



ADDIS ABABA UNIVERSITY

SCHOOL OF GRADUATE STUDIES

SCHOOL OF LAW BUSSINESS LAW STREAM

THE CALL TO LEGALLY INTRODUCE COURT
ANNEXED ALTERNATIVE DISPUTE RESOLUTION IN
ETHIOPIA

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**A THESIS SUBMITTED TO ADDISABABA UNIVERSITY, THE SCHOOL OF
GRADUATE STUDIES AND SCHOOL OF LAW IN PARTIAL FULFILLMENT
OF THE REQUIREMENTS FOR THE DEGREE OF MASTER OF LAWS (LLM)
IN BUSINESS LAW**

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DECLARATION

I, Samuel Ephrem, hereby declare that “**THE CALL TO LEGALLY INTRODUCE COURT ANNEXED ALTERNATIVE DISPUTE RESOLUTION IN ETHIOPIA**” is original. It has not been presented for any degree or examination in any university. I also declare secondary information sources used in this study has been duly acknowledged and cited.

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ACRONYMS AND ABBREVIATIONS

AACC.....	Addis Ababa Arbitration and Conciliation center
ADR.....	Alternative Dispute Resolution
CDRM.....	Customary Disputes Resolution Mechanism
CPC.....	Civil Procedures Code
E.C.....	Ethiopian Calendar
EACCC.....	Ethiopian Arbitration and Conciliation Center
FDRE.....	Federal Democratic Republic Of Ethiopia

G.CGregorian calendar

LMCH.....Lagos Multy Door Court House

NCMG.....Negotiation and Conflict Management Group

NoNumber

UNCTRAL MODEL Law.....United National Commission on International Trade
Law Model Law on International Commercial Arbitration

USA.....United State of America

VoVolume

ABSTRACT

The basic objective of this research is to examine whether or not court annexed ADR can serve as effective reform measure to improve delay, excessive cost, unfairness, unpredictability and inaccessibility of judicial dispute resolution process in Ethiopia. To achieve this objective, the researcher utilized primary, secondary and tertiary data sources. The primary data sources were collected from different legal instruments, interviews, and observations. Secondary data sources utilized in this study were case analysis, books, journals, articles, unpublished material, reports, news papers, and cyber sources. Accordingly, the interpretations and logical analysis of collected data revealed that court annexed ADR can successfully settle specific types of civil disputes initiated to court thereby reduces courts' case load. Consequent to this reduced backlog litigation process, in turn, holds improved capacity to resolve other civil cases with (in) reasonable time, cost and improved fairness. Beside, availabilities of ADR in court enable disputants to choose and access dispute resolution methods of their interest. In addition, the judiciary due to numerous advantage of ADR can provide for disputants a mechanism that resolve specific types of disputes with /in reasonable time, least cost, and improved fairness. Further, it is found difficult to succeed with this reform measure without enactment of effective regulatory frame work. On the other hand, incomprehensive regulation, overregulation, lack of adequate awareness and poor administrative systems are found as among potential challenges for successful implementation of this program in Ethiopia. Therefore, this study recommended the country to introduce court annexed ADR. This should be through enactment of proper and comprehensive regulatory framework. Moreover, this formal introduction of the program

should be followed by strong implementation measures mainly on the above potential execution challenges

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CHAPTER ONE

1. INTRODUCTION

1.1. Background of the Study

Traceable human histories prescribe from the time human number reached two; it become inevitably to create relationship.¹ Besides, it is universally recognized that any group of two or more human being will sooner or later produce *justiciable* difference in their relationships. In addition, community everywhere requires disputes should be resolved “expediently, economically, predictably, conveniently and fairly, and by accessible dispute resolution method.”² In response to this, number of techniques and institutions were applied and involved in disputes resolutions process.³ Further, quality of techniques applied and types of institutions involved in dispute resolution impacts qualities of the specific mechanism.

Now days, there are different dispute resolution mechanisms in the world. These are *inter alia* religious dispute resolution, customary dispute resolution, judicial dispute resolution,⁴ private ‘alternative dispute resolution’ (henceforth ADR)⁵ and court annexed ADR. Among these mechanisms the current study focus on court annexed ADR.

¹ The Lord made a woman as helper of Adam, the first man, as result the two established relationships. The Holy Bible, New International Version, the Book of Genesis, (International Bible Society), Chapter 2, Section 18-24

² D Paul Edmond (Ed), Commercial Dispute Resolution, Alternative to Litigation, (27 November, 2006, Canada Law Inc), p.1,(herein after Edmond)

³ Robert M. Cover, “Dispute Resolution: a Foreword,” Yale law Journal of Dispute Resolution, Vol. 88, No.4, (1979), pp. 910

⁴ Judicial dispute resolution is government based mechanism which resolves disputes through the process of litigation. See Bryan A. Garner, (editor in chief), Black’s Law Dictionary, (8th ed., St.Paul Minn, West Publishing Company, 2004), P.1068

⁵ ADR is procedures for setting disputes by means other than litigation method such as arbitration, or mediation. Black’s Law Dictionary, P.244

The gradual prominence of judicial dispute settlement process led to a period of judicial hostility towards ADR. The main reason for hostility between court and ADR were, *inter alia*, the belief that ADR goes against public policy.⁶ For instance, in common law jurisdiction ADR was perceived to be against public policy for it “otherwise ousted competent courts their jurisdictions. In most cases, the judiciary is not comfortable with ADR since they take the ADR discourses as an encroachment upon courts constitutional power of dispensing justice. The traditional skepticism of ADR now appears to have given way to remarkable judicial restraints under different legal systems.⁷

Amidst of this judicial attitude the uses and advantages of ADR gained gradual ascendancy in the world.⁸ Consequently, judicial prejudice against ADR has gradually faded away as the business sector needed greater speed and flexibility for the settlement of their disputes.⁹ Beside, through time legal scholars have generally attributed remarkably, the swift change of judicial heart concerning the use of ADR to the interest of judges in reducing their workloads, rather a new doctrinal insight.¹⁰ There are two critical assumptions apparent to have comforted courts. The first is that ADR represents only a change in forum, not in the substantive rights of the parties. The second assumption is that ADR is more efficient and effective in resolving civil disputes, and by extension reduces judicial workloads.¹¹

These utilities of ADR, in turn, caused gradual judicial accommodation of ADR among other, as an alternative to formal dispute resolution.¹² The judicial accommodation of ADR further strengthened through introduction of ADR in the main stream of court

⁶ Martinez Fraga, The American Influences on International Commercial Arbitrations, (Cambridge University Press, 2009), p.6,(hereafter Martinez) as cited on H, Gebriel Feyissa: “The Role of Ethiopian Courts in Commercial Arbitration,” Mizzan Law Review, Vol. 4 No.2, (Autumn 2010), p,298 (hereafter Feyisa)

⁷ Craig, W, “*Some Trends and Development in the Law and Practice Of International Commercial Arbitrations*”, Texas International Law Journal, Volume 30,(1995),P. 2; E G Gu W, “Judicial Review Over Arbitration In China: Assessing The Extent Of Pro Arbitration Move by the Supreme People’s Courts in People’s Republic Of China”, Wisconsin International Law Journal, Vol. 27, (2009-2010), pp.225-231 as cited on Feyisa supra at note 3

⁸ Martinez supra at note 6

⁹ Ibid

¹⁰ Ibid

¹¹ Ibid

¹² Feyisa supra at note 6, p29

systems. There is, however, a fear that ADR's independency may be compromised when it turn out to be an appendage of judicial machines. This is because there are greater opportunities for undue and excessive judicial interventions in the independent operation ADR when the later annexed to court.

The appendage of ADR to judicial machine often referred as court annexed ADR (hereafter alternatively 'the program or the reform measure'). Court annexed ADR-is defined as "*an alternative to trial modes of dispute resolution that take place inside the court.*"¹³ It is when trial court launches a program that would supply a range of alternative dispute resolution (ADR) for disputants. With this regard, this study examined prospects and challenges of court annexed ADR in Ethiopia.

1.2. Statement of the Problem

Delay, excessive cost, unfairness, unpredictability and inaccessibility of judicial dispute resolution method are stated as responsible factors for court's failure to fully establish public faith upon it services.¹⁴ These limitations are, among other, attributed to stumpy qualities of litigation method and congestions of cases in the courts' archives.¹⁵

To this end, launching court annexed ADR seems a workable reform measure for the above problems. This is because court annexed ADR can settle significant portion of disputes instituted to court and thereby reduces the court's case load. In addition, reduction of number of cases on the docket, in turn, may enable the court to resolve other cases with (in) reasonable time, cost and improved fairness. Beside, existence of ADR in the court can also give disputants opportunity to choose and access dispute resolution methods of their interest.

¹³ Raymond J. Broderick, "Yes to Mandatory Court Annexed ADR," American Bar Association, Vol.1, .No.4, (1992), p.3; See again Patricia M. Wald "ADR and the Court: An Update", Duke Law Journal, Vol. 46, No.6, (1997),p.1445

¹⁴ Yosef Amiro, "Yefitabiher Kirekiroch Hidet Fetenawoch Ena Tesfaw", Ethiopian Business Law Series Vol. V, (December 2012), p. 23, (hereinafter Yosef)

¹⁵ Ibid

Further, ADR appears as appropriate disputes resolution method than litigation process. For examples, ADR is least cost devices, and flexible process compared to litigation method. This reduces time and cost required to resolve disputes. This reduced litigation time possibly allows people to spend their time on other economic and social activities. This eventually contributes for economic and social development of the country.

Furthermore, party control rule under ADR process seem to reduce delay, unpredictability and unfairness of cases. Hence, the above discussed qualities' of ADR, along with its other qualities, can help Ethiopian court's endeavor to provide speedy, economical, predictable, fair and accessible dispute resolution method. Hence, court annexed ADR with all its qualities enables the court to provide appropriate dispute resolution method at least for petty civil disputes.

Therefore, the above dealt limitations of litigation process can possibly improved through the use of court annexed ADR. Accordingly, it is rationale to assess prospects, challenges and the ways to introduce court annexed ADR in Ethiopia.

1.3. Research Questions

Based on afore discussed statements of problem; this research intends to answer the following questions:

- What are the roles of court annexed ADR in improving major problems of judicial dispute resolution in Ethiopian?
- What are the roles of effective regulatory frame work on court annexed ADR in Ethiopia
- What are challenges related to introduction and execution of court annexed ADR in Ethiopia?

1.4. Objectives of the Research

1.4.1. General objective

To examine prospects and challenges related to introduction and execution of court annexed ADR in Ethiopia.

1.4.2. Specific Objectives

- To examine the roles of court annexed ADR in improving major drawbacks of judicial dispute resolution in Ethiopian?
- To examine the roles of effective regulatory frame work on court annexed ADR
- To identify challenges related to introductions and execution of court annexed ADR in Ethiopia.
- To examine prospects and challenges of court annexed ADR before some courts in USA, India, Nigeria, and Addis Ababa, Ethiopia

1.5. The Research Methodology

To achieve the above research objectives; the researcher utilized primary, secondary and tertiary data sources. The primary data sources collected and used includes different foreign and domestic legal instruments. This is basically to analysis prospects of effective regulatory frame work on court annexed ADR.

The other primary data collected and utilized in this study were- interviews. This utilized to examine whether or not court annexed ADR can serve as effective reform measure to improve delay, excessive cost, unfairness, unpredictability and inaccessibility of judicial dispute resolution process in Ethiopia.

Secondary data sources utilized include case analysis, books, journal, articles, unpublished material, reports, news papers, and cyber sources. These are intended to describe and examine features; prospects and challenge of court annexed AD and other

forms of dispute resolution. The tertiary data source used is legal dictionaries, this is utilized to explain and define some terms used in this study.

1.6. Significance of this Research

This study hopes to have the following significances: First, the findings and contents of this thesis are believed to be helpful for legislative organ. This is because, the study can serve as starting point for any legislative acts or process on court annexed ADR. Secondly, this research is expected to be useful for court selected to provide court annexed ADR services. Thirdly, researchers in the fields of the law who are interested in this topic - court annexed ADR- can use this study as a reference. Lastly, this research supports higher academic institutions that offer courses on ADR.

1.7. The Limitations of this Research

The following are among factors which bring limitations to this research:

- ❖ Lack of timely and full co-operation from appropriate organs and relevant persons.
- ❖ Lack of sufficient literatures on court annexed ADR. Since, it is a new reform measure under number of jurisdictions including Ethiopia.
- ❖ Lack of sufficient and organized data concerning prospects and challenges of the pilot court annexed mediation before some federal fist instance court in Addis Ababa.

However, by employing different mechanisms the researcher reduced negative effects of the above limitations.

CHAPTER TWO

2. COURT-ANNEXED ADR VIS-A-VIS-OTHER FORMS OF DISPUTE RESOLUTION

2.1. Introduction

This chapter introduces the main features of various types of court annexed ADR and their relationships with other modes dispute resolution. Consequently, the first section of this chapter briefly discusses the characteristics of various types of dispute resolution mechanisms. Following this, the second section gives bird's eye view about historical tensions between ADR and court. The third section introduces general concept about court annexed ADR. Section four discusses essential features of different types of court annexed ADR. The last section discusses the differences and similarities between court annexed ADR and private ADR. Moreover, this section further explains the differences and similarities between court annexed ADR and judicial dispute resolution

2.2. Dispute Resolution in General

2.2.1. Brief Overview

There are various definitions given for disputes. For example, Black's Law Dictionary defines dispute as "a conflict or controversy, especially, one that has given rise to a particular law suit."¹ Dispute arises because of different factors. Yet, there are principal causes of conflicts that are mentioned frequently.² For example, the simple fact that individual demand or need is almost unlimited and resources are limited is perhaps the most common source of conflict. The other principal cause of dispute is cognitive conflict. It relates to one's understanding of a situation. Conflicts may also spring from clashes of cultural and religious values.

¹ Bryan A. Garner, (editor in chief), Black's Law Dictionary, (8th ed., St.Paul Minn, West Publishing Company, 2004), p. 1423.

² D. Paul Emond (ed.), Alternative to Litigation, (Edward Street Aurora Centririo, Canada Law Book Inc.,1986), pp. 13-14 (hereafter Edmond)

Disputants can be described as rational individual actors seeking to maximize predetermined and clearly known targets.³ These characteristics are mainly observed from disputants before traditional civil courts. In addition, Black's Law Dictionary defines dispute Resolution as "*highly formal kind of main motion, often containing a preamble and one or more resolving clause in the form resolves that....*"⁴

Dispute resolution mechanism starts from the proposition that there is an important relation between dispute and mode of dispute resolution. Dispute-resolution work also proceeds from premise there are many techniques and institutions for performing a single social function i.e. ending dispute.⁵ Further, most dispute resolution processes set in motion after an issue has ripened into a dispute and only then to help to restore aggrieved party to their pre-dispute status. Yet dispute resolution process may anticipate conflict and either seek to avoid dispute or attempt to structure and manage in way that minimizes conflict. From the two, conventional wisdom argues that the sooner a process is invoked the better [the result is].⁶ Thus, it is more efficient to avoid dispute whenever possible, rather than to try to resolve after it arisen.

2.2.2. Rational and Irrational Dispute Resolution Process

2.2.2.1. Irrational Process –Chance and Physical Strength

Chance and physical strength are seldom discussed as dispute resolution mechanism. This is because, decisions arises from the two mechanisms lack a sense of fairness and rationality. Chance is characterized by a coin toss- which is completely arbitrary. It seems only acceptable when "the disputants are more or less indifferent about the result; the matter in dispute is relatively small and the need for fast, inexpensive resolution method is great."⁷

³ Id. p .16

⁴ Bryan *supra* at note 1, p. 4089. See again Robert M. Cover, "*Dispute Resolution: A Foreword*," Yale law Journal of Dispute Resolution, Vol. 88, No. 5, (1979), pp. 910-915.(hereafter Robert)

⁵ See Robert above, p. 910

⁶ See Edmond *Supra* note 2, pp. 14-16.

⁷ See Edmond *supra* note 2, p.17

The other irrational dispute resolution processes is physical strength, which its modern counterpart is economic strength. This often determines which of the two disputing parties will succeed in commercial disputes.⁸ In this case, disconcerting is the idea that dispute to be resolved on the bases of brute strength.⁹ This shows dispute is resolved under this mechanism in favor of the physically and economically stronger party. However, most public dispute resolution processes are designed to minimize or eliminate the impact of strength. This is by designing number of fair principles and procedurally safe guarding provisions.¹⁰

2.2.2.2. Rational Process: Authoritative Command and Private ADR

Dispute may be settled by the command third party such as the judge of the court, appointed official and elected politician.¹¹ This command model of dispute resolution may also divide along a number of lines. As to Edmond, the differentiating lines of the command model among others are: “the degree of independence of the decision -maker; the degree of input from the affected parties; and the degree of structure and formality of the process and the way information is generated generally.”¹²

Regarding the degree of independence of the decision maker; this could ranges from biased representative of the disputants, as in many forms of labor arbitration, to independent member of the judiciary. The second differentiating line, which is the degree of input of information or evidence from the affected parties, will also vary greatly among different type of command model of dispute resolution. This could ranges from the official makes an order without receiving any information or evidence from disputing parties.

⁸ See Edmond *supra* note 2, p.16

⁹ Robert *supra* at note 4, p. 915

¹⁰ Edmond *supra* note 2, p.17

¹¹ Edmond *supra* note 2, p.18

¹² Edmond *supra* note 2, p.18

Conversely, under other command model, the official discusses, debates or, bargains with the affected parties prior to the order or decision they make. This mainly determined by the model of procedures each legal system applies. This can be either inquisitorial model or adversarial model. Consequently, under some authoritative command model of dispute resolution the decision maker either takes active or passive role in generating information or evidence from disputants. The third line of difference is that some authoritative models are highly formal and structured whereas other types are less formal and less structured.¹³

Beside, traditional civil court¹⁴ and administrative tribunal are common example for authoritative command model. The traditional civil court is the conventional method of access to justice. This is the recourse to formal adjudication mechanisms, approaching the courts, as provided by the State, to resolve dispute peacefully.¹⁵ Alternatives dispute resolution mechanisms (ADR) is also classified under rational dispute resolution process.¹⁶

¹³ Edmond *supra* note 2, p.18

¹⁴ Iftikhar Hussain Bhat, "Access to Justice: a Critical Analysis of Alternate Dispute Resolution Mechanisms in India", International Journal of Humanities and Social Science Invention, Vol. 2, Issue No. 5, (May. 2013), P.47; Edward Brunet and Charles B. Craver, Alternative Dispute Resolution: Advocate Perspective, (2nd edition, Lexis Nexis, 2001), p. 6 (hereinafter Craver and Brunet), Gal Dor and Menachem Hofnung, "Litigation as Political Participation" Israel Studies, Vol.11, No.2 (2006), pp.131-157; and see in general Austin Sarat and Joel B.Grossman; "Courts and Conflict Resolution: Problems in the Mobilization of Adjudication", The American Political Science Review, Vol.69, No.4 (1975),pp. 1200-1217

¹⁵ For further detail features about traditional judicial civil dispute resolution mechanism. see John F. Dienelt, "Practice Tips: Procedural Decisions at the Threshold of Dispute Resolution," Dispute Resolution Law Journal, p.96, See in general Fekadu Petros, "Underlying Distinctions between ADR, *Shimglina* and Arbitration: A Critical Analysis," Mizan Law Review, Vol.3, No.1, (2009).

¹⁶ For detail features of various types of ADR ; See Roger Fisher and William Ury, Getting Yes to Negotiation Agreement Without Giving In, (Harvard Negotiation Project, Bruce Patton), Bryan A. Garner, A Dictionary of Modern legal Usage, (2d ed. 1995), p.554; Richard C. Reuben, "Public Justice: Toward State Action Theory of Alternative Dispute Resolution" California Law Review, Vol. 85, No. 3, (May, 1997), p.581, Allen Jstitt; Mediation: Practical Guide, found on <http://www.cavendishpublishing.com> ; Anne B. O' Hagen, "Balancing Burdens: Clarifying the Discovery Standard in Arbitration Proceedings" The Yale Law Journal, Vol. 117, No. 7 (2008),pp.1559-1567; Steven Smith, *et al*, "International Commercial Dispute Resolution: International Lawyer" International Legal Developments Year Review Vol. 44, No. 1, (2010), pp.113-128; D.K. Jain, "Arbitration as a Concept and as a Process", ICA Arbitration Quarterly, Vol. XLI, No.4, (January – March 2007); Laura Nader, "Disputing without the Force of law," Yale Law Journal, Vol. 88, (1979); Edgardo Buscaglia, Justice and the Poor Formal versus Informal Dispute Resolution Mechanisms: A Governance-Based Approach, P.2. and Thomas Weber, "Gandhi an Philosophy, Conflict Resolution Theory and Practical Approaches to Negotiation" Journal of Peace Research, Vol. 38, No. 4 (Jul., 2001), pp. 493-508

2.3. Hostility between ADR and Court

Some literature reveals that ADR, especially arbitration as alternative means of dispute resolution mechanism pre-date even litigation. For instance, arbitration as dispute settlement device has a history dating as far back as ancient civilizations in Egypt and Greece.¹⁷ However, the gradual importance of judicial dispute settlement led to a period of judicial antagonism towards ADR. Even in what are now “arbitration friendly” jurisdictions like U.S.A, Great Britain and France, there was a long-standing jurisprudential struggle against ADR.¹⁸ The main reason for this hostility was, *inter alia*, the belief that ADR goes against public policy.¹⁹

The traditional doubt upon ADR expressed itself through remarkable judicial restraints under different legal systems.²⁰ The desirability of court assistance for and necessary intervention in ADR is now well understood. However, the challenges of maintaining fair balance between excessive and necessary judicial intervention seem unending debates.

There are two approaches for court intervention in ADR, i.e. minimalist and maximalist approach. The most prevailing international trend confines the judiciary to minimum intervention into ADR.²¹ This minimalist approach is maintained by the United National Commission on International Trade Law Model Law on International Commercial Arbitration (UNCTRAL MODEL Law). Some aspects of this approach includes “*enforcement of arbitration agreement, recognition of principles of competence–competence (kompetenzce kompetenze) and severability, the upholding of finality of arbitration award subject a certain fairness standard, the relative autonomy of the*

¹⁷ H, Gebriel Feyissa: “The Role of Ethiopian Courts in Commercial Arbitration, Mizzan Law Review, Vol. 4 No.2, (Autumn 2010), p,298 (hereafter Feyisa)

¹⁸ Ibid

¹⁹ In common law jurisdiction ADR was perceived to be against public policy for it “otherwise ousted competent courts their jurisdictions. Martinez Fraga, The American Influences On International Commercial Arbitrations, (Cambridge University Press, 2009), p.6, as cited on Feyisa supra at note 15, (Here after Martinez)

²⁰ Craig .W, “ Some Trends and Development in the Law and Practice Of International Commercial Arbitrations”, Texas International Law Journal ,Volume 30,(1995),P. 2; Eg Gu w, “ *Judicial Review Over Arbitration In China: Assessing The Extent Of Pro Arbitration Move by the Supreme People’s Courts in People’s Republic Of China,*” Wisconsin International Law Journal , Vol. 27, (2009-2010), pp.225-231 as cited on Feyisa supra at note 35

²¹ Feyisa supra at note 15, p.3

arbitration from judicial intervention during arbitration proceeding and enforcement of arbitral awards. “²² On the other hand, the maximalist approach favor broader judicial interventions into ADR proceeding.

Amidst of this judicial attitude, however, the uses and advantages of ADR gained gradual ascendancy in the world.²³ Consequently, judicial prejudice against ADR has gradually faded away as the business sector needed greater speed and flexibility for the settlement of their disputes. Such method of dispute settlement is more provided by ADR than litigation methods. Furthermore, neutral venues, in the form of international arbitral tribunals have been in demand as international trade grew dramatically after world wars.²⁴ This further scaled up the importance of ADR on global level.

Furthermore, resolving commercial disputes through litigation method is less favored by disputants. This because of its financial burdens coupled with possible administrative barriers and corruptions which in turn lead to distrust upon courts”.²⁵ At least one of the parties to the conflicts might find submitting disputes to national courts unpleasant.

Beside, through time legal scholars have generally contributed for the rapid change of judicial spirit concerning the use of ADR to the interest of judges in reducing cases on the docket. Further, the fact that ADR’S gradually proved itself as a better dispute resolution mechanism caused the gradual judicial accommodation of ADR.²⁶

With regard to court annexed ADR, however, there is fear that ADR’s independency may be compromised when it is relegated to the judicial machines. This because, there is high opportunity for undue judicial interventions in the independency of ADR when it annexed to court than in case of ADR in private markets. This tension become responsible for a number of arguments against court annexed ADR.²⁷

²² Feyisa supra at note 15, p.3

²³ Martinez supra at note 17

²⁴ ZakosG, International Commercial and Marine Arbitration, (London Rutledge Cavendish, 2008), p.9

²⁵ Asouzu A, International Commercial Arbitration and Africa’s States: Practice, Participation and Institutional Developments, (Cambridge University Press), pp 25-30

²⁶ Feyisa supra at note 15, p29

²⁷ Raymond J. Broderick, “Yes to Mandatory Court Annexed ADR,” American Bar Association, Vol.1, .No.4, (1992), p.3, See in general Craver and Brunet *supra* note 19

2.4. Court Annexed ADR- A Brief -Overview

Court annexed ADR is defined as “an alternative to trial modes of dispute resolution that take place inside a court.”²⁸ It is when the trial court launched a program that would supply a range of alternative dispute resolution mechanisms for litigants- often called “multi-doors court houses.”²⁹ Court annexed ADR as dispute resolution process occurs after a case is filed in a court and when a party initiates an ordinary law suit.³⁰ Accordingly, once a case is filed to a court, which has already launched court annexed alternatives, then the latter either voluntarily or mandatorily refers the case to either type of court annexed ADR it provides.

In some sense private providers of ADR perceived as competitors of traditional court system. This is because, the two supplies similar service, that is dispute termination. The private ADR providers constantly differs from court in terms of providing speedy, least cost, flexible, fair and predictable mechanisms.³¹ Consequent to this, private ADR received enthusiastic support from surprising array of proponents and it is able to achieve practical success in terms of capturing citizen’s demands on service they provide.³²

The state of competition between courts and private market alternatives has caused courts of some legal systems to adjust their services. This is *inter alia* by the introduction of different types of ADR into the court system.³³ That is why ADR that provided by

²⁸ See in general Patricia M. Wald “ADR and the Court: An Update” Duke Law Journal Vol. 46, No.6, (1997)

²⁹ See in general Eric van Ginko, Court Annexed ADR in Los Angeles County found on www.BussinessADR.com /EVG/ publication/ Accessed on July/2014; see also Frank Sander, “Varieties Of Dispute Processing” ,F.R.D., Vol.70, (1976), PP.111,130-132as cited on Craver and Brunet *Supra* note 12

³⁰ And in major jurisdictions court annexed ADR is mandatory process. See Craver and Brunet *supra* note 12, p.2, See also Susan Keilitz; “Dispute Resolution: Court-Connected ADR: New Qualifications Guidelines say Quality Buck Stops at the Court” ,GP, Solo & Small Firm Lawyer, Vol. 15, No. 4, (1998), pp. 36-37

³¹ Craver and Brunet *supra* note 12, pp.7-12

³² Jethro L. Man and James F. Henry, “Lesson from the Alternative DR Movement,” U.Chi.L.Rev. Vol.53, (1986), pp. 424,429-431 as cited on Craver and Brunet *supra* note 19, pp.13-14.

³³ Craver and Brunet *supra* note 12, p.7

private sectors considered as primary cause for introduction of court annexed ADR.³⁴ Eventually, ADR is now as prevalent in the court as it was in the free market.³⁵

2.5. Types and Essential Features of Court Annexed ADR

2.5.1. Court Annexed Arbitration

Court annexed arbitration, in USA legal system, is arbitration processes that take place inside a court room. The primary purpose of court annexed arbitration is to reduce private and social cost of disputing and to reduce delay of case. The procedure of court annexed arbitration is set in motion when-following filling of the civil suit in court- those cases qualified for court annexed arbitration are diverted by court to an arbitrator for hearing.

The qualification criteria are mostly monetary limits and types of case. For example, all civil suits seeking compensation fewer than 100,000 US Dollar are typical and many court systems exclude cases seeking injunctive relief from court annexed arbitration.³⁶ As to hearing to be conducted in court annexed arbitration proceedings:

“Court annexed arbitration hearing is adjudicatory, the parties submit evidence and the arbitrators’ rulings are based on the proof submitted. Although not required to do so the process of court annexed arbitration tends to apply substantive legal doctrine. The hearings are conducted by either a single arbitrator or a panel of three arbitrators chosen from volunteer pool of lawyers. Mostly hearings take place 80 to 180 days after the filling of the answer and decision are rendered shortly thereafter. Moreover, in some districts, hearing are open to the public, in others, they are private. At arbitration hearing, arbitrators may permit the introduction of any credible non-privileged evidence including hearsay. Good faith participation in the arbitration hearings is required of both the parties and their counsels. Further the requirement of personal appearance differs from jurisdiction to jurisdiction.”³⁷

³⁴ Craver and Brunet *supra* note 12, pp. 6-7

³⁵ Stevens H. Clarke and Elizabeth Ellen Gordon “Public Sponsorship of Private Settling: Court-Ordered Civil Case Mediation”, *Justice System Journal*, Vol. 19, No. 3, (1997), p.336,pp. 31339,(herein after Steven)

³⁶ See *Infra* Chapter Three of this Research

³⁷ See *Infra* Chapter Three of this Research

³⁷ Craver and Brunet *supra* at note 12,p.532

After arbitrator has rendered the award, which include cost, each party has thirty (30) days to request a trial as form of an appeal.³⁸ This right to request a trial and its procedure may vary from jurisdiction to jurisdiction. Beside, when parties requested a court litigation process for resolution of their cases and if the latter permitted their request; the common procedure is “the case is restored to its original place, where it was before it referred to court annexed arbitration. And it is treated as if it had never been arbitrated. Accordingly, neither the record of the hearing, if made, nor the arbitrators’ decision is admissible at trial.”³⁹ Further, a party requesting a trial mostly required by a court post a bond.⁴⁰

While court annexed arbitration’s award is not final, however, penalty related with requesting trial, expense and rigorous procedures of the trial processes causes some attorney not to request trial.⁴¹ This eventually, gives substance to the award reached. In addition, if a trial is not requested within thirty days from the day of arbitration decision, arbitration award considered as a judgment of a court and has the same force and effect as a final court judgment.⁴²

2.5.2. Court Annexed Mediation

Court annexed mediation is mediation process employed for resolution of dispute.⁴³ The latter process is classified into mandatory court annexed mediation; voluntary court annexed mediation and judicial court annexed mediation.⁴⁴ Mandatory court annexed

³⁸ This right to request a trial as an appeal called *trial denevo*. Craver and Brunet *supra* at note 12,p.532

³⁹ Craver and Brunet *supra* at note 12, p. 572

⁴⁰ In the amount of Arbitrators fees and litigation cost; if the party requesting the trial improves his position at trial, this bond is returned to him; but if he fails to do so it is retained by the court. Craver and Brunet *supra* at note 12,p.532

⁴¹ Craver and Brunet *supra* at note 12,p.532

⁴² Ibid

⁴³ See in general Craver and Brunet *supra* at note 12,

⁴⁴ Craver and Brunet *supra* note 12 , p.535

mediation is required for a certain type of cases under some jurisdictions.⁴⁵ This type of mediation lack the element of voluntariness found in the community mediation.

Whereas, under voluntary court annexed mediation the parties may voluntarily opt to attempt settlement of their disputes by using mediation.⁴⁶ This is purely voluntary and lack coercive element found in the mandatory mediation. The procedure of this meditation type is the mediators, who are selected from rosters of qualified neutrals, are assigned for eligible disputes shortly after filing of the suit to the court. The mediator then holds one or more session with the parties to seek settlement. The most commonly used model in this process is a problem solving model.

Judicial mediation, on the other hand, is mediation sessions carried out with a judge or judges acting as a mediator.⁴⁷ In this case there are two schools of thought on issue whether the judge assigned to try the case should latter, after the case diverted to mediation, serve as the judicial mediator on the same case. The schools of thought that argue that the trial judge should not latter involve in court annexed mediation base their foundation on the premises:

“ The judges who mediate may not approach the latter trial, to be held after mediation failed to settle the case, with an open mind. Moreover, the parties might afraid to disclose certain points in caucus session out of fear that the disclosure might adversely influence the judges during the latter trial if the case does not settled by judicial mediation.”⁴⁸

The above issue can be satisfied in a seemingly easy fashion, since the trial judge can assign the judicial mediation to another judge.⁴⁹ The other school of thought finds a little objectionable about a judge mediating his/her own case. According to this view “the information that a judge acquires about the case, when he/she evaluates the case for

⁴⁵ By far the most common types of mandatory mediation is the court mandated child custody mediation; mediation Of farm foreclosure action between lenders and farmers. For argument for and against mandatorily mediation Raymond J. Broderick, “Yes to Mandatory Court Annexed ADR,” American Bar Association, Vol.18.No.4, (1992) p.3

⁴⁶ Craver and Brunet *supra* note 12 , p.535

⁴⁷ But this mediation type can be classified under mediation held as a form of pretrial conference or settlement conference; see Craver and Brunet, *supra* note 12, pp. 533- 535

⁴⁸ Craver and Brunet *supra* at note 12,p.535

⁴⁹ There is a contention whether a trial judges should continue as judicial mediator. Craver and Brunet *supra* at note 12, pp. 536-37

diversion to judicial mediation session, can be used to give the judge an advantage as a mediator.

Further, the parties are likely to value the opinion of the judges on the disputes.”⁵⁰ Proponent of this view feel that courts can latter try a case impartially, if the dispute fail to settle through judicial mediation.⁵¹ Confidentiality is a rule for court annexed mediation, like privately contracted mediation, to be effective process.⁵²

2.5.3. Early Neutral Evolution

Early neutral evaluation is the other type of court annexed ADR. This involves referring the case instituted to a court to a neutral for some initial evaluation. The neutral, after initial evaluation, communicate to the parties’ likely hood of success or failure of the various claims and defenses presented before the court.⁵³ Beside, early neutral evolution also involves an attempt by a neutral to settle disputes.⁵⁴ Further, the neutral permit each party to present their case in an abbreviated time period.⁵⁵ Furthermore, the neutral ask question, prepare a case evaluation for a second term including a ranges of possible damages and disclose his evaluation to parties following an attempt for settlement.⁵⁶

2.5.4. Mini -Trial, Private Judging and Summary Jury Trial

The mini-trial and private judging can both be initiated by parties before and after the case is filed to the court.⁵⁷ Hence, both mechanism do not purely fall under court Annexed ADR as other previously discussed types of court annexed ADR. This because,

⁵⁰ Craver and Brunet *supra* at note 12,p. 535

⁵¹ Craver and Brunet *supra* at note 12, pp. 533-37

⁵² For the arguments-should the requirement of confidentiality be policed by the judge who requires mandatory mediation, see Craver and Brunet *supra* at note 12, PP.539-54

⁵³ Craver and Brunet *supra* at note 12,p.532

⁵⁴ Craver and Brunet *supra* at note 12,p.532

⁵⁵ Craver and Brunet *supra* at note 12,p.532

⁵⁶ For details of essential features of early neutral evaluation. See, Craver and Brunet *supra* at note 12, pp. 549-573

⁵⁷ Anne S.kim, “Rent a Judges and the Cost of Selling Justice,” Duke L.J., Vol. 44, (1994) as cited on Craver and Brunet, *supra* note 12, p.531

court annexed ADR is alternative dispute resolution mechanisms that set in motion for a dispute primarily filed to the court for litigation purpose. Moreover, summary jury trial is another type of court annexed ADR. This only practiced in common law legal system.⁵⁸

2.6. Court Annexed ADR and Other Modes of Dispute Resolution

There are various types of dispute resolution mechanisms as tried to be discussed under the above sections. However, this Section limit its' discussion on mechanism of dispute resolution through court annexed AD, private ADR and the traditional civil court. This is because; they are the major modes of dispute resolution.

2.6.1. Court Annexed ADR and Private ADR

Court annexed ADR and private ADR mechanism of dispute resolution share many common features. For instance, both process primarily set for the purpose of ending civil dispute. They are mainly reactive process of ending dispute which already materialized among disputing parties. Besides, they are less formal and flexible compared to strict formalities the traditional civil courts apply on the dispute.

There is high parties' participation under the two mechanisms and mostly the two processes conducted privately compared to civil court litigation.⁵⁹ In addition, both mechanisms claimed to be speedy process and less expensive compared to traditional civil litigation. To sum up, all other features of private ADR, *mutatis mutandis*, are also features of court annexed ADR.⁶⁰

Court annexed ADR has, however, its own unique features compared with private ADR or community based ADR. Accordingly, court annexed ADR is claimed to be second

⁵⁸ For detail of features of summary jury trial see Craver and Brunet supra note 12, p.535, pp. 554-570

⁵⁹ However, there may be cases when mandatorily court annexed mediation conducted publically, see Craver and Brunet, supra note 12, pp.539-547

⁶⁰ Refer section 2 of this chapter

stage model in the development process of ADR.⁶¹ Second stage models are initiatives which contain the seeds of further development in a qualitative way that the previous first stage development initiative lacks. These development processes of ADR include state funding of ADR, state offices, the multi-door court house and the compulsory use of some ADR techniques by the court in specialized circumstances.⁶²

Further, in case court annexed ADR the judiciary involves to a much greater degree than they were in community ADR.⁶³ Furthermore, in case of the court annexed ADR, the court regulates the process by issuing procedural rules and certifying ADR practitioners.⁶⁴ Thus, the court systems that adopt such programs are offering them with their implicit endorsement as a public service.⁶⁵ Moreover, court annexed ADR can both be voluntary and mandatory process, whereas, private ADR are only known for its' voluntary nature.

2.6.2. Court annexed ADR and Traditional Civil Court

Court annexed ADR and traditional civil court processes have features they commonly share. For example, both are publically⁶⁶ sponsored service. Both have the purpose of terminating dispute as any other dispute resolution mechanisms. Besides, the mechanism of dispute resolution through court annexed ADR, do not compete or substitute the service tradition civil court provides. Both mechanisms are supplementary and

⁶¹ Some "first-Stage models of ADR" are now privately institutionalized which operates within their own jurisdictional settings; see in general Peter B. Edelman "Institutionalizing Dispute Resolution Alternatives" The Justice System Journal, Vol. 9, No. 2,(1984), pp. 134-150

⁶² Id.p.150

⁶³ See in general Richard C. Reuben, "Public justice: Toward A State Action Theory of Alternative Dispute Resolution," California Law Review, vol. 85, no. 3 , (1997)

⁶⁴ ADR practitioner can be private practitioners or court officials; See Steven *supra* note 33, pp.311-339

⁶⁵ So the practitioners are responsible and accountable to the public. See Steven *supra* note 33, pp.311-339; see Craver and Brunet *supra* note 12, p.4

⁶⁶ Simon Roberts, "Alternative Dispute Resolution and Civil Justice: An Unresolved Relationship" The Modern Law Review, Vol. 56, No. 3, and Wiley, Dispute Resolution: Civil Justice and Its Alternatives , (1993), pp. 452-470

complementary to each other.⁶⁷ Even the justifications frequently stated to legalize court annexed ADR is:

“ To provide the opportunity to make better use of existing service, to speed decision making and to enhance the acceptability and quality of decision all in a form where dispute are traditionally resolved. Further what some jurisdiction put forwarded as an important reason for the adoption of mediation legislation is the public policy of lessening the case load of the court and lessening the very substantial costs associated with the expansion of the court system. Furthermore, Section 1775(c) of the California Code of Civil Procedure explicitly provided that mediation [court annexed mediation] may also assist to reduce the back log of case burdening of the judicial system: Above all the other side further strengthening the above arguments saying although the district has a crowded docket, the purpose of ADR is not simply to ease congestion ;quite to the contrary, its primary goal is to offer litigant a fair, inexpensive, and efficient means of settling a dispute that they were unable to solve on their own.”⁶⁸

There are unique features that private or community based ADR has in comparison to the litigation process of traditional civil court as discussed above.

Moreover, court annexed ADR is the integration, not conversion, of ADR into litigation process as this chapter previously attempted to define it. Accordingly, the unique features of private ADR compared to litigation are also the features of court annexed ADR beside the latter's unique features. This qualities that differentiate private ADR from litigation process also used to differentiate court annexed ADR from litigation method. Therefore, the features of private ADR mutatis mutandis hold for court annexed ADR when contrasting points between the latter and the traditional civil court litigation rose.

Accordingly, the difference between the two, which is essentially procedural than structural, can be summarized as follows. Court annexed AD is conducted privately, with low cost, with low emotional involvement, flexibly and within short period of time. Besides, it is undertaken under transparent procedures, with the application of the provision of better practices and better mechanisms oriented. In additions, court annexed

⁶⁷ The notion of court annexed ADR per se shows how it is complementary and supplementary to the traditional civil court, Refer Section 2.3 and 2.4 of this Chapter.

⁶⁸ <http://www.lawreform.vic.gov.au/sites/default/files/improvingalternativedisputeresolution.pdf> last accessed June/2014, see also Eric *supra* note 27, p.344

ADR could possibly arrive at creative and predictable solution compared with the dispute resolution mechanism through civil court litigation method.”⁶⁹

2.7. Summary

There are various types of dispute resolution processes that can broadly classify into rational and irrational processes. The irrational process involves chance and physical strength. This chapter, however, emphasizes on the relationship between various types of rational dispute resolution processes, i.e. the relationship between civil court litigation, private ADR and court annexed ADR.

All rational dispute resolution processes have primary purpose of ending dispute. This, in turn, shapes all of them to have common features. Besides, court annexed ADR is the integration of private ADR with a certain modifications into judicial dispute resolution mechanism. This integration between ADR and court made court annexed ADR to share features of both private ADR and to some extent the features of litigation process.

In addition, the fact that court annexed ADR is ‘*blending*’ of private ADR with some elements of litigation process fashioned the method to have its own independent features. Consequently, court annexed ADR have essentially unique features when separately compared with private ADR and litigation process. Therefore, court annexed ADR due to its number of advantages may help to improve some drawbacks of judicial dispute resolution in Ethiopia if properly introduced and executed.

⁶⁹ Cf. Craver and Brunet supra note 12, p.4

CHAPTER THREE

3. THE EXPERIENCES OF OTHER COUNTRIES ON COURT ANNEXED ADR

3.1. Introduction

Delay of cases, unreasonable litigation cost, complexities of litigation process and unpredictability of courts' decisions are major problems challenging public faith upon judiciaries' services in number of legal systems. As a result, court annexed ADR is one among commonly suggested reform proposal to improve the above courts' problems.¹ Consequently, many jurisdictions are gradually improving judicial dispute resolution mechanism via introducing court annexed ADR.²

Hence, this Chapter tries to present experiences of three major jurisdictions on court annexed ADR. Specifically, this chapter introduces brief legal history; success and challenges of court annexed ADR in USA, India and Nigeria.³

¹ European Union Mediation Directives No.52/2008 , of the European Parliament Council of (21may 20080); *“European Union Mediation Directives of the European Parliament and the Council,” Official Journal Law* NO. 136, (2008); The Rules of Voluntary Court Annexed Mediation of the Magistrate’s Court of Republic of South Africa See again Sylvie Counterpoise, social Dialogue and Changing the Role of Conciliation, Arbitration and Mediation Used for Resolution of Labor Dispute in France, Michael Mill, ADR Trends in Major Asian Economy’s, Noh young Park, *“Court Annexed Mediation in Korea”*, Asia Practice Law Review _No.151, Vol.17 (2009) , The Judicial Conciliation Act of R. Korea; Japan’s Act on Promotion of the Use of ADR law No.151 of 2004

² Ayinla Luke man, *“Enhancing Sustainable Development by Entrenching Mediation Culture in Nigeria”*, Journal of Law, Policy and Globalization, Vol.21, (2014), p.5. (hereinafter Luke Man)

³ Court annexed ADR under above three jurisdictions are basically similar, yet there are slight procedural differences under each legal system. For example , Nigeria' s legal system prefer to call a multi door court house service which is essentially the same process with court annexed ADR under other legal system. See above Luke man.

3.2. U.S.A

Delay of more than 5 years in civil cases and huge numbers of pending cases was causing a lot of concern in the USA. Judicial conferences, legislatures and their committees made various suggestions and reports as a solution for the above problems. This reform attempt on civil litigations process by American Judicial system seems unattainable at the first blush.⁴ However, considerable reduction in delay in disposal of civil cases in USA has gradually become possible. These improvements were mainly achieved due to various measures implemented by the cooperation, dedication and efforts of judges, lawyers and their associations. Most important of these measures were two: “*case management plan and using court annexed ADR.*”⁵

Further, on the Federal level, American congress adopted the Civil Justice Reform Act in 1990. The latter Act required that each Federal District [court] to develop a case management plan, and recommend referral to Alternative Dispute Resolution (ADR). Consequently, U.S.A has established court-ordered mediation-which is mediation process ordered to be undertaken outside court [by private ADR institutions] and court annexed mediation system.⁶

Court annexed mediation, which is mostly mandatory, was intended as a way to lighten the backlog of cases before courts in U.S. On the initial period, this program fails to achieve significant success. For instance, Rand Institute for Civil Justice evaluated pilot court annexed ADR districts over the first four-year period. This is to assess court annexed ADR’s effectiveness at reducing cost and delay in federal courts; the results, though older one, of the evaluation are decidedly mixed. i.e., federal pilot [court annexed] ADR did not bring any

⁴ I. H. Bhat, “*Access to Justice: A Critical Analysis of Alternate Dispute Resolution Mechanisms in India*”, International Journal of Humanities and Social Science Invention, Vol. 2, Issue No. 5, (May. 2013), p.49; see again Justice J. Mohit, S. Shah, “Study of the American Legal System for Procedural Reforms in Civil Courts in India”, p.9. (Hereinafter J. Mohit), Found on www.Bussiness ADR.com Accessed on July/2014)

⁵ J. Mohit, *supra* note 4, p.2. In the US, by virtue of the ADR Act of 1998, all Federal District Courts are authorized to require parties to a suit to first go for ADR, both institutional and court annexed ADR, if any in all civil cases. See in general Eric Van Ginko, Court Annexed ADR in Los Angeles County, found on www.Bussiness ADR.com /EVG/ publication/ Accessed on July/2014.(here in after Eric) and See also Luke man *supra* note2 ,p.3. See Caroline Harris Crown, “*The Alternative Dispute Resolution Act of 1998: Implementing A New Paradigm Of Justice*”, N.Y.U. L. Rev. Vol.76, (2001) as cited on p.4 of Eric; see also cases between Allied-Bruce T. Cos Vs. Dobson, 513 U.S. 265 (1995) as cited on Eric p.1. Further, in USA legal rules relating to mediation can be found in more than 2500 statutes. See Prof Tang Houzhi, Worldwide Use Of Mediation, P.10.Found on [http www.Bussiness ADR.com](http://www.Bussiness ADR.com) (hereinafter prof Tang)

⁶ Prof Tang *supra* at note 5, P.10

significant impact in reducing cost and delay. The evaluation comes up with conclusion that court-annexed ADR is neither a panacea nor a failure; yet ADR has enjoyed some modest successes, participants seem to like it.⁷

The reform measure, however, within a short span of 15 years⁸; have achieved significant results.⁹ In California, known to have courts with high volume of litigation, after introduction of court annexed ADR; delay has been reduced very significantly and most cases are disposed within a year and almost all cases within two years.¹⁰ Specially, in Los Angeles superior court ADR achieved an appreciable success.¹¹ Further, in San Diego (California) having the third largest number of trial courts in USA 97% of civil cases [from civil cases referred to ADR] able to be settled.¹²

Under the other parts of USA, court Annexed ADR seems gradually succeeds in terms of saving cost of litigations and reducing delay of cases. However, estimates of cost savings through court annexed ADR vary substantially from study to study, depending on type of ADR process

⁷ Patricia M. Wald, "ADR and the Courts: An Update", Duke Law Journal, Vol. 46, No. 6, (Duke University-publisher, 1997), pp.1472, and pp. 1445-147. See again. Robert. M.levy, "ADR's In Federal Court: The View from Brooklyn." Justice System Journal. Vol.26. No. 3,(2005)

⁸ Many trace the beginning for popularity of alternative dispute resolution programs in U.S.A in the 1980s and 1990's to the chief justice Warren Burger call to action, that was the need for increasing focus on court annexed Arbitration and Mediation, On January 24, 1982. See Eric *supra* note 5, p.2

⁹ It has been suggested that issues like the number of settlements; the time within which settlement is reached, the cost as well as the satisfaction of disputing parties provide a good yard stick to measure the success of court annexed ADR in terms of improving previously existed dispute resolution mechanisms. See Eric *supra* note 5, p.2

¹⁰ For detail regulations, prospects and challenges of court annexed ADR in California see the following references: California Code of Civil Procedures ("CCP"), Sections 1775 - 1775.15, California Evidence Code ("EC"), Sections 703.5 and Section 1115-1128, and California Rules of Court, Rules 3.890 – 3.898; and they are found on <http://www.LegInfo.Ca.Gov/CGI/Bin/DisplayCode;http://www.Leginfo.CA.Gov/CGIandbin/DisplayCode;http://www.CourtInfo.CA.Gov/Rules/index.cfm;http://www.leginfo.ca.gov/cgi-bin/displaycode/http://www.lasuperiorcourt.org/courtrules/ui/;andhttp://www.lasuperiorcourt.org/courtrules/ui/http://www.courtinfo.ca.gov/programs/ADR/as they are cited on Eric supra at note...> See also Roselle L, Wissler, "Court-Connected Mediation in General Civil Case What we know From Empirical Research," Ohio State Journal Of Dispute Resolution, NO.17, (2002), p. 641 See in addition, Robert A. Baruch Bush, "Staying in Orbit, or Breaking Free: The Relationship of Mediation to the Courts over Four Decades", 84 N. DAK. L. REV., Vol.54, No.705,(2008), pp.135-137 7. See also, Jeff Kichaven, When Mediators Cross the Line found on <http://www.mediate.com/>

¹¹ Scott H. Hughes, "Mediator Immunity: The Misguided and Inequitable Shifting of Risk", Oregon Law Review, Vol. 83, (2004), pp.1-2 see again <http://www.lasuperiorcourt.org/adr>, as cited on Eric *supra* at note 5, p.17

¹² J.Mohit, *supra* note 4, p.3. Cf, In the USA ADR's [both private ADR and court annexed ADR] settlement rate are 94 percent. See in general S.B. Sinha, ADR: Mechanism and Effective Implementation, Found on <http://www/Bussiness.com/> which Accessed on July/2014)

evaluated, type of cases, type of intervention and local conditions. For example, in United States Barkai and Kasebau Court-annexed arbitration's cost savings, in year 1992, was 500 (US\$) per party.¹³ Further, in year 2004, cost savings of Stipanoich's early pilot [court Annexed] mediation was 6000 (US\$) per case.¹⁴

Whereas, as to court annexed ADR's impact on time evaluate the total time from filing a complaint to settling the case. Accordingly, as per studying outcomes, in year 2009, of ADR use by the U.S. Federal Government; relative to traditional litigation court annexed ADR by estimates saved about 88 hours of staff time and about 6 months of litigation time per case. Showing that court annexed ADR reduce public costs as well as private cost.¹⁵ Court annexed ADR also improving perceived quality of the legal system and increasing trust in fair resolution of conflicts in [USA]. In USA mostly, better quality of courts is associated with more frequent use of ADR services.

Generally, in USA today there are no arrears of cases older than two years.¹⁶ Therefore, USA was improving problems with judicial dispute resolution mechanism through legalizing court annexed ADR in addition to other reform measures.

3.3. India

Characterized by huge and continuously increasing population and limited resources, access to justice for all' in India is still distant dream even after six decades of independence. Judicial system in India is already laden with insurmountable arrears, marred by a poor judge to population ratio.¹⁷ The Indian judicial system also attended with procedural complexities,

¹³ The World Bank group Financial and Private Sector Development Vice Presidency, October 2011 View point, "Settling out of the Court, How Effective is Alternative Dispute Resolution", Public Policy Journal, PP.2-6

¹⁴ Ibid

¹⁵ Ibid

¹⁶ J. Mohit, *supra* note 4, p.3. See also, Hon'ble T and J.S. B. Sinha, ADR and Access to Justice: Issues and Perspectives, p.5. See again, Prof. K. N. Chandra, Jaya V. S, *etla*, ADR: Status and Effectiveness, found on <http://ssrn.com/abstrac.pdf>, Accessed on July/2014. For further Advantages of court annexed ADR, see Scott h. Hughes, "*Mediator Immunity: The Misguided and Inequitable Shifting of Risk*", Oregon law Review, Vol. 83, (2004), pp.1-2

¹⁷ L.S. Huchanar, "*In Search Of True 'Alternative' To Existing Justice Systems In India*", Indian Journal of ADR, NASALA Law Review, p.6, (Herein after Huchnar)

inherent delays and soaring expenses.¹⁸ In the recent past, Indian judicial system had entered into a phase where its credibility and efficacy was getting eroded to a considerable extent.¹⁹

These problems propelled search for new alternatives and the result was, inter alia, the coming of ADR in its contemporary modern existence. Court annexed ADR in India is inspired by the success of court annexed ADR in California.” Under Indian legal system, ADR falls into two broad categories: community-based dispute resolution mechanisms and court-annexed options.²⁰

Beside, in India concept of ADR gone sea changes with insertion of section 89 into the 1908 Indian Civil Procedure Code (hereinafter CPC).²¹ Section 89 introduced into Code of Civil Procedure, by Code of Civil Procedure (Amendment) Act, 2002.²² This is followed by committed and concerted judicial endeavor. Section 89 provides for judicial settlement of disputes through arbitration, conciliation, mediation and *including* settlement through Lok Adalats.²³

In the process of administration of justice initiatives taken by the Supreme Court of India in *Salem Advocate Bar Association vs. Union of India (II)* gave initial momentum to use of ADR in courts pursuant to section 89 CPC.²⁴ Thereafter, in *Afcons Infrastructure Ltd. v. Cherian Varkey Construction Co. (P) Ltd*, the Supreme Court gave detailed practical guidelines; so that section 89 CPC can be well utilized.²⁵ In the latter case the Supreme Court also gave

¹⁸ Ibid

¹⁹ Id. pp.6-7

²⁰ S.Shah Study of the American Legal System for Procedural Reforms in Civil Courts in India”, p.14. See also Iftikhar Hussein Bhatt, “*Access to Justice :A Critical Analysis of Alternate Dispute Resolution Mechanisms in India*”, International Journal of Humanities and Social Science Invention ,Vol. 2 , Issue, No. 5 , (May. 2013),,P. 49 (herein after Bhat)

²¹ Prof. K.N.Chandra Sekharan, ADR: Status and Effectiveness Study, p.207, and pp. 69-70. Found on, <http://ssrn.com/abstract=2535079> (herein after Sekharan,)

²² The Amendment Act comes into effect from July.2002 G.C. The parliaments intervened having regard to the success stories in other countries particularly in USA where the settlement rate rose to 94%. Initially, there was a resistance to the system both from the section of the bar and the bench but positive out look to it became the question of necessity in India. As a result the parliament loose reasons why it does not legalize court annexed ADR. See J. Mohit, Supra at note 4

²³ “*This means ‘People’s Courts’*. It is popular ADR fora where the Lok Adalat judge steers disputant parties towards a negotiated settlement by the use conciliation process. Lok Adalats can dispose the matter only on the basis of settlement and compromise. And such settlement gets crystallized in the form of award of the Lok Adalat, which is final and is executable as a decree of the court. Lok Adalats have statutory recognition under the [India] Legal Services Authorities Act, 1987.” See Huchnar supra at note 36, p.16. See also Sekharan supra at note 21, p.172 , J. Mohit supra note 4, and Bhatt, supra at note 20 , p.49

²⁴ Sekharan supra at note 21, P.20

²⁵ Sekharan supra at note 21, P.21

interpretative process to correct the draftsman's error so as to give a purposive interpretation to mediation and judicial settlement under section 89 CPC.²⁶

Consequent to the above joint efforts, Section 89 CPC is now being efficiently utilized in India. Mainly Lok Adalats and Mediation are the most widely employed ADR mechanisms in terms of section 89 CPC.²⁷ The overall results put mediation as the most efficient in terms of quality and quantum of disposal.²⁸ Therefore, Section 89 CPC gave massive boost to ADR revolution in India through legalizing court annexed [and court ordered] ADR thereby, helped development of settlement culture in India.

Delhi, consequent to the above Legal enactment has four court annexed mediation centers at district courts. These function at Tis Hazari, Karkadooma, Rohini District Court and the Delhi High Court Mediation and Conciliation Centre.²⁹ The study reveals that, court annexed ADR as a dispute resolution technique in Delhi was producing promising success at its infancy level.³⁰ Accordingly, the average settlement rates in the above centers ranges from 45%-70%. Yet different regulatory and administrative limitations are challenging the success of court annexed ADR in India.

²⁶ Sekharan supra at note 21,p.21

²⁷ The mediation revolution which has stormed Delhi with the establishment of numerous mediation centers is an upshot of section 89 CPC. Sekharan supra at note 21,p.21

²⁸ Sekharan supra at note 21,p.21

²⁹ High Court Mediation and Conciliation Centre, is manned by full time professional and trained mediators and functioning under the aegis of the Delhi High Court. Saurabkul Sher Shta, “ *Alternative Dispute Resolution Mechanism: A case Study Of Delhi*, Indian Journal of ADR , NASALA Law Review , (2012), P.15 (Herein after Shta)

³⁰ Statistics reveal that in all the five court annexed mediation centers in Delhi till date more than 55,000 cases including connected cases in total have been settled through mediation. Id. pp. 15 -20

3.4. Nigeria

There is different constraint in Nigeria court system so that civil cases can take 5 to 20 years.³¹ Hence, similar to other jurisdiction Nigeria for long was looking for solution for the problems with its judicial dispute resolution mechanisms. As a result, contemplation of court-annexed ADR in some states of Nigeria developed recently as a reform measures.³² The establishment of the court connected ADR in Nigeria was championed by the Negotiation and Conflict Management Group (herein after NCMG,). The later led to establishment of Lagos Multi-Door Court house (hereinafter LMDC).³³

Like other multi door court house in others parts of Nigeria, LMDC is now part of [connected to] the Lagos State judiciary.³⁴ LMDC intially, come into being with out any clear legal bases but, latter created by statute named Lagos Multi-door Courthouse Law of 18 May 2007.³⁵ The overriding objective of this law was to:

*” To enhance access to justice by providing alternative mechanisms [which] supplement litigation in the resolution of disputes;(b) Minimize citizen frustration and delays in justice delivery by providing standard legal Framework for fair and efficient settlement of disputes through ADR To serve as focal point for promotion of ADR in Lagos State and to Promote the growth and effective functioning of the justice system through [legalizing court annexed] ADR methods [Emphasis is added]”*³⁶

³¹ Dr Emilia Onyema, “*The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC,*” *Apogee Journal of Business Property and Constitutional law* Volume 2, No.7, (2013), pp.96- 120, (hereinafter Onyema) See, Onyema , supra at note 59 , pp. 5-7, pp. 96-97.

³² See, Luke man, supra at note 2, p. 4

³³ This is the first Multi-Door Court house (MDCH) in Africa. The latter is almost the same with court annexed ADR, though there are slight procedural differences. Subsequent to the coming into being of LMDC the concept was replicated in the other judiciaries. Presently, at least thirteen judiciaries in Nigeria have shown interest in its replication. There are now three MDCHs in Nigeria -in Kano, Abuja, and Lagos - each independently managed and attached to their respective state High Courts. See lukeman supra at note 2, p.3 and p. 8. See also Kidane, B. Lucas; “*Alternative Dispute Resolution for Businesses Conflicts in Developing Countries,*” (Helpdesk Research Report, 2010), pp. 379-380, (hereinafter Kidane). It was initially brought into existence on the 11th day of June, 2002. See Mr. K. Aina, “*ADR and the Relationship with Court Processes*”, *Mediterranean Journal of Social Sciences* Vol. 5 No.16, (MCSER Publishing, Rome-Italy , 2014), pp. 2, 6-13,and pp.36-83

³⁴ Luke man supra at note, 2, p.3 and p. 35

³⁵ Section 1(2) (b) of this Law describes LMDC as “a court-connected alternative dispute resolution center. See Oneyama supra at note, 59,p.97

³⁶ Ibid

LMDC uses different type's dispute resolution, including arbitration, mediation, early neutral evaluation and the hybrid process.³⁷ It was designed to diagnose each dispute and refer cases to appropriate types of ADR that best suited for resolution of cases.³⁸ The original concept for the MDC is bringing into the formal justice system various ADR mechanisms, as equal dispute resolution mechanisms to litigation. The provider linked to court, located in premises of courts and controlled by judiciary but delivered by privately independent neutrals. As a general rule, judges in Nigeria are not allowed to mediate from the bench.

The envisaged procedures for court annexed mediation in Nigeria are:

*“For disputant to walk into registry of court, file her case before the Registrar who then allocates the case to one of the many dispute resolution processes as path ways. Once filing fee is paid for the case which if assigned to an ADR pathway is directed to the MDC scheme and if litigation then it is assigned to a judge or magistrate as the case may be.”*³⁹

Mediation has already been identified as the predominant process of dispute resolution adopted under the LMDC scheme. It appears that practice of the LMDC is to give disputants the freedom to choose from the various dispute resolution processes available to them. However, the process appears disputants are ‘actively’ encouraged towards mediation.⁴⁰ LMDC accept and handle mixture of commercial, land, contract, and other cases.

As per experiment done on success of MDC in Nigeria; it has brought reductions in backlog of cases.⁴¹ It is worthy to note that experimental practice of mediation⁴² in particular under mediation centers have certainly reduced back log of cases and as well reduced number of cases that goes to trial.⁴³ In terms of time within which settlement reached; while arbitration through the LMDC can take up to a year whereas mediation takes an average of three months.⁴⁴

³⁷ Ibid.

³⁸ See Luke man supra at note 2, p.3. See Training Manual On Alternative Dispute Resolution And Restorative Justice, (Sponsored By European Commission, United Nation Office On Drug And Crime. National Judicial Institute, Abuja, October 2007), p. 26. See Onyema Supra at note 31, p.20

³⁹ Onyema Supra at note 31, p.20

⁴⁰ Onyema Supra at note 31, p.20

⁴¹ Luke man, supra at note 2,p.3

⁴² Luke man supra at note 2, p.114

⁴³ Luke Man, supra at note 2,p.4

⁴⁴ Previously litigation before Nigerian court took an average of 5 to 20 years. See Onyema , Supra at note 31, p. 5

Furthermore, "Between 2002 and 2011(G.C), a total of 1,136 civil disputes were filed before LMDC; from this 1,071 cases was mediated, and 321 (30%) were resolved while 467 (43.6%) were unresolved and 327 (29%) were withdrawn or discontinued. LMDC scheme as part of formal justice system in Lagos state increases access to justice and access to various methods of disputes resolution by giving disputants choices."⁴⁵

Conversely there are some challenges affecting the success of LMDC, for example LMDC is not being administered effectively and efficiently. Further, court-annexed ADR is not legally made a general phenomenon and adopted in all States of the Federation of Nigeria as formal and comprehensive program.⁴⁶

3.5. Summary

Court annexed ADR is becoming effective reform measure as per experiences of USA, India, Nigeria and other ⁴⁷ legal systems dictates. This is success when measured in terms of quality and quantity of cases disposed by this mechanism. It also reduced cost and time required to finally resolve cases. Further, court annexed ADR slightly increased clients' satisfaction and trust upon courts' service in the above jurisdictions.

⁴⁵ Luke man supra at note 2, pp.7-12

⁴⁶ Luke man Supra at note 2, p.5

⁴⁷ Court annexed ADR is also already set in motion in other legal systems. So far the following countries have attempted to incorporate [court annexed ADR] process into their court systems. For instance, from North, America- Canada; from Asia: China, Hong Kong, India, Singapore; from Australia: Australia, New Zealand; from Europe: Germany, Greece, Ireland, Italy, Netherlands, Portugal, Scandinavia, Spain, U.K.; from Africa: Egypt, Namibia, Nigeria, South Africa, Tanzania, Tunisia, Uganda, Zambia, Zimbabwe. Lecture given to Strathmore University: Mediation – A Solution for the Legal Sector Crisis -the Role Of Legal Ethics And Jurisprudence In Nation Building, (2004) p.13. In most of the above country an average mediation session takes 1.5 days. 80% of cases referred to mediation settle on that occasion. The remaining 20% settle within a three week period after the adjournment of the initial session. Ibid. More recently in the Commercial Courts of England, a pilot project of 2000 shows: "a 83% [77%] Settlement rate of the cases in which ADR was attempted, (52% settled through ADR, 20% settled some time after the conclusion of the process and, 5% settled by trial following unsuccessful ADR and the outcome was unknown for the rest of 23% of the cases."Id.p.15. In New South Wales Supreme Court over 500 mediations were conducted during 2008 by registrars. See Luke man supra at note 2, pp.3-4

Besides, various administrative draws backs and gaps on regulating laws were challenging the development of the program under the above jurisdictions. Law on court annexed ADR is not comprehensive enough to regulate all potential issues in relation to court annexed ADR. For instance, in Lagos Nigeria there is no proper legal definitions for each type of court annexed ADR; and even arbitrator code of conduct not enacted there.

In addition, inefficient leadership like, lack of public awareness campaign, and absence of quality training program, are among common instances of institutional limitations hindering the success of court annexed ADR in the above jurisdictions.

Therefore, USA, India, and Nigeria were recently experiencing improvements in their traditional dispute resolution mechanism through formally introducing court annexed ADR. Moreover, court annexed ADR showed promising potential especially if those limitations challenging the program are rectified through strong measures.

CHAPTER FOUR

4. COURT ANNEXED ADR AND OTHER DISPUTE RESOLUTION METHODS IN ETHIOPIA

4.1. Introduction

This chapter discusses various dispute resolution methods in Ethiopia. To this end, it attempt to explore the success and factors challenging effective operations of the pilot court annexed mediation before four benches of federal first instance court in Addis Ababa.

4.2. Customary and Religious Dispute Resolution Mechanism

Non-judicial dispute settlement methods played a significant role in resolving disputes in Ethiopian legal history.¹ It was CDRM that used to resolve different kinds of disputes before the introduction of state justice system in Ethiopia.² CDRM institution often function at community level based on trust among people, who personally know each other, in face- to- face context.

CDRM drives its power from customary laws, which are ‘made by the people and not by the state. Customary law in turn drives its legitimacy ‘from Participation and consensus of the community.³ Further, the strong sides of this mechanism are;

“Limited cost, legitimacy and appropriateness, restorative capacity, participatory procedure, predictable process and out comes, enforceable community based sanction, avoidance of coercive measures, and building community cohesion, accessibility and time lines.”⁴

¹ Haile G. Feyissa: “The Role Of Ethiopian Courts in Commercial Arbitration“, Mizan Law Review, Vol. 4, No.2,(Autumn 2010) p,298 (hereinafter Feyissa), p.299. See also Tesfaye Abate, Introduction to Law And The Ethiopian Legal System Teaching Material. (Alpha University College Under The Sponsorship Of The Justice And Legal System Research Institute, 2007), pp. 247-252

² Alula Pankrust and Getachew Assefa, (Ed), Grass Root Justice In Ethiopia : The Contribution of Customary Dispute Resolution, (French Center of Ethiopian Studies, Addis Abeeba,2007), p.1. (Hereinafter Alula and Getachew)

³ Alula and Getachew, P.23

⁴ These advantages are stated as basic reasons for CDRM’s continuous existence in Ethiopia. Alula and Getachew, P.257 and the following pages.

Furthermore, during the enactment period of the modern Ethiopian codes some attempts were made to incorporate certain principles of customary law.⁵ At a time the latter codes were aimed to comprehensively govern all legal relationships in the country, leaving very limited space for widely –practiced CDRM. This state policy was clearly notable in the Ethiopian Civil Code, which in its repeal provision Article 3347 states: "*unless otherwise expressly provided, all rules whether written or customary previously in force concerning matters provided for in this code shall be replaced by this code and are hereby repealed.*"

Contrary to this aim, in more than half a century, neither was a much sought legal uniformity achieved nor the modern codes able to practically succeed in replacing CDRM.⁶ Fortunately, the 1995 FDRE Constitution embodied a clear recognition of the jurisdiction of customary and religious courts. Specifically, the above constitutional recognition applies for family and personal matters among disputants who consent to such jurisdictions.⁷ Social Courts are also established in five states: Tigray, Amhara, Oromia, Southern Nations, Nationalities and Peoples and Harari State. These courts are established at the *Kebele* or community level in rural and urban areas.⁸

Further, article 61 and 62 of the Tigray State Constitution also establishes Social Court. In Addis Ababa city, *Kebele* Social Courts were also established by the Addis Ababa City Government Revised Charter Proclamation No. 311/2003. Consequently, CDRM, in its parts, has been allowed to exist and to perform administration of justice in Ethiopia as per recognition accorded to them by the above laws.

⁵ These codes are enacted between 1956-1960, E.C.

⁶ Fifty years after enactment of the Penal code and the Civil Code, customary laws and institution are still active and vibrant. There are also case studies that amply testify this fact. See in general Alula and Getachew, *supra* at note 2. P.5

⁷ See Article 34(5) of The Constitutions Of Ethiopia Federal Democratic Republic, Federal Negarit Gazeta, No.1, (Addis Ababa,1995), (hereinafter the Constitutions). Pursuant to this Article and Article 78 (5) of the Constitution, the House of Peoples' Representatives and State Councils can establish or give official recognition to religious and customary court. Comprehensive Justice System Reform Program Baseline Study Report, (Ministry of Capacity Building Justice System Reform Program Office February, 2005.), pp. 81-84. (Hereinafter the Reform).

⁸ The reform pp. 81-84 . See also, Knife Abraha G/Engziabher, The Dispute Resolution Practice of the First People of Africa, Found on www.unisa.ac.za/news/

Besides all the above prospects, there are factors challenging CDRM's effective operations. Firstly, CDRM are influenced by urbanization and socio-political realities.⁹ Secondly, expansions of new religion (Protestant and Islam) in some parts of Oromia made serious impact on CDRM.¹⁰ Believers of these new religions think that these institutions are outdated and even against faith in general.¹¹ As a result, tensions occur between those who want to maintain the institutions and the proponents of new religions. The other challenge is the wide spread allegation of the practices of partiality that with CDRM.¹²

Further, CDRM institutions are localized and jurisdiction of it often limited to particular localities within ethnic group.¹³ Furthermore, it is stated that:

“There are assumed danger on customary institutions’ potential compromises based on status, non-compliance with human right standards, the undermining individual rights, especially of women, children and minorities’ rights, and the inability to guarantee procedural fairness.”¹⁴

Hence, the above dealt limitations raised on CDRM were affecting reliabilities’ of this mechanism. This in turn challenged effective operations of the institutions as a disputes resolution mechanism in Ethiopia.

In parallel to CDRM, religious dispute resolution mechanism also plays a considerable role in administration of justice in Ethiopia. The Sharia court is one example of religious courts applying Islamic laws to mainly family matters such as marriage and succession.¹⁵ These courts are found in Addis Ababa and in other regional states. The basis for those religious courts is not only cultural or historic but also constitutional.¹⁶ The Federal First Instance Court of *Sharia*, the Federal High Court of *Sharia* and the Federal Supreme Court of *Sharia* are already established in

⁹ See Alula and Getachew, supra at note 2, p. 31

¹⁰ Alula and Getachew, supra at note 2, p. 31

¹¹ Alula and Getachew, supra at note 2, p. 31

¹² Alula and Getachew, supra at note 2, pp.31- 33

¹³ Alula and Getachew, supra at note 2, p. 31

¹⁴ Getachew Assefa and Alula Pankhurst, Facing The Challenges Of Customary Dispute Resolution, (French Center of Ethiopian Studies ,Addis Abeeba,2007), _P.257 (herein after Pankhurst)

¹⁵ Parties must voluntarily submit to jurisdiction of these courts. See Alula and Getachew supra at note 2, p.23 and Introduction to law, supra at note 1, pp.48-49.

¹⁶ Alula and Getachew supra at note 2,p.23

Ethiopia.¹⁷ Currently, all other regions except Gambella have courts of *Sharia*. For example, consolidation of *Sharia* courts at state level can be found in Oromia.¹⁸

4.3. Public Dispute Resolution in Ethiopia

On the second phases of dispute resolution history, Ethiopia was influenced by the development of legal codes starting from 1957-1965.¹⁹ As a result of this development process the Ethiopian government enacted six modern legal codes in a massive codification project of that time. These codes are Penal Code(1957), Civil Code (1960), Commercial Code(1960), Maritime Code(1961), Criminal Procedure Code(1961) and Civil Procedure Code of (1965). Basically, the codification acts at a time was due to Emperor Haile Sellassie's drives of modernizing the legal system. Beside this development; numbers of problems were challenging administration of justices in Ethiopia.

The basic problems challenging the efficiency of Ethiopian court are delay of cases, unpredictability- in either of the process and outcome, inaccessibility and lack of quality procedure and outcome. Further, there other related core general and specific problems of administration of justice in Ethiopia:

“The judicial systems are neither accessible nor responsive to the needs of the poor. The indigent and powerless simply do not see courts as an institution that serves their interests. Moreover, serious steps to tackle corruption, abuse of power and political interference within the administration of justice have yet to be taken. Furthermore, the inadequate funding of the justice institutions aggravates those deficiencies of the administration of justice system. Whereas, specific problems of Ethiopian justice system are: “Low professional competence of judges and court staff, lack of initial and continuous training for judges and staff, lack of systems for holding judge accountable for misconduct, poor system for case management, little knowledge of the justice system by the general public and hence, very limited

¹⁷ In accordance with those provisions of Federal Courts of Sharia Consolidation Proclamation No. 188/1999 as cited on Alula and Getachew supra at note 2

¹⁸ See in general, Sharia Consolidation Proclamation, 1994, No. 53/94, of Oromia Regional State Courts as cited on the Reform supra at note 10, p.83

¹⁹ Further, between 15th century till early 20th century, which is characterized by the realm of empire, the imperial relay and refer disputes for resolution to indigenized translated [legal] text. The seriate mengist, fewuse menfessawi, and fetha negest are the codified source of law at time. See Alula and Getachew supra at note 2, pp.1- 2, and p. 23

*confidence of the general public in courts and other institutions in the administration of justice.”*²⁰

From the time Ethiopia launched modern justice systems, administration of civil justice systems was among areas that drew governments’ attention.²¹ Although the government had undertaken different reform measures, civil dispute resolution process in Ethiopia is not efficient enough to fully capture society’s faith.²² As per the findings of research undertaken by Kilimanjaro International Corporation limited and the Federal ethics and anti- corruption commission: “*Ethiopian court system is one among five governments organs failed to establish public confidence on it services.*”²³ If a certain government organ has very limited communities’ confidence upon its service, it inevitably raises questions on the purpose for which such an organization is established.

4.3.1. Dispute Resolution Process before Federal Courts: Prospects and Challenges

Ethiopian federal civil justice system showed good improvements compared with the previous time.²⁴ These are due to different joint reform measures undertaken by Ethiopian government and Federal Courts. For example, in 2001 (E.C.) new procedures for resolution of civil disputes were designed, based on the research conducted on the area, and partly put into practice.²⁵ Recently, the government is further focusing on organizing and improving services of federal courts’ in a new form.²⁶

²⁰ The Reform supra at note 7, pp.159-178. See also Article 8 and 7 of the Federal Judicial Administration Commission Establishment Proclamation No.24, (1996), Article 7(2) of Ombudsman Proclamation No.165, (2000,). See again Case Study Report on Continuing -Job-Training Needs for Judges of The Federal Supreme Court, Ethiopia , (2003) as cited on the Reform supra at note 8,p.160

²¹ See Article 50 (2), Articles 78 of FDRE Constitutions. See in general, Federal Court Proclamation, No.25, (Addis Abeba,1996)

²² Yosef Amiro, “*Yefitabiher Kirekiroch Hidet Fetenawoch Ena Tesfaw*”, Ethiopian Business Law Series .Vol. V, (December 2012), p. 10 (hereinafter referred as Yosef)

²³ Ibid

²⁴ Yosef supra at note 22, p.9

²⁵ However, these reform measures are put into practice without any authoritative law enacted on it. Yosef supra at note 22, p.9

²⁶ Interview with Ato Getu legese, Assistant Judge and Court Annexed Mediator, at Federal First Instance Court Kirkos Branch, On 10 May/2007, E.C., Addis Ababa, (herein after Ato Getu) and Interview with Ato Tewdrose W/ Maryiam, Assistant Judges at Federal First Instance Court and Court Annexed Mediators at the Federal First Instance Court Menagesha Branch, On 13 May/2007, G.C, Addis Ababa (herein after Ato Tewdrose)

Among the above improvement measures: establishing new benches, new buildings, and applying new technology both on dead and active files can be stated. These are intended for easy opening of cases and to easily access files. Consequent to these and other reform acts good improvements observed in terms of pronouncing fair, economical, and expedient decisions.²⁷ For instance, cases filed before Kirkios Labour Bench able to be disposed within four months after the above reform measures.²⁸ Ato Sintayew further added “*no undue interference from the executive organ of the government in our center, Menagesha, labour bench.*”²⁹ These improved services in turn somehow press forward society’s faith upon the services of Federal Courts. The increasing numbers of cases coming to court is, among other, can evidences existence of improvement of communities’ confidence on dispute resolution services provided by some federal courts in Addis Ababa.³⁰ The above reform measures, however, did not bring fundamental changes on major problems of civil justice systems of federal court.³¹ Such that, still there are huge room for further improvement on justice services of the federal courts.

To discuss some of major problems challenging the Federal courts’ dispute resolution services; delayed services common limitation under number of courts. Delayed service negatively affects economic, political, and social rights of the citizens. That is why justice delayed is considered as justice denied. If cases are not decided within a reasonable period of time; the nationals are not motivated to create economic relationships. Further, investors are not attracted to such systems, which in turn affect general economic activities in the country. That is why expedient disputes resolution service is considered as basic qualities required from any dispute resolution process. To this end, research has been conducted by the Ethiopian Federal Supreme Court which intended to improve delay in civil disputes process.³² Consequently, new adjournment principles are designed and partly applied by Federal courts. As per these principles:

“ordinary civil litigation should be disposed within four month; cases apportioned for summary procedure should be decided within two months’, cases classified to be handled by

²⁷ Interview with Ato Berasa Birahanu and Sintayeho Zeleke, Judges at Federal First Instance Court Lideta Branch, (On 17 May / 2007 G.C), Addis Ababa (hereafter Ato Birasa and Sintayeho Respectively)

²⁸ Yosef, Supra at note 22, p.23

²⁹ Yosef, Supra at note 22, p.23

³⁰ See Ato Getu and Ato Tewudros Supra at note 26

³¹ See Yosef supra at note 22, p.2.

³² Yosef, Supra at note 22, p.11

*accelerated procedure within one months; cases before appellate court with two months; and cases before cassation division have to be decided within three months.”*³³

Practically, however, cases are not being decided as per the above adjournment policy.³⁴ For instance, cases filed before Federal First Instance Courts Lideta, Yeka and Kera Branches are being decided after 15-20 adjournments. Ordinary civil litigations which expected to be decided with four months as per the above adjournment policy are practically disposed within the minimum of 2 Year period. Further, cases brought to federal appellate courts and Federal Cassation Branch is not disposed as per the time limit provided by the above adjournment policy. There are numbers of problems that are specified as factor for delay of cases before federal courts:

*“Firstly, incompatibilities between numbers of cases compared with number of judges. Secondly, Lack of strong controlling mechanism for applications of legally fixed time period. Thirdly, Lack of necessary materials, like sound recording used by judges to carry out their duties is also contributing for delay of cases. Beside, lack of motivation and commitments on side of the judges. Thirdly, client’s way of litigation, which arises from ignorance of right procedures and unnecessary dilatory techniques purposely used by trial lawyers are mentioned as basic causes for delay of cases before Ethiopian federal courts.”*³⁵

Further, under normal courses of things, court decisions are expected to be consistent and predictable on similar issues. Practically, however, there are instances when federal courts’ decisions are inconsistent and unpredictable.³⁶ These problems mostly arise from incompetence’s of the judges and undue relationships they creates with clients. These problems, nevertheless, improved to some extent after the cassation benches legally established in Ethiopia. This because, Proclamation to Re-amend Federal Courts Proclamation No. 454/97, empowered cassation division to give a binding interpretation which helps lower courts to give similar decisions on the similar issues of law. However, the Federal Cassation Bench by itself observed when it made contradictory decisions on similar issues of law.

The interpretations the Federal Cassation Division gave on Article 1723 of the Civil Code concerning contract on immovable property is good instances for this: *“If contract of sale of immovable property is not made before court or notary, it is only considered as mere draft, so*

³³ Yosef, Supra at note 22, p.11

³⁴ Yosef, Supra at note 22, p.11

³⁵ Ato Getu, supra at note 26. See again Labor Proclamation, No. 377 /2003, Federal Negarit Gazeta (Addis Ababa)

³⁶ Yosef supra at note 22, p.15

invalid and void contract.”³⁷ In contradiction with the former decision it latter decide that: “*Even if contract for sale of immovable property is not made before notary or court, if disputing parties admit existence of the contract it become a valid contract.*”³⁸ The latter decision completely changed the spirits of the former decisions. So how a contract previously interpreted void from its existence can be a valid contract by mere admission of the contract existence by the parties? This can, nonetheless, be true for voidable contract, since, it can be invalidated when attacked by one party to the contract, which is not true for void contract.³⁹

The other instance of contradictory decisions by Federal Cassation Division is concerning issues of material jurisdiction on claims arises from lease contracts. First, it decided that it is Addis Ababa City Administration Courts that have material jurisdiction on disputes arise from lease contracts.⁴⁰ Later on, however, the cassation bench contradicts the first decision by deciding that federal courts have material jurisdiction on disputes arisen form lease contracts despite its first decisions.⁴¹ Whenever a new decision excepted from the order one it should be explained, reason out and analyzed in lines with the first decision unless it create a confusion. Beside, Ato Wenialelem said that; “*Federal courts sometimes pronounces contradictory judgments on similar issues.*” This in turn evidence how unfair and [unpredictable] some judgments of the federal court are.

The other basic problem is the inconvenience related with the services of the federal courts provides. There are times when customers are not served at their adjourned time. For instances, client appointed at 3.00 local time in morning wait up until 6.00 local time.⁴² Furthermore, there are times when federal judges mistreat clients and attorneys through different kind of threat.⁴³ Beside this, currently federal judges’ are using existing offices by turn due to inadequacy of offices to conduct litigation, even many of federal courts’ office are rented one.⁴⁴ This is

³⁷ Decision of Federal Cassation Division Mazia 30/1999,(G.C), Cassation File No.21448 as cited on Yosef supra at note 22, p.15

³⁸ Decision of Federal Cassation Division on Tikemt 13/20202, (G.C), Cassation File No. 32226 as cited on Yosef supra at note 22, p.16

³⁹ See Ethiopian Civil Code, Provisions of the General Contracts deals with the above issues

⁴⁰ Addis Ababa City Administration versus Dinkus PLC, Federal Supreme Court Cassation Division File No. 54697,(24 September /2003) as cited on Josef supra at note 20, p.16

⁴¹ Yosef, Supra at note 22, p.16

⁴² Josef supra at note 22, P.19

⁴³ Yosef, Supra at note 22, p.23

⁴⁴ However, courts are constructing different buildings intended for providing convenient services for the customer. From my observation from different federal courts

creating inconvenience upon customers especially when offices are changed from place to place.⁴⁵

4.4. Modern Alternative Dispute Resolution (ADR): Brief Legal History

The modern notion of ADR had, however, been alien to Ethiopian until at least mid-20th century. Before that, [ADR] was only known within the context of customary dispute resolution processes (CDRM). The Ethiopia legal framework for modern ADR was laid down by the codifications of 1950s and 60s and other subsequent legislations. The then modern codified laws recognized three types of ADR. These are mainly compromise, conciliation and arbitration.

As per Article 3308 – 3314 of the Civil Code⁴⁶ the Ethiopian law recognizes compromise as a dispute resolution mechanism and protects parties' freedom towards compromise agreement. Above all, even legal priority is given for compromise agreement, so long as a judgment having the force of *res judicata* has not been rendered over those rights or obligations which made subject of compromise. Further, the Civil Code also recognizes conciliation as a mechanism for resolution of civil disputes.⁴⁷ Beside, any ADR mechanism applied on condition of divorced marriage have to be undertaken under the courts' supervision.⁴⁸

Furthermore, some provisions were made for arbitration in the 1960 Civil Code⁴⁹ and the 1965 Civil Procedure Code.⁵⁰ As a result, the two codes, both of which predate the modern international arbitration legislation represented by UNCITRAL Model Law are for now the major sources of arbitration law in Ethiopian. Yet still the new revised family code and labor proclamation⁵¹ can also be mentioned as a source of arbitration law in Ethiopia. Ethiopian's

⁴⁵ Yosef supra at note 22, P.21

⁴⁶ Civil Code Of The Empire Of Ethiopia 1960 Negarit Gazette , Extra Ordinary Proclamation No.1650 1960, Article 3308 - Article 3314(2) (hereinafter the Civil Code)

⁴⁷ Article 3318 – 3322 of Civil Code. See also Article 142(1) and (2) of the Labour Proclamation, No. 377/2003.

⁴⁸ W/ro Amzia Sh/ Abraham Vs Ato Abdu Ismail, Federal Supreme Court Cassation Division, Cassation File, No. 696/5738 (February 2002, E.C.)

⁴⁹ Article 3325-3346 of Civil Code govern enforcement of agreements to arbitrate in the form of either arbitral clauses or arbitral submission.

⁵⁰ See in general Civil Procedure Code, 1965, Negarit Code Gazette, Extra Ordinary Proclamation No.3, Addis Abeba,1965,Article 315-319, 351-357,244(1)((g)) and 461(Hereinafter Civil procedure Code). There are certain disputes which Ethiopian law requires mandatory arbitration. See Article 49 of the Ethiopian cooperatives societies Proclamation, No.147/1998 and Professor Tilahun Teshome, "The Legal Regimes Governing Arbitration In Ethiopia: Synopsis", Ethiopian Bar Review, Vol1, No.2,2007, pp.127-131

⁵¹ Article 143(1) and (2) of the Labor Proclamation

arbitration law seems “basically designed for domestic arbitration.”⁵² The pertinent provisions of the Civil Code and Civil Procedure code on arbitration do not distinguish between domestic and international arbitrations, except in the context of execution of foreign Arbitral awards. Thus, the provisions of the above codes on arbitrations proceedings do not apply on “International” Arbitrations. On the other hand Ethiopia is yet to join the 1958 New York convention on the recognition and enforcement of foreign arbitral awards.⁵³

Recent developments show that Ethiopia has gradually developed an interest for alternative dispute settlement mechanisms. Arbitration, along with other ADR mechanisms, is now a popular dispute settlement process among business communities – international or domestic.⁵⁴ Improvements with respect to institutional arbitration are indicative of the current trends toward a better utilization of ADR especially for commercial disputes in Ethiopia. Two ADR institutions: the previous Ethiopian Arbitration and Conciliation Centre (EACC), and the Arbitration Institute of the Addis Ababa Chamber of Commerce and Sectorial Associations (AACCSA) – were established.⁵⁵ Now a day, however, the first ADR institution is not functioning. The existing ADR institution primarily target at business communities as potential clients for their services.

Like other countries of the world, in Ethiopian also, business disputes are on the increasing rate. Global problem related with court proceeding inevitably compels them to choose other alternative dispute resolution mechanisms. The above mentioned establishment of arbitration institutions and the practical trend in Ethiopia also evidence the above argument. So one can safely conclude that, in Ethiopia ADR is also in process of development and reach the stage it attract attention of the business communities in similar fashion with its development on global level.

⁵² Bezzawork shimelas, “The Formation, Content and Effect of an Arbitral Submission under Ethiopian law” Journal of Ethiopian Law, Vol. 17 (1994), p. 90, [hereinafter Bezza work].

⁵³ Haile G. Feyissa , “The Role Of Ethiopian Courts In Commercial Arbitration“ Mizan Law Review , Vol. 4 No.2,(Autumn 2010) (Hereinafter Feyisa).p.203 See in additions, Robert Allen Sadler, Ethiopia Civil Procedure, (Addis Ababa, Haile Selassie University Press, 1968)

⁵⁴ Inter alia, economic [cost] and time factors justify the growing popularity of ADR - mainly arbitration. Feysisa supra at note 53, p.304

⁵⁵ Feysisa supra at note 53, p.304

4.5. The Hostility between ADR and the Court in Ethiopia

As an alternative forum for the resolution of civil dispute, ADR is a departure from the traditional litigation process. ADR mostly set in motion by and due to the consent of parties to avoid litigation. It is established that if the parties agree to submit their eligible dispute to any of available ADR, they automatically oust courts of their jurisdictions.⁵⁶ Besides, it is widely held that court excessive intervention in ADR proceeding, is undesirable as it may frustrate and disrupt the independent operation of the latter mechanism. Such that courts required to not frustrating the parties' freedom of contract by interfering unreasonably in the ADR process and thus makes the latter redundant. Conversely, ADR could not effectively operate without positive intervention and support of the national court.⁵⁷ Yet, it is a paradox that the mechanism which supposed to be better alternative to the court has to resort for support to the court.

The degree of court intervention in ADR proceeding is mainly a function of the policy of a country on ADR and the trust it place on this mechanism. It is predominantly the case that modern ADR law especially modern arbitration laws affirm minimal courts intervention in ADR.⁵⁸ The existing practice, however, points towards extensive interventions by Ethiopian courts in ADR proceedings.⁵⁹ This extensive judicial intervention is mainly attributed to the Ethiopian law on ADR proceedings and the erroneous assumptions from the courts side that ADR forum will divest courts constitutional power of resolving disputes. Consequently, there are number of practical cases which evidence broader and excessive judicial intervention in the ADR proceeding contrary to probable intentions of the parties.⁶⁰ The other instances for broader

⁵⁶ Tewhodrose Meheret, "*Reconnaissance of the Ethiopian law of Arbitration: Is reform due?*", Ethiopian Business Law Series Vol. V, (December 2012), p.241 (Hereafter Tewodrose Meheret)

⁵⁷ Cf with the historical tension between ADR and court on international plane which discussed under chapter two of this research

⁵⁸ This principle is incorporated in the Model law as well as in numerous domestic laws. Article 5 of United National Commission on International Trade Law Model Law on International Commercial Arbitration (UNCTRAL MODEL Law.), Commercial Arbitration Act of Canada (Article 5), and German law section 1026 as cited on Tewdrose Meheret supra at note 58, p.242

⁵⁹ Mekbib Tsegaw, "The Necessity For and Extent Of Courts Interventions in the Process Of Arbitrations", Ethiopian Business Law Series Vol. V, (December 2012), p.154 and Tewedrose Meheret supra at note 58 p.242

⁶⁰ Order entered by the South West Shewa High Court On Sene 5,2000 in **The Case Of Pan Africa Construction Plc Vs. Dragon I And P Avax S.A. Joint Venture**, Civil Case File No.08326 as cited on Mekbib supra at note 60;. See again generally, Marta Belete, "Good Faith (Lack Of) in Investment

judicial intervention in ADR are; the premature judicial interventions during arbitral proceeding, and broader judicial review of arbitration awards.⁶¹ Ethiopian courts in practice observed when incidentally determine validity of arbitration agreements when they are only called to appoint arbitrators on behalf of default party.⁶² This show that mostly courts are not comfortable with ADR, for they take ADR institutions as competitive organ than as complimentary systems stands for the same purpose.

The wisdom lies in the design to be espoused by which necessary assistance can be guaranteed and unnecessary intervention is kept at bay. Hence, courts must clearly understand the limits and extent of their role or interventions whenever their assistance is sought for either by the parties or ADR institutions. Beside, the courts should have a favorable attitude to ADR disregarding the wrongly made tensions that establishments of such forum will divest them from their jurisdictions.

Moreover, Ethiopia is attempting to introduce court annexed ADR program, as she already introduced the pilot court annexed meditation before few federal courts in Addis Ababa. Hence, it seems logical to suspect independent operation ADR's, since court annexed ADR is undertaken through the courts control and supervision.

4.6. Court Annexed ADR in Ethiopia

Court annexed ADR is not formally, legally, introduced under Ethiopian legal system so far. Such that so far there is no clear law in Ethiopia which comprehensively regulate court annexed ADR process. The pilot court annexed mediation so far operating under few related articles of Civil Procedures, Labor Proclamation and other guideline prepared by Federal Supreme Court. For instance, there is no clear law on how to recognize and execute resolution of court annexed mediation center.⁶³

Arbitration and The Conduct Of The Ethiopian Government In The Saline Case: Exercise Of Legitimate Wright Or “Exhibits A “ For Guerrilla Tactics,” Ethiopian Business Law Series Vol. V, (December 2012)

⁶¹ Tewdros Meheret supra at note 5, p.243 et seq, and Article 3325 -3346 of the Ethiopian civil code and article 351 of the Ethiopian civil procedure code.

⁶² Feysisa supra at note 53, p,298 et seq

⁶³ Ato Birassa supra at note 27

However, nine detailed principles for court annexed mediation process were identified by Federal Supreme Court. These nine principles which do not have official legal recognition are summarized herein under:

“Business, construction, labor, succession and family disputes should have to pass through court annexed mediation before they brought to litigation process. Beside, other civil litigation can be tried to be resolved through court annexed mediation mechanism, whenever court, or case leader or disputants find it relevant. Mediators will be selected and employed based on criteria set by Federal Supreme Court in collaboration with other organizations works on the area. Further, Federal Supreme Court will give proper, periodical and continuous training for mediators. Mediator, for each case, will appointed either by the disputant or courts. Any interested party can apply with sufficient reasons to court, for cases to be referred to court annexed mediation to be tried through civil litigation. Furthermore, mediators should finalize mediation process within ten days. The mediators should impartially inform disputants’ advantage of mediation, create ideas which help disputants to reach on settlement, and should also encourage them to decide by themselves on their own issues. Mediators should inform court in advance whenever cases are adjourned so to hear final outcome of mediation process. However, mediators should keep in secret ideas raised and evidence heard during mediation process. If the mediation processes end with settlement, the disputants should prepare their agreements in a written form within ten day from date mediation process ends. In case one of the party failed to appear; mediator should return case to court and make the latter to give order on litigation costs. Unless special circumstances requires, any ideas raised, any evidence heard during mediation process should not be disclosed to court or to any third parties. The privacy of mediation process should be respected either by disputants or by mediators.”⁶⁴

As per the above new procedures, there are cases which cannot be settled through court annexed mediation on the other hand. These are: "*Case related with government, especially human rights case. And any other case prohibited by the law not to be settled by mediation. Moreover, case which do not have party defendant. For any other reasons courts belief such type of cases should not to be settled by court annexed mediation process.*"⁶⁵

⁶⁴ The Guide Line Prepared by Ethiopian Federal Supreme Court as cited on Yosef supra at note 25, pp.21-23. However, if mandatory court annexed mediation seen within the context of CDRM; subjecting disputes to the former mechanism without the consent of the parties seems contradictory with the spirit of Article 34(5) of the FDRE Constitution. Yet still, it only referring cases to court annexed ADR that become mandatory. Consequently, parties still have the right not to agree with settlement proposal, accordingly in this case mandatory court annexed mediation seems not contradictory with FDRE constitution. See again Article 37 of the FDRE Constitutions.

⁶⁵ Ibid

The Draft Civil Procedure Law was proposed so as to legalize the above nine new procedures or principles for court annexed mediation.⁶⁶ However, the latter proposals to legalize court annexed mediation through amendment of Civil Procedure Law not approved until now.

The federal first instance and federal high court, however, started to partly implement these reform proposals without any clear legal authority.⁶⁷ Further, federal first instance court designed a project which works on developments of court annexed mediation.⁶⁸ As a part of the project federal first instance court is doing research on court annexed mediations.⁶⁹ Furthermore, the government is now persuaded that resolution of disputes through ADR including court annexed ADR could attract foreign direct investments and create positive national image.⁷⁰

4.6.1. The pilot Courts Annexed Mediation in Ethiopia: Prospects and Challenges

Although Court annexed ADR is not formally introduced in Ethiopia, the pilot Court annexed mediation was introduced before Federal Courts in Addis Ababa since Tehas 2004 E.C.⁷¹ The pilot court annexed mediation come into being based on agreement entered between Ethiopian Arbitration and Conciliation Centers (AACC) and Federal Supreme Court and Federal First Instance Family Bench located in Addis Ababa.⁷² Consequently, the program was launched at four Centers, i.e. Lideta, Menagsha, Kirkos, and Akaki Federal First Instance Court. The above agreement between the two organs was intended [in the long term] to ease the case congestions before courts', to minimize litigation cost, to reduce numbers of adjournment, and to promote win –win culture.⁷³

The types of cases mostly handled by this pilot project are business, family and labor dispute. Practically court annexed mediation process, set in motion, only when disputants voluntary

⁶⁶ Ibid

⁶⁷ Ibid

⁶⁸ Ato Birassa supra at note 27

⁶⁹ Interview with Ato Berane Meskel, President of Federal First Instance Court and who are conducting the above research,(May 17/2007G.C. Addis Ababa)

⁷⁰ Ibid

⁷¹ Interview With Ato Weyinalem W /Senbet, Attorney, Former Court Annexed Mediator and Assistant Judge before Federal First Instance Court Lideta Branch, On May 15 /2007, (G.C.), Addis Ababa (hereafter Ato weyinalalem)

⁷² Activity Report of the Ethiopian Arbitration and conciliation Center ,(2004-2010) Found on www.eaccc.com.et (hereinafter Activity report)

⁷³ Ibid

submit to this mechanism. Yet the court provides the proposal to appear before the court annexed mediation center before they try litigation.

The procedures are, once valid statement of civil claim submitted before Federal First instance courts which provide court annexed mediation; the latter courts issue a summon. And on this very summons court states the fact that the disputants can voluntarily appear before court annexed mediation center. I.e. they can try court annexed mediation program before they appear for the first hearing of their suit.

Few awareness creation campaigns were undertaken since the pilot court annexed mediation introduced in Ethiopia. For instance, in Yekatiit 2004(E.C.) Radio program named FM 96.3 reported existence and features of court annexed mediation as dispute resolution mechanism.⁷⁴ In addition, Addis Admass gazette, also reported the existence of the pilot program.⁷⁵ Further, EACC in collaboration with Federal Supreme Court provides 5 days (40 hours) training on court annexed ADR for all senior and assistant judges of federal courts.⁷⁶ Furthermore, federal supreme court also prepared some voucher on features of court annexed mediation and distributed to different benches of Federal First Instance courts.⁷⁷ Above all, informal awareness creation for disputants is also made by some judges and court's annexed mediators. Mainly, on existence, benefit and features of court annexed mediation. As a result of the above awareness creation campaign disputants sometimes request resolution of their dispute through court annexed mediation.⁷⁸ Therefore, we can say that there were some positive moves towards awareness creation about pilot court annexed mediation in Ethiopia.

Consequent to above introduction and attempt to strengthen the pilot program, promising success is observed towards the primary goals of the program.⁷⁹ For examples, at initially period of a program 15% of cases are settled, from cases mediated before First Instance Court of Lideta Branch. In addition, at Federal First Instance Court Menagesha Labor Branch, around 38 % of

⁷⁴ Ato Weyenalem, *supra* at note 60

⁷⁵ *Ibid*

⁷⁶ Ato Getaw, *supra* at note 28

⁷⁷ Ato Birassa *supra* at note 29

⁷⁸ *Ibid*

⁷⁹ Interview with Attorneys', President, Senior judges and court annexed Mediators at Federal First Instance Court Lideta, Menagesha and Kirkos Branche, Addis Ababa April 25-28, 2007 G.C

labor disputes were able to be settled through court annexed mediation process.⁸⁰ Further, since the programs initiated and start to resolve cases; it is reported that the courts' case load are reduced.⁸¹ Above all, disputants, who resolved their case through this process, observed when satisfied by the program. For instance, Ato Alelign Terefe, one of the disputants over succession case said that:

*“We are satisfied by court annexed mediation process since it is family issue; we [all disputants] are from the same extended family; our case is resolved through peace full means this strengthens our future relationship. Ato Alelign further goes on to say that under this mechanism, our cases are resolved within a short period of time and with least cost. Other clients, who resolved their case through court annexed mediation at Lideta Branch, too said that; “They are satisfied by this mechanism especially in terms of saving their time and money, and the transparency of the procedure and the outcome when compared with litigation. “*⁸²

Moreover, there are civil cases which disputants anticipate up to four year for final decision through litigation method; but court annexed mediation process practically settled the above cases within single day.⁸³ This show, in one aspect, how fast court annexed ADR process is when compared with litigation process.

The diligence and motivations of court annexed mediators' in terms of maintaining fair mediation process and extra- protection they provide for disputants who appeared without lawyers are contributing for the above success.⁸⁴ In addition, positive attitude of few lawyers and judges for the program and their cooperation's are become another incentive for success of the pilot court annexed mediation in Ethiopia.⁸⁵ Main due, the above success reached with very little human resources, without any regulatory Frame work, with little or no awareness about the program and many other limitations will be discussed.

⁸⁰ Yosef supra at note 22, p.2. Beside, court annexed mediation and conciliation is effective dispute resolution mechanism for civil conflict among disputants who will have continuous relationship even after litigations end. Interview with Ato Taye Birhanu, who Conducted LLM Thesis on Court Annexed Mediation Conciliation For Some Civil Cases, September 28,2007 E.C, Addis Ababa

⁸¹ Ibid

⁸² Interview with Ato Alelign and some other disputants, litigated over succession and business cases before Menagesha and Lideta Branch, 8 may, 2007(E.C), Addis Ababa

⁸³ Ato Tewderose supra at note 27

⁸⁴ Interview With w/o Selam Demise, Court Annexed Mediator and Assistant Judge before Federal First Instance Court Lideta Branch, On May 3 /2007, (E.C.), Addis Ababa (hereafter w/o Selam)

⁸⁵ Interview with W/O Selam. For instance Ato Desalign Berie, The Former President of Lideta First Instanc Court, however, was highly co- operative for the pilot program during his presidential terms.

Conversely, these pilot programs have number of drawbacks that obviously challenge effective operations of the program. First, lack of adequate awareness about the program stated as one among the draw backs. For instance Ato Biressa said that:

*“Though I’m a judge, I knew only existence of mediation at our center and I do not have a know -how about court annexed mediation, either the benefit and any other issues related with program. The interviewee further said, most disputants do not have a clue about the program and even disputants who heard about the program consider the latter as private mediation process.”*⁸⁶

Hence, only few disputants know even existence of court annexed mediation and even some judges do not have sufficient awareness about the pilot program. Further, some disputants do not have strong belief that their disputes can be settled through this mechanism.⁸⁷ They think trying this process for resolution of their disputes a mere time killing. Disputants’ lack of faith on court annexed ADR seems resulted from lack of enough awareness, lack of attentions from government side and lack of effective regulatory framework on court annexed ADR in Ethiopia. Beside this, when case are resolved within a short period of time through court annexed mediation, it is observed when disputants declined to fully pay their lawyers.⁸⁸ This in turn causing some lawyers to hold negative attitude towards court annexed mediation.

Secondly, lack of adequate budgets, also reduced commitments and motivations of mediators, and responsible for the non- existence of facilities required for operation of the program. The other drawback is absence of continuous follow up from administrative organs. This directly or indirectly challenges the success of the pilot program.⁸⁹ Moreover, lack of enough experts on court annexed mediation process are dropping it its own challenges on the program. There is no formal evaluation and assessment procedure for this pilot program.⁹⁰ There is only mere exceptional report about settlement rates to the presidents of the federal first instance court.⁹¹ The non- existence of evaluation and assessment program deny the opportunity for periodical rectification measures on some flaws affecting success of the program.

⁸⁶ Interview with Ato Birassa supra at note 29

⁸⁷ W/o Selam supra at note 84

⁸⁸ Interview with Ato Weyinalem supra at note 60

⁹⁰ Ato Birasa supra at note 28

⁹¹ Ibid

4.7. Summary

Different dispute resolution mechanisms serve administration of justice in Ethiopia. CDRM is serving justice at least concerning family dispute both before and after state justice system introduced. This is with and without legal or state recognition. Moreover, numbers advantage like least cost, easy accessibility and its power of maintaining societal cohesions are stated causes for the letters' continued existence.

Conversely, the non- incorporation of modern principles and procedures into CDRM were among factors challenging effective operations of this mechanism in Ethiopia. Further, Religious dispute resolution mechanism also plays considerable role in resolving family and personal disputes based on recognition accorded to them by the modern Ethiopian laws.

A public justice system has a lion share in resolving dispute in Ethiopia. Specifically, the federal civil dispute resolutions mechanism showed a little improvement in terms of providing quality services. These are mainly due to different reform measures jointly undertaken by concerned authorities. However, there are rooms for improvement on delayed, expensive, unpredictable and inconvenient services' of federal courts. Since the later problems are considered major reasons for lack of societies' confidence upon federal courts services.

Further, the modern private ADR mechanism introduced in Ethiopia through modern codes enacted, in 1950's and 60's (E.C), and by subsequent legislations. Accordingly, compromise, conciliation and arbitrations are given legal recognition in Ethiopia. Currently, Ethiopian business communities seem to be more attracted to ADR than court litigation due some limitations on the services provided by courts. However, there are historical hostilities between court and ADR in Ethiopia. This tension expressed itself in different cases through excessive and broader judicial interventions in ADR's independent operation.

Furthermore, the Ethiopian government seems persuaded by ADR's positive role of for improving existing dispute resolution mechanism. The introduction of the pilot court annexed mediation before four branches of the Federal First Instance Court in Addis Ababa is one evidence for this. The latter program is able to achieve promising success before the above courts. These successes are basically in terms of reducing case loads before courts, by settlement of cases and in satisfying customer both in process and outcomes. However, some basic

institutional and legal limitations are hindering efficient operation of the Federal Pilot Court annexed mediation. For examples, like lack of awareness, lack of regulatory frame works, lack of persistent and periodical assessment and evaluation process, and lack of expert in the area.

CHAPTER FIVE

5. THE CALL TO LEGALLY INTRODUCE COURT ANNEXED ADR IN ETHIOPIA

5.0. Introduction

The whole process of this research work generally examined, prospects and challenges related to formal introduction of court Annexed ADR in Ethiopia.

5.1. The Role of Court Annexed ADR in Improving Judicial Dispute Resolution

The Ethiopia judicial dispute resolution seems not fully established faith upon its service. Consequently, the Writer researched whether or not court annexed ADR can serve as effective reform measure to improve delay, excessive cost, unfairness, unpredictability and inaccessibility of judicial dispute resolution process in Ethiopia. Accordingly, by effectively introducing court annexed ADR as additional, alternative and appropriate dispute resolution mechanism; it is possible to improve these problems.

First, this is possible through shifting some eligible¹ cases to court annexed ADR. The settlement of eligible cases through court annexed ADR reduces courts' case loads. Besides, as a result of using court annexed ADR as additional tool for resolution of disputes; courts could get additional time to decide cases on a docket without number of adjournments. This enables courts to decide cases at their hand more expediently than before. For example, one of the causes for delay of cases at federal courts is caused by incompatibilities between numbers of cases with number of judges.² So that, shifting some number of cases to court annexed ADR method reduces delay of cases before the courts. This, in turn, reduces excessive cost that arises from delayed judicial dispute

¹ See infra Section 5.3 of this Chapter

² See Supra discussion under chapter four of this research

resolution process. Further, additional time a court acquires, due to cases are shared by court annexed ADR, reduces injustice arises from rush on cases.

Using court annexed ADR as alternative and additional mechanisms also enable disputants to access and choose dispute resolution method of their interest. For examples, ADR methods such as mediation and conciliations occur silently and privately. Hence, disputants who prefer absence of publicity are more satisfied by this mechanism. Furthermore, in Ethiopia some disputants currently prefer ADR to litigation methods due to some advantages of ADR for specified types of disputes.³ The above improvements on some problems of litigation method, due to integration of ADR into judicial systems⁴ improve public trust upon judicial dispute resolution.

Moreover, as long as the improvement on societies' faith upon court improves access to justices. This is for the reason that, once additional dispute resolution, which potential improves previously existing mechanism launched, communities will be motivated to bring conflicts before courts. For instance, after introduction of pilot court annexed mediation before some federal first instance courts number cases spurt to the latter courts increased as a result.⁵

Therefore, using court annexed ADR as alternative and additional tool for resolution of eligible civil disputes can improve some problems of the judiciary. These is because, court annexed ADR reduces court's case loads and make the court more accessible, and reduce delay, excessive cost and unfairness of the litigation's method.⁶

³ Especially business communities both at domestic and international arena are more interested to ADR than litigation methods.

⁴ Moreover, foreign investors observed when prefer ADR to judicial dispute resolution mechanisms. Consequently, if Ethiopian court provides dispute resolution mechanism preferred by investors'; the more the investors rely on the systems. This reliance in turn attracts other investors into the country. This eventually brings different economic, political and social benefits for the Country

⁵ See Supra discussion under chapter four of this research

⁶ Cf with the success of court annexed ADR in improving drawbacks of judicial dispute resolution in USA, India and Nigeria as discussed under Chapter three of this research. See in addition, the prospects of pilot court annexed mediation before few federal courts in Addis Ababa as discussed under chapter four of this research

Secondly, ADR is more appropriate⁷ dispute resolution for certain specified cases than litigations method. These are mainly due to ADR's number of advantages that formal litigation method lacks. For example, both conciliations and mediation types of ADR process keep disputants in control of controversies and even standard of fairness is set by disputants themselves.⁸ This party control mechanism, in turn, allows the parties to make proper control over potential carelessness, lack of motivations and unfair acts of mediators or conciliators.⁹ For instance, lack of motivation and commitment of judges before Ethiopian federal courts mentioned as a factors for delayed, contradictory and unfair decisions by the latter.¹⁰ This, among other, basically due to the reasons that litigation systems do not allow disputants to control such behavior of judges as it is in ADR method.

Further, the right to control the process and outcomes of dispute resolution creates an empowerment and sense belongingness on the side of disputants. This improves their trust upon court which provides these mechanisms. Furthermore, giving decision-making power for disputants also enhances successful implementation of dispute settlement. This because, it is less likely those disputants refuses timely executions of their voluntarily made agreements or decisions. Hence, party control rules reduces potential delay, unpredictability and unfairness of cases and thereby improves disputants' faith upon a court which provides this rule through court annexed ADR.

Moreover, judiciaries' required adjudicatory, straightjacket and complex procedures for resolution of dispute resulted for more out-of pocket expenditure than ADR do. i.e. ADR is more economical or least cost devices. In addition to this, ADR which is mostly precise

⁷ Appropriateness under this context when it is measured among other in terms of resolving disputes timely, economically, and fairly.

⁸ See in General Edgardo Buscaglia, Justice and The Poor Formal Versus Informal Dispute Resolution Mechanisms: A Governance-Based Approach. See also Thomas Weber, "*Gandhian Philosophy, Conflict Resolution Theory and Practical Approaches to Negotiation*" Journal of Peace Research, Vol. 38, No. 4 ,(July2001), pp. 493-508

¹⁰ Yosef Amiro, "*Yefitabiher Kirekiroch Hidet Fetenawoch Ena Tesfaw*", Ethiopian Business Law Series Vol. V, (December 2012), pp.10-19, (hereinafter Yosef)

and flexible process compared to litigation method reduces time required to resolve dispute.¹¹ Above all, mediation and conciliation processes' win /win, transparent and predictable mechanism reduces emotional stress involved in resolving conflicts. This because, comparably the win/ loss rules in adjudicatory process creates stress upon disputants due to fear of 'May not to win' the unpredictable litigation process. The win /win policy of conciliation and mediation process also preserves and sometimes enhance relationship.¹² This consequently, improves disputants comfort with the methods. Generally, the above discussed extra - qualities of ADR enables the latter methods to effectively settle some civil disputes than litigation method.

Thirdly, the above qualities, ADR when integrated into courts systems, it acquires another additional qualities which improves ADR's efficiency of disputes resolution. For instance, compared to private ADR; court annexed ADR methods provided by court as part and parcel of the same system. Such that under the control, guidance and supervision of court. This gives court annexed ADR smooth acceptance and co-operation of the court. Such that, court annexed ADR would ensure the felling that ADR is complimentary and not competitive with court system. It reduces the previously existing tension between ADR and court in Ethiopia.¹³ These naturally, improve efficiencies' of ADR mechanism in Ethiopia where positive role of courts is very crucial for the former.

Besides, public acceptance of Ethiopian court, which it acquired because of its integrity and impartiality, established over long period of time will pass to court annexed ADR. Such that, previous 'good will' of Ethiopian courts among public will moves to court

¹¹ This reduced litigation time in turn allows people to spend their time on different economic and social activities. This in the long runs contributes for overall economic and social development process.

¹² These maintained positive relationships after resolution of disputes have different economic and social benefits for disputants and general public. This is due to continued economic and social relationships among disputants

¹³ So long as the argument court annexed ADR reduces courts' case loads and it is appropriate method can justify the lawful introduction of court annexed ADR in Ethiopia; for stronger reasons the same arguments should justify the legal recognition for private ADR in Ethiopia. Since the same purposes can be achieved through private ADR. See for the detail supra chapter four of this research and its accompanying notes

annexed ADR for the latter services provided by the same court that to some extent established public faith upon its services.

5.2. The Roles of Effective Regulatory Framework on Court Annexed ADR

It seems necessary to design proper legal and institutional framework on court annexed ADR for efficient implementation of the latter. This is due to reasons, regulatory frameworks serve as platform via designing various directions, used for effective operations of court annexed ADR. Besides, regulatory framework creates public notice about the program. In addition, the enactment of regulatory proves government's level of commitments for this program. This in turn improves the recognitions of judges, lawyers and general public for this reform measure. Further, the legal framework creates uniform practice in relation to this program. It also makes predictable and clear all substantive and procedural issues in relation to court annexed ADR. Furthermore, regulatory frameworks also needed to control potential arbitrariness in relation to this mechanism.

If designing regulatory framework is mandatory for effective implementations of this program; the most basic questions are:

- What should regulatory framework look like?
- Who should regulate this program?
- How do we avoid over regulations?

First, the regulatory framework should be comprehensive enough to effectively address and regulate all basic issues in relation to court annexed ADR. Accordingly, among¹⁴ basic issues regulatory framework is expected to address - designing institutional rules for continuous awareness creation and continuous training for all relevant groups. These relevant organs are possibly general public, lawyers, judges, conciliators, mediator, arbitrators, and administrative organ of courts - like president of a court. In addition, designing effective rules on criteria to accept and approve qualified ADR practitioners. Besides, the regulation should address time bound within which each court annexed ADR

¹⁴ The other issues like ethical rules, criteria to accept and refer cases to court annexed ADR and mandatory versus voluntary nature of the program will be discussed in detail in the next subsections

proceeding should be completed. Further, designing institutional systems on how to persistently monitor and periodically evaluate court annexed ADR. Furthermore, the regulatory framework should have required qualities, i.e, each rule and procedures should be clear and predictable enough so as to prevent any kind of substantial confusion during practical applications of this law.

Secondly, organs of the government involved in regulations of court annexed ADR are basically legislative and judiciary.¹⁵ Legislative branch possibly participate in regulation of this reform measures mainly by enacting legal and institutional rules. In addition, the legislative organ may mandate courts the enactment of different court rules so as to fill issues left unregulated by the former. Further, institutional rules on court annexed ADR can list other duties and power of the court in relation to this program. Hence, the court participate in regulation of court annexed ADR via implementing those rules enacted by the legislative organ.¹⁶

There seems hostility between court and ADR in Ethiopia. This is due to the assumption, wrongly made, that establishments of ADR forum divest the courts' jurisdictions to deliver justice.¹⁷ This clearly expressed itself through over regulations of private ADR proceedings as it is laid down in different national laws. The latter over regulations further open rooms, for the court to frustrate the independent operations of private ADR proceedings under different occasions. Consequently, on the verge of the country's attempt to introduce court annexed ADR, it is logical to doubt independent operation ADR's which will be provided by the Ethiopian court. This is because, there are high opportunities for judiciary to compromise the independency's of ADR when it turn out to be an appendage of judiciary machine than in case of private ADR. However, independent operation of ADR must not be compromised so to reap those advantages of ADR, when it connected to the judicial machine. It should not be overly regulated to the

¹⁵ See, who regulate court Annexed ADR in USA legal systems, supra discussion under chapter three of this research .

¹⁶ However, the effective and successful implementation of institutional and legal frameworks requires an extraordinary, dedicated, and determined executions efforts of courts, lawyers, legal scholar, and other relevant public and private organs in the country.

¹⁷ Cf with hostility between court and ADR in Ethiopia. supra discussion under chapter four and accompanying notes.

extent it allows frustration of the very nature of ADR by the court. This because, the efficacy of ADR cannot be obtained whenever national law permit broader and excessive judicial interventions into the former mechanism. Therefore, fair balance should be kept between necessary regulations and independent and fair operation of ADR proceedings while designing regulatory frame work on court annexed ADR. To this end, the regulatory framework on court annexed ADR should not allow unreasonable and broader judicial intervention otherwise it will defeat the very purposes of this reform measure

Moreover, the regular courts must clearly understand the limits and extent of their role whenever their assistance is sought for either by the parties or court annexed ADR practitioners. Beside, the trial judges should have a favorable attitude to court annexed ADR proceeding disregarding the wrongly made attitude that establishments of such forum will divest them from their jurisdictions.¹⁸

5.2.1. Criteria to Refer Cases to Court Annexed ADR

All civil dispute coming to courts may not be effectively resolved through court annexed ADR. Hence, it is sound to design qualification criteria for cases to be admitted to court annexed ADR. The most common qualification criteria under other jurisdictions are monetary limits, types of cases and practical suitability. When we qualify disputes to court annexed ADR based on the amount of monetary claim involved in the controversies, we can use such sort of criteria, like for example, all petty civil cases which constitutes claim for monetary compensation up to 100,000 Ethiopian Birr. While we legally set the maximum amount of monetary claim for cases to be admitted to court annexed ADR, the fact that the country going to introduce the program for the first time should be put into consideration. At the beginning stage of this program it is good to attempt the program only for petty civil cases.

¹⁸ Cf with discussion on the hostility between court and ADR in Ethiopia. supra discussion under chapter four and accompanying notes

Types of cases like family, succession, and small commercial disputes are well suited for court annexed ADR. Beside, when we use practical suitability as qualification criterion to refer cases to court annexed ADR; it should be by giving reasonable legal discretions for courts under which the latter determines, on cases by case basis, cases practically suitable for court annexed ADR. In connection to this, even it seem logical if legal discretion is given for court so to excluded cases which are legally eligible yet practically not suitable to be settled through court annexed ADR. However, under such cases courts have required to provide legally convincing reasons to exclude legally eligible cases from court annexed ADR. Further, the above discretions' of the court should not apply for types of cases which the relevant law may clearly exclude from ambit of court annexed ADR. For instance, human right cases, criminal cases and any other types of cases the law provides.

Conversely, some cases obviously not suitable to be resolved through court annexed ADR should be excluded. For instance, complex civil cases, civil case involving enormous amount of monetary claims and other civil cases involving public interest should be legally excluded. These exclusions are firstly, court annexed ADR is a new reform measure which is mainly based on experiences of foreign jurisdictions.¹⁹ Secondly, illiteracy level of our societies may make cumbersome, the execution of the program on all types of cases. Thirdly, the country does not have enough numbers of expertises on ADR. Hence, it seems logical if Ethiopia carefully apply court annexed ADR only for petty and specified types of cases on the beginning stage, until the program can proves itself as effective dispute resolution mechanisms. To sum up, amount of monetary claim, types of cases and practical suitability can be used as criteria to admit cases to court annexed ADR in Ethiopia.

¹⁹ Because court annexed ADR is more of foreign made modern ADR which may not exactly fit to our cultural context?

5.2.2. Mandatory versus Voluntary Court Annexed ADR

The question whether court annexed ADR has to be mandatory or voluntary process is normally raised on cases legally eligible for court annexed ADR. In similar fashion, mandatory or voluntary process can be determined based on the amount of claims involved in controversies and type's cases. Accordingly, those eligible civil cases involving larger monetary claims better to be channeled to court annexed ADR when all parties agree. Since, amounts involved in disputes are material for parties. Whereas, all types of eligible cases which are not made mandatory court annexed ADR by elimination should only be referred to court annexed ADR when all parties consented to it. Moreover, whenever necessary courts have to actively encourage parties to settle their case through court annexed ADR.

All other practically suitable civil cases, which fall under courts' discretion to refer to court annexed ADR, should be referred only upon the consent of the parties. This because, among basic reasons that make private ADR effective mechanism in the private market is the method's voluntary nature. Hence, court annexed ADR should lose its voluntary natures only under very limited circumstance. Yet it seems logical that there should be exceptional scenarios when mandatory court annexed ADR used for specified types of cases.²⁰ These mandatory courts annexed ADR can also be applied on eligible civil disputes involving very smaller amount of claim. Moreover, types of disputes like family and succession cases can be referred to court annexed ADR without the consents of parties. The same holds, for stronger reasons, on eligible types of cases for which conducting litigation process end in nothing but unreasonable public and private cost.

However, if mandatory court annexed ADR seen within the context of CDRM; subjecting disputes to the former mechanism without the consent of the parties seems contradictory

²⁰ Though referring cases to court annexed ADR is mandatory still the parties have to be given the right request trial. Under some jurisdictions the right to request trial is permitted upon deposit of securities. The latter securities only returned in case fundamental difference in dispute resolution arrived through litigation process. For argument for and against mandatorily court annexed mediation, see in general Raymond J. Broderick, "*Yes to Mandatory Court Annexed ADR*," American Bar Association, Vol.18.No.4, (1992)

with the spirit of Article 34(5) of the FDRE Constitution. Yet still, it only referring cases to court annexed ADR that become mandatory. Consequently, parties still have the right not to agree with settlement proposals. Thus, in this case mandatory court annexed ADR seems not contradictory with FDRE constitution. With this regard, court annexed ADR, whether mandatory or volunteer, should be seen as one mechanism that the judiciary provides. Hence, once disputants instituted their case to court; to some extent it should be assumed that they gave their consent for any of the mechanisms, whether ADR or litigation process that the court provides.²¹

Whereas, on types cases the law order mandatory court annexed ADR, if parties raises sufficient causes to take their case to trial, they have to be allowed after court rule on adequacy of their reasons. For example, if parties already tried ADR outside the court, however, failed to settle their disputes for which there is no other reasons to mandatory refer court annexed ADR. Because, it is less probable, though not impossible, for such types cases to be resolved through court annexed ADR once failed through the means of private ADR.

5.2.3. Ethical Rules of Conduct for Court Annexed ADR

The need for enactment of ethical rules of conduct for court annexed ADR proceedings is primarily to promote confidence or faith in the integrity and fairness of the process. Further, it used to facilitate and encourage court annexed ADR proceedings. For instance rules of 'voluntary participation and self-determination'²² require arbitrators, or mediators to inform parties, at the outset, that any resolution of the dispute requires a voluntary agreement of the parties. In addition, they must respect the right of each participant to decide the extent of his or her participation in the process, including the right to withdraw at any time. The mediators or arbitrators of court annexed ADR must

²¹ See Article 37 of the FDRE Constitutions.

²² Compare with ethical rules of conduct for mediators for Californian court annexed mediation. Eric Van Ginko, "Court Annexed ADR in Los Angeles County," found on www.Bussiness ADR.com/EVG/publication/ Accessed on July/2014. See also Robert A. Baruch Bush, "Staying in Orbit, or Breaking Free: The Relationship of Mediation to Courts over Four Decades", *N. DAK. L. REV.*, Vol. 7, No. 705, (2008),pp.135-137 See again Jeff Kichaven, *When Mediators Cross the Line* found on <http://www.mediate.com//>

also refrain from coercing any party to make a decision or to continue to participate in the mediation.

Confidentiality rules further requires that; at the outset of the court annexed ADR process, the mediators or arbitrator must inform the disputants that the process confidential.²³ Accordingly, the mediators or arbitrator must not disclose information revealed in confidence during the proceeding unless authorized by the person revealing the information.

The rule for conflicts of interest basically deals, the matters that reasonably could raise question on mediators /arbitrators relationships and affiliations of a personal, professional, or financial nature” with the parties. Hence, the mediator or arbitrators must make reasonable efforts to keep informed about matters that reasonably could raise a question about his or her ability to conduct the proceeding impartially, and they have continuing obligation to disclose these matters to the parties. Consequently, they must decline to serve or withdraw if they cannot maintain impartiality toward all participants.

5.3. Potential challenges related with introductions and execution of Court Annexed ADR in Ethiopia

Court annexed ADR has a potential to gradually improve some problems of judicial dispute resolution mechanisms. These is proved to some extent under model jurisdictions we discussed under chapter three including pilot court annexed mediations before few federal first instance courts in Addis Ababa. However, as the case for other types of reform measure, it is logical to anticipate some challenges which potentially reduce the efficiencies of court annexed ADR in Ethiopia. Accordingly, these challenges could possibly be those related with regulatory framework: legal and institutional framework. Further, there are also challenges that could be faced during practical implementations of the above regulatory frame work on court annexed ADR.

²³ Ibid

Firstly, lack of comprehensive legal framework used to regulate all substantive, procedural and institutional issues related to court annexed ADR can affect effective operations and growth of this mechanism. For instance, legal frame work may overly narrow scopes of applications of this mechanism. Consequently, some relevant cases that can be effectively resolved through court annexed ADR would be excluded. This naturally reduces number of cases that can be settled through this mechanism. The other instance is the time limit for completion of court annexed ADR proceedings may be overlooked during legislative enactments. This open room for unreasonable extensions of time needed for disputes resolution.

Secondly, some limitations while designing institutional rules may also challenges effective executions of the program. This could include where the courts' power and duties on the program may not be properly regulated. Especially, when court's extent of intervention in the independent and fair operation of court annexed ADR failed to be clearly demarcated. Hence, such sort of legal gaps open rooms for court to abuse of its discretions to the extent it compromise the independent and volunteer operation of ADR. For example, court, by manipulating the gaps on the regulatory frame work, may unreasonably force disputants to choose court annexed ADR mechanism for their disputes.²⁴ Therefore, potential gaps or limitation while designing regulation deals with courts' institutional responsibilities would challenge the independent and effective operations of court annexed ADR in Ethiopian.

Lastly, some limitations possibly faced on implementations stage can challenge effective execution of the program. For instance, continuous awareness and enlightenment campaign for lawyers, judges, and general public may not be properly undertaken by institutions responsible for this task. Consequently, disputants due to lack of awareness, may not consciously choose this mechanism. Moreover, the writer informed that there is wrong perception, due to lack of awareness among some disputants in Ethiopia, that

²⁴ Whenever the specific law only intends to empower courts to persuade the parties but not to mandate them, to settle their disputes through court annexed ADR.

ADR is preferences of weak people and it is a not reliable mechanism too.²⁵ Consequently, for fear being perceived as weak persons and for lack of faith some people are not attracted to this mechanism. This eventually, reduces potential numbers of cases to be resolved through this method. Above all, due to lack of adequate awareness disputants decline to pay fully lawyer's fee, for mere reasons that their disputes are resolved within a short period of time. These in turn compel lawyers not to encourage disputants to resolve their dispute through court Annexed ADR.

Above all, lack of persistent and periodical evaluation and assessments on court annexed ADR potentially challenges successful implementation of this program. Furthermore, lack of adequate budget which, *inter alia*, reduces commitment and motivations of court annexed ADR practitioners is the other potential challenges. Lastly, lack of quality training, lack of expertise, internal co-operation, inefficient administrations and limitations on the required resource are the other potential challenges for effective implementation of the program. Therefore, the above discussed legal, institutional and implementation gaps can potentially challenges successful introduction and implementation of court annexed ADR in Ethiopia.

²⁵ Interview With Ato Weyinalem W /Senbet, Attorney, Former Court Annexed Mediator and Assistant Judges At Lideta Federal First Instance Court , On May 15 /2007, (G.C.), Addis Ababa

CHAPTER SIX

6. CONCLUSIONS AND RECOMMENDATIONS

6.1. Conclusions

This study was basically conducted to investigate whether or not court annexed ADR can serve as an effective reform measure to improve problems of delay, excessive cost, unfairness, unpredictability and inaccessibility of judicial dispute resolution process in Ethiopia. Accordingly, after interpreting, and comparatively and logically analyzing collected data the study arrived at the following conclusions:

The integration of ADR into main stream of the court systems can serves as a reform measure for the above problems. Firstly, existence of ADR in a court can be used by the court as additional and alternative tool for resolution specific types of disputes. The resolution of disputes by court annexed ADR shares suitcase apportioned for litigation processes. This impliedly shows that court annexed ADR can reduce backlog of cases in the judiciaries archives. The reduction of suitcases in the courts' archives, in turn, improves qualities of litigation process. This is because, once some portion of cases instituted to court settled through ADR, trial judges as result acquire additional time for the rest of suit cases. This improved amount of time per case in turn, reduce rush on cases and unreasonable adjournment due to huge number of files in the court's archive. This, in turn, reduces unfairness, delay and expenses that springs from rushes on cases and frequent adjournments. Hence, reduction of case load, through the help of ADR, enable trial judges to resolve other cases with improved speed, fairness and cost.

Secondly, court annexed ADR enables litigants to choose and access dispute resolution methods of their interest. Through this it improves inaccessibility's problem of judicial dispute resolution. Thirdly, court annexed ADR enables courts to provide appropriate

civil dispute resolution for certain specified cases. This is mainly due to ADR's precise, flexible process and convenient processes, and party's control, transparent and win/win policies. These qualities enable ADR to settle disputes within reasonable time, with least cost, fairly and conveniently than litigation method. This reform measures also to some extent, succeeded to resolve dispute appropriately than litigation method in USA, India, Nigeria and Addis Ababa. Consequent to this, for instance, some disputants who resolved their cases via the pilot court annexed mediation before some federal courts in Addis Ababa appreciated the processes.

Therefore, this study concluded that court annexed ADR is an effective reform measure to improve problems like delay of cases, higher cost of litigations, unfairness, unpredictability and inaccessibility of judicial dispute resolution in Ethiopia.

This study further concluded that it necessary to enact quality regulatory frame work on court annexed ADR for effectiveness of the latter. This is because, it is through regulatory framework that the government launches proper platform that used for uniform, independent, clear, fair and predictable operations of this reform measure. For instance, non-existence of clear regulatory framework for pilot court annexed mediation in Addis Ababa created substantial confusions on orderly and proper functioning of the mechanism. Beside, enactment of law on court annexed ADR is one means of creating public notice about the introduction of the reform measure in the country. The enactment of regulatory framework can serve as a means by which the government declares its full recognition and commitment to the program. This in turn improves trust of judges, lawyers and some disputants for ADR in general. In addition, formal introduction of court annexed ADR in Ethiopia would ensure the felling that ADR is complimentary and no more competitive mechanism with a judicial dispute resolution. Consequently, to legally introduce court annexed ADR reduces the previously existing tension between ADR and court in Ethiopia. This further contributes for successes of ADR in Ethiopia.

Further, effective operations of this program also found to be influenced by qualities' and comprehensiveness' of this regulatory frameworks. Particularly, successful operation of this reform measure among other requires proper legal enactment on issues like criteria to

admit cases to court annexed ADR, and promotion and protection of voluntary natures of the mechanism. Furthermore, strong regulation on the courts' extent of interventions in the program and required ethical conducts from ADR practitioners found to impacts the successes of the reform measures.

The final issue examined by this study is potential challenges related to introduction and executions of court annexed ADR in Ethiopia. Consequently, the first potential challenge is limitations on the law intended to regulate this reform measure. The First instance is incomprehensiveness of the regulatory frame work. This is when basic substantive or/and procedural issues related to court annexed ADR left unregulated. This potentially affect efficient settlements of disputes through this mechanism as it did in USA, India and Nigeria legal systems.

The other is when judiciary's institutional power and responsibility to intervene in the reform measure failed to be clearly demarcated by relevant regulation. Such legal lacuna allows broader and excessive judicial intervention in the program. This, in turn, frustrates independent and fair operation of court annexed ADR.

The other limitation that can potentially challenges effective implementations of the program is lack of adequate awareness from sides of disputants, lawyers, judges, and general public. As a result of this, some disputants do not relay and choose the mechanism. Further, some lawyers and judges potentially may not promote and assists the program. These can hold backed the reform measure from achieving its intended purposes.

Moreover, poor administrative system is found as other treat to successful implementation of this program in Ethiopia. Some instances of inefficient administrative systems are- lack of persistent and periodic evaluation, lack of proper and timely internal cooperation, lack of quality training and lack of adequate budgets required for suitable operations of court annexed ADR.

6.2. Recommendations

In addition to the discussions, comments, analysis and conclusions made in the body of this research, the researcher forwarded the following recommendations:

1. For it is found by this study that court annexed ADR improves some of the problems of judicial dispute resolution, the country should launch the program as one reform measure.
2. To effectively introduce this reform measures legislative organ should enact proper, quality and comprehensive legal framework. This is so to comprehensively and efficiently regulate all basic issues related with court annexed ADR.
3. The above regulatory framework on court annexed ADR's should be designed in line with the following pillar purposes:
 - Enhancing access to justice by providing alternative, additional and appropriate dispute resolution mechanism which supplement litigation method;
 - Minimizing disputants frustration on justice delivered by Ethiopian courts by providing proper legal framework that facilitate fair, economical, expedient and effective disputes settlement mechanism;
 - Promoting effective functioning of justice system; and
 - Entrenching settlement cultures which Enhances social and economic development in the Country.
4. The role and discretions of Ethiopian court in court annexed ADR proceedings should be clearly demarcated by regulatory framework designed by legislative organ.
5. The Ethiopian courts should have to launch effective leadership structures; including allocation of adequate budget required for building comprehensive centers and different facilities needed for effective operations of the program.

6. Ethiopian courts in co-operation with relevant public and private organ should launch and implement continuous and quality training program for judges, lawyers, potential practitioners of court annexed ADR and other relevant groups.
7. Ethiopian courts hand- in- hand with other relevant organs, like different public and private media broadcasting organizations, should launch and execute continuous awareness creation and raising program. These should be on importance, procedures, required ethical conduct and other basic issues of court annexed ADR
8. The Ethiopian courts should design and implement persistent monitoring and evaluation processes.
9. Finally lawyers, judges, academicians, academic institutions, media broad casting and other relevant private and public institutions should make joint, dedicated, determined and relentless efforts for successful implementation of court annexed ADR in Ethiopia.

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- ✓ Interview with Ato Tewdros W/ Mariam, Assistant Judges at Federal First Instance Court and Court Annexed Mediators at the Federal First Instance Court Menagesha Branch, On 13 May/2007, G.C, Addis Ababa
- ✓ Interviewed With Ato *Alelig* , Disputant who was Litigated Over Succession Case before Federal first instance Court Menagesh Branch 8 May, 2007(G.C), Addis Ababa
- ✓ Interviewed With Few Disputants, Litigated over Business Cases Before Lideta Branch, (8 May, 2007(G.C), Addis Ababa
- ✓ Interview With Ato Taye Birhanu, Who Conducted LLM Thesis On Court Annexed Mediation Conciliation for Some Civil Cases, September 28,2007 G.C Addis Ababa
- ✓ Interview with Ato Berasa Birahanu, Judge at Federal First Instance Court Lideta Branch, (On 17 May / 2007 G.C), Addis Ababa
- ✓ Interview with Ato Sintayeho Zeleke, Judge at Federal First Instance Court Lideta Branch, (On 17 May / 2007 G.C), Addis Ababa
- ✓ Interview with Ato Berane Meskel, President of Federal First Instance Court Lideta Branch (May 17/2007G.C), Addis Ababa
- ✓ Interview With Ato Weyinalem W /Senbet, Attorney, Former Court Annexed Mediator and Assistant Judges at Lideta Federal First Instance Court,(On May 15 /2007, G.C.), Addis Ababa
- ✓ Interview with W/o Selam, Assiatsant Judges and Court Annexed Mediators at Federal First Instance Court Lideta Branch On May 15 /2007, (G.C.), Addis Ababa

ANNEXES

ADDIS ABEBA UNIVERSITY SCHOOL OF LAW

LLM PROGRAM ON BUSINESS LAW STREAM

SEMI –STRUCTURED INTERVIEW GUIDE LINES FOR LLM THESIS ON:

**STATUS OF COURT ANNEXED ALTERNATIVE DISPUTE RESOLUTION (ADR) IN
ETHIOPIA**

STUDENT: SAMUEL EPHREM

ADVISOR: PROFESSOR TILAHUN TESHOME

SEMI -STRUCTURED INTERVIEW GUIDE LINES

INTERVIEWEE

Disputants

Court annexed ADR practitioners

Administrative staff of the court annexed ADR

Court officials

Other interested groups

1. Do you think that dispute resolution mechanisms in Ethiopia, especially the civil court litigation, are effectively and efficiently handling the existing civil disputes? Why or why not?
2. Does court annexed alternative dispute resolution mechanism so far initiated in Ethiopia? If yes, how and for purposes it was introduced?
3. Is there a policy or laws in place or under process for court annexed ADR in Ethiopia? If yes how do you evaluate them?
4. Is there an adequate awareness conducted about court annexed ADR in Ethiopia
5. Are the pilot court annexed mediation in Ethiopia is under continuous evaluation and assessment process? If yes how it is being undertaken?
6. How do you evaluate the progress, success and challenges, of this program?
7. Do you think Ethiopia currently need a comprehensive law on Court annexed ADR? Why or, why not?
8. What are your general comments and recommendations on using court annexed ADR as a reform measure to improve delay, unfairness, excessive cost and unpredictability of judicial dispute resolution in Ethiopia.

A DETAIL DESCRIPTION OF SOME OF THE ABOVE QUESTIONS

Dear professor herein under I attempt to split each of the above open- ended questions; so as to use them as a gap filling mechanism during the interview process. I.e. I thought to raise the under mentioned issues, whenever the interviewee would fail to touch them during their response to the above questions.

- 1.1. Do you think that civil court litigations, as a mode of dispute resolution mechanism, in Ethiopia are fair, economical, expedient and predictable mechanism? Why? Or why not?
- 1.2. Does Ethiopian judicial system able draw society's faith upon its service? Why or why not?
2. 1. When the program initiated for the first time?

- 2.2. Is there a dead line for the pilot project on court Annexed ADR in Ethiopia?
- 2.3. Does this reform program originally proposed by the country or borrowed from foreign jurisdictions?
- 2.3. What is the purpose of this program?
- 3.1. Do this laws or policy if any are clear and comprehensive enough to regulate all process of court annexed ADR?
- 4.1. Is there awareness about the existence of the program?
- 4.2. Is there awareness about the features of the program? Like awareness about criteria for cases to be admitted to court annexed ADR, how the autonomy of the parties are regulated or respected, service fee, etc
- 4.3. Is there continuous education campaign on the court Annexed ADR?
- 5.1 .What are the assessment and evaluation criteria?
- 5.2. Are the assessment mechanisms are participatory?
- 6.1. How do you evaluate the success of the program with the goals initially set?
- 6.2. Is there an adequate fund for the program? Why or why not?
- 7.1. How do see the role of legalizing a comprehensive court annexed ADR in Ethiopia in improving dispute resolution mechanisms?
- 7.2. What your recommendations are; on the future regulation of court Annexed ADR, on the following essential issues:
- Criteria for cases to be admitted to court annexed ADR,
- How the autonomy of the parties should be regulated,
- Service fee,
- Awareness raising and;

The budgetary aspect of court annexed ADR among other?

8. 1. What are your recommendations on whether to extend the period of the pilot program, or to stop it soon; either to extinct the program at all or so as to further formalize it across the country?