

Chapter 9

Alternative Dispute Resolution in Ghana: A Critical Look at Act 798

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ABSTRACT

Adjudication of issues in the Ghanaian jurisdiction can be traced back to the pre-colonial era where powers were vested in chiefs, elders, and representatives of all the major tribes. Chiefs and elders adjudicated on most issues with the family heads serving as lawyers. During the colonial era, judicial powers were vested in the Privy Council, which took away the powers of the chiefs and elders. At times parties to a dispute may want to resolve the dispute in a form other than the normal court system, hence the alternative dispute resolution (ADR). However, ADR lacks stare decisis since it set no precedent to guide similar disputes in the future. Also, there is no right of appeal when parties opt for ADR. The purpose of this chapter is to assess the use of ADR in Ghana, the challenges, and the way forward.

INTRODUCTION

The concepts of ADR have been practised in Ghana before the colonial period. These ideals have been ingrained in Ghanaian cultures and communities' traditional standards and values (Ruffin, 2019). The Colonial Courts, which were founded by the colonial administrators at the time, were able to identify, confirm, and implement these conventional settlement outcomes in the courts because of the methods of traditional dispute resolution ingrained in our ancestors' social fabric. Chiefs, elders, and heads of families and clans in each group were involved in the settlement process (Ruffin, 2019). In today's world, the extended family structure consists of the nuclear family (father, mother, and children) as well as other relatives such as uncles and aunties, grandfathers and mothers, cousins, and so on. The head of each extended family is usually the eldest male, known as the "Ebusua Panyin" (Akan). Furthermore, each extended family in the group belongs to a particular clan. Each clan is typically led by the clan's eldest living male or an elected elder from one branch (Zuure, 2018).

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The majority of disagreements were previously settled by the extended family system. Parents refer family conflicts to the family's head of household, who attempts to settle the conflict. When this attempt fails, the clan chief is summoned to assist. The Chief is usually the last resort, making a final and binding decision. Due to recent urbanisation and rural-urban migration within the region, the extended family system is continuing to deteriorate. The majority of individuals and families have traditionally relied on the court trial process to resolve disputes (litigation). However, due to the public's unfavourable view of the country's judicial systems, litigation is quickly becoming unpopular. Litigation has also been sluggish, costly, and inconvenient. These and other factors have prompted Ghana's judicial service to launch a comprehensive reform programme aimed at reducing the backlog of cases in the courts, reducing the time spent trying cases, and introducing policies and procedures that make justice more available to the poor and vulnerable.

ADR structures can be a welcome and effective replacement for Ghana's conventional and extended family conflict resolution methods (Price, 2018). Owing to the progressive collapse of the extended family structure, these extended family systems have become is weakening or withering away largely because a) mass mobility—people migrating to cities, b) increasing frequency of inter-ethnic marriages, c) formation of nuclear families away from close relatives. Ghana's people have been characterised as being peaceful, hospitable, and peace-loving despite the fact that there is political unrest, intra-ethnic, and religious conflicts persisting in the country. With the weakening of the extended family system and its dispute resolution, which has affected the informal way of adjudicating issues among individuals, it's more important than ever to find new ways to maintain the peace that has brought much-needed stability and economic growth. To this end, the adoption and implementation effective ADR framework in the country is sorely needed in order to nip potentially open hostilities and conflicts in the bud. Alternative Dispute Resolution (ADR) can be described as any means of resolving a legal issue outside of the courtroom. ADR methods have been around for a while and are quickly gaining traction as a favoured form of conflict resolution. Parties that have participated in ADR processes such as mediation express satisfaction and confidence in the process. Negotiations in various ways, mediation, and arbitration are some of the ADR processes widely used by stakeholders in the country (Mensah-Panford, 2018). This paper evaluates alternative conflict resolution in Ghana: A detailed look at Act 798, the problems, and the way forward in this context.

HISTORICAL OVERVIEW OF ADR IN GHANA

Professor Uwaize, known as the “Father of ADR in Africa,” is credited with establishing ADR in Ghana. In 1996, he led a group of 12 legal professionals from Nigeria, Senegal, and Ghana to the United States for ADR training. Former Chief Justice Georgina Theodora Wood, Mr. Nene Amegatcher, who represented the Ghana Bar Association, and Professor Henrietta Mensa- Bonsu [now a Justice of the Supreme Court of Ghana] from the faculty of law were among the Ghanaian representatives chosen. They were given the task of raising ADR awareness in Ghana after they completed their training. After a fruitful training session, the team was to train interested individuals and retain them. Former Chief Justices Kwame Wiredu and George Kingsley Acquah worked hard to put in place policies to help Ghana grow ADR (Uwazie, 2014).

Following that, ten more legal practitioners were qualified to assist in the creation of Ghana's ADR institution. ADR was implemented on a trial basis with the assistance of these qualified practitioners

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