

# Assessing the Use of Mediation in Dispute Resolution in the Court System: A Case of the Brong Ahafo Region, Ghana

George Kafui Agbozo\*    Vida Korang  
Catholic University College of Ghana, (Marian Conflict Resolution Centre)  
Post Office Box 363, Fiapre - Sunyani, Ghana

## Abstract

This paper assessed the benefits that disputants, legal practitioners, judicial service personnel and legal aids gain from using mediation in resolving disputes. A sample of 60 disputants, 48 legal practitioners, 81 judicial service personnel and 10 legal aids officials were sampled for the study in Brong Ahafo Region of Ghana. Both primary and secondary data sources were used in gathering data. It was found that mediation is very useful for both disputants and legal practitioners as it was less expensive, very time efficient, and improved upon disputants' relationship even after the process. The outcome of the process was also found to be very confidential and non-adversarial unlike that of litigation proceedings. On the contrary, the paper revealed some setbacks: there were fewer offices for the hearing sessions which often delayed the mediation process. Also, less professional mediators were available and not given enough incentives to motivate them help the disputants. Finally, the findings show that although disputants may initially feel hesitant and uncomfortable about alternative dispute resolution process, they later often found it very useful. Hence, they recommended it to court users, friends and relatives.

**Keywords:** dispute resolution, litigation, mediation, disputants, Ghana, conflict

## 1. Introduction

Dispute is inevitable in life. The common legal response to dispute is the lawsuit. Nolan-Haley (2001) noted that most lawyers who graduated from law school before the mid seventies would probably choose this option intuitively. She further noted that this option was chosen mainly because in majority of law school classroom, litigation process is assumed to be appropriate means of resolving clients' legal problems. It was therefore not surprising that much of the public and the lawyers see litigation as the best way to resolve disputes. Alternative Dispute Resolution(ADR) is an umbrella term that refers generally to alternatives to court adjudication of disputes. It is also known as appropriate disputes resolution or Amicable Disputes Resolution in some international cycle (Nolan-Haley,2001). These alternatives include Negotiations, Arbitration, Mediation, mini-trial and summary jury trial. This paper presents ADR specifically mediation as a dispute resolution method as practiced in the court system in the Brong Ahafo Region of Ghana.

### 1.2 Problem Statement

The most common and popular form of dispute resolution is the lawsuit or litigation. Resolution of disputes using ADR method appears to be a recent phenomenon especially in Ghanaian courts. Many users of the court seem not to have knowledge of the alternative methods to resolving disputes. There are also limited practitioners of these ADR methods in resolving disputes in our courts and communities. This makes a number of disputants see the court as the first option in resolution of their disputes. It is for this reason that the Catholic University College of Ghana, the Catholic Diocese of Sunyani and Giving to Ghana foundation of the USA collaborates to undertake 40hour training in mediation practice. So far over 300 people from Brong Ahafo Region and other parts of the country have been trained in the use of mediation and arbitration in resolution of disputes from 2011 to date. The Catholic University has also makes the study of ADR part of its enrichment studies which makes it mandatory for all students in the university to do ADR during their studies in the university. The Marian Conflict Resolution Centre in furtherance to this objective was established in 2011 to handle conflict prevention, management and resolution of disputes using ADR methods. The trained mediators of the centre have been mediating cases in various courts in the country. This survey assesses the use of mediation as an ADR method in resolving dispute in the Brong Ahafo Region of Ghana.

### 1.3 Objectives of the Study

The main objective of the survey was to assess the use of mediation in resolving conflicts in the Brong Ahafo region.

The specific objectives of the survey therefore included the following:

1. To determine the various type of cases mediated in the region
2. To determine the benefits in using mediation in resolving conflicts from the perspective of the disputants and legal practitioners.
3. To present the challenges in the use of mediation in resolution of disputes.

4. To present reasons for which legal practitioners and users of ADR will recommend the use of mediation to others.

#### *1.4 Research Questions*

Based on the above objectives, the paper sought to answer the following questions:

1. What are the types of cases mediated in the Brong Ahafo region?
2. What are the benefits of using ADR (mediation) by disputants and legal practitioners in resolving conflict?
3. Why do legal practitioners and disputants recommend mediation to other court users?
4. What are the distinctions between ADR and litigation?
5. What are the challenges associated with the use of mediation in the resolution of dispute in the Brong Ahafo Region.

#### *1.5 Motivation of the Study*

Since the introduction of ADR in Ghana, there have been numerous benefits for both disputants and legal practitioners who recommend mediation to their clients. Hence the idea behind this study is to weigh the benefits of using ADR and whether it is really true that both disputants and legal practitioners recommend mediation to other clients. This paper will also help other African countries who have been introduced or about to be introduced to ADR know the essence of this alternative means of resolving disputes. Again, the study will serve as a reference for other academic research in the future.

The rest of the paper is organized as follows: the next section reviews basic literature in the subject matter of ADR. The approach used in carrying out the survey is presented in section three. Section four captures the results and analysis of the findings, the final section outlines the conclusions and recommendations of the survey.

## **2. Literature Review**

This section explains mediation as a dispute resolution method, its advantages and disadvantages and makes efforts to distinguish it from litigation. These are done by reviewing the ideas and thoughts on the subject by various writers.

### *2.1 Overview of Alternative Dispute Resolution*

ADR is a term generally used to refer 'to informal dispute resolution processes in which the parties meet with a professional third party known as the Mediator or Arbitrator who helps them resolve their dispute in a way that is less formal and often more consensual than is done in the courts' (Goldberg et al, 2012).

Alternative Dispute Resolution (ADR) has been in existence for the past five (5) decades and more. It was developed in the United States of America after the political conflicts of the 1960s (Goldberg, et al, 2012). This according to Riskin (2005) brought a dramatic shift in dispute resolution, away from court trial and towards alternative method of resolving dispute. The ADR movement which started in America with its members mainly non-lawyers created a variety of dispute resolution vehicles in which lawyers played no significant role. The legal community however became active later on taking up leadership roles in the movement (Riskin, 2005) Riskin (2005), gave five motives that spark off the interest in ADR to traditional litigation. These are as follows

1. Saving time and money and reducing the overloads in the judicial system
2. Having better processes – more open, flexible and responsive to the unique needs of the participants
3. Achieving results or outcomes that serve the real needs of the participants or society
4. Enhancing community involvement in the dispute resolution process and
5. Broadening access to justice.

### *2.2 ADR in Ghana*

In Ghana, the practice of ADR has been in existence since the pre-colonial days. These practices have remained embedded in various traditional norms and values of Ghanaian societies and communities (Adjabeng, 2007). He further presented that these methods of traditional disputes resolution which were entrenched in the social fabric of our ancestors enabled the Colonial Courts, established by the colonial administrators at the time to recognize, validate and enforce these traditional settlement outcomes in the courts. The settlement was through Chiefs, Elders, Heads of Families and Clans in each community (Adjabeng, 2007).

Adjabeng (2007) again observed that the extended family system practice in Ghana continues to suffer a gradual break down due to urbanization and rural-urban migration within the Country. Most individuals and families have therefore generally relied on the Court trial process of dispute resolution (Litigation). However he noted that, litigation is fast becoming unpopular due to a general negative perception of the public regarding the judicial processes in the country. Litigation has also been slow, expensive and cumbersome. The ADR

mechanisms can therefore be a welcoming and appropriate substitute to the traditional and Extended Family methods of resolving disputes in Ghana. ADR mechanisms came into formal use with the promulgation of the ADR Act 2010 (Act 798) and are fast gaining popularity as a preferred method of dispute resolution. Parties who have gone through some ADR processes like Mediation acknowledge their satisfaction and trust in the process. Some ADR mechanisms commonly used by stakeholders in the Country are Negotiations in its various forms, Mediation and Arbitration.

### 2.3 Mediation as ADR Method

The most commonly used ADR processes are mediation and arbitration with other forms like negotiation and settlement conference, neutral evaluation. The main objective of this study is to assess the use of mediation in resolving dispute in the Brong Ahafo region of Ghana. This section therefore presents mediation as the primary method of dispute resolution.

Mediation is where an impartial person often called ‘Mediator’ who helps the disputants to try to reach a neutral acceptable resolution of the dispute. The mediator’s objectives are typically to help the parties search for a mutually acceptable solution to their conflict and to counter tendencies toward competitive win-lose strategies and objectives (Goldberg et al, 2012). On the contrary, the mediator does not decide the dispute outcome but helps the parties communicate so they can try to settle the dispute amicably between themselves. Thus for mediation, the control of the outcome lies in the hands of the disputants. Mediators are most at times single individual but they can be more than one if the disputants do not see it as intimidating.

Moore (1996), defined mediation as ‘the interaction in a standard negotiation or conflict of an acceptable third party who has limited or no authoritative decision-making process but who assists the involved parties in voluntarily reaching a mutually acceptable settlement of issues in dispute.’ He further explained from this definition that a mediator may play a number of different roles and enter conflicts at a variety of different levels of development or intensity.

Mediators as stated by Moore (1996) are often noted to use two broad classes of tactics thus general tactics and contingent tactics. With the general tactics, there are commonly known techniques used by the facilitator in facilitating almost all the disputes that come their way. These tactics includes; tactics for entering the disputes, analysing the conflicts, planning the mediation, identifying parties interests, facilitating parties negotiations and generating of proposals, drafting agreements and developing implementation plan. A key mediator activity is to identify the causes of the conflict and to build a hypothesis as to how the conflict would be resolved. Contingent tactics on the other hand are those used to handle the special problems which arises at the cause of negotiation thus the tactics used for resolving unforeseen misunderstanding between the disputants. Some of these impromptu situations that arise are value clashes, power imbalance, destructive patterns of interactions, communication problems, strong emotions, misinformation and differing analyses.

Moore (1996) has come up with some important highlights on mediation that needs to be noted:

1. The mediator controls the process but the disputants themselves control the content and outcome of the decision-making process in resolving the dispute.
2. The process is confidential and does not go public which most at times benefit the family disputes.
3. The mediator must be neutral and impartial.
4. The agreement reached by the disputants is not binding in the sense of being enforceable in court of law unless the parties choose to contractually bind their agreement.
5. Entering into the process is voluntary for all the parties in dispute.
6. Any dissatisfaction of either or both disputants would lead to the termination of the progress of the mediation.

### 2.4 Benefits of Mediation over Litigation

Mediation in particular can be flexible, speedy and cost effective way to resolve conflicts. It is a confidential process that enables both parties to explain and then discuss what their needs and concerns are to each other in the presence of the independent third party in order to attain a mutually acceptable, agreeable stage.

The parties concerned have greater control and responsibility in resolving the conflict unlike that of the litigation process where everything is left in the hands of the judge or jury. While litigation can be extremely stressful for the disputants, mediation appears to be a stress free model particularly in critical situations that involve children.

There are various reasons as to why the use of ADR is more beneficial than litigation. Some of which are elaborated below.

- a. *Faster results and more flexible*: a dispute often can be resolved or settled much faster with mediation (ADR) in a matter of a day or two or at most a week while with lawsuit it can take several years before settling. With ADR (mediation), even if litigation is ongoing, it can always be switched to mediation at any stage of the process only when the disputants are ready and willing to use ADR. This makes ADR

- more flexible and the outcome is always faster than litigation.
- b. *Very Cost Effective*: using a mediator in resolving disputes saves a lot of money that could have been spent on attorneys' fees, court costs, expert fees and a whole lot of other litigation expenses.
  - c. *Preserve Relationships*: ADR can be less adversarial and hostile way to resolve disputes. For instance, a well-equipped mediator will always dim it high to help the disputants communicate effectively on their needs and assist them rather than letting them shout and rain insults on each other which in the end will not preserve their relationship. Preserving relationship after mediation is also a major goal in any ADR process other than the lawsuit proceedings. This is more important in family or business disputes where the relationship among parties are very vital.
  - d. *Confidential*: since ADR (mediation) is more private and its issues are not publicly known, it helps disputants to trust the mediation process more than litigation when it comes to family disputes. This allows the parties to focus on the merits of the disputes without the concern of the public and may be of special importance where commercial reputations and trade secrets are at stake.
  - e. *Increase Satisfaction*: in the mediation process the parties are always on the win-win solution unlike the trial which is win-lose solution. Since the parties know that they will both win, they make sure that the said goal is being achieved at the end of the mediation process. In that the dispute is being resolved peacefully among them and they are highly satisfied with the outcome of the decision made.
  - f. *Neutrality*: A neutral professional mediator usually presides over an ADR proceedings. The mediator is typically a specialist in ADR with no interest in the outcome of the dispute: who both parties choose to referee the negotiations. The disputants are free to select a mediator of their own choice with an experienced knowledge in the area of law in question rather than leave the decision to the Judge or Jury who would rule based on personal bias.
  - g. *Improve Attorney-client Relationship*: Attorneys may also benefit from the use of mediation (ADR) in that disputants may see them as problem-solvers instead of combatants. Quick, cost-effective and satisfying resolutions are likely to produce happier clients and thus generates a lot of client since their present clients will refer the attorney to friends and business partners (Moore, 1996: Kressel, 1997).

### 2.5 Distinction between ADR and Litigation

One may be faced with a dispute that needs to be resolved or settled and you must decide first how to reach a solution either through the court adjudication (litigation) or ADR. To effectively make this decision, one needs to weigh both models thus the Litigation proceedings and the Alternative Dispute Resolution process.

Ketchen G. Edward (2009). Litigation is a lawsuit in which its decisions are made in court before the judge or jury. However, litigation can be intimidating and risky for the litigants. In addition, because court proceedings are adversarial, a battle between attorneys in which the truth of the case is not always the end result but how attorneys are able to defend and convinced the judge or jury depend on how excellent they are. Though, with the lawsuit one can obtain money: put a stop to certain activities and have statutes and documents interpreted, the outcome however is that of win-lose situation.

In addition, litigation is very expensive sometimes prohibitively preventing others from taking their cases to court. In situation where one can afford litigation, the person must face the crucial court dockets and be willing to wait as the lengthy process begins which in the long run will keep disputants boiling and relationships too end apart.

Moreover, certain issues must be translated to legal issues but in some disputes which are very real usually are not able to be translated to legal case and the decision are being made by the court. Litigation ends up with a decision which is binding, enforceable and appealable. It is also public and has more safeguards than the ADR process. Again, decisions are more precedent and usually very predictable unlike the ADR process which is not predictable.

The major distinctions between ADR mediation and litigation can be summarised in the table below which is a replica of Ketchen (2009).

### 3. Methodology

This section discusses the research procedures that were followed in order to address the main objective of assessing the use of mediation in resolving disputes in the court system in Brong Ahafo Region of Ghana.

#### 3.1. Research Design

This study design took the form of a descriptive (survey) research. Descriptive research is the exploration of the existing certain phenomena or to specify the nature of a given phenomenon (Osuala, 2007). In the case of this study, our objective is the practice of mediation in the court system in Brong Ahafo Region. Descriptive research is mainly done when a researcher wants to gain a better understanding of a topic to provide an accurate portrayal of characteristics of a particular individual, situation, or group. It is a means of discovering new meaning,

describing what exists, determining the frequency with which something occurs, and categorizing information. Descriptive research is also used to describe characteristics of a population or phenomenon being studied. It does not answer questions about how/when/why the characteristics occurred. Rather it addresses the "what" question (What are the characteristics of the population or situation being studied?) The description research is used for frequencies, averages and other statistical calculations (Shields and Rangarian, 2013). Although this research is highly accurate, it does not gather the causes behind a situation.

There are three main types of descriptive methods: observational methods, case-study methods and survey methods (Jackson, 2009). Often the best approach, prior to writing descriptive research, is to conduct a survey investigation (Shields and Rangarian, 2013). Unlike qualitative research, descriptive research may be more analytic. It often focuses on a particular variable or factor. In addition, the data collection procedures used in descriptive research may be very explicit. On the other hand, because of the data collection and analysis procedures (such as surveys) it may employ, descriptive research can also investigate large groups of subjects. Often these are pre-existing classes. In these cases, the analytical procedures tend to produce results that show "average" behaviour for the group (Shuttleworth, Jul 5, 2008)

### *3.2 Research Sample*

The main aim was to purposely conduct the study in all court connected mediation centers in the Brong Ahafo Region. For accuracy and statistical representation, we distributed as many questionnaires as possible in all the centers in the region. However, we had to work with what was eventually completed and returned. In all we received sixty (60) completed questionnaires from disputants (court users) and forty-eight (48) from legal practitioners or lawyer. Eighty one (81) was received judicial service staff (made up of judges, magistrates, registrars, court clerks etc.) and ten (10) from legal aid staffs.

### *3.3 Data Collection*

In line with a descriptive research, a survey method was used for the purpose of data collection. A survey is a data collection tool used to gather information about individuals. A survey may focus on factual information about individuals, or it might aim to collect the opinions of the survey takers.

In survey research, the researcher selects a sample of respondents from a population and administers a standardized questionnaire to them. The questionnaire, or survey, can be a written document that is completed by the person being surveyed. For this study, two different sets of questionnaires were set for the two target group thus disputants being in target group one and legal practitioners; judicial service and legal aid also fall under the target group two.

After participants answer the questions, researchers describe the responses given. The essence of survey method can be explained as "questioning individuals on a topic or topics and then describing their responses" (Jackson, 2011).

Also, some of the data collected in this study was done using the secondary source data such as published articles, online articles and published books. Again some information were adapted from both court assisted mediation centres in the region.

### *3.4 Data Analysis*

In the analysis of data, we used both quantitative and qualitative method. While the quantitative methods require the use of tables and charts to determine the frequencies, averages, mean etc. of the data collected, qualitative method on the otherhand was used to interpret and comment on some of the responses that were received from the respondents.

## **4. Results and Discussion**

This section concentrates on the qualitative analysis of the assessment of the use of mediation in dispute resolution in the court system of Brong Ahafo Region of Ghana. The assessment is done using the two target groups that is the disputants on one hand and then the legal practitioners such as the judicial service staff, judges, lawyer and legal aid staff, on the other hand.

### *4.1 Evaluation of the use of Mediation from the perspective of the disputants*

From the data collected it was realized that majority of disputants were male thus constituting 73% out of a total of 60 disputants with the remaining representing female (27%).

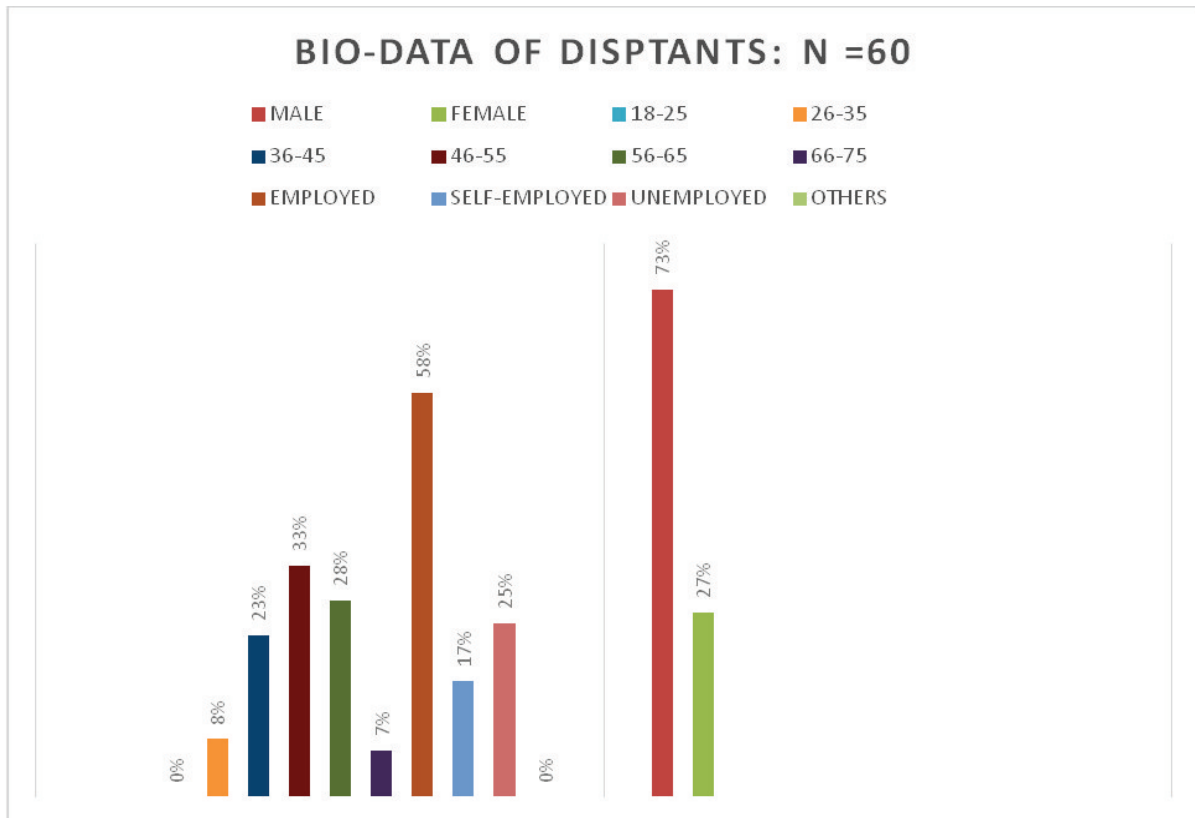


Figure 1: Bio-Data of Disputants

Again, majority of disputants were between the ages of 46 and 55 and the least being between 18 and 25. This shows that in the Brong Ahafo Region disputes referred mediation are normally for the elderly with a null percent representing the youth. Moreover, 58% were employed in various public and private institutions, 17% self-employed and the remaining unemployed: these are shown in Figure 1 below.

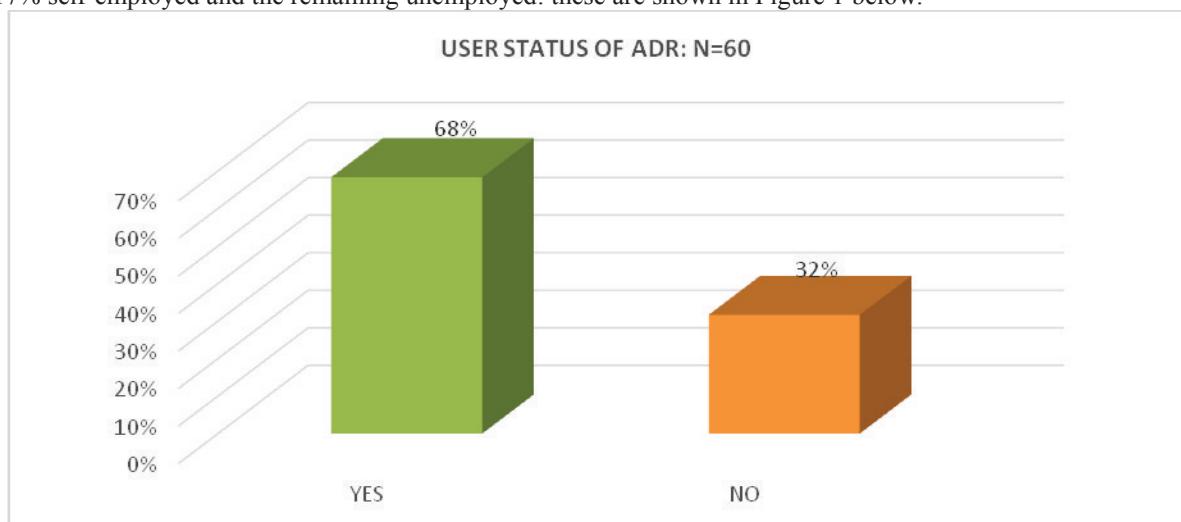


Figure 2: User Status of ADR

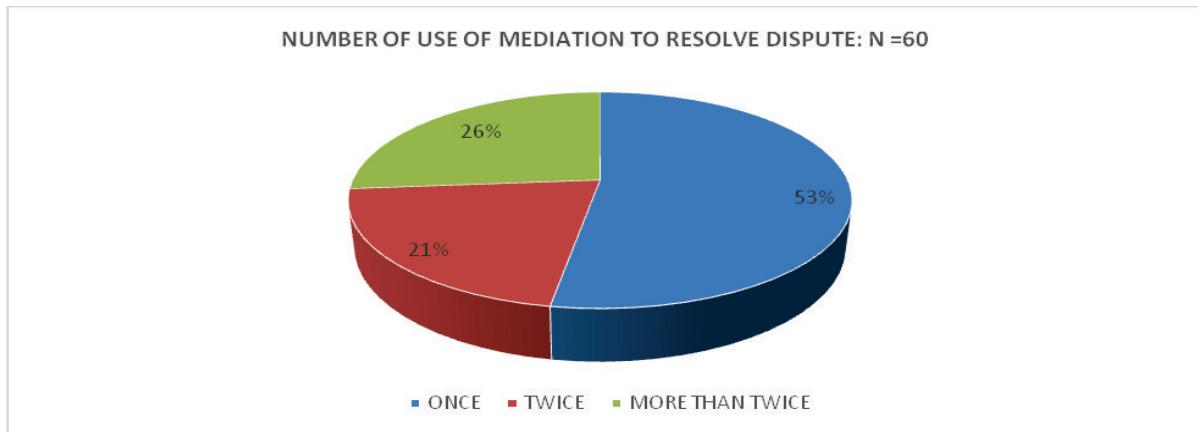


Figure 3: Number of Use of Mediation to Resolve Dispute

Figures 2 and 3 show the disputants' ADR user status and number of disputes that has been resolved for them. While 68% indicated ever using ADR to resolve disputes, 32% of the respondents had never done such a thing. 53% said they have used it only once; 26% more than twice and 21% representing only twice.

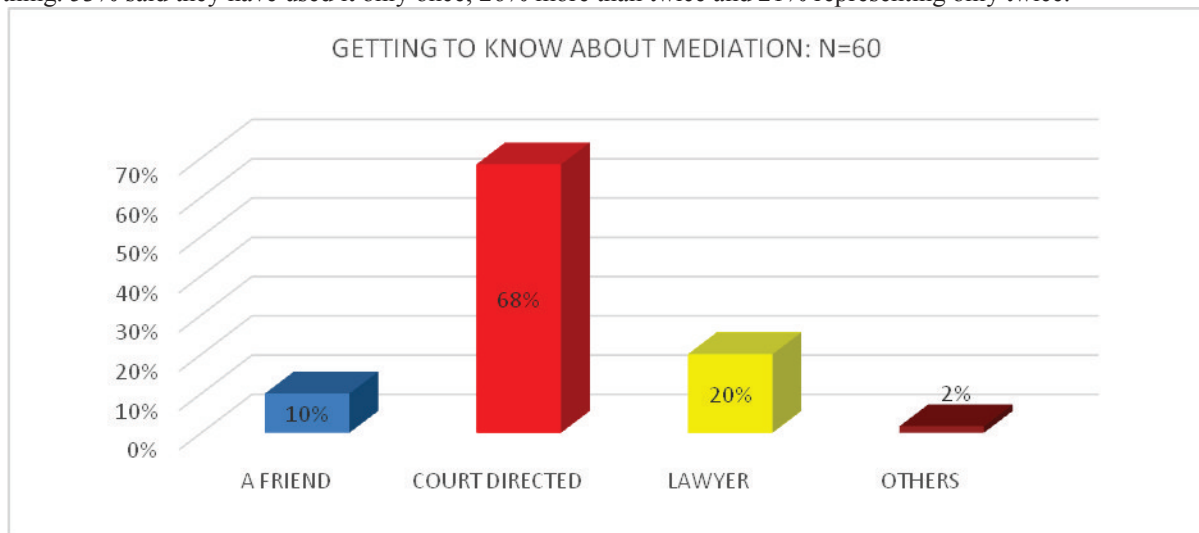


Figure 4: Knowledge of Mediation

In most instances, 68% of the time, the disputants get to know about ADR at the point where the court refers them to send their case for mediation. The remaining 32% of the respondents got to know of ADR from their friends, lawyers and others: this is illustrated in Figure 4.

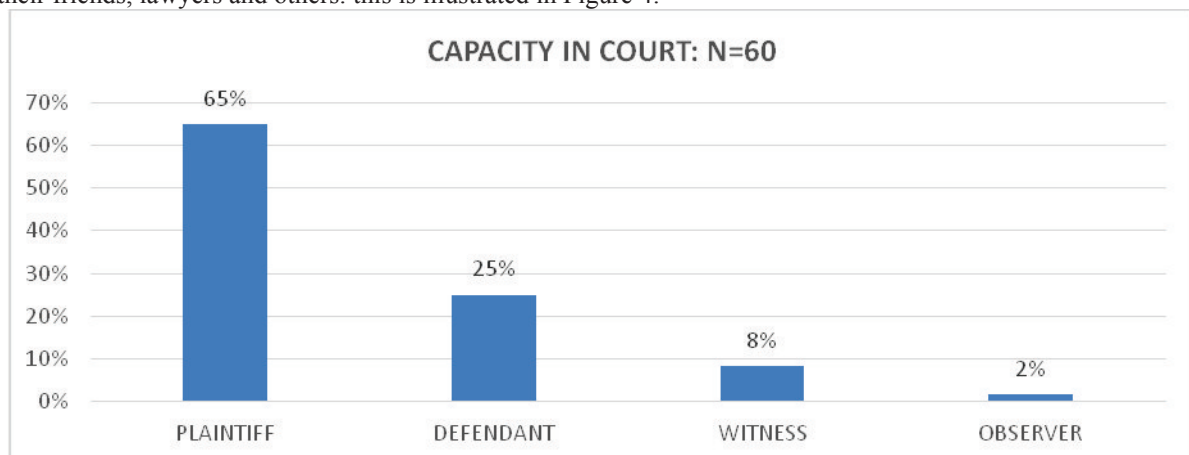


Figure 5: Capacity in Court

With court being the usual way of resolving disputes; it was realised that disputants have different reasons for being in court: 65% of the disputants were the plaintiff, 25% being the defendant and the least being witness. This is represented in Figure 5.

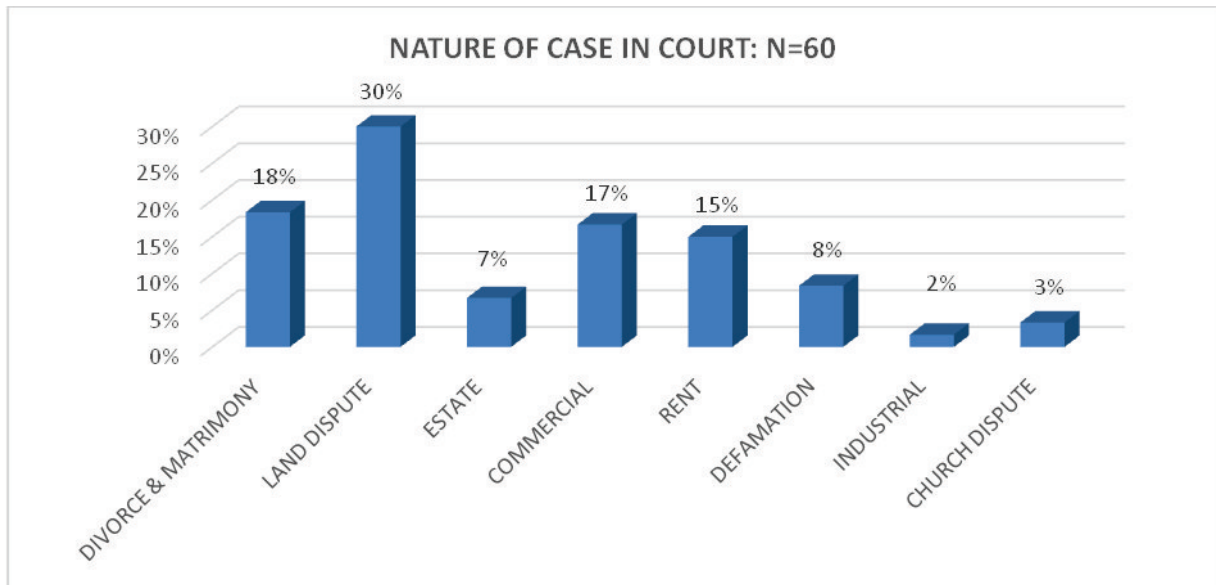


Figure 6: Nature of Case in Court

Figure 6 shows the nature of cases that disputants have filed in court: which 30% being the majority were land disputes, 18% were divorce and matrimony disputes with the rest being estate, commercial, rent, defamation, industrial and church disputes.

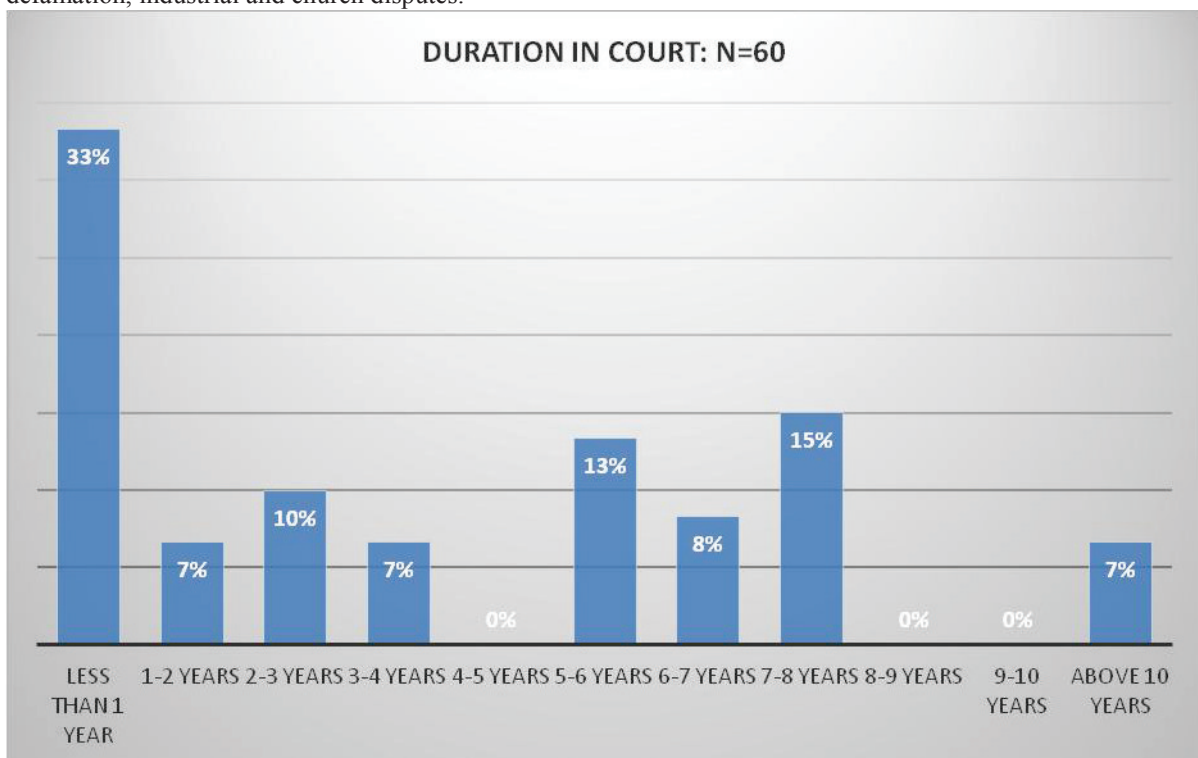


Figure 7: Duration of Case in Court

It was realized as part of the study that 33% of cases of the respondents have been in court for less than a year and no cases have been there at the time of our survey for between the 4 to 5 years and 8 to 10 years. In other instances, 24% of the respondents have their cases in court for between 1 to 4 years, 36% have had it for between 5 to 7 years and 7% for above 10 years.



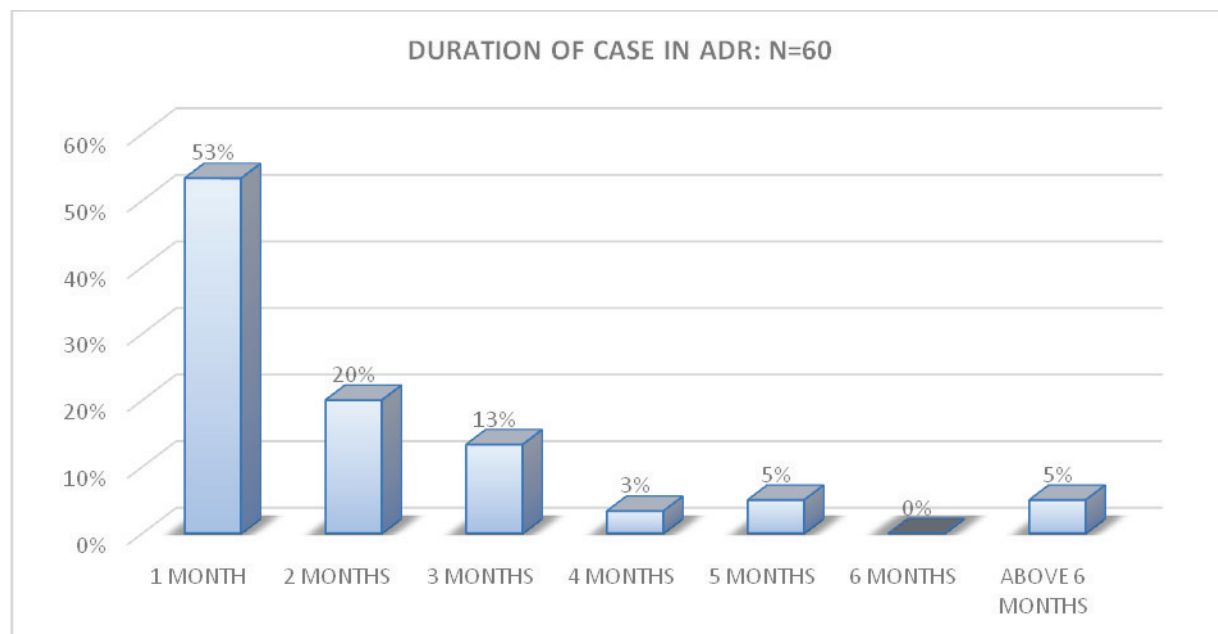


Figure 8: Duration of Case in ADR

Figure 8 above illustrates the duration of cases in ADR; which 53% of the disputants responded that their case have been there for a month now and no cases have been there for a year at the time of our survey. In comparing Figures 7 and 8, it can be seen that ADR cases are less time consuming than the court cases; while majority (53%) of the cases referred to ADR have been there for less than a month before they get resolved, majority those in the courts (67%) are above a year. This goes to confirm literature which lauds ADR for dealing expeditiously with cases due to the flexibility inherent in the process/procedure and practice.

The respondents commented on the following factors as benefits of ADR: time spent, cost involved, venue, neutrality of mediators, confidentiality of the process, flexibility, outcome of the case and relationship with the other party.

With the time spent with the ADR process, majority responded that their cases were dealt with immediately: they again said that they did not incur any cost with the mediation process (since the centers dealing with the cases are court connected centers and do not charge extra fees) and that the venue for the process was very comfortable: the mediators are very neutral in mediating their process for them; they were not intimidating or authoritative in the process and this makes the process very confidential, very flexible with an agreeable and acceptable outcome; finally they were able to maintain their relationship with the opposing party. This analysis is represented in Figure 9 below. These observations from the respondents falls in line with what most authors on ADR have been able to establish as the benefits associated with the use of ADR in conflict resolution.

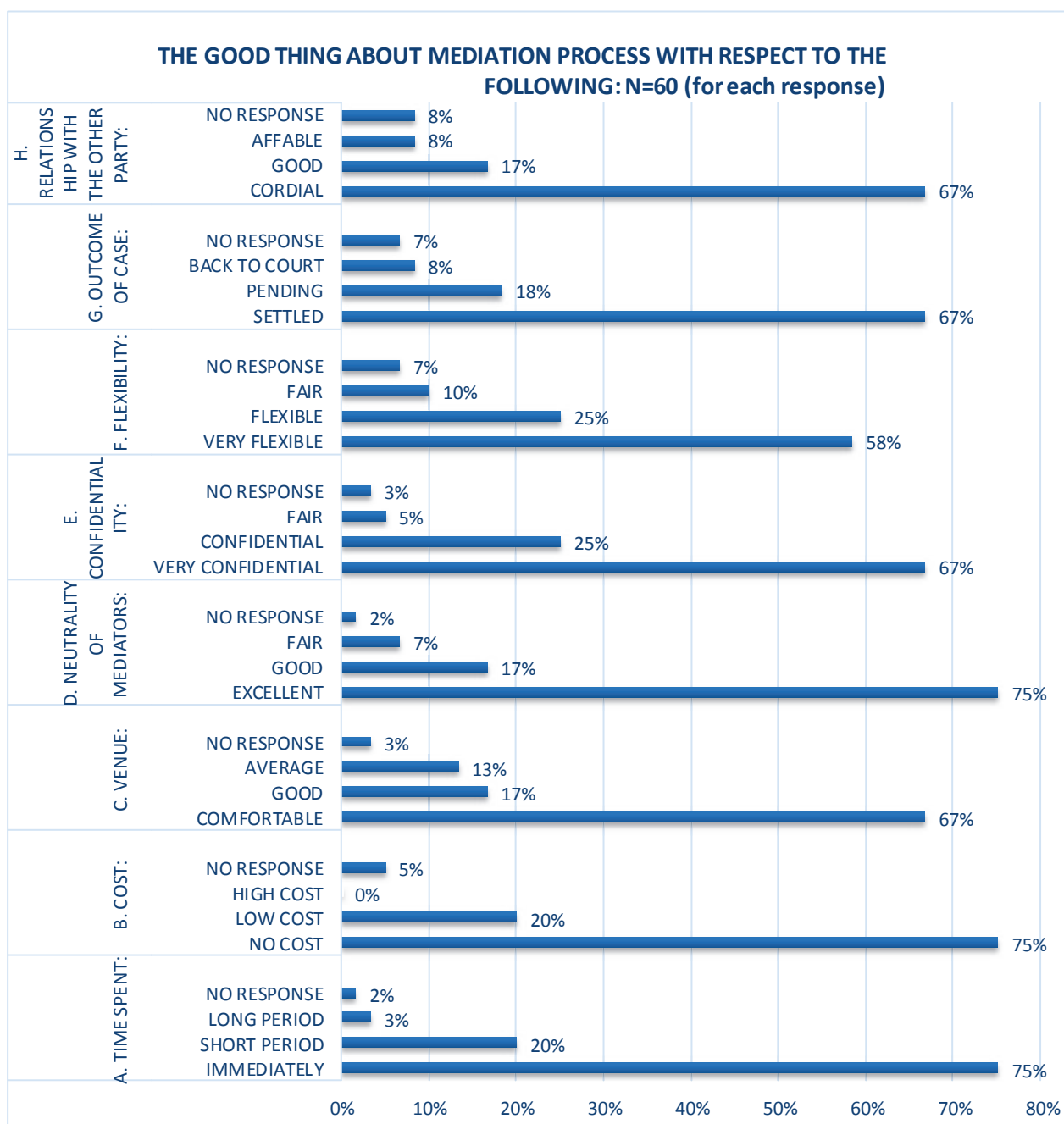


Figure 9: Benefits of Using ADR (Mediation) Process

The disputants' general assessment of the mediation process revealed the following:

- Mediators are patient
- Speedily resolve problems
- Good sense of humour and neutrality on the part of the mediator
- Free expression by parties with no intimidation from mediators
- Show of good understanding on the part of mediators
- Fair and intelligent mediation process
- Faster, cheaper and perfect outcome of the process

This assessment outcome from the respondents is not a departure from what one should expect in a normal mediation process/procedure. It is worth noting that these court connected mediators are operating by the rule and conducting mediation sessions in line with best practice.

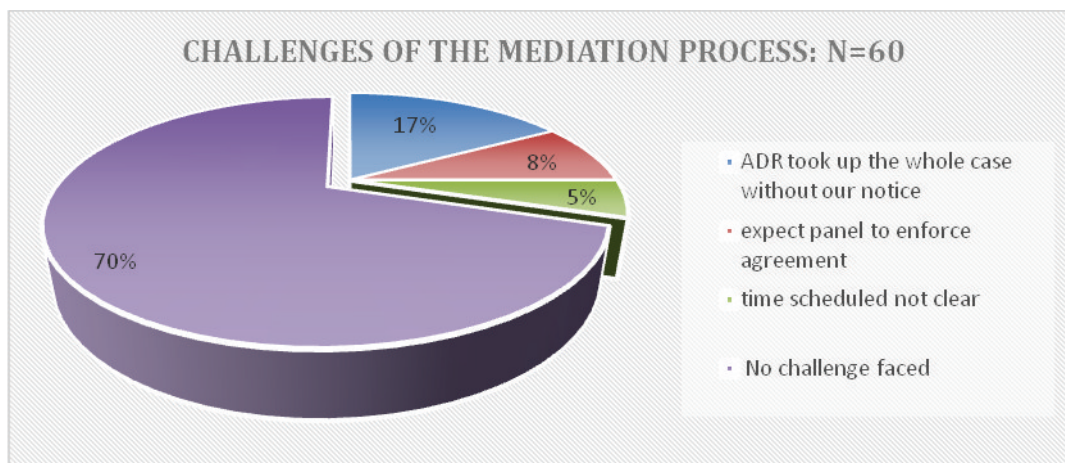


Figure 10: Challenges of Mediation Process

Although a very high proportion (70%) of the respondents did indicate that they do not face any challenges with the use of ADR, others came up with issues of concern as shown in Figure 10. 17% disputants brought to our notice that their cases were referred to ADR with very little input coming from them, while 5% expect the panel (of mediators) to enforce mediation agreement.

The challenges, though minimal in nature, points to the fact that some of the respondents who had their cases referred to ADR, do not understand the process and the conditions under which mediation operates. And as such, some of their expectations fall outside the mandate of the mediators.

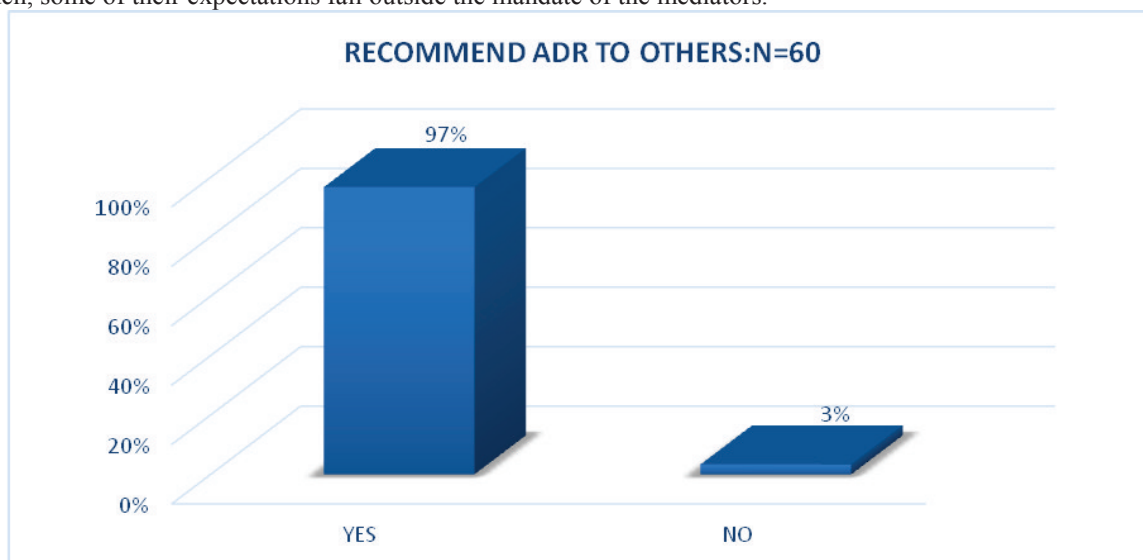


Figure 11: Recommendation of ADR to others

It was noted that 97% of disputants indicated that they will recommend the mediation process to their friends and relative. Earlier figures showed that a lot of the respondents were not well informed about ADR and were also using it for the first time. However, having gone through the process, almost all the respondents have embraced it and are ready to recommend it to others. This shows how beneficial the ADR process has been to disputants in the Brong Ahafo Region. This is illustrated in Figure 11.

The reasons given by the respondents for recommending ADR to others are stated as follows: :

- Effective use of dialogue in resolving problem
- Good resolution at limited cost
- Ability to express oneself freely
- Cheap, fast and peaceful way to resolve conflict

Finally, the respondents made some recommendations which in their opinion will help improve the ADR process to make it more beneficial to them so it becomes a preferred choice to court trial. These recommendations are listed below:

- ❖ Mediators should continue to work hard and be neutral
- ❖ The CCADR Centers should increase their office and employees in order to minimise long waiting
- ❖ The CCADR Centers should employ full time mediator who would be available throughout the week to handle cases.

- ❖ For more effective use of the ADR process, the number of cases handled per day should be reduced in order for the mediators to have more time for the disputants.

These recommendations above establish the fact that there are very few mediators working with the courts in the Brong Ahafo Region. Our checks has found out that the courts are unable to attract the mediators because of very poor remuneration for their services. Again, there are very limited training opportunities for mediators. The cost of training mediators in Ghana is also quiet expensive. These factors have contributed to the pressure on the CCADR Centers and the relative delays that are encountered by the parties.

#### 4.2 Evaluation of the use of Mediation from the Perspective of Legal Practitioners, Judicial Service and Legal Aid Staffs

For this target group, it was noted that 58% were from the judicial service; 35% as legal practitioners or lawyers and 7% are staff from the Legal Aid. Among these are lawyers, mediators, ADR assistants, registrar, court clerks, judges and magistrate.

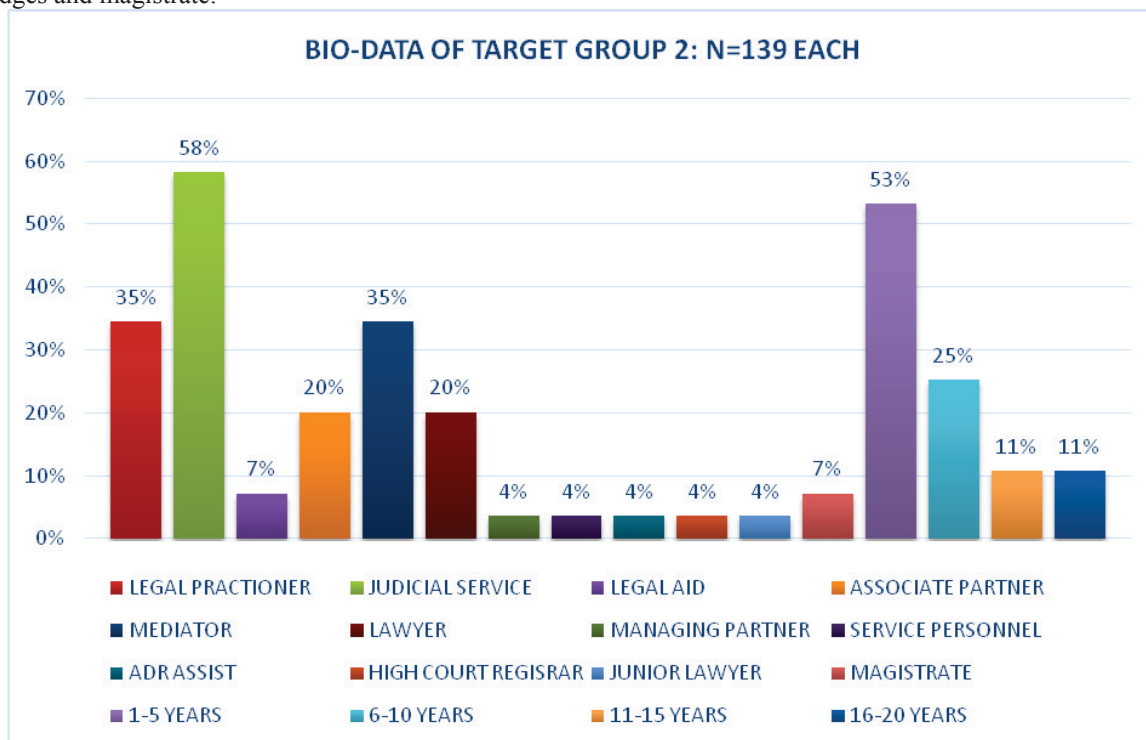


Figure 12: Bio-Data of Target Group 2

We realized that with these target group majority of them had 1 to 5 years of experience in their field which represent 53% of the population. 25% have worked between 6 and 10 years with the rest working for over 10 years. This review is illustrated in Figure 12.

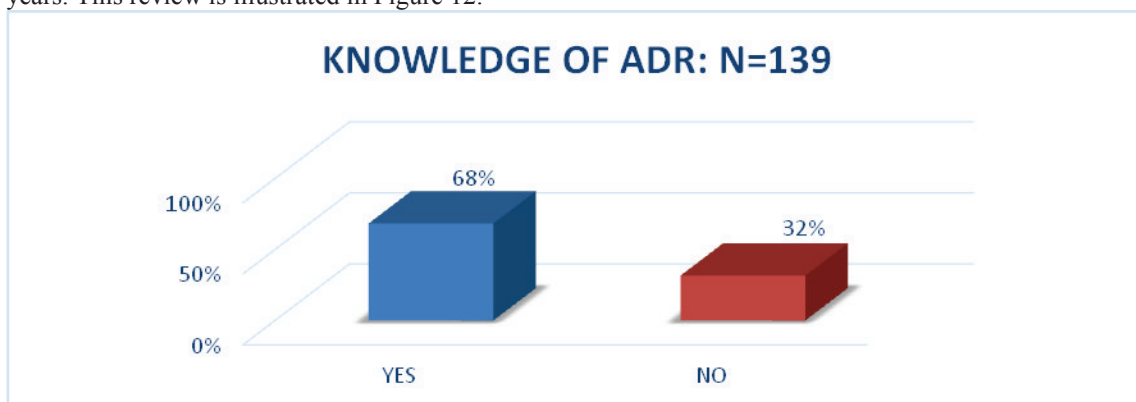


Figure 13: Knowledge of ADR

68% of the respondents in this group have good working knowledge of the ADR process. The other 32% have no practical knowledge of ADR process although they have a good idea as to what it is. Majority of this group are the court clerks/officials. This is shown in Figure 13 above.

The 68% of the respondents who are knowledgeable in ADR had their training (and continue training) either as:

- ❖ a course work which was part of their legal training
- ❖ a workshop, seminar and conference
- ❖ part of staff/professional development program or
- ❖ a special training session for practitioners

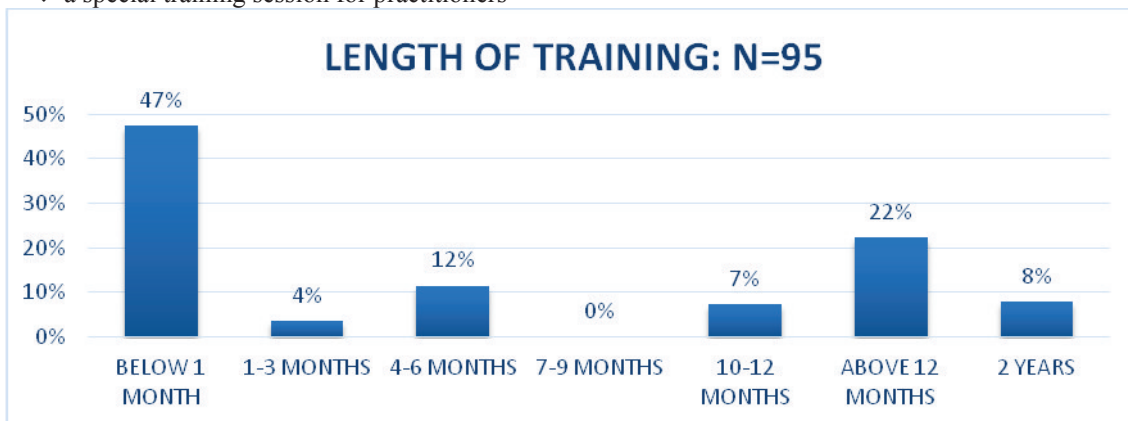


Figure 14: Length of Training

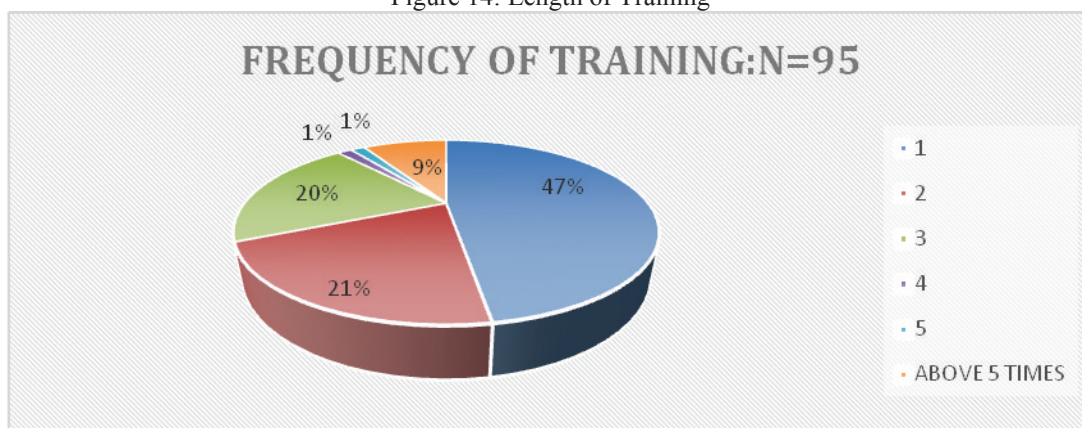


Figure 15: Frequency of Training

47% stated that their length of training was below a month and 22% have been trained for more than 12 months. Majority of the respondents indicated that they have gone through the training a couple of times but are unable to practice due to workload. These information is illustrated in Figures 14 and 15 above.

Whiles a good number of the respondents (53%) are of the opinion that the course content of the various courses attended were basically the same, others (18%) were of the view that it is always different and some (11%) felt that further training comes as a continuation to the previous level reached. These different views are represented in Figure 16.

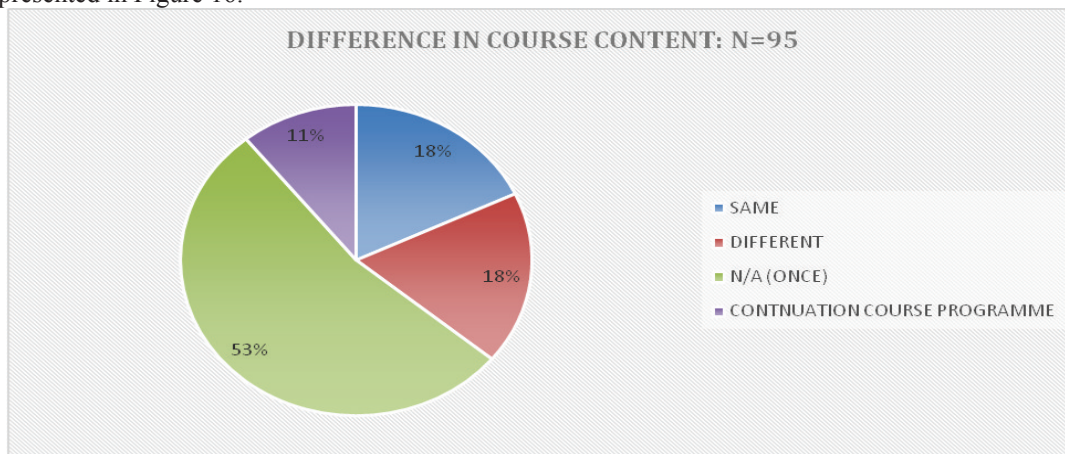


Figure 16: Difference in Course Content

No matter the repeat nature of the course content in the various training programmes (As shown in

Figure 16) these respondents have attended, they did state that they have always been satisfied with the courses. Majority (41%) of them are saying they have gained more knowledge in the ADR process and the rest are saying the ADR training covered all aspect of ADR process and equipped them with new/modern skills, . This is illustrated in Figure 17.

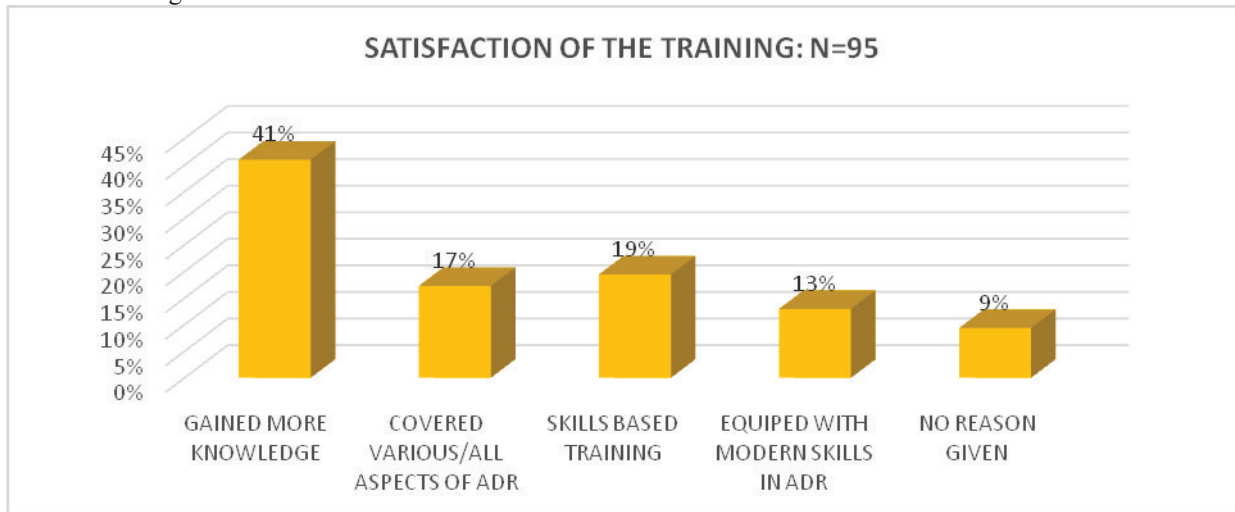


Figure 17: Satisfaction of the Training

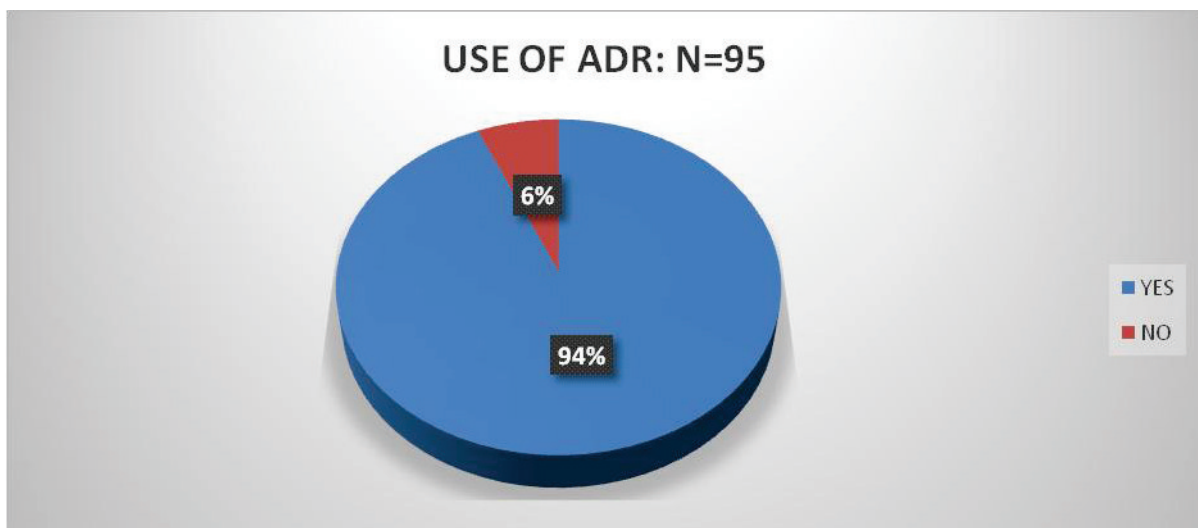


Figure 18: Use of ADR Process

After they have been trained in ADR processes, we realised that 94% of them do practise ADR and only a few that is 6% were not practising it due to their workload, this is seen in the figure below.

Those who use ADR process stated some reasons for preferring ADR process to litigation; these are listed below:

- ❖ Basic requirement in the practice of profession
- ❖ For complete settlement of case
- ❖ It is less expensive
- ❖ Faster, easier
- ❖ Friendly environment
- ❖ Parties get equal treatment
- ❖ Improve the relationship of parties after the settlement

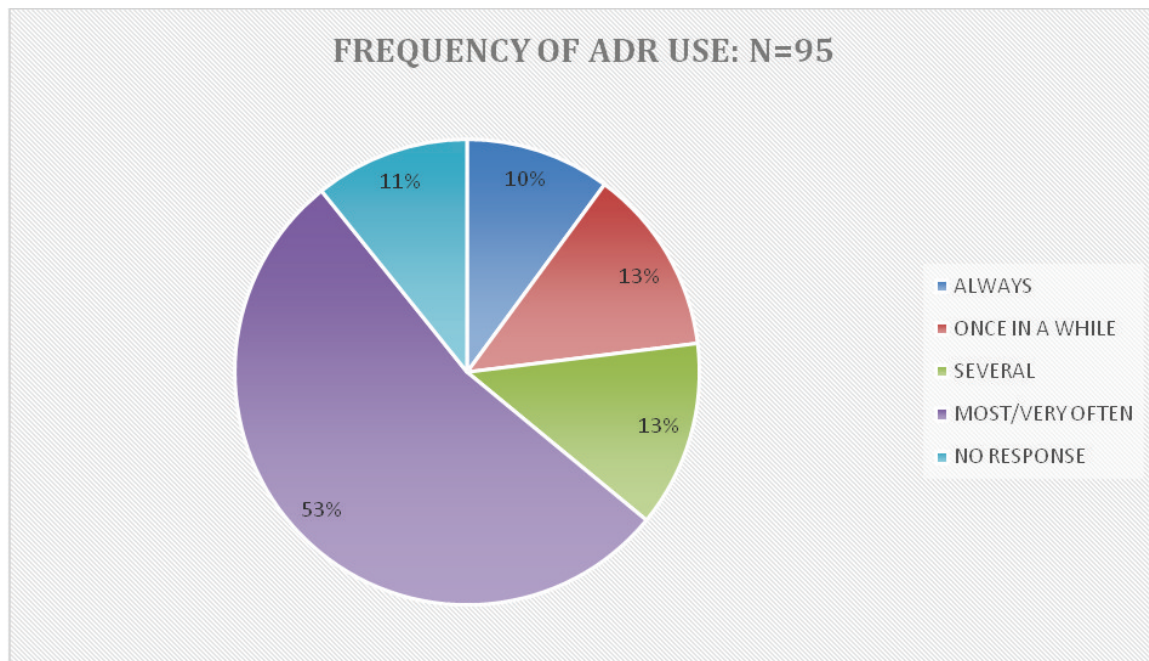


Figure 19: Frequency of ADR Use

Stating the above reason for using ADR process by the legal practitioners, majority mentioned that they have used ADR more than once and it was very helpful.

Table 1: Stage for ADR Process in Resolving Cases

| STAGE FOR ADR Process  |
|--|
| Before the filing of the case                                |
| Pre trial  |
| During the early stages of the trial process                 |
| When the trial gets prolonged                                |
| When the trial gets complicated                              |
| When the parties involved or the judge/lawyer recommends ADR |
| All the above  |

From the literature review it was noted that ADR process can be done at any stage of the trial whether prior to the trial or at the time of trial. This study realized the following stages where cases are referred to the ADR process. This is highlighted in the table below.

The following reasons were adduced as why cases are referred for mediation.

- ❖ Essential for the legal practice
- ❖ It serves as an alternative way for resolving the conflict
- ❖ Parties understand and prefer ADR process
- ❖ Cases go to ADR only when the need arises

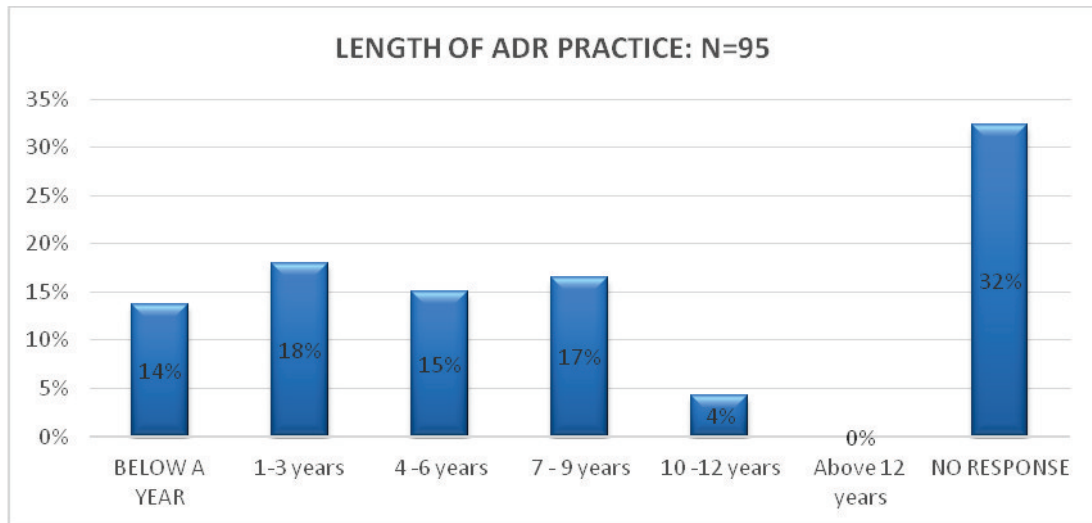


Figure 20: Length of ADR Practice

Legal practitioners, judicial service and legal aid staffs also stated that they are in full support of the ADR process and always advise their clients to opt for ADR process rather than the litigation proceedings. Some of these respondents have practice ADR for some time now (as illustrated in Figure 20) and will support and recommend it when the need arises.

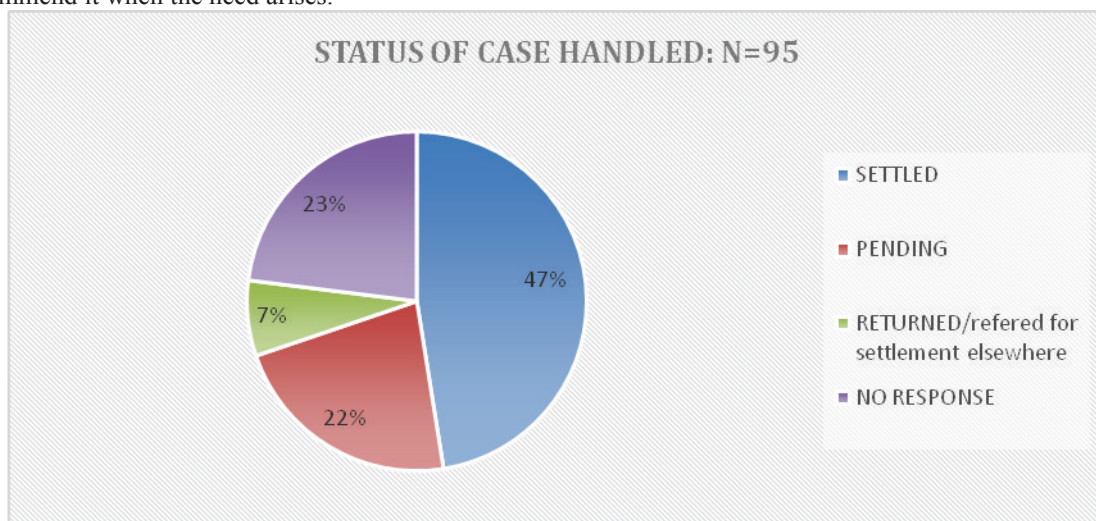


Figure 21: Status of Cases Handled

Based on the data that was available, a review of cases referred to the CCADR centers between January 2014 and June 2014 was conducted and from Figure 21, it was realised that 47% of cases that are handled by the use ADR process have been settled within the period. Only 7% had been referred (back) to the court for trial. The rest are pending.



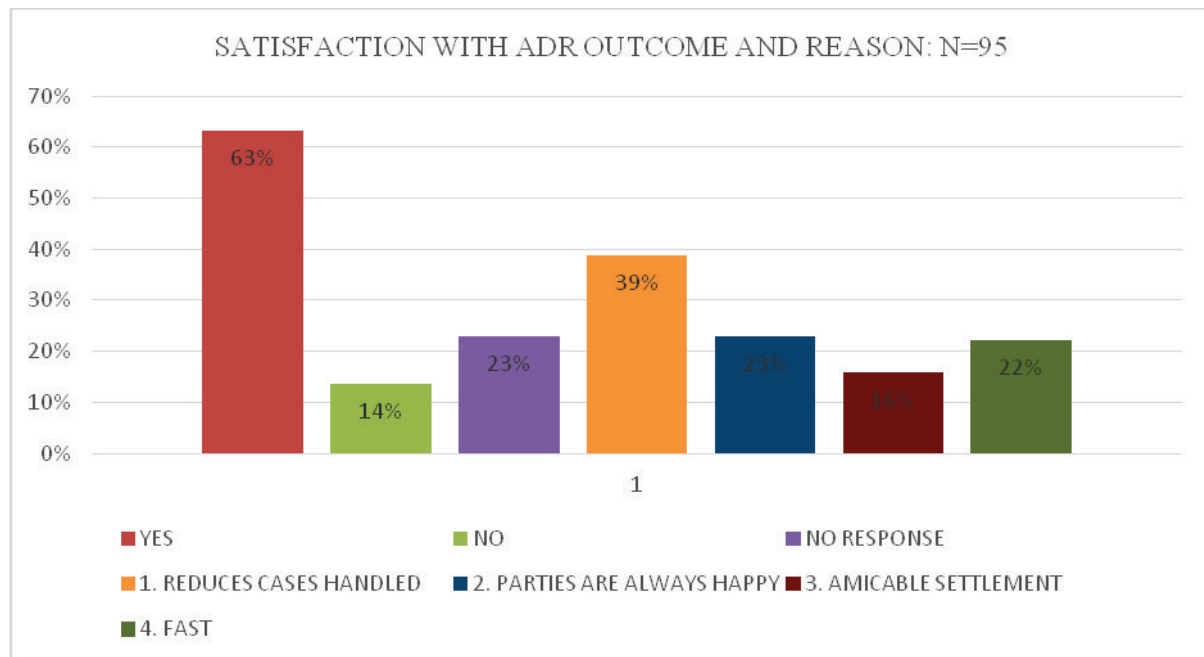


Figure 22: Satisfaction with ADR outcome and Reason

Majority of the respondents (63%) said they were satisfied with the use of the ADR process in that the parties were always happy about the outcome of the process; also the case was settled amicably and was very fast. This is demonstrated in Figure 22.

Despite the satisfaction that ADR process gives to both the disputants and legal practitioners, there were some challenges that the respondents claim they are confronted with while practicing ADR. These have been stated below:

- Parties lie and sometimes there are delay in the process
- Lack of legal backing
- Sometimes clients are reluctant to go in for ADR process
- Lack of cooperation from both disputants and council
- Insufficient personnel with experience in ADR process
- Inadequate space for mediation process
- Insufficient allowance for mediators
- Some disputants see ADR as inferior and lower to court proceedings

Also legal practitioners, judicial service and legal aid staffs face challenges in recommending ADR process to their clients. These challenges are listed below.

- ❖ Difficult when the real parties are absent
- ❖ Parties are sceptical about the ADR process
- ❖ Clients uncomfortable with the absence of their lawyers during the ADR process
- ❖ Clients sometimes feel lawyers are not ready to represent them on their case that is why they are referred to ADR
- ❖ Clients do not have enough knowledge about ADR process and due to this they think ADR can be partial with the outcome

This target group stated that there is the need for some action to be taken to deal with the challenges mentioned above by:

- Educating clients in accepting ADR process and counsel them not to be afraid of ADR process
- Advising clients that mediators are fair and that their operations are under the law
- Training more mediators to help in handling cases
- Improving enforcement mechanism of ADR agreement to make them more binding
- Lawyers willingness to give litigants more confidence in the process

While the respondents highly favoured ADR, it is worthy to note that this is because they do have some challenges with the litigation proceedings. These they named as:

- ❖ Time consuming and stressful
- ❖ Strains relationship between disputants
- ❖ Very expensive and frustrating
- ❖ Loss of confidence in the legal system
- ❖ Difficulty in accepting judgment

In comparison, the respondents rated ADR (mediation) process highly over litigation. From the data the following comparisons were made.

- ❖ ADR process is faster than litigation
- ❖ ADR is time efficient as compared to litigation
- ❖ Litigation is very hostile while ADR process is very freely and ADR is a better option when it comes to resolving disputes.
- ❖ ADR process is non-adversarial unlike litigation which is adversarial
- ❖ ADR is cheap not like court trial which is very expensive
- ❖ ADR outcome are always win-win situation while litigation is a win-lose situation
- ❖ ADR process is flexible than litigation
- ❖ ADR is devoid of technicalities
- ❖ ADR process is done in an open, comfortable and relaxed venue

It was also noted from legal practitioner, judiciary and legal aid staffs that although disputants may initially feel hesitant and uncomfortable about ADR, disputants in retrospect often find the process very useful. This makes encouraging them to adopt ADR process as part of legal system the next time round much less difficult. The reasons for encouraging disputants in using ADR process are:

- ✓ Speed in resolving disputes
- ✓ Has a lot of advantages over litigation
- ✓ Helps reduce cases at regular court
- ✓ Parties come up with their own solution
- ✓ Saves money and improves disputants relationship
- ✓ Helps with the administration of justice
- ✓ Easily accessible and participatory decision making
- ✓ Non-adversarial and internationally acceptable
- ✓ Parties more satisfied with outcome of the mediation

## 5. Summary and Conclusion

In assessing the benefits of the use of mediation in resolving conflicts in the court system in the Brong Ahafo Region, 60 disputants were sampled while 48 legal practitioners, 81 judicial service personnel and 10 legal aid practitioners were also sampled alongside and these were grouped into two with the disputants forming the target group one and the rest forming target group two. From the analysis it was realised that majority of the disputant were male thus 44 and the rest being female. In relation to the benefits that this group derived from the use of mediation, they brought to our notice that mediation is very time efficient, not expensive, improve on their relationship with the other disputant, they are able to express themselves freely without anyone intimidating them and that the process is very fast and always the outcome is very confidential. Despite all these great remarks from the disputants they had some setbacks from the use of mediation which some stated as follows: that due to fewer offices for the mediation process, it most at times delay the process; and finally, the time scheduled are normally not clear. After the disputants have weighed the pros and cons it was noted that in comparing ADR process to litigation, the litigation proceedings was realised to be very expensive, time consuming, mostly the judgment comes from the Judge or the Jury but with the ADR process they (disputants) decides on the outcome which is always done amicably. It was brought to our notice by the disputants that they will gladly recommend ADR process to their family and friends because it helped them settle their case very easily and cheaply than the traditional litigation proceedings.

The target group two on the other hand had a lot to say about the ADR process in that they have gone for some training and were very supportive of the ADR process. They noted that ADR has not only helped the disputants but have helped them too because some cases are worth settling with ADR process rather than the litigation proceedings for instance, divorce and matrimony disputes, land disputes, church disputes and rent disputes. The following benefits were derived from the use of ADR; it was less expensive: faster and cheaper: friendly environment and unity at the end of the process on the part of the disputants. There were other challenges that faced in practicing ADR process, parties lie: lack of legal backing: clients reluctant to go for ADR process: lack of cooperation for parties and sometimes the disputants themselves delay the process: inadequate space for hearing session and inadequate allowance for the mediators and other legal practitioners. Overall, this target group were very supportive and always willing to encourage disputants in using ADR process because it proceedings are very fast and cheap. They also did not hesitate to recommend the ADR to their clients who have not heard about the benefits that they can derived from using ADR process. All these findings are consistent with the literature review in chapter two.

In conclusion, it is clear that ADR is seen as a less costly approach to dispute resolution than having the dispute resolved through a judgment given by the court. Almost all the respondents saw ADR as a comparatively faster mechanism for dispute resolution. Nonetheless, even the most enthusiastic supporters of ADR still saw

some challenges for disputants in ADR process especially when one or both parties are not interested in the process it causes delay in the process and this is more seen in divorce and matrimony disputes, rent disputes, church disputes and land disputes. Also it was found that knowledge of ADR is not wide spread. This means that more education should be done on training both the ADR practitioners and disputants or court users in order to have more knowledge about ADR so that its practice would not be a burden again for the legal practitioners, judicial service personnel and legal aids staff.

## REFERENCES

- Bornie, C. N. (2002), *An Evaluation of the Use of Mediation in Environmental Dispute Resolution under s268 of the Resource Management Act 1991*, Lincoln University
- Boulle, L. et.al. (1998). *Mediation: Principles, Process, Practice* (New Zealand edition). Wellington, Butterworths.
- Brown, C.J. (2002) *Facilitative Mediation: The Classic Approach Retains its Appeal*  
Accessed on [mediate.com](http://mediate.com)
- Bush, R.A.B., and Folger, J. P. (1994), "The Promise of Mediation: Responding to Conflict through Empowerment and Recognition." San Francisco: Jossey-Bass
- Carnevale, P. J., Lim, J. D., and McLaughlin, M. E. (1989), "Contingent Mediator Behaviour and Its Effectiveness." In K. Kressel and D. G. Pruitt (eds.), *Mediation Research: The Process and Effectiveness of Third-Party Intervention*. San Francisco: Jossey-Bass
- Carnevale, P. J., and Pruitt, D. G. (1992), "Negotiation and Mediation." *Annual Review of Psychology*, 43, 531–582.
- Denscombe, M. (2004), *The Good Research Guide for small-scale social research*, 2nd edition, Open University Press.
- Goldberg, B. Stephen and other (2012), *Dispute Resolution*, 3rd Ed, Boston; little Brown and Company
- Jackson, S.L. (2011), *Research Methods and Statistics: A Critical Approach*, 4th edition, Cengage Learning
- Jackson, S.L. (2009). *Research Methods and Statistics: A Critical Thinking Approach* 3rd edition. Belmont, CA: Wadsworth.
- Ketchen, G. Edward, (2009), *Alternative Dispute Resolution (ADR) for Less Cost and Risk*
- Kressel, K. (1997), "Practice-Relevant Research in Mediation: Toward a Reflective Research Paradigm." *Negotiation Journal*, 13, 143–160.
- Kressel, K. (2007). *The Strategic Style in Mediation*. *Conflict Resolution Quarterly*, Vol.24, no.3, 251-283
- Kressel, K., and Pruitt, D. G. (1989). *Mediation Research: The Process and Effectiveness of Third-Party Intervention*. San Francisco: Jossey-Bass
- Miles, Sharrolyn. Young lawyers division, American Bar Association. *Winning at Mediation: The Strategies for Effective Dispute Resolution*. Retrieved from [www.americanbar.org](http://www.americanbar.org)
- Moore, C. W. (1996), *The Mediation Process: Practical Strategies for Resolving Conflict*. (2nd Ed) San Francisco: Jossey-Bass
- Osuala, E.C. (2007), *Introduction to Research Methods*, 3rd Edition, AFP Ltd. Lagos-Nigeria
- Shields, Patricia and Rangarjan, N. (2013). *A Playbook for Research Methods: Integrating Conceptual Frameworks and Project Management*. [1]. Stillwater, OK: New Forums Press.
- Shuttleworth, Martyn (2008) *Survey Research Design*. Retrieved Oct 05, 2014 from Explorable.com: <https://explorable.com/survey-research-design>