenced by disputant's selection of third party.[610] While this is true, we cannot tell for sure if this will be absent if the disputant does not select a third party neutral. Contextual and individual factors moderate justice outcome relations. What it means is that what is referred to as justice could be contextual.

6.3.1.2 Fairness

Impartiality, competence, or mastery over the mediation process are very key to ensuring procedural fairness from disputants' perspective. This confirms earlier findings in the District Courts in Ghana.[611] What this finding means is that each dispute resolution stakeholder expects to be treated fairly throughout the dispute resolution process. Disputants expect dispute resolution practitioners to be fair to all. They do not expect partial treatment. They do not expect to be looked down by their co-disputant(s) or dispute resolution practitioner(s). They expect every evidence they will adduce to be objectively examined and considered on its own merit. They do not expect the dispute resolution practitioner to make prejudicial comments while the case remains unresolved. In fact, this concept aligns perfectly with the provisions of article 17(1) and (2) of Ghana's Constitution, which states that all are equal before the law and prohibits discrimination.[612] Again, this concept is so important that the Constitution demands that one accused of committing a criminal offence is required to be offered a fair hearing.[613] A judge against whom proceedings have been instituted for his/her removal is also entitled to be heard.[614]

It is therefore not surprising that a disputant who perceives real likelihood of bias against him/her is allowed to raise it. A successful objection on the ground of real likelihood of bias supported by

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609 Shestowsky Donna, 'Procedural preferences in Alternative Dispute Resolution: A closer, modern look at an old idea' [2004] Psychology, Public Policy and Law 211.

610 Feng Jiaojiao and Xie Pengxin, 'Is mediation the preferred procedure in labour dispute resolution systems? Evidence from employer–employee matched data in China' [2020] Journal of Industrial Relations 81.

611 See the work done by Crook RC, 'Alternative dispute resolution and the Magistrate's courts in Ghana: a case of practical hybridity' [2012] Africa power and politics 1.

612 Constitution of the Republic of Ghana 1992 Article 17(1).

613 Constitution of the Republic of Ghana 1992 Article 19(1).

614 *Republic V Chief Justice of the Republic of Ghana and Another [2020] GHASC 43.*

cogent and convincing evidence pointing to inability to get justice against a judge, for instance, will lead to that judge being asked to recuse himself/herself from hearing the case.[615]

A case that readily comes to mind is an ongoing criminal case in the High Court of the Republic of Ghana.[616] In the original case, the defendants were charged for playing various roles leading to the Republic of Ghana losing huge sums of money. During the hearing, the defendant[617] who was charged for causing financial loss to the state to the tune of $217 million raised an issue of bias against the presiding judge (Justice Clemence Jackson Honyenuga) who was subsequently appointed a judge of the Supreme Court of Ghana. The defendant expressed doubt about getting a fair hearing. The judge rejected the accused's objection. The presiding judge therefore refused to recuse himself and continued to sit as an additional High Court judge (having become a Supreme Court judge). The defendant proceeded to the Supreme Court to challenge the decision of the High Court. The Supreme Court of Ghana[618] by a three-two (3-2) majority decision overturned the decision of the High Court and barred the presiding judge from hearing the case.

Interestingly, in arbitration a person appointed arbitrator is required to disclose any information that will affect his/her neutrality,[619] or disclose any matter likely to occasion reasonable doubt concerning his/her independence and impartiality.[620] This applies to mediation as well. Fairness is required both in the procedure adopted and the outcome of a dispute resolution process. A critical issue that ought to be considered is the designing of a dispute resolution method. Indeed, many abound, and more are being designed by the day. What this finding tells designers of such mechanisms (whatever name they are known by or called) is that adequate systems should be incorporated to allow for fairness from start to finish. The existing methods can also re-assess their processes with the view to redesigning them for optimal fairness delivery.[621]

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615 *Republic v High Court (Financial Division) Accra (JS/32/2019) [2019] GHASC 74.*
616 *The Republic v Stephen Kwabena Opuni & 2 Others H3/23/2009 (2019) 1.*
617 A former Chief Executive Officer of COCOBOD, a Ghana (State) Government Owned Enterprise.
618 *The Republic V Stephen Kwabena Opuni & 2 Others (2021) SC.*
619 Alternative Dispute Resolution Act 798 of 2010, s 12(5).
620 Alternative Dispute Resolution Act 798 of 2010, s 15.
621 See Alternative Dispute Resolution Act 798 of 2010, s 74(5).

This virtue is so jealously guarded by the judiciary that it is a misconduct per Rule 3 of the Code of Conduct for Judges and Magistrates for a judge or magistrate to be impartial in the discharge of his/her judicial functions.[622] Again, E (1) of the Code states that a judge is disqualified if she/he acts in a manner where his/her impartiality becomes questionable. Judges and Magistrates are mandated to give every person with legal interest in proceedings the right to be heard.[623] What is more, Rule3(8) of the same Code of Conduct mandates all judges and magistrates to dispose of all judicial matters before them fairly. These and many of such provisions are meant to guarantee fairness of litigants and users of the courts in Ghana.

While bias may exist for no cogent reason, it may be a child of corruption. A party may compromise the third party supposed neutral to obtain a favourable outcome. This is more pronounced in litigation.[624] This may be due to its public nature and the fact that disputants have no hand in the selection of the judge or magistrate who determines their case.

This has been acknowledged by the judiciary and almost all the Chief Justices see it as a setback to justice delivery. That is why many attempts have been made and continue to be made to weed the justice delivery system of corruption. A key step was the Code of Conduct for Judges and Magistrates, and the Public Complaints and Court Inspectorate Unit (PCCIU) which was set up in 2003 with public relations and complaints units (established in 2014-2015) to receive complaints of corruption and bias.

Indeed, the popular saying that "Judges like Caesar's wife must live above approach"[625] is non-negotiable and ought to be jealously guarded and defended if litigation is to continue to play its role effectively. This explains why some judges have been removed from office for stated

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622 Judicial Service of Ghana, *Code of conduct for Judges and Magistrates* (Judicial Service of Ghana Accra 2014) 6.

623 Judicial Service of Ghana, *Code of Conduct for Judges and Magistrates* (Judicial Service of Ghana Accra 2014), Rule 3(7).

624 At least the 'Number 12' investigative piece undertaken by TIGEREYE PI gives some evidence of judicial corruption in Ghana.

625 As cited in *The Republic V Chief Justice of the Republic of Ghana and Another [2020] GHASC 49*.

misconduct under Article 46 of Ghana's constitution.[626] In the same vein, those who resolve disputes using the other dispute resolution methods, like *Nana's*[627] wife must live above reproach.

6.3.1.3 Enforceable outcome

Enforcement is the execution of the decision of a dispute resolution method. Respondents saw this as a very fundamental factor of an appropriate dispute resolution. This is because it would be fruitless to get a very sound outcome that cannot be enforced. The ability of a dispute resolution method to provide means of enforcing its decisions is very important to dispute resolution stakeholders.

Arbitral awards are final and binding on the disputants and persons claiming on or under same.[628] Interestingly, an arbitrator may, with the consent of the parties under the parties' direction or the arbitrator's own initiative, correct a typographical, computational, or clerical error on the award and issue a new award within twenty-eight days of delivering the award.[629] This practice is however unusual in litigation. However, there is an opportunity to set aside an arbitral award on stated grounds.

However, the laws of Ghana bar certain actions from being taken if certain periods are exceeded. Causes of actions that the law frowns on if they exceed two years upon accruing include claim for damages for slander or seduction, recovery of contribution against concurrent wrongdoers, and recovery of penalty or forfeiture under an enactment.[630] Again, the following actions are barred after six (6) years.[631] They include action on simple contract, quasi-contract, enforcement of arbitral award, among others. Also, an action for enforcement of a judgment after twelve (12) years of it becoming enforceable, action to enforce an arbitral award emanating from an arbitral agreement under seal,[632] among others.

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626 See the Number 12 investigative work done by TIGEREYEPI.

627 The Chief in Ghana who is believed to embody the soul of his people and who stands between the living and the dead.

628 Alternative Dispute Resolution Act 2010 (Act 798), s 52.

629 See Alternative Dispute Resolution Act 2010 (Act 798), s 53.

630 Limitation Act NRCD 54 of 1972, s 2.

631 Limitation Act NRCD 54 of 1972, s 4.

632 Limitation Act NRCD 54 of 1972, s 5.

An arbitral award can be enforced like a court judgment.[633] However, it may be denied on the basis of lack of substantive jurisdiction to make the award.[634] Foreign arbitral awards are also enforceable in the High Court.[635] The High Court may set aside an arbitral award on grounds of incapacity, invalidity of law underpinning the award, inability to present case, not following agreed procedure, failure to disclose arbitrator interest (if any), non-arbitrability of the subject matter or award being induced by fraud or corruption, among others.[636] It is interesting to note that a customary arbitral award need not be in writing, does not have to be registered in the court but shall bind parties and any claimant through or under them.

The award may be enforced as a judgment of the court.[637] A customary arbitral award may be set aside within three (3) months of giving the award and be done by a challenge. This challenge may be mounted at nearest District, Circuit or High Courts on breach of natural justice rules, miscarriage of justice, and breach of relevant custom.[638] Interestingly, all the foregoing relating to customary arbitration are applicable to negotiation. However, in the case of negotiations, disputants are not bound to accept the outcome of the process.[639]

Where mediation is used, a signed settlement is deemed binding on the disputants and anybody claiming under same.[640] The signed settlement therefore carries the weight of an arbitral award.[641] What this means is that this settlement is enforceable. The question to ask is whether an unsigned settlement reached at the end of a mediation process is binding on the disputants. My view is that yes. Yes, to the point that the settlement was reached voluntarily where the parties had the opportunity to present their positions, without fraud, and the subject matter was mediatable.

Litigation outcomes are executed in various ways depending on the relief granted by the court. Specified rules determine remedy implementation. Writ of *fifa* or garnishee order may be used in

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633 Alternative Dispute Resolution Act 2010 (Act 798), s 57(1).
634 Alternative Dispute Resolution Act 2010 (Act 798), s 57(3).
635 See Alternative Dispute Resolution Act 2010 (Act 798), s 59(1).
636 Alternative Dispute Resolution Act, 2010 (Act 798), s 58 (1)-(3).
637 See Alternative Dispute Resolution Act 2010 (Act 798), s 108, 109 and 111.
638 Alternative Dispute Resolution Act, 2010 (Act 798) s 112(1)(2).
639 See Alternative Dispute Resolution Act 2010 (Act 798), s 113(c).
640 See Alternative Dispute Resolution Act 2010 (Act 798), s 81(3).
641 Alternative Dispute Resolution Act 2010 (Act 798), s 82.

cases of money or debts. Attachment may be used to enforce an order for perpetual injunction. According to Rule 1 of Order 43 of the High Court Civil Procedure Rules, C.I. 47, execution of an order for payment of money can be done through a writ of fiery facias, by garnishee proceedings, through a charge order, appointing a receiver, writ of sequestration or committal order.[642] In similar manner, Orders 27, 44, 47 and 49 also apply to an order for the payment of money. Litigation makes elaborate rules for enforcement of its judgment. In fact, orders are sometimes given by the court and are expected to be carried out.

Issues that are very germane to enforcement of a dispute resolution outcome are many. The suitability of the outcome delivered is worth considering. Again, whether the outcome fully satisfies the unique desires of the disputant for seeking a resolution is key? This may depend on the flexibility of a dispute resolution method to design creative solutions to meet the needs of specific disputants. The cost of executing the resolution outcome is also of great concern. It would very distasteful if the cost of executing a resolution outcome is beyond the reach of disputants. How long it takes to execute a resolution outcome is also important. The longer it takes; the more disputants lose since they may be losing money of deprived of the benefit to derive from enjoying the fruits of the resolution outcome. Once these basic questions are answered to the satisfaction of a disputant, he/she would be on his/her way to identifying appropriate dispute resolution.

6.3.2 Research Question Two: Which mechanism is ideal for selecting 'A'DR method

The study established the need for a mechanism as a yardstick for selecting an appropriate dispute resolution method. The study found that **reconciliation, expected outcome, relationship, fairness, and decision enforceability** collectively constitute a mechanism for use in choosing an appropriate dispute resolution method. These findings are contrary to six (6) factors identified by Ling-Ye. [643] These findings are however in agreement with four (4) factors put forward by Ling-Ye, which are expected outcome (she referred to it as 'outcome'), enforceability, relationship (she

642 *Republic v High Court, Accra; Ex parte PPE Ltd, SC, Civil Motion No. J5/12/2007.*

643 She Ling-Ye, 'Factors which impact upon the selection of Dispute Resolution methods for commercial construction in the Melbourne industry: Comparison of the Dispute Review Board with other Alternative Dispute Resolution methods' <https://www.irbnet.de/daten/iconda/CIB_DC24501.pdf> accessed 25 August 2021.

called it ‘relationship preservation’), and fairness (she called it ‘openness, neutrality, and fairness). These factors have been discussed below:

6.3.2.1 Reconciliation

Disputes destroy otherwise harmonious co-existence. It is therefore very significant that a method with sufficient structures to reconcile the disputants is employed with the view to allowing them to heal holistically. This may be possible using the principle referred to as ‘*giving a little and receiving a little*’[644] by disputants. This is a central virtue of dispute resolution attempts. It is reached when disputants are brought to a point where they acknowledge their wrong and resolve to make amends.

A very important means of reconciling parties is using the ‘PEACE’ Model posited by Kudonoo.[645] The ‘*PEACE*’ in the PEACE model stands for ‘people expressing accurately concerns and emotions’. This was built on Ghanaian values and the appreciative inquiry theory. This theory recognizes that there is good in each person, and that relationships thrive when this good is identified, and tapped to create a new world. A world where disputants are healed and begin afresh as though nothing had happened between them. However, wisdom from experience especially of the elderly, *Nananom* (the chiefs), priests and priestesses are employed to unearth the truth. This truth is what Ajayi and Buhari[646] described as the ‘covenant logo’. Disputants’ concerns and emotions need to be fully and properly expressed for healing to take place if reconciliation is to be attained.

Scholars such as Hopeson have argued that specific dispute resolution methods ought to be used if reconciliation is to be attained. Their view is that certain dispute resolution methods per their design are not ideal for reconciling disputants. In this respect the CounsMed Methodology[647] - a

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[644] Adeyinka Theresa Ajayi and Lateef Oluwafemi Buhari, ‘Methods of conflict resolution in African Traditional Society [2014] African Research Review 147.

[645] Enyonam C Kudonoo, ‘The PEACE Model: a sustainable approach to conflict prevention and resolution in Africa’ in Sherman W (ed) *Handbook on Africa: Challenges and issues of the 21st Century* Nova science publishers 2016) 18.

[646] Ajayi and Buhari (n 529).

[647] A methodology designed and launched by Dr. Emmanuel Hopeson in October 2019.

hybrid of counselling and mediation which employs psycho-analytical methods to explore disputants' emotions and behavioural tendencies prior to a resolution attempt is a good option. The effectiveness of CounsMed Methodology in healing and reconciling disputants is beyond dispute.[648]

In the traditional setting, depending on the offence, some sacrifices are performed to pacify the gods for instance. Libation is also poured to seek forgiveness and acceptance of apologies and seek reconciliation from the dead. Animals are slaughtered, traditional foods prepared, distributed, and eaten and schnapps shared to the elders and those present.
Therefore, a method with an inbuilt design that allows disputants to remove or be assisted to remove the canker and toxic occasioned by the dispute is preferred. This is very important because the traditional Ghanaian society sees dispute as a disturbance of the communal harmony.

6.3.2.2 Expected outcome

Disputants are at liberty to decide for themselves what they want out of a dispute resolution process. This expected outcome may be resolution, precedent, justice, specific performance, injunction,[649] among others. A dispute resolution method therefore is a vehicle for conveying disputants to their expected destination. What it means is that the expected outcome (destination) will determine the dispute resolution method to use. The question to ask is whether a single dispute resolution method can envisage and for that matter be fitting for all possible dispute resolution outcomes. I do not see this to be feasible since user choices vary and change over time and circumstances may not make this static. However, there are popular expected outcomes to use. Again, some methods have the ability to craft remedies to meet the expectations of disputants.

What this finding mean is that designers of dispute resolutions have an obligation to ascertain what disputants' expected outcomes are or likely to be. This may lead to specialization of dispute

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648 Emmanuel Kokjo Hopeson, 'CPR launches new approach to ADR' <https://www.modernghana.com/news/497668/cpr-launches-new-approach-to.html> accessed 26 August 2021.

649 Hibberd R Peter and Neuman Paul, *Alternative Dispute Resolution and Adjudication in Construction Disputes* (Blackwell Science Malden MA 2000) 23.

resolution methods to deliver specific outcomes. This if properly done in my view will lead to increased user satisfaction and harmonious communal existence.

6.3.2.3 Relationship

The need to preserve disputants' relationships is a key factor in selecting dispute resolution method.[650] Relationship preservation is the backbone of traditional dispute resolution methods. In fact, it is believed that each individual in the community is related to another in one way or the other. In some cases, members of an entire community trace their lineage to a common ancestor. It is for this reason that certain key assets of the community are owned by the indigenes collectively. That is why land for instance in the Ghanaian society is deemed to belong to the dead, living and the unborn. Relationship preservation is so fundamental that some scholars have argued for a therapeutic touch to be brought to dispute resolution.[651]
That is why when there is a standstill in a dispute resolution process, the elders resort to *in camera* discussions which are known as '*going to see the old woman*'. The purpose is to seek the ancient wisdom that will enable the dispute resolution stakeholders involved in the process arrive at a decision that will not lead to division but will preserve existing relationships and offering sustainable outcomes.

Relationship preservation becomes a delicate issue if the dispute involves parties in an employment relationship unless the disputants disinterested in maintaining their relationship. This is because the working relationship may be strained. Research has shown that the *other dispute resolution methods* are better at maintaining existing relationships.[652]

6.3.2.4 Decision enforceability

The decision arrived at after a dispute resolution process is known by different names. The decision arrived at after litigation is known as a judgment, that of arbitration is known as an award

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650 Robert Benjamin, 'The natural history of negotiation and mediation: the evolution of negotiative behaviours, rituals and approaches'<www.mediate> accessed 26 August 2021.

651 Silbey S Susan and Merry E Sally, 'Mediator settlement strategies' [1986] Journal of Law and Policy 10.

652 Agapiou Andrew, 'The impact of mediation practice on and the resolution of grievances, the preservation of employment relationships and termination' [2016] US-China Law Review 267.

(and a consent judgment if done in the court) and that of mediation is called settlement or consent judgment (as the case may be). It is obvious from the discussions under research question one (1) above that the three dominant dispute resolution methods deliver enforceable outcomes. These methods are litigation, arbitration and mediation.

While disputants look at the expected outcome of a dispute resolution process, the ability to enforce that outcome is equally important. The agreement arrived at after negotiation is not binding on parties.[653] Settlement agreements of mediation are binding on disputants if they sign it[654] and it will have the same weight as that of an arbitral award.[655] A customary arbitration award is binding on the disputants and parties claiming through and under it and is enforceable in the same way a judgment of the court is enforced.[656] Arbitral award is binding on the disputants and enforceable like a court judgment.[657] A judgment - the outcome of litigation, can be enforced based on the specific relief granted by the court. In fact, litigation is seen as the dispute resolution method that offers the most enforceable outcomes. It is also seen as the only one which offers precedents for instance.

The cost and length of time taken to enforce the outcome of a dispute resolution process is worthy of consideration. Disputants ought to pay closer attention to these issues. Sustainable dispute resolution is endured if these factors are objectively and comprehensively considered in designing and selecting dispute resolution for use.

6.3.2.5 Fairness

At the point of selecting a dispute resolution method, disputants are already in an unusual psychological state and the least a dispute resolution method can do is offer a soothing process. A method that creates a very conducive atmosphere for disputants to ventilate is a good start. Procedural fairness is of outmost importance. Fairness is subjective even though it is expressed

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653 Alternative Dispute Resolution Act 798 of 2010, s 113(c).
654 Ibid section 81(3).
655 Act 798 (n 530), s 82.
656 Ibid sections 109(a) and 111.
657 Act 798 sections 52 and 57(1).

in some basic principles. This includes objectivity and neutrality in commentary, questioning, gestures, among others.

6.3.3 Research Question Three: Which resolution method is the most appropriate one?

The finding of the quantitative phase was that mediation is the most appropriate dispute resolution method in Ghana having obtained 36.8% rating by responses. This rating was the highest obtained by a single resolution method. This finding confirms the earlier work done by Feinberg that mediation is the appropriate dispute resolution method.[658] This can explain why some Chinese laws make it compulsory to use mediation in resolving some disputes.[659] The finding is however contrary to that by some studies in that arbitration is reportedly the most favoured and widely used dispute resolution method.[660]

It is worthy of note that not just anything under the cloak of mediation would be described as the most appropriate dispute resolution in Ghana. This is because there are instances where mediation has failed to deliver the results expected. Some individuals without requisite training, required temperament, experience, and without the heart for the work and who jump on-board the mediation bandwagon for the sake of the money they would make, hardly do a good job. Such individuals end up fuelling the disputes presented to them for resolution.

Certain factors are critical if mediation is to perform satisfactorily. These factors are namely the nature of the dispute, the situation, mediator strategy, and mediator personality type/traits.[661] While these factors are critical, mediator expertise in the specific issue underlying the dispute is key. This is because, depending on the style adopted by the mediator, she/he can have varied roles and influences on the disputants. Mediator impartiality is a key determinant of a successful

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658 Kenneth R Feinberg, 'Mediation - A Preferred Method of Dispute Resolution' [1989] Pepperdine Law Review S5.

659 Jun Ge, 'Mediation, Arbitration and Litigation: Dispute Resolution in the People's Republic of China' [1996] UCLA Pacific Basin Law Journal 122.

660 See the work by ANS Simsek and AK Bolten, 'Mediation as a charming dispute resolution mechanism <https://www.gsghukuk.com/en/publications-bulletins/articles/mediation-as-a-charming-dispute-resolution-mechanism-gsg.pdf> accessed 9 September 2021.

661 Thomas W Miller and Lane Veltkamp, 'Clinical and preventive issues in child custody disputes' [1995] Child Psychiatry and Human Development 257.

mediation process. That is why disputants owe an obligation to themselves to select persons with unblemished reputation for impartiality in their work to serve as mediators. Competence in the specific dispute area would be a great asset in the mediation process.

The limiting issue about mediation is that the settlement reached applies to only the disputant since the process is normally confidential. However, this supposed limiting factor is also seen as mediation advantage, that is, its confidentiality. This makes it ideal for resolving certain matters. For instance, it is suitable for resolving disputes between persons who are closely related such as husband and wife or where the need to guard against a commercial interest or working relationship.

As reported by some scholars, mediation user satisfaction ranges between 60 – 85% as compared to just 30 – 50% satisfaction with litigation.[662] Mediation can be resorted considered a first step during the process of dispute resolution or used as a second step while in court. In the latter, if the mediation process is exhausted, the settlement reached is treated as a consent judgment of the court. A list of certified mediators is presented to the disputants to choose from. The disputants are responsible for the mediator's fees and every cost incurred in the process. These costs are normally shared between the disputants.

What this finding mean is that most respondents prefer a more amicable means of having their disputes resolved. They want a dispute resolution process which gives them a greater voice. One that gives them not only an ear but a voice as well. They want to be listened to no matter how bad their case may be. They also want a dispute resolution method that enables them to maintain their relationships and live peaceably thereafter. After all, the Constitution of the Republic of Ghana presumes an accused innocent until proved guilty or until he/she has pleaded guilty. A method which delivers one and only one result – the most reconciliatory outcome. This is irrespective of one's status in life, gender, financial status, age, or any other differencing variable.

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[662] British Columbia Ministry of justice, 'Characteristics and outcomes of dispute resolution processes related to family justice issues' (British Columbia Ministry of justice) <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/review.pdf> accessed 22 August 2021.

6.4 Conclusion

The quantitative phase's findings were presented in this chapter. The study revealed that appropriate dispute resolution method is one that delivers a just, fair and enforceable outcome. It was also found that reconciliation, expected outcome, relationship, fairness and decision enforceability collectively constitute a mechanism for selecting an appropriate dispute resolution method. Finally, it was discovered that mediation is the appropriate dispute resolution method in Ghana. Respondents were of the view that it offers amicable resolution of disputes without compromising their relationships. However, only 45.4% of respondents responded to this item which means that 54.6% failed to do so. Chapter seven presents and analyses the findings of the qualitative phase of the study. This was done with the view to explaining the quantitative phase's findings of the work on the third research objective.

Also, Act 798 is a suitable mechanism for determining which disputes are best resolved by ODR and some of the disputes that are best resolved using litigation. Analysis of the legal framework for resolving disputes in Ghana would reveal no dispute resolution method is appropriate for resolving all disputes in absolute terms

CHAPTER SEVEN

FINDINGS AND ANALYSIS OF DATA FROM QUALITATIVE PHASE

7.1 Introduction

A report of the Mixed Methods Research Design process used in this work has been presented here. Mixed Methods Research was used for in-depth understanding of the appropriate dispute resolution method in Ghana. Specifically, a sequential mixed methods approach was employed. Explanatory design was used here. This was to allow the researcher to provide an answer to the third research question fully. The semi-structured interviews were conducted with the rationale to obtaining participants' actual experience on dispute resolution. Some respondents of the quantitative phase who did not provide a response to the question on the most appropriate dispute resolution in Ghana and who possessed in-depth knowledge and experience on the issue participated in the qualitative phase. The analysis of the data collected was done in a coherent and ideal manner with the view to attaining the purpose of the study.

7.2 Participants' demographics

7.2.1 Gender of participants

The COVID-19 pandemic made it challenging to interview as many participants as the researcher would have wished. However, the nine participants who were purposively selected provided adequate information for analysis and drawing conclusions. Nine (9) individuals who had earlier taken part in the study's quantitative phase but who failed to respond to the item on which dispute resolution method is the most appropriate one in Ghana were interviewed. These participants were selected based on demonstration of sufficient depth of knowledge in dispute resolution, and the stakeholder group they belonged to. The dramatic interruptions of every aspect of human endeavour occasioned by COVID-19 made it impossible to conduct more interviews than nine. The findings of the study revealed that fifty-five-point six percent (55.6%), that is, five (5) participants were females. Four participants, that is, forty-four-point four percent (44.4%) were males.

7.2.2 Educational level of participants

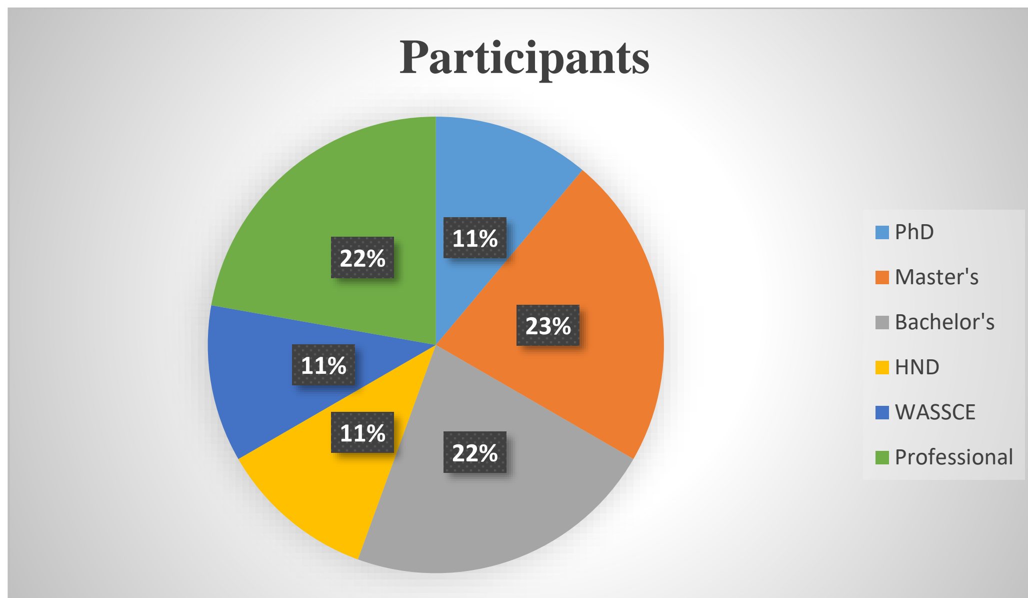

Fig. 4: Educational level of participants (qualitative)

The figure above presents the highest educational level of participants. Details of the figure presented above are as follows: one (1) participant had a PhD, two (2) participants had master's degrees, two (2) participants had a Bachelor's degree, one (1) participant had a Higher National Diploma (HND), one (1) participant had a West Africa Senior Secondary School Certificate (WASSCE), and two (2) participants had professional qualifications. What this means is that all the participants had some formal education.

7.2.3 Age ranges of Participants

This item was to determine the age ranges of participants. This was based on the sensitivity of the question of age and the discomfort that it creates for some participants. This approach therefore made it possible for all participants to offer a response. It emerged that three (3) of the participants fell within the age range of 51 – 61, two (2) fell within the age range of 61 years and above, two (2) participants fell within the age range of 40 – 50 years, one (1) participant each fell within the age ranges of 29 – 39, and 18 – 28 respectively.

7.2.4 Professions of Participants

This theme gives a better insight into what disputants did for a living. It revealed that there was one (1) judge, one (1) legal practitioner, three (3) 'other dispute resolution practitioners', two (2) businessmen, one (1) trader, and one (1) teacher.

7.2.5 Stakeholder Categories of Participants

The need for having as many primary stakeholder groups as possible participating in an exercise of this nature is crucial since it was one of the gaps identified in literature. The stakeholder mix of participants is as follows: one (1) judge, one (1) lawyer, three (3) other dispute resolution practitioners, one (1) religious leader, one (1) chief, and two (2) disputants.

7.2.6 Duration for which participants have been stakeholders

This was to determine how long participants had been in the dispute resolution field. The duration that participants had been dispute resolution stakeholders emerged as follows:

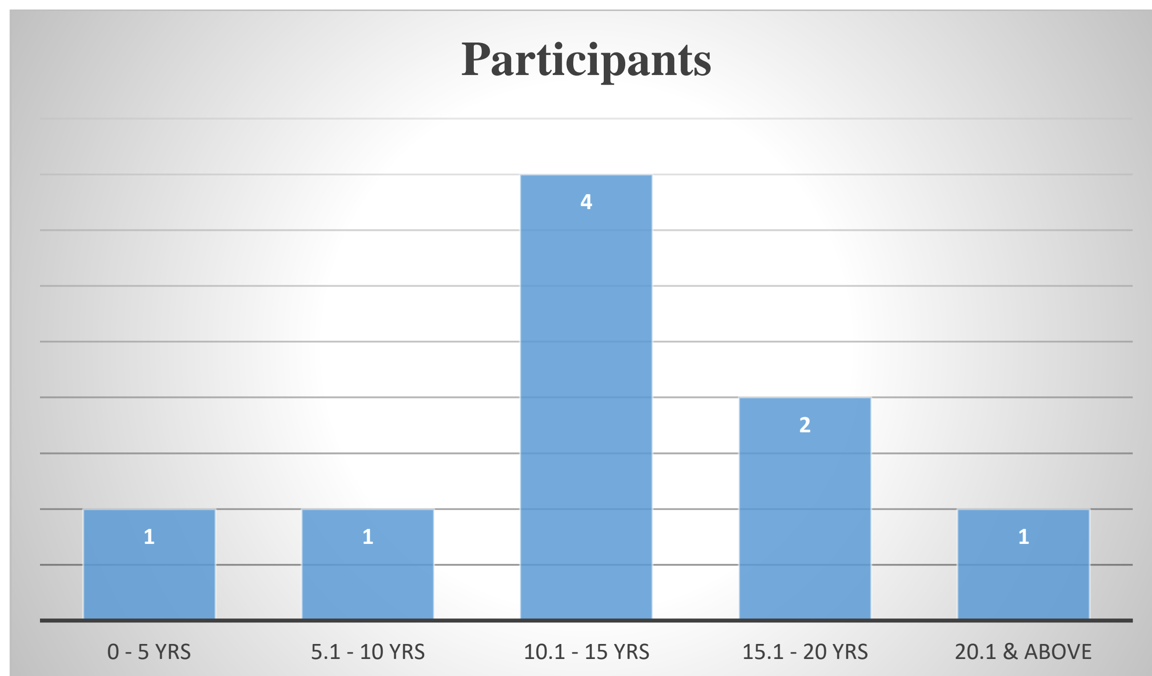

Fig.5: Duration for which participants have been stakeholders

What emerged from the interviews as illustrated in the figure above is that one participant had been a dispute resolution stakeholder for between 0 – 5 years and another had been a dispute resolution stakeholder for a period between 5.1 – 10 years. Four (4) participants had been dispute resolution practitioners for a period between 10.1 – 15 years, two (2) and one (1) participants had been dispute resolution stakeholders for periods between 15.1 – 20 years and 20.1 years and above respectively.

7.3 Findings of the Qualitative Phase

The following steps were taken to ensure validity of the results:

a. Triangulation – data was collected using questionnaires and interviews to answer the third research question. In addition, same persons were involved in the data collection.
b. Verbatim reportage – responses of interviewees were transcribed verbatim.
c. Validation – interview summaries were sent to respondents for validation.
d. Checks – presentations and interpretations were discussed with two Professors who were dispute resolution experts.

7.3.1 Research Question Three: what is the appropriate dispute resolution method in Ghana?

Qualitative data was collected using semi-structured interviews to exhaustively answer the third (3) research question. The purpose was to explain one unexplained issue in the quantitative phase. The issue is that even though the quantitative data revealed that **Mediation** is the most appropriate dispute resolution method (**36.8%** rating), the researcher was at a loss as to why 287 respondents which constituted 54.6% of the total respondents of 526, did not respond to the question on which dispute resolution method is the appropriate one in Ghana. In fact, only 239 responded to the item which constituted 45.4%. This was a huge departure from the results for research questions one (1) and two (2). This necessitated the use of qualitative method for further probe.

One of the participants had this to say:

There is no dispute resolution method that can be described as appropriate for resolving all disputes at all times.[663]

Another participant said this:

> There is nothing like one size fits all. In my many years of practice I have never come across any dispute resolution method that is appropriate for resolving every dispute. There is always one that fits a particular dispute and circumstance.[664]

The third research objective was thus achieved even though in an unusual way – that there is no dispute resolution method that is appropriate in absolute terms in Ghana.

7.3.2 Factors determining appropriate dispute resolution method

It emerged from the interviews conducted that a particular dispute resolution method may be appropriate for resolving specific dispute based on some factors. These factors if properly considered and applied, would enable the disputant to select the dispute resolution method he/she considers appropriate. These factors are: type of dispute, stage of dispute, disputants' circumstances, issues in dispute, dispute resolution practitioner, and the legal framework.

Some views from participants were:

> What constitutes an appropriate dispute resolution method depends on what the legal regime is or says about resolving disputes. For instance, the law in Ghana does not allow for using a method other than litigation for resolving disputes relating to interpretation of specific provisions in the Constitution.[665]

Another participant said this:

> The type of dispute and stage of dispute are key to determining an appropriate dispute resolution method. This is so because a specific dispute resolution method may be appropriate for resolving a dispute at the early stage of a dispute than another method. Again, even the dispute resolution method that is considered appropriate at the early stage of a dispute may

663 Direct quotation 237.
664 Direct quotation 682 *(P3: 682).*
665 Direct quotation 241.

> not be apx`8propriate for resolving that same dispute at a later stage of the dispute – when the dispute becomes full blown or protracted.[666]

Again, another participant said this:

> Of what use is a so-called appropriate dispute resolution method if I cannot afford it when I am in dispute? The method which I can pay for within my little resources and yet be assured of a fair hearing is my appropriate dispute resolution method.[667]

Worthy of mention is this theme that emerged:

> The issue in dispute determines which method to use. In the olden days every issue in dispute was resolved in the chief's palace. However, today it is not every issue that can be resolved everywhere. There are specific avenues designed for resolving specific issues in dispute. That is why a singular act can have civil and criminal components which can be resolved best at different fora – the court for the criminal component and an ADR centre for the civil component.

The findings at this phase revealed that what is appropriate today may not be appropriate tomorrow. In fact, even if the same person is involved in the same dispute later, another dispute resolution method may be appropriate than that of today. This is because circumstances remain ever-changing.

7.4 Data analysis

There exists an inseparable relationship between the collection of data and analysis of data in a qualitative study.[668] Data analysis can be described as the means of ensuring order, structure and meaning in data collected.[669] In essence, data analysis is the process of sense making, interpretation and theorization of data.[670] Some have defined it as the art of applying inductive

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666 Direct quotation 1049.

667 Direct quotation 816

668 BW Tuckman and BE Harper, *Conducting educational research* (6th edn, Rowman and Littlefield Publishers 2012) 387.

669 Marshall C and Rossman GB, *Designing qualitative research* (3rd edn, Thousand Oaks, CA: Sage Publications 1999) 150.

670 Schwandt TA, *The Sage dictionary of qualitative inquiry* (Sage Publications: Lost Angeles 2007) 6.

and deductive logic to research.[671] Qualitative data analysis is sense making from participants' perspective.[672] It is an iteration of data collection, data processing, data analysis and data reporting.[673] In summary, qualitative data analysis is transforming data collected insightful and understandable form.[674]

Therefore, data analysis can be said to be the art of making sense of and presenting data in a meaningful way. Some scholars have argued that the deductive approach used in qualitative studies relies on what the participant feels about the phenomenon under study. This, researchers also do by putting themselves into the setting in question when interpreting responses from participants. The analysis was done by coding, description, and categorization.

Data was treated just as its name – information that is collected systematically, recorded, and organized in a manner that will allow for proper interpretation.[675] It was thereafter taken to the next level as espoused by some scholars[676] where it was reconfigured and subjected to alternative means of seeing with the view to answering lingering or conspicuous questions. Qualitative study assumes that man can produce the most fertile data possible. Qualitative studies are therefore conducted in a sequential, systematic, and verifiable manner in conformity with the views of Morgan.[677]

There is a school of thought that qualitative methods are more suitable for finding meanings of specific events.[678] These meanings are the intent of the original authors of the words being

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671 Best JW and Kahn JV, *Research in Education* (10th edn, Pearson Education Incorporated Cape Town 2006) 354.

672 Cohen L, Manion I and Morrison K *Research Methods in Education* (6th edn, Routledge Falmer New York 2007) 461.

673 Jan Nieuwenhuis, 'Analyzing Qualitative Data' in *First Steps in Research* (Van Schaik Publishers Pretoria 2007) 105.

674 Gibbs R Graham, *Analysing Qualitative Data* (Sage Publications New York 2007).

675 Antonius Rachad *Interpreting quantitative data with SPSS* (15th edn, Sage Publications Chicago 2003) 2.

676 John Schostak and Jill Schostak *Radical research: Designing, developing, and writing research to make a difference* (Routledge London 2008) 10.

677 David L. Morgan *The focus group guidebook* (Thousand Oaks, Sage California 1998) 13.

678 Catherine Marshall and Gretchen B. Rossman, *Designing qualitative research* (3rd edn, Sage Publications Incorporated New York 1999) 150.

analysed.[679] Analysis of qualitative data is transformation of data into findings. This is done by reducing the volume of data collected, identifying patterns, and designing a mechanism for communicating results.[680] In essence, qualitative data analysis is investigation of transcribed data collected.[681] It undertakes narration of constructive interpretation of data.[682] In this respect, participant's language is used since a more personal style is adopted. An interesting part of a qualitative research is having a blend of the voices of both participants and the researcher.[683]

The researcher highlights both features that recur and various processes, steps and procedures employed in the study. Qualitative data analysis has three steps.[684] Data organizing is the first of the steps and it varies depending on the research strategy employed. Data description is the next and involves description of the salient aspects of a study. The final phase is interpretation where findings or results are explained, and questions answered. Proper description of results in a qualitative study is a sure way to properly positioning readers to better understand and interpret the results.

7.4.1 Using ATLAS.ti

All documents were uploaded unto ATLAS.ti. These documents were audios, videos, and text files. The audios, videos and text files were recordings of interviews conducted. In all, nine (9) documents were uploaded of which three (3) were audios, two (2) videos and four (4) were typed responses. All assigned documents were saved as a single project.

During the first stage, *in vivo* coding was done with the view to enabling even small parts of the data to be considered in detail paving the way for comparison with others.[685]

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[679] Daniel Muijs, *Doing quantitative research in Education with SPSS* (2nd edn, Sage Publications London 2011) 9.

[680] John W Creswell, *Qualitative inquiry and research design: choosing among five approaches* (4th edn, Thousand Oaks California 2013) 44.

[681] E Henning, VW Rensburg and B Smith, *Finding your way in qualitative research* (Van Schaik Publishers Pretoria 2004) 127.

[682] Paul D. Leedy and Jeanne Ellis Ormrod, *Practical research planning and design* (9th edn, Pearson Education International Boston 2010) 135.

[683] Creswell (n 561).

[684] John W Beat and James V. Kahn, *Research in Education* (10th edn, Pearson Education Incorporated Cape Town 2006) 270.

[685] See the work of Christina Silver and Lewins, Ann *Using software in qualitative research: A step-by-step guide* (2nd edn, Thousand Oaks, CA: Sage Publications New York 2014) 57.

The codes did not exceed three hundred (300) as recommended by Friese.[686] At the second stage, similar codes were grouped. These were compared after merging them into higher order categories as appropriate. The theory of first (ordinary man's understanding) and second order constructs (social sciences' construct) propounded by Schutz was used. This is in line with suggestions that this theory be used at this stage.[687] First order constructs were printed out and used for the second stage coding. Common usage terms were converted into more usable terms. Similar and related terms and codes were then merged.

The third stage saw the researcher doing selective coding. A revisitation of the codes and themes, concepts and relations search was done. Networks (visual representations) were created through many codes and quotations' linkages. These network diagrams birthed themes, concepts, and patterns. Co-occurring codes were also mapped.

Nine (9) semi-structured interviews were conducted via zoom, telephone, and face-to-face. These interviews were conducted with a District Court judge (n = 1), a lawyer (n = 1), Other Dispute Resolution Practitioners (n = 3), Religious Leader (n = 1), a Chief (n = 1), and Disputants (n = 2). These interviews were transcribed verbatim. Summaries of the interviews conducted were sent to the interviewees to ensure that what was transcribed was exactly what they told the interviewer. The data collected was analysed using ATLAS.ti. The analysis examined which dispute resolution method is the appropriate one in Ghana.

7.4.1.1 Procedures adopted using *Atlas.ti*

The use of *Atlas.ti* in legal research allows for greater consistency with the epistemological basis of research in other social science fields.[688] Computer-aided techniques were used to undertake contents analysis of the data collected. *Atlas.ti* was used because it had been used by many

686 Susanne Friese, *Qualitative data analysis with ATLAS.ti* (Sage Publications London 2014) 45.

687 Nicky Britten, Rona Campbell, Catherine Pope, Jenny Donovan, Myfanwy Morgan and Roisin Pill, 'Using meta ethnography to synthesise qualitative research: A worked example' [2002] Journal of Health Services Research and Policy 209.

688 Mark A. Hall and Ronald F. Wright, 'Systematic content analysis of judicial opinions' [2008] California Law Review 65.

scholars and it enhances transparency, validity, and trustworthiness of research outcomes.[689] The automated process that it comes with allows for better efficiency and accuracy. It also allows for establishing links, categories, connections, relationships, and graphical representation of data.[690]

Macro-themes were generated culminating into the final themes. *Atlas.ti* greatly facilitated the content analytic process. Outputs are filtered and this involve the use of memos, quotations, and documents, among others. It enables data manipulation for proper code formation. This computer-aided approach enables codes to be linked to quotations for better navigation of data as well as better analysis and interpretation of data collected. Specifically, in this study, it allowed for connections between the various codes[691] and quick recall of data.[692]

7.4.1.2 Contents Analysis

A contents analysis was done of the interviews conducted. Data was collected, transcribed, coded, evaluated, categories identified, themes identified and transcribed. This approach allowed for description, comparison and explanation of the data collected. The steps undertaken enabled a systematic and logical analysis to be done leading to discovery of not only the rationale but the motive behind responses received.[693] The first step was a reading of the transcripts with the view to gaining an understanding of the entire body and context of the data. The second step involved coding of the data. This coding was done using open, axial, and elective coding. Atlas.ti version 7 was used in this respect. Descriptive names were initially identified and marked. These were however themes that related to the objectives of the study.

Interestingly, these themes were consistent with the interview questions (see Annexure B3). These themes so identified were evaluated during the coding process – axial and selective for coherence. The categories were labelled as they relate to the theoretical framework of the study. Hermeneutical analysis, which allows for understanding of complex wholes and establishment of

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689 Hanna Schebesta, 'Contents analysis software in legal research: A proof using ATLAS.ti' [2018] Tilburg Law Review 23 – 33.

690 Pat Bazeley, 'Conceptualizing research performance' [2010] Studies in higher education 889 – 903.

691 Kelle Udo, Computer-assisted qualitative data analysis" in Seale C, Gobo G, Gubrium JF and Silverman D (eds.), *Qualitative research practice* (Sage Publications London 2004) 481.

692 John W. Creswell, *Research design: Qualitative, quantitative, and mixed methods approaches* (3rd edn, Thousand Oaks Sage New York 2009) 249.

693 Raymond-Alain Thiétart, 'Research Methods' [2007] Strategic Management Journal 565.

relationships[694] was employed. All relevant codes of the study were compiled into a framework using Atlas.ti 7 and presented in figure 5 below. This framework highlights the core components of the qualitative study.

The categories identified include the following: appropriate dispute resolution method, alternative dispute resolution method, arbitration, litigation, mediation, and negotiation. All related units were assigned to the final categories. The components were briefly introduced and discussed. The discussions include verbatim reproduction of participants' responses. Interpretive discussion was undertaken of views the researcher considered prominent.

The themes identified formed the basis for reasoning, arguing and conclusions in conjunction with the quantitative analysis in order to discover the appropriate dispute resolution method in Ghana. To begin with, the responses considered prominent were discussed followed by evaluative and interpretive discussions in line with the research objectives. An observation list was derived.

7.4.1.3 Observation

The need to use an observation list has been emphasized by many scholars.[695] Face-to-face interview allows for observation of visual clues, and body language. These may give very good clues for the interviewer. An additional advantage is signalling how to read signs and data location from its collection context from the onset.[696] There is however, the need for circumspection in reading body language since it could be misleading.[697] An observation list was designed to present a context for the work, background of respondents, and to present the environment in which the interviews were conducted.

Qualitative methods approach uses concepts, terms, among others to design a framework for presenting findings. The data collected was analysed to transform it into findings.

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694 Betul C. Ozkan, N Davis and JN Johnson, 'An Innovative Approach on Holistic Analysis of Interview Data: The Case of Iowa State University's Simultaneous Renewal of Teacher Education' [2006] Turkish Online Journal of Educational Technology 11.

695 Thiétart (n 574).

696 Scott David and Robin Usher, *Researching Education: Data, methods, and theory in educational enquiry (*2nd edn, Bloomsbury Publishing New York) 109.

697 Terence George Coleman, 'A model for improving the Strategic Measurement and Management of Policing: the police organizational performance index (POPI)' (PhD Dissertation, University of Regina 2012) 252.

7.4.2 Discussion of themes that emerged from the semi-structured interviews

Interviews constituted the second stage of the sequential mixed methods research employed in this study. The explanatory design was used because it allowed the researcher to answer the third research question fully. This was informed by the quantitative data collected. The qualitative data was used having been prompted by the failure of 54.6% (287 respondents) of the total respondents (526) to respond to this question. The question was: which dispute resolution method is the appropriate in Ghana?

Interviewing, which is the most widely associated method to qualitative research approach, was used at this stage. Semi-structured interviews were used to collect the data. This was to ensure that similar questions were answered by all interviewees. This was to ensure that comparable information was obtained. Semi-structured interviews are combinations of unstructured and structured interviews. This begins with broad set of questions but makes room for some flexibility during the interviews.[698]

These types of interviews were used because they allowed for in-depth examination of the phenomena under study by combining open-ended questions with the flexibility of a range of other questions. An interview guide was used to serve as the structure for the interviews. This guide contained the constructs and predetermined open-ended questions. There was room for the researcher to probe further by asking follow-up questions.[699] Some similar issues were raised for clarification by subsequent interviewees as suggested by some scholars.[700] All these were done with the view to exploring and obtaining contextual *reality* from participants' perspectives.

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[698] This is in line with the proposition of Boomsma RS, *The construction and operationalization of NGO accountability: Directing Dutch governmentally funded NGOs towards quality improvement* (University of Amsterdam 2013) 62.

[699] See the work of Given LM, 'Hermeneutic' in *The Sage encyclopedia of qualitative research* (Sage Publications Inc. 2008) 5.

[700] This was in line with the work by Ryan B, Scapens RW and Theobald M, *Research method and methodology in Finance and Accounting* (Thompson London 2002) 76.

Quotations from coded data have been used to support and strengthen the narrative thereby ensuring in-depth understanding of participants' views.[701]

In summary, this study was conducted in accordance with the guidance provided by Miles and Huberman[702] which is coding of data collected; adding memos; patterns, themes, and relationships identification; limited generalization of consistency discerned; linking generalizations to constructs. The themes are discussed below.

Negotiation, which has been defined earlier in this work as the process of arriving at a common and unanimous position from otherwise conflicting positions[703] has been confirmed by the interviews. This study also defined negotiation as the process where disputants engage each other with the view to resolving their dispute. Customary and religious beliefs hold negotiation as a very important dispute resolution method.[704] It is seen as the very first step in resolving disputes and has existed since time immemorial.

Mediation was the second theme that the study discovered. Mediation is a non-coercive intervention by a third-party towards conflict resolution.[705] The spirit of mediation is "no victor no vanquish".[706] Mediation has been defined in this study as the use of a third party to facilitate conflict resolution and reconciliation of disputants.[707] Respected elders in the communities, those disputants trust and respect, persons with mastery over the subject matter serve as mediators in the Ghanaian society. These individuals are normally those who are well versed in the traditions and customs of the people. The mediator defines the issues in dispute, clarifies the interests of disputants, provides a platform for disputants to communicate effectively, focuses the discussions,

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[701] As recommended by Given LM, *The Sage encyclopedia of qualitative research* (Sage Publications Incorporated 2008) 6.

[702] Mathew B Miles and Michael A. Huberman, *Qualitative Data Analysis: An Expanded Sourcebook* (Thousand Oaks Sage Publications California 1994).

[703] Henry Kissinger, *American Foreign Policy: Three Essays* (WW Norton & Company Inc. New York 1969) 73.

[704] Christians who constitute about 71% of the total population of Ghana will refer you to Mathew 18:15 as a basis.

[705] Adeyinka Theresa Ajai and Buhari Lateef Oluwafemi, 'Methods of conflict resolution in African traditional society' [2014] African Research Review 138.

[706] Isurmona VH, *Problems of peacemaking and peacekeeping: perspectives on peace and conflict in Africa* (John Archers Publishers Limited Ibadan 2014) 149.

[707] see 3.13, page 124.

proposes, or assists with the proposition of options, helps clarify options generated, and assists disputants write their settlement.[708]

The importance and efficacy of mediation is beyond contestation. That is why mediation has been incorporated into Ghana's justice delivery system. Having been classified under court-connected ADR, litigants subsequently have the option of choosing to resolve their dispute using mediation. Alternatively, disputants can resort to mediation immediately after dispute occurrence, to have their disputes resolved. In each case, disputants select their own mediator based on their own circumstances. Mediation is used to resolve all kinds of disputes with the exception of those listed in section one (1) of Ghana's Alternative Dispute Resolution Act, 2010. These are matters of the environment, those of national or public interest, those relating enforcement as well as interpretation of the Ghanaian Constitution, and other prohibited by law cannot be resolved using ADR (mediation inclusive).[709]

The third theme that emerged was arbitration. Arbitration is the determination of disputes by a third party who renders a final and binding award. There is ad-hoc and institutional arbitration. Ad-hoc arbitration is where disputants select persons they deem appropriate to resolve their disputes whilst institutional arbitration is where disputants appoint non-human third parties to resolve their disputes. Arbitration can also be domestic or international. While an arbitral award may be enforced just like a court judgment[710], it can also be challenged in a court of law that is, the high court. If the challenge is successful, the arbitral award is set aside. This can happen in cases of incapacity or disability, invalidity of applicable law, inability to present case, award being outside arbitral agreement, and non-conformity to agreed procedure.[711] Arbitration is defined in this study as the voluntary submission of a dispute to a third party (neutral) for a final and binding determination (see conceptualization, p.134).

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708 Roger J. Patterson, 'Dispute resolution in a world of alternatives' [1988] Catholic University Law Review 591.

709 Alternative Dispute Resolution Act 798 of 2010, s 1.

710 Alternative Dispute Resolution Act, 2010 (Act 798), s 57(1).

711 Alternative Dispute Resolution Act, 2010 (Act 798), s 58(2).

7.4.3 Analysis of findings of the semi-structured interviews

Semi-structured interviews were used to collect qualitative data to explain the findings of the quantitative phase to answer the third research question exhaustively.

Research Objective 3: Appropriate Dispute Resolution Method in Ghana

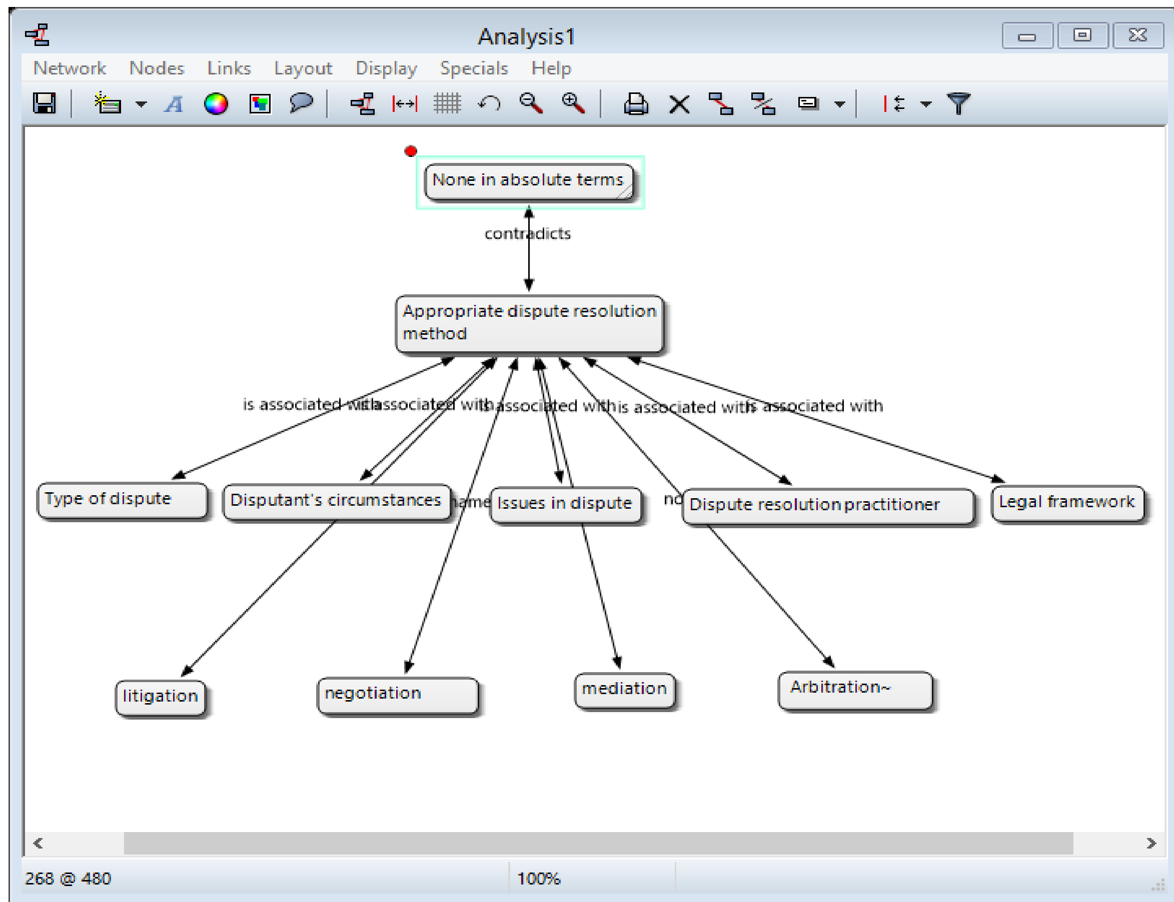

Fig.6: Appropriate dispute resolution method (qualitative)

The analysis revealed that there is no appropriate dispute resolution method in absolute terms. This is in consonance with findings by scholars such as Wolfe[712] who argue that there is nothing like one size fits all method for resolving disputes. What it means is, there is no single dispute

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[712] Jeffrey Scott Wolfe, 'Future of Alternative (Or is it appropriate) dispute resolution' [2001] Tulsa Law Journal 785.

resolution method that is always suitable for all disputes, at least not in Ghana. This is however in contrast with earlier findings by some scholars that there is an appropriate dispute resolution method.[713] For example, Feinberg posited that mediation is the appropriate dispute resolution method.[714] It is contrary to that by Wang[715] that ODR is superior to litigation. Also, it is also contrary to the point argued in some studies that people prefer more of the 'Other dispute resolution methods' also referred to as adjudicative methods.[716] This finding is interesting because there are hybrid dispute resolution methods which combine more than a dispute resolution method. Examples include Med-Arb, Arb-Med, among others. Again, some other dispute resolution methods can be found in some parts of litigation for instance. That is why one can have settlement in litigation.

Menkel-Meadow's call for renewed thinking beyond the assumption that litigation is the appropriate dispute resolution method with the view to exploring appropriate dispute methods for resolving disputes in diverse, complex, and modern settings is therefore very apt.[717] It is in the same vein that the 'other methods' have been incorporated into Ghana's court system. This fusion (marriage as I would call it) is known as Court-Connected Alternative Dispute Resolution (CCADR). This was blessed based on the Courts Act, and other relevant provisions in other Acts. The judiciary prepared a practice manual which stated the legal basis of Court Connected ADR in Ghana as sections 72 and 73 of the Courts Act and Order 58 Rule 4 of the High Court Civil Procedure Rules and other legislations.[718] *Therefore, the court adopted the ADR system.*[719] The beauty of this creativity is that litigants in court, can opt to use any of the ODR methods to resolve their dispute. Whatever decision is arrived at using any of these methods is brought back to the court for adoption as consent judgment. By so doing, the court throws its weight behind the

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713 Petrina Ampeire, 'ADR in South Africa: a brief overview' (Global pound, 2017) <https://ww.globalpound.org/2017/12/09/adr-south-africa-brief-overview> accessed 17 August 2018.

714 Kenneth R. Feinberg, 'Mediation - A Preferred Method of Dispute Resolution' [1989] Pepperdine Law Review S5.

715 Margaret Wang, 'Are alternative dispute resolution methods superior to litigation in resolving disputes in international commerce?' [2014] Arbitration International 1.

716 Stephen LaTour, Pauline Houlden, Laurens Walker and John Thibaut, 'Some determinants of preference for modes of conflict resolution' [1976] The Journal of Conflict Resolution 319.

717 Menkel-Meadow Carrie, 'The trouble with the adversary system in a postmodern, multicultural world' [1996] William and Mary Law Review 5 – 44.

718 See Chapter two of the Court Connected ADR Manual published by the Judiciary. This includes the Courts Act and the Arbitration Act.

719 See P1: 151-152.

decision rendered by these other dispute resolution methods. This therefore enhances decision enforceability since it would be enforced in the way a court judgment is enforced. This confirms the complementarity of these methods. However, some scholars see it as evidence of litigation superiority over the other methods.

7.4.3.1 Analysis of determinants of appropriate dispute resolution method

Indeed, it is incontestable that dispute resolution methods differ and perform differently or better than others in different situations.[720] In fact, even the same dispute resolution methods function differently under different circumstances. That is why Chan and Suen[721] found that arbitration is the appropriate method for resolving international construction disputes in China. This study found that different factors collectively determine the appropriate dispute resolution method to use in resolving disputes. These factors are namely type of dispute, disputant's circumstances, issues in dispute, dispute resolution practitioner, and legal framework. This appears to be in alignment with the saying that there may be more than two sides to every situation. Again, this finding confirms the statement that truth is partial, complex, lends itself to interpretation and depends on features of the knower and the known.[722] This is especially so because man's knowledge base changes with time and human circumstances. The determinants of appropriate dispute resolution method are type of dispute, disputant's circumstances, issues in dispute, dispute resolution practitioner, and the legal framework. These findings are contrary to those put forward by Feinberg that uncertainty of result, inefficiencies in time and money, importance of the controversy, and suitability for neutral expert fact-finding.[723] The factors that determine an appropriate dispute resolution method are illustrated below:

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720 John T. Allison, 'Five ways to keep disputes out of court' [1990] Harvard Business Review 166.

721 Edward H. Chan and Henry C. H. Suen, 'Dispute resolution management for international construction projects in China' [2005] Management Decision 589.

722 Menkel-Meadow Carrie, 'The trouble with the adversary system in a postmodern, multicultural world' [1996] William and Mary Law Review 5.

723 Kenneth R. Feinberg, 'Mediation - A Preferred Method of Dispute Resolution' [1989] Pepperdine Law Review S5.

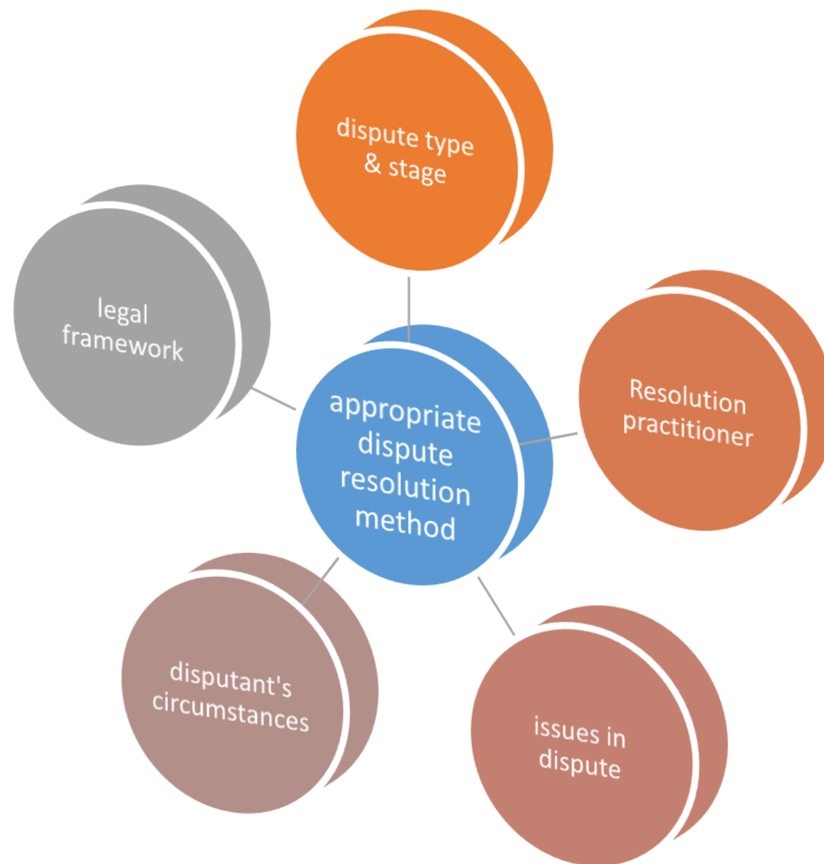

Fig. 7: Determinants of appropriate dispute resolution method

The factors found as determinants of appropriate dispute resolution method have been discussed below.

The first factor identified was *disputant's circumstances*. Contextualization of dispute resolution attempts to suit the peculiar situation of a disputant is a key resource. In this respect, financial status of disputants is a very important determinant of the choice of dispute resolution method. It was found that financial status could either be an enabler or deterrent to selecting disputant's preferred dispute resolution method. This confirms earlier studies carried out by scholars such as Allison[724] showing that finance is a key determinant of appropriate dispute resolution method selection. This becomes especially clearer where a disputant must pay for a third-party neutral's

724 John R. Allison, 'Five ways to keep disputes out of court' [1990] Harvard Business Review 166.

services. The ability to pay for such services is a very crucial consideration in selecting a dispute resolution method. This is therefore in line with previous studies that found cost as a factor to consider in selecting an appropriate dispute resolution method. Disputant's financial position will determine which dispute resolution method she/he will select in resolving a dispute.

In the words of one of the participants,

"My position will be very much enhanced if I can afford all the available dispute resolution methods. That way, I will be able to choose the most suitable one for me".[725]

This is what another participant has to say:

"The affordability of a dispute resolution method is my number one consideration in selecting a dispute resolution method. I will make do with the one that my money can afford even if that is not the most ideal one for me".[726]

Another disputant's circumstance discovered is knowledge of availability and efficacy of all dispute resolution methods. This finding is in line with the proposition by Smith and Martinez that the best dispute resolution methods are those with specific features including stakeholders being well informed about the availability of dispute resolution methods.[727] A disputant's knowledge about the various dispute resolution methods to select from is very key. A participant had this to say:

> "how can I make the best choice if I lack knowledge about the existence of some dispute resolution methods? Again, how do I make the best choice if I do not have adequate knowledge about the dispute resolution methods I have to choose from? Adequate knowledge about them and their functionality will better position me to make a choice. Another participant said: I need to be aware of how each of the various dispute resolution methods performs. How effective are they? What are the testimonies of users of these methods? Will they recommend these methods and why?"[728]

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725 Quotation 83.

726 Quotation 1012.

727 Stephanie Smith and Martinez Janet, 'An analytic framework for dispute systems design' [2009] Harvard Negotiation Law Review 123.

728 Quotation 1020.

Certainly, every disputant would want to select a method that has a high user rating. The expected outcome of a dispute resolution method is another consideration discovered. Most of the participants stated that they would want their disputes settled amicably and have their relationships restored or preserved.
A participant had this to say:

> I behave like the proverbial fowl in dispute. This animal never plucks off the eyes of its adversary no matter how upset it is. I want my dispute resolved in a manner that enables me to preserve my relationship with my co-disputant for that matter I will go for a dispute resolution method that will help me do so.

However, some participants were less concerned about relationship preservation. They ought to have got what they wanted, irrespective of the cost even if it means losing their relationships. A participant said this:

> I would want a method that will deal ruthlessly with anyone who messes up with me, I care less about the aftermath. If you hurt me with your eyes opened, I will also go for a method that will allow me to deal with you with my eyes wide opened.[729]

Some would want a method that can give them justice. In this respect, they would go for a method that they perceive can give them justice. To some of these disputants, fairness is a key component of this justice. They would look for a method that would offer them a fair hearing and fair decision. This confirms the work done by scholars such as Wang.[730] There are those who are also interested in setting precedent. For these disputants, it is obvious they would go for a method that will allow them to do so, and obviously this would be litigation. In essence therefore, socio-cultural, and economic factors determine which dispute resolution method would be the appropriate one for a disputant. What this means is that the appropriate dispute resolution method is subjective and

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729 Quotation 476.

730 Margaret Wang, 'Are alternative dispute resolution methods superior to litigation in resolving disputes in international commerce?' [2014] Arbitration International 9.

dynamic. It changes with time and circumstances. An individual based on his current circumstances might find a dispute resolution method as appropriate at a point in time and find another appropriate in another set of circumstances.

The second factor identified was *dispute type*. It was found that the type of dispute is a key determinant of appropriate dispute resolution method. This is a confirmation of the work done by Bierling[731] that when it comes to travel and tours, negotiation is the most appropriate dispute resolution method. This finding is like an earlier study undertaken which found that ODR is best at resolving construction disputes.[732] Indeed, in some jurisdictions like China, mediation is the preferred dispute resolution method for resolving labour disputes.[733] Again, Amarteifio and Lartey[734] made the point that arbitration is the preferred method for resolving large commercial disputes in Ghana. While this may be true, a myriad of issues collectively determines a preferred dispute resolution method. In fact, a dispute resolution method seen as ideal in a particular large commercial dispute may not be ideal in another or in a similar circumstance at different times involving different disputants. A reason is that disputants' circumstances differ. Even in cases where disputants' circumstances are similar, their interpretation and understanding may differ. It is the collectivity of disputants' understanding of their prevailing circumstances and their temperament type that determines what they see as appropriate.

The stage of the dispute is also a determinant. A dispute resolution method may be appropriate for resolving a dispute at an early stage but may not be appropriate at a later stage of that same dispute. A protracted dispute for instance may require a dispute resolution method that offers more control to the third party neutral to settle the dispute. This may however, not always be the case. A key example is the Dagbon Chieftaincy dispute in Ghana. The height of this protracted

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731 Laura Bierling, 'Adopting the best dispute resolution method in the Travel and Hospitality industry using Multi-Attribute Decision Making Models' [2019] PM World Journal 1.

732 See the work of Bvumbwe C and Thwala DW, 'An Exploratory Study of Dispute Resolution Methods in the South African Construction Industry' [2011] International Proceedings of Economics Development and Research 34.

733 Feng Jiaojiao and Xie Pengxin, 'Is mediation the preferred procedure in labour dispute resolution systems? Evidence from employer–employee matched data in China' [2020] Journal of Industrial Relations 98.

734 Melisa Amarteifio and Isaac Aburam Lartey, 'Litigation and enforcement in Ghana: overview' <https://uk.practicallaw.thomsonreuters.com/0-619 2168?transitionType=Default&contextData=(sc.Default)&firstPage=true> accessed 24 August 2021.

dispute with extremely damaging impacts saw the killing of King of Dagomba, Ya Na Yakubu Andani II and twenty – eight (28) of his followers on 27th March, 2002.[735] The Committee of Eminent Chiefs headed by the Asantehene Osei Tutu II in 2019 resolved this dispute after defying many dispute resolution attempts including litigation. The Committee of Eminent Chiefs utilized their rich expertise in customs, traditions, and mediation practice to resolve the age-long dispute. Key dispute types that came up during analysis of the data collected during the semi-interviews were chieftaincy disputes, and labour disputes as discussed below:

The first type of dispute is Chieftaincy disputes and their resolution. The institution of chieftaincy is an integral part of Ghana's socio-cultural and legal fibre. This can be seen by the dedication of a whole chapter (Chapter 22) of Ghana's Constitution, to chieftaincy matters. Article 270[736] established the institution of chieftaincy and its organs. These organs include the National House of Chiefs, Regional Houses of Chiefs, and Traditional Councils. This institution was clothed with the power to compile Ghana's customary law after reviewing its customs and usages. It is also expected to establish succession lines which are applicable to every stool or skin.[737]

Despite the existence of increased modern democratic structures, about ninety percent (90%) of Ghanaians rely on traditional authoritative systems in organizing their affairs.[738] This is not surprising because the institution of chieftaincy and its structures have kept the Ghanaian society together since time immemorial. It is therefore not surprising that Ghana's 1992 Constitution mandates the chieftaincy institution to resolve matters affecting it – chieftaincy related matters. These matters include nomination, election, enstoolment/enskinment, destoolment of chiefs and queen mothers. Even though section 57(1) of the Chieftaincy Act, 2008 defines who a chief is, this can be the source of a dispute. However, the institution is properly clothed to resolve such disputes. The Chieftaincy institution uses its organs to develop the customary law and resolve chieftaincy disputes. Each Traditional Area is expected to have a Traditional Council of which

[735] Deborah Pellow, 'Logistics of violence among the Dagomba in Northern Ghana' in Steve Tonah and Alhassan Sulemana Anamzoya (eds), *Managing chieftaincy and Ethnic conflicts in Ghana* (Woeli Publishing Services Accra 2016) 54.

[736] Constitution of the Republic of Ghana 1992.

[737] Article 272(b) of Ghana's 1992 Constitution.

[738] Nachinaab John Onzaberigu and Francess Dufie Azumah, 'Chieftaincy disputes and its effects on women and children: a case study at Bawku Municipality, Ghana' [2017] The International Journal of Humanities and Social Studies 18.

the Paramount Chief of each area is the President except the Kumasi Traditional Area where the Asantehene is the President.[739]

The Chieftaincy Act gives the discretion to the Judicial Committee of a Traditional Council to be assisted by a lawyer, if the Council deems it necessary.[740] The Traditional Council, which is the lowest organ of the Chieftaincy institution, has the legal mandate (jurisdiction) to hear and determine chieftaincy related causes or matters in their traditional areas.[741] The Traditional Council is required to conduct its proceedings according to customary law. This jurisdiction it exercises through its Judicial Committee made up of three or five of its members.[742] It is worthy of note that this council has the power to compel party and witness attendance as well as production of documents since it has powers equal to those of a District Court in civil matters. The highest organ of the Chieftaincy institution is the National House of Chiefs.

The National House of Chiefs hears and determines appeals from the Regional Houses of Chiefs. However, this appeal ought to be lodged within thirty days after delivery of judgment unless extended by either the Regional House of Chiefs or the National House of Chiefs.[743] It is worthy of note that an appeal against a final judgment or order to either the Regional or National House of Chiefs operates as a stay of execution of that judgment or court order.[744] This house has the powers, rights and privileges of a High Court, and can compel attendance of witnesses and examination on oath, compel production of documents, etc. Rules of Court Committee fashions rules for use by the house.

It also has the power to commit offenders for contempt same as that of the High Court. Interestingly, however, the house is required to 'certify' to the High Court of a contempt charge and the High Court shall either acquit or punish the accused as it deems fit. It also has the power to punish any person(s) who wilfully obstruct(s) proceedings of its Judicial Committee and can impose a fine of up to two hundred and fifty penalty (250) units (GH¢3,000.00) or a term of

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[739] See Sections 12(1) and 13(1) of the Chieftaincy Act 759 of 2008.
[740] Chieftaincy Act 759 of 2008 s 15(5).
[741] Section 29(1) of Chieftaincy Act 759 of 2008.
[742] See Section 29(2) of Chieftaincy Act 759 of 2008.
[743] Section 33(1) of Chieftaincy Act 759 of 2008.
[744] See Section 34(1) of the Chieftaincy Act of 759 of 2008.

imprisonment of up to twelve months or both on summary conviction.[745] At the highest end of the scale, an appeal concerning a judgment of the National House of Chiefs goes to the Supreme Court. However, the High Court supervises all Chieftaincy adjudicating institutions.[746] The High Court also enforces judgments of the Judicial Committee of the House of Chiefs.

A critical institution for resolving chieftaincy disputes is the *Regional House of Chiefs*. Regional House of Chiefs hear both petitions and appeals. Petitions are the means by which fresh cases are submitted to the Judicial Committee of the House. Chieftaincy appeals from traditional councils are heard and decided by the appropriate Regional House of Chiefs.[747] Indeed, each region is required to have a Regional House of Chiefs.[748] The Regional House of Chiefs is responsible for chieftaincy matters in the region. The jurisdiction of the Regional House of Chiefs includes determination of appeals from the traditional councils regarding nomination, election, selection, installation, or deposition of a chief. It also has original jurisdiction in all matters concerning paramount stool or skin or the occupancy of a paramount stool or skin including a queen mother; making appropriate recommendations for the expeditious resolution of chieftaincy disputes; compiling customary laws and lines of succession to each stool/skin, among others. A Regional House of Chiefs is clothed with the power to declare what the customary law is in its region or part of its region.[749] It also has the power to alter existing customary law in its region or part thereof.

The Judicial Committee of the Regional House of Chiefs exercises the Regional House's original and appellate jurisdictions. The Judicial Committee consists of three chiefs selected from amongst members of the Regional House of Chiefs. Cases are brought before regional or national houses of chiefs in two forms – either a petition or appeals. Actions invoking the house's original jurisdiction are commenced in the form of petitions.[750] The petitioner's full name and capacity, facts and particulars seeking to rely on, nature of relief seeking, names and addresses of all parties likely to be affected by the action, names and particulars of would-be witnesses, address of

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[745] See Section 39(b) of the Chieftaincy Act 759 of 2008.
[746] Section 43 of the Chieftaincy Act 759 of 2008.
[747] Article 274(3)(c) of Ghana's 1992 Constitution.
[748] Article 274(1) of Ghana's 1992 Constitution.
[749] See Section 51(1) of the Chieftaincy Act 759 of 2008.
[750] National and Regional Houses of Chiefs Procedure Rules, 1972 Rule 1.

petitioner and his/her counsel for service are required to be provided in the petition.[751] The defendant has fourteen days after service to file a statement of defence stating facts and particulars he seeks to rely on, names and particulars of witness(es) and address of his counsel for service where represented by counsel.[752] A memorandum of agreed issues may be filed if the parties so wish or if ordered to do so. A hearing notice is then issued to the parties. This notice specifies the suit number, names of the parties (petitioner/appellant versus defendants), date and time fixed for hearing, date of issued, and a note that the Tribunal will proceed to hear the case even if a party fails to appear or put in appearance. This notice is issued by order of the Tribunal. The hearing notice is served on the parties in the same manner as a court summon. The bailiff fills a certificate of service form upon serving a party. The party served, date, place of service and the time are entered in the certificate of service by the bailiff with the bailiff appending his signature beneath.

The House appoints panel members before the case is called. Three members of the committee constitutes the panel. One of these members must be a paramount chief well knowledgeable in the traditions and customs of the disputants so he could deal with such matters in the hearing. The other panellists are selected from other paramountcy. These chiefs are nominated and an agreement reached on at a meeting of all judicial council members. Appointment letters are issued to these chiefs to sit on specific cases. The exact case and all the panel members are stated in the letter of appointment. The Registrar of the Regional House of Chiefs writes this letter.

At the hearing, the petitioner is required to open his case first unless otherwise directed. Witnesses may be called same of which shall be examined by the party calling them and cross-examined by the other party. Thereafter, a re-examination may be done on matters arising by the party calling a witness. The petition may be struck out if a petitioner fails to appear when the petition is called for hearing. On the other hand, the judicial committee may proceed to hear the matter if the defendant fails to appear when the petition is called for hearing[753] and deliver its judgment giving reasons thereof.

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[751] Rule 2 of the National and Regional Houses of Chiefs Rules, 1972.
[752] See Rule 5 of the National and Regional House of Chiefs Rules, 1972.
[753] See Rule 12(1) & (2) of the National and Regional House of Chiefs Rules, 1972.

An appeal is permitted within thirty days after judgment whether it is to the Regional House of Chiefs against a judgment of a Traditional House of Chiefs or to the National House of Chiefs against a judgment of a Regional House of Chiefs.[754] The notice of appeal should contain the appellant's address, the grounds of appeal, whether the entire decision or the specific part thereof, nature of reliefs, name(s) and address(es) of counsel, names and address(es) of parties directly affected by the appeal, particulars of misdirection or error in law in question, and grounds of appeal.[755] The notice of appeal is then served on all parties directly affected and sufficient copies supplied to the Judicial Committee members who will hear the case.

The Greater Accra Regional House of Chiefs consists of thirteen (13) traditional councils. These are Ga Traditional Council, Ngleshie Alata Traditional Council, Osu Traditional Council, La Traditional Council, Teshie Nungua Traditional Council, Tema Traditional Council, Kpone Traditional Council, Prampram Traditional Council, Ningo Traditional Council, Ada Traditional Council, and Shai Osudoku Traditional Council.

The Regional House of Chiefs is the appropriate place for resolving chieftaincy disputes.[756] A key reason for this conclusion is that the Chiefs who are custodians of the traditions and customs of the people and who have in-depth knowledge in chieftaincy matters resolve these disputes. The empanelling is done to ensure that one chief from the traditional council from which the dispute emanates is a member of the panel. This they did not see happening in litigation over chieftaincy matters.

Unlike the courts, cases determined by the Houses of Chiefs are not reported in specific reports even though the various Houses of Chiefs have records of them. It is only the cases appealed from the National House of Chiefs to the Supreme Court that are reported. However, the Regional Houses of Chiefs submit their reports to the Ministry for Chieftaincy and Religious Affairs periodically.

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754 See Rule 13(2) of the National and Regional Houses of Chiefs Procedure Rules, 1972.

755 See Rule 14(1) of National and Regional Houses of Chiefs Procedure Rules, 1972.

756 Respondents' view.

Table 71: Statistics on cases received and resolved by the Greater Accra Regional House of Chiefs in the 2nd and 3rd Quarters, 2020:

Table 70: Cases received and resolved by Greater Accra Regional House of Chiefs

Quarter	Number of Cases brought forward from previous quarter	Number of Cases received in reporting quarter	Total Number of cases	Number of Judicial committee sittings in reporting quarter	Number of cases disposed off	Number of cases pending
2nd Quarter	23 cases	3 cases	26 cases	24 sittings	1 case	25 cases
3rd Quarter	25 cases	5 cases	30 cases	38 sittings	4 cases	26 cases

It can be seen from the data for the 2nd and 3rd quarters that an average of twenty-four (24) cases are brought from previous quarter to the next quarter. However, only four (4) cases are received in a quarter. Again, 2.5 (3 cases, to one decimal place) cases are disposed of in a quarter. The number of cases pending is 25.5 (26 cases, to one decimal place). The respondents who stated that COVID-19 affected the speed at which the cases were determined.

The second type of dispute identified in the analysis of the interviews conducted was labour disputes. It was discovered that labour or commercial disputes are better resolved using *other dispute resolution methods* and this is a confirmation of some earlier studies.[757] The cost, time and need to maintain business relationships were the main reasons for the choice of ODR in

[757] See the work done by Sagartz A, 'Resolution of international commercial disputes: surmounting barriers of culture without going to court' [1998] Ohio State Journal on Dispute Resolution 695.

resolving labour or commercial disputes. Labour disputes are normally resolved by the National Labour Commission.

The National Labour Commission (NLC) is the institution established to resolve labour disputes in Ghana. The Commission was established under the Labour Act charged with the mandate to ensure industrial harmony, among others.[758] It receives complaints from employees, employers, trade unions, and Employer Association. The NLC undertakes settlement at four levels, that is, at facilitation, at mediation, at voluntary/compulsory arbitration, and the Commission level (by the Commission).

The National Labour Commission resolves industrial disputes without charging disputants a '*pesewa*'.[759] An aggrieved party can walk into the NLC offices and would be provided with a form to complete. An aggrieved party makes a complaint, to be specific. Information to provide include the type of party the complainant belongs to (whether employer, employee, Trade Union, or employer's organization). Again, contact details of the respondent must be provided. The next information to provide is the nature of the dispute – is it unfair termination, unfair labour practice, refusal/failure to negotiate, violation of Union Rights, dismissal, among others. There is also the need to provide information on the brief facts of the dispute. If there are any documents attached that must be noted, the reliefs being sought as well as the sector in which the dispute arose must be stated. Lastly, the date dispute occurred, details of dispute procedures followed must be stated. Lastly, the document must be signed by the complainant. Methods employed in resolving disputes include facilitation, mediation, and arbitration. The NLC provides list of enlisted dispute resolution practitioners who are either mediators or arbitrators. The parties bear the cost of the method used. The outcome is binding on the parties.

Table 71: List of cases received and settled by the National Labour Commission

Year	Nature of complaints						medical	others	Total cases received	Total settled
	Summary dismissal	Unfair termination	Retirement/ ESB	Unpaid salaries	Wc	Layoff / R				

[758] See Labour Act, 2003 (Act 651).

[759] *Pesewa* is the lowest denomination of Ghana's currency.

2005	123	120	57	50	15	33		127	525	**51**
2006	145	178	72	77	11	43		137	663	**191**
2007	163	172	65	77	26	56		127	686	**220**
2008	160	178	46	75	13	26		120	618	**441**
2009	139	237	38	58	6	48		214	740	**406**
2010	199	278	31	95	15	79		207	904	**413**
2011	143	198	26	59	9	50	2	141	628	**371**
T'di 2011	-	-	-	-	-	-	-	-	30	**12**
T'di 2014	-	-	-	-	-	-	-	-	20	**9**
T'di 2015	-	-	-	-	-	-	-	-	21	**10**
T'di 2016	-	-	-	-	-	-	-	-	30	**15**
2012	127	190	6	32	27	31	35	218	666	**322**
2013	149	196	5	18	26	74	1	198	667	**303**
2014	116	151	33	34	22	74	3	157	590	**287**
2015	141	212	9	49	21	62	2	158	654	**306**
2016	108	221	14	93	6	55	-	167	664	**352**
2017	145	252	30	72	3	67	1	148	718	**324**
2018	192	222	8	139	4	88	0	191	844	**412**
2019	175	202	4	184	3	65	2	123	758	**714**
J - S 2020	75	104	8	98	2	48	0	81	416	**226**

Source: Field data (National Labour Commission, 2020)

Note the meaning of the following in the table above:

WC – Workmen's compensation

T'di – Takoradi (Western regional capital, Ghana)

ESB – End of service benefit

J - January

R – Redundancy

S - September

The above data indicates that the National Labour Commission deals with mainly six (6) types of labour-related disputes, that is, summary dismissal, unfair dismissal, retirement/end of service benefits, unpaid salaries, workmen's compensation, redundancy/lay-off/severance pay, and other disputes. A total of 10,325 cases were received for the 15-year period (that is, 2005 – 2019) out of which 5,113 cases were settled. The year 2020 was excluded because the last quarter data was not available at the time the data was collected. Cases received (101) and settled (46) in Takoradi were also excluded because the study focused on Ghana as a whole and not on specific cities.

Of the 10,325 cases received during the 15-year period, twenty-nine-point one percent (29.1%) were on summary dismissal; twenty-three-point fifty-six percent (23.56%) were 'other types' of disputes. Furthermore, twenty-one-point five percent (21.5%) cases were on summary dismissal; complaint on unpaid salaries represented ten-point seventy-seven percent (10.77%); complaint on redundancy/lay-off/severance pay represented eight-point two percent (8.2%); complaints on retirement/end of service benefit represented four-point three percent (4.3%); and complaints on workmen's compensation represented two percent (2%).

It is worthy of note that the settlement rate of complaints received for the last three years excluding the year 2020 (that is from 2017 to 2019) was sixty-two-point five percent (62.5%). This speaks of the efficacy of the National Labour Commission in resolving labour disputes. Data from the table above showed that the previous year of the analysis recorded a ninety-four percent (94%) settlement rate.

The third factor identified was *the issues in dispute*. This was a key theme that emerged from the interviews. This refers to specific matters at the core of the disagreement. Participants were of the view that these issues would determine the forum to approach in seeking a resolution. A participant stated that:

> 'for me, the specific issue at the centre of the dispute will determine where I go to for a resolution. If I have an issue with my partner in marriage for instance, I will send it to my Pastor for him to resolve it. This is because I can trust him to keep whatever transpires at the meetings between ourselves, nobody will hear anything. If however, I have a land ownership

case, chances are that I might end up going to court especially where there has been double sale of the land by the relevant traditional authority'.[760]

This confirms earlier works done by scholars such as Georgette Francois who posited that ODR is the ideal method for settling land disputes, for instance.[761] Again, issues on marriage, especially that to do with divorce are best handled by the courts. It is interesting to know that under Ghanaian law, this is granted if the marriage has 'broken beyond reconciliation'. It is however, worthy of note that such a request cannot be taken to the courts of Ghana within two (2) years of entering into the marriage. The courts here refer to the Circuit Court or the High Court.[762]

In the same vein, an issue that has to do with crime cannot be resolved using customary arbitration for instance.[763] One cannot also serve as an arbitrator in a criminal matter, except with approval by the court.[764] It can only be dealt with using litigation. This is hinged on the premise of punishing to serve as a deterrent, correction, or reforming.

The fourth factor that emerged was *legal framework*. The legal framework of Ghana provides for dispute resolution. The Constitution of Ghana allows for use of litigation to resolve all manner of disputes. These include those on civil, criminal, and interpretative, among other issues. It is interesting to note that the Constitution has not only provided the forum for resolving disputes (litigation) but also granted these courts specific jurisdictions.[765] What this means is, not any court can hear any criminal matter. For instance, only the Supreme Court is clothed with the power to enforce and interpret the Constitution.[766] The Constitution has also established the chieftaincy institution in Ghana and clothed it with the power to determine all matters pertaining to chieftaincy – election, selection, installation, challenge of hailing from the right lineage and family, codifying, interpreting and developing the customary law, among others.[767] Furthermore, section one (1) of the Alternative Dispute Resolution Act, 2010 (Act 798) prohibits the use of

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[760] Quotation 895.

[761] Francois G, 'ADR is best option for land disputes' <http://www.ghana.gov.gh/index.php/media-center/regional-news/1455-adr-is-best-option-for-land-disputes> accessed 22 August 2018.

[762] Section 43 of the Matrimonial Causes Act 367 of 1971.

[763] Alternative Dispute Resolution Act 798 of 2010, s 89(2)(a).

[764] Alternative Dispute Resolution Act 798 of 2010, s 89(2)(b).

[765] The Courts Act 459 of 1993 as amended by the Courts (Amendment) Act, 2002, has augmented this (Act 620).

[766] See Article 130(1)(a) of the Constitution of the Republic of Ghana.

[767] See Article 272 of the Constitution of the Republic of Ghana.

ODR to resolve matters relating to the environment, those of national or public interest, enforcement or interpretation of the constitution. Some pieces of legislation make room for use of dispute resolution methods other than litigation. For instance, the sections 72 and 73 of the Courts Act, 1993 (Act 459) as amended by the Courts (Amendment) Act, 2002 (Act 620) enjoin courts to promote reconciliation in cases before it. Again, the Order 58 Rule 4 of the High Court Civil Procedure Rules (C.I. 47) empower the High Court to settle matters before it amicably at the pre-trial stage. Therefore, the legal framework sets the boundaries as to which method is permissible for use in resolving specific disputes and which is not.

The fifth factor that emerged from the interview was *dispute resolution practitioner*. The study revealed that the person(s) or institution involved in a dispute resolution process is(are) very important to participants. Dispute resolution practitioners include opinion leaders such as elders, chiefs of all ranks, religious leaders, judges, and other respected members of the Ghanaian society. Chiefs occupy a very special role in dispute resolution since they are seen as the link between the living and the death. Their names differ from ethnic group to ethnic group. To the Ewes[768] a chief is called '*Togbe*', to the Gas[769] a chief is known as *Nii*. While these are general names for chiefs, the specific name of a chief is dependent on his/her rank in the chieftaincy as well as the stool name. The highest rank of the Akan chieftaincy hierarchy is the *Asantehene*. The next in rank to the Asantehene is the paramount chief (*omanhene*), divisional chief (*abrempong*), headman (*adikrofoɔ*) and council of elders (*abusua panin*)[770] in that order. While in the case of litigation, a disputant has no say in who presides over the hearing, in the other methods she/he has. Even in litigation where a party is uncomfortable with a judge hearing his/her case, that person can raise an objection.

A successful objection on the ground of real likelihood of bias supported by cogent and convincing evidence pointing to inability to get justice against a judge will lead to that judge being asked to recuse himself/herself from hearing the case.[771] Interestingly, in arbitration a person

768 The Ewe is an ethnic group in Ghana.
769 The Ga is an ethnic group in Ghana.
770 Tweneboah Seth, 'The sacred nature of the Akan chief and its implications for tradition, modernity and Religious Human Rights in Ghana' (MA thesis, Florida International University 2012) 52.
771 *Republic v High Court (Financial Division) Accra (JS/32/2019) [2019] GHASC 74*.

appointed arbitrator is required to disclose any information that will affect his/her neutrality,[772] or disclose any matter likely to occasion reasonable doubt on his/her independence and impartiality.[773] Again, on chieftaincy matters, only chiefs sit over these matters, the disputant has no choice. However, a party dissatisfied with a chief seating to adjudicate over his dispute can object to it and if he satisfies the threshold, the chief in question would have to recuse himself/herself. However, if the dispute remains unresolved at the National House of Chiefs, it can be taken to the Supreme Court for resolution where a judge, not a chief would adjudicate over its resolution.

In the other dispute resolution methods, the parties choose the third-party neutral that determines the dispute. However, there are instances where institutions are used for resolution (where an institution is selected to determine the dispute, not an individual). Whether institutional or ad-hoc, disputants select who resolves their dispute. What came out clearly was that irrespective of how good a dispute resolution method is designed, if it is not properly utilized, the outcome would not be satisfactory to the parties. Third neutral's party mastery over use of the chosen dispute resolution method, his possession of the requisite temperament, application of the relevant procedures, among others are to disputants. Therefore, for a dispute resolution method to be effective at appropriately resolving a particular dispute, it is incumbent on the dispute resolution practitioner to be knowledgeable in the subject matter of the dispute. Some participants had the following to say:

> 'if I am not convinced of the neutrality, competence, and possibility of getting justice, I won't bother opting for a particular dispute resolution method. Why will I spend my money paying for the services of an individual who will end up ganging up against me, I won't'.[774]

Another said:

> 'I will only select a dispute resolution method if I have no doubt about the credibility of the person who will determine the dispute'.[775]

772 Alternative Dispute Resolution Act 798 of 2010, s 12(5).
773 Alternative Dispute Resolution Act 798 of 2010, s 15.
774 Quotation 720.
775 Quotation 1035

It must be noted that the issue of dispute resolution practitioner as a factor in determining the appropriate dispute resolution method does not arise if negotiation is used. This is because the disputants engage each other directly. The burden here is on the disputants to ensure that they are in the proper frame of mind to engage the other party successfully, that they possess the requisite negotiating skills, that they have the right temperament to negotiate successfully, among others.

7.4.4 Dispute Resolution Methods

It emerged from the semi-structured interviews that Negotiation, Mediation, Arbitration and Litigation were identified as the main disputes resolution methods in Ghana.

7.4.4.1 Negotiation

Negotiation is a dispute resolution method where disputants engage each other directly with the view to resolving their own dispute. In the case of labour disputes, parties are required to engage each other in good faith to resolve their dispute in line with the terms of their contract of collective agreement as the case may be.[776] Whilst no specific process was identified for negotiation, certain factors were identified as factors for successful negotiation. These were: ability and willingness to engage the other disputant directly, being in the right frame of mind to make intelligent submissions, having a win-win mindset (willingness to compromise), having good persuasive/communication skills, and commitment to having the dispute resolved.

A participant said this:

> 'One need to have the right temperament to talk with the party he/she is in dispute within order to resolve their dispute. s/he should also have the ability to win the other party over to his/her side. In the absence of these, it will be a useless exercise'.[777]

Another participant said:

> 'The parties decide how to negotiate. However, they should be able to maintain an unpolluted atmosphere throughout the process if they are to get anything out of this process. None should

[776] Labour Act 651 of 2003.
[777] Quotation 345.

be shy of the other either. Each party should be free to speak his/her mind without being hurt or harmed by the other. disputants should be sure of sufficient safeguards to prevent abuse from any of the parties'.

The foregoing views amply demonstrate the vulnerability of negotiation. However, it is seen as very simple, inexpensive, and fast. This is because it is squarely in the hands of the disputants. One of the biggest shortcomings of negotiation is inability to enforce its outcome. It relies on the faithfulness of the disputants to honour their agreement.

7.4.4.2 Mediation

The principles of Mediation are: (i) justice; (ii) fairness (procedural); (iii) party autonomy and control; (iv) confidentiality, neutrality, and impartiality of the process; and (v) settlement enforcement.[778] The mediation process as presented by Kudonoo[779] using the *koklotsu*[780] and as laid out in the acronym *'PEACE' is as follows: prepare, engage, analyze, concerns, explicate.* The first step of the mediation process, known as *prepare* is associated with the adinkra symbol *bi nka bi* (none should bite the other) is where the mediator explains the process to the parties and urges them to be decorous in their choice of words throughout the process. Parties are assured of confidentiality and impartiality as well. *The second step is 'engage'.* This step was assigned got its 'spirit' from the adinkra symbol '*ese ne tɛkrɛma'* which means 'teeth and mouth'. The parties are allowed to ventilate, in other words, pour out their heart. They are expected to say whatever is bothering them or whatever issue they have with the other party. The third step is '*analyze*'. This step was associated with the adinkra symbol '*hwɛhwɛmudua'* which means *'measuring rod or* searching rod'. This is where every attempt is made to unearth the root cause of the dispute. The next step is '*concern*' which is hinged on the adinkra symbol '*mate masie' which* means 'I have heard but hidden it'. The issues that emerged from the third step are exhaustively talked and/or discussed by the parties.

778 Kasser-Tee KB Clara, 'Mediation in Ghana: a critical examination of how act 798 seeks to improve mediation and the mediation process in Ghana' [2017] GIMPA Law Review 182.

779 Kudonoo C Enyonam, 'The *PEACE* Model: a sustainable approach to conflict prevention and resolution in Africa' in Sherman W (ed), *Handbook on Africa: Challenges and issues of the 21st Century* (Nova science publishers 2016) 19.

780 Ewe (one of the ethnic groups in Ghana) name for Cock.

Disputants are then professionally guided to generate options for consideration. The fifth step is '*explicate*' which was undergirded by '*mpatapɔ*' which means '*knot of pacification or reconciliation*'. Wisdom is used to locate and tie this knot. That is why in most cases people who are well versed in the customs and traditions of the people as mediation are preferred as mediators. The elders, chiefs, among others are frequently used.

A participant stated that the mediation process has eight stages. These stages are as follows:

> 'Mediator's opening statement, parties' opening statements, setting of agenda for the process, interests' exploration, options generation, negotiation, formalising decisions, and closing. He added that there could be an additional step which is 'caucusing'. Caucusing is where the mediator holds private sessions with a party or parties, depending on the exigencies of the process'.[781]

This process, even though was not attached to any traditional symbols, appear to be in line with the one proposed by Kudonoo above. Another participant who is a court-connected mediator had the following to say about the mediation process:

The case is referred to me from the District court with the parties' consent to use mediation. The parties are invited using a standard form which states the title of the case, the claim, venue the parties are being invited to, the date and time and the signature of the officer in charge of the centre inviting the parties. On arrival, the chosen mediator then explains the process to the disputants at their first appearance at the centre and if they are satisfied with the intended process they would fill and then sign a consent form. This signifies consent to avail oneself to mediation. The parties also indicate their choice of language for the process on the form. The mediator then signs the form and a date is set for the first meeting.

The ground rules are set at the start of the process. The complainant is then asked to present his/her case without interruption from the respondent. However, the mediator is at liberty to ask questions for clarification but not to suggest that he/she has taken sides. The respondent is then given the opportunity to state his/her side of the story unrestricted. At this point, the parties address only the mediator. The parties are then given the opportunity to address each other directly. The

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[781] Quotation 115.

mediator plays a very critical role in keeping the conversation going without degenerating. After the exchanges, the issues in dispute are then identified. This constitutes the basis for generating options towards a settlement. All disputants critically evaluate the options generated. The viability of each option is considered. The parties then agree on the specific options which in their view will enable them to resolve their disputes. These options are crafted into a settlement either by the parties themselves or under the direction of the parties (by the mediator).

In the case of the Court Connected ADR, the settlement is presented on a standardized form entitled Terms of Agreement. The title of the case or claim is written, the date is stated, the exact terms of the settlement are written, the complainant will write his/her name and append his/her signature, and the respondents will do the same. The mediator will also write his full name and append his/her signature. This form is returned to the court and the terms of the agreement which become the terms of settlement are adopted as a judgment of the court and referred to as consent judgment. These terms of settlement are then enforced in like manner as a court judgment. A failure to adhere to these terms is treated as a failure to comply with a judgment of the court. The Court-Connected ADR has been so accepted that 132 Courts consisting of 33 Circuit Courts and 99 District Courts have been connected to the CCADR Programme with CCADR resolving 1,171 cases in Greater Accra in 2022.[782]

7.4.4.3 Arbitration

Arbitration is a dispute resolution method where disputants willingly submit their dispute to a third-party neutral for a final and binding award.[783] Arbitration has been a dispute resolution method used in Ghana since time immemorial. As early as 1928, the Arbitration Ordinance (Cap. 16) was passed to align arbitration practice in the then Gold Coast (Ghana) with the Geneva Protocol of 1923. Four years later, that is, in 1932 the Arbitration (Foreign Awards) Ordinance was promulgated to bring into effect the General Convention on the Execution of Foreign Arbitral Awards of 1927.[784] Twenty-nine years later, specifically in 1961, the Arbitration Act was enacted

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[782] Edmund Mingle, 'Court Mediators settle 1,171 cases in Greater Accra' (*ADR Daily*, 21 March 2023) www.adrdaily.com/court-mediators-settle-1171-cases-gretaer-accra accessed 11 July 2023.

[783] Ainuson Kweku, 'Enforcement of international and national arbitration awards in Ghana – legal basis, challenges and obstacles' [2017] KAS African Law Study Library 417.

[784] The full name of the Ordinance is the Arbitration (Foreign Awards) Ordinance (Cap. 17).

having acceded to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.[785] The Arbitration Act domesticated provisions of the New York Convention.[786] Forty-nine years later, that is, in 2010 the current legislative framework – Alternative Dispute Resolution Act was passed.[787] The foregoing is ample testimony of the nation's belief in the efficacy of arbitration in resolving disputes.

Categorization of arbitration depends on many factors including disputants' nationality (domestic or international), subject matter (commercial arbitration, for example), seat of arbitration (which law will govern the arbitration), venue for arbitration (domestic or otherwise), among others. There is also ad-hoc or institutional arbitration, customary arbitration, and international commercial arbitration. Irrespective of the type, it is a private forum.

Arbitration is now practiced and promoted across the entire courts' hierarchy in Ghana.[788] This partly explains why the 2021 ADR Week on the theme "Making our courts user friendly through the use of ADR" saw 131 courts (33 Circuit Courts and 98 District Courts) not only participating in the celebrations but settling cases submitted to them for free.[789] The Courts and the 'other dispute resolution methods' (ADR) are certainly bedfellows.

The parties select the type of arbitration (whether ad-hoc or institutional), the arbitrator in the case of ad-hoc arbitration, the seat and venue, the language to use, and everything concerning the process. The parties are at liberty to go with their lawyers, witnesses and any relevant document that would enable them to present their case. The parties are bound by the arbitral award of the process.

Almost every matter can be arbitrated except for matters of public interest or national interest, those on the environment, interpretation, or enforcement of the constitution.[790]

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785 The full name of the Act is New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, 1958.

786 The full name of the Act is the Arbitration Act, 1961 (Act 38)

787 The Alternative Dispute Resolution Act, 2010 (Act 798)

788 Ainuson Kweku, 'Enforcement of international and national arbitration awards in Ghana – legal basis, challenges and obstacles' [2017] KAS African Law Study Library 418.

789 Mingle Edmund, 'Judicial Service launches 2021 ADR Week' (ADR Daily, n.d.) <adrdaily.com> accessed 3 September 2021.

790 See Alternative Dispute Resolution Act 798 of 2010, S 1.

Participants had this to say about arbitration:

> 'Arbitration is the best method for settling disputes. This is because it is cheaper, simple, and faster allows the disputants to be in control. However, it is not suitable for all disputes. For instance, I do not use it as a first point of call if I have a misunderstanding with my husband, I try to talk to him first. However, I use it when someone wanted to take portions of my parcel of land, and it worked very well. The boundaries were properly drawn, and everybody was happy'.[791]

Another participant said:

> 'Arbitration is very effective for resolving investment or commercial disputes. I say this because it allows the parties to preserve their relationship. It does not generate or degenerate into animosity. What I like is that unlike court where the parties have no say as to who presides over the hearings, in arbitration the parties choose who should resolve their dispute. This makes it easier for the parties to accept the outcome of the arbitration process'.[792]

Again, one participant said:

> 'Arbitration is very ideal because even though it is private, the court backs it with its power (power of the state) when it comes to challenging or enforcing the arbitral award. It is good for matters that are private and those that are business-related'.[793]

From the foregoing, it can be seen that arbitration is appropriate for resolving business/contract/commercial/family related disputes. It provides fairness both in procedure and outcome because of party involvement and control, preserves relationships and is considered cheaper. However, on the issue of cost, some have argued that arbitration may be more expensive than litigation.

Arbitration has been used to resolve major international disputes. A case in point was the recent arbitration between *Sibton Switch Systems Limited (Sibton Switch) v Bank of Ghana* at the London International Court of Arbitration. Sibton Switch filed the request for arbitration for breach of a Master Agreement for the Ghana Payment Systems Infrastructure. This was occasioned by a

791 Quotation 902.
792 Quotation 899.
793 Quotation 1045.

cancellation of the agreement upon change in both political leadership of the country in 2017 and management of the bank. Sibton Switch sought a claim of USD$478,000,000. The award, delivered on 28th July 2021, dismissed the case and awarded cost to the Bank of Ghana. This averted a huge diplomatic setback between the two countries.

The second case worthy of consideration was the maritime border dispute that arose between Ghana and Côte d'Ivoire in September 2011 over ownership of the Twenneboa, Enyenra, and Ntomme (TEN) an oil field area that had been developed by Tullow Oil Ghana. After fruitless negotiations, Ghana referred the dispute to the International Tribunal on the Law of the Sea (ITLOS) in November 2014, seeking a declaration of the exact geographical coordinates of the area. After three years of arbitration, Ghana obtained the right over the Tano basin in September, 2017 through a judgment delivered on 23rd September, 2017 where the TEN fields were declared exclusive economic zone of Ghana.[794]

7.4.4.4 Litigation

Litigation as a dispute resolution method in Ghana came with the colonialists and has remained to date. It employs a zero-sum mindset where there is a winner at the end of the process who takes all – winner takes all, and a loser. It is the most heavily regulated and law-based dispute resolution method in Ghana. In fact, its various fora – the courts, have been enshrined in the constitution[795] with each court clothed with specific jurisdiction.[796] There are two broad categories of courts in Ghana. The superior courts (the Supreme Court, Court of Appeal, the High Court, and the Regional Tribunal)[797] and the lower courts (District Court and the Juvenile Tribunal – a specialized District Court).[798] The persons who qualify to sit as judges in the various courts and

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[794] International Tribunal for the Law of the Sea, 'Dispute concerning delimitation of maritime boundary between Ghana and Côte d'Ivoire in the Atlantic Ocean' (ITLOS, 23 September 2017) <https://www.itlos.org/fileadmin/itlos/documents/cases/case_no.23_merits/C23_Judgment_23.09.2017_corr.pdf> (accessed 26 August 2020).

[795] See Constitution of the Republic of Ghana, 1992 Article 126.

[796] See Constitution of the Republic of Ghana, 1992 Article 128.

[797] Constitution of the Republic of Ghana, 1992 Article 126(1)(a).

[798] Courts Act of Ghana 459 of 1993, s 39.

how they could be removed have all been captured in the constitution and the Courts Act and as amended.[799]

The litigation process from birth to death is as follows: (1) initiation of action; (2) determination of matters in dispute (pleadings); (3) discovery – fact-finding preceding trial; (4) interlocutories – orders preceding trial; (5) application or directions; (6) trial; (7) judgments and orders (as the case may be); and (8) judgment enforcement.[800] Opoku-Agyemang however, identified four stages of the litigation process. That is, pre-trial, trial and judgment, execution of judgment, and review/appellate stages. Apart from the review/appellate stage all the processes identified by Justice Gbadegbe and Opoku-Agyemang are the same. In seeking audience in the courts, one does not only need to rely on a specific provision or judgment of a court to base an action on but also identify the most suitable court. Specific rules are required for specific actions in the court.

The High Court Civil Procedure Rules, better known as C.I. 47 regulates civil proceedings in Ghana. All civil cases ought to be handled in the manner prescribed by C.I. 47. That is why cases such as breach of contract devoid of fraud or any element of crime ought to be determined in the court using C.I. 47. The burden of proof in civil cases is on the balance of probabilities. Criminal matters are those that appear to be in the exclusive domain of litigation for determination. This is because they are matters of public interest and are not normally left to disputants to determine. That is why rape, theft, and murder cases for instance are handled by the state (the Republic of Ghana and not the victims). The victims only assist the state in the prosecution. Criminal cases are handled in accordance with the Criminal Procedure Code, 1960 (Act 30).

As to when litigation is appropriate, a participant had this to say:

> 'Litigation is appropriate when there is a dispute over land ownership especially if there is multiple sale of the same parcel of land to different people. This is because the court is able to determine the rightful owner and give a ruling that will bring peace'.[801]

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799 The Courts Act of Ghana 459 of 1993.

800 Gbadegbe Sule, 'Overview of the High (Court Civil Procedure) Rules, C.I. 47' in Judicial Training Institute (ed), *The Judiciary (*Judicial Training Institute Accra 2009) 3.

801 Quotation 745.

Another participant said the following:

> 'The court is not the place for disputes involving loved ones, family members or people you cherish. However, it is good for resolving protracted disputes'.[802]

A participant had this to say:

> 'Litigation is very ideal where the other disputant is uncooperative. It puts the fear of God in disputants. The parties are summoned in the name of the Chief Justice and told that the case will be determined if even a party fails to show up at the hearing and would be bound by the decision of the court. You would see an otherwise non-responsive party running to the court to participate in the process'.[803]

The legal framework provides for use of litigation in dealing with specific issues. For instance, litigation is the prescribed method for challenging the validity of the election of an individual as the President of Ghana[804]. This challenge must be in accordance with the Presidential Election Act, 1992 section 5, Rules 68 and 68A of the Supreme Court (Amendment) Rules, 2012, and the Civil Procedure Rules.[805] This petition must be filed within twenty-one (21) days after gazetting of the presidential results. In fact, even the reliefs one can seek have been predetermined. Again, a challenge of the election of a person as a Member of Parliament must be mounted in the High Court and in accordance with the Civil Procedure Rules.[806] However, in some cases the parties are at liberty to use litigation to resolve disputes. Specifically, enforcement, and interpretation of the constitution are done in the courts (the Supreme Court)[807] and enforcement of fundamental human rights.[808] Litigation is preferred where authoritative decision making is required, where finality is of essence, where precedent is desired, where crime is involved.

This chapter contained presentation and analysis of the findings of the qualitative phase of the study. In this regard, the finding that there is no single dispute resolution method or set of methods that is appropriate for resolving every dispute every time was discussed. Participants'

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802 Quotation 102.
803 Quotation 485.
804 See Constitution of the Republic of Ghana Article 64.
805 The full names are the Presidential Election Act, 1992 (PNDCL 285) section 5, Rules 68 and 68A of the Supreme Court (Amendment) Rules, 2012, and the Civil Procedure Rules (C.I. 47).
806 See the Civil Procedure Rules (C.I. 47).
807 See Constitution of the Republic of Ghana 1992 Articles 2 and 130.
808 The High Court has jurisdiction in these matters.

demographics were captured. Again, the determinants of appropriate dispute resolution method were discussed as well as the themes that emerged from the interviews conducted. The next chapter (chapter eight) presents a discussion of the findings of the study on the third research question as obtained at both the quantitative and qualitative phases of the study. These findings were thus integrated in the next chapter.

CHAPTER EIGHT

DISCUSSION OF FINDINGS

8.1 Introduction

This chapter presents a discussion of the findings of the quantitative and qualitative phases on the third research question. The aim is to integrate the findings presented in chapters six and seven. This chapter specifically and exhaustively answers the third research question on which dispute resolution method is the appropriate one in Ghana. The chapter argues that there is no appropriate dispute resolution method in absolute terms. The methodology employed, the findings of the quantitative and qualitative phases, the integrated findings of both phases, and the determinants of an appropriate dispute resolution method have been presented in this chapter.

8.2 Overview of the Mixed Methods Research employed

This study adopted the approach suggested by Creswell.[809] The first step is to collect qualitative and quantitative data. In this regard, quantitative data was collected from two hundred and thirty-nine (239) dispute resolution stakeholders in Accra. In the second phase, interviews were conducted for nine (9) of the respondents who took part in the quantitative phase. Second was to select mixed methods design. This study employed the explanatory sequential design. This was because neither quantitative nor qualitative approaches was sufficient to answer the third research question. Integrating the two data sets is the next step. The data collected were integrated. The fourth step is to draw conclusions or references. The study drew conclusions or references from the integration undertaken. The fifth step is to note insight from using mixed methods research. In line with this, the study highlighted some insights from the work done. Key elements identified by Creswell[810] for undertaking mixed methods research were applied. These elements include first an ideal theoretical perspective for the mixed methods research was chosen. The next element is implementation. This was done by adopting a sequential explanatory methods design. This was done by first collecting and analysing quantitative data and collecting and analysing qualitative

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[809] Creswell John, 'Understanding Mixed Methods (Creswell Approach)' (2020) <https://www.youtube.com/watch?v=AYI0CcqvCc4https://www.youtube.com/watch?v=AYI0CcqvCc4> accessed 15 July 2022.

[810] Creswell John, *Qualitative, quantitative and mixed methods approaches* (2nd edn, Thousand Oaks 2003).

data in that order. The third element was the stage at which integration took place. Integration was done at the design, data collection and data interpretation and reporting levels. Equal priority was given to both quantitative and qualitative phases so that the third research question could be exhaustively anaswered in order to achieve the research objectives.

Rigorous processes were employed throughout the design, methods employed, implementation, interpretation and reporting stages of the study. The data collected was integrated. Integration was done at the design, data collection and data interpretation and reporting stages. Meta inferences were then drawn from the integratioin of the explanatory sequential design. Ethical considerations were given at all stages of the process.

Validity and reliability of the quantittative data was ensured. A pilot study was used to ensure validity and reliability. Content and face validity were employed. A panel of ten dispute resolution practitioners examined the questionnnaire designed and commented on it. Their comments and feedback were used to refine the questionnaire. This was to ensure that the questions were clear, easy to undertand and that the items were suitable for measuring the phenomenon understudy. The refined questionnaire was piloted on five dispute practitioners at two different time points in Accra – Ghana to ensure reliability. There was no difference observed in the responses. Cronbach Alpha coefficient was 8.0 which showed high internal consistency and accuracy in the responses. Indeed, a value of 0.80 is considered good for instrument reliability.[811] Credibility and reliability were ensured at the qualitative phase using the four principles proposed by Irene Korstjens and Albine Moser.[812] These principles are credibility, transferability, dependability and confirmability.

The Mixed Methods Research design used in this study has been illustrated below:

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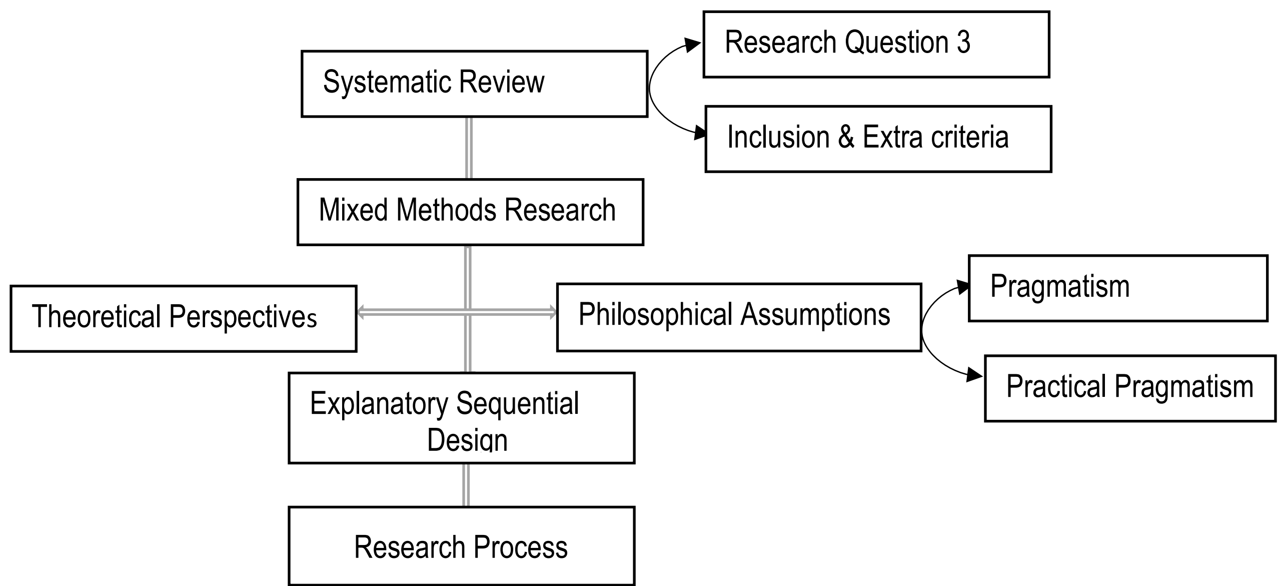
[811] Field Andy, *Discovering Statistics Using SPSS* (3rd edn, Sage Publications Limited London 2009) 677.

[812] Irene Korstjens and Albine Moser, 'Series: Practical guidance to qualitative research. Part 4: Trustworthiness and publishing' [2018] European Journal of General Practice 120.



Phase	**Aim**	**Research Questions**	**Study Design**	**Sample**	**Setting**	**Data Collection methods**	**Data Analysis**	**Ethics**
Phase 1 Quantity	To determine the appropriate dispute resolution method in Ghana	What is the appropriate dispute resolution method in Ghana?	Cross-sectional	239	District Court, Accra; Central ADR Centre, Ashaiman	Questionnaires	SPSS Version 24.0	Reliability Validity
Phase 2 Quality	To explain why 54.6% of respondents did not respond to the item	Why did you not to the item which dispute resolution method is the appropriate one in Ghana?	Descriptive Qualitative	9	District Court, Accra; Central ADR Centre, Ashaiman	Interview guide	Content analysis	Prior consent/voluntary participation Anonymity Dependability Repeatability

Data Integration

Data Interpretation

Fig.8: Mixed Methods Research Design Procedure employed (Adapted from Schoonenboom & Johnson, 2017)

8.3 Integrating the qualitative and quantitative findings

Explanatory sequential design was employed to answer the third research question. In other words, qualitative method was used to collect data to explain the quantitative data obtained. This is because explanatory research provides answers to what happens[813] or that which requires explaining. This is in line with earlier studies.[814] Specifically, interviews were conducted with some participants (n = 9). All the participants in the qualitative phase were respondents of the quantitative phase who did not respond to the question as to which dispute resolution method is the most appropriate in Ghana. Mixed methods research is undertaken for divergent, in depth, complete views and, enhanced understanding of the phenomena under study.[815] Indeed, it has been used extensively to 'solve practical research problems'.[816] The philosophical underpinning here was pragmatism, to be specific, practical pragmatism. Pragmatism emphasises the use of different worldviews and perspectives for better understanding of a social phenomenon.[817] Practical pragmatism focuses on 'what works' approach. It sidesteps the hard 'epistemological issues'. Therefore, explanatory sequential design was used in this study to explain results of the survey done. It was to explain the result of the third research question.

Research question 3: Which dispute resolution method is the most appropriate one in Ghana?

The findings of the quantitative phase revealed that Mediation is the most appropriate dispute resolution method in Ghana (see table 66). However, this was the response of 239 respondents which constituted forty-five-point four percent (45.4%) of the total respondents. On the other hand, 287 respondents, who constituted fifty-four-point-six percent (54.6%) did not respond to the question of which dispute resolution method is the most appropriate one in Ghana. This necessitated a further probe. That probe was conducted using qualitative research where

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813 Denscombe Martyn, *Ground rules for social research: Guidelines for good practice (*2nd edn, McGraw-Hill London 2010) 54.

814 John W. Creswell and Vicki L. Plano Clark, *Designing and Conducting Mixed Methods Research (*3rd edn, Sage Publications California 2018) 56.

815 Viswanath Venkatesh, Susan A. Brown and Bala Hillol, 'Bridging the qualitative-quantitative divide: Guidelines for conducting mixed methods research in information systems' [2013] MIS Quarterly 21.

816 Teddlie Charles and Tashakkori Abass, 'Major issues and controversies in the use of mixed methods in social and behavioral sciences' in Tashakkori Abbas and Teddlie Charles (eds), *Handbook of mixed methods in social and behavioral research* (Thousand Oaks, CA: Sage 2003) 3 – 5.

817 Ngulube Patrick, 'Blending qualitative and quantitative research methods in library and information science in Sub-Saharan Africa' [2013] Esarbica Journal 10.

opportunity was offered to some of the respondents of the quantitative phase to explain why they responded to the items the way they did. This was also to allow for deeper, richer and contextualised findings.

The findings of the qualitative phase, which was done using semi-structured interviews, were conducted using the quantitative phase constructs. The themes that emerged from the analysis of the data collected from the interviews indicated that there was no absolutely appropriate dispute resolution method in Ghana.

A comparison of the findings of the two phases on the appropriate dispute resolution method in Ghana showed a divergence. While the respondents of the quantitative phase of the study were categorical that mediation is the most appropriate dispute resolution method in Ghana, participants of the qualitative phase were unanimous that there is no absolutely appropriate dispute resolution method in Ghana. The study did not take the findings of the quantitative phase as the findings on the third research question. The first reason for the above decision was that, if majority of respondents (54.6%) were convinced that mediation was the most appropriate dispute resolution method in Ghana, they would have said so. In fact, the explanation from the qualitative phase was that there is no absolutely appropriate dispute resolution method in Ghana. Again, the most fundamental law for resolving disputes in Ghana using ‘other dispute resolution methods’ – the Alternative Dispute Resolution Act 798 of 2010 prohibits the use of mediation to resolve some disputes.[818]

How then can we conclude that it is the most appropriate dispute resolution method in Ghana? This is especially so when the semi-structured interviews revealed that the legal framework for resolving disputes is a key consideration for selecting the most appropriate dispute resolution method.

Findings of the quantitative and qualitative phases on the most appropriate dispute resolution method in Ghana have been presented below using a weaving approach:

818 Section 1 of the Alternative Dispute Resolution Act 798 of 2010 does not lend itself for use by ADR Methods of which Mediation is part of to resolve disputes concerning matters of public interest, environment, among others.

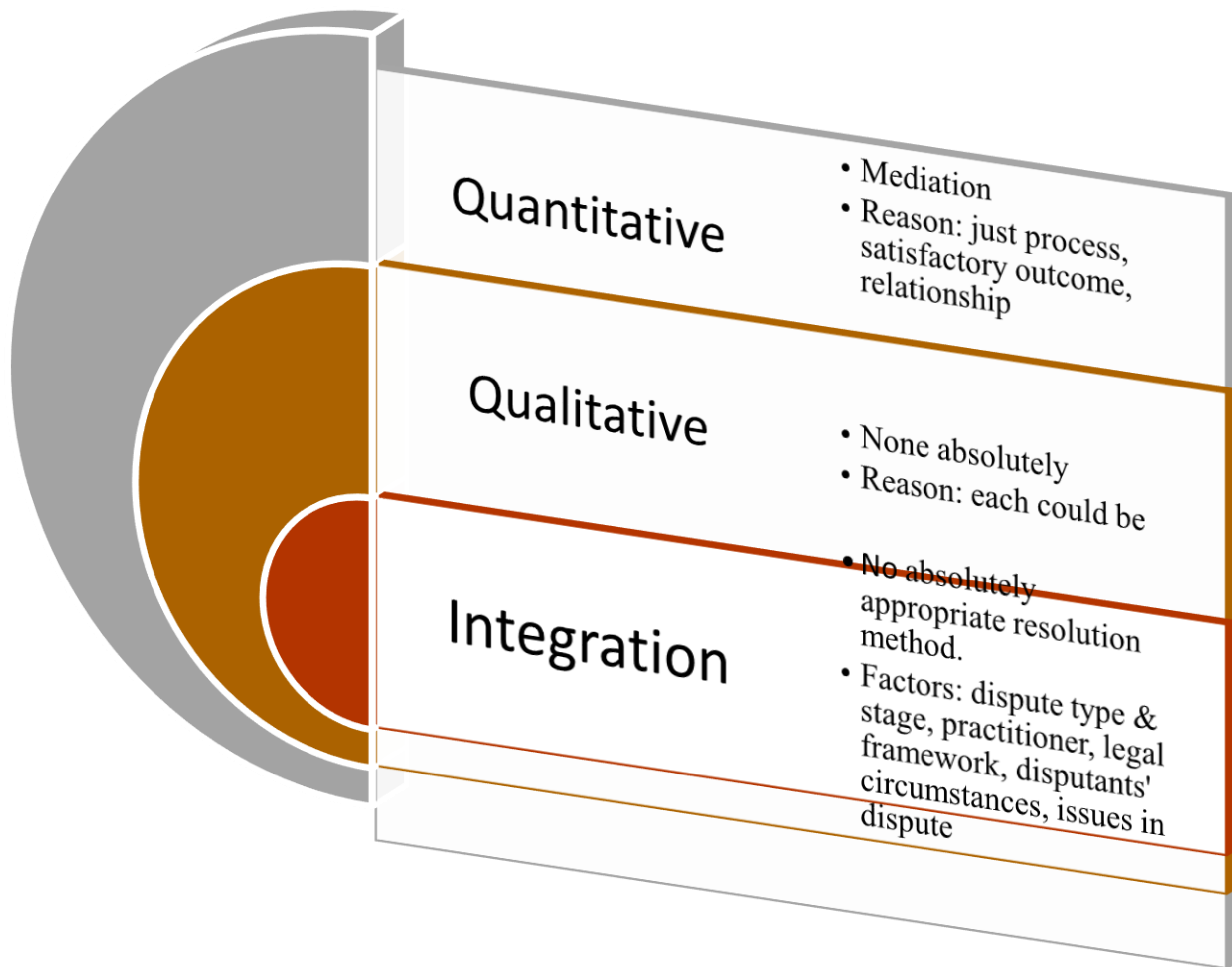

Fig.8: Illustration of the findings of the quantitative and qualitative phases

Since only 45.4% of the total participants opted for mediation at phase one, this study found it difficult to conclude that mediation is the most appropriate dispute resolution method in Ghana. It is obvious that the findings at the two phases are contradictory. It has been argued that an epistemological fallacy will be committed if it becomes nonsensical to integrate contradictory qualitative and quantitative findings where there is no sufficient evidence for doing so.[819] The researcher realised from the merging that it is only after a disputant has considered the factors

[819] Emma Uprichard and Leila Dawney, 'Data Diffraction: Challenging Data Integration in Mixed Methods Research' (2019) 13 Journal of Mixed Methods Research 19.

identified in the qualitative phase that he/she can come to the findings at the quantitative phase of the study. In effect, it is the factors identified at the qualitative phase that would inform the choice of a dispute resolution method.

Fit of data integration, which is the coherence of the quantitative and qualitative data revealed a discordance. This was because the findings at the two phases appeared contradictory. The study therefore resorted to existing studies for explanations of the discordance as proposed by Fetter and Creswell.[820] Literature has revealed how-findings generated through the two phases ought to be described, as also revealed in literature since 2004 by the British Columbia Ministry of Attorney General. They found that dispute resolution has inputs and outcomes. However, this study refers to these two variables as inputs and outputs. The integration of the seeming discordance was done by presenting the findings at the quantitative and qualitative phases as constituting a continuum. This continuum consists of inputs and outputs.

The findings of the qualitative and quantitative phases constituted the inputs and outputs respectively. The integrated findings are in line with earlier findings that disputants' background (this study found disputants' circumstances), disputants' desires, and statement of facts (this study found dispute type and dispute stage, and issues in dispute) are inputs variables of a dispute resolution process. The study also confirmed findings that mediator characteristics (this study found resolution practitioner) and disputants' characteristics (this study found disputant's circumstances) as input variables.[821] Again, the findings corroborated earlier ones that satisfaction, and agreement reached (this work found satisfactory outcome) as output variables of a dispute resolution process.[822] What appears to be the addition to existing inputs in a dispute resolution process is legal framework and issues in dispute.

Below is a pictorial view of the Integrated findings of the Mixed Methods Research.

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820 Michael D. Fetters and John Creswell, 'Achieving integration in Mixed Methods Designs – Principles and Practices' [2013] Health Services Research 1.

821 British Columbia Ministry of Attorney General, 'Characteristics and outcomes of dispute resolution processes related to family justice issues' <https://www2.gov.bc.ca/assets/gov/law-crime-and-justice/about-bc-justice-system/justice-services-branch/fjsd/review.pdf> accessed 8 August 2022.

822 See the work done by David Carneiro, Paulo Novais, Francisco Andrade, John Zeleznikow and José Neves, 'Online dispute resolution: an artificial intelligence perspective' (2014) 41 Artificial Intelligence Review 211.

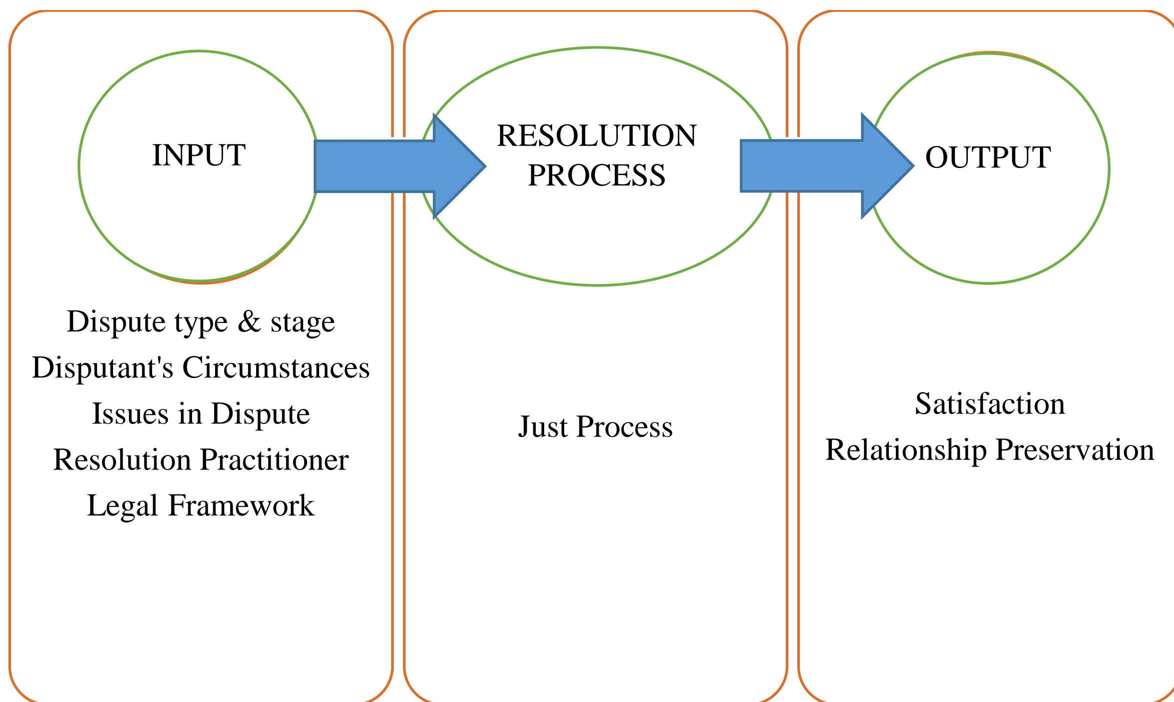

Fig.10: Integrated findings of the Mixed Methods Research

8.4 Determinants of appropriate dispute resolution method

The study sought to reap the fruits of Mixed Methods Research which include improved construct validity and better response to a research question.[823] It adds meaning,[824] contextualised richness, deeper insight,[825] better interaction,[826] and facilitates conversations.[827] That is why this method was employed to answer the third research question exhaustively.

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823 Harris Jamelia, 'Mixed Methods Research in developing country contexts: Lessons from field research in six countries across Africa and the Caribbean' [2022] Journal of Mixed Methods Research 165.

824 Treviño Ernesto, Scheele Judith and Flores Stella, 'Beyond the test score: A mixed methods analysis of a college access intervention in Chile' [2014] Journal of Mixed Methods Research 255.

825 Cooper Joseph and Hall Jori, 'Understanding Black male student athletes' experiences at a historically Black College/Uiversity: A mixed methods approach' [2016] Journal of Mixed Methods Research 46.

826 Coryn L. S. Chris, Schrõter C. Daniela and McCowen H. Robert, 'A mixed methods study of some of the factors associated with successful school strategies for Native Hawaiian students in the state of Hawa'ai' [2014] Journal of Mixed Methods Research 377.

827 Bridwell-Mitchell N Ebony, 'The rationalizing logics of the public school retorm: How cultural institutions matter for classroom' [2013] Journal of Mixed Methods Research 173.

The integrated findings of the mixed methods research undertakesn as illustrated above in figure 8.3 indicates that the first step towards an appropaite dispute resolution (parties' satisfaction and relationship preservation) is consideration of five factors in the selection of an appropriate dispute resolution method. These factors have been illustrated below:

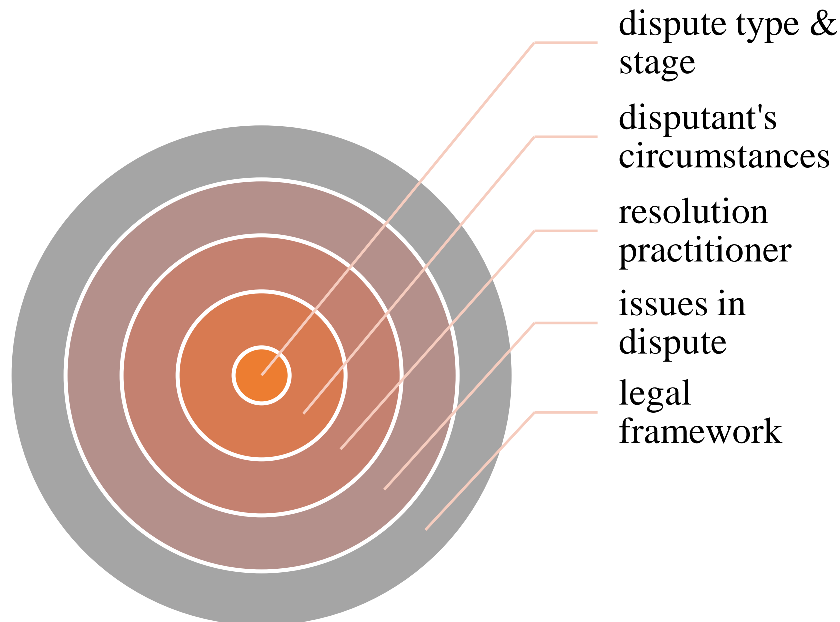

Fig.10: Factors to consider in selecting an appropriate dispute resolution method

While respondents at the quantitative phase chose mediation as the most appropriate dispute method because it provides a just process, it provides satisfactory outcome and it preserves relationships, participants at the qualitative phase had a different view. To participants of the semi-structured interviews, the type of dispute and stage of dispute, disputants' circumstances, issues in dispute, dispute resolution practitioner, and the legal framework for resolving disputes collectively determine the most appropriate dispute resolution method.

The ability to get a just process and outcome is very likely to emanate from a dispute resolution practitioner who is seen by the disputants as competent and suitable to either resolve their dispute or help them resolve their dispute exhaustively. A competent and committed captain steering the dispute resolution ship is also likely to produce a satisfactory outcome.

Just output, satisfactory output and relationship preservation are outcome variables while type of dispute and stage of dispute, disputant's circumstances, issues in dispute, dispute resolution

practitioner, and legal framework for dispute resolution are input variables. The input variables are factors to consider in selecting a dispute resolution method to ensure the delivery of a just, and satisfactory outcome which preserves disputants' relationships. In other words, the inputs obtained at the qualitative phase are needed to obtain the outputs obtained at the quantitative phase.

What this means is that in order to obtain a dispute resolution outcome that is just, satisfactory and one that maintains relationships, five things are required. The first is the type of dispute. This is because, it is not every dispute that can be properly resolved using every dispute resolution method. It is the conduct of the third-party resolution practitioner and an objective assessment of the entire procedure that would lead a disputant to conclude that the process was just.

The findings revealed that the factors that have been suggested by scholars as determinants of an appropriate dispute resolution method are actually inputs and outputs variables of a dispute resolution process. In a nutshell, these factors are part of a dispute resolution continuum.

The integration did not *quantitize*' the qualitative findings to arrive at a statistically single outcome as proposed by some mixed methods researchers. What this work did not also do was to use the factors identified as considerations for selecting the most appropriate dispute resolution method to determine same. The study was also limited by the number of participants of the second phase of the study.

This chapter presented the mixed methods research undertaken. It stated the rationale for undertaking the mixed methods research, how the mixed methods research was done and the findings of the integration undertaken.

The next chapter (Chapter nine (9)) presents a summary of what was done in every chapter of the study, that is, from chapter one to chapter eight. The chapter also presents some recommendations based on the findings of the study as well as implications for theory and practice. The chapter ends with conclusion of the study.

CHAPTER NINE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

9.1 Introduction

This chapter first presents a brief overview of the research journey undertaken. It therefore presents a summary of the study. It then goes ahead to make some recommendations which if implemented can positively impact the dispute resolution landscape in Ghana and the world.

9.2 Summary

Chapter one laid the background to the study. The statement of the problem was then explained making a case for the study. The hypotheses and research questions of the study were also stated. Three objectives were set for this study. The first was to clarify the concept of appropriate dispute resolution. The second objective was to design a mechanism for use in selecting appropriate dispute resolution method. The third objective was to determine the appropriate dispute resolution method in Ghana. The outline of the study was also provided.

Chapter two started with a theoretical framework which presented theories fundamental to the study. Chapter three presented a review of relevant works done predominantly in Africa and in Ghana, laid out Ghana's legal framework for resolving disputes, other dispute resolution methods, appropriate and alternative dispute resolution methods, and reviewed other literature on the phenomena under study.

It was demonstrated that there was lack of clarity on the concept of appropriate dispute resolution method. There was also no standardized mechanism for selecting an appropriate dispute resolution method for use in resolving disputes. Lastly, there was no empirical validation of what constitutes an appropriate dispute resolution method in Ghana.

Chapter four outlined the research methodology employed. The findings of the quantitative phase of the study were presented in chapter five using tables. Objectives one and two were achieved using quantitative methods research where a questionnaire was administered on 526 primary dispute resolution practitioners in Accra - Ghana. The data collected was analysed using SPSS version 24.0 and the findings were presented in tables. This allowed for a holistic interpretation

of the findings since they were integrated with relevant literature reviews. The findings were then analysed. This chapter also began answering research question three. In chapter six, explanatory sequential mixed methods research was used to explain the findings of the quantitative phase on which dispute resolution method is the most appropriate in Ghana (research question three). Interviews of respondents of the quantitative phase who were purposively selected were conducted in Accra. The findings of these interviews were presented and analysed using Atlas.ti. This was done in chapter seven. Chapter eight presented a discussion of the findings. In this chapter, the findings of the quantitative and qualitative phases on the third research question were integrated to achieve the third research objective. This chapter (chapter nine) summarised the findings of the study, concluded the work, and made some recommendations based on the findings of the study.

Findings

The findings of the study as they relate to the hypotheses are that:

Hypothesis 1: Litigation is the appropriate dispute resolution method in Ghana

The study found that Litigation is not the appropriate dispute resolution method in Ghana. This was in sharp contrast to the works of some scholars that litigation is the appropriate dispute resolution method.[828] This finding could be said to be a tacit confirmation of the doubt expressed by Menkel-Meadow[829] on litigation being the appropriate dispute resolution. Again, this finding confirmed the argument made by Ngira[830] that the notion that litigation is the appropriate dispute resolution method is a misconception without jurisprudential basis. Litigation could however, be an appropriate dispute resolution method in specific circumstances.

Hypothesis 2: Negotiation is the appropriate dispute resolution method in Ghana

The study did not find negotiation to be the appropriate dispute resolution method in Ghana. Hypothesis 2 therefore stands rejected. However, Negotiation could be appropriate in specific

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828 See the work by STA Law Firm, 'Comparative Analysis of ADR methods with focus on their advantages and disadvantages' (STA Law Firm, n.d) < http://mondaq.com> accessed 19 November, 2021.

829 Menkel-Meadow Carrie, 'The trouble with the adversary system in a postmodern, multicultural world' [1996] William and Mary Law Review 4.

830 Ngira David, '(Re) Configuring 'Alternative Dispute Resolution' as 'Appropriate Dispute Resolution': Some wayside reflections' <http://dx.doi.org/10.2139/ssrn.3212091> accessed 19 November 2021.

circumstances. In specific terms, it has been found that Negotiation is the most effective dispute resolution method for resolving land disputes.[831] Again, a careful reading of the law governing ODR[832] gives one the impression that Negotiation is seen as appropriate at the early stages (or start) of industrial disputes as disputants are mandated to use Negotiation as a first step towards resolving industrial disputes. This also means that Negotiation may not be appropriate for resolving disputes at advanced stages.

Hypothesis 3: Mediation is the appropriate dispute resolution method in Ghana

The study did not find Mediation as the appropriate dispute resolution method in Ghana. Therefore, hypothesis three (3) was rejected. This finding was a confirmation of earlier findings that the other dispute resolution methods of which mediation is one, are not the appropriate dispute resolution methods.[833] This finding was however, in contrast with some earlier studies.[834] Mediation may however, be appropriate for resolving some disputes and in some instances.

Hypothesis 4: Arbitration is the appropriate dispute resolution method in Ghana

This hypothesis was rejected because the study did not find arbitration to be the appropriate dispute resolution method in Ghana. This confirmed some earlier findings that Arbitration is not the appropriate dispute resolution method in Ghana.[835] Arbitration could be appropriate in specific circumstances. For example, Arbitration is most ideal for resolving disputes when parties are from different nations.[836]

Hypothesis 5: Alternative Dispute Resolution Act, 2010 (Act 798) would be the most suitable legal mechanism for determining an appropriate dispute resolution method

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[831] Paaga Dominic Tuobesaane, 'Customary land tenure and its implications for land disputes in Ghana: cases from Wa, Wechau and Lambussie' [2014] Internal Journal of Humanities and Social Science 263.

[832] Alternative Dispute Resolution Act 978 of 2010, s 153.

[833] Richard Abel, 'The contradictions of informal justice' in *The politics of informal justice: The American experience* (Academic Press New York 1982) 58.

[834] Abokuma Edzii Juliana, 'Is alternative dispute resolution a solution to interpersonal and group conflicts in West Africa? the case of Ghana' (Master of Arts thesis, University of Ghana 2018) 76.

[835] Affrifah Kingsley Kwabena, Alternative Dispute Resolution as a Tool for Conflict Resolution in Africa – Ghana as a Case Study (Master of Arts thesis, University of Ghana 2015) 43.

[836] Menkel-Meadow Carrie, 'Hybrid and mixed dispute resolution processes: integrities of process pluralism' [2020] Comparative dispute resolution 405.

The legal mechanism in this context consists of the substantive laws which prescribe the ideal fora for resolving disputes. Therefore, the most suitable legal mechanism in this respect, is the one that is best suited for determining an appropriate dispute resolution method. Time and finances did not allow for examination of all substantive laws. However, this work considered the substantive laws and specific provisions therein most applicable to the phenomenon understudy. This is because there are many pieces of legislation in Ghana.

Sections 72 and 73 of the Courts Act are worthy of consideration.[837] Section 72 (1) and (2) enjoin the courts to promote reconciliation and amicable settlement in Civil Cases, it specifically states that courts with civil jurisdiction and their officers are obligated to use appropriate means to settle disputes and promote reconciliation of disputants. However, in crimination matters, the court is enjoined to promote reconciliation and facilitate amicable settlement only where the offence is not a felony and does not aggravate in degree.[838] The understanding one gets from these provisions is that this Act cannot be used to determine an appropriate dispute resolution method. However, it provides the opportunity for the parties to determine the appropriate method for resolving a dispute. This the parties can ignore.

The High Court Civil Procedure Rules on their part make room for dispute settlement at the pre-trial stage. This is where dispute resolution methods other than litigation are considered by the parties. Specifically, Order 58 of the High Court Civil Procedure Rules allows the High Court to have matters settled amicably during the pre-trial stage. The parties can have their dispute settled through mediation, negotiation or arbitration by the trial judge or any other external person the parties may agree on. Again, Rule 4(1)-(4) which talks about procedure said that within three days of filing a case or after lapse of time for filing a case, the Administrator of the High Court is required to allocate the case to a judge for pre-trial settlement conference.[839] This Act too does not tell or cannot be used to tell the appropriate dispute resolution method. It only provides the platform for the disputants to consider trying another dispute resolution method. It is only after inability to resolve their dispute using any of the other dispute resolution methods as they deem fit that the litigation process is fully exhausted.

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[837] Sections 72 and 73 of the Courts Act 459 of 1993.

[838] Section 73 of the Courts Act 459 of 1993.

[839] High Court Civil Procedure Rules Order 58, rule 4.

The Labour Act which deals with labour disputes, prefers use of the other dispute resolution methods, that is, negotiation (conciliation), mediation, and arbitration. In fact, the National Labour Commission (NLC) has been established to handle labour disputes. The NLC, which uses the ODR (ADR) methods gives orders which have the effect of the High Court.[840] What is not in doubt is that for labour disputes the Labour Act, 2003 (Act 651) can be used to select the appropriate dispute resolution method. However, a party dissatisfied with the award of a compulsory arbitration can challenge it at the Court of Appeal other than that the award shall be final and binding on him/her.[841] The unanswered question is what about the other disputes. This Act does not provide an answer.

A careful reading of the ADR Act would reveal that ODR (ADR) methods are inappropriate for resolving matters of national/public interest, the environment, constitutional enforcement and interpretation, any others the law says cannot be resolved using ODR (ADR) methods.[842] What this implies is that litigation is the appropriate method for resolving these disputes. Another inference one draws is that ODR (ADR) methods are appropriate for resolving disputes other than the above. Therefore, Act 798 is a suitable mechanism for determining which disputes are best resolved by ODR and some of the disputes that are best resolved using litigation.

-Hypothesis 6: Analysis of the legal framework for resolving disputes in Ghana would reveal no dispute resolution method is appropriate for resolving all disputes in absolute terms?

The legal framework for dispute resolution in Ghana consists of many laws. This includes Ghana's 1992 Constitution; the Courts Act as amended in 2002; the High Court Civil Procedure Rules as amended by the High Court (Civil Procedure) (Amendment) Rules; Labour Act, Criminal Offences Act; Alternative Dispute Resolution Act, Juvenile Justice Act, Civil Procedure Act, among others.[843]

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840 Labour Act, 2003 (Act 651), s 133(4).

841 See Act 651 (n 839), s 167(2).

842 Alternative Dispute Resolution Act, 2010 (Act 798), s 1.

843 The Courts Act 459 of 1993 and as amended by Act 620 of 2002; the High Court Civil Procedure Rules C.I. 47 and as amended by the High Court (Civil Procedure) (Amendment) Rules, 2019 (C. I. 122); Labour Act 561 of 2003, Criminal Offences Act 29 of 1960; Alternative Dispute Resolution Act 798 of 2010, Juvenile Justice Act 653 of 2003, Civil Procedure Act 29 of 1960.

An analysis of all the relevant pieces of legislations revealed that there is no dispute resolution method that is appropriate for resolving all disputes in absolute terms. What is clear is that specific laws identify the appropriate or the method that is likely to be appropriate for resolving specific disputes. Specifically, litigation is appropriate for resolving disputes involving constitutional interpretation and enforcement; enactment in excess of powers of parliament or any authority given enactment powers, criminal offences (specifically, felonies and aggravated offences); matters of the environment, national interest/public interest; disputes pertaining to jurisdiction; child custody cases where sexual, psychological and mental abuse is involved; among others.[844] On the other hand, industrial disputes, matrimonial causes, matters concerning children (both civil and criminal but excluding abuse, custody, etc. cases) are ideal for resolution using other dispute resolution methods.[845] In a petition for divorce, for instance, the court will willingly allow the parties to effect reconciliation irrespective of the stage of the case.[846] This means that the law gives the parties the liberty to select which method is appropriate for resolving their dispute. Again, the law gives the Commission on Human Rights and Administrative Justice (CHRAJ) the right to use any other dispute resolution method to remedy, correct or reverse instances of infringement of fundamental human rights and freedoms, abuse of power, injustice, corruption, and unfair treatment.[847] Again, the Ghana Investment Promotion Centre Act finds the other dispute resolution methods as appropriate in resolving a dispute arising between a foreign investor and the Government of Ghana in matters of enterprise. It prescribes mutual discussion, arbitration and mediation in that order for resolving such disputes.[848]

The Lands Act, 2020 on its part bars actions concerning land in court unless ODR (ADR) fails to resolve the dispute under the ADR Act.[849] The understanding one gets is that the Act sees ODR/ADR as the appropriate means of resolving disputes concerning land. That is why it

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[844] See the 1992 Constitution of Ghana, Article 130(1)(b); Alternative Dispute Resolution Act 798 of 2010; the Children's Act, 1998 (Act 560).

[845] Labour Act, 2003 (Act 651); The Children's Act, 1998 (Act 560) prescribes the use of mediation by Child Panels;

[846] Section 8 of the Matrimonial Causes Act, 1971 (Act 367).

[847] Commission on Human Rights and Administrative Justice Act, 1993 (Act 456) section 7.

[848] Ghana Investment Promotion Centre Act, 2013 (Act 865) section 33.

[849] See section 98(1) of the Lands Act 2020 (1036).

recommends litigation as a last resort, only when one has exhausted the ODR/ADR methods (procedures) or where ODR/ADR fails to resolve a dispute.

It is clear from the above that the various Acts see the appropriate dispute resolution method as it relates to specific disputes. In other words, different methods are appropriate for resolving specific disputes.

The study also found that:

1. An appropriate dispute resolution method is one that delivers a fair, just, and enforceable outcome.
2. There is no absolutely appropriate dispute resolution method in Ghana.
3. Type of dispute, stage of dispute, disputants' circumstances, issues in dispute, dispute resolution practitioner, and legal framework are factors to consider in determining what constitutes an appropriate dispute resolution method.
4. A blend of the ability of a dispute resolution method's ability to reconcile the disputing parties, deliver expected outcome(s), preserve relationships, ensure fairness, and render enforceable decisions constitute a mechanism for selecting an appropriate dispute resolution method.

The above findings (see Chapters 6, 7 and 8) have been summarised below:

9.2.1.1 An appropriate dispute resolution method is one that delivers a fair, just, and enforceable outcome

Under objective one (1), the study found that an appropriate dispute resolution method is one that delivers a fair, just, and enforceable outcome. In fact, an appropriate dispute resolution method is the one that offers an equal opportunity for the disputants to make their cases unimpeded. This was arrived at after conducting a survey on 526 respondents. Whatever facilities are required for a disputant to make his/her case must be made available to him/her. That is why the Supreme of Ghana ruled in *Republic V Baffoe-Bonnie and Ors*[850] that an accused person is entitled to access

[850] *Republic V Baffoe-Bonnie and Ors [2018] SCGLR* 40.

to copies of documents in the possession of the prosecution such as witness statements, exhibits, and documents including those the prosecution does not even intend relying on during the trial. This is to give more effect to the concept of fair trial in Article 19(2)(e) and (g) of Ghana's Constitution. This method should have sufficient safeguards for disputants to be satisfied with the process. It is only when this is well done that we can arrive at what Fawzia Cassim called 'meaningful participation' in the process.[851] This is so important because it engenders collective acceptance of the dispute resolution outcome even if a disputant disagrees with it. An objective bystander should come to one and only one conclusion after observing the proceedings.

The outcome of the dispute resolution process should be commensurate with the facts as ascertained and the relevant law, if any. Nothing but the truth in its entirety of what transpired between the parties undergirds this outcome. There is no reason why the innocent should pay for the sins of the guilty. That is why the constitution of Ghana lays a very neutral foundation for trying criminal offences – the accused is presumed innocent until proved guilty or she/he pleads guilty.[852] Justice frowns on any glimpse of miscarriage or travesty of justice. Indeed, justice must not only be done but must be manifestly seen to be done. This is a priceless fruit of democracy for the poor especially. This is because, the poor lack the power and resources to match the mighty in society in disputes and looks up to the structures of the state to treat them on the merit of their case. They yearn to be given nothing more or less than what they deserve.

What is appropriate about a dispute resolution method if its outcome is unenforceable? Disputants should be assured that whatever is obtained after a dispute resolution process can be actualized. There should be user-friendly avenues for enforcing these outcomes. There should not be unnecessary delays and expense in realizing the outcome of this process. The backing of state structures in this respect is key. Decision enforceability should guide the length and breadth of the dispute resolution practitioner's creativity in outcome design.

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[851] Cassim Fauzia, The right to meaningful and informed participation in the criminal process (LLD thesis, University of South Africa 2003) 8.

[852] Constitution of the Republic of Ghana 1992 Article 19(2)(c).

9.2.1.2 There is no absolutely appropriate dispute resolution method in Ghana

It is erroneous to tag a specific dispute resolution method as appropriate and another or others as alternative. The reason is that, in the first place, the dispute resolution methods described as alternative dispute resolution methods which I refer to as 'other dispute resolution methods' are not the same. Therefore, lumping them together and giving them a description is inappropriate. Second, some of these methods are phases in litigation. Third, the court throws its huge weight behind these other dispute resolution methods in what is known as Court Connected ADR (CCADR) in Ghana. Can we honestly divorce the courts and indeed litigation from these methods especially when some disputants prefer them because of the court's endorsement and commitment to enforce their outcomes? Indeed, the theme of Ghana's 2022 ADR Week Celebration was "Making our Courts user friendly through the use of ADR". This is a further deepening of attempts to ensure enhanced synergy between litigation and the other dispute resolution methods in dispute resolution. This is because 131 courts have been connected to ADR in Ghana of which 98 are District Courts and 31 are Circuit Courts. The Chief Justice of the Republic of Ghana His Lordship Justice Kwasi Anin-Yeboah stated that the time to work hard to make ADR a preferred choice for dispute resolution for lawyers and disputants is now.[853] This was based on the fact that ADR has satisfactorily resolved 29,558 cases in a ten-year period thereby taking a huge burden off the courts.

Again, what is appropriate today may not always be appropriate. Disputes are complex and dynamic hence the need for creativity in designing and redesigning of dispute resolution methods. The tastes and preferences of disputants are not constant. A disputant may find a dispute resolution method appropriate for resolving a particular dispute but find it inappropriate even if faced with the same dispute another time. Therefore, factors that are ever changing ought to be thoroughly examined at all times to select an appropriate dispute resolution method for use at any particular time.

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853 See the 26th July 2022 news report by Joy News <https://www.youtube.com/watch?v=e-vvARdukTQ> accessed 10 August 2022.

9.2.1.3 Determinants of appropriate dispute resolution method

Specific factors must be considered in order to select an appropriate dispute method. Type of dispute is the first factor to consider. It is not every dispute that can be appropriately resolved using every dispute resolution method. The stage of a dispute is another factor. A specific dispute resolution method may be appropriate for resolving a dispute at its early stage but inappropriate at an advanced stage of that same dispute. Again, a protracted dispute cannot be properly resolved by every dispute resolution method. Another factor to consider is disputants' circumstances. For an appropriate dispute resolution method to be identified, every disputant must be able to objectively assess his/her own circumstances. What is one's temperament type, what is his/her financial strength especially as it relates to the cost of each of the dispute resolution methods? Is the individual in the best frame of mind to personally engage the other disputant? Even if one is in the best frame of mind, is he or her well skilled and experienced to engage in this process all by himself/herself or turn to another person/entity for help? The next factor to consider is issues in dispute. What is at the centre of the dispute will determine which dispute resolution method is appropriate and even who presides over the dispute resolution process. There are specializations in the expertise of dispute resolution practitioners. That is why some mediators specialize in land cases only, some marital disputes only, some labour-related cases only, among others. That is why there are specially designated courts for handling specific disputes. The Commercial Division of the High Court of Ghana for instance handles cases of commercial nature such as finance, banking, leasing, intellectual property, contracts, among others. In addition, the judges who conduct mediation are trained on how to conduct mediation professionally with a judge responsible for ODR.

Another factor to consider is the dispute resolution practitioner. Admittedly, in litigation, disputants have no say in who presides over the determination of their dispute. There is however, an opportunity for a disputant to put in an application for a judge to recuse himself/herself from determining his/her case but this is no mean a task. In the case of private dispute resolution platforms (methods), disputants choose who should preside over the determination of their dispute. They therefore have every obligation to ensure that they select the best. This is so important because like every service provision, the one delivering the service cannot be divorced from the service being delivered. No matter how appropriately designed a dispute resolution

method is, if the dispute resolution practitioner does not possess the required competence, does not conduct himself/herself professionally and does not deliver to the expectation of the disputants, that otherwise appropriate method would be deemed inappropriate.

The last but first factor to consider is the legal framework for resolving disputes. What does the law say about resolving the dispute one finds himself/herself in? For instance, matters relating to the environment, interpretation, or enforcement of the constitution, and national or public interest are not allowed to be settled by a means other than litigation in Ghana.[854] However, in the absence of a legal bar, a disputant is at liberty to select his/her preferred dispute resolution method. The disputant should make sure that he/she would get the backing of the legal framework if the need arises at the stage of enforcing the outcome obtained. Furthermore, not every court has the power to resolve every dispute. For example, only the Supreme Court has jurisdiction to interpret the constitution.[855]

9.2.1.4 Mechanism for selecting an appropriate dispute resolution method

The study found that reconciliation, expected outcome, relationship, decision enforceability and fairness together constitute a mechanism for use in selecting an appropriate dispute resolution method. These findings agreed with four of the factors identified by Ling-Ye[856] (that is, expected outcome, relationship, decision enforceability and fairness) but contrary to the other six (6) factors he identified. The expected outcome factor confirms the work done by Shonk.[857] Again, reconciliation and relationship are factors found by Hopeson as key in a mechanism for choosing an ideal dispute resolution method.[858] Relationship preservation is so fundamental that some scholars have argued for a therapeutic touch to be brought to dispute resolution.[859]

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854 See Alternative Dispute Resolution Act, 2010 (Act 798) s 1.

855 See Constitution of the Republic of Ghana, 1992 Article 130(a).

856 Ling-Ye She, 'Factors which impact upon the selection of Dispute Resolution methods for commercial construction in the Melbourne industry: Comparison of the Dispute Review Board with other Alternative Dispute Resolution methods' <https://www.irbnet.de/daten/iconda/CIB_DC24501.pdf> accessed 25 August 2021.

857 Shonk Katie, 'Choose the right dispute resolution process' [2021] Program on Negotiation Harvard Law School 1.

858 Hopeson Emmanuel, 'Understanding human behaviour in conflict resolution' (Askia Publications Accra 2012) 189.

859 Silbey S. Silbey and Merry Y. E. Sall, 'Mediator settlement strategies' [1986] Journal of Law and Policy 10.

9.3 Recommendations

It is recommended that:

1. Dispute resolution designers should craft dispute resolution methods with features that deliver fair, just and enforceable outcomes.
2. Existing dispute resolution methods should include additional features for enhanced fairness, justice, and enforceable outcomes or remove features that do not deliver fair, just, and enforceable outcomes.
3. The Government of Ghana should establish a central authority for training, certifying, and regulating dispute resolution practitioners including institutions. This will enhance the professionalism of 'other dispute resolution practitioners' and ensure enhanced user satisfaction.
4. Users of negotiation should reduce their agreements into writing for ease of reference and enforcement.
5. Dispute resolution practitioners (especially those using the other dispute resolution methods) should master the art of unearthing the emotional aspects of disputes before proceeding to deal with the substantive aspects if disputes are to be resolved sustainably since each dispute has emotional components.
6. Section 113(c) of the Alternative Dispute Resolution Act which states that parties to negotiation are not bound by the outcome of the negotiation (settlement) should be amended to make negotiation settlements registrable in court, binding on the parties and enforceable in the same manner as a judgment of the court.[860]
7. Section 1 of the Alternative Dispute Resolution Act which bars the use of ODR to resolve environmental, national/public interest and Constitutional interpretation disputes should be amended. This will allow for matters of the environment to be resolved using 'other dispute resolution methods' (Alternative Dispute Resolution methods).[861] Again, a blanket bar on use of 'other dispute resolution methods' to resolve matters of public interest is problematic. What really are matters of public interest? In fact, the *Ghana v Cote D'Ivoire* boundary dispute which threatened Ghana's otherwise peaceful relationship with Cote

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[860] Section 113(c) of the Alternative Dispute Resolution Act 798 of 2010.

[861] Ibid Section 1.

D'Ivoire as well as Ghana's significant oil finds in the disputed area, which lingered on for many years was exhaustively resolved using arbitration on September 23rd, 2017.[862] It would be strange to say this was not a matter of public interest.

Again, it is no longer sustainable to bar ODR from being used to resolve environmental disputes. It is unfair for the law to take the right of dispute resolution stakeholders to choose which resolution method is ideal in this circumstance. ODR is used to resolve environmental and environmental-related disputes in countries such as China, Australia, Thailand, Canada, etc.

Also, the European Community 6th Environment Action Programme (2002 – 2012) called on European Union Countries to use ODR (specifically mediation) to resolve environmental disputes. The United Nations Convention on the Laws of the Sea, the World Trade Organisation Dispute Settlement, among others allow for use of ODR to resolve environmental disputes. Climate change disputes are also resolved using ODR. In fact, some countries such as India have Tribunals where arbitration is used to resolve environmental disputes.[863] ODR is also used to resolve disputes on protection of the ozone layer.[864] The advantages of using ODR to resolve environmental disputes are many. They include: faster resolution of environmental disputes, low resolution expense, investor-community/governmental relationship preservation, enhanced investor confidence, among others.[865] Ghana can therefore join the league of countries who have permitted use of ODR to resolve environmental disputes.

8. Disputants should select dispute resolution methods that offer them just, fair, and enforceable outcomes.
9. Disputants should, before making the choice in (7) above, consider the type of dispute and stage of the dispute, the dispute resolution practitioner (if it is ascertainable), disputants' circumstances, issues in dispute, and the dispute resolution legal framework.

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[862] Alhassan A, 'Ghana and Cote D'Ivoire Boundary Dispute: The Customary Agreements that Dispel a Looming Interstate War' [2019] Journal of Global Peace and Conflict 27.

[863] Edge Law Partners, 'ADR – A solution to climate change disputes?' (17 June 2022) www.linkedin.com/pulse/adr-solution-climate-change-disputes-edge-law-partners

[864] Vienna Convention for the Protection for the Protection of the Ozone Layer, Article 11(2).

[865] Edge Law Partners, 'ADR – A solution to climate change disputes?' (17 June 2022) www.linkedin.com/pulse/adr-solution-climate-change-disputes-edge-law-partners

9.4 Implications of findings for theory and practice of ODR in Africa

The findings amply demonstrated that the age-old narrative that litigation is appropriate and the other methods alternative, needs a reconstruction because it is fictitious. The reality is that there is no dispute resolution method that is appropriate for resolving every dispute every time, not even if the disputants remain the same. Like contestable public offices, every dispute resolution method is assessed through the lenses of the type and stage of dispute, issues in dispute, disputant's circumstances, dispute resolution practitioner, and legal framework for resolving disputes. It is only after a favourable verdict is returned that a vote is cast for a dispute resolution method. This process is repeated whenever there is a dispute.

Disputants should avoid using dispute resolution methods that do not render fair, just and enforceable outcomes. This is because these methods are not appropriate for resolving disputes. Disputants' knowledge of the performance of dispute resolution practitioners is key. Therefore, disputants owe a duty to themselves to have a sound understandng of all dispute resolution methods and their workings as well as the performance of dispute resolution practitioners where this is ascertainable.

ODR Practitioners ought to realise that their methods/practices are not inferior or secondary. They have the opportunity to make their methods attractive to disputants. There is the need for constant monitoring and creativity in designing processes and solutions. Practitioners are required to improve their performance and make the pursuit of user satistaction their overall aim. This is becasue their perfomance will determine their selection to resolve disputes and their sustainability in the dispute resolution landscape.

Further studies will be required to determine the most appropriate dispute resolution method in Ghana using the factors identified in this study as determinants of appropriate dispute resolution.

9.5 Conclusion

The approach adopted allowed for the involvement of as many primary dispute resolution stakeholders as possible (judges, lawyers, other dispute resolution practitioners, religious leaders, chiefs, and disputants), to elicit exhaustive and satisfactory responses to answer the research questions leading to attainment of the objectives of the study.

Analysis of the data collected from the survey and interviews showed that an appropriate dispute resolution method is one that renders fair, just, and enforceable outcomes. Again, a combination of a dispute resolution method's ability to reconcile the disputing parties, deliver expected outcome(s), preserve relationships, ensure fairness, and render enforceable outcomes constitute a mechanism for selecting an appropriate dispute resolution method. Further, it was discovered that there is no absolutely appropriate dispute resolution method in Ghana. That which is appropriate is the most suitable in a specific situation given all the relevant circumstances. The alternative is the method found not to be most suitable in a particular instance. It is therefore far from the academic notions of what is 'alternative'. The major finding therefore focused more on what is 'appropriate' than the 'alternative'. Type of dispute, stage of dispute, disputants' circumstances, issues in dispute, the dispute resolution practitioner, and legal framework are factors that determine what constitutes an appropriate dispute resolution.

Stage of dispute, and legal framework for resolving disputes as factors to consider in selecting an appropriate dispute resolution method are worthy of notice.

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APPENDICES

ANNEXURE A: ETHICAL CLEARANCE

UNISA 2020 ETHICS REVIEW COMMITTEE

Date: 2020:09:17

ERC Reference No.: ST106- 2020
Name : K Clemence

Dear Kotochie Clemence

Decision: Ethics Approval from 2020:09:17 to 2023:09:17

Researcher: Mr K Clemence

Supervisor: Prof A Velthuizen

Appropriate versus Alternative: Litigation in the context of dispute resolution methods in Ghana

Qualification: Doctor of Philosophy in Law

Thank you for the application for research ethics clearance by the Unisa 2020 Ethics Review Committee for the above-mentioned research. Ethics approval is granted for 3 years.

*The **Low-risk application** was **reviewed** by the CLAW Ethics Review Committee on 17 September 2020 in compliance with the Unisa Policy on Research Ethics and the Standard Operating Procedure on Research Ethics Risk Assessment.*

The proposed research may now commence with the provisions that:

1. **The researcher will ensure that the research project adheres to the relevant guidelines set out in the Unisa Covid-19 position statement on research ethics attached. Provisional authorisation is granted.**

2. The researcher(s) will ensure that the research project adheres to the values and principles expressed in the UNISA Policy on Research Ethics.
3. Any adverse circumstance arising in the undertaking of the research project that is relevant to the ethicality of the study should be communicated in writing to the CLAW Committee.
4. The researcher(s) will conduct the study according to the methods and procedures set out in the approved application.
5. Any changes that can affect the study-related risks for the research participants, particularly in terms of assurances made with regards to the protection of participants' privacy and the confidentiality of the data, should be reported to the Committee in writing, accompanied by a progress report.
6. The researcher will ensure that the research project adheres to any applicable national legislation, professional codes of conduct, institutional guidelines and scientific standards relevant to the specific field of study. Adherence to the following South African legislation is important, if applicable: Protection of Personal Information Act, no 4 of 2013; Children's act no 38 of 2005 and the National Health Act, no 61 of 2003.
7. Only de-identified research data may be used for secondary research purposes in future on condition that the research objectives are similar to those of the original research. Secondary use of identifiable human research data recquire additional ethics clearance.
8. No field work activities may continue after the expiry date **2023:09:17**. Submission of a completed research ethics progress report will constitute an application for renewal of Ethics Research Committee approval.

Note:

The reference number ST 106-2020 should be clearly indicated on all forms of communication with the intended research participants, as well as with the Committee.

Yours sincerely,

Prof T Budhram
Chair of CLAW ERC
E-mail: budhrt@unisa.ac.za
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Executive Dean: CLAW
E-mail: MBasdeo@unisa.ac.za
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ANNEXURE B: INSTRUMENT SCHEDULES

ANNEXURE B1: QUESTIONNAIRE FOR DISPUTE RESOLUTION PRACTITIONERS

INTRODUCTION

My name is ***Clemence Kotochie,*** and I am doing research with **Professor Velthuizen Andreas**, a Professor in the Thabo Mbeki African School for Public and International Affairs; and **Professor Fawzia Cassim**, a Professor in the Department of Criminal and Procedural Law, College of Law towards a Doctor of Philosophy Degree in Law at the University of South Africa. We are inviting you to participate in a study entitled **'Appropriate versus Alternative: Litigation in the context of dispute resolution methods in Ghana**'. I crave your indulgence to ask you some questions meant to elicit the required responses to enable us to determine the appropriate dispute resolution method in Ghana.

Be assured that ***this is purely for academic purposes only*** and every piece of information you provide will be treated confidential and private. You are at liberty to decline any question you deem unnecessary.

SECTION A

DEMOGRAPHIC INFORMATION OF RESPONDENTS

1. Gender: Male [ ] Female [ ]
2. Age: 18 – 28 [ ] 29 – 39 [ ] 40 – 50 [ ] 51 – 61 [ ] 61 & above [ ]
3. Profession: Judge [ ] ADR Practitioner [ ], Lawyer [ ] Teacher [ ] Religious Leader [ ], Medical Doctor [ ] Businessman/woman [ ] Other [ ] Specify ___________________
4. Dispute stakeholder group category: Disputant [ ], Mediator [ ], Negotiator [ ], Arbitrator [ ], Judge [ ], Chief [ ], Religious Leader [ ], Other [ ], Specify ______________________________
5. How many years have you been a dispute resolution stakeholder? 0 – 5 yrs [ ] 5.1 – 10 yrs [ ] 10.1 – 15 years [ ] 15.1 – 20 years [ ] 20.1 years & above [ ]
6. Highest educational qualification: PhD [ ] Masters [ ] First Degree [ ] HND [ ] Diploma [ ] SSCE/WASSCE [ ] BECE [ ]

SECTION B

NATURE OF DISPUTE

Note: Please identify one major dispute you have been involved in (as a disputant, dispute resolution expert, etc.) in the past five (5) years and respond to the questions concerning it below.

Dispute Component - Type of Dispute

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***CD = Contractual Dispute, MD = Marital Dispute, LD = Land Dispute, LaD = Labour Dispute, OD = Other Disputes.*** Note further that **CD = 1, MD = 2, LD = 3, LaD = 4, OD = 5.**

Question	Statement	Response				
		CD	MD	LD	LaD	OD
7.	What type of dispute was it?					

Please specify the actual dispute if you selected ***Other Dispute - 'OD'*_______________**

Dispute Component – Emotions (Temperament Type)

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***ML = Melancholy, CL = Choleric, SG = Sanguine, SP = Supine, PG = Phlegmatic, UA = Unaware.*** Note further that **ML = 1, CL = 2, SG = 3, SP = 4, PG = 5, UA = 6**

	Statement	Response					
		ML	CL	SG	SP	PG	UA
8.	What was the disputant's personality type?						

Dispute Component – Emotional Issues

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***AG = Anger, SM = Shame, GT = Guilt, JS = Jealousy, FR = Fear, OT = Other.*** Note further that **AG = 1, SM = 2, GT = 3, JS = 4, FR = 5, OT = 6**

	Statement	Response					
		AG	SM	GT	JS	FR	OT
9.	Which emotional issue underlied the dispute?						

Please specify the exact emotional issue if you selected

Other Dispute - 'OT' _________________

Dispute Component – Beliefs and Values Issues

Indicate your level of agreement or disagreement with each of the questions below by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***SD = Strongly Disagree, DA = Disagree, NDA = Neither***

Disagree nor Agree, A = Agree, SA = Strongly Agree. Note further that ***SD = 1, DA = 2, NDA = 3, A = 4 and SA = 5.***

Question	Statement	Response				
		SD	DA	NDA	A	SA
10.	***Differences in 'beliefs' underlied the dispute***					
11.	***Differences in 'values' underlied the dispute***					

Stage of dispute

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***DS = Discomfort Stage, IS = Incident Stage, MS = Misunderstanding Stage, TS = Tension Stage, CS = Crisis Stage.*** Note further that ***DS = 1, IS = 2, MS = 3, TS = 4, CS = 5***.

Question	Statement	Response				
		DS	IS	MS	TS	CS
12.	At what stage was the dispute before it was brought to you for a resolution?					

Adapted from CRANAplus (2011)

Motivation for seeking a resolution

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***FB = Financial Benefit, EB = Emotional Benefit, RB = Relational Benefit, ReB = Reputational Benefit, OB = Other Benefits***. Note further that ***FB = 1, EB = 2, RB = 3, ReB = 4, OB = 5***.

Question	Statement	Response				
		FB	EB	RB	ReB	OT
13.	What motivated your involvement in seeking a resolution?					

Please specify the exact toll, if you selected '***OB'*** above

____

If you selected '***FB' = Financial Benefit***, please provide details by responding to the question below:

Question	Statement	Response (GH₵)				
		Below 2,500	2,500 – 5,000	5,000 – 7,500	7,500 – 10,000	10,000 & above
14.	I anticipated making in monetary terms, the sum of..					

Disputant's expectations

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***RS = Resolution, JS = Justice, PC = Peace, PT = Precedent, OT = Other***

Question	Statement	Response				
		RS	**JS**	**PC**	**PT**	**OT**
15.	What was your expectation for getting involved?					

If you selected 'OT' – Other, then specify: ____________________________________

Dispute setting

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: **WP = Workplace, HM = Home, RP = Religious Place, OT = Other**

Question	Statement	Response			
		WP	**HM**	**RP**	**OT**
16.	**What was the setting in which the dispute occurred**				

If you selected 'OT' – Other, then specify: ____________________________________

SECTION C

DISPUTE RESOLUTION METHOD

Choice of dispute resolution method

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***N = Negotiation, M = Mediation, A = Arbitration, L = Litigation, O = Others***. Note further that ***N = 1, M = 2, A = 3, L = 4 and O = 5.***

Question	Statement	Response				
		N	**M**	**A**	**L**	**O**
17.	I used this dispute resolution method to resolve the dispute					

If you selected 'O' – Other, please specify

____

Mechanism for selecting appropriate dispute resolution method

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***SD = Strongly Disagree, DA = Disagree, NDA = Neither Disagree nor Agree, A = Agree, SA = Strongly Agree***. Note further that ***SD = 1, DA = 2, NDA = 3, A = 4 and SA = 5.***

Question	Statement	Response				
		SD	DA	NDA	A	SA
18.	***'COST'*** is my main consideration in selecting the dispute resolution method					
19.	'***OPENNESS, NEUTRALITY & FAIRNESS*** are my main considerations for the choice of dispute resolution method					
20.	'***SPEED***' is my main consideration in selecting the dispute resolution method					
21.	'***EXPECTED OUTCOME***' is the main determinant of my choice					
22.	'***PRIVACY & CONFIDENTIALITY'*** are my main considerations in selecting a dispute resolution method					
23.	'***ENFORCEABILITY***' was my main consideration					
24.	'***PRESERVATION OF RELATIONSHIPS'*** is my main consideration					
25.	'***FLEXIBILITY***' is my main consideration for my choice					
26.	'***CREATIVE REMEDIES'*** was the main determinant of my choice					
27.	'***DEGREE OF CONTROL'*** is the main determinant of my choice of a dispute resolution method					
28.	***'RECONCILIATION'*** is the main determinant of my choice of dispute resolution method					

Adapted from ***Cheung et al (2002); Susskind & Cruikshank (1987)***

SECTION D

<u>DISPUTE RESOLUTION OUTCOME</u>

This section seeks to discover the result of your chosen dispute resolution method. Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***SD = Strongly Disagree, DA = Disagree, NDA = Neither Disagree nor Agree, A = Agree, SA = Strongly Agree***. Note further that ***SD = 1, DA = 2, NDA = 3, A = 4 and SA = 5.***

Question	Statement	Response				
		SD	DA	NDA	A	SA
29.	I was satisfied with the dispute resolution method I used					
	My reasons for the answer I provided in (29) above are that:					
	Statement	**SD**	**DA**	**NDA**	**A**	**SA**
30.	The process involved was open, neutral & fair					
31.	The cost incurred was affordable					
32.	The time from start to finish was short & commendable					

33.	The outcome was what I expected					
34.	There was privacy & confidentiality throughout the process					
35.	I was able to enforce the outcome					
36.	Our relationship was preserved					
37.	The process was flexible					
38.	The method had the ability to fashion creative remedies					
39.	I had control over the process					
	Appropriate dispute resolution method					
	Statement	**N**	**M**	**A**	**L**	**O**
40.	Which dispute resolution method is the appropriate one in Ghana? (***N = Negotiation, M = Mediation, A = Arbitration, L = Litigation, O = Other)***					
	My reasons for the answer I provided in (40) above are that :					
	Statement	**SD**	**DA**	**NDA**	**A**	**SA**
41.	The method provides a just process and outcome					
42.	It is less costly					
43.	It guarantees a speedy resolution of disputes					
44.	It ensures privacy and confidentiality					
45.	It provides satisfactory outcomes					
46.	The outcomes are enforceable					
47.	It preserves relationships					
48.	It is flexible					
49.	It is able to craft creative remedies/solutions					
50.	It gives disputants control over the process					
51.	It resolves disputes best					
52.	It reconciles disputants					

As adapted from ***Merchant and Constantino (1995); Ury, Brett & Goldberg (1988)***

Thank you very much!!!

ANNEXURE B2: QUESTIONNAIRE FOR DISPUTANTS

INTRODUCTION

My name is ***Clemence Kotochie,*** and I am doing research with ***Professor Velthuizen Andreas*** in the Thabo Mbeki African School for Public and International Affairs and ***Professor Fawzia Cassim*** in the Department of Criminal and Procedural Law of the College of Law in University of South Africa towards a ***Doctor of Philosophy Degree in Law*** at the ***University of South Africa***. The study is entitled '**Appropriate versus Alternative**: '***Litigation in the context of dispute resolution methods in Ghana***'. I crave your indulgence to ask you some questions meant to elicit the required responses to enable us to determine the appropriate dispute resolution method in Ghana.

Be assured that this is purely ***for academic purposes only*** and every piece of information you provide will be treated confidential and private. You are at liberty to decline any question you deem unnecessary.

SECTION A

DEMOGRAPHIC INFORMATION OF RESPONDENTS

1. Gender: Male [ ] Female [ ]

2. Age: 18 – 28 [ ] 29 – 39 [ ] 40 – 50 [ ] 51 – 61 [ ] 61 & above [ ]

3. Profession: Judge [ ] ADR Practitioner [ ], Lawyer [ ] Teacher [ ]
   Religious Leader [ ], Medical Doctor [ ] Businessman/woman [ ]
   Other [ ] Specify _________________

4. Dispute stakeholder group category: Disputant [ ], Mediator [ ], Negotiator [ ], Arbitrator [ ], Judge [ ], Chief [ ], Religious Leader [ ],
   Other [ ], Specify ___________________________

5. How many years have you been a dispute resolution stakeholder? 0 – 5 yrs [ ]
   5.1 – 10 yrs [ ] 10.1 – 15 years [ ] 15.1 – 20 years [ ] 20.1 years & above [ ]

6. Highest educational qualification: PhD [ ] Masters [ ] First Degree [ ]
   HND [ ] Diploma [ ] SSCE/WASSCE [ ] BECE [ ]

SECTION B

NATURE OF DISPUTE

Note: Please identify one major dispute you have been involved in (as a disputant, dispute resolution expert, etc.) in the past five (5) years and respond to the questions concerning it below.

Dispute Component - Type of Dispute

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***CD = Contractual Dispute, MD = Marital Dispute, LD = Land Dispute, LaD = Labour Dispute, OD = Other Disputes.*** Note further that **CD = 1, MD = 2, LD = 3, LaD = 4, OD = 5.**

Question	Statement	Response				
		CD	MD	LD	LaD	OD
7.	What type of dispute was it?					

Please specify the actual dispute if you selected ***Other Dispute - 'OD'***

____

Dispute Component – Emotions (Temperament Type)

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***ML = Melancholy, CL = Choleric, SG = Sanguine, SP = Supine, PG = Phlegmatic, UA = Unaware.*** Note further that **ML = 1, CL = 2, SG = 3, SP = 4, PG = 5, UA = 6**

	Statement	Response					
		ML	CL	SG	SP	PG	UA
8.	What was the disputant's personality type?						

Dispute Component – Emotional Issues

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***AG = Anger, SM = Shame, GT = Guilt, JS = Jealousy, FR = Fear, OT = Other.*** Note further that **AG = 1, SM = 2, GT = 3, JS = 4, FR = 5, OT = 6**

	Statement	Response					
		AG	SM	GT	JS	FR	OT
9.	Which emotional issue underlied the dispute?						

Please specify the specific emotional issue if you selected

Other Dispute - 'OT' __________________

Dispute Component – Beliefs and Values Issues

Indicate your level of agreement or disagreement with each of the questions below by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***SD = Strongly Disagree, DA = Disagree, NDA = Neither Disagree nor Agree, A = Agree, SA = Strongly Agree***. Note further that ***SD = 1, DA = 2, NDA = 3, A = 4 and SA = 5.***

Question	Statement	Response				
		SD	DA	NDA	A	SA
10.	***Differences in 'beliefs' underlied the dispute***					
11.	***Differences in 'values'*** *underlied* ***the dispute***					

Stage of dispute

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***DS = Discomfort Stage, IS = Incident Stage, MS = Misunderstanding Stage, TS = Tension Stage, CS = Crisis Stage.*** Note further that ***DS = 1, IS = 2, MS = 3, TS = 4, CS = 5***.

Question	Statement	Response				
		DS	IS	MS	TS	CS
12.	At what stage was the dispute before you sought a resolution?					

Adapted from CRANAplus (2011)

Motivation for seeking a resolution

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***FT = Financial Toll, ET = Emotional Toll, RT = Relational Toll, ReT = Reputational Toll, OT = Other Tolls***. Note further that ***FT = 1, ET = 2, RT = 3, ReT = 4, OT = 5***.

Question	Statement	Response				
		FT	ET	RT	ReT	OT
13.	What motivated your search for a resolution?					

Please specify the exact toll, if you selected '***OT'*** above

____

If you selected '***FT' = Financial Toll***, please provide details by responding to the question below:

Question	Statement	Response (GH₵)				
		Below 2,500	**2,500 – 5,000**	**5,000 – 7,500**	**7,500 – 10,000**	**10,000 & above**
14.	I was losing in monetary terms, the sum of..?					

Disputant personality type

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***ML = Melancholy, CH = Choleric, PH = Phlegmatic, SG = Sanguine, SP = Supine, UA = Unaware***

Question	Statement	Response					
		ML	**CH**	**PH**	**SG**	**SP**	**UA**
15.	What is your personality type?						

Disputant's expectations

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***RS = Resolution, JS = Justice, PC = Peace, PT = Precedent, OT = Other***

Question	Statement	Response				
		RS	**JS**	**PC**	**PT**	**OT**
16.	What was your expectation for seeking help?					

If you selected 'OT' – Other, then specify ____

Dispute setting

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: **WP = Workplace, HM = Home, RP = Religious Place, OT = Other**

Question	Statement	Response			
		WP	**HM**	**RP**	**OT**
17.	What was the setting in which the dispute occurred				

If you selected 'OT' – Other, then specify ____

SECTION C

DISPUTE RESOLUTION METHOD

Choice of dispute resolution method

Indicate your response to each question by ticking the appropriate column provided against each question. Note the full meaning of the following abbreviations: ***N = Negotiation, M = Mediation, A = Arbitration, L = Litigation, O = Others***. Note further that ***N = 1, M = 2, A = 3, L = 4 and O = 5.***

Question	Statement	Response				
		N	**M**	**A**	**L**	**O**
18.	I used this dispute resolution method to resolve my dispute					

If you selected 'O' – Other, please specify

____

Mechanism for selecting appropriate dispute resolution method

Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***SD = Strongly Disagree, DA = Disagree, NDA = Neither Disagree nor Agree, A = Agree, SA = Strongly Agree***. Note further that ***SD = 1, DA = 2, NDA = 3, A = 4 and SA = 5.***

Question	Statement	Response				
		SD	DA	NDA	A	SA
19.	***'COST'*** was my main consideration in selecting the dispute resolution method					
20.	'***OPENNESS, NEUTRALITY & FAIRNESS*** were my main consideration for the choice of dispute resolution method					
21.	'***SPEED***' was my main consideration in selecting the dispute resolution method					
22.	'***EXPECTED OUTCOME***' was the main determinant of my choice					
23.	'***PRIVACY & CONFIDENTIALITY'*** were my main considerations in selecting a dispute resolution method					
24.	'***ENFORCEABILITY***' was my main consideration					
25.	'***PRESERVATION OF RELATIONSHIPS'*** was my main consideration					
26.	'***FLEXIBILITY***' was my main consideration for my choice					
27.	'***CREATIVE REMEDIES'*** was the main determinant of my choice					
28.	'***DEGREE OF CONTROL'*** was the main determinant of my choice of a dispute resolution method					
29.	***'RECONCILIATION'*** was the main determinant of my choice of dispute resolution method					

Adapted from ***Cheung et al (2002); Susskind & Cruikshank (1987)***

SECTION D

DISPUTE RESOLUTION OUTCOME

This section seeks to discover the result of your chosen dispute resolution method. Indicate your response to each question by ticking the appropriate columns provided against each question. Note the full meaning of the following abbreviations: ***SD = Strongly Disagree, DA = Disagree, NDA = Neither Disagree nor Agree, A = Agree, SA = Strongly Agree***. Note further that ***SD = 1, DA = 2, NDA = 3, A = 4 and SA = 5.***

Question	Statement	Response				
		SD	DA	NDA	A	SA
30.	I was satisfied with the dispute resolution method I used					
	My reasons for the answer I provided in (30) above are that:					

	Statement	SD	DA	NDA	A	SA
31.	The process was open, neutral & fair					
32.	The cost incurred was affordable					
33.	The time from start to finish was short & commendable					
34.	The outcome was what I expected					
35.	There was privacy & confidentiality throughout the process					
36.	I was able to enforce the outcome					
37.	Our relationship was preserved					
38.	The process was flexible					
39.	The method had the ability to fashion creative remedies					
40.	I had control over the process					
	Appropriate dispute resolution method					
	Statement	**N**	**M**	**A**	**L**	**O**
41.	Which dispute resolution method is the appropriate one in Ghana? (***N = Negotiation, M = Mediation, A = Arbitration, L = Litigation, O = Other)***					
	My reasons for the answer I provided in (41) above are that :					
	Statement	**SD**	**DA**	**NDA**	**A**	**SA**
42.	The method provides a just process and outcome					
43.	It is less costly					
44.	It guarantees a speedy resolution of disputes					
45.	It ensures privacy and confidentiality					
46.	It provides satisfactory outcomes					
47.	The outcomes are enforceable					
48.	It preserves relationships					
49.	It is flexible					
50.	It is able to craft creative remedies/solutions					
51.	It gives disputants control over the process					
52.	It resolves disputes best					
53.	It reconciles disputants					

As adapted from ***Merchant and Constantino (1995); Ury, Brett & Goldberg (1988)***

Thank you very much!!!

ANNEXURE B3: INTERVIEW GUIDE

INTRODUCTION

My name is ***Clemence Kotochie,*** and I am doing research with ***Professor Velthuizen Andreas*** in the Thabo Mbeki African School for Public and International Affairs and ***Professor Fawzia Cassim*** in the Department of Criminal and Procedural Law of the College of Law in University of South Africa towards a ***Doctor of Philosophy Degree in Law*** at the ***University of South Africa***. The study is entitled '**Appropriate versus Alternative**: '***Litigation in the context of dispute resolution methods in Ghana***'. I crave your indulgence to ask you some questions meant to elicit the required responses to enable us to determine the appropriate dispute resolution method in Ghana.

Be assured that this is purely ***for academic purposes only*** and every piece of information you provide will be treated confidential and private. You are at liberty to decline any question you deem unnecessary.

SECTION A

DEMOGRAPHIC INFORMATION OF PARTICIPANTS

1. What is your gender?
2. What is your age or age range? (Intervals of 10, e.g., 18 – 28, 29-39, 40-50, 51-61, etc.)
3. What is your highest educational qualification?
4. Please what do you do for a living (Profession)?
5. What type of dispute resolution stakeholder are you? (Disputant, dispute resolution practitioner, etc.)
6. How many years have you been a dispute resolution stakeholder?

SECTION B

APPROPRIATE DISPUTE RESOLUTION METHOD

7. Why did you not provide an answer to the question on which dispute resolution method is the most appropriate one in Ghana at the quantitative phase of this study?
8. Which factors determine an appropriate dispute resolution method?
9. Can you please explain your response in question eight (8) above?

SECTION C

OTHERS

10. Please do you have any additional information to provide?
11. Do so (if the participant answered 'yes' in question ten (10) above).

Thank you!!

In case of reply the number and date of this letter should be quoted

My Ref. No. SCR 38

Your Ref. No.

Tel. No. 0302-663952 - Ext. 2017(Office)
0302-661810 (Direct)

OFFICE OF THE JUDICIAL SECRETARY
P. O. Box 119
Accra, Ghana

October 20, 2020

PROFESSOR DOCTOR ANDREAS VELTHUIZEN
UNIVERSITY OF SOUTH AFRICA (UNISA)

Dear Sir,

RE: PERMISSION TO CONDUCT RESEARCH

We acknowledge receipt of your letter dated September 24, 2020 seeking permission on behalf of Mr. Clemence Kotochie, a PhD Candidate of UNISA to conduct a research at the court on the topic: ***Appropriate versus Alternative: Litigation in the Context of Dispute Resolution Methods in Ghana for his PhD thesis.***

We are pleased to inform you that your request has been granted.

The student must however credit the Judicial Service in all publications the collected data would be used and submit a copy of your completed research work to the Judicial Service.

The student should contact the ADR National Coordinator, Mr. Alex Nartey who, by a copy of this letter has been directed to assist and facilitate your research work.

Mr. Clemence Kotochie should locate the ADR Directorate at the former Children's Bay, on the 2nd Floor, The Law Court Complex, Accra.

We wish him the best in his research work.

JUSTICE CYNTHIA PAMELA A. ADDO (JA)
JUDICIAL SECRETARY

Cc: Mr. Alex Nartey, National ADR Coordinator
Director, Communications