

# Alternative Dispute Resolution and Peace-building in Africa



Alternative Dispute Resolution  
and Peace-building in Africa

Edited by

Ernest Uwazie

**CAMBRIDGE  
SCHOLARS**

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P U B L I S H I N G

Alternative Dispute Resolution and Peace-building in Africa,  
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## ACKNOWLEDGMENTS

This publication is primarily the result of the Third International Africa Peace and Conflict Resolution Conference, on the theme of “ADR and Peace Studies in Africa, 15 years later: Lessons and Future Directions”. The conference was held on July 26-28, 2011 in Accra, Ghana.

Several additional papers were selected, to enrich the publication and to contribute to the emerging literature on alternative dispute resolution and peacebuilding in Africa, both in practice and policy. Arguably, this publication will continue to benefit from future revisions and critical reviews, as well as related conference conclaves in Africa and elsewhere.

The publication of this volume would not have been possible without the contributions of the respective authors and conference sponsors. Together, we overcame the challenges involved in producing conference proceedings.

Each author is responsible for the contents of her/his contribution. As the editor, I have taken care not to distort the content or meaning of each contribution. I regret any errors or mistakes herein, as they are unintended. The views expressed in this publication remain those of the contributors or authors, and they do not necessarily represent the viewpoints or endorsement of the July 26-28, 2011 conference organizers: Center for African Peace & Conflict Resolution (CAPCR) and Ghana Association of Certified Mediators and Arbitrators (GHACMA).

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December 2013

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## ABOUT THE EDITOR

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# FOREWORD

STEVEN GATEMBU KAIRU

I am delighted to provide a Foreword to this publication on ADR in Africa. Some of the challenges that have faced Kenya—and indeed many countries in Africa—in the administration of justice are attributable to overreliance on the courts in the resolution of all forms of dispute, even where the courts are not well suited to the task and where other forms of dispute resolution would be more appropriate. The result is that our courts are overwhelmed by their caseloads; parties have to wait for a long time in the queue before getting service from the courts, access to justice is hindered, substantial justice is often compromised due to the technical strictures of the court system, and it is often the case that outcomes of court proceedings do not satisfy the interests of the parties involved.

It is against this background that Kenya has embarked on legal reforms to integrate alternative forms of dispute resolution—as well as traditional dispute resolution mechanisms—in the administration of justice. A few of these reform initiatives are worthy of mention. Under the Constitution of Kenya, 2010,<sup>1</sup> courts and tribunals are enjoined, in exercising judicial authority, to apply alternative forms of dispute resolution. In its strategy to promote and facilitate alternative forms of dispute resolution, the judiciary has undertaken to develop laws and rules for alternative dispute resolution, and to sensitize court users and communities to alternative dispute resolution options.<sup>2</sup> The Civil Procedure Act has been amended to empower courts, at the request of parties or where the court deems it appropriate, to refer disputes to mediation or other appropriate methods of dispute resolution.<sup>3</sup> An Arbitral Court has recently been established under an Act of Parliament,<sup>4</sup> which is empowered to adopt and implement

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<sup>1</sup> Article 159(2)(c) of the Constitution of Kenya, 2010.

<sup>2</sup> Judiciary Transformation Framework 2012-2016

<sup>3</sup> Sections 59B and 59C of the Civil Procedure Act, Chapter 21 of the Laws of Kenya

<sup>4</sup> Nairobi Centre for International Arbitration Act, Act No. 26 of 2013. The Act also establishes Nairobi Centre for International Arbitration.

appropriate means of dispute resolution on its own motion, or at the request of parties, including conciliation, mediation and other means.

Alongside these reform initiatives is the need for capacity building. Happily, many universities, and law schools in particular, have incorporated alternative dispute resolution courses within their curricula. The Centre for African Peace and Conflict Resolution (CAPCR), under Professor Ernest Uwazie, has made a very significant contribution to capacity building in Africa. In 2004, CAPCR invited nine of us from Kenya to the US to train as trainers of trainers in alternative dispute resolution. CAPCR has provided similar training and curriculum development expertise in other countries in Africa. However, the need to create internal capacity remains, and is urgent in Africa, particularly as the use of ADR expands to include commercial cases.

I therefore welcome this publication on alternative dispute resolution, with contributions by a diverse, distinguished, and experienced group of contributors. It provides an invaluable reservoir of intellectual resources on ADR in Africa and beyond. It will greatly assist in better understanding the status of ADR, and help to address the challenges that face Africa in the administration of justice and the pursuit of peace.

## PROLOGUE

# ALTERNATIVE DISPUTE RESOLUTION (ADR): THE GHANA EXPERIENCE

GEORGINA T WOOD

The history of Alternative Dispute Resolution (ADR) in Ghana, and perhaps in West Africa, begins with Professor Ernest Uwazie and the Center for African Peace and Conflict Resolution at the California State University, Sacramento, US. It is his vision, foresight, tenacity of purpose and relentless pursuit for excellence that, with the assistance of his ADR project partner, Attorney Daniel Yamshon (and others), gave birth to the ADR movement in Ghana. Their intervention did not end at that. To this day, they continue to nurture the effective growth and internal capacity building of ADR in the sub-region, as well as throughout Africa.

Under Professor Uwazie's leadership (I refer to him as the father of ADR in Africa), in 1996 twelve of us from the West Africa sub-region (Nigeria, Ghana and Senegal) were invited to the US, starting in Sacramento, for an intensive one month Training of Trainers (ToT) program on ADR for legal professionals. It was during this landmark project that, as the representative of the Judiciary of Ghana, I first cut my ADR teeth. I did not have much difficulty in recognizing, in those early stages of the program, that ADR held great promise for justice delivery.

Nene Amegatcher (now President of the Ghana Bar Association) was the nominee of the Ghana Bar Association. The third pioneer was Professor Henrietta Mensah-Bonsu, who represented the Law Faculty of the University of Ghana, Legon. (She later served as the United Nations Secretary General's Deputy Special Representative to the Republic of Liberia). Dan Yamshon is among those gallant men and women whose invaluable contribution to the development of ADR in Ghana—and subsequently in The Gambia during my tenure as a justice of the Supreme Court of the Gambia, while in session—will always be remembered.

I would like to pay special tribute to two of my predecessors as Chief Justice: the late Chief Justices Kwame Wiredu and George Kingsley

Acquah, who, under their respective tenures and working with Professor Uwazie, initiated vigorous policies leading to the development of ADR in Ghana.

Last but not least, I would like to pay a special tribute to Ms. Brooks Robinson, who was then Public Affairs Officer of the United States Information Services in Accra. Brooks, as I love to call her, exerted considerable time and energy assisting in entrenching ADR and other democratic values in our dear country. May I reiterate that I remain encouraged by the invaluable support the Judiciary has received from our donor partners, and all of the wonderful friends earlier acknowledged.

Our task, after the initial training in 1996 (that was of course followed by more advanced training) was, though simple, indeed quite daunting. We moved across the entire country in order to spread the ADR message, sharing the knowledge we had acquired with our colleagues—Bench, Bar and Faculty—and the general public. Our goal was to train and retrain other trainers. Even more importantly, we pushed for policies that encouraged the integration of ADR into our legal system. We found the legal terrain pretty difficult. It was steeped in litigation culture and was not ADR friendly, but we persevered.

## **Judicial Reforms**

Ghana has often been lauded for its democratic progress. For its part, the Judiciary has not relented in its efforts to ensure the effective administration of justice—even in the face of successive military interventions. This notwithstanding, the Judiciary has not been without its share of challenges within the emergent Ghanaian polity. A little over ten years ago, the major stakeholders in the administration of justice felt that the system needed a major overhaul if it was to respond effectively to the needs of the business community, in particular. This was at a time when the private sector had, appropriately, been identified as the engine of growth for the Ghanaian economy. The Judiciary itself, the Private Enterprise Foundation, the Ghana Bar Association and the Ghana Investment Promotion Centre called for remedial policies and judicial reform programs based on sound strategic options. In particular, the adjudication of commercial and land cases were marked by frustratingly long delays. The main causes of these delays varied. The Judiciary was at the time contending with such basic issues as poor and inadequate hard and soft infrastructure, outmoded, cumbersome, and non-user-friendly procedural rules of court, difficult enforcement mechanisms, etc. In short, the institution was underfunded and poorly resourced. Unattractive

conditions of service were certainly a negative factor, resulting in a poor work ethic. Under such conditions, it was virtually impossible to attract some of the finest legal brains to the Bench. The overall effect was the occasional seeming loss of public confidence in the court system, due principally to the length and expense associated with litigation. It was rightly thought that institutional reform would lead to the transformation of the judicial system, and that this would positively impact upon such critical areas as commercial and investment law. But we have made and continue to make significant improvements in the area of infrastructure.

With the support of the World Bank, the Government of Ghana, under the Private Sector Development Project, commissioned a study that sought to identify those gaps and weaknesses that needed urgent attention. One area which came under consultants' scrutiny was Ghana's "Administrative Law Procedures on Arbitration and other Alternative Dispute Resolution Mechanisms." Their overwhelming conclusion, which enjoyed the full endorsement of the national body tasked to discuss all recommendations under the project, was that ADR must, with minimum delay, be integrated into the justice system.

The year 1998 witnessed the setting up of a Task Force on ADR, by the then Deputy Attorney General and Minister for Justice, Mr Martin Amidu. Mr Nene Amegatcher and I were privileged to serve on that task force. Its major task was to formulate a standalone Bill on ADR for passage into law. Surprisingly, it took almost ten years for the bill to be passed into an act of Parliament, Act 798 (2010). We found the pace of change rather too slow, given the fact that within the African setting, the cultural environment for ADR was not an issue.

Thankfully, the legal system is well resourced in terms of specific ADR statutory provisions. In other words, there was no dearth of a generalised legal framework or specific supportive ADR legislation for ADR practice in Ghana. Therefore, in spite of the delay, we proceeded, under these laws, to have ADR mainstreamed into the formal judicial system.

### **The Pre Alternative Dispute Resolution (ADR) Act (Act 798) Era**

The Courts Act 1993, Act 459 (as amended) served as the basic legal framework for ADR practice. Pertinently, its predecessors all carried the provision which encourages out-of-court settlements, as we are sometimes used to describing them. It vests in the courts the general power to

promote reconciliation in civil and criminal cases. In particular sections, 72 and 73, (quoted in part) empowered the court to:

(1) ... promote reconciliation and encourage and facilitate the settlement of disputes in an amicable manner between and among persons over whom the court has jurisdiction.

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

### **Section 73: Reconciliation in Criminal Cases**

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

In terms of specific ADR legislation, we have the following:

**The Arbitration Act 1961, Act 38.** This made provision for both domestic and foreign arbitrations. An award was final and binding, and could be enforced in the same manner as a judgment or order of the court.

**The Matrimonial Causes Act 1971, Act 367.** Section 8 enjoined the court, in divorce proceedings, to adjourn proceedings specifically to promote reconciliation when expedient to do so.

**The Commission for Human Rights and Administrative Justice Act 1993, Act 456.** Pursuant to section 7(d) (i), the Commission is mandated to take appropriate action to remedy a complaint through negotiation and compromise between the parties.

**The Children's Act 1998 Act 560.** Child Panels are mandated, under section 28, to mediate in civil and criminal matters affecting children.

**The Labour Act 2003, Act 651.** This Act endeavours to provide a step by step approach to the resolution of industrial disputes so as to avoid self-



help and confrontations. Thus, sections 153, 154 and 157 require parties first to negotiate in good faith, proceed to mediation if this fails, and finally to submit to voluntary arbitration should mediation also fail.

**Order 58 of the High Court Civil Procedure Rules 2004, CI 47.** This constitutes the special procedural rules regulating commercial litigation in the Commercial Courts, a specialized unit of the High Court. The rules mandate Pre-trial Settlement Conference, where parties are obliged to attempt to reach a settlement of the relevant dispute, principally through the use of mediation by a Judge. Parties may request a reference to an external person or institution other than a Judge. Where parties are unable to reach a settlement, the case is assigned to a new Judge, for a full scale trial.

**Minerals and Mining Act, 2006, Act 703** – section 27(1) mandates the holder of a mineral right and the Minister, in the event of a dispute, to use Alternative Dispute Resolution procedures to reach an amicable settlement.

Thus, in 2003, under the auspices of the National Governance Programme (GNP), a Judiciary ADR Task Force was established. It was charged with the responsibility of working out the policies and strategies for achieving the goal of mainstreaming ADR in Ghana. Nene Amegatcher and I, together with a few others, as members of this Task Force, developed the first voluntary Court-Connected ADR model in Ghana. Apart from the Commercial Courts, which practice a mandatory model, this model is operational in all Courts in Ghana. Mediation thus serves as the primary alternative to litigation for the many ordinary citizens who access the courts for justice but who lack the financial resources to engage in endless litigation. It thus works well in the lower courts in particular, where the caseload is higher and more amenable to out of court settlement.

In all of this, I would be remiss if I failed to mention the invaluable contribution of our chiefs, queen mothers, religious leaders, heads of families and elders: they use customary arbitration, negotiated settlements, and other informal conciliatory methods on a daily basis in order to settle a large number of disputes in their respective areas of jurisdiction. We have, over the years, shared the knowledge and experience we have acquired in ADR practice to build their capacities to assure substantive and procedural fairness and integrity in their practice.

The most successful model of Court-Connected ADR is to be found in the Commercial Courts. Established in 2005, these courts provide investors, in particular, with the opportunity for the timely disposal of

commercial and other investment related disputes. As part of the practice and procedure of the court, parties are mandated at the pre-trial settlement conference to explore the possibility of full or partial settlement of their dispute. Available information shows that we have not done too badly although, admittedly, there is room for improvement. The Court continues to host study visits from other judiciaries from the sub-region and beyond.

Not unsurprisingly, the deployment of ADR within the judicial system of Ghana was set out as one of the key objectives of Ghana's Growth and Poverty Reduction Strategy for 2006-2009 (GPRS II).

On assuming the high office of Chief Justice, I continued in the path my predecessors had trodden. We have continued to offer training to members of the Bar Association. We have recruited and trained private individuals, including retired professionals, chiefs, queen mothers, paralegals, etc., to serve as ADR neutrals for the Judiciary. Judges, magistrates, registrars and other court staff have not been left out of the ADR skill training and education programs.

Within the Judiciary, the establishment of a Court-Connected ADR Unit, under the directorship of a Justice of the Court of Appeal with national and regional ADR Coordinators, has expanded the frontiers of ADR practice. Refreshingly, the Supreme Court has actively promoted ADR at that apex appellate level. I have, from time to time, received encouraging news of successful Supreme Court ordered ADRs. ADR weeks have become an established regime within the judicial system. Under this program, one week in each legal year term is set aside and dedicated to the settlement of cases via mediation. Again, Sena Chambers, of which Nene Amegatcher is the junior partner, deserves special mention. Week after week, the firm has provided *pro bono* services to the Judiciary, to ensure the success of this program. We salute this team and other lawyers and trained Mediators who have actively lent support to our effort.

The Judicial Training Institute (JTI) of the Judicial Service of Ghana is primarily responsible for ADR training programs. The Institute works in partnership with a number of resource persons from ADR-proficient organizations, particularly, the renowned Ghana Association of Chartered Mediators and Arbitrators (GHACMA), which is a product of the 1996 ADR initiative in Ghana.

## **Private and Community ADR Institutions**

The Ghanaian ADR story remains incomplete without mentioning the contributions of private and community institutions. We need to laud the efforts of the few individuals who have braved the odds to form

associations that educate, promote and provide ADR services for our people. Aside from GHACMA, other service providers include Gamey and the Gamey Institute (now known as the Pulse Institute), which specialises in labour and industrial issues; the Ghana Arbitration Centre, under the leadership of Dr. S.K.B. Asante; the International Federation of Women Lawyers (FIDA), and the West African Dispute Resolution Centre (WADREC). Ashaiman, a densely populated, very active and yet deprived community near Accra, now has a well-established and functioning community ADR Center. The training of local mediators was carried out under the auspices of GHACMA. At the time, Ashaiman did not have a court house, and residents had to travel a fairly long distance to access justice. In 2008, I inaugurated a Circuit Court in the community and the initial ADR work that we had earlier undertaken under the auspices of GHACMA. WADREC now effectively complements the traditional role of the court system.

## **Challenges**

This is not to say there are no challenges. There are, but we remain confident of success. One central challenge is apathy among the legal fraternity. Owing to the kind of legal education members receive, they tend to prefer litigation to ADR. We do have Judges and Magistrates who, in spite of the effectiveness of ADR as a case management tool, tend not to invest any time in promoting and encouraging its appropriate use. In 2008, we launched a strategic plan to build on the entire ADR program. It addresses the following five key areas of ADR development: Court-Connected ADR Mainstreaming, Recruitment and training of Neutrals, ADR Infrastructure, and ADR Advocacy and Funding for ADR.

Through a combination of strategies, including the restructuring of legal education to cover a full study course in ADR, we are confident of success. Increasing ADR awareness through a variety of programs aimed at engaging the general public in ADR activities such as seminars, workshops and symposia, remains an effective strategy. Ultimately, the creation of college and university educational programs for the training of conflict resolution managers and ADR experts will help to respond to the challenges in Africa, including Ghana.

## **Conclusion**

During the past 15 years, Ghana has been embarking upon a variety of institutional reforms and development initiatives. The introduction of

ADR remains an enduring feature of the legal system in Ghana. As an adjunct to courtroom adjudication, it holds promise for an improved and qualitative access to justice for all Ghanaians, while serving as an attractive feature for economic development.

December 2013

**Note:** *Excerpts of the Keynote Lecture at the April 2011 CAPCR Peace Awards Dinner, California State University, Sacramento.*

# CHAPTER ONE

## INTRODUCTION: ADR AND PEACE-BUILDING IN AFRICA

ERNEST UWAZIE (EDITOR)

It is fitting to take stock of the road travelled by or in the name of peace building and conflict resolution in Africa, since it gained new prominence and momentum in the mid-1990s. In particular, I remember our maiden program in 1996, on “promoting alternative dispute resolution in West Africa”, with participants from and activities in Nigeria, Ghana and Senegal. It is probably safe to say that the 1996 ADR project in West Africa was a landmark event in the participating countries, if not all of Africa; it certainly provided useful lessons for expansion, legal sector reform, social policy changes, and cultural adaptations. I also remember our first ADR summit in 1998 in Accra, to stimulate the long road toward internal capacity building for program development, service delivery, and institutionalization. In 2008, we met again in Addis Ababa, Ethiopia, in order to elevate the conflict resolution dialogue, expand the network in the Africa sub-region, and discuss the critical importance or need to evaluate what we do, and to assess whether it was working in Africa.

Fifteen years after that initial project, we are attempting to use this medium for a preliminary review of activities, to assess progress, to identify some challenges, and to chart a new, emergent course in the ultimate quest for a culture of peace that promotes development and social justice.

To recap, the conflict landscape in Africa in the 1990s was alarming: In a resonant lamentation, William Nhara (Coordinator of the Conflict Prevention and Research at the OAU) stated:

The 1990s has so far witnessed events that will remain as serious indictments in the history of African political development. Never before has there been such ‘bloody experiences,’ leaving well over three million

dead, more than 10 million refugees and a historical legacy for our children and future generations of democides and ethnocides.<sup>1</sup>

In *Reviewing Events in Africa*, the former OAU Secretary General Salim Ahmed Salim highlighted the troubling state of conflicts in Africa: 67 military coups staged between 1956 and 1996, 16 countries embroiled in intra-state wars or protracted civil conflicts, and 8 million refugees and 14 million internally displaced people.<sup>2</sup> During that same time frame, there were over 120,000 African child soldiers. One need not imagine the adverse impact of the conflicts on every aspect and corner of the African family, community and nation-state, with economic, cultural, political, social, and environmental costs. The immediate and collateral consequences of the conflicts were significant and widespread, with urgent calls for a more strategic and purposeful approach to conflict resolution in promoting democracy and development in Africa.

In response to these sobering conflict reports, various programs and initiatives were developed in the 1990s, especially Alternative Dispute Resolution (ADR),<sup>3</sup> followed soon after (in the early 2000s) by peace and conflict studies programs at many universities. The ADR programs focused on practical skill building and creation of foundational knowledge on interpersonal, community disputes, namely negotiation, mediation, conciliation, arbitration, and some combination of processes. Attention to ADR program development varied across Africa, from the legal or judicial sector, to the civil society organizations and traditional or community leaders, to certain professional and commercial institutions (chambers of commerce, media, public agencies, etc.). More recently, there has been particular interest and experimentation with the place and prospects of ADR in electoral disputes.<sup>4</sup> Common ADR project objectives include the decongestion of the court system, the creation of access to justice, promotion of peaceful out of court settlements, conflict prevention or de-

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<sup>1</sup> "Early Warning and conflict in Africa," Occasional Paper No. 1, February 1996

<sup>2</sup> OAU Fact Sheet, 1998-2

<sup>3</sup> ADR advocates the use or application of appropriate dispute resolution mode(s); its emphasis on reconciliation reflects the traditional "African dispute resolution" principle and conciliation process.

<sup>4</sup> Jacob Segun Olatunji, "How INEC will resolve election disputes – Jega," *Nigerian Tribune*, November 12, 2010. It is worth to mention that the Independent National Electoral Commission in Nigeria has a functioning ADR unit.

escalation, and timely resolution of conflicts.<sup>5</sup> Most ADR projects have been led by American and European resource persons or organizations.

A review of sample syllabi of ADR training programs by US, including CAPCR (Canadian, Italian and British trainers in sub-Saharan Africa) reveals common themes, including an anatomy and taxonomy of conflicts, ADR techniques of negotiation, mediation (most dominant), conciliation, and a few other international arbitration procedures. Teaching methodology is primarily carried out through a combination of lecture and role plays of interpersonal, family, commercial and community types of conflicts; CAPCR's curriculum is unique in its cultural adaptation of concepts, examples and role plays. The duration of training programs ranges from 2-5 days, with more advanced or training of trainers program lasting an additional 2-5 days.

Most of the training has occurred in Africa, with some in America, Australia and Europe. Training participants include lawyers, judges, magistrates, court registrars, human rights activists organizations, educators, community/traditional leaders (chiefs), police officers, social welfare officers, university student/youth leaders, electoral officers, and religious and women leaders.

ADR organizational structure and programming has plural designs, from court (connected/annexed in Nigeria/Ghana/Tanzania), community (including NGOs, Female Lawyers Association, FIDA-Kenya), and agency, (e.g., National Institute of Peace and Conflict Resolution in Nigeria, and private-for-profit organizations). Some organizations focus exclusively on various ADR services, while others seem to incorporate it into their program profiles, with certain enabling legislations and/or court rules.<sup>6</sup>

The CAPCR ADR experience and lessons from Ghana, Nigeria, Kenya, and Ethiopia demonstrate that well-designed and properly implemented ADR programs in Africa can:

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<sup>5</sup> Notably, ADR is being adopted by some African countries to promote foreign investment; the creation of special or commercial courts with mandatory ADR (e.g., Ghana) supports the goal of increasing investment and promoting overall economic development.

<sup>6</sup> While ADR is generally permissible, some countries and institutions have deemed it proper to adopt (court) rules or legislation to ensure sustainability and professional status; e.g., The Ghana ADR Act 798; Kenya 2010 Constitution Referendum; similar provisions exist, e.g., in Uganda, the Gambia, Tanzania, South Africa, Lagos state-Nigeria, Rwanda, and they are being considered in many other places.

1. Provide citizens with concrete and satisfying resolutions to their disputes or complaints;
2. Reduce court backlogs while simultaneously improving their ability to resolve disputes more efficiently and effectively;
3. Use the subject matter expertise and the professional skills of mediators, who do not require the extensive training of a lawyer or judge;
4. Increase confidence in ADR mechanisms among lawyers and traditional authorities or chiefs;
5. Create a mutually supportive, collaborative relationship between the formal legal system and out-of-court, non-formal dispute resolution processes;
6. Increase access to justice and promote national economic development efforts.

The jury is still out on the overall impact of ADR in Africa's declining conflict<sup>7</sup> and the ample increase in democratic states<sup>8</sup> since the beginning of the 21<sup>st</sup> century. However, the success of any ADR system should be measured or evaluated by key qualitative and quantitative data and adjusted accordingly, to capture both macro- and micro-level conflict phenomena. Measurement indicators include the number of ADR uses and the percentage of cases filed and processed via ADR versus court litigation, the average time spent on a case, the number of successful ADR settlements with agreements reached, the number of active/qualified ADR practitioners and trainers, the number of ADR institutions and services in the country, community acceptance, the level of service satisfaction by disputants and practitioners, the results of any ADR legislation or court rules, and the number of ADR publications and the amount of research conducted. The ultimate test of ADR systems will depend on the functionality of each affected country's peace index or conflict mitigation capability, and its positive impact on social development. Any effective ADR system must have a flexible design structure that is rooted in satisfying the interests of the parties in dispute, and in the professional administering of justice in a dynamic yet culturally sensitive manner.

For sustainability and effective internal capacity building of ADR in Africa, the following key policy steps are critical:

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<sup>7</sup> See further Conflict Trends in Africa, 1946-2004 (DFID, 2006).

<sup>8</sup> See also ECA 2005 African Governance Report, part 1.



1. Enact proper legislation to facilitate ADR institutionalization. While most African court rules or policies permit the judge to encourage parties to settle out of court in most cases, enacting legislation will elevate the status of ADR before a skeptical disputant, will build public confidence, and will further increase ADR utilization and promote ethical practice. Legislation will also provide a framework for reference, review and reform, as well as institutionalizing much needed education and professional training.
2. National and local governments and their international partners should invest in capacity building, through training and infrastructural support for the development of ADR networks of providers and advocates, who can continually advance the best practice. In addition to legal professionals, internal capacity building efforts should include the training of local and religious leaders, traditional authorities and chiefs, election officials, police and security personnel, human rights organizations, public complaints bureaus or the office of the ombudsman, and women and youth leaders. Enhancing the ADR negotiation and facilitation skills of these target groups will add further value by increasing each country's conflict mitigation or prevention capacity, and reducing the number of cases that burden the court docket, thereby freeing up time and resources for the courts to focus on the more suitable cases. Particular emphasis should be given to supporting ADR networks in Africa's conflict-prone countries and communities, which can contribute to improved conflict mitigation and the compliance of conflicting parties. Given the high levels of community participation and legitimacy achieved in ADR pilot programs, it is clear that ADR can also play a vital healing and trust-building role in post-conflict transitional justice contexts.
3. Create appropriate incentives for lawyers and judges for ADR development and use. For lawyers, a strategic use or inclusion of ADR provides additional tools for effective case resolution; this leads to efficiency of practice, increase in revenue, and greater satisfaction for both the lawyer and the client/disputant. A judge's performance report should include the number of cases referred or resolved via ADR and the time taken from case filing to mediation. Appropriate awards or other forms of

recognition by the legal profession, including Senior Advocate reviews and national merit honors, will also elevate the support and use of ADR among members of the bar and bench.

4. Create critical synergy between formal/state ADR institutions and the informal/indigenous community sector and networks, to scale up access to justice and to create a sustainable system of peaceful, nonviolent conflict resolution and mitigation. Change will reach many sectors of society, as well as transforming the nature of disputing, albeit at varying speeds. By enhancing and expanding the use of ADR in all modalities of disputes, whether between individuals or groups, people will gain a sense that justice can be achieved and that the need for self-determination or *interest* can be satisfied. A great advantage of ADR is that it adapts to the people and the dispute at hand, and is equally effective in formal legal systems, traditional disputing mechanisms and broad-based multiparty conflicts.

Perhaps the main lesson and achievement of ADR—as well as related conflict resolution initiatives in Africa, with significant increases in the Global Peace Index rankings of many Sub-Saharan African countries (see GPI 2012)—is to have created an enabling environment and framework for a more robust visioning of the desired ultimate goal of a “culture of peace” through “peace education” or peace studies. Arguably, ADR or conflict resolution is a transactional process, altering the human or group behavior of conflicting or disputing parties, whether in the long- or short-term. Peace education or peace studies, however, aims to achieve both attitudinal transformation and structural paradigm shift; it is anchored in the values of positive peace (though not necessarily in the absence of violence or war) and social justice for sustainable human security, promotion of social development, and stability of nation-states, institutions, communities, groups and families. Like ADR, peace studies view war or violence as a fundamental human creation that is solvable, and hence requires preventative and proactive—and overall pro-peace—thinking and action, including development, planning, and implementation of laws and social policies. Achieving the goal of a culture of peace in Africa requires the synergy and complimenting of theoretical research in peace education and the practical skill facilities of alternative dispute; both fields of knowledge and activism are indispensable.

Since the early 2000s, Peace and Conflict Studies programs have been developed in many universities in Africa, with the primary mission of

peace education<sup>9</sup> or the cultivation of conflict resolution knowledge and skills. A recent internet search (2013) revealed over 70 peace or conflict studies programs in African universities, with five in Nigeria alone. Although the names of the programs may vary slightly (e.g., Peace and Conflict Resolution, International Peace and Conflict Resolution, Peace and Conflict Management, Human Rights and Peace, Peace and Strategic Studies, Alternative Dispute Resolution, etc.), these programs are clearly devoted to peace education via teaching, training, research, the development of curricula and materials, and direct or intervention services, both in theory and/or practice and across disciplines. Courses range from such common topics as dispute and conflict resolution, peace and conflict studies, mediation, negotiation, arbitration, religion and conflict resolution, human rights and global justice, peace and development and peace and nonviolence, to more esoteric topics such as peace and development, alternative dispute resolution, research methods in peace and conflict studies, scientific analysis of peace and conflict, war, peace and nonviolence and public sector dispute resolution. They are offered at various levels of undergraduate and graduate studies, with a combination of in-class lectures, simulations, practicum/internship experiences, and service-learning modules. Although most of the programs are multidisciplinary, they are housed in colleges or faculties of law, social sciences (political science, justice studies, criminology and social work), arts and humanities (religion, communication and media, ethnic studies) and business. The creation of the University for Peace (UPEACE) in 1980, with headquarters in Costa Rica and locations in various parts of Africa via UPEACE-Africa) is a clear consequence of the recognition of the critical role of the university in peace education.

Through its work and partners in Nigeria, the UPEACE (Africa) program was instrumental in the establishment of the landmark policy of the Nigeria Federal Ministry of Education, which mandated the creation and integration of peace and conflict studies courses or units into the Nigerian university undergraduate curriculum,<sup>10</sup> and required the same for select subjects in secondary schools. Of course, the schools and universities are faced with conflicts, as in wider society, in particular in terms of ethnic and gender value differences, stereotypes, and practices such as vandalism, student unrest/riots, exam malpractice, stealing, cultism, illegal drug use, rape, beating up of teachers and fellow students, school drop-outs, and other forms of lack of discipline.

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<sup>9</sup> While ADR emphasizes resolution of conflicts, peace education aims for behavioral and attitudinal changes.

<sup>10</sup> [www.Un.org/pubs/chronicle/2007/issue1/0107p40.htm](http://www.Un.org/pubs/chronicle/2007/issue1/0107p40.htm).

From sample CAPCR fieldwork survey experiences in East/West Africa, student enrollments (at undergraduate/graduate levels) in peace studies surpass available space; the students come from various backgrounds and interests, across fields such as criminal justice, security, diplomacy, law, business, government, human rights, etc. Most are run as graduate programs. Upon graduation, some go into a teaching/research related field and a few go into practice, while many go into other fields where their skill and knowledge may be used, albeit in a limited way. Peace clubs in the schools, e.g., in Nigeria, serve as the main focus of promoting peace education through peer mediation, dialogues, and community service. Notwithstanding post graduate employment beyond school, peace education or conflict studies knowledge is applicable at all levels of social interaction and decision making, whether in the private/home or public arena. Peace education will add value to the curriculum of the emerging leadership development initiatives in and on Africa, particularly for the youth (as Africa's future leaders), under the promise of peace architecture. As in ADR, peace education prioritizes nonviolence, particularly mediation, as the most effective and desirable response to conflict.

In sum, much has been achieved and learned since the nascent development of peace education in Africa; challenges remain, especially in the development of indicators of success, both short- mid- and long-term,<sup>11</sup> and in the capacity of teachers to develop and deliver effective and flexible/dynamic curricula,<sup>12</sup> plus an outcome or field assessment of African peace and conflict studies graduates. Such data will provide useful guidance on program planning, curriculum development and continuous visioning. For peace education to succeed, it must be integrated within national educational systems, with a focus on the capacity-building of teachers and appropriate curriculum development for the purposes of both teaching and practical student involvement. Peace education programs need to reflect the peculiar circumstances and conditions of each country, and need to be adapted to enhance both cognitive learning and social/life skills, as well as reinforced and harmonized throughout various school or university subjects. Merely gaining knowledge of peace, without the

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<sup>11</sup> Ernest Uwazie, "Developing Criteria for Assessment and Evaluation of Peace & Conflict Resolution Projects", Presentation at the Annual Africa Conference, California State University, Sacramento, Center for African Peace and Conflict Resolution, Spring, 2007.

<sup>12</sup> Lilian-Rita Audile (2006), "Assessing Peace education component of the Universal Basic Education in Nigeria through social studies curriculum." Paper presented at the 12th World Conference in Education of the World Council for Curriculum and Instruction, Manila, Philippines, August.

conforming practice or the appropriate forms of supportive behavior and attitude, is incomplete. Peace education is central to achieving the overall education mission in Africa of positive social change and positive development. Sustained efforts must be made to respond to or overcome challenges, both internal and external.

The following courses are recommended (though the list is not exhaustive) for universities offering peace and conflict studies:

- *Introduction to Conflict Resolution* (Covers the basic theories, the sources, causes and costs of conflict, options for response, communication, socio-cultural considerations/issues, peace and justice)
- *Negotiation*
- *Mediation and Conciliation*
- *Arbitration*
- *Peace building and Peacekeeping*
- *Dialogues and Reconciliation*
- *War and peace*
- *Environmental justice and peace*
- *Ethnic and Religious relations*
- *Negotiating Energy and natural resources*
- *Managing land conflicts*
- *Managing cultural conflicts: race, ethnicity, gender, class, and age*
- *Hostage negotiation*
- *Managing workplace conflicts: safety, labor/management, employee relations*
- *Managing natural disasters/Crisis*
- *The media in peace and conflict resolution*
- *Violence and Terrorism*
- *Restorative justice*
- *Ethics and Conflict Resolution*
- *Research Methods in conflict resolution*
- *International negotiation, Mediation and Arbitration*
- *Negotiating/Mediating boundary disputes*
- *Partnering and conflict prevention; especially in construction projects.*

The centerpiece of the course pedagogy should be a classroom simulation that educates students in the theoretic analysis and practical knowledge of

the nature, management and resolution of various types of conflicts, whether civil, commercial, or criminal, both domestic and international. At all levels of teaching, the curriculum must be based on core values of alternatives to violence, ethics of the profession of peace makers and teachers, continuous research into what works, proficiency of cultural diversity, education for global citizenship, and community service (or *Ubuntu*), as well as respect for human rights, sensitivity to the environment, and the ultimate mission of achieving social justice.

## Conclusion

Conflicts in Africa have much in common, and striking parallels can be drawn between them at all levels. Dynamics affecting the most complex war time conflicts, civil unrest and other macro disputes are in play, even in the smallest community conflicts. The converse is also true: lessons learned through community mediation, for example in South Africa, are applicable to the most complex and largest conflicts to be found on the continent.

Just as conflict dynamics are comparable between African conflicts, whether large or small, local or international, so are mediation processes. Effective approaches to resolving large-scale conflicts and civil wars are effective at the community level, and ineffectual techniques at the community level are just as likely to be counter-productive in mediating international disputes. While there may be some differences in mediating macro- and micro-conflicts (such as the time required, the need for negotiation teams, and the complexities of agenda development or pre-negotiations), as far as the mediation process is concerned, the differences are more like variations on a theme than real substantive dissimilarities.

As African conflict dynamics and mediation processes can be seen as analogous, on levels ranging from the community to the international arena, so too are many of the issues and interests affecting countries, political parties, ethnic groups, interest groups, and communities and civil societies. Often these interests are very basic: survival and safety. At other times, they occur on a higher level of interest, such as self-determination and/or securing human rights, but they are of equal importance at all levels.

A major premise of ADR or peace education is that lessons learned from conflict resolution in larger regional or national conflicts are applicable to community mediation, and vice-versa. Approaches that were successful in the Democratic Republic of the Congo may hold keys to resolving the Niger Delta conflict. As civil wars (or any war) affect large cross sections of countries and communities, so do environmental crises.