UNIVERSITY OF EDUCATION, WINNEBA

MEDIATION AND CONFLICT RESOLUTION IN GHANAIAN COURTS: PRACTITIONERS AND THEIR CLIENTS EXPERIENCES IN THE TWIFO PRASO DISTRICT COURT

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DECLARATION

Student's Declaration

I, Asaah-Junior Stephen Kwabena, declare that this thesis, with the exception of quotations and references contained in the published works, which have all been identified and duly acknowledged, is entirely my own original work, and it has not been submitted, either in part or whole, for another degree elsewhere.

Signature.....

Date.....

Supervisor's Declaration

I hereby declare that the preparation and presentation of this thesis were supervised in accordance with the guidelines on thesis supervision as laid downby the University of Education, Winneba.

Prof. George Hikah Benson (Principal Supervisor)

Signature.....

Date.....

Dr Seth Frimpong (Co-Supervisor)

Signature.....

Date.....

DEDICATION

To my wife Ophelia, and children -Adwoa, Nana, Esi, and Akosua.

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ABSTRACT

This study explored mediation as a tool for resolving conflicts from the experiences of mediation practitioners and their clients in the Twifo Praso District Court. The study was based on procedural fairness and justice theories. It followed a qualitative approach, adopting an exploratory single case study design with 30 participants selected through census and convenience sampling. Thematic analysis was used to analyse the data derived from a semi-structured interview guide, observational guide and documentary analysis. The findings indicate that mediation is defined differently by various participants, depending on their socio-cultural, socio-legal, and role and style dimensions. These definitions significantly influenced practitioners to employ expansive protocols, alternating between initial joint sessions and initial caucusing. Furthermore, factors such as relationship building, economic considerations, and time constraints influence participants' choice of mediation as a dispute resolution model in the Twifo Praso Court. Moreover, the study found that parties assessed procedural fairness based on factors such as the first speaker dilemma, confidentiality, and neutrality, particularly when considering portions of parties' demands in generating settlements. The findings indicate that the program is effective as it has successfully been able to clear backlog cases and achieved a settlement rate of 80%, surpassing the national rate of 45%. Therefore, the study recommends procedural fairness and educational initiatives for parties involved in mediation. In contrast, practitioners' training should be based on an integrative approach and the incorporation of co-mediation. Subsequently, the study has contributed to developing mediation practice as a conflict resolution model in Ghana.

CHAPTER ONE

INTRODUCTION

1.1 Background to the Study

Access to justice is a fundamental human right and a cornerstone of democratic governance (Atuguba et al., 2006). In Ghana, like many other countries, the over-reliance on the court system has often led to delays and dissatisfaction among litigants, and these issues not only burden the judiciary but also impede the swift and fair resolution of disputes, undermining public confidence in the legal system (Adjei & Ackah-Yensu, 2021). Mediation, as an Alternative Dispute Resolution (ADR) mechanism, addresses these concerns by providing a more efficient, cost-effective, and accessible means of resolving conflicts (Crook, 2012). Consequently, mediation has emerged as a pivotal tool for resolving conflicts within the judicial landscape of Ghana, offering a complementary alternative to traditional litigation. As a structured process where an impartial mediator facilitates communication and negotiation between disputing parties, mediation aims to achieve a mutually acceptable resolution (Ibrahim, 2018). This method of conflict resolution is particularly significant in the Ghanaian context but has not received enough attention, especially from the perspectives of mediation practitioners and their clients, taking into consideration procedural fairness, mediation conception, protocols, factors clients consider before using mediation and its effectiveness.

Adrian and Mykland (2014) submit that academics continuously seek solutions to the challenges that threaten human survival since such problems constantly evolve and become more complex. To that end, conflict is one of the social issues that affects people of all ages, statuses, races, nationalities, and religions in various ways (Galton et al., 2021). Globally swift resolutions of conflicts have been the vein of accessing

justice (Kirgis, 2014; Mwenda, 2006; Morocco Judicial Reform, 2007). Consequently, the World Bank Report (WBR) (2018) found that "It is a thread that runs through all 17 of the Sustainable Development Goals (SDGs) and it is critical to end poverty, reduce inequality, reach those left behind and promote peace and security" (p. 9). To that end, SDG16, in particular, targets 16.3 seek to measure the extent to which the rule of law and equal access to justice for all are promoted, as well as the extent to which non-discriminatory laws and policies for sustainable development are enforced (Uwazie, 2014).

However, several writers have argued that the overconcentration of litigation as the formal mode of accessing justice has led to a huge global justice gap (Amasah et al., 2015; Apuku-Awuni, 2022; Crook, 2012; Ibrahim, 2018). Consequently, the WBR (2020) identified three dimensions of the justice gap within the formal legal system worldwide. They include about 235 million people who live in extreme conditions of injustice through the orthodox court system (litigation), 1.5 billion people who cannot resolve their justice problems themselves, and 4.5 billion people who are excluded from the opportunities the law provides for resolving conflicts. This justice gap has been widened by the over-concentration of the formal legal system which has undermined human development (Alfini, 1999; Bukari, 2013), reinforce the poverty trap, and impose high societal costs (Pruitt & Carnevale, 1993), and subsequently threatened the sustainability of SDG goal 16 (Fisher, 2017; Shahla, 2021; Nyarko, 2015; UNO Global Studies, 2016).

However, in terms of the geographical distribution of the global justice gap, some scholars have identified India, Singapore, the United Kingdom, the USA, and various African countries as facing challenges in achieving swift conflict resolution (Susslo et

al, 2020; Uwazie, 2011). Thus, there is a need for a paradigm shift to address the global justice gap, exacerbated by over-dependence on the court system as highlighted by Prof. Sander's address to the U.S. judiciary in 1906 and later emphasized at the 1976 Pounds Conference (Menkel Meadow, 2020; Mwenda, 2006; Palihapitiya et al.,2019; Stone, 2005; Uwazie, 2011; Wood, 2008). These global conferences advocated that mediation be institutionalized in courts (Akeredolu, 2013; Brazil, 2002; Shestowsky, 2017; Siang, 2017; Villareal, 2006) to serve as either an alternative or complement to easing the court from case explosion (Mwenda, 2006; Picard, 2000; Wahab, 2013).

The process of integrating mediation into formal court practices is commonly known as Court-Connected Alternative Dispute Resolution Mediation (CCADRM) (Adrian, 2016; Agarwal, 2001; Akeredolu, 2010). The prevailing reason for introducing CCADRM has been to reduce the burdens on the judicial system (Charcoudian et al., 2017; Nolan-Haley, 2020; Palihapitiya et al., 2019). This was the basis of the Woolf reforms to civil procedure in the United Kingdom in 1999 and the 1990 Civil Justice Reform Act in the United States (Brazil, 2002; Boulle & Teh, 2000; Villareal, 2006) to reduce case explosions in courts and to enhance access to justice (Vidmar, 1984; Wall & Lynn, 1993). As a result of these global justice reforms, CCADRM has been implemented as a solution in many developed and developing countries, including the United States, United Kingdom, Australia, Canada, Nigeria, Kenya, New Zealand, Singapore, and Hong Kong (Akeredolu, 2013; Shahla, 2018; Owiti, 2009; Wissler, 2011). These countries have long since adopted mediation as a method to complement the dominance of litigation within the formal legal system.

In Ghana, historically, mediation has been a social weapon for resolving conflicts informally before the introduction of the formal legal system (Acquah, 2006; Ahorsu &Ameh, 2011). As evidenced by the popular Akan proverb " Opanin ntena efie emma asefua nfo," which means that an elder cannot be present in the house and allow chaos to reign. Observers who witness escalating tensions between children, adults, groups, or any opposing parties are not seen as socially responsible (Gedzi, 2006). Thus, traditionally, elders and chiefs have been regarded as socially responsible people for conflict resolution within their communities (Adzhalie-Mensah & Benson, 2018; Edzii, 2018). This responsibility is voluntarily assumed and institutionalized in various ways (National Peace Council (NPC), 2011). In traditional Ghanaian communities, conflicts are typically resolved through a process that involves the head of the compound and, if necessary, the chief's arbitration court (Ahorsu & Ameh, 2011; Morhe, 2011). This process is guided by traditional customs and values, including the respectful exchange of greetings, the presentation of drinks to witnesses, respect for authority and hierarchy, prayer and libation-pouring, and respectful questioning and answering (Brown & Marriot, 1999; Kendie & Bukari, 2012).

Consequently, these elements of mediation practice promote trust, fairness, openness, emotional venting, bonding, shared values, cooperation, consensus building, conflict de-escalation, and legitimacy (Cohen, 1997; Matsumoto & Juang, 2013). This model of conflict resolution is not unique to Ghana's informal system (Apuku - Awuni, 2022; Kendie & Bukari, 2012), as similar practices exist in other countries such as China, India, Australia, the USA, the UK, Kenya, and Nigeria (Uwazie, 2011). According to Afrifa (2019), colonial arrangements replaced mediation and traditional arbitration as means of resolving conflicts and inculcated litigation consciousness in the Ghanaian citizenry.

Socio-legal scholars have reported that the legal provisions of making the chiefs' courts critical components in the dispensation of justice have not yet yielded the needed results (Nolan –Haley & Annor Ohene, 2014). To that end, Afrifa (2019) argued that "the court structure in Ghana is similar to that found in other common law jurisdictions in the British Commonwealth with a shifted focus on litigation" (p.12). But for many years, litigation or adjudication has been, and continues to be, the principal mode of dispute resolution in many countries, including Ghana (Adjei & Ackah-Ayensu, 2021). Some studies (Afrifa, 2019; Atuguba et al, 2006; Kasser-Tee, 2017) have indicated that litigation explosion within the Ghanaian legal system appeared to have resulted from the over-utilization of the formal court system to the neglect of traditional conflict resolution models such as mediation and arbitration. It appears that Ghana's legal system, which aims at providing equitable and easy access to justice for all citizenry is rather serving as a barrier for the poor and the vulnerable (Kasser-Tee, 2017).

Adjei and Ackah-Ayensu (2021) and Crook (2012) have further argued that the over-reliance on the formal court system as the first point of call in resolving conflict has led to challenges such as a pressured legal aid system, delays in case processing, real and perceived corruption, and strained relationships and interactions. Similarly, Crook et al. (2011) claim that over-utilization of the formal court system has led to poor infrastructure, outmoded, cumbersome, and non-user-friendly procedural rules of court, and difficult enforcement mechanisms.

Another major challenge, as reported by Amasah et al. (2015), is the delay within the formal court system anytime a case is filed, with simple cases sometimes taking as long as 26 years before their resolution. For instance, in 1981, in Abba v. Nframa (Supreme Court, 30 November 1981, unreported), the case took 12 years (Amasah et al, 2015).

Given the resource-constrained circumstances, such as the unavailability of sufficient administrative staff and logistics, the prosecution of conflicts at the court is often delayed, leaving a backlog of cases that constrain the timely and efficient delivery of social justice (Agbozo & Korang, 2017).

Two decades ago, principal stakeholders in the administration of justice felt that the judicial system of Ghana needed a major overhaul if it was to respond effectively to the legal needs of Ghanaians, the disabled, women, the poor, and the business community, in particular (Apuku-Awuni, 2022; Atuguba et al, 2006; Crook, 2004). This was at a time when the private sector had, appropriately, been identified as the engine of growth for the Ghanaian economy (Kwesi, 2013). To that end, the GJS, the Private Enterprise Foundation, the Ghana Bar Association (GBA), and the Ghana Investment Promotion Centre called for remedial policies and judicial reform programs based on sound strategic options, which led to the search for other means of resolving disputes in a more cost-effective, time-efficient and client-satisfying manner (Kwesi, 2013; GJD, 2020). It was rightly thought that institutional reform would lead to the transformation of the judicial system and that would positively impact such critical areas as commercial, societal peace, and harmonious living (Wood, 2008). With the support of the World Bank, the Government of Ghana, under the Private Sector Development Project, commissioned research to identify those gaps and weaknesses that needed urgent attention (Acquah, 2006; Gedzi, 2006). The study recommended that Ghana's "Administrative Law Procedures on Arbitration and other ADR mechanisms, such as mediation, must be incorporated into the Ghanaian judicial system (Mahama, 2010; Uwazie, 2004; Wood, 2008). Similarly, UNO had also tasked its member states to adopt mediation as an alternative to dispute resolution (UNO, 2004). This recommendation was subsequently endorsed by the national body tasked to discuss all recommendations

under the project, which was that CCADRM must be integrated into the justice system (ACT 798 (2010); Uwazie, 2014; Wood, 2008).

Atuguba (2022) defined CCADRM as a method of resolving conflict through models other than adjudication in the court. Through such processes, disputes are settled outside the main courtroom, in a different department within the court system (Ngetict, 2019). CCADRM techniques have proven over the years to be less costly and faster in resolving disputes, and to serve as a supplement to litigation (Ghana Judicial Service Practice Manual for Mediators, 2010). Court mediation aims to provide citizens with concrete, satisfying resolutions to their disputes or complaints (UNO, 2016), reducing court backlogs while improving the ability to resolve disputes (Ibrahim, 2018). Moreover, it enhances the efficient and effective utilisation of the subject-matter expertise and professional skills of mediators, who do not require the extensive training of a lawyer or judge (Barnes & Obeng, 2021). It also involves creating a mutually supportive, collaborative relationship between the formal legal system and out-of-court, non-formal dispute-resolution processes (Agarwal, 2001).

Increasing access to justice and promoting national economic development efforts is also one of the aims of the court-connected mediation program (Kasser Tee, 2017; Practice Manual for Mediators, 2010). Mediation is a dispute resolution tool that is adequately provided for in Ghanaian law as a way of combining traditional and formal resolution strategies to create access to justice (Morhe, 2011). Act 798 (2010), the main legal instrument governing the practice of mediation in Ghana, has sought to improve the practice of Mediation in Ghana. All CCADRM amenable cases, upon acceptance by parties, are referred to mediators trained by the Ghana Judicial Training School and

attached to 131 courts, especially Magistrate, Circuit, and High Courts in Ghana (World Bank Report, 2020).

The settlement as a mediation evaluation model deals with the measurement of total cases unresolved to the percentage that mediators were able to resolve (Boyle, 2017; Pignault et al, 2017). This, according to Boyle (2017), is inclined to the 'simple' model of mediation evaluation. Even with this simple model of measurement, Ghana is faced with over 94,946 backlog cases as of the 2018/2019 legal year (Afrifa, 2019). Consequently, the District-Magistrate Courts and the Circuit Courts alone accounted for about 40,091 of the backlog cases by the end of 2018/2019 (GJD, 2020). CCADRM report indicated that out of 40, 091 backlog of cases in the Magistrate court, 2,158 were referred to CCADRM, and mediators resolved 981, representing a 45% settlement rate. However, other jurisdictions recorded a higher settlement rate through the simple evaluation model. For instance, Povey's (2000) research in South Africa reported an over 80% settlement rate, Palihapitiya et al (2019) study in the USA reported a settlement of 70% to 90%, whereas Kressel and Pruitt (1989) study reported a settlement of 70% to 80% in Europe. Pignault et al (2017) conducted an effectiveness mediation study in the New Castle found a settlement rate of 90-100% while Cox and Parsons (2000) reported 82% settlement in Italy. Mwenda (2006) argued that the 'mediators' settlement rate accepted to renew one appointment should be between 60% and 90 %.

The Central Region of Ghana which is the third poorest region in Ghana has not been sparred with litigation explosion after the judicial reform of integrating mediation into their court practices (Osei, 2020). An area in the Central Region of Ghana not sparred with the litigation explosion is the Twifo, Hemang –Atti- Morkwa area comprising

three paramountcies namely: Atti-Morkwa, Twifo Mampong, and Twifo Hemang (Osei, 2020). Anecdotal evidence suggests the residents in these areas prefer litigation to traditional resolution leading to a near explosion of litigation in this area (Osei, 2020). Kasser-Tee (2017) indicated that the majority of the citizens have lost trust in the traditional conflict resolution models because of the high cost of case hearings, favouritism on the part of some chiefs, and most of the paramount chiefs are in conflict themselves. Similarly, Osei (2020) attributed the high rate of cases in the Twifo Atti-Morkwa area as a result of the likelihood of the formal court to overturn the judgment arrived at the chief's court or arbitration. Thus, the Twifo Praso Magistrate Court is the only court within the Twifo, Hemang, and Atti-Morkwa enclave where most people seek formal justice. The court serves approximately 40,000 people with an average of 70 cases filed per month (GJD, 2020). The court records show that from 2016- to 2023 average of 4, 220 cases were filed at the court making this court the court with the highest backlog in terms of civil cases and second in criminal cases in the Central Region of Ghana (GJD, 2020; GJS, 2018; WBR, 2020).

However, continuous litigation in the Twifo, Hemang, and Atti-Morkwa had negative consequences on the peace and harmony of the area including disrupting its economic development by stalling developmental projects (Osei, 2020), depriving potential land users and investors of developmental rights, and causing farmers whose lands are injuncted to suffer untold hardship leading to poverty and explosive conflicts (WBR, 2020). Consequently, in the 2018/2019 legal year, CCADRM was integrated into the civil proceedings of Twifo Praso Court to promote the smooth and efficient administration of justice by ensuring efficiency and speedy delivery of justice (GJS, 2019; WBR, 2018; Manual Practice for Mediators, 2010).

1.2 Statement of the Problem

The global pursuit of access to justice has increasingly turned to Alternative Dispute Resolution (ADR), particularly mediation, as a remedy for the delays, costs, and adversarial nature of traditional litigation (Tallodi, 2019; Zhomartkyzy, 2023). However, a significant geographical and conceptual gap exists in the scholarly understanding of this practice. While extensive research on mediation effectiveness, models, and practitioner styles have been conducted in developed nations (Allport, 2015; Lande, 2022; Riskin, 1996) and to a less extent, in other African countries like Kenya and Nigeria (Akeredolu, 2013; Ngetich, 2019), the Ghanaian context remains critically underexplored.

Existing studies in Ghana have either focused on urban centres or specific sectors, such as the construction industry, and challenges of mediation practice (Agbozo & Korang, 2017; Baffour-Awuah et al., 2011), leaving peri-urban and rural courts such as Twifo Praso, which often bear the brunt of case backlogs, virtually unstudied. This research gap is acutely manifested at the Twifo Praso District Court in the Central Region. The core problem is the unassessed efficacy and procedural integrity of the Court-Connected Mediation program at Twifo Praso, amidst overwhelming evidence of systemic overload and a critical need for accessible justice (Osei, 2020).

This problem is underscored by compelling data; thus, the Judicial Service of Ghana (2020) officially identified the Twifo Praso Court as having the highest caseload in the Central Region, yet it suffers from one of the lowest rates of case settlement and disposal. Judicial records (2021) show the court handles an average of 70 cases monthly, with 4,220 cases filed between 2016 and 2022, creating a significant justice deficit. The Twifo Praso local economy is predominantly agrarian, with about 72% of

the active population engaged in agriculture (Twifo-Atti Morkwa Composite Budget, 2020). The high volume of litigation, particularly over land, a primary economic asset, directly threatens productivity and livelihoods by prolonging conflicts that impede farming and investment (Osei, 2020; Twifo-Atti Morkwa Composite Budget, 2020).

Despite the introduction of mediation in 2019 to alleviate this crisis, no empirical research has been conducted to evaluate its implementation. Consequently, it is unknown whether the mediation process in this high-pressure environment adheres to principles of procedural fairness and protocol, and how the conceptions and practices of the mediators themselves influence outcomes. The experiences and perceptions of the clients, the intended beneficiaries of this reform, are also entirely undocumented

1.3 Purpose of the Study

The purpose of the study was to explore the experiences of mediation practitioners and their clients in using mediation as a conflict resolution tool in the Twifo Praso Court.

1.4 Objectives of the Study

Specifically, the study sought to:

1. Explore CCADRM practitioners' and clients' conceptualization of mediation.
2. Examine the protocols CCADRM practitioners normally follow in resolving conflicts in Twifo Praso Court.
3. Explore why clients use mediation in resolving conflicts in Twifo Praso Court.
4. Examine the effectiveness of CCADRM in Twifo Praso court by mediation administrators.

1.5 Research Questions

The following research questions were formulated to guide the study.

1. How do CCADRM practitioners and clients conceptualize mediation?
2. Which protocols do CCADRM practitioners normally follow to resolve conflicts in Twifo Praso court?
3. Why do clients use mediation in resolving conflicts in Twifo Praso court?
4. How effective is CCADRM from the perspectives of mediation administrators in the Twifo Praso court?

1.6 Significance of the Study

This study will offer practical and theoretical contributions in the following ways.

First, in terms of theory, this study will provide valuable insights into how the diversity of mediation conceptions applies to procedural fairness, court change management, and justice theories. It will further showcase the interconnectedness of these theories within the context of mediation Practice from the peri-urban perspectives.

Second, the study will contribute to practice through existing knowledge and literature on the management of conflicts in Ghana. Thus, providing information about mediation as an alternative dispute resolution mechanism as evidence of its use and success may convince communities embroiled in long-standing conflicts to adopt this approach. Moreover, Social Studies education will find the outcome insightful in enhancing their understanding of mediation as a conflict resolution mechanism by serving as a source of reference to students, academics, and researchers in future research.

Third, in terms of policy, the study will significantly influence policy by providing evidence-based recommendations, highlighting areas for improvement, and promoting best practices. By leveraging these research findings, policymakers can develop

informed and effective policies that enhance the mediation process, improve access to justice, and promote socio-economic equality, diversity, and inclusion. Moreover, the outcomes of the study will be a useful source to policymakers dealing with conflict management in the country through the advantages of mediation as a conflict resolution mechanism. Further, the recommendations and outcome of this study will be beneficial to curriculum developers. Consequently, both the Ghana Judicial Service and the social studies department will infuse the outcome into the practice and teaching of conflict resolution.

1.7 Delimitations

The study was restricted to the Twifo Praso court, which means that the research only focused on mediation as a tool for resolving conflict within this specific area. Moreover, the participants for the study were restricted to only mediation practitioners (judges, mediators, registrar, and ADR officer and their clients who used mediation in the Twifo Praso court, and stakeholders such as prosecutors and bailiffs were not made part of the participants. This may limit the generalizability of the findings to other mediation users and practitioners. In terms of conceptual stands, the study was limited to mediation as an alternative dispute resolution with procedural fairness of clients, conception of mediation, mediation protocols and why mediation clients use mediation in the Twifo Praso court. Other pertinent alternative dispute resolution models, such as arbitration and conciliation, including the challenges and solutions of mediation practice, were ignored.

These conceptual limitations were established to ensure that the research is conducted with a specific conceptual barrier in mind to provide more in-depth insights into mediation as a tool for resolving conflict in that specific area. However, the results

cannot be generalised to other regions, age groups, or populations without further research. Therefore, the findings should be interpreted and applied carefully, considering the study's limitations.

1.8 Organization of the Study

This thesis consisted of five chapters. Chapter one provides an introduction to the study by outlining the background of the study, a statement of the problem, the objective of the study, the research questions, the significance of the study, delimitations and the definition of terms. The second chapter reviews related literature on the issues being investigated. The review was broadly done under the themes of theoretical review, conceptualization of mediation by practitioners and their clients, procedural fairness in mediation, mediation protocols, factors parties consider before using mediation, and mediation effectiveness. The third chapter presents the methodology that was employed in the study. It describes the study area, the philosophical underpinning, the research approach, the research design, the population, the sample and sampling procedure, instrumentations, the trustworthiness of instruments, the data collection procedure, the method of data analysis and ethical considerations. The fourth chapter covers the presentation and analysis of the data gathered through the administration of the research instruments. The final chapter presents the summary of findings from the study, conclusions reached based on the findings, and recommendations based on the problems and objectives of the study.

1.9 Definition of Terms

Mediation: The primary method of dispute resolution involves a neutral third party (mediator) facilitating communication and negotiation between conflicting parties.

Alternative Dispute Resolution (ADR): A broader term that encompasses mediation and other methods of resolving conflicts outside litigation.

Court-Connected Mediation: A mediation process that is linked to a court case and is facilitated by court-appointed mediators

Mediator: A neutral third party who does not take sides but helps the parties involved in the conflict to reach a mutually acceptable resolution.

Client: A mediation user who seeks the services of a mediator to resolve a conflict or dispute.

Confidentiality: The principle that discussions and information shared during mediation are private and not disclosed to others.

Mediation practitioners: Professionals who facilitate the mediation process, helping disputing parties reach a mutually acceptable resolution.

Conceptualization: It deals with practitioners' conception, views, knowledge and understanding of mediation, which involves clarifying key concepts, ideas, and their relationships.

Procedural fairness: It refers to the perceived fairness of the processes and procedures used to make decisions and resolve disputes. In the context of mediation, procedural fairness is crucial as it influences the participants' satisfaction with the process.

Best Alternative to Mediated Agreement (BATMA): It deals with the level of compromises relative to positions, stands, and interests that clients forego to reach an agreement in mediation

Worst Alternative to Mediated Agreement (WATMA): This involves the positions, interests, and stances that clients in mediation are not ready to compromise to result in a mediation agreement

Mediation Protocol: It involves either a structured process or creativity that guides mediation practitioners during the mediation process

CHAPTER TWO

LITERATURE REVIEW

2.1 Introduction

The purpose of this chapter is to review the literature relevant to the research topic. The research aims to investigate court-connected mediation as a dispute resolution process, its impact on case resolution processes, settlement rate, and how it affects access to justice from the perspective of CCADRM practitioners and their clients. The investigation involved defining the concepts used in the literature review (Coolican, 2019) and exploring how court-connected mediators and their clients conceptualize mediation as a tool for resolving social conflict and providing access to justice in Twifo Praso Court (Adjei & Ackah-Ayensu, 2021). Various scholars have identified several questions which are important for this research, such as: 'What have other scholars said about this topic?' 'What are the theories addressed?', 'What is the previous research on the subject of interest?' 'Are the findings consistent?' and 'Are there any flaws in the existing research that you can identify, or can you make recommendations for improvement? Adopting the questions provided by Creswell (2014) guided me to review the presentation of the research study based on the objectives of the study.

The first part focused on the theoretical and conceptual review of related literature, part two reviewed the literature on the conceptualization of mediation practice in terms of meaning and style, and part three focused on procedural fairness of court-connected mediation, particularly, the attributes of procedural fairness mediation. Part four focused on mediation practice protocols but limited the review to the three stages of protocols, such as pre- mediation protocol, actual mediation protocol and post-mediation protocols. Parts four and five reviewed literature on factors that influenced

court clients in using mediation and the effectiveness of mediation from the view of mediation administrators, and its influence on case settlement and access to justice.

2.2 Theoretical and Conceptual Framework

Mediation started as a practice rather than an academic innovation (Nally, 1995), and can be compared to the field of medicine in the early 18th century, consisting mainly of practitioners (Picard, 2000). However, while medical practice literature has improved with scientific theories, mediation literature primarily consists of maxims, prescriptive advice, rules of thumb, and concise statements about what to do and not to do (Brems et al., 2017). Although these soft theoretical bases are important, Pruitt and Rubin (1986) warn that they should not be mistaken for theoretical statements. To that effect, there is relatively little theoretical analysis of mediation, as argued by Wall et al. (2001) and other researchers (Bercovitch, 2011; Darrow-Hammond et al., 2019; Zartman, 1984).

The wide range of mediation styles, conceptions, and practices is due to the lack of professional standards, the relative newness and growth within the mediation profession, and the diversity in the training of practitioners (Thibaut & Walker, 1978; Topmain & Lutz, 1989). However, others have made a conscious effort to develop some theories that apply to this study. Consequently, this research was influenced by two theories: The theory of Procedural Fairness (Lind et al., 1990) and the Rawlsian Justice Theory (Faber, 2003; Rawls, 1971).

2.3 Theory of Procedural Fairness

Exploration of procedural justice is grounded in the theory of procedural justice fairness since the extension of procedural justice from the law court to mediation is not an easy task (Van Den Bos et al., 1997). More importantly, as lawyers see procedural fairness

as ‘what a fair process should be’, the parties see it otherwise and evaluate it as ‘what is it that makes the procedure a fair one’ (Grootelaar, 2018). This divergence in conceptualizing fairness in mediation must be guided by a grounded theory since accepting the unfavourable outcome of judicial decisions is premised on how fair the process has been to the parties (Lind & Tyler, 1988). This forms the foundation of social obedience, which is the basis of common law (Van de Graaf, 2021; Vidal et al., 2019).

The first attempt at theorizing procedural fairness is credited to Thibaut and Walker in 1975 (Hagan & Hans, 2017). Thibaut and Walker (1975) theorized procedural fairness to mean psychological effects of procedural variation by conducting a study that compared features of adversarial, and inquisitorial systems of decision-making (Hagan & Hans, 2017; Thibaut & Walker, 1975). Their study explored which of the adversarial or inquisitorial modes of justice was the most ‘just’ in the decision-making process. They found that in making decisions, parties considered the outcome as important as the process (Thibaut & Walker, 1975), though they initially focused on the experiences of parties in the legal process (Tyler, 2017). Other procedural fairness theorists extended the theory to socio-legal issues such as conflict resolution, restorative justice (Tyler & Lind, 1992), and prose-litigation (Lissak & Sheppard, 1983). Currently, it is applied to public policy development, such as Alternative Dispute Resolution and Mediation (Hagan & Hans, 2017).

The initial focus of Thibaut and Walker (1975) has been redeveloped by Lind and Tyler (1988) to embrace improvement in mediation practice and obedience to the law (MacCoun, 2005; Morrill & Rudes, 2010; Tyler, 2017). Currently, since “mediation serves the interest of the ‘minority citizens’ to access justice, there is a need to guarantee their procedural fairness in the adoption of mediation in courts (Tyler & Huo, 2002).

Tom Tyler (2017) defined procedural fairness justice as a judgment about the fairness of the procedures used in making decisions. Based on this definition, Van de Graaf (2021) identified three classifications of procedural fairness theories based on their applicability to mediation practice. These were instrumental procedural fairness theory, normative and relational building procedural fairness theory, and virtue mediation theory. The instrumental procedural fairness theories focus on evaluating fairness by looking at how a grounded and robust mediation process should incorporate fairness, and how parties understand the process used in mediation (Leventhal, 1980; Tyler & Lind, 1992). This position is consistent with Thibaut and Walker's (1975) argument that parties in dispute value process control as a way of getting parties the expected results, and influences their likelihood of accepting the outcome. The theory argues for mediators in the mediation process to display impartiality and confidentiality, listen to parties, respecting parties' positions in settlement generation.

The second classification of Van de Graaf's (2021) procedural fairness theory is the building of relationships, which Tyler and Lind (1992) call normative mediation. It is based on the assumption that parties go to mediation intending to improve and maintain their relationship beyond the initial meeting process and afterwards. Thus, hearing what people have to say during and after settlement generation improves relationships, especially when parties are respected and trusted, through repairing and maintaining strained relationships (Touval,1985). Consequently, respecting how parties in mediation consciously create peace through compromise and amending parties' differences through face-to-face interaction removes negative perceptions.

The third perspective is the "fairness as a virtue" model, which trades off self-interest and establishes procedures that preserve human dignity (Garcia, et al., 2002). It further argues that procedural fairness should be based on recognizing the need to offer assistance to parties in dispute who may not be resourceful enough to get access to the court to resolve their cases based on economic and social barriers (Fisher, 2017). Van de Graaf's (2021) classification of procedural fairness identified the various perspectives of theorizing mediation fairness encompassing the mediation process and how parties in dispute experience and legitimize it. It embraced Thibaut and Walker's (1975) theory of procedural fairness, specifically relating to the formal court system, and how other scholars have expanded and improved the theory to include contemporary and 21st-century conflict resolution strategies (Hagan & Hans, 2017; Tyler & Lind, 1992; Tyler, 2017). The theory further identified the basic tenets of mediation as a conduit for building, and maintaining people's relationships after parties have resolved their differences. It manifests itself through the 'no pronouncement of guilty' feature of mediation. The classifications further conclude on the need for parties to judge the mediation process when mediators display respect for the litigant's rights, and dignity, display confidentiality, and neutrality, and give parties a voice during the mediation process.

Such tenets of the theory are identified as indifferent to the social and economic status of the parties involved in the dispute settings. This theory is relevant to this study since mediation as a conflict resolution in the Ghanaian setting has not received much attention concerning how parties in dispute who use mediation value procedural fairness and how its negligence can negatively impact mediation practice (Brems et al., 2017). On the contrary, the theory appears to be one-sided to the expectations of the mediators and the users of mediation. How the institutions responsible for

implementing this new conflict resolution create fairness is not highlighted by the theorists. Lind and Tyler (1992) critique the theory that it focuses more on outcomes and overlooks the behaviours and motives of individuals involved in disputes. The theory is further critiqued based on its call for means that are costly and time-consuming in administering justice. Moreover, strategies to combat the prevalence of procedural unfairness traces are also silent from the theorists. Notwithstanding these challenges of the theory of procedural fairness, most of the themes found within the theory therein reviewed apply to the Ghanaian mediation practice, and its practical use aims at rebuilding the practice of mediation, especially in the Central region of Ghana, specifically the Twifo Praso court, where few studies have been conducted on mediation and procedural fairness justice.

2.4 Rawlsian Theory of Justice

The theory of Justice as propounded by John Rawls in 1971 addressed issues related to distributive justice in society through reliance on the alternative device of the social contract (Faber, 2003; Heise, 2000). The theory posits that justice ought to be a basic functional principle in independent societies and social institutions (Rawls, 1971). Rawls' Theory of Justice recognizes social justice in an ideal society scenario where citizens interact on an egalitarian basis of cooperative reciprocity and mutual respect (Rawls, 1971). Ideally, the theory speculates that elements of ADR, such as mediation, would work well to solve conflicts between parties when a neutral person reminds parties of a conflict of the possible outcomes, worst case, and best case (Heise, 2000). According to the theory, as conflicting parties reflect on the alternatives and the results of their actions, they conform to a just solution without necessarily involving the punitive actions of the law (Rawls, 1971). The justice theory, which relies on two principles, speculates on the original position of equity, which would influence

agreements based on just principles (Leventhal, 1980). The first principle explains that each person is to have an equal right that is compatible with liberty for others (Kirim, 2019; Rawls, 1977). It also provides that inequalities are to be arranged to everyone's advantage (Kirim, 2019). Such an understanding extends the freedom of an individual against psychological intimidation and liberty from arbitrary arrest. Thus, power can only be exercised in the right way over any individuals in the civilized community (Lind & Tyler, 1988).

The theory of justice is significant to this research because it advocates for resolving conflict through peaceful means without intimidating conflicting parties. From the perspective of this theory, mediation aims at resolving conflicts between parties without undermining the element of justice. The theory also posits that an element of CCADRM will be effective in terms of providing justice that works in the best interest of litigants. In theory, Rawls' principle will not only create an avenue for solving conflicts without necessarily litigating in an open court but also guarantee the best available results for conflicting parties through CCADRM. Thus, the theory of Justice guarantees that CCADRM is a suitable mechanism for accessing justice for the poor, and would therefore be useful in settling disputes by providing an avenue that is also utilized in the courts.

2.4.1 Critiques of the Rawlsian Theory

Hsieh is an outstanding critique of Rawls's theory. The most compelling argument from Heise (2000) regarded the idea of exit. Like CCADRM, Rawls' theory has a provision for free exit from a scenario leading to conflict or free exit from the justice process if one of the parties finds the process unsatisfactory (Ngetich, 2019). Consequently, the first part of this argument concerns leaving a workplace where the property is owned

communally (Faber, 2003). This provision may create peace, but would not be just for the one exiting, especially when no compensation for their contribution is guaranteed. This argument may explain the limitations of CCADRM in settling disputes in Ghana. The second argument against Rawls's theory relates to freedom of exit during the justice process. That is, if conflicting parties are free to leave at any moment they deem fit, then they are likely to use their freedom to frustrate the process (Faber, 2003; Heise, 2000; Lind et al., 1990; Ngetich, 2019). This weakness is also in the elements of mediation, which may make it difficult to coerce parties to commit to the mediation processes until the final resolution can be realized.

Notwithstanding the challenges of the Rawlsian theory of Justice, the following strengths were identified. This theory provides the veil of unknown outcomes as a useful tool in an attempt to provide reasonable justice values that are constructive to the disputing parties (Ngetich, 2019). This advantage is beneficial over the litigation system, where disputes would be settled based on the law. The theory provides an avenue where no one would want to emerge victorious but be contented with the best possible outcome where no one is the loser (Crook, 2012; Lind & Tyler, 1988). Another relevance of the theory to this research is the idea that people can agree on the justice principles without prejudice and bias because of their understanding of the process. To that end, the most selfish decision would be harmless to another party because it is made in the best interest of whoever gets the worst offer of the judgment made. Consequently, it provides room for settling disputes without necessarily involving the courts while ensuring that disputes are settled amicably without adversarial cost, which could deprive conflicting parties of access to justice.

2.5 Conceptual Framework

This section covers a clarification of key concepts and a review of related literature. Uwazie (2014) the founding father of Alternative Dispute Resolution (ADR) in Africa, and Nolan-Harley (2020) agree concepts that have been responsible for ADR developments cannot be overlooked for the reason that the underlying knowledge base provides the vital framework for policymakers (Government) and practitioners (mediators, litigants, and judges) alike to rely on when deciding how to use CCADR to increase settlement rate and access to justice. The researcher sides with them, and for that reason, this section examines some basic concepts that have contributed to shaping the way CCADRM. To better understand the conceptual framework for this research, the key themes that underpin it are discussed, which are depicted in Figure 1 and discussed below.

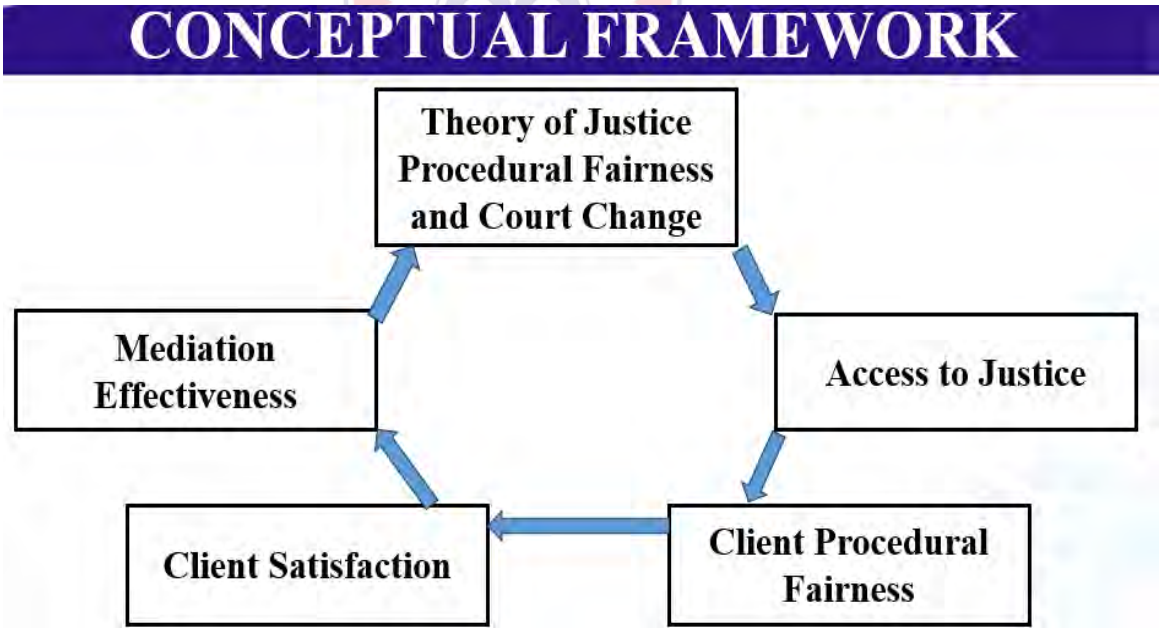

Figure 1: Themes

Source: Authors construct, 2023

Theories of justice, procedural fairness and Change in court management corroborate each other to enhance access to justice. The researcher hypothesizes that how mediation practitioners and their clients understand mediation can influence its effectiveness as a conflict resolution tool (Picard, 2000). Thus, an objective of mediation accordingly aims at helping citizens with an accessible, cost-effective and fast resolution of conflict to build confidence in the court users. Consequently, when practitioners and clients display a variety of mediation meanings that respond to various dispute settings emanating from culture, values, and social and legal constructions, trust is built by clients, which results in effectiveness.

To that end, multifaceted mediation conception can influence expansive protocols and subsequently higher settlement rates and party satisfaction.

Moreover, the researcher argues that when practitioners adopt a variety of protocols based on the nature and the characteristics of the conflict, there is a likelihood that certain procedural breaches will be avoided. Consequently, this could influence clients to feel that the mediation process was fair, leading to the client's compromise and resolution of their conflict. Thus, when mediation practitioners display their skills in mediation as a result of understanding the modern practice, could influence clients to develop trust, faith, and the adoption of CCADRM. Finally, when clients in dispute understand mediation conceptions, they become satisfied with the mediation process, protocols and the researcher argues that this could influence their procedural fairness judgment, and a high settlement rate leading to efficient mediation practice and access to justice.

2.6 The Concepts of Dispute and Conflict

To the layman, conflict and dispute may mean much the same thing since both involve a disagreement over some issue (Brown & Marriott, 1992). However, Mwenda (2006) tried to distinguish between the two terms as a justiciable dispute and a behavioural conflict. Consequently, behavioural conflict occurs where interests are incompatible (Ngetich, 2019). Whereas Wahab (2013) defines conflict as an incompatibility concerning opinions, principles, and beliefs. Thus, conflicts when uncontrolled sometimes manifest themselves in verbal or behavioural disagreements, which could lead to violence at the local and international levels (Shahla, 2018). Some scholars posit that the potential for conflict to result in violence calls for its condemnation (Picard, 2000). However, Rundle (2010) identified some sources of conflicts, such as decision-making processes and exchanges of opinion, when the democratic process is built based on the normalcy of ideas and interests.

An irreconcilable conflict becomes damaging when natural mechanisms for solving it are inadequate to deal with it (Oyombo, 2020). In such cases, other methods or processes may have to be resorted to. Some conflicts may be resolved by dispute resolution procedures such as injunctions, court orders, which restrain unlawful behaviour, arbitration, and CCADRM (Sackey, 2010; Uwazie, 2014). Thus, informal and formal conflict resolution adopt mediation. On the contrary, disputes are a class of conflict that manifests itself in distinct, justiciable issues (Ngetich, 2019), which involve disagreement over issues capable of resolution by negotiation, mediation, or any other dispute resolution process involving a neutral third party (Brown & Marriott, 1999) or through litigation (Fiadjoe, 2004). Thus, the differences can usually be examined objectively by the parties in the case of mediation or by the judge or arbitrator

in the case of the other methods, where the neutral can take a view on issues to assess the correctness of one party over the other.

Foskett (1996) notes that an actual dispute will not exist until a claim is asserted by one party, which is 'disputed' by the other. This is called a justiciable dispute by Mwenda (2006). According to Brown and Marriott (1999), the question as to whether or not a 'dispute' exists can be highly relevant, for example, where mediation or other dispute resolution provisions in a contract provide that disputes are to be referred to mediation or any other stipulated process. If no dispute exists, then a party wishing to enforce any aspect of the contract may do so through the courts; but if a dispute does exist, then the specified process must be followed. Mwenda (2006) further points out that it is the simple knowledge that disputes arise in society due to interaction amongst its members and that the greater and/or the more frequent the interactions amongst those with differing needs or conflicting interests are, the higher the chances of disputes.

Shahla (2018) is of the view that disputes are an expression of people's differences and that taking the opportunities provided by the state to resolve them leads to a better understanding of one another. This is supported by Van de Graaf (2021), who posits that how disputes are resolved can redefine relationships, redraw boundaries, redistribute wealth, reform laws, restrict movements, remove barriers, reshape thinking, and reframe problems. Consequently, the distinction between behavioural conflicts and justiciable disputes appears relevant in the ADR discourse; it appears that in practice these differences are purely the display of semantics (Akeredolu, 2013) and can be used interchangeably (Mwenda, 2006). Litigants in conflict aim is how their cases get resolved and do not necessarily care about whether it is a dispute or conflict (Tallodi,

2017). Since the literature reported mediation as a component of both conflict and dispute, the researcher, therefore, used the terms interchangeably in the study.

2.7 The Etymology of the Concept of Conflict Resolution

Conflict resolution is conceptualized as the methods and processes involved in facilitating the peaceful ending of conflict (Adzhalie-Mensah & Benson, 2018; National Peace Council (NPC), 2011; Zuure, 2018). Some define conflict resolution as the role bestowed on community members or arrangements therein provided by society to create peace. For instance, Fiadjoe (2004) explained conflict resolution as an attempt by community members to live in harmony by actively communicating information about their conflicting motives or ideologies and engaging in collective settlement. Consequently, conflict resolution aims at helping disputants understand and view the conflict, with beliefs, perspectives, understanding, and attitudes to increase its likelihood of resolution (Agarwal, 2011). Another perspective of the etymology of conflict resolution, which is premised on creating a 'we feeling through emotional readjustment and forgiveness', was provided by Nally (1995). According to Heise (2000), the aim of conflict resolution is when people in conflict engage a third party to facilitate their dispute, who entreats the parties in dispute to forgive. To that end, people will be spurred by illness that is associated with emotional challenges through emotional readjustment. Another etymological perspective of conflict is behavioural change. Based on this, Shahla (2018) defined conflict resolution as a reflection of how the disputants act and react, intending to offset their differences by learning from the experiences of the conflict to create a behaviour change.

It could be inferred that different perspectives underlie the meaning of dispute resolution. This is not surprising since the resolution of the conflict has been associated with a wide range of methods and procedures for addressing conflict (Adrian & Mykland, 2014). Contemporary dispute resolution methods used by both formal and informal practitioners include negotiation, mediation, mediation-arbitration, diplomacy, and creative peace-building (Akeredolu, 2013). Thus, Wahab (2013) and Rundle (2010) argue that the term "conflict resolution" can be used interchangeably with dispute resolution, based on the philosophy of the practitioners or the community that is experiencing the conflict. But both informal and formal conflict resolution involve mediation that satisfies all the etymological assumptions discussed above. Mediation as a contemporary conflict resolution then becomes a consensual tool encompassing the use of nonviolent resistance measures by parties in an attempt to promote effective resolution (Afrifa, 2019). Thus creating genuine access to justice.

2.8 Access to Justice and Alternative Dispute Resolution

The global justice gap, which is always ballooning, threatens the achievement of SDG 16 (NPC, 2011). However, access to justice aims at achieving individual legal rights and fundamental human rights, which are important aspects of the rule of law (Mahan &Mahura, 2017; Maranlou, 2015). The Access to Justice Movement arose as a historic response to criticism of liberalism and the rule of law (Maclons, 2014). Such criticism, in its extreme expressions, maintains that traditional civil and political liberties are futile promises. That is a deception for those who, because of economic, social, and cultural reasons, cannot enjoy and benefit from those liberties, especially when litigating in courts (Ibrahim, 2018). The Access to Justice Movement aims to analyze and search for ways to overcome the challenges or obstacles which make civil and political liberties inaccessible to so many people (Maranlou, 2015). To that end,

Charcodian et al. (2017) and Atuguba (2022) observe that economic obstacles, such as the poverty of many people who, for economic reasons, have no or little access either to information or adequate representation in resolving their disputes. This spurred the global attention given to the Access to justice that has attracted considerable global support, in the good governance agenda, especially in developing countries (Heise, 2000).

The concept of the rule of law, synonymous with the absolute supremacy of legal principles, ensures that no individual, regardless of social status, is exempt from compliance with the laws of the nation (Maranlou, 2015). The rule of law mandates that every member of society, whether a president or a mechanic, is subject to the same legal standards, promoting principles of legal equality, impartiality, and individual liberty (Kwesi, 2013). To that end, equal opportunities must be given to all citizens to access justice affordably and expeditiously (Maranlou, 2015). However, the courts, the universally accepted institutions constitutionally empowered to adjudicate between citizens or between the state and citizens' duties and obligations, are in dispute (Constitution of Ghana; WBR, 2020). Consequently, access to courts signifies the capability of all citizens to seek prompt resolution of their disputes through legal channels, reflecting a contemporary system of justice administration (Atuguba, 2022). On the contrary, Brems eta al., (2017) posit that the current global judicial system appears to provide exclusive access to the wealthy, thereby denying the most vulnerable members of society the opportunity to seek justice. This exclusion constitutes a violation of human rights. To that end, how to create accessible avenues for people who are in conflict has been a concern to all (Lande, 2022).

Studies of access to justice have found access to financial resources (Dome et al., 2019; Oyombo, 2020), which manifests itself through payment of lawyers that parties engage, payment of procedural entitlement such as payment for services, the filing of affidavits in courts are very costly where the poor usually cannot pay and are virtually excluded (Kodwo, 2017). Moreover, institutional challenges such as the language, interpretation and exclusion of parties who use the court from their personal views and the ability to understand and use the system create artificial barriers for the poor and vulnerable in achieving justice (Acquah, 2006; UNO, 2004). Moreover, access to justice principles put forward by Atuguba et al (2006) and Maranlou (2015), such as the possibility of every individual to bring a claim before a court and to have the matter adjudicated upon promptly, the right of an individual to have his claim heard without procedural hindrances. They further noted that the provision of legal aid for those in need does not apply to most people in the world, especially in a developing country such as Ghana. Consequently, the inability of the state to bring affordable, flexible and prompt resolution of conflict as a way of enjoying access to justice leads to the institution of alternative dispute resolution (Lind & Tyler, 1988; Menkel-Meadow, 2016; Nolan-Haley & Annor-Ohene, 2014; Niemerijer & Pel, 2005). Thus, ADR, especially mediation, has been identified as the 'game changer' in providing greater access to justice for people who need justice in a variety of ways of resolving disputes (Mack, 2003; McAdoo, 2007; Woof, 2016).

How mediation as an alternative dispute resolution mode within the formal court system enhances access to justice is reported by scholars (Amasah et al., 2015; Susslo et al, 2020). These scholars argue that for mediation to enhance access to justice, court practitioners, such as judges, lawyers and registrars, have to consciously recreate their conception of litigation. For instance, Susslo et al (2020) study found that judges and

lawyers become receptive to mediation and arbitration and adopt it as a social justice tool for the poor and vulnerable to enjoy universal legal rights. On the contrary, Shetowsky (2017) and Menkel-Meadow (2017) found that when legal practitioners develop a cold attitude to alternative means of enjoying legal rights, such as mediation and arbitration, access to justice may not be achieved.

A common challenge of access to justice discourse within the formal legal system is the problem of insufficient or inadequate access to lawyers (Edzi, 2018; Ese, 2005). However, Siang (2017) puts up a contradictory argument that strengthening and prioritizing mediation and arbitration as an alternative to litigation can reduce the vast access to justice gap since ADR empowers parties to personally own the resolution process. To that end, the opinion of the lawyer will be consultation and not representation, which will influence a timely, fair, and affordable access to justice for the poor litigants (Shawawry, 2020). Another group of scholars (Baffour-Awuah et al., 2011; Evasti, 2014) advocated for different strategies to reduce costs and increase the effectiveness of legal procedures and services, as well as increase the individual's capacity to identify and afford appropriate legal assistance and dispute processes.

Thus, the current legal system will not be able to achieve a holistic improvement of societal safety, and violence will increase if the legal system does not include the informal modes of accessing justice, especially through mediation and arbitration (Uwazie, 2014). Ahorsu and Ameh (2011) corroborated this assertion when they found that alternative dispute resolution processes give diversity to conflict resolution processes. Thus, this diversity will prevent external people who may not be knowledgeable in some basic cultural behaviours and practices from influencing disputing parties in the name of making money out of them (Ahorsu & Ameh, 2011).

This creates increased tensions and volatile security situations for the public in an attempt to seek justice in the courts. Though some scholars are of the view that to increase access to justice, alternative dispute resolution models are critical because of the challenges of the current legal system's inability to provide expanded access to justice. However, there are gaps in the literature concerning how those who have used these alternatives to seek justice understand, appreciate and evaluate the process, since access to justice must include knowledge of alternatives and if the alternative is free from certain procedural challenges, such as fairness of the process. This is what this study aims to fill.

2.9 Development of Alternative Dispute Resolution

Allport (2015) talks about the ADR revolution through formal and informal tension modes of conflict resolution. Thus, when people have a dispute which they are unable to resolve on their own, they would naturally seek the assistance of third parties, be it family members or friends, in the form of advice and guidance, to settle their differences (Bercovitch, 2011). In fact, "dispute processing" is not a new phenomenon, having been around as early as the 7th through the 11th centuries, A.D. (Shawawry, 2020). Such acts of resolving disputes more often take the form of "mediation, which is an informal way of resolving disputes as compared to the formal legal process (Touval, 1985). Thus, such "alternative" methods have become increasingly popular and have been referred to as complement litigation (Goldberg et al., 1999). This Alternative dispute resolution (ADR) has since become an acronym that was coined to cater for "methods which will complement and or replace litigation as the ultimate model for resolving disputes (Mwenda, 2006). This term is defined in the Glossary to the Civil Procedure Rules (CPR) of England and Wales as a collective description of methods of

resolving disputes other than through the normal court trial process (Kallipetis & Ruttle, 2006).

Consequently, Allport's (2015) study in Europe revealed that the ADR movement started with the call for legal education and law curricula to be reviewed to cater for other non-adversarial modes of conflict resolution. Mahama (2010) observes that such calls demanded the inclusion of mediation and arbitration, which are non-adversarial, cost-effective, consensual and conciliatory modes of training people. The change in the curriculum aimed to start thinking about moving away from the court-dominated practices to new voluntary mechanisms (Allport, 2015). This change of curriculum started in the USA (Allport, 2015), Europe (Carl-Helmut, 2015), Australia (Shahla, 2018) and some parts of Asia (Shahla, 2021). The objective of the training was for law students who have traditionally been trained for legal combat to appreciate the challenges of that training and respond to the contemporary global trend of consensual settlement (Heise, 2000). Subsequently, other countries developed strategies relevant to institutionalizing mediation and other forms of informal conflict resolution in courts.

Globally, the USA is reported as the pace-setter in the ADR movement. For instance, Stone (2005) reported that the shift from litigation to mediation in the USA was influenced by the explosion of court cases. Thus, accessing courts in the USA was expensive, especially those who accessed justice through the hiring of lawyers (Stone, 2005; Villarreal, 2006). Another reason that accounted for the development of mediation as an ADR movement was the acute shortage of lawyers. Stone (2005) reported that the ratio of lawyers to the American citizen was 10% of lawyers serving 90% of Americans. Quantitatively, Palihapitiya et al (2019) reported that the legal system was so bad that on average one lawyer served 1, 400 people in America. A

similar observation was made in Europe by Carl-Hemut (2015) who found that the European system had become polarized that only the rich people could access justice through the formal court because they could pay for the continuous adjournment of cases and the astronomical cost of accessing lawyers. This situation was not different in Asia where Siang (2017) reported that the Asian Legal system had a lot of cases pending and it could take about 20 years before such cases could be cleared from the courts. These observations meant that most people were excluded from the opportunities provided by the state for ordinary citizens to meet their legal needs.

Resnik (1982) argued that in the USA, 80% of the citizens could not meet their legal needs, thereby widening the justice gap since most low-income American citizens were excluded from the formal justice system because they could not afford the cost involved (Stone, 2005), they were excluded from the structure of the legal system in terms of the archaic nature of court proceedings, delays, emphasis on technicalities rather than case merits (Allport, 2015). Consequently, by 1906, legal scholars in the USA identified massive court inefficiency in enhancing access to justice based on cost, time, and availability of courts (Palihapitiya et al. 2019). The booming nature of these challenges led an American Judge, Roscoe Pound, who in 1906 delivered a speech on the state of the American justice system to the American Bar Association (Allport, 2015; Resnik, 1982; Villareal, 2006). Allport (2015) posits that during the ABA conference, Pound urged the ABA to push for a judicial reform, such as mediation, with a character that aims at diverting litigation to self-empowerment and amicable resolution. This created the consciousness of mediation in the American citizenry, but the problem identified by Pound existed and gradually became unbearable until 1976.

Senan et al. (2018) reported that in 1976, during the observation of the 70th anniversary of the Pound conference, Chief Justice Warren Burger, speaking on the theme 'Causes of Popular Dissatisfaction with the Administration of Justice advocated a shift from the litigation consciousness to alternative means of resolving conflict through mediation and arbitration. At this conference, Prof Sander advocated for the integration of mediation into the formal court system as a multiple-door courthouse' where different conflict resolution mechanisms such as mediation and arbitration can be used by court users (Stone, 2005). Kallipetis and Ruttle (2006) posit ADR was integrated into Tulsa, Houston, and Washington in 1985, New Jersey, Cambridge, and Massachusetts, and all Federal courts by 1998. In terms of the impact of clearing a backlog of cases, by 1996 mediation programs had settled about 20, 000 cases (Stone, 2005). Currently, mediation is compulsory in all courts in America as a way of creating access to justice (Menkeel-Meadow, 1997).

Other scholars (Carl-Helmut, 2015; Welsh, 2001) reported mediation has been an informal conflict resolution mechanism in Europe dating back to the Norma conquest, and subsequently between the 17th and 18th centuries. Kallipetis and Ruttle (2006) found that Europe's interest in mediation was a spillover from the American successful experience. However, the formal integration into the formal legal system of Europe was when Lord Woolf in 1994 reviewed the civil procedure rules for England and Wales intending to improve access to justice (Carl-Helmut, 2015). This review was necessary to reduce the cost of litigation, and complex rules of litigating both in High courts and County courts (Kallipetis & Ruttle, 2006; Woof, 2016). Whereas the USA operates a compulsory mediation, in the civil procedures of England and Wales, mediation is not compulsory but all disputants are encouraged to attempt mediation as a first option before filing cases in court (Woof, 2016). However, any person who unreasonably

rejects mediation risks suffering costs and penalties after trial. This is exemplified in the case of Dennett vs Railtrack PLC (Stone, 2005).

CCADRM in African countries developed from the influence of both the USA and Europe (Uwazie, 2014). There has been an increased growth in ADR and, in particular, mediation and its various hybrids within the African continent (Kasser-Tee, 2017). Some African countries have identified CCADR specifically, mediation as the appropriate remedy for challenged court systems and a tool that will provide greater access to justice for its citizens (Mahan et al., 2017). In Africa, mediation as an alternative dispute resolution has been integrated into some countries' legal systems. Akeredolu (2013) reported mediation integration into their legal system whereas Owiti (2009) and Chitsa (2018) reported integration of mediation into Kenya's legal system. The objective of these African countries' integration of mediation is to create an opportunity for all people irrespective of social, economic, or political background to freely use the court to resolve their disputes (Afrifa, 2019).

An inspiration for mediation in African countries is based on the global need for peaceful Africa. Consequently, Western organizations such as UNO, AU, State governments, and the United States Agency for International Development (USAID) have devoted considerable resources to integrating CCADR under the rule of law programs of most African countries to solve the global justice gap, which is becoming very alarming (Sarpong- Anane, 2014). In Africa, court mediation is designed to encourage courts and communities to find ways to offer citizens alternatives to courtroom trials for resolving disputes (Kirges, 2014). In Africa, CCADR is a concept where mediation and arbitration are made part of the court system in a way that persons who approach the courts for the resolution of their disputes are no longer availed of the

litigation process alone but can take advantage of other options in deserving cases with their claims assigned for resolution through the ADR processes (Relis, 2009). Akeredolu's (2010) study in Nigeria identified some key features of the Multiple Door Court House or CCADRM as the initial procedure through the intake screening and referral of ADR-suited cases based on the discretion of the judge and parties in dispute (Overcash, 2015). Some studies show that it is considered a preferred form of ADR (Crook, 2012) with its core values of self-determination, confidentiality, and impartiality.

CCADR mediation aims at providing access to what some scholars refer to as "interest-based justice where disputants are offered the chance to dominate in the resolution of their social conflict (Crook, 2004). It aims to increase this access with promises of efficiency through savings in cost and time (Solo & Nsengaali, 2022), enhanced satisfaction through the exercise of party self–determination (Welsh, 2001), protection of relationships (Wissler, 2011), creativity, process flexibility, and informality (Salem, et al., 2015; Sackey, 2010). All of these promises have led to a prominent role for CCADR mediation as an access to justice vehicle in the international dispute resolution landscape (Cavaleri, 2018). Interestingly, the United Nations Organization (U.N.O), favours CCADR mediation for its potential to contribute to the effective implementation of peace agreements by acting as a viable alternative to civil and criminal justice systems (Crawford & Maldonado, 2020). The World Bank promotes CCADR mediation as a method of managing and resolving disputes (WBR, 2020).

In Ghana, some mediation practitioners subscribe to the context, "alternative" in the term "ADR" to the formal court process and system (Crook, 2012; Afrifa, 2019; Atuguba, et al 2004). Thus, the parties look for informal methods to resolve their

dispute through mediation within the Ghanaian court system (Wood, 2013). The emergence of mediation as an ADR mechanism in Ghana focused on the approach to generate creative solutions in a conflict towards mutually beneficial outcomes based on a set of rules and principles (Fisher & Ury, 1981). To that end, Rundle (2010) argues that mediation is purely conciliation, and does not include litigation though it may be linked to or integrated with litigation, which involves the assistance of a neutral third party, and empowers parties to resolve their disputes. The development of mediation from the historical review appears to have received some attention from countries such as the USA, UK, India, Australia, Singapore, and other African countries to reduce the myriad of challenges ranging from explosive backlogs and cost (Palihapitiya et al, 2019; Shahla, 2021). However little is known about how parties who use the mediation process understand the process, the concept and how participants feel about the process in terms of its fairness.

2.10 Concept of Mediation

Mediation has been reported to exist as long as records show the existence of the human race. Scholars in mediation practice have reported that social interactions, both voluntary and involuntary, are the causes of conflict (Ahorsu &Ameh, 2011; Allport, 2015; Owiti, 2009). Wall and Lynn (1993) defined mediation as stemming from the Latin root 'mediare,' which means to halve. Others interpret mediare as 'healing,' indicating that mediation is consciously designed to heal people who are in conflict (Ahorsu & Ameh, 2011; Shapira, 2016; Solo & Nsengaali, 2022). Different perspectives of explaining mediation are reported in the literature, with many defining mediation in various forms and versions (Carmelina & Lazaro, 2003). As a result, mediation definition should depend on the particular conceptions, and discipline of

study, since the concept has been practised globally and dates back to an unrecognized period (Carmelina & Lazaro, 2003).

Consequently, the concept of mediation has been viewed by many as the anchor to the ADR movement (Darrow-Harmon et al., 2020; Landerkin & Pirie, 2001), and has gained popularity globally as an ADR mechanism through Acts of Parliament, including Ghana's Act 798 (2010) (Mahama, 2010; Wood, 2013). Folberg and Taylor (1984) defined mediation as a process that emphasizes the participants' systematic isolation of disputed issues, with the help of a mediator who is indifferent to the interest of the case. This is done to draw alternatives and options for reaching a consensual agreement that caters to the needs of disputing parties. Some practitioners conceptualize mediation from the objectives inherent in the mediation practice, the expectations and roles that mediators must perform, and the dynamic nature of mediation and conflict (Boulle et al., 2000; Kasser-Tee, 2017; Tvaronavicienen et al., 2021).

The Handbook for NPC (2011) states that the definition of mediation must include process perspectives and characteristics of the mediator in terms of its function, role, interest, and positions of the parties in the dispute. Based on this, Picard (2000) defined mediation as a process by which people in conflict, select a neutral third party or persons, who consciously isolate themselves from the disputed issues, but are interested in helping the parties to develop settlement options. Thus, the mediator is either trained or untrained and serves as a moderator to help parties resolve their conflict. The Maryland Judicial Operation (2016) described mediation as a consensual process in which a neutral third party without any power to impose a resolution, works with the disputing parties to help them reach a mutually acceptable resolution of some or all of the issues in dispute. Crook (2012) posits that mediation can be conceptualized as the

process where a mediator allows parties in dispute the opportunity to tell their respective sides of the story, and their cases are heard and considered by the mediator to assist them in coming to a common compromise.

On the other hand, the Australian National Alternative Dispute Resolution Advisory Committee (NADRAC, 2007) defines mediation more descriptively as a process in which parties to a dispute, with the assistance of a neutral third party (the mediator), identify disputed issues, develop options, consider alternatives, and endeavour to reach an agreement. To that end, the mediator has no determinative role concerning the content of the dispute or the outcome of its resolution but may advise or coach the parties during the mediation process on how to generate a settlement. Another context of defining mediation by other scholars is that it may be undertaken voluntarily, under a court order, or subject to an existing contractual agreement (ADR Act, 798, Kasser-Tee, 2017).

Other scholars contextualized mediation from cultural perspectives. For instance, Ahorsu and Ameh (2011) explain mediation as the application of indigenous values, norms, and ethnographic practices as foundations for conflict resolution where mediation infuses traditional African values with at times western mediation processes for greater efficiency based on the commitment to a commonality of goals, values, interests, practices, and institutions that can be exploited as a conduit for conflict resolution.

Several researchers have expanded Ahorsu and Ameh's definition of mediation by including the process of applying various norms and practices by respectable members of the community. This includes Abusuapanin (Family head), and traditional leaders whose aim is to restore disputants and communities to peace through the pacification

of the land, gods, and ancestral spirits, witnessed in their daily lives as influenced by traditional norms and institutions (Nukunya 1969, 1997). In building on the cultural dimension of mediation, Assimeng (1981) and Kasser-Tee (2017) have also explained mediation from both traditional and modern approaches as a means to addressing community conflicts through the help of a neutral party who navigates through the positions and interests of parties in dispute to enhance social peace settlement. Trust building as a conception of mediation has also posited another view of mediation practice. This is exemplified in Shawawry's (2020) definition that focuses on facilitating easy commitment for warring groups and individuals to negotiate and build trust where the parties identify easily with the settlements as their own. The process is more amenable to mitigating conflict attitudes.

Another conception of mediation is provided by Kovach (1994) who defined mediation based on the roles of the role the neutral third party plays. In the view of Kovach (1994), mediation is the process where a neutral third party plays the role of a 'mediator'. This definition means that mediation neutrals involved in mediation must not see themselves as judges lawyers or arbitrators. Moreover, such neutrals must not display preferences for any of the parties since such preferences can lead to the breaking of trust. In other words, the mediator is a dispute facilitator who introduces techniques to help the parties negotiate to settle their differences and arrive at an agreed solution to resolve the dispute at hand. In building up the conceptions of mediation attention must paid to the level of control in the mediation process. To that end, Oyombo (2020) views mediation as a process where parties control the result and the consensus reached or decided not by the mediator, although the mediator at times provides suggestions or avenues for possible dispute resolution, or points out common interests between the parties. Thus mediation is seen as where parties own the process of the resolution by coming out with

a possible settlement agreement and the task of the mediator is to guide, the parties on the possible effects of such settlement options.

Some practitioners define mediation from an impartial perspective. For instance, Adzahlie-Mensah and Benson (2018) explained mediation as where the mediator's responsibility is to ensure that the process is impartial and unbiased and that there is a balance of power between the parties. That is, the person who has a disputing party who lacks knowledge in the pending dispute must be empowered by the mediation to appreciate the dynamics of the dispute so that a better settlement option can be provided to aid the settlement. Moreover, Siang's (2017) definition is based on the process dimension of conception where parties are guided and assisted by the mediator through various processes such as exploring various options and solutions, exchanging information, bargaining and negotiating between the parties, and decision-making. These process dimensions are critical for the understanding of mediation since parties may report unfair treatment during the mediation process, especially when their understanding seems contrary to issues raised by Siang (2017).

This is corroborated by Brems et al., (2017) who argued that conceptualizing mediation practice must have an ultimate goal of bringing about a more harmonious relationship between the parties so that parties may not be tempted to perceive the mediation process as either biased towards them, not meeting their expectations because of misconceptions of the mediation practice and being overly zealous that at all means their cases should be resolved. It can be summed up that the central quality of mediation is its capacity to reorient the parties toward each other (Galton et al, 2021), not by imposing rules on them (Act 798, 2010; Kasser Tee, 2017), but by helping them to

achieve a new and shared perception of their relationship, a perception that will redirect their attitudes and dispositions toward one another.

A critical conception of mediation that creates problems in the minds of both mediators and people who use mediation as a dispute resolution tool is whether mediation should be seen as a facilitative, evaluative, and social norm approach (Benson & Asaah-Junior, 2024). From the various scholars' perspectives of mediation conception, it can be deduced that some of the definitions align with either the facilitative, evaluative, or social norm. Definitions of the role of the mediator as impartial, facilitator, self-determination, party ownership of the process, a couch and a neutral third party with no interest in the case, align with the facilitative conceptions (Charkoudian, 2012; Riskin, 1996). In contextualizing mediation practice, there is the likelihood that when the mediation process slips from these prompters, parties may report an unfair and biased mediation process (Becovitch & Oishi, 2010). To that end, Uwazie (2014) defined mediation as a kind of ADR model intending to facilitate negotiation between conflicting parties so that their differences can be resolved amicably with the help of the mediator. They further identified the process as a voluntary nonbinding process where the parties own their resolution under the supervision of the mediator.

On the contrary, it could be deduced from the definition that mediation aligns with the evaluative conception (Lande, 2022; Rundle, 2010; Shahla, 2021, Shawawry, 2020; Siang, 2017; Wahab, 2013; Wall et al., 2001). Thus, the evaluative mediation concept goes beyond just facilitating the process mediators must also evaluate the merit of cases therein presented (Shahla, 2021). Another implication of the mediation concept which aligns with the evaluative conception is that mediation should not be limited to the role of a neutral party as the only facilitator but must be interested in the outcome of the

mediation by offering advice to the parties on how to achieve settlement (Oyombo, 2020). Similarly, Siang's (2017) conception which aligns with the evaluative conception is the giving of options by the mediator to the parties to choose from in ensuring a consensual settlement of cases. Subsequently, the evaluative proponents argue that an evaluative mediator must be bold enough to evaluate the merits of the case as presented to parties during mediation because by the time the case gets to its terminal stage parties themselves would have known the merit or otherwise of their case (Siang, 2017).

Moreover, the evaluative proponents argue that because most parties are used to the litigation style of the resolution (Mahama, 2010; Ibrahim, 2018) parties themselves come to the mediation for mediators to evaluate the good and bad aspects of their case, and subsequently inform their decision to compromise for a resolution of the conflict (Ameer-Ali, 2010). Another critical issue about the evaluation conception of mediation as identified in the review has some evaluative words such as assess, predict, settlement focused, seeing mediation as a social problem, and the need for harmony (Antwi, 2017; Nolan-Haley, 2020). Other evaluative prompters identified in the literature include conflict as a social problem that needs to be resolved (Shawawry, 2020; Siang, 2017), power imbalance, and when a party feels he/she is resourceful can pay for the cost involved in the court litigation process (Crook, 2012). Evaluative mediation also manifests by clarifying some miscommunication that leads to conflict (Agbozo & Korang, 2017). This normally compels mediators to disclose the status of the case to the parties.

The cultural dimension conception of mediation aligns with the social norm approach which dwells on cultural values as a way of maintaining peace (Ahorsu &Ameh, 2011). That is this conception thrives on conflict as a social problem, and the need for a solution so that people can live in peace. The social norm advocate argues that since the society is built with conflict, in addressing conflict efforts must be made to include some cultural values, attributes, and skills developed and used for the survival of the society as the conflict resolution model (Assimeng, 1981). Scholars who align with social norm conceptions include (Ahorsu & Ameh, 2011; Assimeng 1981; Afrifa, 2019; Kasser-Tee, 2017; Nukunya, 1997).

Apart from these conceptions of mediation practice, other scholars have extended the conception to include international mediation. For instance, Carmelina and Lazaro (2003) cited Bercovitch and Houston's definition, which focuses on global or international mediation beyond traditional or local perspectives. This perspective has influenced some to define mediation as the ability to resolve conflict across international barriers where parties agree to a common consensus to facilitate trade, industrialization, and global peace (Atuguba, 2022; Nolan-Haley, 2020; WBR, 2020; Uwazie, 2014).

Another conception discusses mediation based on the need for formal training. To that end, the Hague Convention of 1899 and 1907 see mediation as the process of using neutrals who are trained with not less than 40 hours of training to resolve international peace and avoid global hostility (Article 4, 6, 8 of the Hague Convention on global peace, cited by Carmelina and Lazaro, 2003). In the collaborating training perspective, other scholars defined mediation based on the skills parties display to create a mutual resolution of the conflict. Menkel-Meadow et al. (2020), and Palihapitiya et al (2019),

view mediation as a fair process of resolving conflict, where the mediator's skills and fairness are key in creating lasting peace within the community of practice. The International Institute for Conflict Prevention and Resolution (CPR, 1998), later adapted by the United States Institute for Peace (USIP, 2020), defines mediation as a process of educating the parties in dispute on established ground rules for mediation, which cover non-binding, voluntary proceedings where any party may withdraw before executing a written settlement agreement.

However, Touval (1985) posits that courts and other quasi-judicial institutions that aim for efficiency often evaluate the mediation program based on the impact of the settlement, which could pressure mediators to prioritize the outcome (evaluative model of mediation) over the process (facilitative model of mediation). Surprisingly, the GJS identifies improving court output (settlement) as the primary objective of Ghana's CCADRM program, followed by efficiency (procedural and facilitative) as its last objective (CCADR manual, 2010; GJS, 2019). This objective makes the view of the practitioners critical to the success or failure of CCADR Mediation in Ghanaian Courts. The literature reviewed shows that mediation defies a single definition, as it has grown and developed over time. Some scholars define it as a facilitative, evaluative, problem-solving, cultural, international, voluntary, fair, and settlement-based process. This is accompanied by various promoters of the meaning that makes it unique. Initially, the mediation conception was facilitative, where the mediator facilitated the entire process to create social peace.

However, Wall, et al., (2001) challenged this view and advocated for the expansion of mediation to include the facilitative or evaluative process or function of the mediator. Picard's (2000) study found that the conception of mediation was influenced by the

disputed practice of the mediator, the parties involved, the gender of the mediator, and the type of dispute. Thus, he advocated for a pluralistic conception of mediation instead of a polar one. Bush and Folger (1994) and Topmain et al (1989) advocated for a malleable definition of mediation since it is used by various social institutions like big business organizations, financial institutions, educational institutions, political parties, family heads, and the formal court system.

Furthermore, the mediation definition should include traditional and cultural dynamics since conflict manifests itself within the social settings of societies where values, norms, and communal living depend on peace. Darrow-Hammond et al's (2019) study identified another concept of mediation called inclusive mediation conception which strives for the parties' right to decide which of the mediation modules they want to use for their resolution. They see inclusive mediation as how and when a community nominates and vests interest of resolution on neutrals so that they can achieve community justice. Their inclusion was, however, limited to some socially, culturally, and empirically tested as the basis of inclusive mediation.

The narratives discussed above appear to have foreign appeal, but there is a need to explore the local conception of mediation within African and Ghanaian jurisprudence to further develop mediation practice. To that end, it is important to pay attention to the experiences of mediation users, particularly those in the forest belt where lack of access to justice is reported to be high, such as the Twifo Praso enclave (Charkoudian, 2012). The various definitions and descriptions of mediation that have been explored raise questions as to whether they have been incorporated into the practice of court-connected mediation in Ghana by practitioners and their clients. This study aims at

filling this gap, by exploring how mediation practitioners and their clients conceptualize mediation from the Ghanaian context.

2.11 Procedural Fairness Experiences of Clients Who Access Mediation Through CCADRM

Mediation, as a conflict resolution model, has been seamlessly integrated into the formal justice system to enhance court efficiency (Crook, 2012; Nolan-Harley, 2020). This integration is driven by its inherent characteristics, including low cost, unhindered accessibility, increased party ownership, consensual settlement, and the reduction of backlogs in explosive court cases (Charkoudian et al., 2017; Van de Graaf, 2020). To that end, recognizing the multifaceted nature of conflicts depends on how practitioners demonstrate procedural fairness as a creative approach by ensuring that all stakeholders feel respected, and included during the resolution process (Brems et al., 2017). The handling of disputant cases within a dispute resolution setting holds immense significance, comparable to the outcome of generating the final settlement agreement (Van de Graaf, 2021).

Fair procedural research has emerged as a focal point for international human rights organizations due to its potential to enhance the effectiveness of the dispute resolution system, particularly within the domain of mediation (European Courts of Human Rights Overview, 1959-2017). The procedural fairness identity of mediation in conflict resolution, aimed at achieving justice, rests on the foundational principle that justice must not only be administered but also perceived to be administered – encapsulated in the adage that 'justice should not only be done but should be seen to be done' (Brown, 1991; Love & Galton, 2012). This underscores the imperative of maintaining

transparency and fairness in the handling of disputant cases, thereby upholding the integrity and legitimacy of the mediation process.

In the view of Van de Graaf (2020), in achieving fair and equitable access to justice, attention must not always be concentrated on the theoretical consideration of providing the models for seeking access to justice, but consideration must be placed on the 'how of the process'. This appeal of mediation as a conflict resolution mechanism is critical since most people use it in resolving their disputes based on the challenges of the formal court system and the chiefs' court (Charkoudian, 2012). Van de Graaf (2021) highlights that in Belgium, there is a notable trend where the majority of individuals who have experienced discrimination opt for mediation as their preferred avenue for seeking redress, with only 1% resorting to the formal court system to advocate for the rights of the less privileged.

Procedural justice fairness further focuses on exploring the "how of the process" and not just the settlement outcome since parties who use mediation may not know how the process works (Lind & Tyler, 1988). To that end, Van de Graaf's (2020) study in Belgium found that participants who were unsure of what to expect in the mediation process judged any form of human and worthy treatment as a fair process. Thus, human treatment was judged "self-worth", especially when parties in mediation were not discriminated against based on socioeconomic status, gender, race, or educational background (Lissak & Sheppard, 1983).

Treating parties equally in the pursuit of justice and providing unrestricted access to justice exemplify egalitarian principles and serve as focal points of procedural fairness (Lind et al., 1990). This approach enhances citizens' trust in the justice system by signalling that society values and cares for the less privileged without discrimination

(Shapira, 2016). However, some scholars in mediation argue that upholding egalitarian treatment in the process of dispute resolution not only promotes fairness but also fosters confidence in the legal system, ultimately contributing to a more just and equitable society (Lind et al., 1990). Other studies on the effect of procedural fairness on case settlement (Shapira, 2016), general court performance (Nolan-Haley & Annor, 2014) and how lawyers and mediators view procedural fairness (Van de Graaf, 2021). Onukwube's (2011) study examined the procedural fairness of mediation in construction industries in Nigeria, whereas Oyombo's (2020) study in Kenya found a relationship between the parties' understanding of procedural fairness in mediation and settlement outcome.

Pearson and Thoeness's (1985) study findings on procedural fairness identified potential challenges that may arise when mediation becomes a widely adopted dispute resolution mechanism. Consequently, Nally's (2005) study on procedural fairness found that the expanded use of mediation in various dispute settings poses a procedural challenge because mediators felt pressured to compromise on procedural fairness, which could ultimately undermine the effectiveness of mediation practice.

Despite the contributions of these studies, a significant challenge remains in the literature: the lack of a universally accepted definition of procedural fairness. This inconsistency may lead to potential confusion and varying interpretations across different studies. Divergences in focus, such as prioritizing participant voice versus emotional elements, can result in fragmented understandings of procedural fairness that could hinder the formulation of comprehensive mediation practices.

Moreover, many studies are situated within specific contexts or case studies, which may restrict the generalizability of their findings to broader mediation settings. This context-

dependent characteristic raises questions about the applicability of insights gained from these studies to diverse environments, including those found in the Twifo Praso court. To foster a more pertinent understanding of mediation practices, future research should address the distinctive cultural and socio-economic contexts of Ghana, acknowledging that existing methodologies may not fully encapsulate the experiences and needs of local clients and practitioners.

Cultural context is essential in shaping perceptions of procedural fairness, particularly in Ghana, where communal values and collective decision-making may significantly influence mediation practices. It is imperative for future research to delve deeper into these cultural elements, ensuring that mediation practices are aligned with local traditions and societal expectations. While the literature provides foundational insights into procedural fairness in mediation, its application within the Twifo Praso court demands further investigation. Addressing the identified challenges and focusing on cultural sensitivity will enhance the mediation process and better satisfy the needs of Ghanaian communities. Understanding the relationship between procedural fairness and outcome fairness will be crucial for achieving successful mediation outcomes in this specific context.

Similarly, in Ghana, particularly in the Central region and specifically in the study area (Crook, 2008), a significant proportion of the inhabitants, drawn by the advantages of integrating mediation within the court system, opt for this approach as their preferred method of resolving conflicts (Adrian & Mykland, 2014). Gaps, however, exist in the literature on how mediation clients experience procedural fairness of mediation after they have explored the concept of mediation. To address this issue, a study needs to be conducted to gather data on procedural fairness within Ghanaian mediation

jurisprudence. This research will serve as a valuable resource for guiding the practice of mediation and ensuring that it remains a fair and effective means of resolving disputes. This gap is what this research aims to fill in the literature.

2.1.1 Attributes of procedural fairness experiences in mediation from clients' perspectives

Various studies have been conducted on procedural fairness, with some focusing on the general legal system, judges, court arbitration, and court clients (Pignaut et al., 2017; Relis, 2009). In terms of general perceptions of mediation fairness, one attribute of procedural fairness recognized in the literature is the 'giving of voice" to participants who use mediation in the resolution of their conflict (Crook et al., 2011; Nolan-Haley & Annor, 2014). Thus, procedural justice fairness can be evaluated based on how people's views are considered, and the information parties give to mediators is factored into the generation of settlement agreements (Lind et al., 1990; Lind & Tyler, 1988; Thibaut & Walker, 1978). Some studies on procedural fairness found that parties evaluated procedural fairness when disputants adhered to the outcome reached in the settlement of a dispute without going to appeal (Beijersbergen, 2017). This procedural fairness fosters orderliness and contributes to a reduction in mental health problems of disputants (Van de Graaf, 2021).

Procedural fairness research also reported issues such as when parties are allowed to tell everything they know about the process without being interjected by the mediator (Galton et al., 2021) and when mediation practitioners pay attention to the parties when presenting their cases by empathizing with sensitive disclosure (Adzhalie-Mensah & Benson, 2018; Gacia et al., 2002). Others evaluated procedural fairness when parties have access to tell their side of the story and are allowed to express the virtues of

apology, forgiveness and being forgiven (Alfini, 1991; Asmussen, 2018). When parties admit wrongdoing by telling the truth and its associated compensations (Tyler, 2017).

By accepting the terms of the settlement, parties demonstrate a willingness to resolve their disputes amicably, which can alleviate stress and anxiety associated with prolonged conflicts (Adjei et al., 2021). This compliance with the settlement outcome promotes a sense of closure and stability, ultimately benefiting the mental well-being of the involved parties (Van de Graaf, 2020). Procedural fairness premised on the parties' voice being heard leads to obedience to the law and cooperative decision-making, creating and moderating social interaction through peaceful living (Tyler & Huo, 2002*)*. To elevate the quality of the mediation process, parties in dispute must be genuinely "heard," and sufficient time must be allocated to them (Lazaro & Carmelina, 2003; Wissler & Hinshaw, 2021). Not only does being heard create procedural fairness (Agbozo & Korang, 2017; Kirges, 2014). MacCoun (2005) argued that when portions of parties' stories are catered to in the generation of the settlement agreements, they develop a super interest in mediation. Liu et al.'s (2010) study corroborated this view when their study identified part of parties' communication designs factored in the generation of options as a critical component of procedural fairness mediation. Menkel Meadow (2020) in his study also found that fairness manifests itself by not only being listened to but consideration and compromises both parties bring to the table of mediation. When a party insist on not being ready to compromise, though they were duly listened to, they would still not get the needed settlement outcome (Heise, 2000).

Another dimension of procedural fairness is the speed of resolution time (Osse & Assiama, 2020; Wemmers, 1996). Though there is no consensus in the literature on the demand for time by mediation users, the two major periods are determined when the

cases are referred and when parties are allowed to determine their own time (Heise, 2000). Scholars argued that mediation users considered their “worth” and “value” when mediators extended the time needed for the resolution of their dispute by providing additional time and resources to the disputing parties (Allport, 2015). Such gestures influence parties' evaluation of procedural justice. Some argue that it's not merely about extending time, but rather providing "enough time" for both the referral and face-to-face meeting stages of mediation (Brems et al., 2017). Sufficient time in these stages fosters a sense of safety in the process and prevents rushing the referral or resolution of the case under mediation (Adzahlie-Mensah & Benson, 2018; Valkeapaa & Seppala, 2014). This emphasis on allowing adequate time at each stage of the mediation process ensures that parties feel comfortable and empowered to engage fully, contributing to a more effective and sustainable resolution.

Van de Graaf (2020) proposed that the exchange of information between parties and authorities, although reminiscent of informative justice, is aligned with procedural justice. This is because the information provided by parties constitutes an integral aspect of the mediation process and plays a crucial role in making decisions concerning the case (Solo & Nsengaali, 2022). When the mediation referral and processes occur either very quickly or very slowly, it introduces uncertainties in the decision-making process (Akeredolu, 2010). This can lead to procedural challenges in the minds of the parties involved and increase the likelihood of perceiving the mediation process as unfair (Lazaro & Carmelina, 2003). A balanced and timely mediation process is essential for maintaining the integrity and perceived fairness of the proceedings, ensuring that all parties feel adequately heard and supported throughout the resolution process (Charkoudian, 2016). Contrastingly, a shorter waiting period is evaluated as a

positive procedural fairness attribute, especially when it involves a swift resolution of the issues (Van de Graaf, 2021).

Based on the literature that has been reviewed so far, there is a strong indication that mediation acceptability as a conflict resolution model is premised on a better understanding of how procedural fairness is applied as a guiding principle, for both local and international practice. This study aims to facilitate, improve and modify the mediation program so that parties will not reject mediation based on basic procedural fairness breaches. Some experts recommend dedicating not less than an hour to each party, while others suggest allowing parties to share their complete narrative without interruptions from mediators or other authorities (Van de Graaf, 2021). This approach ensures that all parties have the opportunity to express themselves fully and contribute to the resolution process without feeling rushed or silenced. Other measurements of procedural fairness include how parties build their relationship in the process of mediation (Shapira, 2016), lack of prejudices, objectivity, and giving attention to parties in dispute by mediators (Van den Bos et al., 2020). For instance, Van de Graaf (2021) found that creating the impression that parties have been heard influenced their willingness to accept a mediation settlement, whereas the party's satisfaction with a fair mediation process was premised on defendants seeing the 'authority' as neutral, unbiased, and objective.

2.12 Confidentiality as a Procedural Experience of Clients in CCADRM

Another procedural fairness attribute is confidentiality. To that end, Curran and Coakley (2018) explained confidentiality as characterized by the communication of secrets or private matters and enjoying the confidence of another person entrusted with secrets. Siang (2017) posits that confidentiality is fundamental to traits that influence a

client's evaluation of a fair mediation since adhering to confidentiality leads to full trust in the mediation process. Consequently, confidentiality in mediation influences the mediator to encourage the parties to be candid in terms of their willingness to compromise their needs and interests, which underlie their respective positions (Galton et al, 2021). Some mediation users consider confidentiality as a basis for evaluating processes based on the type of information considered confidential, the purpose for which the confidential information is shared, and who asserts confidentiality and against whom (Pignault et al., 2017). Rundle's (2010) study on procedural fairness found that an advanced judgment of procedural fairness is grounded on confidentiality as demonstrated in the entire mediation process, statements, information, and comments shared or made by the parties.

Shawawry's (2020) study on mediation found that parties found that the prohibition from disclosing statements, information, and comments received during the caucuses to the other party safeguards confidentiality. Whereas, Pignault et al (2017) study participants evaluated procedural fairness through confidentiality when the mediator depends critically on confidential information disclosed during caucuses to get the parties to address their underlying interests and issues. Hensler (2001), on the contrary, found that participants do not base their experience of procedural fairness on confidentiality, especially if the information shared with the mediator is true and not fabricated. While the New South Wales Law Reform Commission (1991) study reported the influence of confidentiality on settlement as a basis of mediation, users evaluated the mediation process as fair. The contrary view was reported by Wahab (2013) and Rundle (2010). For instance, they found that confidentiality was exclusionary and influenced mediators to press for a certain type of settlement in which the other party may disagree, leading to the non- settlement of the cases (Rundle, 2010).

Scholars assert that confidentiality can inadvertently pressure mediators and parties into settlements that may not reflect genuine mutual agreement, thus complicating the perceived value of the mediation process.

This tension between the ideal of confidentiality as a tool for enhancing trust and the realities that can emerge within the mediation setting highlights the need for a nuanced examination of its implications. The present study aims to critically evaluate the complex interplay between confidentiality and procedural fairness in the context of mediation, specifically focusing on the Twifo Praso Court. By aligning with both supportive and critical perspectives on the matter, this research seeks to illuminate the distinct features and challenges of mediation as a tool for conflict resolution within this particular judicial environment.

2.13 Neutrality and Impartiality as Procedural Fairness Experiences of CCADRM Clients

Procedural mediation fairness traits such as neutrality and impartiality have been evaluated by scholars (Fisher & Ury, 1981; Siang, 2017; Wahab, 2013). Though some attempts have been made to differentiate between neutrality and impartiality. For instance, Fisher and Ury (1981) argued that impartiality deals with how mediators conduct the process and treat the parties, while neutrality refers to mediators' prior knowledge about or interest in the outcome of disputes. That is an essential criterion for neutrality is that there must be no conflict of interest in any aspect of the third-party relationship with the parties in a dispute (Shawawry, 2020) if mediation is to be seen as procedurally fair. Others allude to neutrality in the sense that mediators should have no relationship with parties or vested interests in the substantive outcome that might interfere or appear to interfere with the ability to function in a fair, unbiased, and

impartial manner (Siang, 2017). However, it is asserted that impartiality is not the same as neutrality (American Bar Association, 1994). They further explained that the mediator must be impartial and be seen to be impartial when dealing with both parties during the mediation process. The mediator must ensure that both parties are treated fairly as they work towards reaching an amicable settlement (MacCoun, 2005).

Mwenda (2006) submits that court users evaluate procedural fairness when the mediator makes it clear to the parties that they will not influence any party or have any preconceived bias towards any proposed options or outcomes. In corroborating Nally (1995) found that mediation fairness is premised on how mediation practitioners ensure that their personal values, opinions, and emotions do not interfere with the process. Another way in which neutrality influenced parties' perception of procedural fairness was when no prior or current relationship or interest in the outcome of the dispute existed (Ibrahim, 2018). Moreover, when mediators do not take sides, ensure fairness during the process, display high credibility, and focus solely on the mediation process, parties evaluate the mediation as fair (Zhormartky, 2023; Brown & Marriot, 1999). To that end, some studies (Astor & Chinkin, 1991; Nally, 1995) reported that parties in dispute judge mediation fairness when a mediator withdraws from the mediation session if the mediator's background could prejudice the mediation process and its outcome.

Though some studies on procedural fairness mediation have been conducted by socio-legal scholars, these studies focused on general experiences of mediation both in the court and outside the court practice. Moreover, the procedural fairness experiences reported appear to be concentrated in the High Courts, which is a superior court, at the expense of magistrates' courts. Another gap in the literature identified is that most of

the studies have urban backgrounds, and are mostly conducted in advanced countries at the expense of developing countries and precisely magistrate courts located in a peri-urban area with high levels of illiteracy and poverty. These gaps appear unaddressed in the literature. This study aims to fill the gap by exploring CCADRM clients' experiences of procedural fairness during the use of mediation as a conflict resolution tool in the Twifo Praso court in the Central region of Ghana. This place is a peri-urban area, and a magistrate court, with most of the inhabitants depending on court mediation as a conflict resolution mechanism.

2.14 Protocols Used in Mediation

Besaiso et al. (2016) defined protocols as a local set of rules, policies, and procedures developed and implemented by programs. They concluded that all mediation protocols were developed following pertinent state laws, Rules of Court, and local court rules. This implies that protocols of court-connected mediation may not be universal or homogeneous but may be varied based on the peculiarity of the state or country involved in CCADR mediation. This review will focus on the core protocols such as referral, joint session, caucusing, and settlement.

2.14.1 Referral and education as pre-mediation protocol

Various models abound before cases amenable to mediation can be referred to mediation in a court (Liu et al., 2010; Mack, 2003). Studies have identified various referral processes before a case is sent to mediation for resolution. Jagteberg & deRoo (2008) indicated that referral of mediation cases normally starts with a written referral, which is offered through a letter from one of the parties in dispute to the court before the initial court hearing. Thus, the parties discuss among themselves through letter correspondence and self-tests, identifying various compromises the parties would want

to make (Mack, 2003). But in other jurisdictions, settlement options proposals must be presented to the court before the referral to mediation request could be granted (Morocco Judicial Reform, 2007; Netherlands Judiciary Quarterly, 2011). When parties agree to the proposed settlement plan, the court registrar, according to Jagteberg & deRoo (2008) submit for that consideration by the judge, and subsequently to mediation. Whereas Mack's (2003) study in Europe found that such initial mutual arrangement mandated the judge to refer the case to mediation, Crook's (2012) study in some parts of Africa including Ghana found that this decision is based on the discretionary powers of the judge in the court.

Another pre-mediation referral protocol is the pleading for referral by a party when the case is called for an open hearing in court. For instance, Crook (2012) and Nolan-Haley and Annor (2014) indicated that a party can orally plead to the judge to allow parties to try mediation within the court. Moreover, the judge upon considering the nature, and the characteristics of the case and the parties involved can refer a case to mediation with or without the consent of the parties involved (Act 798, 2010; Judiciary Quarterly of Netherland, 2011; Shahla, 2018; Owiti, 2009). This models of referral abound, for instance, in Ghana the magistrate is the only person mandated by the law to refer cases taking into consideration the provisions of ACT 798 and other factors such as the nature of the case and the characteristics of the parties. In Kenya, the ADR coordinator is mandated to sieve cases amenable to mediation and request parties to accept mediation (Oyombo, 2020), while All Port's (2015) study found referral applicable to the judge and the court registrar in Birmingham. Carl-Helmut's (2015) study also found referrals based on the discretion of both the judge and the mediation officer, and other stakeholders in the administration of justice. In the USA Charkoudian (2017) reported

mixed findings where some courts have only judges referring cases and others with the help of ADR officers who offer early neutral evaluation (ENE).

Some studies reported that mediation parties at times request oral or written mediation referrals based on information and education that mediation practitioners, such as registrars, ADR officers, and the Judge offer to parties in dispute (Palihapitiya et al., 2019). Thus, pre-mediation referral, especially from judges and other court workers, is seen as a measure of quality mediation (Heise, 2000; Van de Graaf, 2021), since it gives room for parties to collaborate, discuss and mutually examine the future of the conflict. Such information includes but is not limited to the mediation process being voluntary, the party's self-determination, confidentiality, and neutrality (Menkel-Meadow, 2020; Maryland Judicial Reforms, 2016). To that end, mediation practitioners facilitate case referral by assisting parties in selecting their mediator, explaining the various settlement options that are applicable and the need to return to litigation if any of the parties so wish (Osse & Assiama, 2020). Jagtenberg de Roo (2011) found that the intermediary role of mediation practitioners is very crucial since parties, at times, fail to willingly approach the court in asking for a referral. Since the effectiveness of any mediation program is grounded on referral services national courts offer to parties in dispute, it becomes critical this referral protocol is attended to. Some research has found that the sole responsibility of referral which some ACTS offer may be dangerous to the achievement of fundamental human rights (Depner et al, 1992; Lande, 2022; McDermott & Obar, 2004). Others also argue that since some of the referrals may be written then we need only the judge who understands the legal and socio-cultural climate to decide the type of referral (Act 798, 2010; Kovach, 1994; Pel, 2008).

There is a gap in the literature relative to the African and Ghanaian practice of mediation in terms of how judges and mediation users influence the referral of cases to mediation. This knowledge gap especially how judges and mediation users influence cases to avoid procedural breaches is given attention by this study.

.14.2 Education of parties and referral of cases to mediation

The provision of education on the presence of mediation as a pre-mediation referral protocol has been identified by mediation scholars (Magg & Schmitt, 2010). Alshahrani (2017) posits that the referral of cases to mediation should be premised on the provision of adequate education on how ADR works in courts to influence court users to adopt it as their conflict resolution tool. Some scholars of mediation (Sayed-Gharib et al., 2011; Sarmiento, 2013) admit that awareness of mediation and its attributes through the education offered by judges, court registrars, and the Judicial service globally improved procedural fairness and the correction of wrong perceptions that parties bring to mediation and subsequently accepted the referral of cases to mediation. Pre-mediation referral education as a protocol in mediation has been reported by some countries. For instance, in Russia, Yaskova and Zaitseva (2017) reported that the provision of education to disputants on the merits of mediation, such as building and maintaining relations, reduction of cost and the party empowerment of awareness of alternative disputes. The provision of education on alternative dispute resolution (ADR) during the pre-referral stage of mediation protocol influenced its adoption in the settling of disputes in construction projects in Kuwait (Sayed-Gharib & Lord Price, 2011). Moreover, Keršuliene et al. (2010) established that awareness of mediation advantages presented through education by court practitioners to court users presented a substantial influence on decisions to embrace alternative dispute resolution (ADR) in resolving disputes in construction projects in Lithuania.

Similarly, Tazelaar and Snijders (2010) found evidence demonstrating that awareness of mediation during the pre-mediation had significantly influenced the case referral to ADR in both the Netherlands and Germany. However, Salem (2015) observed that concerted efforts to develop an awareness of mediation practice during the pre-mediation referral stage had presented a substantial positive influence on case referral to ADR in determining disputes in construction projects in Ireland. Most cases were referred to mediation during the pre-mediation stage after parties in dispute got the opportunity to learn about how ADR works in Germany and Sweden (Magg & Schmitt, 2010). In Africa, specifically in Nigeria, Idowu et al. (2015) educated disputants on the availability of mediation during the pre-mediation stage and motivated disputants in accepting referrals of cases to mediation for amicable resolution. Similar studies have been subsequently reported in South Africa (Heise, 2000) and Zambia (Oyombo, 2020).

On the contrary, some studies have reported that disputants have rejected case referrals to mediation based on inadequate education and orientation by court practitioners. For instance, Baffour-Awuah et al. (2011) established that inadequate education on the availability of mediation and its advantages in the court system presented considerable influence on disputants' decisions to reject the referral of cases to mediation in Ghana. In their study, Hussin and Ismail (2015) observed that the scarcity of knowledge in mediation had resulted in the limited use of the ADR method in settling conflicts by participants in Malaysia. Similarly, Sarmiento (2013) reported low referral as a result of inadequate education on mediation referral in the Philippines, while Khekale and Futane (2015) found the same in India. How mediation practitioners educate parties on the presence of mediation within the court system has been given attention, even though the findings are not conclusive. However, there is a gap, especially in how and why the education is provided and in what context, which appears not to have been given enough

attention. This study aims to fill this knowledge gap.

2.14.3 Time of referring cases to mediation

Time taken before the referral of cases is very crucial because the quality of referral has become a global concern and needs to be supported and strengthened since the future of CCADRM demands an appropriate style and practice of referral (Pel, 2008). Netherland Dispute Research (2011) advocates for attention to the period, necessary for the referral of cases to mediation after filing in courts. The research found that judges and other staff involved in mediation, as a way of strengthening mediation practice, must upgrade their knowledge of referral based on the role they play in the continuum of mediation as a conduit for the achievement of access to justice (Pel, 2008; Jagterberg & de Roo, 2008). Studies on mediation referral found that 80% of 'administrators' use letters as a medium to seek referral since it deals with institutions that may not have the luxury of time to litigate in court (Netherlands Judicial Quarterly, 2011).

Another study on referral reported that most civil cases are referred by judges instead of parties during the hearing of cases (Crook, 2012). In civil cases such as family law disputes, parties usually try to resolve the conflict back home, but because no consensus was built, the case is then filed in court. Such situations are described by Jagtenberg and Roo (2011) and need prompt referral. Judges' basis for referring cases to mediation in the literature includes the tendency to save time, cost, social harmony, and communication (Fisher & Ury, 1981; Pel, 2008; Palihapitiya et al, 2019). Some studies also reported the degree of escalation of the conflict, parties' readiness to negotiate, the presence of enough grounds for negotiation, and future business and social expectations (Neimerjei & Pel, 2005). Future relationships accounted for about 75% of factors judges considered before referring cases, such as business, family, education, and

marriage (Crook, 2010). Uncompromised positions of parties, especially when cases experienced high escalation, parties' unwillingness to compromise interests, with escalated positions put referral agents aback in sending such parties' cases to mediation (Neimerjei & Pel, 2005).

The timing of referral was also reported in the literature. Lande (2022) cited ACT 4:4 of the National Standards for Court Mediation Programs (NSCMD) and identified variations in time based on case type and the urgency of the parties involved. Carmelina and Lazaro (2003) reported that there is no consensus on the timing of referral of mediation cases, but identified two major referral periods, namely early and late referral. They further argued that these extreme polar versions of the long and short should give mediation practitioners guidance when referring cases after considering all underlying issues of the case pending. All litigants seeking justice in court value time as a resource that parties in conflict seek to preserve and avoid its wastage (Ibrahim, 2018; MODR, 2010). Some studies favour shorter times while others reported later referral (Crook, 2008; Damaseb, 2010). Shahla's (2018) study reported that court mediation referral cases are made either before cases are filed or during the period before judgment. Here, parties and judges can make referrals within this continuum based on how the parties and the conflict are proceeding during the litigation process (Carmelina & Lazaro, 2003). On the contrary, some studies have reported early referral as more productive than late referral. Lande's (2022) study found that waiting too long before referral can influence case settlement. Shawawry (2020) found that when cases take too long a time in litigation before referral, cases may not be settled since parties have already incurred the necessary cost, time, and effort and may want to end litigation instead of the mediation settlement.

A study conducted by Owiti (2009) reported that sunk costs in terms of time, money, and resources wasted during the longer period of litigation may not warrant settlement if getting to the terminal stage of judgment. Nwazi's (2017) study also identified that early referral avoids adversarial and entrenchment of position in the resolution process. Some studies also reported that early referral of cases avoids acrimony exhibited by parties during cross-examination, cost, and filing of counterclaims (Charkoudian, 2013; Rundle, 2010; Wahab, 2013). Grillo's (1991) study in Mexican courts reported that judges routinely referred cases early enough to avoid intimidation from the well-resourced and knowledgeable parties, while Palihapitiya et al (2019) study in Massachusetts court reported that early referral facilitated early information sharing and the need to compromise for settlement. Folberg and Taylor's (1984) research also identified ready acceptance of early referral from judges when the judge offers education to the parties on the advantages of mediation sessions, which are fast, cost-effective, and build party autonomy in settlement generation.

Maryland Survey (2016, 2010) found early referral of cases through either early neutral selection of amenable mediation by court staff and judges in Baltimore, Calvert, and Montgomery counties, because of the relationship between parties and the readiness to compromise. Shestowsky's (2017) study on mediators' conception of referral found that judges who are pro-mediation readily referred amenable ADR cases to mediation at an early stage of the conflict to reduce case backlogs in the courts. Another study conducted by Curran and Coakley (2018) found that judges who were familiar with arbitration and conference settlement promptly cases amenable to mediation to enhance the speedy resolution of cases and avoid time wastage. Kasser –Tee (2017) analyzing

ACT 798, 2010, further suggested that judges must refer cases amenable to mediation early to avoid the challenges of the traditional court system being transported into mediation practice. The ability to refer early cases based on the studies reviewed spanned from cost, time wastage, clearing of backlog, and maintenance of relationships either through business, social or cultural relations in enhancing social harmony and the need to reduce the overburdening of the judges. These views though available in other jurisdictions, how the Ghanaian court court-connected mediation stakeholders also make meaning out of this becomes the gap that this study wants to fill.

2.14.4 The initial joint session as a mediation protocol

Traditionally, the joint session protocol has been the foundation of the mediation process (Calvin, 2006). In biblical times, sparring community members often resolved conflicts by gathering together in an open forum alongside other community members to discuss and resolve disputes collaboratively (Gedzie, 2006; Wall & Lynn, 1993). In more modern times, the joint session has built upon this foundation to serve additional purposes, such as allowing the mediator to set the tone for and explain the mediation process to participants (Mwenda, 2006). In addition, the joint session provides an opportunity for the mediator to lay out the protocols for the mediation session, such as confidentiality regarding the information being exchanged and how the caucuses will work (Adrian, 2016; Crook, 2004). Crook (2012) submits that the joint session allows the parties a chance to communicate directly with one another.

Agarwal (2010) argues that joint sessions are focused on a more traditional exchange of thoughts, concerns, proposals, and needs of parties towards the resolution of their conflict. In corroborating, Calkin (2006) found that initial joint sessions give the mediator the power to control the process by serving as a guide to disputing parties'

arguments. To that end, Brown (1991) submits that an initial joint session as a mediation protocol creates an opportunity for advocacy for the potential for parties to speak and contribute to a creative and collaborative result. Charcoudian and others (2009) contributed to the initial joint session as mediation protocol found that it gave ownership of the dispute to the disputing parties since lawyers were not always engaged during the initial joint session. Thus it can be inferred from the previous studies that the advantages inherent in the initial joint session protocols influence some mediators to adopt it as the first initial attempts of getting parties to reach an amicable resolution of their cases. Mediators with such orientation start the mediation process with an initial joint session.

However, in terms of how the initial joint is conducted in the court mediation, Allport's (2015) study found that the most common is where parties remain in the same room following the delivery of the mediator's opening statement. On the other hand Crook (2010), Nolan-Haley and Annor Ohene's (2014) study revealed that a mediation joint session protocol puts the conflict into perspective where disputants are allowed to explain their side of the case and conclude with the demand the parties seek from each other.

To that end, disputants take advantage of the opportunity to speak directly to one another by making preliminary remarks or opening statements, where the plaintiff might explain why the suit was commissioned (Nolan-Haley, 2020; Topmain, 1989). Consequently, Eisenberg (2016) notes that in terms of fairness, the defendant is given the same opportunity at the initial joint session to offer responses to the claims of the plaintiff and further identify whether they are ready to continue the session or offer an apology and compensation for the resolution of the conflict. Calkin (2006) observes

that in the initial joint session period, all the guidelines to ensure the success of the mediation are given, where each side is expected to listen to the other without interruption after the opening remarks. A joint session may be used to exchange information, share a personal perspective, or identify potential risks directly, rather than as translated or presented by the mediator (Manual for Mediators, 2010). A joint session may also be used to deliver an effective apology or acknowledgement concerning personal responsibility; to deliver a complicated offer or counteroffer coupled with an explanation; or to engage in confidence-building discussions to begin the repair of a prior constructive relationship (Galton & Weiss, 2021). In corroborating, Asmussen (2018) asserted that the initial joint session must include a face-to-face conversation characterized by trust and truth. Vidal et al. (2019) concluded that face-to-face interaction as an initial joint session protocol compels cooperation influenced by politeness interactions, demand to listen to each other and refrain from explicit criticism of others and their ideas. Studies have shown that socially desirable behaviours such as cooperation (McAdoo & Welsh, 2004), truth-telling (Crook, 2012), and rapport-building (Rundle, 2010).

Other researchers have identified some challenges with using the initial joint as the first protocol in mediating cases. For instance, Akeredolu (2011) observes that more cynical people believe there is a more calculated purpose behind starting the joint session, where mediators demonstrate their authority. Another study by Cox and Parson (2000) on the challenges of initial joint session protocol was mediators' evaluation of the status of the cases, which often put some parties off, and they would prefer to hear the final judgement from the judge and not the mediator. In corroborating the challenges therein found in the use of the initial joint session as a mediation protocol, Pignault et al. (2017) found that most clients might not want to commit time and resources to prepare for the

initial joint session when the case involves their abusers, and this lack of preparation may result from a lack of faith in the ability of the process to work. Van de Graaf (2020) identified socially undesirable behaviours such as the use of pressure tactics, inappropriate language (Welsh, 2001), and rude or impulsive responses (Wood, 2013). The initial joint session as a protocol has received enough attention in the literature from advanced countries such as Canada, the USA, Europe, Asia and some African countries such as Nigeria and Kenya. However, it appears Ghana's mediation program has received little attention on the protocols of mediation, especially on the initial joint session and why mediation practitioners adopt it as a protocol. This gap in the literature is what this study aims to fill.

2.14.5 Caucusing as a mediation protocol

The value of using caucus sessions is a subject of controversy (Pruitt & Carnevale, 1993), and various writers have touched upon reasons for, and against, the use of caucus in mediation practice (Donohue et al., 1994; McEwen, 1982; Picard, 2000; Suslo et al., 2020). A caucus refers to the practice where a mediator meets privately with either of the parties in dispute (Kressel & Pruitt, 1989). Some mediators prefer to hold most of the mediation in the caucus because they believe that parties will be freer to speak, that it helps to keep emotions from escalating, and that they can be more directive in moving parties to an agreement (Charcoudian, 2020). Other mediators keep the parties together for as long as possible and use it as a strategy only when parties appear stuck and unable to move forward in the negotiation process (Nolan-Haley, 2020). Still, other mediators discourage any use of caucus because they believe it denies the parties the opportunity to learn to engage in creative discussion of their differences and joint problem-solving. A good example of these differences is that, whereas labour mediators caucus with the parties as a strategy to build trust, family mediators avoid the use of caucus for fear that

private meetings would create mistrust (Nally, 1995; Picard, 2000). The use of caucus might be connected to differences in how mediators understand their role and how they describe their style (Picard, 2000).

2.14.6 Goals of caucusing in mediation practice

Calkin (2006) identified four primary goals the mediator seeks to accomplish in adopting a caucus with each party. First and foremost, she seeks to begin building a sense of trust, rapport, and confidence in her role as a peacemaker (Suslo et al., 2020). By showing interest in each party's case, and in the parties themselves as individuals, she can convey her sincere desire to find a peaceful resolution that all can accept (Menkel–Meadow, et al., 2020). As this rapport is developed, the parties often are willing to compromise more than they originally intended when entering the process. Secondly, the mediator seeks to gain a better understanding of the facts and law of the case.

Because of confidentiality, the mediator can ask questions of all parties that have never been asked in a judicial setting (Schildt et al., 1994). She can inquire as to what the weaknesses in the case are from the litigant and lawyer's perspective if available during the mediation. This gives the mediator an understanding of the case, to which a judge, jury, or arbitrator would never have access (Picard, 2000). Third, caucusing gives the mediator a chance to begin reading the parties' real goals to get as much money as possible, to find vindication, and to have the matter resolved (Shestowsky, 2017). Fourth, the mediator seeks to identify any hidden agendas that might exist. Not infrequently, parties come to a mediation seeking something other than money. Sometimes they seek vindication or they just wish to vent and have someone listen to

their side of the case. Many times an apology or expression of concern will further the process (Picard, 2000).

2.15 Factors that influence Court Users (clients) to Use Mediation as a Conflict Resolution Model

Disputants are confronted with two options: using either the formal (litigation) or informal (mediation) systems for managing their conflicts within the court system (Ibrahim, 2018). Disputants in the court system take courses of action based on certain motivations. Such motivations are mostly based on their knowledge, opinion, material wealth, power, and status (Kendie & Bukari, 2012). Similarly, Ibrahim (2018) identifies the motivational factors for choosing a management mechanism as including awareness of the options available, opinions on how effective mechanisms are, the cost involved in the use of a particular option, and the valued nature of the option, which has to do with the perceived likelihood of success and their relationship with an opponent. In Vidal and Hammond's (2019) view, not all people have equal access to all options; class, gender, age, and other factors may restrict which avenues are open to certain individuals or groups within the court system. Based on factors like age and gender, community members might prefer either litigation or mediation mechanisms. In line with the assertion by Vidal and Hammond (2019) view Kendie (2012) suggests that the nature of the dispute or conflict itself may prescribe the use of certain legal procedures. In situations where the conflict is between or within families or is communal or even violent or non-violent, some mechanisms may be preferred to others (Ibrahim, 2018). Some of the motivating factors court users consider before using mediation are discussed below.

2.15.1 Maintenance of relationships

Mediation as an ADR mechanism's common feature is that it preserves and improves the disputing party's personal, social, and business relationships (Brems et al., 2017), and integrates lost features of conciliation, peace and healing (Calkin, 2006) that could have been destroyed by traditional court litigation (Ese, 2005). The formal court system is characterized by a strained relationship because of the adversarial nature of the case presentation, leading to fatal heart attack, suicide contemplation, depression and other health-related diseases (Calkin, 2006). This means that mediation extends beyond repairing existing relationships to where there is no previous relationship between the parties (Grootelaar, 2018). Shahla (2021) contributed to this by stating that 'even in commercial cases where one party does not want to lose a client, mediation creates a foundation for resuming the relationship after the case has been resolved amicably.

However, an objective of mediation aims at finding a peaceful and healing relationship among disputing parties. Keeping parties out of court, and engaging in mediation offers them an environment of less adversarial relationship and enhances an improvement of relationships, cooperation, and communication (Calkin, 2006). According to Shahla, (2021) disputing parties whose aim of benefit from continual relationships consciously select mediation as a multiple door of the court since it contributes to the positive transformation of relationships for family, neighbour, workplace, and business-related conflict. This is so because the agreement reached in mediation is consensual where parties do not feel like losers or winners (Calkin, 2006; Shahla, 2021). The relationship between parties is improved through mediation when they are offered the opportunity to gain a holistic understanding of one another motives, interests, positions and stands (Love & Galton, 2012).

The peace-making process results in a spirit of cooperation which creates relationship advancement as parties navigate through the mediation process (Nwazi, 2017). While the court's intention of litigants is all cost wining, it increases the adversity of the parties whereas as mediation process is influenced by compromise through the neutral behaviour exhibited by the parties' mediator who acts as the referee of the dispute (Chukudifu, 1989; Ese, 2005). This compromising nature makes parties reconsider their previously held stands that resulted in the conflict and through apology, forgiveness and compensation payment, parties leave the mediation table where their relationship had been strengthened (Van de Graaf, 2021), in parties building their relationship, Calkin (2006) observed that, in employment, business, and school settings, disputants have to go back to their working stations to continue working after legal actions have instituted against each other. Legal proceedings may destroy such existing working environments and relationships because of the adversarial nature of the open court (Wellers, et al., 2001). But when such cases are mediated, efforts are made by the mediator to rebuild their lost working relationship by engaging in a healing process during the mediation process (Calkin, 2000). This is critical According to Calkin (2006) when the case involves discrimination against the minority in terms of wages and job promotions.

A similar observation was made by Picard (2000) who reported that the Canadian Public Service Staff Relations Board instituted employee mediation service which mediated more than 500 cases with 85% settlement success and improved management and clients' working relationship and productivity. Shahla (2021) also reported that mediation programs improved and benefited relationship building between workers and their colleagues. Others reported that mediation relationship-building reduced absenteeism, and tension building which could have cost 359 billion dollars in the USA

(Aragaki, 2009; McEwen & Wissler, 2002; Shamir, 2003; Zeinemann, 2003). In his study, Overcash (2015) found evidence postulating the desire to realize the preservation of relationships presented a significant influence on the use of alternative dispute resolution (ADR) in settling conflicts in the United States of America (USA). Similarly, Vidal et al. (2019) established that the need for the preservation of business relationships had a substantial influence on the decision to adopt ADR in determining disputes emerging during the implementation of construction projects in Canada. In particular, they argued that arbitration was considered the most appropriate ADR method for the maintenance of business relations due to its inherent advantageous features that facilitate flexibility of proceedings and elimination of hostile enforceability of dispute settlements (Tanielian, 2012).

Cunningham (2015) found evidence indicating preservation of business relationships had a significant influence on the use of ADR in resolving disputes in Ireland. She, (2011) established that the preservation relationship significantly influenced the embracing of alternative dispute resolution (ADR) in resolving conflicts in Australia. Similarly, Jelodar (2015) found evidence indicating preservation of business relationships influenced the use of ADR in settling disputes in construction projects in New Zealand. In his study, Amaradiwakara (2017) observed preservation of relationships significantly influenced the embracing of alternative dispute resolution (ADR) in resolving disputes in Sri Lanka. Nihaaj (2018) found evidence that the need to maintain economic relationships presented a considerable influence on the adoption of ADR in settling disputes in construction projects in the same country. However, in their study, Main and Hossian (2015) found evidence that there was limited use of mediation as an ADR method in settling disputes for purposes of maintenance of relationships in Bangladesh. In their study, Javadian and Husseini (2014) found

evidence demonstrating preservation of social relationships significantly influenced the adoption of alternative dispute resolution (ADR) in resolving conflicts in Iran.

In corroborating, Alfadhli (2013) observed the need to preserve work relationships presented a substantive influence on the use of ADR in resolving disputes in construction projects in Kuwait. However, Besaiso, et al., (2016) established no preservation of relationships on the use of ADR in settling disputes in The Palestine State. Okpaleke, et al., (2016) also established that mediation rather worsened the relationship that parties had already built dispute in Nigeria. In a study, Balogun, et al., (2017) found contrary evidence on the influence of mediation in building and repairing relationships. The authors submit no evidence on the use of ADR in building party relationships in construction projects in South Africa. Similarly, Ntiyakunze (2011) observed that mediation use destroyed business relationships significantly in Tanzania.

The experiences of Ghanaian mediation users appear not to have been given enough attention, especially in rural settings where integration of mediation in court practices has been embraced by most of the citizens. This study aims to fill this gap by exploring whether relationship building is a key factor parties consider before using mediation. There is also a gap in terms of the settings of the research, most of the studies primarily focused on factors general mediation users consider before using it but this study focused its attention on only court mediation users.

2.15.2 Reduction of cost in CCADR mediation and access to justice

Many governments have indeed recognized the importance of reducing judicial costs and increasing access to justice through the integration of mediation in civil proceedings. This approach has been researched extensively and is effective in many different contexts. Kirim (2019), for example, notes that the Turkish legal system has

implemented court-sponsored mediation in civil disputes as a way to reduce the burden on the court system and improve access to justice. Similarly, Nwazi (2017) has made an important observation regarding the exclusion of various citizens from the formal justice system due to their low economic and financial standards. Many people may indeed avoid seeking justice simply because they cannot afford the costs associated with initiating and utilizing the court system (Kasser –Tee, 2017). To that end, Fiadjoe (2004) points out that from the 1980s onwards, government administrators worldwide expressed serious concerns about the increasing costs of legal aid for litigants accessing the court system. These circumstances dissuade potential citizens from seeking legal redress, as they face financial constraints related to legal fees, attorney costs, transportation expenses, and the necessary paperwork for mediation initiation (Crook, 2011, 2012; Edward, 1988; Nolan-Haley & Annor, 2014).

In contrast, mediation is acknowledged for its potential to reduce the financial burden of accessing justice in courts by requiring a lower initial filing fee payment (ACT 798, 2010; Kasser-Tee, 2017; Nwazi, 2017). This effect could be particularly significant in developing nations, where many individuals already struggle financially to access legal recourse (Chukwudifu, 1989; Goldberg et al., 1999; Shahla, 2021; Stipinowich, 2004). According to Shahla (2021), addressing the cost challenge requires consideration from two angles: the government's objective of lowering judicial expenses and the litigant's objective of reducing the legal costs related to accessing justice. Nonetheless, a question frequently posed by scholars pertains to the efficacy of mediation in minimizing expenses linked with court-associated mediation for enhancing judicial accessibility (Geen, 2014; Nwazi, 2017). This inquiry can be better examined through the perspectives of litigants and court practitioners, who are the primary beneficiaries of mediation.

Shahla's (2021) study highlighted issues of cost, delay, and strain within the civil justice system, as the government struggled to meet the budget for legal aid. Shahla recommended mediation as a cost-effective and prompt resolution alternative, given the limitations of the civil justice system. Nwazi (2017) highlighted financial challenges within the Nigerian judiciary, including difficulties in funding legal aid and the insufficient number of courthouses and judicial personnel. These issues have hindered the majority of Nigerian citizens from accessing justice effectively. The justice system in Nigeria became a privilege for the wealthy, enabling them to intimidate the vulnerable (Edward, 1988; Ese, 2005). To address this disparity, mediation was introduced as an alternative means of accessing justice, offering a cost-effective solution with limited payment requirements restricted to filing fees (Chukwudifu, 1989). Likewise, Owiti's (2009) research identified cost considerations as the driving force behind the integration of mediation into Kenya's legal system, aiming to broaden access to the courts for individuals seeking to uphold their fundamental human rights. Rundle's (2010) PhD thesis from Tasmania University of Tasmania highlighted the high cost of accessing justice as a key factor in introducing mediation into civil proceedings in Tasmania. This move aimed to make justice more accessible to vulnerable individuals, leveraging mediation's cost-effectiveness trait.

Similarly, Goldberg and Brett's (1983) experiment in the US Department of Labour emphasized the cost-effectiveness of mediation as a primary reason for its introduction into the US court system. Article 14 of Ghana's constitution protects citizens' unrestricted access to justice, meaning that any hindrance to accessing justice constitutes a violation of fundamental human rights. Unfortunately, the Ghanaian judicial system faces challenges such as affordability and proximity in accessing justice (Osse et al., 2020). In addition to this challenge, the Afro-barometer report from 2020

revealed that 54% of its participants cited the expensive nature of the Ghanaian justice system as a reason for not utilizing it to resolve their conflicts. The study participants further disclosed that the Ghanaian justice system predominantly benefits the wealthy and economically active citizens, often neglecting the needs of the poor (Dome et al., 2019; GJD, 2022). To address these challenges, the ADR Act 798 (2010) was enacted with the primary aim of reducing costs for litigants and the court while enhancing people's access to the court.

Consequently, Crook (2013) highlighted the significantly lower costs associated with CCADR mediation compared to pursuing a full legal case, where parties involved in CCADR mediation are not subject to any additional fees after paying the basic 'filing fee', typically around Ghc 200 ($7.50). If litigants proceed to a full trial, the fees could amount to Ghc 5000 ($250) or more. Crook's (2012) study further revealed that disputants perceive mediation as less costly because cases are typically resolved more quickly, thereby avoiding ongoing transportation expenses and the costs associated with hiring lawyers. In corroboration, Nolan-Haley's (2013) research concluded that parties who opted for mediation as a dispute resolution method saved 60% of the expenses compared to those who pursued full litigation at trial. Additionally, Afrifa's (2019) study identified cost as a significant factor for parties considering mediation, particularly for those who were not financially capable of affording the services of lawyers. Shahla (2021) suggests that in various jurisdictions, including the United States, the financial crisis of 2008 resulted in reduced budgets for the judiciary. To mitigate these budgetary constraints, the judiciary turned to mediation as a means of reducing judicial costs.

Woof (2016) asserts that numerous studies from a global perspective have demonstrated that employing alternative methods, such as mediation, can decrease the costs associated with litigation. These collaborations have led to the establishment of mediation schemes offering zero or low-cost, time-limited mediation sessions held in court premises for litigants who have already initiated court proceedings (Love & Galton, 2012). In their research, Du Preez (2012) presented evidence indicating that the desire to minimize expenses led to the adoption of alternative dispute resolution (ADR) methods to resolve conflicts in construction projects in the Netherlands. Similarly, Henry Fisher (2017) found that the imperative to establish mechanisms ensuring minimal costs in the event of disputes significantly influenced the adoption of alternative dispute resolution (ADR) in both England and Wales. Saeb et al., (2018) found that the drive to minimise costs linked with litigation significantly impacted the adoption of alternative dispute resolution (ADR) in resolving disputes in Iran. Moreover, Salem's (2015) research revealed evidence suggesting that objectives aimed at minimizing costs played a significant role in the utilization of alternative dispute resolution (ADR) for resolving disputes in the Kingdom of Bahrain. According to Shahla (2018), court-based mediation schemes were initiated in the Central London County Court in 1996. These schemes are operated on a pro bono basis by trained mediators, aiming to reduce costs and enhance access to justice.

In North America, mediation reportedly saved approximately US$500 per party in the United States and about US$6,000 per case in Canada, according to Adrian's (2016) study. Additionally, Rosenberg and Folberg (1994) found that about 40% of parties believed that they saved money with mediation, contrasting McDermott and Obar's (2004) study, which reported that parties believed mediation added about US$4,000 on average to the cost of litigation. Palihapitiya et al.'s (2019) study conducted a thorough

analysis of the cost implications of different forms of mediation in the US, revealing varying results. While Palihapitiya et al. (2019) found that cost savings exist in some contexts, Wissler (2004) reported mixed outcomes regarding general civil mediation cost savings. Specifically, Palihapitiya et al.'s study examined compulsory court-based mediation and yielded different findings. On the contrary, in North Carolina, a report evaluating the impact of a court-sponsored mediation program for civil claims revealed that the program did not achieve its anticipated cost-saving objectives (Allport, 2015). Additionally, satisfaction with mediation was found to be comparable to that of conventional settlement methods (Charcoudian et al., 2017). However, despite these differing perceptions and mixed findings regarding overall cost savings, especially for mandated cases necessitating further litigation, questions persist regarding whether court-referred mediation effectively reduces litigation costs. Research findings indicate mixed results, both from the perspective of lawyers and general court assessments. Voluntary mediation is often found to be more successful in reducing costs compared to mandatory mediation.

Wissler's (2004) research findings concluded that the average costs of cases referred to mediation are lower than those for regular cases. The cost savings amount to €53 in civil cases, €318 in administrative cases, and €404 in tax cases (Ibrahim, 2018). The cost savings primarily stem from mediations where litigants reach a (partial) agreement. In cases where litigants do not agree, the additional costs for civil cases referred to mediation average €220, while for tax cases, the extra cost amounts to an average of €28. In their study titled Reducing Costs to Litigants and Courts, Chacoudian et al. (2017) reported that the total litigation costs for litigants would have been higher if the case had not been assigned to mediation. They found that the use of mediation resulted in either decreased or increased total costs to their clients or had no effect. Some

participants reported that mediation had led to cost decreases for their clients, averaging $8,155. Menkel-Meadow's (2016) study highlighted that savings arise from the absence of expenditure on transcripts, briefs, or oral arguments, as they are not typically required when cases are referred to mediation. This results in a reduction in the overall cost associated with mediation. Bercovitch (2011) and Kovach et al. (2010) reported several benefits of mediation, including a decrease in the time to disposition for successfully mediated cases. They also noted that mediation provides the opportunity to resolve issues beyond those initially brought up in the appeal process. Additionally, agreements reached through mediation are typically considered durable and result in reduced costs for litigants when cases are settled promptly.

Cavaleri (2018) uncovered evidence suggesting that a majority of parties involved in construction disputes in Denmark chose to opt out of alternative dispute resolution (ADR) at a later stage due to the significant hidden costs associated with it. Specifically, she argued that arbitration entailed additional management costs that were deemed excessive in comparison to the financial position outlined in the contract, leading to a preference for litigation in most disputes (Cavaleri, 2018). In his study, Abeynayake (2017) found that parties involved in construction disputes in Sri Lanka were more inclined to utilize alternative dispute resolution (ADR) to resolve their conflicts. Though this research is meaningful for the current study, the procedural aspect of this research appears not to highlight the vacuum that the researcher wants to fill. Interestingly, how cost reduction influenced settlement is missing in this literature, which this research seeks to address.

2.16 Effectiveness of Mediation in Courts

Mediation has become a widely accepted and increasingly popular form of Alternative Dispute Resolution (ADR) globally, with its effectiveness being extensively researched and documented from a closed perspective (Afrifah, 2019; Boyle, 2017). Thus, creating significant research gaps in a comprehensive understanding of mediation effectiveness. Consequently, existing studies have primarily focused on the outcomes of mediation, such as settlement rates and party satisfaction, with limited attention to how management support creates mediation effectiveness (Boyle, 2017). This oversight leaves a significant gap in our understanding of what occurs during mediation and how it leads to desired outcomes. Moreover, most of the research has been conducted in Western contexts, neglecting the diverse local courts' initiatives and social and legal contexts of non-Western countries such as Ghana and specifically Twifo Praso (Ibrahim, 2018). This geographical bias limits the generalizability of findings and underscores the need for a more expansive exploration of mediation effectiveness, notably from culturally sensitive research. Some authors have measured mediation effectiveness from specific contexts, such as family or employment disputes, with little attention to its application in other areas, like commercial or community disputes (Adjei & Ackah-Ayensu, 2021; Wahab, 2010). This narrow focus restricts our understanding of mediation's versatility and potential applications. Others have attempted to study mediation effectiveness from the impact of mediator characteristics, such as gender, experience, and style (Akeredolu, 2010; Crook et al., 2010). The long-term effects and sustainability of mediation outcomes about the durability of agreements and the potential for future disputes have received some attention (Ervasti, 2014; Fisher, 2017).

Another simple measurement of mediation reported in the literature has been how mediation styles influence mediation success, especially from traditional perspectives

such as facilitative, evaluative, and transformative (Galanter, 2004; Geen, 2014). Limited Attention has been paid to cost-effectiveness, settlement rate and institutional efforts in enhancing mediation effectiveness. Research rarely assesses the resource utilization and cost-benefit analysis of mediation compared to other dispute resolution methods. There appears to be no universally accepted framework or instrument for measuring mediation effectiveness, leading to inconsistent and incomparable results across studies (Brazil, 2002). In terms of institutional efforts at creating mediation effectiveness, Palihapitiya et al (2019) attempted in the USA to examine how local mediation practitioners create mediation effectiveness, such as being dedicated to the principles of mediation. Whereas Wahab (2010), Siang (2017) and Kasser-Tee (2017) studied case-clearing backlogs as a measure of mediation effectiveness, concentrated on urban dwellers' appreciation of mediation. Moreover, their studies measured effectiveness from national data, for instance, data from Ghana Judiciary annual reports, Ghana Judicial Digest assessment modules and reports.

This study aims to contribute to filling these gaps by exploring specific aspects of mediation effectiveness, such as court-connected practitioners' measures of mediation effectiveness, taking into consideration how the backlog of cases, celebration of ADR week, and high settlement of cases affect mediation effectiveness.

2.16.1 Reducing caseloads and delays from the perspective of clients in CCADRM practice

Court-centered case jamming contributes to the delay of justice. A major justification given for reforming systems of civil justice is the reduction of caseloads. In 1987, at the trial court level, India promulgated the Legal Services Authorities Act, by which

court mediation was introduced. Due to this success, in 1999, the Indian Parliament passed the Civil Procedure Code requiring that trial courts refer disputes for settlement through mediation and other alternative means of solving conflict (Supreme Court of India, Manual for Training Mediation). Moreover, the Netherlands presents a useful illustration of a judiciary seeking to address the case backlog through mediation practice. During the 1990s, to address court delay, the judiciary promoted court-annexed mediation. A study analyzing the effects of the programme found that 'about 5% of the cases suitable for mediation were resolved and concluded by court-referred mediation' (Niemer & Pel, 2005). The study showed that while a small number of cases proceeded to mediation, each successful mediation decreased the work of the courts, given 'the time saved that the court would otherwise have to spend drawing up a judgment, hearing testimony and reviewing written exchanges of statements' (Niermer & Pel, 2005). Many studies have shown that mediation can save time for courts and parties, ranging from several months to several years. In Colombia, a study examining its court mediation programme (Shahla, 2018) showed that in 2001, tenant eviction cases took 15 months on average in court but only four months in mandatory conciliation. A study by Hagan and Han (2017) analyzing Justice S.B. Sinha stated the following:

> The available infrastructure of courts in India is not adequate to settle the growing litigation within a reasonable time, despite the continual efforts. A common man may sometimes find himself entrapped in litigation for as long as a lifetime, and sometimes litigation carries on even to the next generation.

Speedy disposal of cases and delivery of quality justice is an enduring agenda for all who are concerned with the administration of justice (Shahla, 2021). Moreover, the effects of court-referred mediation in Canada found that mandatory mediation programmes resulted in more cases being settled sooner. Similarly, Wissler (2004)

reported that 'in five studies of appellate cases, the time to disposition was one to three months shorter for cases assigned to mediation than for other cases. In this context, there is an imminent need to supplement the current infrastructure of courts by employing Alternative Dispute Resolution (ADR) mechanisms.

In addressing court delay, pilot programming followed by the introduction of legislation, as exemplified in Canada, has been considered an effective model for designing court-based programmes. In 1999, in Toronto and Ottawa, a two-year pilot rule was introduced in the Ontario Court Rules for the Ontario Superior Court of Justice, making mediation mandatory. Chitsa's (2018) study examining 3,000 mediated cases alongside a control group, the study concluded that mandatory mediation resulted in significant reductions in the time taken to dispose of cases, decreased costs to litigants, a higher proportion of cases (roughly 40 percent overall) being completely settled, and a larger further group partially settled, early in the litigation process. The same study also found that lawyers estimated their clients' cost savings to be $10,000 or more per case in 38% of mediated cases, less than $5,000 in 34% of them, and from $5,000–$10,000 in 28% of mediated cases.

Additional findings from studies in Australia further suggest that court-based mediation programs have contributed to a reduction in delays. A study of the mandatory court-referred mediation program in New South Wales found that at least half of the cases referred to mediation successfully resulted in settlement, thereby significantly reducing the courts' remaining caseload (Maclons, 2014). However, later studies have suggested a wider base of programmes be examined to provide additional insights. Bergman and Pyykkonen (2017) noted that court mediation programs can reduce costs and time. Therefore, the success and achievement impact of mediation reduced the cost and

duration of civil cases. Many view success as most importantly measured through 'high client satisfaction', often resulting in high-quality mediation programmes entailing 'highly trained, debriefed, problem-solving mediation services staffed by well-paid mediators, who use an intake (Shahla, 2021).

2.16.2 Length of the mediation session and processing time

There are quite substantial differences between civil and administrative cases. The time taken to dispose of cases after their initial filing in court has been researched by scholars of CCADR mediation. The following is the time frame which has been reported in the literature. Welsh's (2014) research reported the extra processing time of cases referred to mediation has to be attributed to administrative activities. The actual processing time of the mediation amounts to an average of 57 days: 65 days in civil cases and 31 days in administrative cases. In cases of administrative law, the median processing time is 0 days, i.e. the mediation is completed on the same day it started; in civil cases, the median processing time is 46 days.

From the point of view of the Judicial Service of Ghana, one of the main goals in introducing court-connected ADR was the hope that this option would be speedier and thereby help to reduce the delays and backlog of cases blocking up the formal court system. Afrifa (2019) reported that the official target given to mediators to settle the case with litigants was within 30 days and remit the case back to court if it was not possible to deal with it within that time frame, although it was possible to ask for an extension. Crook's research further reported that most of the cases were dealt with in one or two mediation sessions. The study by Nolan-Haley (2020) also reported how mediators were able to settle a case that had been hanging on for 10 years and was resolved within 30 minutes of the mediation process. Crook's (2012) study also reported

that 55% of the litigants surveyed had already had to attend court more than six times, and 30% between two and five times, but once a case was heard in mediation, the cases usually got settled within two or three sittings.

Other studies reported mediated case settlements reported in between four months after initial filing at the court (Kakalik et al., 1996; Macfarlane, 1995; Wall et al., 2001). However, some reported disposition within seven (7) to twelve (12) months (McEwen, 1992; Wissler, 1992), whilst other studies also reported disposition of litigated cases within twelve months and above (Depner et al., 1992; Kakalik, 1996; Schmidt et al., 1994). Other researchers also found a single mediation session settlement of the dispute through CCADR mediation (Evasti, 2014; Wissler, 2002).

Other researchers also became interested in the total number of hours litigants would want to use in mediation sessions. Some studies reported a time frame of two (2) to three (3) hours in the mediation process (Hagan & Han, 2017; McEwen, 1992; McFarlane, 1995; Wissler, 2002), others also reported less than two (2) hours (Kakalik et al, 1997; Wissler, 2004). The longest of the time frames was reported in the research conducted by Kobbervig (1991; Wissler, 2004). Litigants' pushback may also be due in part to some highly directive mediator practices. Crook's study of mediation in Ghana's Magistrate's Courts reports a concern with some coercive behaviour towards the litigants. In the same vein, Nolan-Haley (2020) adopted an observational study of mediators' behaviours and reported a definite effort to push for compromise agreements. In the context of the courts, mediation should be expected to deliver to disputants an experience of justice, more commonly referred to as procedural justice.

2.17 Chapter Summary

The literature review revealed that many governments in the global north and south have shown significant interest in introducing mediation to enhance judicial performance. However, the studies reviewed primarily focus on basic evaluation models, such as settlement rates, the importance of mediation practice, and the challenges mediation practitioners face. Studies on mediation effectiveness that explore the conception of mediation, the protocols involved in mediation practice, the experiences of mediation users, and how local administrators of CCADRM) evaluate the program appears to be missing from the literature. Another area that lacks adequate attention is the interaction of these elements within the African and Ghanaian contexts, particularly studies that combine the perspectives of both mediators and their clients. This study aims to fill that gap.

CHAPTER THREE

RESEARCH METHODOLOGY

3.1 Introduction

This chapter discussed the methodology used for the research. Specifically, the chapter described the study area, the philosophical underpinning, the research approach, the research design, the population, the sample and sampling procedure, instrumentations, the trustworthiness of the instruments, the data collection procedure, the method of data analysis and ethical considerations.

3.2 The Study Area

The map below shows the spatial distribution of the Twifo Atti- Morkwa enclave. These towns are within the Twifo-Atti-Morkwa and Twifo/Hemang/Lower Denkyira districts. From the south to the north are Twifo Hemang, Mampong, Nyinase, Twifo Praso, Aboabo, Wamaso Morkwa, and Agona. To the northwest is the Ayaase enclave. To the northeast of the map is Dunkwa, the capital of Upper Denkyira East.

The research was conducted at the Twifo-Praso Magistrate Court building located within the Twifo Praso-Dunkwa on–Offin Road in the Twifo Atti-Morkwa district. The court setting is characterized by two semi-detached structures, one comprising the courtroom, judge's chambers, clerk's room, and bailiff's room as a semi-detached building. The second structure is made up of the registrar's office, the account office, and the ADR office. This area has a car park and general washroom, and the court is walled and gated with both night and day watchmen. The court has a greenish ambience created by the trees, which have been planted to serve as shade. The location of the court within the heart of the town makes it accessible to all. The ADR office is furnished with tables and chairs for mediators and a long bench with plastic chairs to complement

when parties involved are more than two. The chairs are arranged in such a way that parties can face each other in expressing their issues during the resolution process.

Figure 2. The district map for Twifo Atti- Morkwa

Source: 2020 PHC district Analytical Report for Twifo Atti Morkwa.

3.2.3 Brief Profile of Twifo/Atti-Morkwa District

The Twifo Atti-Morkwa District was established under Legislative Instrument 2023 on June 28, 2012 (Ghana Statistical Service, 2020). It is reported in the Ghana Statistical Service (2020) records that the District Assembly has 42 members made up of 28 elected and 12 appointed members, the District Chief Executive and Member of Parliament, who are ex officio members (40 Males and 2 Females). The District Assembly consists of five (5) Area Councils, namely: Twifo-Praso Area Council, Twifo- Mampong Area Council, Twifo -Agona Area Council, Twifo -Wamaso Area Council, and Twifo -Nyinase Area Council (District Assembly Composite Budget

2020; Osei, 2020). The population of Twifo Atti-Morkwa District, according to the 2020 Population and Housing Census, is 61,743, representing 2.9 percent of the population of the Central Region, with females constituting 51.0 per cent while males formed 49.%. 38.3% of the population are migrants. The District has a youthful population where children under 15 years constitute 76.6%, depicting a broad base population pyramid with a small number of elderly persons (60+ years) constituting 6.8 percent.

As the backbone of the local population's existence, land theoretically defines the kind of economic activities that the people engage in, such as mining, palm plantation and rice farming (Osei, 2020). The Twifo Atti-Morkwa district has vast fertile lands. These soils developed over well-drained granite and responded well to phosphorus fertilizer application (Osei, 2020). They are distributed around Mampoma, Morkwa, Agona, and Nkwankyemaso. The soils are excellent for cultivating tree crops such as cocoa, oil palm, citrus, and coffee and food crops such as plantain, cocoyam, banana, and cassava. The land is underlined by Birimian and Tarkwaian rocks which are very rich in mineral deposits. Diamond deposits can be found in Afiafiso while Manganese deposits are found in Asamang and Twifo Mampong. Dickson's report as cited by Osei (2020) on the possible regional impact of plantation projects in the central region of Ghana gave birth to the Twifo Oil Palm Plantation (TOPP). It was established as a special government project on oil palm in 1977 at Twifo –Ntafrewaso (Twifo Atti-Morkwa composite budget, 2020; Osei, 2020). Funding for the company's establishment was from a loan facility from the European Union, and the Dutch Government. TOPP was established to provide sustainable agro production and processing in oil palm and has become one of the largest producers and exporters of palm oil in Ghana creating high

demand for land in this area. TOPP produces about 20,000 metric tons of palm oil and about 5000 metric tons of palm kennel (Benson& Asaah-Junior, 2024; Osei, 2020).

3.3 Research Paradigms /Philosophical Worldview

The choice of a research paradigm is fundamental, as it shapes the entire process of knowledge construction (Bryman, 2008) and is crucial for verifying theoretical propositions (Coolican, 2019). This study is firmly grounded in the interpretive/constructivist paradigm. This philosophical stance is predicated on the assumption that social reality is not singular and objective, but is rather constructed through the subjective meanings that individuals derive from their lived experiences (Crotty, 1998; Denzin & Lincoln, 2003). Consequently, the paradigm's focus on understanding how people interpret and make sense of their world directly aligns with the core objective of this research: to explore the experiences of mediation practitioners and their clients within the specific context of the Twifo Praso Court in Ghana. The justification for deploying this paradigm is threefold.

First, to understand mediation as a conflict resolution tool, one must move beyond merely measuring its outcomes and instead investigate the nuanced, lived experiences of those who use it. The interpretive paradigm allows for precisely this, enabling the researcher to deconstruct the realities of both practitioners and clients to uncover how the process is perceived, what meanings are assigned to it, and what constitutes effectiveness from their multiple, subjective viewpoints.

Second, the effectiveness of mediation is deeply embedded in social and cultural norms. In a specific peri-urban area like Twifo Praso, these culturally mediated realities are paramount; the paradigm provides the necessary philosophical foundation to explore how local customs and social structures influence the mediation process. Finally, by

prioritizing the unique, multifaceted knowledge of the participants, this approach ensures that the findings are not imposed by the researcher but are co-constructed from the rich, qualitative data provided by those directly involved.

3.3.1 Ontology

Milles et al. (2014) view ontology as a philosophical study that specifies the nature of reality to be studied; it is concerned with the order of reality and how human beings experience it. Moreover, Burrell and Morgan (1979) postulate that an ontology is concerned with the nature or essence of the investigated social phenomena. Researchers under this category normally ask, is a social reality external to individuals imposing itself on the consciousness from without, or is it the product of individual consciousness? (Walliman, 2006). Is reality an objective nature or the result of individual cognition? Is it given "out there" in the world, or does one's mind create it? According to Cohen et al. (2010), these questions originate directly from what is known in philosophy as the nominalist-realist debate.

3.3.2 Epistemology

Epistemology specifies the nature of the relationship between the researcher and what can be known; thus, researchers are concerned with the meaning that participants can know (Walliman, 2006). From the above definitions, a paradigm can be viewed as a perspective or worldview based on a set of assumptions, concepts, values and practices that constitute a way people view reality in the communities they live in. Based on their assertion above, Fayolle et al. (2005) use a hierarchical order to express how knowledge can be studied and understood, as depicted in the following figure.

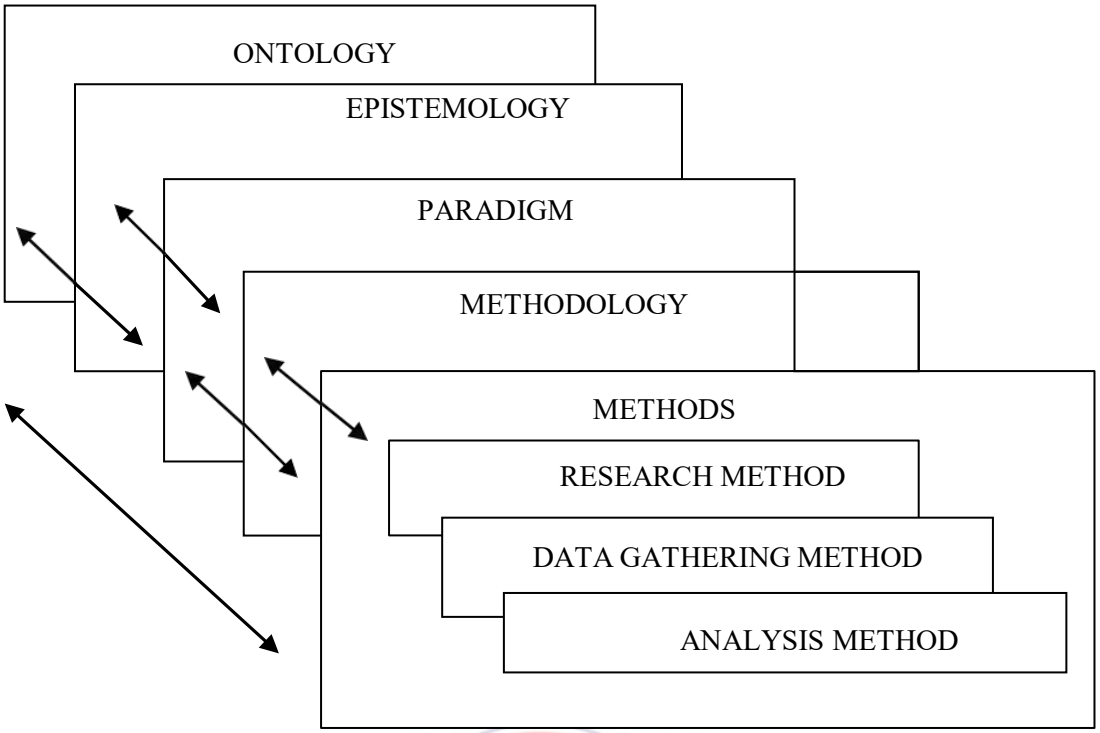

Figure 3. Hierarchical order of a paradigm

Source: Adapted from Fayolle et al. (2005)

According to Fayolle et al. (2005), ontology is the broadest and deepest level, followed by epistemology, which is the second level and may be deduced from ontology. Ontology is concerned with the different ways of attaining knowledge, which is referred to as methodology. Each methodological choice consists of several specific methods, and within these methods, we find several alternatives for data gathering and analysis.

The constructivist or interpretive paradigm guided this study. This influenced the process of the investigation in terms of framing the research, selecting participants, data collection, presentation and so on. This philosophical worldview allowed for the creation of meaning from the lived experiences of participants, which is unique in its own right (Coolican, 2019). To that end, mediation practitioners and their clients have unique experiences and established realities that emerge from their multifaceted knowledge. Subsequently, the interpretive approach assisted in the establishment of a

relationship of trust between the researcher and participants. This mutual relation enabled the rich experiences of participants to be explored, where in-depth information was collected to provide significant influences as informed by the gathered data, interpretation and analysis.

An excellent relationship was established before data collection through sound communication with participants, and this continued throughout the process of the study. This study is anchored on the interpretive or constructive approach, which enables the researcher to deconstruct the realities of the experiences of practicing mediation practitioners and their clients during the mediation process.

3.4 Research Approach

Creswell (2014) identified three research approaches, namely Quantitative (Positivism and Post-positivism): an approach of measurements and numbers. Qualitative (Constructivism & Transformative): approach to words and images. Mixed Methods (Pragmatism): approach of measurements, numbers, words, and images. However, this study adopted a qualitative approach because this approach aligns with the objectives of the study.

3.4.3 Qualitative research approach

This study adopted a qualitative research approach, a decision that aligns with the interpretive/constructivist paradigm and is essential for achieving the research objectives (Babbie & Mouton, 2001). The qualitative approach is predicated on a naturalistic philosophy that views reality as multi-layered, socially constructed, and best understood through the shared experiences of individuals in their interactive settings (Braun & Clarke, 2021). This perspective is particularly suited to investigating mediation in the Twifo Praso Court, as it allows the researcher to explore the collective

and individual beliefs, perceptions, and thought processes that constitute the very essence of the mediation experience. The justification for this approach is in addressing the need to understand mediation as a lived practice rather than merely a procedural tool.

First, to uncover the how and why behind the practice. The research questions necessitate an exploration of how Court-Connected Alternative Dispute Resolution (CCADRM) functions and why participants (litigants, mediators, judges) perceive it as effective or challenging. A qualitative approach is uniquely capable of probing these complex issues by collecting rich, narrative data on how mediators conduct sessions, the strategies they employ, and the reasons clients accept or reject settlements. This depth of understanding is unattainable through quantitative methods alone.

Second, to prioritize the meanings and experiences of stakeholders. By working with participants in their natural setting, the Twifo Praso Court, the study gains a holistic understanding. It treats participants as active constructors of meaning (Coolican, 2019), valuing their subjective understandings of the process. This is crucial for assessing the true status of mediation practice, as its effectiveness is ultimately determined by the values, expectations, and lived experiences of those who use it.

Finally, to accommodate the subjective and culturally specific nature of conflict resolution. Holding a subjectivist view acknowledges that reality is perceived differently by various actors. In a specific cultural context like Twifo Praso, the meanings attached to conflict, authority, and settlement are deeply social. The qualitative case study approach is therefore indispensable for interpreting how local norms and individual experiences shape the mediation process, providing the nuanced

insights needed to understand its role as a conflict resolution tool in this unique community.

To that end, the qualitative approach was selected because it is the most appropriate strategy for generating the detailed, interpretative data required to answer the research questions. It enables the researcher to explore the diverse knowledge of stakeholders and co-construct a nuanced understanding of the challenges and successes of CCADRM practice in the Twifo Praso Court.

3.5 Research Design

The single case study approach was selected for this research as it is the most appropriate empirical strategy to achieve a deep, context-rich understanding of the Court-Connected Alternative Dispute Resolution (CCADRM) programme in the Twifo Praso Court (Yin, 2019). Thus, a case study design is a methodology used to conduct in-depth investigations into a contemporary phenomenon's natural or real-life context (Yin, 2019).

This study adopted a single case study, because the Twifo Praso court as an organization fits the description given by Yin (2019), and Braun & Clarke (2021), especially the focus on organization with one entity. Moreover, with hundreds of mediations conducted annually at Twifo Praso Court, the programme comprises a community of experienced practitioners (mediators, clients, the registrar, and the judge) who can provide significant insights based on their direct involvement. A case study design is ideally suited to explore such a contemporary phenomenon within its real-life context, where the boundaries between the phenomenon (mediation practice) and its context (the Twifo Praso Court) are not clearly evident (Yin, 2018).

Again, the effectiveness of mediation is highly dependent on local context and legal culture, which are critical variables influencing processes and settlement outcomes (Coolican, 2019). Researchers acknowledge the significant diversity of processes labelled mediation, meaning that findings from one jurisdiction may not directly apply to another. The case study approach is uniquely capable of investigating these context-dependent factors, allowing for an examination of how the specific social, cultural, and procedural nuances of the Twifo Praso Court shape the mediation experience.

Finally, a primary strength of the case study method is its capacity to provide a thick, detailed description of the phenomenon under study. As scholars note, to maximize the potential for analytical generalization and to allow others to assess the transferability of findings, the features of a particular program must be described in meticulous detail (Miles et al., 2014). This study, therefore, employs the case study approach to document the intricate workings of the Twifo Praso CCADRM programme, creating a comprehensive account that captures the complexities often lost in broader survey-based research. This depth is essential for generating meaningful insights into the programme's operation and effectiveness.

Finally, the contemporary nature, size and age of the CCADRM programme at Twifo Praso Magistrate Court made it ideal for a case study (A decade after institutionalizing CCADRM) (Coolican, 2019).

3.6 Study Population

The study population refers to the total group of individuals or elements that share the characteristics of interest to the researcher (Braun & Clarke, 2021). In research design, it is essential to distinguish between the target population and the accessible population. The target population is the complete group to which the researcher aims to generalize

study findings, while the accessible population is the subset of the target population that is practically available for inclusion, often limited by logistical constraints such as location, time, and willingness to participate (Miles et al., 2014).

For this study, the target population consisted of all individuals involved in the mediation process at the Twifo Praso court. This broad group included every client, practitioner, and Judges, Court Registrar and ADR Officer associated with court-connected mediation services, irrespective of the stage or outcome of their case.

The accessible population was a specific subset of the target population, defined by practical and temporal boundaries. It included only those clients and practitioners whose cases fell within the study's reference period and who were at identifiable stages of the mediation process. Specifically, this encompassed individuals with cases that were either resolved or at the referral, initial joint session, caucusing, or advanced joint session stages. The accessible population also included available traditional stakeholders namely judges, mediators, the ADR clerk, and the court registrar operating within the Twifo Praso court context during the study period. This group formed the actual pool from which study participants and subjects were drawn, as reflected in the ADR Logbook (2023).

3.7 Study Sample and Sampling Techniques

Sampling is a central feature of research design, involving the selection of a subset of a population from which data is collected to make inferences about the whole (Cohen et al., 2011; Creswell, 2014). This study employed a mixed-method sampling strategy, utilizing both census and convenience (non-probability) sampling techniques to select participants from the accessible population within the Twifo Praso court.

A census sampling technique was used to select all key practitioners and traditional stakeholders integral to the Court-Connected Alternative Dispute Resolution (CCADR) process. This method involves surveying every member of a defined sub-population (Miles et al., 2014).

The total number of court-affiliated professionals directly involved in mediation at the Twifo Praso court was known and small, and to ensure complete representation and to understand the institutional and procedural framework of CCADR, it was essential to capture the perspectives of every core role. Including all ensured that the data reflected the entire system's operational viewpoint.

Consequently, the census was applied to select all 8 individuals in these roles: 1 presiding Judge overseeing referrals, the 1 Court Registrar, the 1 ADR Clerk, and all 5 certified Mediators on the court's roster. Convenience sampling, a non-probability method where participants are selected based on their availability and willingness to take part (Braun & Clarke, 2021), was used to recruit client participants. The justification for this method is substantial and grounded in the practical and ethical constraints of the study context.

Convenience sampling is characterized by confidentiality and access constraints since mediation is a strictly confidential process and researchers cannot randomly access client names or compel participation.

To that end, initial access to potential participants was therefore facilitated through the court's ADR registry, which identified eligible cases. Despite tracing eligible candidates using addresses and contact details from registry records, a significant majority were unwilling to participate. Primary reasons for refusal, based on recruiter

feedback, included distrust in how the research data would be used and general apprehension about the research process, irrespective of assurances given.

Given these barriers, the only clients who could be included were those who voluntarily agreed after being contacted. Thus, a convenience sample of 22 clients (involved in 11 cases) was formed from those who were accessible, available, and willing during the data collection period. This method, while not allowing for statistical generalization, enabled the gathering of rich, experiential data from clients who had actually undergone the process.

The total sample size was 30 participants, comprising 8 practitioners (selected by census) and 22 clients (selected by convenience sampling). This aligns with qualitative research guidelines, which suggest a sample of 25-30 participants can provide adequate information richness and thematic saturation for in-depth analysis (Coolican, 2019; Denscombe, 2010). The final sample consisted 17 males and 13 females, all of whom had direct experience with CCADR mediation at various stages from referral and initial joint sessions to caucusing and final resolution at the Twifo Praso court.

Table 1: Details of Participants for the Study

Type of court staff	Activity participated	Remarks
JUDGE:01	Interview and court observation	Referred cases to CCADRM
THE COURT REGISTRAR: 01	Interview and Court observation	Responsible for CCADRM practice
ADR CLERK:-01	Interview and Observation	Runs the office with mediators who aid in the resolution of cases
MEDIATORS:05	Interview and Mediation observation	Mediate the cases referred to CCADRM.
CLIENTS (22)	Interview and Mediation observation	Engages in settlement of their dispute, taking notice of procedural, cost and relational factors

Authors Construct, 2023

Table 2: Coding For Mediation Practitioners

Court-connected mediator	Court connected mediator	Court-connected mediator	Court-connected mediator	Court-connected mediator	ADR officer	Court judge	Court registrar
CCM1	CCM2	CCM3	CCM4	CCM5	ADRO	CJ	CR

Table 3: Coding for Mediation Clients (Court-Connected Clients)

CCC1	CCC2	CCC3	CCC4	CCC5	CCC6
CCC7	CCC8	CCC9	CCC10	CCC11	CCC12
CCC13	CCC14	CCC15	CCC16	CCC17	CCC18
CCC19	CCC20	CCC21	CCC22		

Authors Construct, 2023.

Table 2 shows coding for court staff (mediators, ADR officers, the judge, and the registrar), and Table 3 shows mediation clients who were involved in the study. For the coding of the court staff (CCM 1-5 stands for mediators, CJ stands for court judge, CR1 stands for court registrar, and ADRO represents ADR officer, whilst CCC stands for court-connected clients.

3.8 Data Collection Instruments

Data relates to any form of information that the investigator can employ to address the research questions. Qualitative research demands that the methods used to gather data be able to yield appropriate data for analysis. This data has to be in the form of narratives (words) instead of numbers or figures (McMillan & Schumacher, 2010). Three data collection instruments were used in this study. These were the interview guide, observation checklist and documentary analysis.

3.8.1 Interviews

Interviews served as the primary qualitative instrument for collecting data in this study. This method was selected for its capacity to elicit detailed, firsthand accounts of participants' experiences, perceptions, and insights regarding the use of mediation at the Twifo Praso court.

A semi-structured interview guide was developed and employed to ensure consistency across sessions while permitting the flexibility to probe emergent themes. The guide was organized into three core sections to systematically address the research objectives:

Participant Background and Engagement: This section established the participant's role (e.g., client or practitioner) and their general history and exposure to the court's mediation services.

The Mediation Process: Questions here explored the practical application of mediation, including its procedural steps, perceived benefits, and the challenges encountered by both practitioners and users.

Evaluation and Impact: This final section examined participants' assessments of mediation's effectiveness, its fairness compared to litigation, and its overall outcomes for conflict resolution.

Through this guide, key issues were investigated in depth. These included participants' conceptions of mediation practice, motivations for selecting mediation over litigation, their views on the process's fairness and efficacy, specific protocols practitioners followed during mediation, and their views on mediation effectiveness for improving the service.

Each interview lasted approximately 45-50 minutes and was conducted face-to-face in either Twi or English, depending on the participant's preference. All sessions were

audio-recorded with prior informed consent to ensure accurate data capture. To avoid disrupting court operations, interviews were scheduled outside of official court hours. Throughout the process, the researcher aimed to maintain a neutral and empathetic rapport, encouraging open dialogue while keeping the discussions focused on the research aims. The recorded data was subsequently transcribed and prepared for thematic analysis

3.8.2 Observation

Observation is a research method that allows the researcher to gather data from occurrences in social settings. The observations were conducted in natural settings, using an observation schedule. The researcher adopted the observational role through which he did not take part in activities in the setting under observation. All the observations took place at the Twifo Praso court premises to get a better understanding of the atmosphere and culture. The researcher observed court room case referral, attitude of clients, how practitioners prepared clients for mediation and finally, observation of the mediation process by clients who voluntarily allowed the researcher into their mediation process. To that end, diplomacy, collaboration, meaningful work and personal growth were the key issues that emerged during the observations.

This method depends on the sense of hearing and sight as well as the recording of what is observed instead of relying on the reports that participants provide in response to written questions. The strategy was suitable for the researcher as it is devoid of the shortcomings owing to the bias of self-reports and the provision of information that is socially desirable (McMillan & Schumacher, 2006).

This technique allows the researcher to observe the actions that people engage in instead of depending on the accounts of people regarding their behaviours. The researcher is

not hugely dependent on the ability or willingness of the participants to contribute information.

The researcher, as a non-participant observer visualized mediation practitioners and their clients in their interactions with people outside the space for observation because of the confidentiality of the mediation process (McMillan & Schumacher, 2006). The researched events even after the normal court hours, and in some cases, the participants were not aware that they were being observed. The researcher created time to visit the court to observe participants in action in their natural settings. The researcher did not discuss those observations which required clarification by participants to foster congruence between observations and accounts of participants (Creswell, 2014). In the next topic, the researcher discusses document analysis as one of the data collection methods.

3.8.3 Document analysis

Documents have always been a significant source of data in qualitative research. Bogdan and Biklen (2007) argue that organisations such as courts have documents which are produced for particular forms of consumption. Merriam (2002) admits that the power of documents as a source of data exists in the reality that these already occur in the context, such that they hardly alter the setting, as does the researcher on entry into the research settings. The researcher explored official documents (for example, Act 798, 2010, ADR Manual for mediators) relevant to mediation practice. Merriam (2001) posits that the reading of documents offers the background knowledge which may be critical in influencing the crafting of research instruments and the conducting of interviews. This may also assist in the corroboration of interviews and observational data (Halcomb & Davidson, 2006). In this study, brief discussions of official documents

relating to mediation practice were held between the researcher and relevant personnel, including the court judge, the registrar, mediation users and mediators at the court. Braun & Clarke (2021) state that analyses of official documents serve to add knowledge to research and explain certain social events.

3.9 Data Collection Procedure

The researcher visited the court for the collection of the data. He first reported to the court registrar, explained his mission and submitted the introductory letter from the University of Education, Winneba, and the Department of Social Studies to them. The registrar then introduced the researcher to the court Judge and the mediation practitioners in the court. The researcher booked an appointment with them and started visiting them as and when necessary to gather relevant data about the study. The researcher, at the same time, interviewed the mediation practitioners and their clients who agreed to be observed during the mediation session. A recorder and field notebook were used by the researcher to record proceedings during the interviews with the participants, and were later transcribed to discern conclusions that were made from the conversations. Ethically, the researcher changed information such as names, sex and location concerning some of the mediation practitioners and their clients to ensure anonymity.

3.10 Ethical Issues

This aspect deals with getting permission to research the study site from various stakeholders. The researcher received ethical clearance from the University Ethics Committee, which allowed him to seek permission to conduct research from the Court registrar, since most of his staff and the court users would be interviewed. All the participants were personally contacted, requesting their assistance. This process

enabled the researcher to issue invitations to them to participate in the study. All of them accepted the request, and before the commencement of the interviews, the researcher again explained to them that they didn't need to take part in the study and that they were free to withdraw at any time if they felt like it. Those who were interested were assured on matters of their concerns, such as assurance that no harm (for example, bodily harm) whatsoever would befall them.

In this study, certain ethical issues were taken into consideration based on the University's policy on research ethics. The researcher obtained permission from the District Court. Participation was voluntary, and the researcher ensured that participants had a good understanding of the reliability of the findings of the study (McMillan & Schumacher, 2010). Therefore, investigations need to be carried out with integrity and honesty. Consent forms were given to all participants to sign. The participants were also informed about the right to withdraw participation at any time they so wished. The researcher ensured that the three most important elements of ethics were well catered for - privacy, confidentiality and anonymity - were maintained throughout the study. This was done by way of not disclosing participants' workstations and personal identities or anything that could lead to their identification. Participants were given numbers to hide their identity (Cohen & Manion, 2007). Assurance was given to all stakeholders that no disruption of the court would occur during the study.

3.10.1 Informed consent

Informed consent relates to the decision to participate in a study based on knowledge of what the study involves, what is demanded in terms of time, activities and topics to be covered, what risks are involved, and where to complain should that become necessary (Best & Kahn 2006). The consent form, which explained the details to

everyone, was drafted and given to them. This was done to enable the researcher to immediately provide answers to questions. The participants were requested to acknowledge their participation in writing or by oral agreement. The agreement meant that participants were free not to answer questions they found uncomfortable and that taking part in the research was purely voluntary.

The researcher explained to the participants that it was important for them to take part in the study because their responses, views and ideas might help in the development and improvement of mediation practice in the court. The researcher reminded the participants that they were free to withdraw at any time, without penalty and that they did not need to offer any reason for doing so.

3.10.2 Anonymity and confidentiality

The essence of anonymity and confidentiality is that information provided by the participants should in no way reveal their identity. Anonymity and confidentiality were maintained throughout the study: this was a way of protecting the participant's right to privacy (Cohen & Manion, 2007). The researcher must make sure that guarantees of confidentiality are carried out in spirit and through letters. The researcher promised all the participants that the information they provided would not be publicly reported in a way that would identify them; the right to privacy helps to ensure both confidentiality and anonymity. From the discussions on ethical considerations, the researcher now details the data analysis process.

3.11 Data Analysis

The analysis of qualitative data for this study was guided by the systematic framework for thematic analysis advanced by Braun and Clarke (2021). This methodology was selected for its methodological rigour and flexibility, facilitating the identification,

analysis, and reporting of patterns or themes within the dataset. The approach was fundamentally inductive, permitting themes to emerge organically from the data rather than being constrained by a pre-existing theoretical framework, thereby ensuring that the findings were deeply grounded in the empirical evidence collected.

The analytical process commenced with a phase of deep familiarization, wherein audio-recorded interviews and observations were transcribed verbatim. The researcher engaged in repeated and active reading of these transcripts alongside the collected documents to achieve comprehensive immersion in the data. Following this, a systematic process of initial coding was undertaken across the entire dataset. This involved generating concise, descriptive codes that captured significant features relevant to the research questions, such as the mediator's role conception or the client's perception of procedural fairness.

Subsequent to coding, the analysis progressed to the generation of themes. This stage involved collating the initial codes and grouping them based on conceptual similarities and relationships to form participants' themes. For instance, various codes of following the manual, deviation from established steps, and record-keeping practices were aggregated under the theme of Adherence to Procedural Protocols. These participants' themes were then subjected to a rigorous, multi-level review. This involved checking the coherence of the data within each theme and ensuring the thematic structure provided a faithful representation of the entire dataset, a process that necessitated the refinement, merging, or discarding of certain themes.

Integral to this process was the documentary analysis, informed by Morgan (2022), which was woven throughout the thematic examination. Key legal and operational documents, including the Manual for Mediators, the Alternative Dispute Resolution

Act, 2010 (Act 798), and the relevant Mediators' and Clients' Logbooks, were not analyzed in isolation but were used as a critical benchmark. The purpose of this integrated approach was to systematically identify consistencies, contradictions, and nuances between the formally prescribed protocols and the lived realities of mediation practice as reported by participants and observed in the field.

The final stages of the analysis involved defining and naming the refined themes to capture their essence precisely. The process culminated in the production of the report, where the analytic narrative was constructed. This involved selecting vivid and illustrative data extracts to substantiate the themes and weaving the findings into a coherent discussion that directly addressed the research questions and engaged with the complex model of mediation effectiveness (Boyle, 2017; Pignault et al., 2017). Through this rigorous and multi-faceted analytical strategy, the study synthesized insights from interviews, observations, and documents to elucidate how mediation is conceptualized and operationalized in the Twifo Praso court, and how these factors ultimately shape its effectiveness as a mechanism for access to justice.

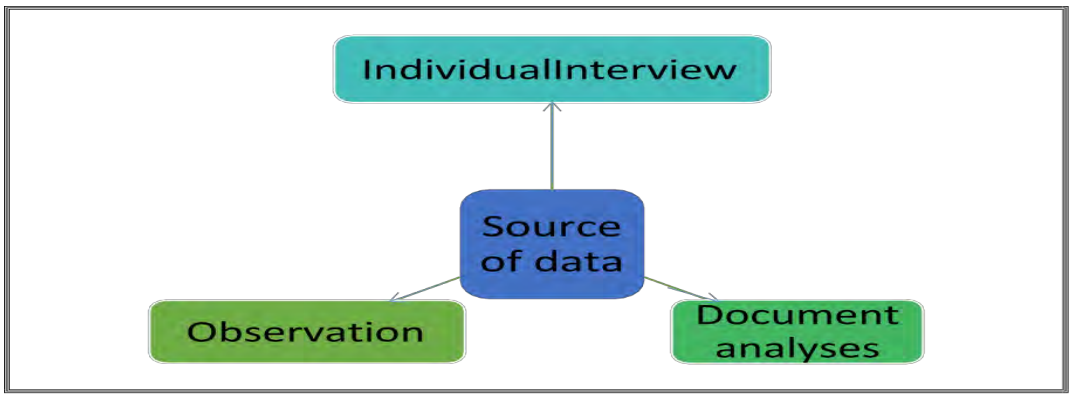

Figure 4. Source of Data Analysis

3.13 Trustworthiness

To ensure the rigour and integrity of this qualitative study, the research design and execution were guided by the principles of trustworthiness, encompassing credibility, confirmability, dependability, and transferability. The following measures were implemented to enhance the quality and defensibility of the findings.

3.13.1 Credibility

Credibility was established through strategies aimed at ensuring the findings accurately reflect the participants' experiences and the context of the study.

Extended Engagement: The researcher spent a prolonged period in the field at the Twifo Praso court. This facilitated a deeper understanding of the mediation environment, allowed for the building of rapport with participants, and increased the depth and reliability of the information collected.

Triangulation: Data were collected and cross-verified using multiple methods: semi-structured interviews, direct observation of mediation sessions, and analysis of relevant court documents. This convergence of sources strengthened the validity of the emergent themes. Member Checking: Interview transcripts and preliminary interpretations were returned to participants for verification. This process allowed them to confirm, clarify, or correct the researcher's understanding, ensuring the findings remained grounded in their original accounts.

3.13.2 Confirmability

Confirmability addresses the neutrality of the findings, ensuring they are shaped by the data and not by researcher bias. The researcher maintained a reflexive journal to document personal assumptions, decisions, and potential influences throughout the research process.

An audit trail was kept, comprising raw data (audio files, transcripts), field notes, and records of the analytical process to demonstrate how conclusions were derived directly from the collected information.

3.13.3 Dependability

Dependability relates to the consistency and potential replicability of the research process.

The methodology is described in detail within this chapter, providing a clear, logical account of all procedural steps from data collection to analysis. This detailed documentation allows for the study's procedures to be audited and provides a foundation for similar research to be conducted in comparable settings.

3.13.4 Transferability

Transferability refers to the extent to which the findings may be applicable in other contexts. Rather than seeking statistical generalizability, the study provides a "thick description" of the research context, participants, and processes. This rich, detailed account allows readers to assess the potential relevance and transferability of the findings to their own situations or similar environments

3.12 Positionality

The researcher's background, experiences, and professional training could inevitably influence the perspectives and approaches to this study. Thus, extensive training and experience in mediation may lead to a predisposition towards viewing mediation positively, potentially overlooking its limitations and challenges. To address this potential bias, the researcher designed a balanced approach that included both positive and negative experiences of mediation clients and practitioners. Neutral interview questions were developed to enable participants to share their unfiltered experiences,

ensuring that the study captured a comprehensive and unbiased perspective on mediation practices.

Moreover, being an insider within the mediation community might result in over-identifying with the practitioners, potentially skewing the representation of their experiences. To address this challenge, the researcher included a diverse range of participants, ensuring representation from clients and practitioners with varying levels of satisfaction with the mediation process. Additionally, the researcher conducted member checks by sharing preliminary findings with participants to verify the accuracy and authenticity of their experiences.

In terms of personal beliefs and values as a practitioner, the researcher holds a strong belief in the efficacy and fairness of mediation as a conflict resolution tool. This belief could influence the interpretation of data to align with the researcher's preconceptions. The researcher overcame this bias through the practice of reflexivity throughout the research process by regularly reflecting on how the researcher's beliefs might influence the analysis and also sought feedback from peers and supervisors, who provided critical perspectives to maintain objectivity. Furthermore, during data collection and analysis, the researcher's positionality might shape the formulation of interview questions and interactions with participants. Being aware of this, the researcher had the interview guides reviewed by independent experts and thesis supervisors to ensure neutrality. To avoid leading questions, the interview guide incorporated open-ended questions designed to elicit comprehensive and unbiased responses, allowing participants to freely share their experiences.

Consequently, during data analysis, the researcher's background and beliefs could influence the interpretation of data. To counter this bias, the researcher employed inductive coding techniques that allowed themes to emerge progressively from the data. Additionally, the researcher engaged co-PhD students and supervisors to provide diverse perspectives and critical insights, enhancing the credibility of the research. Moreover, the researcher maintained a reflexive journal throughout the research process to document thoughts, assumptions, and reactions, thereby promoting self-awareness and transparency in the analysis. This practice allowed the researcher to remain aware of any possible biases and actively worked to mitigate their impact on the research. The researcher also employed triangulation by using multiple data sources, such as interviews, observations and documentary analysis, to corroborate findings and provide a more nuanced understanding of the mediation process. This approach helped balance the potential bias of relying on a single data source.

Again, as both a researcher and practitioner, I was aware of how power dynamics could influence relationships and interactions with participants, particularly regarding authority, trust, and access to information. Careful navigation was required to avoid any perceived authority that could affect participant responses. The researcher is committed to informed consent, confidentiality, and respect for participants' experiences, maintaining ethical standards throughout the research process. Acknowledging and addressing the biases and perspectives that the researcher brought to the study resulted in the conduct of rigorous, ethical, and impactful research that contributes to the understanding and improvement of mediation practices in Ghanaian courts.

3.13 Chapter Summary

In this chapter, the researcher presented a detailed discussion of the qualitative research design and methodology used to collect data for this study. Data collection methods included face-to-face semi-structured interviews, participant observation and document analysis. The researcher provided details on the population, sample and sampling, data collection, analysis procedures, ethical considerations, as well as the trustworthiness, validity and credibility of the study. In the next chapter, the researcher discusses data analysis, findings and interpretations.

CHAPTER FOUR

PRESENTATION AND DISCUSSION OF RESULTS

4.1 Introduction

This chapter presents the findings and discussion of the study derived from the responses and verbatim quotations garnered through a multifaceted approach encompassing face-to-face interviews, documentary analyses, and observations. The interviews were conducted at the Twifo Praso court. Additionally, non-participant observation and documentary analysis played a pivotal role in the data collection. The exploration of mediation as a conflict resolution tool in the study area was undertaken through a comprehensive examination and recording of themes derived from the voluminous and nuanced data. During the analytical phase, the researcher meticulously compared all the gathered data, a process instrumental in drawing attention to the identified themes. The analysis and comparison persisted until thematic saturation was achieved, signifying a comprehensive exploration of the emergent themes.

4.1.1 Demographic Characteristics of the Study Participants

The demographic characteristics of the participants covered gender, age, location of participants, and educational background. The thirty (30) participants were from different places within the Twifo –Hemang- Atti-Morkwa area who have used mediation as an alternative in settling their conflict in the Twifo Praso court. The findings are presented in Table 2.

Table 2: Demographic Characteristics of Research Participants

Designation	Frequency	Percentage (%)
The Court Judge	1	3.3
The Court Registrar	1	3.3
Mediators	5	16.7
ADR Officer	1	3.3
Mediation Clients/ Users	22	73.4
Total	**30**	**100**
Gender		
Male	17	56.7
Female	13	43.3
Total	**30**	**100**
Age (in years)		
20-40	10	33.3
41-60	12	40.0
61 & above	8	26.7
Total	**30**	**100**
Town of Clients		
Twifo Praso	6	20
Twifo Hemang	8	26.6
Wasa Ateiku	2	6.7
Twifo Mampong	4	13.3
Wasa Atobiase	2	6.7
Jukwa	2	6.7
Morkwa	4	13.3
Kayireku	2	6.7
Total	30	100%
Educational Qualification		
No Formal Education	4	13.3
Basic Education (BECE)/Equivalent	4	13.3
Senior High (WASSCE)/Equivalent	6	20
Diploma (HND)/Equivalent	5	16.7
Degree (BA, B.Ed.)/Equivalent	6	20
Postgraduate (PhD, MPhil)/Equivalent	5	16.7
Total	**30**	**100%**

From Table 2, it can be seen that the study included a Magistrate, Mediators, Court Registrar, and ADR Officer. These were mediation practitioners involved in mediation practice. These practitioners had a great influence on the efficiency of mediation as a viable mode of resolving conflict. The judge did the referral and adaptation of settled cases. The Court Registrar educated the parties in dispute before signing the consent forms. The Twifo Praso court had 5 mediators who were involved in the mediation

process as a way of resolving conflict, while the ADR Officer did the clerical duties of recording timelines for parties, compiling the data from the court, and sending feedback to the registrar. He also did the day-to-day education of mediation at the court before the judge started the court process. Moreover, 22 clients or mediation users whose cases were at various levels of mediation at the Twifo Praso court were conveniently selected as either plaintiffs or defendants in their respective cases.

The gender of the respondents was another socio-demographic variable the researcher explored. In all, 17 males and 13 females were involved in the study (see Table 2). This suggests that most of the participants in the study were males. These findings concur with Nolan-Haley and Annor's (2014) and Gedzi's (2006) studies that males easily send cases to court as compared to females. However, in terms of court mediation, studies suggest that females like court mediation more than males since culturally, females who send their cases to court for litigation are frowned upon by their community (Antwi, 2015; Ibrahim, 2018; Maranlou, 2015; Morhe, 2011; Palihapitiya et al., 2019). This study's finding is different since males rather dominated mediation instead of females, though females gain greater benefits from mediation and may also generally be better equipped to offer assistance at mediation (Maranlou, 2015; Rundle, 2010). However, this view is in dissonance with the current study, where males dominate the mediation practice.

In terms of age distributions, the finding shows that ten participants were aged between 20 and 40 years (see Table 2). Twelve participants were within the age cohort of 41 to 60 years, and 8 were within the age bracket of 61 – 80 years. This finding demonstrates that most of the participants were within the age bracket of 20 and 60. To that end, such people within 41-60 years are known to possess some economic prowess through

inheritance or family assets or might know the historical perspectives concerning litigation on family or personal violations (Ibrahim, 2018; Wahab, 2010). A critical analysis of the age range of 20- 60, was mature enough to conceptualize, evaluate, and analyze mediation as a tool for resolving conflict in the Twifo Praso magistrate court based on the philosophy of mediation practices. Based on the characteristics of the participants, they are all directly involved in the mediation practices, and exploring their experiences on how mediation is conceptualized, the protocols used, and how it is seen as effective by these participants cannot be underestimated.

In terms of the distribution of the participants' locations, the study found that most of the clients who patronize the court come from Twifo-Hemang, Twifo Praso, Jukwa, Morkwa, Twifo Mampong, Twifo Kayireku, Wasa Ateiku, and Atobiase (see Table 2). Consequently, these towns fall under four major traditional councils: Atti-Morkwa, Twifo Mampong, Wasa Fiase, and Twifo Hemang. These areas, served by the court, are known for their agro-based production, particularly palm plantations (Twifo Atti-Morkwa Composite Budget 2020; Osei, 2020). The establishment of agro-based industries has led to increased pressure on land use for cultivating palm trees, cocoa, and mining activities, resulting in significant land conflicts (Osei, 2020; Twifo Atti-Morkwa Composite Budget, 2020).

Consequently, the presence of the agro-based industry TOPP has attracted many financial institutions to the area. This has allowed farmers to obtain loans to expand their farms, purchase agricultural inputs to improve their crop yields and sell their produce back to the company. It seems like there are significant challenges in recovering loans from farmers in the area. Based on the information provided, utilizing mediation to resolve these issues appears to be a cost-effective, non-adversarial, and

timely solution (Osei, 2020). Moreover, the study showed that most of the towns that rely on the court to resolve their conflicts have to travel long distances, with the least distance being approximately 20 kilometres, to access the court for conflict resolution. For example, there is the issue of illegal entry into Kakum National Park (Jukwa) for harvesting wildlife and other forest products. Additionally, areas like Wasa Ateiku and Atobiase have a high number of cases where people resort to the court to recover unpaid loans and settle divorce cases (GJS, 2020). Thus, the parties who may not have the resources to commute for several months to litigate normally plead with the court to use mediation for an amicable settlement. This finding is consistent with Crook's (2012) study that distance and cost of litigation influence court users to adopt mediation.

In terms of the educational background of the participants, four participants did not have formal education, and 4 participants had primary education. Post-primary education had 6 participants, 5 participants also had a Diploma and HND equivalent, whereas Degree and Post Graduate constituted 6 and 5 respectively. This showed that most of the participants had a high level of education (see Table 2).

Most of the participants in the study had formal education ranging from basic education to tertiary level. This meant that participants could read and understand the agreement that clients signed, offer much input in the resolution of their cases, and could critically analyze the models of mediation practice in the court. It could also be posited that the participants of this study were knowledgeable enough to provide very detailed, useful, and credible information since most of them had passed through formal education in one way or the other. To that end, their views were useful in that their level of education offered them a better opportunity to understand issues of conflict and, therefore, were better prepared to compromise for a better settlement agreement. These backgrounds

further strengthened the researcher's conviction that most educated court users patronized mediation practice.

4.2 Findings

Five themes emerged from the responses of the participants. These were the Meaning of Mediation, Procedural Mediation Fairness, Mediation Protocols, Clients' reasons for using Mediation, and Mediation Effectiveness.

First, the participants' responses regarding the meaning of mediation were categorized into four sub-themes: socio-cultural conceptions, socio-legal conceptions, role and style conceptions, and integrative conceptions. These differences in defining mediation highlighted the multifaceted nature of how mediation was understood. In the second theme, Procedural Mediation Fairness, participants' responses were categorized into several key aspects. These included addressing the first speaker dilemma, maintaining neutrality, ensuring confidentiality, and ensuring that all parties have the opportunity to be heard. Additionally, participants highlighted the significance of considering portions of the parties' demands in contributing to the generation of a settlement agreement. These responses from the participants underscored the critical importance of procedural fairness in the mediation process.

The third research question examined the mediation protocols used by mediation practitioners. The responses were categorized into three distinct themes, namely: pre-mediation, actual mediation, and post-mediation. The fourth theme, Factors Influencing Clients' Choice of Mediation, identified three key sub-themes that shape clients' decisions to engage in mediation. These included relationship building, the economics of cost, and the economics of time. The fifth theme, Administrative Evaluation of Mediation Effectiveness Practice, explored three sub-themes: caseload effectiveness,

institutional effectiveness, and the celebration of Legal ADR Week. These responses highlighted the broader administrative implications of integrating mediation into the legal framework. Collectively, these themes provided a comprehensive understanding of the multifaceted dynamics surrounding the practice of mediation, shedding light on its diverse meanings, procedural complexities, client considerations, and broader administrative impacts.

4.3 Meaning of Mediation

Responses from mediation practitioners and their clients on the meaning of mediation revealed different perspectives and diversity, compelling the researcher to categorize them principally as socio-cultural, socio-legal, the roles and styles practitioners use, and an integrative conception.

These differences in defining mediation by both the mediation practitioners and their clients are rooted in the interpretive perspective that posits reality as dynamic and shaped by the subjective experiences of participants (Garcia et al., 2002). In this study, participants' conceptualization of mediation as a conflict resolution mechanism stemmed from diverse perspectives such as the participants' backgrounds, nature of practice including social and legal settings reflected the belief that knowledge is constructed through the lenses, experiences, and cultural contexts of individual perspective. This multiplicity in defining mediation made Bush and Folger (1994), and Nally (1995) advocate for a malleable definition of mediation since in contemporary global space, mediation has become multi-faceted where all the fabric of social institutions are using it as their medium of conflict resolution.

4.3.1 Socio-cultural meaning of mediation

The question of how participants understood mediation practice received responses that were aligned with what the researcher called "Socio-cultural meaning" since participants' responses aligned mediation as an extension of cultural and traditional conflict resolution. Some participants' definitions of mediation emphasized the belief in social cohesion, problem-solving, and mending broken relationships. These conceptions of mediation focused on the provision of education on the cultural dimension of traditional law involved in the cases they normally mediate by understanding mediation from the cultural embodiment of practice.

Moreover, the participants' definition of mediation took into account the cultural backgrounds, norms, and values involved to create a sensitive cultural environment so that participants could navigate any cultural biases that parties bring to the dispute settings. Some explained mediation from the appreciation of cultural diversity. For instance, CCM3, who is a traditional linguist, explained mediation as "*The process of building a relationship through the integration of cultural values which parties are either aware or unaware in enhancing social harmony and peace".* This practitioner's definition was based on the fact that he is a linguist in one of the chief courts who has the traditional memory of conflict resolution. As the spokesperson of a chief, he extolled traditional values that resulted in repairing the broken relationship among disputing parties through the development of ethical peace. This conception was in line with the participants' background. The view of CCM3 was corroborated by CCC1, who was a traditional healer who had come to court by the summons of one of his wives. His understanding of mediation was "*The inclusion of long-held social values in the resolution of conflict, taking into consideration social values and traditional ethics available in a given area into the court settings*. This participant is a believer in

traditions, especially the Twifo social values based on the local values in the community, which have been held by the people in the community for decades, since mediation has been a traditional way of resolving conflict before its integration into the formal legal system. He believes that the fact that it has been integrated into the formal system does not change its identity as a social peace mechanism.

The views of participants CCM3 & CCC1 were also shared by participant CCM5, a Social Science teacher who doubles as a mediator. CCM5 defined mediation using cultural integration as a basis of practice, thus:

> Mediation is the process of integrating cultural norms and experiences so that both the practitioner and their clients will be okay in the mediation journey. Especially in areas of language, values, ethics, and religious practices in enhancing the peaceful resolution of conflict within the community.

This practitioner's cultural explanation added a different discourse to the cultural perspective of mediation by dwelling on clients' everyday experiences of mediation, which parties might have used in resolving their conflicts. Nevertheless, the entrenched positions the parties took, landed clients in court. Consequently, CCM5 utilized clients' religious, social and communal backgrounds to convince them to accept a peaceful resolution through mediation. To that end, CCM5's background might have influenced his understanding of mediation citing language, peace and cultural norms as the basis for his conception.

Another definition offered by CCC12, a family head who was in court for chieftaincy issues with his queen mother. CCC12 defined mediation as *cultural embodiment where parties who are in conflict are guided to resolve their differences, based on a historical appreciation of the cultural dynamics which the parties must consider*. Subsequently, this participant explained mediation as:

> The process of helping parties to appreciate the culture of communal living, which is driven by the need for the parties to see themselves as brothers and sisters where conflict is seen as a dividing spirit to create confusion. This has been the practice of our great-grandfathers that made people in harmony. This implies that parties needed to forgive one another and compensate when it was required to enjoy social progress.

During the study, it was observed that the explanations of mediation provided by mediation practitioners and their clients (CCM3, CCC1, and CCM5 & CCC12) were influenced by their socio-cultural orientations. The cultural backgrounds impacted participants' understanding of mediation as a social cohesion tool. Thus, these definitions emphasize the need for conflict resolution practitioners and their clients to understand the complexity of culture and to pay attention to it to enhance effective resolution through compromise, peace-building, and cultural practices that have been passed down through families, communities, or clans. Cases where cultural antecedents were particularly important included land cases, inheritance, and chieftaincy matters. Since different cultures have unique values and beliefs that could affect the mediation practice, stakeholders must be well-versed in cultural diversity to avoid social infringement, such as the use of certain words and actions that can impact the parties in the mediation process.

The remarks made by the participants during the interview confirmed that some participants perceived mediation as dealing with the inclusion of traditional values in conflict management. These views were consistent with studies that advocated for the mediation definition to include traditional and cultural dynamics as conflict is deeply rooted in the social settings of societies (Afrifa, 2019; Ahorsu & Ameh, 2011; Assimeng, 1981; Kasser Tee, 2017; Nukunya, 1969; Wall & Callister, 1999).

The findings of this study are, however, different from Shong-Kati (2023), who found that mediation and negotiation practitioners must avoid giving too much weight to cultural dominance, especially if the mediator and the clients are from the same cultural settings, since they are familiar with the cultural attributes of the conflict. Again, the views of the current study contradict studies that found that paying attention to the interest, position and stance of parties makes mediation more effective, instead of relying on the cultural attributes of the disputing parties (Mahan & Mahura, 2017; Matsumoto & Juan, 2013; Yuin-Chua et al., 2023).

The empirical review and the responses from the participants' definition of mediation with culture as a tool for social harmony play an essential role in mediation conception, which mediation practitioners must be aware of, especially when facilitating communication, the mediation process, and settlement generation (Bakai, 2022; Liu et al, 2010). The definition further focused on the need to pay attention to communal ethics since it can facilitate a successful mediation process by taking into account the cultural differences of the parties involved (Yuing-Chua et al, 2023). Overall, court mediation practitioners should approach cultural perspectives with sensitivity and respect and be willing to adapt to meet the needs of the parties for a successful mediation process that takes into account the cultural differences of the parties involved.

4.3.3 Socio-legal meaning of mediation practice

Another perspective of conceptualizing mediation was based on the socio-legal meaning of mediation. Such participants explained mediation from facilitative and evaluative conceptions. They explained mediation as where practitioners are unable to influence the conflict resolution process but act as referees without the power of

imposition. Others explained mediation as evaluating conflict from the legal perspective by judging the status of the case. Most of the participants who explained mediation from the evaluative dimension focused on settlement because of the opportunities attached to the number of cases they were able to resolve. Again, the views expressed by the participants aligned with the socio-legal dimension conception, based on the objective of Ghana's Judicial Service, which identifies swift settlement and resolution of cases through mediation as part of its core mandates. However, most of the practitioners who explained mediation from this perspective at times combined both the facilitative and evaluative conceptions.

A typical definition from the interview that depicts a socio-legal conception was from CCM6, a female practitioner who doubles as an administrator. She explained mediation from the facilitative conception as

> "A process of facilitating dispute resolution where an impartial and neutral third-party assists disputing parties in resolving their conflict through the use of specialized communication and negotiation techniques.

This participant sees mediation as the process where mediators, acting as neutrals, settle communication challenges between parties, whereas the mediator is mandated to facilitate and negotiate the mediation process for amicable settlement of cases. This was not surprising because, as an administrator, she worked with different people to increase the output of the organization; such a person's responsibilities are not to judge but to reconcile dissenting views during conflict mediation.

Her view was further corroborated by CCADRO, who also explained mediation as:

> A party-centred process which focuses primarily on the needs, rights, and interests of the conflicting parties in addressing the interests of their conflict in consensual ways that encourage and facilitate resolution without giving their opinion to the parties in dispute.

The role of the ADR Officer was to coordinate the mediation processes, taking into account the legal and social standing of the issue under consideration. It is therefore not surprising that he understood mediation based on the rights, needs and interests of the parties in dispute, notwithstanding the neutral role he performs in the whole mediation process. The views above were corroborated by CCM2, a retired court registrar who doubles as a mediator and also understands mediation as:

> A creative approach to dispute resolution that is not governed by strict rules of procedure but allows the parties to design a process that suits their needs and encourages a consensual rather than an adversarial approach to conflict settlement.

CCM2's conception of mediation was premised on a consensual relationship between parties where the parties own the means of resolution, not losing sight of the legal implications of the case under mediation. As a former Court Registrar, he was always in touch with parties, especially when they were about to file their cases. His routine recommendation was that parties use mediation when the case they were about to file had some sort of relationship, either business or blood. Moreover, CCC20, who was a female tutor in a tertiary institution within the study area, explained mediation based on how mediation practitioners evaluated, assessed and judged the merit of client cases therein brought before mediators. The CCC2O explanation was contrary to the previous conception of mediation, where practitioners were seen as referees.

CCC20 defined mediation subsequently as "*The process where a neutral third party evaluate and facilitates the merit of a case under mediation to enhance the resolution of a case"*. This conception was further corroborated by CCJ, who explained mediation using the combination of facilitation and evaluation conceptions. He succinctly explained mediation as "*The process where cases pending in mediation are evaluated*

and facilitated by neutrals who do not have any interest in the cases except offering a legal and social opinion of mediated cases"

Participants' CCM6, CCC20, CCADRO, and CCM2 definitions are categorized by the researcher to align with the social-legal conceptions based on their backgrounds. Thus, socio-legal participants view mediation when the case under resolution has been critically evaluated, assessed and facilitated by practitioners who are neutral to the dispute settings. Such participants are only interested in how the pending cases are resolved, provided parties are comfortable with the modus operandi of the case settlement.

Socio-legal participants are legally conscious and would want the mediation to be based primarily on the swift resolution of the conflict by adopting either a facilitation or evaluation model. The responses from the participants during the interview bear testimony to the fact that mediation is a process of resolving disputes where a neutral third party assists the parties in reaching a voluntary agreement that is acceptable to both parties. The practitioners must help the parties to facilitate, evaluate, and communicate effectively to identify their needs, interests, and concerns through a flexible and informal process that suits their needs and encourages a consensual approach to resolving parties' differences.

These socio-legal definitions of mediation by participants in this study are consistent with the literature. Picard's (2000) study in Canada corroborates this finding when she reported that mediation is understood as either facilitative or evaluative, using legal status or Acts such as the Mediation Act in the resolution of conflicts. Picard's thesis further concluded that mediation conception should not be watertight but flexible, especially when the parties who own the process are okay with it by navigating through

a facilitative and evaluative practice. Furthermore, the views expressed by the participants as socio-legal are also in line with Darrow --Hammond et al. (2019) study, where they found that mediation conception was inclusive, based on either facilitative or evaluative, provided mediation practitioners strived for parties' right to decide which of the mediation modules they want to use for their resolution. Harmon-Darrow et al called it inclusive mediation when a community nominates and vests interest in mediation on neutrals so that they can achieve community justice by shuttling between evaluative and facilitative models of practice. Charkoudian's (2005) study is also consistent with the participants' view on socio-legal conception, where the goal of mediation is to support participation through mediation with practitioners serving as a guide by either facilitating or evaluating a problem-solving process by developing solutions that meet everyone's needs through listening, reflecting, summarizing, reframing, information provision, and persuasion.

This current study participants' views on mediation conception are contrary to the findings by Brazil (2002), who found that parties' conception should be based only on the facilitation of parties' needs in the resolution of the conflict and cautioned that when mediation practitioners integrate evaluation conception, mediation practice would slip into adjudication and would lose its identity. This view was also reported by Shawawry's (2020) study, where the participants explained mediation conception based on only facilitation of the process for easy commitment for warring groups and individuals to negotiate, build trust and mitigate conflict resolution, but not the facilitating and or evaluating the merits of the case under their resolution.

4.3.4 Definition of mediation based on roles performed by practitioners

Contrary to the facilitative and evaluative meaning of mediation, other participants understood mediation from the roles they performed during the mediation process. Participants' responses factored in prompters such as assessing, predicting, proposing, and pressing for settlement. The facilitative role of the mediation meaning had descriptive terms such as guide, bridge builder, peace-maker, and offering of assistance. CCM4, a retired Social Worker and former jury defined mediation as:

> The process of exploring the needs and concerns of parties in dispute that must be resolved by asking questions, summarizing parties' interests and positions, guiding the discussion, and controlling parties' emotions so that it doesn't escalate the mediation process.

The participant CCM4's explanation of mediation focused on his basic role as a mediator based on the Ghana Judicial Service manual, which includes exploration of parties' underlying interests, summarizing parties' positions, and emotions and guiding the process to avoid escalation of emotions based on mutual acceptance of the settlement options generated either from the parties or the mediator to enhance a fruitful mediation. The same role definition was corroborated by another mediator, CCM5 who defined mediation based on the role he expects the clients to demonstrate:

> I am a neutral facilitator where I only guide the mediation process by maintaining the parties' mode of deliberating their interest and positions to enhance settlement. My role is to assist parties in communicating and help disputants reach an understanding and a settlement. This is facilitated by offering an environment for respectful and fruitful deliberations in assisting parties to find and acquire the needed information to discuss their problems, establish real contact between parties, provide face-to-face contact with them and provide a neutral, supportive environment with common interest and objective to settle parties' differences.

It appears that the views provided by CCM4 & CCM5 focused on various roles resulting from their training and experience with mediation. Notable from the quotes is an exploration of needs and concerns, guiding the process, making joint problem

solving, parties' self-determination, and empowerment. Another meaning of mediation based on role conception was further offered by CCR, the court registrar, who, at times, counsels parties on the need to accept mediation consent forms. He described mediation as:

> The process where my role as a facilitator bares me from contributing to the substantive discussion but moderating the party's move through a very successful process by communicating and seeing the problem from the litigant's perspective by clarifying issues that the parties might have misconstrued in the course of the referral so that consensus can be built among the parties to create a working relationship and bring peace.

Another definition from this perspective was given by a participant (CCADRO) who explained mediation based on his role:

> It is the process of acting as a neutral person to help clients to appreciate the disadvantages associated with conflict, so that parties themselves, upon knowing the problems would compromise for easy resolution of their issues by exploring all the necessary avenues such as the status of the case, the effect of non-settlement and the nature of the relationship that would be ruined by both parties.

The participants above saw mediation based on their roles, which cut across facilitative, settlement, problem-solving and evaluative roles as a way of resolving conflict through mediation in the court. This definition is consistent with authors (Ibrahim, 2018; Picard, 2000; Pruitte & Rubin, 1986) who used the metaphor of framing mediation to settlement roles by uncovering the possible deals that practitioners must adopt to enhance a by-all-means settlement of dispute (Charkoudian et al, 2017; Donuellon & Kolb, 1994; Pearson & Thoeness, 1985). The findings further concur with Agbozo and Korang's (2017) survey in the Brong Ahafo region of Ghana that reported mediation conception based on their role as bridge builders, analysts of conflict, drafting of the agreement, generating proposals and facilitating mediation outcomes. Moreover, the participant's explanation of mediation based on their roles confirms other studies that mediators perform the role of evaluating and helping parties to develop proposals,

offering likely outcomes should the case go on trial, based on the strengths and weaknesses of the case (Mahan et al, 2017; Zhomartkyzy, 2023).

In the same vein, Amasah et al., (2015) definition of the mediators' role is also in line with the current study 's participants' view when they explained mediation by focusing on their roles of evaluating or facilitating the mediation process based on the facts of the case, all in the name of influencing the settlement generation. Furthermore, the role definition offered by the current study participants is in line with Wissler's (2004) study of 27 civil mediators' understanding of mediation, where they explained mediation based on their roles, such as evaluation of parties' cases, offering of opinion, predicted outcome, and recommended settlement values.

On the contrary, the views of the participants in this study are inconsistent with Tvaronaviciene et al.'s (2021) study in Lithuania, where mediators' roles were influenced by their background, whereas practitioners with a social science background adopted a facilitative role process, while those in the law-related background adopted problem-solving at the expense of communicative or transformative. Alfini's (1999) study findings are also contrary to this current study's understanding of mediation, where he found that defining mediation based on participants' roles may create a mediation coercion conception, which limits the basic assumption of the mediation conception of voluntariness of the whole process. In the same vein, Bercovitch (2011) highlights the concept of mediation, cautioning against viewing it solely within the context of local deals, at the expense of its international and global connectedness. Bercovitch argued that the definition of mediation should incorporate a global perspective. However, this aspect was missing from the participants' definitions of mediation, which primarily focused on its roles within their local context.

4.3.5 Integrative mediation style of practice

Some participants in the study offered diverse perspectives on the meaning of mediation, drawing from their socio-cultural and socio-legal backgrounds, and the roles they played. These varied interpretations contributed to the emergence of an integrative understanding of mediation.

To that end, a mediator (CCM5) remarked:

> I don't think I can adopt just one style of mediation practice since the nature of conflict varies based on the characteristics, interests and positions of the parties involved. At times, based on the nature of the case, I adopt socio-cultural, socio-legal, evaluative and facilitative approaches so that all the underlying issues can be identified to enhance the resolution of the conflict.

This mediator has resolved land litigation between a church and a family head. He shuttled along the various conceptions where he initially used the facilitative means of mediation to set the parameters for the dispute and later integrated the evaluation style when the family head decided to prove difficult. It was not surprising when he further explained mediation based on the integration of various conceptions in yielding a compromised settlement.

Another mediator (CCM2) corroborated by saying that:

> If I go strictly by the facilitative model of mediation practice taught at the training school, then I will not be able to resolve most of the cases referred to me. Looking at the nature of the case, I integrate all the relevant conceptions to the case under mediation in order to satisfy the party's myriad interests and the creation of social peace.

CCM2 suggests that his approach to mediation is not confined to the knowledge gained from mediation training schools alone. Instead, he integrates various models based on the nature and characteristics of the case being resolved. Similarly, the court registrar elaborated on the integrative conceptions of mediation, considering them the most effective. These conceptions involve merging academic, theoretical, and practical dimensions of the conflict. This approach views mediation not as a robotic process but

as the application of the mediator's artistic style to achieve a better resolution for the parties involved in the conflict.

CCR narrated:

> The philosophy of mediation is not one sided but is based on the merging of both practical and book knowledge of the conflict under mediation. Mediators are seen as possessing a character that enables them to combine all the necessary approaches, values, knowledge, and experiences needed in a given dispute setting. When practitioners align themselves with one style, it can limit their practice, but when they combine styles, it shows how genuine and critical they are, and these are the virtues needed for the practice of mediation in this court.

A cursory look at the statements revealed that changes in the style of practitioners by integrating different models are not illegal, provided parties are comfortable with the practice (ACT 798, 2010). It can therefore be inferred from the responses, however, that the future of mediation will be premised on how mediation practitioners integrate various styles of practice, which influences mediation effectiveness as reported by the participants. To that end, mediation practitioners have so many models of baskets to select in resolving cases referred to practitioners (Bakai, 2022).

The integration of different styles is consistent with the different roles reported by participants of the study. These styles of integration aim to enhance effective mediation practice. This finding of integrative style is further consistent with a study conducted by Wahab (2013), where participants (mediators and their clients) found the integration of three styles, being facilitative, evaluative and problem-solving in Australia. From the responses, it could be inferred that evaluative, facilitative, and problem-solving styles were integrated to create a better mediation conception and practice because it gave practitioners the power to navigate through various styles based on the nature and characteristics of the case pending before mediation practitioners. Consequently, participants further found that understanding mediation as the integration of various

styles and models gave practitioners the power to adopt various styles, which resulted in the resolution of most of the cases mediated.

As a result, the integrative style of practice reported by participants was in line with studies that the mediation style is pluralistic, and mediation in contemporary times resembles evaluative services, and hybrid settlement processes involving different approaches (Menkel-Meadow et al, 2020; Zhomartkyzy, 2023). It seems like Riskin (1996, 2006) believes that mediators should not strictly adhere to contrasting styles, as each mediator has a dominant style that they may use depending on the nature and characteristics of the dispute and parties involved.

The researcher observed that the definition of mediation based on the approaches that mediation practitioners used was different from the actual skills and tactics they displayed during the mediation process. However, those who defined mediation as integrative were spared from these definitional dilemmas because they navigated their practice through the various definitional terms. This observation is consistent with (Charkoudian et al, 2009) who reported that mediators integrating styles will be the best option for overcoming the dilemma between words and actions. This finding was also reported by Topmain's (1989) study, which argues that mediation conception should not be limited to a single conception but a multitude of practices where each performs a contributory role to mediation success. Moreover, these results reflect those of Bakai (2013) and Obermain (2008), who found that mediation conception is an art but not a science and argued for a combination of styles based on the philosophy of mediation.

From the discussion, a possible explanation for this might be that a mediator's key understanding of mediation is pluralistic, spanning from facilitating problem-solving, communication, and settlement, though their training offered them only a facilitative

model. It could be observed from the discussion above that the mediation conception and definition are not monolithic but vary based on several factors, including the orientation of disputants and mediation practitioners, the nature of the dispute, the background of the parties and the theoretical conception of mediation as an art or science.

The study further found that whereas most practitioners' conceptions were based on socio-legal manifestations through right based approach to mediation, most of the clients conceptualized mediation from the Socio-Cultural approach, with the focus on relationship building and social harmony. This influenced clients to readjust their interests and positions, which ultimately resulted in a mediation settlement. In terms of the similarity of mediation conception by both clients and practitioners, key issues centred on mediation as a social harmony where parties come together to resolve conflict to enhance peace and harmony in society.

4.4 Protocols CCADRM Practitioners Follow

Answering the question of what protocols mediation practitioners followed in the mediation room revealed three themes: pre-mediation, actual mediation and post-mediation. The pre-mediation, according to the participants, started with referring cases, provision of education to the parties in either the open court by the judge or the ADR Officer and the signing of the consent forms. Data from the participants revealed that the pre-mediation styles were not in conformity with the standards of training that either the practitioners received or what has been documented in the practitioner's standard of practice in the mediation handbook. The actual mediation involved either the initial joint session or initial caucusing based on the nature and characteristics of the parties involved in the mediation, and the advanced joint session and settlement.

The themes that emerged from the interviews, therefore, presented a multiplicity of protocols.

4.4.1 Pre-Mediation Protocols

International Institute of Conflict Prevention and Resolution (2021), cited in Lande (2022), posits that experts widely agree on the merits of preparation for mediation. From this study, participants reported that before the start of court proceedings every morning, parties are educated on the new alternative to dispute resolution called CCADRM based on the judge's inclination to the mediation program. The pre-mediation was characterized by the referral of cases to CCADRM, where parties are educated about the process and its benefits. Thoennes and Parson (1981) reported that inadequate briefing of parties before case referral may lead to confusion in the minds of clients. Lande (2022) reported that the complex aspect of the mediation process demands education, especially if parties have no experience in litigation and mediation. In this study, parties' feedback on how education impacted the protocols was reported by participants. For instance, a participant (CCJ) narrated:

> Parties need education about the different ways of accessing justice in the court. I take my time to take parties through the advantages of settling their case through mediation rather than litigation, which is costly and time-consuming both on my part and that of the parties in dispute, and plead with parties to try CCADRM. I normally refer cases after parties are satisfied with my education and recommendation. Any time I talk to parties in the courtroom before I adjudicate cases, I record more referrals to CCADRM. This means parties are ready to use mediation in our court, and that is very refreshing and positive.

In the court where the study was conducted, judges played an important role in the pre-mediation process by initially educating parties to try their case in mediation by extolling the positive effects of court mediation. This education normally convinces the clients to use mediation instead of litigation in court because of the status the judge

occupies at the court, being the one who will finally decide the fate should the parties refuse the mediation. This statement was corroborated by the (CCADRO) Officer:

> Before the start of the court proceedings, I educate parties in court on the need to use alternative ways of getting their grievances addressed through an informal way that is consensual, does not pronounce a winner and a loser, and strives for a compromised settlement. Briefing parties on the objectives of referral eliminates erroneous client expectations and misconceptions of the CCADRM practice.

It can be inferred that this court mediation is fortunate to have double education on the availability of mediation programs in the court for disputing parties to select from. The ADR Officer offers education to the parties whose cases are to be adjudicated by the judge. He normally starts the education by encouraging parties to select mediation because of its cost-effectiveness, speed, and rebuilding of ruined relationships. However, the judge cannot force the parties into mediation unless the disputing parties accept that their case should be tried in mediation. In the words of the CCADRM registrar:

> Parties to mediation themselves must give their consent at the open court before a case can be referred to CCADRM by the judge. The parties can also request the court to resolve their case through the mediation process, and when a contract has mediation stated in it as the first strategy of resolving a conflict, it is referred automatically.

It can be noted from this statement that when parties in dispute have mediation stated in their contract as the first step in resolving their conflict, the judge ensures that by referring the case to mediation without seeking their consent first. One striking finding of the interview was that in this court, there was a well-structured ADR-infused program in the formal court system where either the ADR officer or the judge offered education based on the nature of the case. This is not the case, but it is dependent on whether the judge does or does not believe in the efficacy of mediation as an alternative to the formal court system. The court registrar (CCR) further narrated:

> This court has a well-structured pre-orientation system before mediation starts; parties are given education on the CCADRM based on the judge being a relieving judge or the court judge who sits on the case. Relieving judges hardly offered education to parties on the mediation program in the court.

When parties are represented by a different person through a power of attorney (a letter by a disputant giving another person the power to represent him or her in court or mediation process as a result of certain factors beyond the real disputant), based on circumstances beyond them, such parties, in their subsequent court appearance, displayed a lack of knowledge about mediation. CCADRM officer reported that when parties miss the education process, and a case is referred by the judge, they exhibit a serious lack of knowledge at times equating mediation practice to litigation. CCADRO remarked:

> When parties miss the initial mediation education before signing the referral forms, they show different levels of unawareness of mediation practice, coupled with a lot of misconceptions, chief among them is the idea of an output of the court as a winner and loser. While some parties are present during the pre-court education of CCADRM, they still do not understand the workings of CCADRM and create challenges in the signing of the mediation referral forms and selection of mediators for the mediation settlement.

This view was shared by a mediator participant (CCM5) who stated that:

> Parties who understood mediation protocols and mediation had a well-focused priority of being willing to compromise based on the cost and effect of the dispute under resolution. Such parties had their cases easily resolved, whereas parties with a low level of education or unawareness of mediation protocols found it very difficult to accept compromise and had the majority of their cases referred back to court.

It can be inferred from the responses of (CCADRO, CCR & CCM5) that some parties, though initially received education about mediation, still exhibited an uninformed understanding of the real practice of mediation, and some initially agreed that their cases be referred to mediation but refused to sign the consent forms. On the contrary,

some practitioners also reported a lack of awareness and education by both judges and Court staff in promoting mediation. The court registrar (CCR) remarked:

> The previous judge was more anti-mediation; he showed no interest in the mediation cases, and cases that needed to be referred to mediation were litigated since he refused to offer the needed education to the parties involved in the litigation. Well, I didn't know his motivation for always wanting parties to litigate irrespective of their economic, social, and legal challenges. That period saw the decline of mediation in this court. Opportunity was not given to the ADR officer to provide education to the parties, and even when parties come to me to draft a letter of referral, he normally rejected it based on frivolous excuses.

It could be inferred from these responses that the success of providing education on the availability of CCADRM is subject to the characteristics of the judge presiding. Some judges are pro-mediation, while others are anti-mediation, which was also corroborated by a mediator (CCM1)

> The initial mediation practice was fraught with few referrals, though the court was choked with thousands of cases running for decades. A conscious effort was made for an opportunity to talk to parties before the start of the court proceeding, and I don't know why all attempts were declined and proved futile. I think the man hates mediation or does not believe in the tenets of mediation. This decreased our confidence as mediators since you come to court, and no case is referred to you. There was a lack of awareness about the whole CCADRM program, even among the court staff.

It can be inferred from the statement above that how receptive the court is to the mediation is premised on the judge who comes to court. Judges who believe in transformative justice are ADR inclined, while those who believe in retributive justice do not trust the working and objectives of mediation. Such judges who are proponents of retributive justice do not encourage ADR mediation in this court. In this court, some judges come to relieve duties, and some go on transfer. From the responses, it can be deduced that the current judge is a restorative justice inclined and aims at building the parties' social relationship. The logbook for mediators where the cases referred to mediation was analyzed by the researcher to authenticate this claim by these

participants. The report showed that during 2019/2020, only a few cases were referred to mediation, then in 2020-2021, it increased, then in late 2021 to early 2022 when the current judge went on leave it again reduced drastically under the caretaker of a different relieving judge then from middle 2022-2023 it surged up again in terms of referral of cases.

The views of (CCADRO, CCR& CCM5) in terms of education in this study are corroborated by Kirim's (2019) survey in Kenya, where he concluded that high ADR awareness among litigants had their cases resolved easily, while those who had low education were compensated through experiences at pre-mediation. Moreover, Lande's (2022) study also concurs with the present study findings. He found that clients with more education and preparation about the mediation process came to the mediation well prepared to compromise for the resolution of their conflict, contrary to clients who reported for mediation without prior knowledge of what the process and procedure entailed. Furthermore, Palihapitiya et al. (2019) studied in a Massachusetts court in the USA reported that increased awareness among CCADRM practitioners, such as judges and court staff, helped increase ADR utilization, where respondents indicated that ADR awareness among attorneys, litigants, and the public would be very useful in increasing ADR utilization.

Similar findings concluded that the quality of every mediation must be premised on quality education based on absolute knowledge of the mediation and the parties whose cases are being referred (Calkin, 2006; Eden, 2021; Shetosky, 2017; Netherlands Quarterly Report 2011; OECD, 2017). Others found that parties who were often poorly briefed about mediation did not even accept mediation usage even upon referral to mediation by the judge (Charkodian, 2012; Parson and Thoennes, 1981; Thoennes et

al, 2002). Similarly, the views expressed by the participants are in line with the following research studies from global practice that found education of parties on mediation referral had a substantial influence on the decision to embrace.

ADR in settling disputes in the Philippines (Sarmiento, 2013; Almutairi, 2015; Sayed-Gharib et al., 2010). On the contrary, other studies reported a scarcity of knowledge on meditation, which negatively influenced the use of mediation methods in resolving disputes is consistent with this study. Some found evidence postulating that a lack of awareness of mediation practice by court practitioners, such as court staff and judges, had significantly influenced the use of alternative dispute resolution (ADR) in resolving conflict (Baffour-Awuah et al., 2011; Hussin & Ismail, 2015; Onukwube, 2011). Some studies also reported judges may not be knowledgeable in current mediation practice and will not be ready to refer cases amenable to mediation (Khekale & Futane, 2015). Courts should aim to eliminate potential barriers to mediation use by increasing practitioners' knowledge of the CCADRM and enhancing parties' education on mediation in courts, as global actors assess the effectiveness of CCADRM based on the availability of sound education to parties who utilise mediation.

4.4.1.1 Referring cases as pre-mediation protocol

The Handbook for Mediators' protocols for referral starts with the cases amenable to mediation, such as civil cases and minor criminal cases. Moreover, the protocols identified the judge as the only practitioner who can refer cases to mediation, especially if a relationship exists among the parties. At the pre-mediation stage, referral of cases dealt with how cases were sent to mediation for trial could win the trust of the parties or lose interest in justice delivery if practitioners refer cases indiscriminately without the parties' influence, which may restrict the legal rights of the parties. Little attention

is paid to why some judges refer cases to mediation and why others do not. Practitioners were asked why they referred cases to mediation in the Twifo Praso court. However, the interview responses revealed factors such as whether the case was amenable to ADR, whether the parties were ready to compromise, and the nature of the case, among others influenced case referrals in this court. For instance, the judge noted (CCJ)

> Referral of cases must also be guided by ACT 798 and other discretionary powers of the judge, especially based on the security and welfare of the parties involved. I only refer cases after satisfying both the legal and sociological factors, which can impact court efficiency and the party's autonomy.

This judge does not only refer cases just because he wants to empty the court with cases, but considers various factors, including social, cultural, economic, legal, and political situations. This is true because case referrals must be guided by certain protocols to avoid abusing the rights of the parties who come to court to access justice. The court judge further gave a detailed description of the major issues and factors he consults before referring cases:

> Before I refer cases to mediation, I look at the relationship between the parties and the nature of the case in terms of intensity, interest, and the positions of the parties. Sometimes I consider the stage of the case, looking at old cases that have travelled under three or four judges, which are normally referred since tempers might have cooled off during the long period of litigation. At times, I also consider the intensity of the case, whether it has become acrimonious and life-threatening. For instance, there was a case involving a father and a son where the son pushed the father to the floor when there was a misunderstanding between them and a complaint was filed at the court. Look at the nature of the case where the threat to life is involved, notwithstanding blood relation… it, therefore, demands a thoughtful decision about satisfying blood relation or satisfying the safety of the father.

Some parties have been reported as writing official letters to the court to have their cases referred to mediation with an appeal to the judge. The court registrar recounted

> Some parties apply to use mediation instead of litigation during the first hearing of their case. When some of those letters come, I become very happy knowing very well that a compromise can be reached. When I ask both parties, and they agree, I duly draw the attention of the judge to

> refer the case to CCADRM for settlement. I also encourage the CCADRM officer to intensify the need for parties to accept a referral to CCADRM.

The mediator (CCM3) corroborated the judges' assertion by explaining that:

> Cases that are normally referred to us include methuselah cases, which have travelled for decades without a clear focus, whereas parties' and judges' interests might have wound down. Other cases referred to us include cases of blood relations, petty theft, land cases with huge vested interests, and those with low interest as a result of court fatigue. At times, less serious criminal cases, environmental cases, money recovery, and chieftaincy disputes are referred to us.

It was further observed that not all cases can be referred to mediation for resolution, though the judge gave a generic basis of the ADR Act, the registrar outlined some cases that are excluded from mediation based on what ACT 798, 2010 states: *Cases that border on constitutional interpretation, defilement, abuse, and high treason offences may not be amenable to mediation referral.* Such cases, according to the narratives of the judge, registrar, ADRO and mediators, are excluded by the ADR Act.

The views expressed by the participants showed that cases were not just referred to mediation anyhow, but some factors were duly considered before they were referred. This is very important so that parties in dispute and the mediation practitioners will not take advantage of either underuse or overuse of mediation to create confusion within the court system and the delivery of justice. When due diligence is done by practitioners before sending cases to mediation, it helps to avoid mediation as a dumping site for cases that probably judges have lost interest in and just dumped into the mediators. The interviews revealed that only judges can refer cases, but they can be referred only after their first hearing in court.

The participants' views are consistent with Crook's (2012) study in some courts in urban Ghana, which found that magistrates are the only practitioners in the chain of mediation practice that can refer cases to mediation, and cases amenable to mediation can be

referred by the judge anytime until the final determination of the case. The findings also corroborated Ghana's ACT (798) 2010, which puts the sole responsibility of referral to the trial judge, even if parties recommend that they want their case settled through mediation. Moreover, this current study is consistent with the High Court ACT order 31 rule 4 in Zambia, which states:

> Except in constitutional cases, liberty, injunction, or when the judge considers the case unsuitable for referral, the trial judge can refer cases set for due trial to mediation and further make provisions for cases to mediation at any stage of the litigation process.

This practice is also similar to Helmut's (2015) study, where judges were found to be the only stakeholders responsible for case referral in Germany, Scotland and Switzerland. This view is also confirmed by the respondents of the current study. In Ghana, the Judiciary Service and UNDP manual (2010) and the ADR Act (798), 2010 section 64 state that after a magistrate refers a case to CCADRM, it is up to the parties to decide whether to agree or not. This study reported referral by judges as the "bone and core "of CCADRM programs based on the structural nature of mediation because he decides the fate of case referral but must be subjected to the acceptance by disputing parties. This is also consistent with Oyombo's (2020) study, which reported that mediation referral should be premised on the party's acceptance after the suggestion by the presiding judge from the Lampur Court Mediation Centre (LCMC) in Kenya. Palihapitiya et al. (2019) identified the role of the judge as of great significance to mediation success when he refers cases deemed fit for mediation. Parties have the right to recommend their cases to be referred for mediation, which was also reported by the participants of the study. This finding is in line with a study by Pel (2008) in the Netherlands, where parties preferred amicable settlement by writing letters to the magistrate or the court to request a referral to mediation. This is further corroborated

by Menkel-Meadow (2016), whose study identified high usage of letters as a referral technique in administrative or industrial cases.

However, this study's finding that the judge and significant others can plead for their cases to be referred to mediation but must be subjected to the discretion of the presiding judge or magistrate based on the ADR Act (798) contradicts a study by Ngetich (2019) in Kenya where referral of cases was done by either the mediation deputy registrar and the court judge as people who can evaluate the suitability of the cases for mediation. The study's findings further contradict mediation practice in Namibia, where Damaseb (2010), a deputy chief justice, study on ADR and found that CCADRM coordinators can engage in referral through early evaluation of amenable ADR cases to mediation. Similar studies contradict mediation referral protocols where the court registrar and the ADR officers can refer cases after filing (Calkin, 2006; National Mediator Accreditation Standards in Australia (NMAS) 2020; National Institute of Conflict Resolution 2021; Oyombo, 2020).

In terms of the factors that practitioners in the Twifo Praso court considered before referring to mediation cases are consistent with the narratives in the literature. For instance, Nolan-Haley & Annor-Ohene's (2014) and Afrifa's (2019) research in Ghana reported building relationships as one of the factors judges considered before referring cases to mediation for them to regain their lost relations and live in peace. The views expressed by the participants further concur with a study where court judges considered the degree of conflict escalation and the willingness of parties to negotiate (Netherlands Quarterly Report, 2011), the nature of the case pending, and cases that have lingered in the court for a longer period (Maclon, 2014; Mack, 2003; Lande, 2022) influenced judge's decision to refer cases to CCADRM. In Zambia, Chitsa (2021) reported that

CCADRM officers and judges referred cases based on the oldest pending cases, mortgaged and debt cases, and tort and contract cases. This finding, though, in some part confirms the views of the current study participants in terms of similar cases that judges refer to as mediation; however, in the Ghanaian practice, cases can only be referred after it has been heard in court for the first time before a decision on referral can be taken.

4.4.1.2 Actual mediation protocol

The handbook for mediators identified actual mediation from the initial joint session where the purpose of the mediation is discussed, the role of the mediator and how parties are to behave are discussed. This is followed by discussing the key issues underlying the conflict and the last protocol being caucusing to have a one-on-one discussion on the reason behind the interest and positions that parties assume.

Interview responses from the participants revealed that there was no rigid stand as to how the actual mediation process began. Some of the participants started the mediation process either with an initial joint session or initial caucusing, depending on the nature and characteristics of the case settings and the parties involved. From the observation of the researcher, this deviated from the normal standard practice as established in the mediation practitioners' code of practice, which begins with an initial joint session. Moreover, the practitioners in this court were not stacked with a particular mediation protocol because, in one case, a mediator would use an initial joint session, and in another case, he would start with initial caucusing. This observation contradicted the Global practice of mediation standards that recommended the commencement of an initial joint session where the mediator and all disputants meet together to chart the future of the mediation process.

Another contradiction was found in the mediators' handbook of practice CCADRM (2010), which identified the initial joint session with parties as the first stage of the mediation process where the mediator's role in the process should be communicated to the parties, where neutrality, impartiality and confidentiality are highlighted to calm down their negative conception of the process. Based on responses from the interviews with mediators at the Twifo Praso court, this research examined how mediators initiate the joint session compared to international standards. The responses and observations from practitioners delved into the style of protocols involved and the factors facilitating the contrasting approach of either the initial joint session or initial caucusing.

4.4.1.3 Initial joint session commencement of mediation protocols in Twifo Praso Court

Various ways of conducting mediation have been reported in different jurisdictions that use mediation as an alternative door to the court. Observation and the interview data revealed that what motivated practitioners to use the initial joint session was premised on efficient case resolution for the satisfaction of the parties and not the standard of practice that parties have been taught during their training. Some conditions influenced mediators to commence mediation with an initial joint session. For instance, CCM1 explained what influenced him in using the initial joint session by stating that:

> I used the initial joint session to thank the parties for agreeing to mediate and especially for having the confidence to select me as the mediator for the case. It offers me the opportunity of calling one of the parties, usually the defendant, for the opening prayer and the plaintiff offers the closing prayer. You observed that in the court, litigants must use either the Quran or the Bible to swear, but in ADR, we do not swear; we pray to God so that God will calm down all tempers and take charge of the whole mediation process. After the prayer, I use the initial joint session to introduce myself to the parties, then I confirm the identity of the parties by knowing if they are the real parties in dispute. I educate parties that mediation information is not transferable to other dispute management systems, and also quick to add that breaking the confidentiality rule amounts to contempt of court with a penalty.

This court mediator used the initial joint session to establish the ground rules and the consequences thereafter for the parties. His reason for the use of the initial joint session further stemmed from the ability to display ethical and expected behaviours of the parties. These characteristics facilitated breaking the iceberg and making parties feel at home so that it could influence compromise and case settlement.

Another participant identified the use of an initial joint session to make parties aware of the acceptable behaviours that they must display during the mediation process. CCM5 stated:

> I use the initial joint sessions to explain to parties ethical behaviours that are acceptable during the mediation process, such as the GHOST principle of mediation encompassing Gentility, Honesty, Openness, Specificity, and Time-bound. These are all done to build rapport and to achieve a user-friendly nature of the mediation against litigation in court.

Others also initiated the mediation process with an initial joint session to discuss their roles and how the process would follow. For instance, CCM3 stated that**:**

> I discuss with the parties the duration that we must use for the session. Then, the 'trinity' as the mediator, the plaintiff, and the defendant, based on our schedule, fix or decide the time. At times, we decide the time based on the nature of the case. From practice, I give chieftaincy cases, land cases and inheritance cases more time. At times, I could take about 5 hours to close one case. When a chief brings a subject to the court and the issue comes to mediation, I must respect the chief, so his case is often called first. At times, I discuss with the ADR supervisor to fix that case only, since such cases demand more time.

This role, as a basis for using the initial joint session, was corroborated by participant CCM5.

> Whenever a case is referred, I initially offer prayers and call on God to be at the centre stage of the mediation process. After this, I authenticate their names by inspecting either their Ghana card or Voter ID card, and set the ground rules of GHOST, for the parties to believe in CCADRM. I tell them the reason it has been integrated into the judicial system of Ghana. When both parties' sides of the story have been told, I ask for their interest in settling the case. When I hear their interest, I discuss with the parties if they will agree. When they agree, I draft the settlement

> agreement and read it to the parties. When they are okay with the agreement, it is signed by them, and I escort them to either the courtroom or the judge's chamber for adoption as a court judgment.

These participants provided the basic roles they performed, which included authentication of the identity of the participants through either checking their Ghana card, driver's license, or insurance card. This was seen as a way of avoiding impersonation. They further introduced the mediation session by helping parties to reach an agreement proposed by the parties, drafting the settlement agreement when proposals were accepted and agreed upon by the parties, before sending it to the courtroom for adoption by the magistrate.

Participant (CCM4), however, offered a different role in the initial joint session by reading through the dockets or files containing the pleadings and demands that parties sought from the court. This helped the mediator to understand the conflict settings and how to progress in the mediation process without compromising on the stands of the parties involved in the dispute. He reiterated:

> I used this session to read through the dockets of both parties to know the facts of the case and each party's side of the story outlined in the writ of summons. This helped me to acquaint myself with the parties' narratives. Whilst the plaintiff was telling his side of the story, I consciously noted down areas that needed clarification to enhance a smooth understanding of the issue. When he finished his narratives, I asked questions that I wasn't clear about, both from the written and the oral narratives. After that, the defendant was allowed to tell his/her side of the story. Parties were then given the chance to ask questions they noted down for clarification. This was consolidated by allowing each party to disclose the challenges they faced as a result of the dispute pending in court. During this stage, I noted down the positions, interests and reliefs each party demanded.

What was striking about the participant's (CCM5) response was the time a practitioner took to read the docket detailing both the demands of the parties in the dispute, so he could understand the demands of the disputing parties before the parties' oral presentations were listened to. Some mediators ignore this critical role since, at times,

the case is referred to them the same day, while others do not take pain to go through the dockets but use the oral presentation as a basis of their resolution process. The interview of the participants further revealed why some mediators preferred to commence mediation with the initial joint session instead of caucusing, since the literature revealed that mediators crisscross the protocols with either the initial joint session or initial caucusing. A participant (CCM1) gave a reason for starting mediation with an initial joint session, with a giggling smile on his face:

> The moment a case was referred, the parties selected mediators based on the picture album, but if they don't know you and you ask them to come for the caucus, they will not mind you!! You must assure the parties in pain of the importance, rationale and objective of CCADRM so that they can have confidence in you; this can happen through joint sessions.

Other participants adopted an initial joint session based on the belief and conception that mediation should be seen as a multifaceted process and not a polar and watertight conception, all in the interest of the parties, and to enhance the objective of the Ghana Judicial service goal of reducing the backlog of cases in the courts. The narrative of a participant revealed:

> I do not believe the procedure for resolving the case should be watertight; depending on the case, I decide to either use the joint session or caucusing. But the initial joint session meeting offers parties to share experiences that each has gone through because of the dispute, so that I can calm down their temper to facilitate compromise.

This recognises that the protocol that he follows was not watertight; however, he at times used initial joint sessions when he wanted the parties to compromise or to let each other cool down their tempers in an open face-to-face. He further used the initial joint session to give education to parties who had come to the mediation room by clearing some basic misconceptions that parties brought on board as a result of not understanding the initial education the registrar, the magistrate or the ADR officer gave to parties. CCC23 narrated that:

> When parties were not educated about the process, they came to the table with so many misconceptions. This period allowed the mediator to clear the misconceptions once and for all. At the joint session, guidelines, settings, and enforcement were discussed with the clients.

It was observed that most mediators started their initial joint session with prayer; this was not surprising since most Ghanaians believe that God can help in the resolution of the conflict. Moreover, it was noted that prayers were said from all the types of religious beliefs that came to the court without discrimination. The initial joint session identified the role of practitioners in the mediation as neutral with no vested interest in the case under mediation and talked about the confidential nature of the process. It was further used to explain the role parties were to play through the GHOST principle, which offered them the chance to opt out if they were not comfortable with the process and pleaded with them to see conflict as endemic. The researcher observed a mediation session, which corroborated the description that parties gave during the interview session on why they started mediation with the initial joint session. The researcher observed a case under mediation where a chief had summoned three young men for using DDT to catch fish from a river, which the whole town used as their source of drinking water.

The researcher further observed a very heated argument between the chief and the culprit. After all, they thought that the chief was just using them as a sacrificial lamb because they were not the only people who had engaged in this act. The mediator had a tough time settling this case, taking about four to five hours, including the invitation of witnesses where necessary, before the case was resolved. The mediator adopted the introduction where he told the parties of his role and functions, and the roles the parties were to play for a successful mediation. In the end, they all regained their lost relationship, and they lived in peace. This observation is congruent with the responses

of the participants' use of initial joint sessions in explaining their roles, fixed time based on the case characteristics and calling cases that involved prominent members of the community first.

Further, observation by the researcher at the mediation session revealed that the initial joint session was used by mediators to traditionally welcome the parties to the mediation when they were seated and facing each other. The mediator then starts with opening remarks, telling them about the objective of their meeting, following a successful signing of the mediation forms. The constitutional and legal backing of the process was given to the parties, as well as what they were expected to do to enhance adequate rapport building and calm down the parties who had negative, stressful experiences as a result of the conflict under litigation. Parties were then allowed to present a brief analysis and background of their case so that they could feel at home with the process. What parties knew about the case was further explored by the mediator with the parties. In some of the cases, the initial proposals were accepted by the parties, and the cases were resolved, while in most cases, the initial proposals were rejected by the parties.

It was surprising that participants constructed various reasons for using the initial joint session, spanning from the education of parties, authenticating identities, mediation being seen as varied conceptions and not monolithic, discussing the ethics parties must display, serving as iceberg breakers and the calming of nerves, description of mediator’s roles, among others. This was in line with the interpretivist view that knowledge is not an objective phenomenon but could be constructed based on people’s experiences, beliefs, and how they appreciate a particular issue under discussion.

The participant's views are confirmed by Allport (2015), whose study reported that at the initial joint session, neutrals control the mediation process by establishing or enforcing a protocol for the mediation and adopting techniques that influence parties' thinking and communication. Another study by Garcia et al (2002) confirmed the views of participants in this study, where the initial joint session put the disputants into readiness to compromise through opening statements by the mediator and their clients, which was central in the mediation to avoid the first disputant story. Other scholars' research confirmed that the joint session mediation process begins with the identification of parties and mediators' responsibilities (Lande, 2022; Shahla, 2021). Harmon-Darrow et al. (2020) reported that initial joint sessions led to an exploration of core points and demands of the parties in a dispute where the mediator navigates the parties through.

USIP (2020) reported that parties who have adequate knowledge of mediation cases were resolved at the initial session without moving to either caucusing or adjournment. Shawawry's (2020) study also found the components of the initial joint session to identify mediators and the parties' roles, exploration of parties' interests and positions, and negotiating parties' interests through compromise and settlement of cases. Furthermore, Wissler & Hingshaw (2021:1) recommended joint sessions as the standard for beginning the mediation process, but not caucusing. The findings from this study further confirm court-connected mediation guidelines, such as mediation services guidelines for Ghana Judicial Training School and UNDP manual (2010); Model of CCADRM practice for American Arbitration Association (2002); National standards for CCADRM programs (1993). These guidelines recommend that the process of mediation begin from the initial joint session. When the initial proposal put forward by both parties was shared and accepted, it ended the mediation process. The settlement

agreement was then signed by the parties, and the settlement was adopted in court by the magistrate. However, when the proposal put forward by each party was rejected, the next stage of mediation resumed, where caucusing was done to further press on parties to accept the proposal or evaluate the future of the case should it be referred back to court.

4.4.1.4 Caucusing as actual mediation protocols

The interview with the participants on the protocols they followed in the mediation room had some mediators who subscribed to the use of caucusing instead of initial joint sessions. This was because some mediation authorities agreed that beginning mediation with initial caucusing played an important role in mediation practice (Brown & Ayres, 1994; Calkin, 2006; Calhoun, 2004; Moore, 1987). Mediators who did not believe in the initial joint session identified factors such as the type of case, the characteristics of the parties in dispute, and the strong belief that there is no one-stop-shot protocols to be adopted by mediators during the main mediation session. For instance, the mediator (CCM1) remarked that at times he starts the process with a caucus instead of an initial joint session, depending on the case type. He further stated:

> There are some cases where, if you don't start with caucusing, and you start with an initial joint session, it could be worse, especially in marriage cases where the love shared has diminished beyond repair. See…, I tell you, even land cases with highly compromised interests, high-stakes cases with strong positions, and inheritance cases. Such cases were characterized by the exchange of words after referral by the judge before the mediation process. In such cases, I do not start with the initial joint session but would start with the initial caucus to calm down tempers.

CCM1 narratives on why he preferred the initial caucus were based on the case type. Notably, the participant mentioned marriage cases which were on the verge of collapse, where the love that the parties initially shared had died out, leaving animosity and hatred, and jackpot cases where the survival of the parties depended on the issue under

mediation, such as land cases. Moreover, cases that have spiritual connotations, such as when a party thinks the other is fighting against them spiritually. Such cases, according to CCM1, should start with caucusing so that practitioners can clear most of the misconceptions parties brought to the dispute, to avoid the explosion of the already compromised emotions. This was corroborated by another participant (CCM3) who reported:

> The party's positions, interests and reliefs were discussed in the caucus since the initial attempt could spark escalations of emotions, tensions and confrontations. When a party's interests and positions were muscled through collective engagement, the other party was also called to share his/her story. When the parties are satisfied, the settlement agreement is written and signed by both parties, and the content of the agreement is read to the parties based on the language that they understood. When they were okay with the meaning, I sent the case to the judge for adoption either at the open court or in chambers.

CCM3's reason for starting mediation with initial caucusing was based on the need to create a cease-fire, especially when the interests and the positions of the parties were so high that neither of them wanted to meet face-to-face or compromise. Normally, such cues were taken during the signing of the consent forms, where parties did not want to see each other's faces and when some miniature uncalled-for attitudes were displayed either by the parties in dispute or their supporters. According to the response of CCM3, since mediation is not watertight, his objective was to create a peaceful atmosphere by starting the process with "one-on-one talk caucusing" so that the mediator could take time to plead with parties to exercise restraint by forgiving offenders. Some practitioners started with caucusing when the case under mediation had some form of abuse where one person had been physically, emotionally or psychologically hurt. Such parties, because of the scare the abuser has registered in their minds, were not willing to have a face-to-face meeting with their abusers because it could remind them of the pain. A mediator (CCM5) shared an experience as:

> When a party in the dispute setting has been abused, he does not want to come close to the other party because of the scare left on them. A case in point was when a son assaulted his father by pushing him to the floor. The father demanded that the boy who smoked Indian hemp stop that behaviour or leave his house. The father filed the case in court but requested caucus-only mediation so that the demand of his son to sign a bond and be given one month to leave his house would not be known to his son, because he may receive threats from the boy.

It could be inferred from this response that the father feared his son could do worse when he got to know that he proposed the signing of a bond and also had requested a month's ultimatum to vacate his house. But with caucusing, his demand was met without revealing the identity of the originator of the settlement proposal to his abuser, who could potentially do worse. Another participant (CCM4) also offered a different opinion on caucusing when he said that he adopted it when the discussion at the initial joint session hit a stalemate:

> When the initial joint session hit the rock, I inform my clients about caucusing which in the local parlance is called Yerekobisa Abrewa (we are going to confer with the old lady) or aginanatuo (taking a break to consult with individual parties). The caucus is where I engage only one party to discuss the objectives, plans, and interests of the need to compromise. Here I meet each party privately to discuss options for settlement.

CCM4 preferred to use caucusing only after his initial joint meeting became unsuccessful, then he shifted his style to adopt caucusing. He further identified the significance of caucusing to the parties by identifying the role he plays in it. This narrative was however different from those expressed by the others who used initial caucusing based on the nature and characteristics of the case from the perspectives of parties in dispute. Others preferred causing because of its cultural significance and the confidential nature of the process where the parties were ready to pour out their pain for the mediator to commiserate with them served as a cue to what the mediator could do to enhance settlement of the case. A participant remarked:

> I adopted caucusing because it reflected a traditional technique of conflict resolution which most of the parties use especially because of the secrecy attached with it. It makes the parties willingly disclose everything about the case to me and enhances trust building with the parties. This was very critical in the disclosure of sensitive issues which one party would not want the other to know but could be a basis on which the resolution was hinged.

This participant identified several factors that influenced the use of initial causing primarily to get the critical pointers for case settlement which parties were not comfortable to share with others. Galton, et al. (2021) posit that a current trend among seasoned mediators globally is using a more caucus-only format where mediators separate the parties (Callister & Wall, 1997), caucus separately with them (Boyle, 2017), bring parties and their representatives together (Asmussen, 2018; Zhomartkyzy, 2023). These findings are however in agreement with this study's participants' responses in terms of the roles and functions of initial caucusing. The role of trust building at the initial stage of case management served as an important focus in facilitating the generation of settlement agreements for both parties.

The views of the study's participants confirm that in caucusing if the emotions were high during the initial joint session, the mediator separated the parties into different rooms for private meetings or caucusing (Curran & Coakley, 2018; McDermott & Obar, 2004). Other studies reported the usage of caucus influenced the settlement rate by about 95% (Calkin, 2006). This study confirms that caucusing was adopted by the mediators based on establishing peace, reconciliation, and healing between the parties, kinder and user-friendly resolution (Adrian, 2016; Wissler & Hinshaw, 2021; Valkeepaa & Seppala, 2014; Van De Graaf, 2021). Others reported the confidential nature of caucusing aid mediators to gain the confidence of both parties which led to a compromise and eventual resolution (Calhoun, 2004; Morill & Rudes, 2010). These findings were consistent with this study's findings.

Another study that is consistent with this study is the Galton et al (2021) study, which reported that in some cases where parties were too traumatised to speak to their abusers, mediators adopted caucusing instead of an initial joint session. Furthermore, the views of the study are in line with the views expressed by Senam et al. (2018) and Stulberg and Love (2019). These researchers identified the objective of caucusing as addressing private issues that parties have with the aim of better resolution, interest, walkaway points, reducing tension and allowing room for settlement generation.

Another study that also confirms the perspective of the participants for this current study was McAdoo and Hinshaw (2017), who reported that 62% of mediators always used caucus extensively against joint sessions because of the welcoming nature to disputants, while Love and Galton (2012) found that most commercial mediators spent more than half of the mediation in initial caucusing. Wissler and Hinshaw's (2021) study explored why mediators in the USA used the initial caucus and reported that mediators used it depending on the case type, the style, and the type of mediators' orientation and training.

Some studies consistent with the current study's finding are Welsh (2001), who found that during the initial caucus, mediators explained confidentiality, the mediation process approach, setting of ground rules, and providing opportunities for parties to meet informally to discuss options to resolve their disagreement. Calkin (2006) identified using the initial joint session to build a sense of rapport, trust, confidence, and peacemaker, gaining a better appreciation of facts and the law of the case, offering the opportunity for the mediator to explore the hidden agendas. These findings in the literature are consistent with the findings of this study.

Other studies reported contrary views about the initial use of caucusing. A study by the Maryland Administrative Office of Courts (AOC, 2016) reported that the longer the time parties spend in caucus influenced participants to report that the mediators controlled the outcome, pressured them to accept a settlement, and inhibited issues from being explored by parties. A study by Charkodian et al. (2018) found no relationship between the use of initial caucus and the settlement of cases. Wissler and Hinsaw's (2021) study in America, involving mediators in California, Utah, Michigan, North Carolina and New York, found that the perception that the initial joint session is replaced by initial caucusing was erroneous since the initial caucus and initial joint session performed the same function. Some studies reported that caucusing and keeping parties in separate rooms where the mediator shuttles in between them to help create settlement can be daunting and stressful (Garcia et al, 2002; Gaynor et al., 2014) Garcia et al (2002) also reported that starting mediation with caucusing influenced party's empowerment, emotions and negative perception about the case, since parties were not allowed to tell their side of the story to each other.

When caucusing fails to achieve the desired result, mediators normally adjourn the mediation process so that parties can go home and think about the proposals worth considering to enhance the settlement of the case (Elziny et al., 2016). This leads to the next stage of mediation called the advanced joint session and settlement.

4.4.1.5 Post-mediation (advanced joint session and settlement)

From the interviews and data analysed, the researcher noted that when mediation caucusing fails to achieve the desired resolution, mediators give parties some time to think about how a settlement can be reached through an adjournment. There is a popular saying that "somye ma adwene". To wit, the pillow gives advice. When parties report

on the adjourned date, they are welcomed by the mediators, and the mediator calls for their feedback on the adjournment. Parties, in turn, give their feedback to the mediator based on the consultations they might have done during the period of adjournment. When parties' reports are favourable, the settlement agreement is written and read out to the parties in the language they understand. When they are satisfied with the agreement, they sign it, and the mediator gives it to the CCADRM officer, who then sends it to the court with the parties for adoption. On the contrary, if the parties' feedback is not positive, the mediator is compelled to give additional days for reconsideration, taking into account the time frame given by the judge to return the case to court. A participant (CCM1) explained what goes on during the advanced joint session settlement as:

> When parties return from adjournment, I expect cool heads to prevail since they might have slept over the whole issue under discussion and might have compromised their positions, stands and interests. Sometimes parties return from the adjournment with some misconceptions deeply cleared, facilitating some form of compromise and settlement.

This view was further corroborated by another mediator (CCM2) who reported that:

> Parties whose cases were not resolved during the initial caucus might have a jackpot or high-stakes cases such as inheritance, land cases and family disputes. Such cases demand broader consultation before any other compromise can be made, since it is a collective conflict. The period under adjournment also offers parties the opportunity for advanced consultations leading to compromises of previous positions and stands to enhance settlement.

CCM1 &CCM2 narratives of the advanced joint sessions meant that time was essential in mediation and conflict resolution. It was observed that because conflict at times involved multiple actors, it was important that an opportunity be given to parties during the adjournment period to consult broadly with the significant others who were directly or indirectly involved in the case. This was essential because when the settlement options involved payment of money, divorce, and land issues, it was at times the

significant others and the supporters who would either provide a haven for the divorcee, or contribute money for the payment of the fine, or they could decide to compromise on which portions of the land under litigation they were willing to compromise to bring peace.

Apart from the practising mediators who provided their views on mediation protocols during the advanced joint stage and settlement, their views were corroborated by the CCADRM officer, who noted that this stage of mediation is characterized by

> The provision of final stands and positions of the parties where all the necessary apology and remorse are shown by parties to facilitate settlement of the dispute in terms of damages to be paid, this session offers the opportunity for parties to reduce the payment demand stand or even forgive the party. Looking at the troublesome nature of litigation in terms of cost and time wastage, at the final joint session, parties critically analyze these perspectives before they still insist on not agreeing to the settlement option under consideration.

The presence of supporters by parties at the final joint session played a very important role because the parties in dispute did not live in isolation, but as a family. Another critical influencer of the dispute at the final stage, parties normally come with their supporters, though they may not be allowed into the mediation room. CCM1 reported

> At the final stage of the dispute, options generated by parties are influenced by the supporters they bring or consult, since their acceptance or rejection can impact their relationship with such people. Typical cases where parties normally bring supporters include divorce cases, inheritance, land ownership, and cash recovery. Such cases need guarantees and assistance before settlement can be reached. When a person has filed for a divorce because parties will be separated and the likelihood that they will go back to their previous families, it becomes imperative for their supporters to be duly consulted during the terminal stage of the dispute so that they can be integrated back into the family.

Another practitioner, CCM4, also discussed mediation in the final joint session as involving:

> Debt payment demands the support of family members and loved ones. These stakeholders accompany disputants to the final joint session so that parties will consult supporters before a lasting settlement is

> explored. At times, the inputs of these supporters influence easy settlement, while 'litigant supporters' give uncompromising advice leading to non -non-settlement of the case.

This finding deviates from the normal practice of mediation established in the code of practice and training of mediators (ADR Manual for Mediators, 2010), where significant others were not entertained in any of the mediation sessions since their influence could compromise an amicable settlement. The findings in this court are contrary to the established narratives because these significant others' roles have been well-identified as providing a haven and helping parties pay their debt. Others included reintegrating divorcees into their families, and when the case involved complex actors such as family land disputes and inheritance, supporters' voices became critical in enhancing the generation of settlement. This finding is in line with the interpretivist philosophy, where knowledge creation is not an objective phenomenon but is based on how people conceptualize their understanding of the problem at hand. These applications are also in line with the initial conception of mediation by the participants of the study, which is myriad and divergent based on how they see mediation practice.

Another observation made by the researcher was that the advanced joint session was conducted in this court with co-mediation. This is where mediators come together to help in the resolution of the case. The second mediator offers a different perspective on the settlement agreement that the main mediator might lose sight of. CCM5 narrated that:

> I joined the mediation since, after this case, I also had to mediate at the final joint session leading to settlement and the end of the dispute. At times when I add to the previous position of the mediator, it confirms to the parties that the mediator was not biased and was on the right path. This conformability in co-mediation influenced the easy resolution of the conflict and created a harmonious living among the parties.

Another mediator (CCM2), who also facilitated the co-mediation, corroborated that:

> Looking at the limited nature of rooms and facilities, when we come, we sit to settle the case, offering different perspectives to settle the case. As one asks the question, one takes the note. Co-mediation has helped to settle more cases since one's weakness is complemented by another's strength. If not co-mediation, then I have to go home and come at my scheduled time.

Though co-mediation was not found within the protocols of the CCADRM practice manual, it has been adopted by mediators in this court to enhance long-lasting settlement of disputes. The mediators, when they were two, influenced the easy settlement of cases since each of them had a peculiar skill when combined in the mediation process, and became very effective. It was also observed that the co-mediation came about as a result of creative problem-solving that involved the inadequacy of rooms where each mediator could schedule a meeting with their clients.

CCADRO also noted that:

> Looking at how the co-mediation protocol in our court is becoming very efficient, they must be duly compensated for the service they render so that their interest in case management will not be reduced. When two mediators handle a single case, parties to the dispute develop more confidence in the process.

The researcher observed that the final stage of the mediation process was very critical and emotional for the parties. Though there was no winner or loser in mediation, because parties had different interests and positions, a party must trade off the bigger slice of the mediation pie to enhance settlement. This was normally facilitated by either an apology from the one who was at fault or agreeing to a compensation package proposed by both parties in dispute. When an apology was rendered, it reduced the stands and position for the other to accept the settlement plan and resolve cases based on the influence of the supporters they brought to the court. Mediators dealt with difficult cases through the use of co-mediation, where the other mediator gave an

opinion similar to the main mediators, it facilitated the settlement of the dispute because the parties became convinced that their case was either good or bad.

In a typical case where the researcher observed a case involving an assault, a parent wanted his son banned from their house because he intermittently came around to insult, beat and steal from their house. He reported the case, and the gentleman was arrested. The initial mediator tried to convince the gentleman to agree with the recommendation that he find a new accommodation, since staying with his parents may worsen the tension. Co-mediation at the advanced joint session brought in another mediator who suggested that the boy bring his uncle to apologize to his father. Interestingly, the gentleman came with his uncle to apologize to the parents, and the apology was accepted, and the boy was made to sign a bond of good behaviour and not to repeat the mistake.

This observation confirmed the stance that co-mediation brings into mediation a different perspective to the dispute settings. The observations by the researcher and the views of the parties concur with the research conducted by Afrifa (2019) in Ghana that an advanced joint session helps parties to come to an appreciation of their fundamental interest, where the issues on the table have been discussed dispassionately, leading to easy settlement. This is also confirmed by a study in Shawawry (2020) in Australia, which reported that mediators at the final joint session evaluate the merit of the case that parties bring on board, making parties decide whether to compromise or still stand by their initial proposals.

In another study conducted by Calkins (2006), he reported that at the final joint session, all parties must be present to offer their final view on the case. However, the study further reported that when parties agree to the settlement proposal, parties are stuck

before the adjournment, the mediator drafts the settlement agreement from the proposal and submits it to the court for adoption. These views concur with the views of the participants in the current study. The current study is also consistent with Calkin's (2006) study that found that as the parties get home, they at times talk on the phone to see how best they can influence the settlement among themselves and if their trials fail, they resort to some members of the family to talk to the other party to accept the settlement plan, he concluded the more time given for adjournment the likelihood for the parties to reach consensus before coming to the court.

Eliciting an apology, forgiveness, and acceptance of wrong dominate the literature at the final stage of the mediation process, which is also consistent with other studies. For instance, Bennett and Dewberry, cited in Calkin (2006), reported that the most effective peacemaking tool during the final joint session is a rendering of apology, forgiveness and telling the truth to the parties. When parties display this moral and ethical behaviour, it results in the cessation of the conflict and leads to an amicable settlement. A similar finding was reported by Crook's (2012) study in Ghana, where he reported that at the final joint session, parties compromise their position and interest when an apology is rendered, truth is said and when parties say sorry for engaging in a conflict. In another study, Olexa and Rozelle (1991) discussed the positive impact of apology on 12 dispute resolutions at the final joint session. He further reported that at the initial sessions, such ethics may not be displayed since parties have high hopes that they will be successful in the case settlement. The apology and forgiveness not only help parties achieve a peaceful settlement but also enhance peace, strength and dignity among the parties since maturity is shown by the apologizing party.

The final stage of a case of mediation management and settlement, and the conditions that make it rife are consistent with the literature. For instance, Chitsa's (2018) study in Zambia reported that the protocols of mediation end when parties reach an amicable settlement and the mediator drafts the agreement signed by the parties for adoption in court. His study further identified deadlock as when the parties are still not able to compromise for a settlement to arrive, and demand that the mediator evaluate the cases for the parties to know their stand, should the case be referred back to court. Furthermore, Oyombo's (2020) study in Kenya reported that the final joint session is characterized by parties considering their terminal stage of the mediation process, where parties try to compromise their interest through consultation with those involved in the case to achieve a settlement. The issue of involving significant others and co-mediation in the Twifo Praso court is seen as a creativity that the practitioners have included in the mediation to create an efficient mediation practice, which aims at reducing a backlog of cases in the court.

4.5 Why Clients Use Mediation in Twifo Praso Court.

Two major themes emerged as to why clients use mediation as a conflict resolution mechanism in the Twifo Praso Court. These are procedural fairness experiences and socio-economic factors.

4.5.1 Procedural Fairness of Mediation Practice

Procedural fairness influenced the client's participation in the mediation process at the Twifo Praso Court. To that end, giving parties a voice, impartiality in decision making, ensuring neutrality and confidentiality, and the first speaker dilemma were the four sub-themes that emerged under procedural reasons in using mediation.

4.4.2 Giving Parties Voice

A sub-theme that emerged from the interview on the procedural fairness factor was that parties see the mediation process as fair on the condition that they are listened to and heard by telling their side of the story. In parties telling their stories, they expressed their grievances, interests, positions, and emotions to be considered and taken into consideration in the generation of the Best Alternative to Mediated Agreement (BATMA) and Worst Alternative to Mediated Agreement (WATMA). Participants' responses showed that when they are listened to wholeheartedly, without barriers and intimidation from practitioners, they evaluated the process as fair. A typical comment by CCC12, a male family head from Twifo Mampong, stated:

> The way and manner in which I was duly listened to, empowered, made me tell all that I knew about the case, the challenges that this case has taken me through, the disappointment from the plaintiff, and the need to apologize for my actions as the case has travelled.

This was corroborated by another client, CCC21, a female trader from Wasa Ateiku, who was in court to redeem her loan, stated that *"Adequate time was offered to me to voice my issues, interest, and possible miscommunication that emerged from the dispute. I felt at home, and I felt I had been heard*. Another participant, CCC19, a male cocoa farmer from Morkwa, also expressed satisfaction with fairness when he remarked:

> I was offered an opportunity to express every sentiment I had about the dispute, my bad feelings, and the perceived facts of the case, as I know what others have told me, because of the plaintiff. Now, I have voiced out the ill feelings, and I am okay.

Participants (CCC12, CCC19 and CCC21) explained the fairness process of mediation as dependent on how parties were given adequate time to tell their side of the story. The voicing of the bad feeling mimics procedural fairness from the views of the participants

in this study. Another participant, CCC 17, a pastor, narrated how he felt about the process in these words:

> Hmmmmm, looking at my experience with formal litigation, where parties are not heard at the court without the judge or lawyers interjecting, and making you lose focus, coupled with lawyers' domination of the process at the expense of the real parties who own the dispute. In this mediation, I have been allowed to present my side of the conflict thoroughly without any interjection, bullying, or hindrance, and fear gripped cross-examination by other parties and their lawyers or attorneys.

In another response, a participant, CCC 22, a retired police officer at Twifo Praso who was in court for rent issues with his tenants, stated:

> This process is so fair because all the things that I know about the case, I was able to say them, and explained my reasons for the actions I took that manifested in this dispute. I have been able to express the emotional, psychological, financial, and economic implications of this conflict between us. I leave the rest of the settlement agreement to the conscience of the other party.

These participants (CCC22 and CCC17) took procedural fairness of mediation a step further by contrasting their experiences with the formal court, where the parties are separated from the process and only hijacked by their attorneys and the judge, but in mediation, they are made to tell the full story without fear, intimidation and with confidence. The views expressed by the participants were that anytime mediation practitioners listen to them, navigating through the causes and effects of the conflict, they see the process as a very fair process. The views of mediation users in the court are consistent with studies conducted by McAdoo et al. (2003) that parties see the process as fair when they are not denied the opportunity to tell everything they know about the conflict.

Moreover, the views of the Twifo Praso mediation users on procedural fairness as factors align with Nolan-Haley and Annor Ohene's (2014) findings in Ghana that parties see mediation as fair when mediators listen to their sides of the case, paying attention

to their emotions, views, and sympathizing with the parties. The OECD's (2017) findings are also in line with the views of the current study participants when they reported procedural fairness as when parties are given adequate time to share their side of the story with the practitioners involved in mediation. The findings of this current study are also consistent with Maranlou's (2015) findings in Iran, where female court users saw mediation as fair by the fact that they were not discriminated against but were allowed to tell, discuss, and inform practitioners about the status of their case.

Furthermore, a study on mediation hallmarks from the perspectives of clients reported that when their voices are heard when they offer explanations about the conflict to the plaintiff, defendant, and significant others, they feel the process as fair is consistent with the perspectives expressed by participants in Twifo Praso Court (Asmussen, 2018; MacCoun, 2005; Tyler, 2017; Van de Graaf, 2021). The findings of the procedural fairness expressed by parties who used mediation in resolving conflict in this study corroborate those found in Morocco Judicial Reform (2007), where participants explained procedural justice fairness by feeling free, not coerced, and intimidated to explain their side of the issue under consideration. Adzhalie-Mensah and Benson's (2018) study in Ghana identified procedural fairness as premised when people in conflict take control of the resolution process through their voices being heard, which results in dialogue through consensus building, resonating with mediation users in the Twifo Praso Court.

4.5.3 The generation of Best Alternative to Mediated Agreement (BATMA) OR Worst Alternative to Mediated Agreement (WATMA) with Clients

Another sub-theme that emerged from the interview was that participants used mediation considered the mediation process as fair when elements of their views expressed were considered for the generation of options through the BATMA or

WATMA. When portions of clients ' demands in mediation demands ranging from interests, positions, claims, and views are catered for in the mediation agreement, they feel empowered and see the process as very fair and could propel access to justice. A comment from a client (CCCP27), a female tutor in a nursing school in Twifo Praso, who had brought a member of the school to court, suggested:

> At least we have all been told that mediation is premised on consensual, compromise, and empowerment in nature, so when portions of our interests are considered in the settlement agreement, it creates fairness to me, and the purpose of mediation, as we were told, will be achieved.

This participant judged the process as fair when they were not only made to express their views holistically, but some of their demands were considered in the generation of the settlement agreement. Others identified fairness based on how willing parties were to compromise for mutual relationship building and social harmony. This view was raised by participant CCC22, an officer with a rural bank at Wasa Ateiku, who was in court to retrieve assets of the bank from a previous employee, noted:

> When part of my request proposals, and demand was granted in the final settlement of the conflict, I see this as very fair since we must all sacrifice part of our demands in bringing peace, so when one person's interest, position, and stand are considered, and that of the corresponding party is blatantly ignored, it will create a problem. This settlement is genuine and fair because of the trade-off we all made to have a peaceful agreement.

Because of the business relationship that normally exists between the bank and its previous employees, it was imperative that both clients were listened to and their reasons partly considered so that they would not damage the reputation of the bank and continue their business relationship. When practitioners navigate parties through the sharing of the pie of settlement, they become satisfied, leading to an amicable settlement. This view was further confirmed by another client, CCC26:

> When only one person's interest is considered in the mediation, it doesn't help. I am the Loans Officer of my bank; the bank proposal was in trading off part of the loan, and the defendants' compromise of agreeing

> to the schedule of the payment means all factions have compromised. This naturally makes the process a fair one.

This was corroborated by a female court user (CCC16) on the fairness of mediation as procedural justice, where she noted that:

> When our interests, stands, and positions are factored in during the generation of options by mediation practitioners, it makes the process easier and fairer, especially when the case has to do with financial retrievals. The more my case is kept in mediation, the more I would want to call for interest payment, so we were educated to concede part of our demands so that the debt can be paid, and we can go back to doing our business.

It can be inferred from the responses that both practitioners and the clients agree that taking into consideration some of the demands of the parties in the generation of the settlement agreement is seen as procedurally fair. The practitioners convince the parties to accept a portion of the other side's demand so that the case can be easily resolved. The views expressed by participants spanned from the fact that for mediation to be fair, and for settlement to be reached to avoid court fatigue, it is not adequate to just listen to the parties, but at least, part of their proposals that they bring into the dispute must be incorporated into the generation of the settlement. They may include parties wanting to trade off by apologizing, begging, showing remorse, displaying a sense of guilt, and compromising compensations. When a party's initial positions are held on till the end of mediation, then it means only one person's view was considered in the generation of the settlement options. These were seen not to lead to a fair settlement by the other parties in dispute. This procedural fairness hallmark, as expressed by participants in this study, is consistent with findings by Crook (2012) on the perception of court users in Ghana.

Crook (2012) reported that parties see fairness hallmark in the judicial process when portions of the client's interest and positions are considered in the generation of judgment. This study further aligns with the World Bank Report (2020) findings, where users of court mediation demanded portions of their interest in settlement generation through BATMA. Moreover, Kirges's (2014) study of procedural justice in traditional chiefs' courts in Ghana saw fairness by considering a part of the party's demand in the settlement generation, which is in line with the findings of this current study. Agbozo and Korang's (2017) study of mediation practice in the Brong Ahafo Region of Ghana reported parties' conception of procedural fairness hallmark based on some of their proposals being considered in the final agreement. Lind and Tyler's (1988) study also confirmed the finding of this research, where parties saw compromising positions in the settlement agreement as a judgment of procedural fairness. The same finding was reported by Crawford and Maldonado (2020) that the presence of material and socioeconomic inequalities in the background of parties demands trade-offs and compromise in generating a settlement for effective mediation and procedural fairness. It can be inferred from the discussion above that these mediation users' view of mediation as a procedural hallmark is similar to the global measure of procedural fairness in mediation practice.

4.5.4 Ethical confidentiality and neutrality as procedural fairness in mediation

Crawford and Maldonado (2020) argued that procedural fairness or unfairness manifests in access to justice discourse when institutions designed to resolve conflict do or do not provide an impartial third party to resolve their conflict, creating second-class citizens' justice. They further argued that to enhance access to justice, institutions must provide ethical standards such as neutrality, confidentiality and party autonomy to avoid global mischarge of procedural fairness in conflict resolution.

Responses from the participants of the study regarding mediation procedural fairness had most of the participants reporting that when the process is confidential, when the actors are neutral and not biased during the mediation sessions and when parties are empowered during the process by helping the weaker party through straightening their views (Oyombo, 2020; Owiti, 2009; Wahab, 2013). Ethical hallmarks of neutrality and confidentiality must not be theoretical but must be incorporated into real practice by practitioners since they facilitate procedural fairness. For instance, a participant (CCC11), a married man who teaches at Jukwa Senior High School, who was in the court to resolve a case with his in-laws, explained procedural fairness when the mediation process is confidential and secret as follows:

> Whenever and anytime the process is confidential, and the outcome is not to be discussed by third parties after its adoption in court, it creates trust, confidence, and fairness. I cannot disclose everything about the dispute since it is kept only among the parties, not for the use of the public, except for significant others of the case.

This participant evaluated procedural fairness because of the hallmark of confidentiality and secrecy, where the issues, concerns, and positions raised cannot be used against any of the parties, not even in another court of jurisdiction. This secrecy involved in the practice makes them openly tell the truth, admit mistakes, and wholeheartedly apologize if it takes kneeling to show remorse. Another participant, CCC12, explained the confidentiality hallmark in the following words:

> I always want to have a confidential and secret settlement where I am not exposed to the public because of the work I do as a pastor. I had planned to tell the judge to hear my case with my church member in chambers since open court banter would collapse my church. Coincidentally, my case was referred to mediation for resolution. At the mediation, I felt fairness in my eyes when the practitioners told us that everything that would be discussed would be in camera, even after the case was finally resolved. Indeed, I met a true definition of confidentiality and secrecy where each side informally disclosed confidential issues about the church that were not for public consumption, especially the destruction of the papers the mediator used to write his comments. I am truly satisfied.

Another participant (CCCP15), a female school administrator in one of the private schools in Twifo Mampong, corroborated confidentiality when she said:

> Look, after the whole process of the mediation, the notes taken by the mediator were destroyed. To be honest with you, I was initially scared that the mediator would leak that information, but the fact that the papers were destroyed in our presence made the process fair since the parties were protected from the things said during the mediation process.

The parties (CC18, CCC15& CCC12) in the study found solace in procedural fairness when their cases were treated with secrecy and confidentiality, and the mediator acted as a keeper of the process without expressing any interest in the case under resolution. Moreover, the parties explained procedural fairness when the mediation process was conducted in a private setting and out of reach of the general court users, as in the open court. The destruction of papers used during the mediation process and the inability of any party to use whatever was discussed during mediation in other courts cemented the parties' judgment of procedural confidentiality and secrecy.

Other participants judged the mediation fairness process from the tactics of the mediator, especially when they displayed unbiased attitudes toward them. The researcher observed a court proceeding where the judge rejected a claim by a party whose case had been referred back to the court. The magistrate informed the party that whatever was discussed at mediation was not admissible at the open court, and as a result, he could not consider it as part of his pleading in the open court.

In terms of neutrality as a basis of procedural fairness, the responses of the participants from the interview revealed that when practitioners of mediation are involved right from the referral in court, signing of the consent forms, meeting with mediators and the generation of settlement, they must be careful in how they behave towards the disputing parties. When they show signs of favouring a party, it compromises the parties'

judgment of neutrality. Responses of the participants that demonstrated neutrality in the words of CCC18, a widower who was in court for inheritance claims of a deceased property, explained mediation fairness through practitioners' neutrality:

> I judge mediation as fair when practitioners display unbiased attitudes towards us in the mediation room. The mediator explained to me that he is indifferent about the case and has no interest in the case since the case settlement is to be developed by ourselves, with the mediator serving just as a conduit of the process.

This was corroborated by another client, CCC30, who reported neutrality based on the indifferent interest of the mediation practitioners, the judge, the ADR officer and the mediators.

> The mediator allowed us to come out with our settlement agreement, and he just offered guidance by prompting us on the legal implications of the settlement. The mediator during the introduction echoed to us that he had no interest in our case because we were not in the mediation room to judge a winner and a loser.

These participants judged procedural fairness from neutrality and confidentiality expressed through practitioners' tactics, functions and roles they displayed during the mediation processes. Critical of it included not imposing settlement options on the parties, and also the fact that they were only guided by the mediator to consider a settlement that would be acceptable to all. These bases were seen as neutral elements by the participants of the study. The researcher was not surprised when they evaluated these attributes as a basis of procedural fairness, since it is the most reported narrative in the literature of the mediation process.

The views of the participants support Boyle's (2017) study, which reported that when mediators display fair treatment as they go through the mediation to a settlement, the parties see the mediator as unbiased and do not favour one party over the other. In another study, Kovach's (1996) study is also in agreement with the current study's views when he identified mediators' impartiality through the facilitation of the process

leading to amicable outcomes where parties are not discriminated against. Shawawry (2020) is also consistent with the findings of this study when he reported that parties judge procedural fairness when there is no conflict of interest in any of the third-party relationships with the parties in dispute, which could propel biases in the mediation process. The views of the participants in the current study further corroborated Lande's (2022) research, where he found that confidentiality manifests itself when statements, information, and comments parties give out during mediation are protected by institutional arrangements creating trust and fairness in the mediation processes.

In another study, Van de Graaf (2021) reported that parties experienced procedural fairness by openly speaking about their interest, concerns, positions, and desires without being taken on by any court of jurisdiction. This view is also shared by Owiti's (2006) study in Nigeria, which reported confidentiality results in trust through the information given, positions taken, and things said, which can be a basis for prosecution by either party in dispute, making parties see the process as very fair. All these findings are consistent with the current study's participants' experiences and views on the procedural fairness hallmark of mediation practice.

Furthermore, Shahla's (2018) study and the Ghana ADR Act (798) are also consistent with the findings of this study. For instance, Shahla found that confidentiality is seen as procedural fairness under legal privilege stemming from files, records, notes, and things discussed during the mediation process are kept out of reach of the court system whereas ACT 798 (2010) especially Section 79 is consistent with the current study to the effect that any records or other evidence adduced in mediation shall be confidential. It further states that:

> A record, report, the settlement agreement, except where its disclosure is necessary for implementation and enforcement, and other documents required in the course of the mediation shall be confidential and shall not be used as evidence or be subject to discovery in any court proceedings.

Moreover, section 85 of ACT 798 (2010) also cautions that admissions made by parties in the course of the mediation proceedings or the fact that the other party had indicated are not admissible in any court of law. These sections of the Ghanaian ADR Act create room for a fair process of mediation, which parties always feel happy about.

4.5.5 First speaker dilemma

Another sub-theme that emerged from the study of procedural fairness was who speaks first in the mediation process. To avoid parties having a feeling of bias, the person who is allowed to disclose his or her side of the case first becomes a relevant basis for judging the procedural fairness of the mediation practice. A participant (CCC25), who is a chief in one of the towns around Praso, then litigating with the queen's mother on family land where the case has become acrimonious, noted that attention must be paid to the first speaker's dilemma when he said:

> Since I offered the opening prayer for the mediation and my counterpart presented her case first created fairness because each felt engaged. If not that, then you say that because he brought the case to the court, he should speak first, which is not a fair process. At least if it becomes critical, then parties must vote on it by tossing a coin, or the mediator asks parties to select one person to speak first.

This view was corroborated by (CC28), who suggested

> In traditional settings, because of the belief in juju during conflict resolution, that is why the linguist is made to offer traditional prayers to break the influence of juju on the mediators. However, in the court mediation where only prayers are said, I believe it is not as strong to dispel the influence of the juju that the other party might have brought to court to support their case in the resolution.

This challenge of who speaks first is not surprising, coming from a participant because of the belief in juju during case hearings. Some of the leaders consult juju, and they are told that when you speak first during the trial session, your demands could be guaranteed by anyone who is facilitating the resolution. Moreover, when cases are tension-filled, a party would want to talk first so that they can break the ice. These factors made parties concerned about who talks first during mediation. However, the non-traditional actors' reason for speaking first was offered by the participant (CCC22) who said, *"When the consent of the parties is sought first before choosing who speaks first, then the process follows the principle of natural justice, which is quite fair".*

This court participant offers a legal and fair basis for who speaks first. He argues that the mere fact that a party has brought a case to court does not guarantee him or her to speak first. Parties must be asked to select who should first speak so that the burden of unfairness will shift from the mediator to the parties. If the parties agree to allow one to speak based on who sent the case to court, the gender of the parties, especially when tradition demands that in a case between a man and a woman, it is the man who must speak first or based on the emotions expressed by the parties, whether the case is criminal or civil. However, a contrary view was offered by CCC20, who noted that:

> When one speaks first, the other party can gather his or her thoughts to counter him or her, taking into consideration the hidden motives, interests, and positions, so that the other party can easily reorganize to know what can be said to either make the case better or worse.

Participants see the first speaker dilemma not only from the justice dimension as offered by other parties but also from the motives and background settings of the disputants. It can at times extend to the significant others involved in the case who accompany the parties to the mediation session. The parties, at times, are called upon to toss a coin when they fight over who speaks, avoiding infractions on procedural fairness.

Normally, conflicts are associated with tensions and parties in disputes are ready to break their voice by offering the chance to present their case. The normal practice where the party that brought the case is made to speak is challenged by the participants of this study. They are of the view that when practitioners are mediating cases, the parties must decide who must speak first to avoid prejudice and biased conception from the parties in dispute. The findings of the study are consistent with Garcia et al (2003), who proposed balloting because of the possible effects of first-speaker bias. The issue is that the plaintiff speaks first before the defendant in the formal court system, but this study reported otherwise. The findings of this study are also consistent with (Astor & Chinkin, 1991; Beijersbergen, 2017; Depner et al., 1992; Kelly & Duryee, 1992; Pearson & Thoennes, 1985). They reported procedural satisfaction and fairness by seeking the consent of the person who speaks first.

It was observed from the participants that procedural fairness evaluation is characterized by two major divisions. The first one is the generic global parameters for assessing procedural fairness, such as neutrality and confidentiality, when parties are given ample time to explain the nature of their case and take into consideration the underlying issues. The second measure of procedural fairness was from the Ghanaian discourse of the first speaker dilemma, and when portions of the claims of clients are considered in the generation of the WOTMA and BOTMA settlement agreement. The researcher argues that procedural fairness must be measured from both the Eurocentric and the Ghanaian cultural context to enhance access to justice.

4.6 Socio-Economic factors

Socio-economic factors emerged as the second theme from the experiences of clients in the Twifo Praso court who used mediation to resolve their conflicts. Three sub-

themes were identified, namely, building relationships, cost of mediation, and time in mediating cases.

4.6.1 Building a relationship

The World Bank Report (2010) identified a series of strained relationships within the Ghanaian social fabric based on the percentage of individuals suing individuals, institutions suing institutions, and individuals suing institutions. To that end, improved and building of relationships was one of the sub-themes that emerged from the interviews conducted. A participant (CCC 15), a 50-year-old school manager who has sued some parents for non-payment of school fees, remarked:

> I was torn between the Red Sea and the devil, looking at how I was going to cope with the parents I sued in court, especially those who still have their wards in the school. CCADRM indeed was my saviour ooooo… Hmmmmm, through the referral to CCADRM, we were able to resolve the case amicably, they made their payment of fees in arrears, and some of the parents have even agreed to bring their wards back to school… Imagine how this would have been possible in the open court.

This response confirmed that users of the court prefer CCADRM because it facilitates relationship building. Since this participant took legal action against the parents for non-payment of fees, this participant was able to maintain a cordial relationship with the parents because of the consensual nature of mediation. It could be inferred that litigation would have worsened the relationship between the parties and the school authorities because of the declaration of a winner and a loser, and its adversarial nature. This view of the proprietor was corroborated by participant (CC27), who is a staff member of a tertiary institution that has been sued by a colleague member of her department in court. This 43-year-old tutor defendant reported that:

> The moment the judge recommended that we resolve this case through CCADRM, I had a big sigh of relief… Hm, uncle, it is not easy ooo I have promised myself not to have anything to do in court because of my conviction and my role as an elder in my church. What put me off is the docket that I must stand and even swear awwwww, so embarrassing a

> situation. However, I was saved when the judge himself recommended mediation. I wholeheartedly accepted the proposal, especially since we are all in one school and don't want to continue with hostility after the mediation. The settlement of the case resulted in improving our relationship solidly after the mediation, and we exchanged pleasantries.

The tutor's view on relationship building as a basis for accepting mediation was also shared by her administrator (CC10) when she said:

> See, I am the administrator of the institution working with the plaintiff…though there were a few issues to be resolved, I never thought I would be dragged to court like this. However, I was very pleased when the judge looked at my working relationship to refer the case to CCADRM, where we had a smooth resolution, and we have regained our working relationship. However, I must confess that looking at what initially happened at the mediation's first meeting and the behaviour of the plaintiff, it would have been a bitter lesson for me, taking into account the media reportage and the sheer misinformation they might have given. But I am happy that in this court of mediation, we have been able to resolve the case amicably, and the needful has been done. My tutors and the plaintiff have all been reconciled, and we are going back to our school more united than ever.

CCC27 and CCC10 identified mediation as a very important conduit for building relationships. Issues such as mistrust in the internal school conflict management styles, or when a subordinate thinks the internal school structure may not give her the justice she demands. The participant was satisfied with mediation in the court because the resolution was not adversarial, but consensual, and confidential. It could also be observed from the narratives that going to court is not always about destroying the existing relationship, since there are multiple doors in the court, such as court-connected mediation, which aims at building relationships while demanding proper access to justice. Another participant, CCC9, a 49-year-old secretary of one of the teacher unions, had been brought before the court by a family head for putting up an office on their family land. Interestingly, both parties belong to the same union. Upon the first hearing, the teacher union requested CCADRM, where she remarked:

> You see, my association initially wanted to litigate till the last line of the litigation process… The union lawyer had been consulted and was ready

> to litigate the land under dispute. But how can you fight your son… since the plaintiff is part of our association, I decided to plead with the judge to refer the case to mediation because we did not want to fight in public and soil our relationship with our members. How will the association members see us? I am very happy that what I sought has come to pass, the case is resolved amicably, and the plaintiff has smoked the peace pipe, and oneness has been regained.

The observed session provided direct corroboration for interview data indicating that mediation can repair severed familial relationships. A critical moment unfolded when the complainant (elder brother) articulated the underlying emotional grievances obstructing settlement. He stated, "I will never give him that piece of land, even if the court forces me, he will not do it," and explained his prior decision to cease communication on the matter. During this narration, he became visibly distressed, crying and directly addressing his younger brother: "You are my younger brother… You never bothered, and you beat me up last year… Then you trespass on my land, and I give it to you, hell no." He concluded by framing his resistance as a function of this unaddressed pain: "Now I have said my pain that is underlying my resistance to settlement."

This disclosure precipitated an immediate and dramatic shift in the interaction. The defendant (younger brother) knelt, beseeched the mediator for assistance in apologizing, and stated, "Please!! Please!! Please, mediator, please help me beg him for that incident… I am wholeheartedly sorry for that. Please forgive me." Both parties were then observed crying, with tears flowing, and they embraced in a sustained hug before returning to their seats.

The resolution followed this emotional exchange. The elder brother declared, "I have forgiven you for the sake that our mother, before she died, told me to take care of you as she would have done, and since you are my blood brother, I forgive and give the

portion of the land under dispute to you." This sequence from the expression of underlying grievances to apology, emotional catharsis, and a restorative outcome demonstrates the process through which mediation facilitated the repair and rebuilding of the brothers' relationship, moving beyond a narrow focus on the legal claim to the land.

The researcher's observation corroborated with the interview responses that clients in dispute used mediation to mend broken relationships because the parties were allowed to share all the underlying issues that created the conflict, and were addressed with the help of the mediator. In mediation, parties were allowed to apologize, grieve, and share underlying issues that created the entrenched positions that parties hung on to. Mediation enhanced relationships building, such as family relationships, workplace disputes, and business disputes. These opportunities mediation provided were absent from the formal court process, where there was the judgment of a loser and a winner and the presence of an appeal even to the Supreme Court. These provisions in the formal courts result in strained relationships, which can disintegrate the social peace that is embedded in the social fabric of the Ghanaian culture. Participants, knowing these weaknesses, adopted the mediation model with the ultimate aim of building and repairing strained relationships.

The current study further concurs with Shahla's (2021) findings that parties used mediation because it was efficient in building positive relations through deliberative participation. Moreover, the findings of this study are consistent with Kirim's (2019) study, which reported the preservation of business relationships as the highest determinant of parties' usage of CCADRM in the Menti region of Kenya. Shamir's (2003) study reported mediation users' relationship-building effectiveness, and

Overcash's (2015) study in the USA courts reported that court users adopted mediation because of its impact on relationship repairs. These studies underscored the impact of litigation in endangering relationships, and most litigants avert these outcomes through the use of mediation practice. They found that building relations is a critical reason why most court users adopt mediation as a conflict resolution model, and these findings are in line with what the participants reported in this study.

This study also aligns with Shahla (2018) that parties accepted CCADRM based on relations and process-based consideration that manifested itself through the ability to talk to each other to know about the obstacle are removed. It further explored the understanding of the party's interest gained when parties discussed motives, needs, interests and positions, resulting in relationship building. Wall and Lynn's (1993) study reported that the party's aim of building their social relations, such as brotherliness, influenced the adoption of CCADRM. Moreover, Kressel and Pruitt (1989) reported that divorce mediation was not resolved, but their relationship and reconciliation improved. She's (2011) study in Australia and Jelodar's (2015) study in New Zealand found building relationships as a reason parties use mediation.

The findings of the present study were, however, inconsistent with findings by Pearson and Thoeness (1983), Van de Graaf (2020, 2021), and Zartman (1984). These studies found that unresolved mediation cases worsened parties' relationships in mediation. Wall and Lynn (1993) reported in their study that mediation does not resolve post-dispute climate relationships between parties. Kressel and Pruitt's (1989) study also found strained relationships after mediation, especially for parties whose cases pended in the court for more than 6 months; mediation hardly changed parties' relationship building. It can be inferred from the discussion above that mediation users in the Twifo

Praso court considered improved relationship building as a basis for choosing mediation to resolve their conflict.

4.6.2 Cost of mediation

The responses from the participants for the study were costly and complex proceedings, which manifested themselves in litigation in the justice delivery system and its overall effect on accessing justice. These challenges forced some court users to adopt mediation, which was less costly and timely since unreasonable delays in resolving cases hurt litigants' financial standing. Financial constraints created barriers for the less privileged, and the vulnerable, such as women, the disabled, and the poor citizenry, from enjoying their basic human right of accessing justice. These challenges influenced participants' adoption of mediation as a conflict resolution method in the Twifo Praso court.

Participant CCC22, who was a divorcee, chose mediation because of its cost-effective nature and made this assertion:

> I am a divorcee, the man ran away, leaving all three kids on me to cater for them. You see, I don't have money to go for a lawyer, but looking at what the judge said about ADR, I saw it to be economical in terms of cost, hence I used it for the resolution of the conflict. My happiness is that after the initial filing fee, I did not pay any money to the court or the mediators till the case was resolved…. I think it is very cost-efficient compared to the long procedures with unsolicited payments at the court. Now my ex-husband is caring for the kids, and the court has taken some compensation for me. I am very grateful.

Moreover, a disabled participant, CCC18, who had been duped by her customers, brought the case to court and noted:

> Since I borrowed the money for my business from the chief of the town as a disabled woman, hmmm, it's so bad…. the inability of my customers to pay for the goods collapsed my business. Now I have been left with nothing hmmmmm, brother look at me and my situation even the filing fees were paid by my stepfather who saw how miserable I was because of the disappointment by the customers. How could I have gotten one

> for a lawyer? Fortunately, God listened to my prayer through the CCADRM the parties have paid my money and I am back to business.

This was corroborated by participant (CCC11) who disclosed how cost-effective CCADRM was and expressed this feeling:

> Initially, I had gone for a loan to file the case against my next neighbour. He has used dubious means to take the land that my father lawfully bequeathed to me. However, because he thinks he has money to drag the case at court for me to leave the land for him, after two years I realized I had to use CCADRM since I could no longer pay for the services of the lawyer and the incessant lorry fare and its inconveniences. Virtually I had invested all my seed capital from my business in litigation but within the few days that I requested that the case be settled at CCADRM, within three meetings I got an inexpensive judgment and resolution of the case.

This was further confirmed by a 45-year-old farmer participant (CCC13) who has come to redeem the cocoa farm he bought on a pledge basis:

> I embraced CCADRM since I was fed up. I have incurred a huge cost with litigation, and the complex nature of court proceedings. However, CCDRM takes a shorter time to resolve cases and the issue of cost since it is less costly than hiring a lawyer to litigate my case for me. Lawyers charge not less than Ghc4000 for an entire case while only 10% of such money can help to end a mediation case.

Another participant (CCC24), a 67-year-old woman narrated:

> Looking at the fact that I lost my job during the COVID-19 pandemic era and the frustrating economic crises, I did not have the resources to engage in a long battle in court, though I will not sit there for that man to cheat me. After the divorce from the family, how they shared the assets and the properties was not fair to me, so I came to court to get the right portion for my part of the properties. Hmmmmm, I was very glad when the court registrar listened to my claims and recommended a mediation office for me …. I always say God is great…. after the initial filing fees of about GHC100 and the bailiff transport charge of Ghc80 for the service of informing my husband, I did not pay any money aside from the lorry fare and my feeding fees any time I came to court…… within two sittings the case is resolved and I have taken my rightful portion of the property which I have struggled throughout my 40 years in marriage.

Participants CCC22, CCC21, CCC18 and CCC11 were comfortable with mediation since it allowed them to have their grievances addressed in court because it was

economical and fast compared to the adjudication, which was very high and at times caused vulnerable court users to discontinue their cases because of their economic and social status. It could be further observed that they could not engage the services of lawyers or even legal aid assistance since they were located in Cape Coast. The few who were able to use them had to foot the transportation fare of the lawyers. This could not be borne by the participants in the above narrative. These users chose mediation because of its cost-effective nature that manifested itself through the payment of only the initial filing fees.

Moreover, Participants CCC13 & CCC24, who used mediation to resolve their case, indicated the comparative cost advantage of mediation to litigation. They constantly compared the lesser cost parties pay in mediation to litigation as a basis for accepting mediation use in this court. It could be inferred that if mediation had not been introduced into this court, most potential people in conflict would not continue their cases, citing various economic and social challenges associated with litigation. Moreover, it can be inferred from the two parties' views that the availability of mediation improved their prompt access to justice and the avoidance of judicial exclusion as a result of their low and poor economic status. The responses above further meant that the complicated nature of litigation, with its skyrocketing cost, was a disadvantage for parties in pursuing cases through litigation; however, they mentioned the physical cost of initial filing fees as the only money parties paid to use mediation in court. Since most of the parties who came to court to access justice were always constrained in terms of cost and time, they adopted mediation as a haven for getting their cases resolved. This means that mediation and cost were beneficial to most groups of people, from business partners, farmers, teachers and other significant others in their quest to have their cases resolved.

Another dimension of why parties used mediation in the Twifo Praso court was based on the comparative cost advantage of the chiefs' court and mediation practice in the Twifo Praso court.

Participant CCC12, a family head, remarked with a smile:

> Indeed!! I have received justice as a poor person in the community. See, though my next neighbour told me CCADRM was cost-efficient, so instead of going to the traditional chiefs' court where the initial payment before they sit on the case is around Ghc 500 it was better I came to court where I will get an enforceable judgment for the case I brought up. Fortunately for me after the initial filing fees were paid no other processes of CCADRM were paid for. I thank the government for thinking about the poor people in accessing justice through this effective mode of justice delivery.

A participant (CCC17) a pastor who has used the chiefs' court corroborated by saying

> My son, the cost of filing alone at the judicial committee at the chiefs' court is more than five times what I paid here as a filing fee. However, the CCADRM has helped additionally in building a relationship after the swift resolution of the case, time is saved, the cost is saved and the less pressure on the justice system.

A case involving two chiefs was referred to CCADRM for resolution. The chief (CCC25) reported:

> This time the cost of registering your case at the appropriate traditional councils is not easy. However, at mediation, finality was given to the issue under discussion after paying for the initial filing fees and at worst payment for the service of the defendant which is still on a very low key. As a chief, I know that finality is not given to cases we settle at the traditional council since our ruling can be overturned by court actions. But mediations since there is no appeal finality that can be given to our case coupled with a traditionally blended system like the caucus, I think chiefs must be brought on board since they can blend the two through social expressions and law.

The above responses from CCC12 a family head, CCC17 a pastor and CCC25 a chief confirm that their choice of mediation as a dispute resolution system of resolution was based on its cost-effectiveness compared to both the chiefs' court and the formal court system. They further reported high filing fees, with the least being Gh₵500, the lack of formal enforceability of traditional case settlement, and the ability of the traditional

settled cases to be overturned by court orders as reasons they chose mediation. Mediation at the Twifo Praso court was very cost-effective, such that the only money they paid was the initial filing fees of an average of Gh₵100, less than the Gh₵500 average they were required to pay at the chiefs' court or if the case had progressed in the formal open court. The Chieftaincy Act (2008) section 32(1) states that a judicial committee may require the applicant in proceedings before it to give security for the costs of the applicant. Section 32(2) further states that in each case, determined by a judicial committee, the costs awarded shall be at the discretion of the committee. Section 32(3) further states that for the purposes of recovering payment of a fee into the account of the council with a tax component. The Chieftaincy Act confirmed the fact that parties who use it pay more before accessing it, as opposed to the mediation practice in courts.

The last dimension of cost which participants reported was a plea that when parties who have a scheduled mediation meeting fail to attend the mediation session, they must be compelled by the mediator to pay the cost of transportation and other related social costs for the party who came for the mediation meeting. This was critical if the party refused to formally inform the ADR officer, the mediator or the court registrar.

A participant who is a 50-year-old civil servant at Twifo Hemang litigating over a plot of land had their case rescheduled because one of the parties refused to attend the meeting. He advocated that:

> There must be a clear policy on parties who blatantly absent themselves from mediation, since it puts a lot of financial strain on us. What pains me most is that he is living just a stone's throw away from my house; he could have called the mediator to inform him so that the mediator would call me not to come. My lorry fare must be paid by him.

This view expressed by the interviewee demands a clear way of instituting sanctions for parties in terms of cost payment for refusing to attend a scheduled mediation session. Since cost is awarded to parties who blatantly refuse to attend formal court proceedings hearing same must be extended to the parties in mediation to create a sense of seriousness in the parties who use mediation as a means of settling their cases in the Twifo Praso court.

The findings of the participants in terms of cost are consistent with the literature reviewed. For instance, in terms of fine payment for participants who avoid mediation meetings without formally informing the court, this finding is consistent with the American Bar Association (ABA), cited in Lande (2022), which recommended sanctions to be imposed in terms of cost for defaulting parties and a clear-cut behaviour to be imposed on parties in mediation. Such conduct includes failure of a party to attend CCADRM, who should pay a cost fine to the one who attended. This finding relating to fine payment, which participants in this current study advocated, is further in line with Zambia, Order XLIII rule 15, which enjoins parties who fail to attend a mediation session to pay a fine determined by the court mediation program. This will help to achieve timely resolution, cost-effectiveness, and access to justice. The payment of a fine for non-attendance without reasonable justification to the mediator should be made known to the party's right after referral.

Cost-effectiveness mediation reported by participants as a basis for using mediation in this court is consistent with Fisher's (2017) study in Wales and England. Moreover, Du Preez, et al.,'s (2010) study on business litigation, Crook's (2012), Crook and Brobbey's (2011) study on the Ghanaian justice system, Apuku-Awuni (2022) and Afrifa's (2015) study of mediation all reported that economics of cost-effectiveness in CCADRM

influenced its adoption by parties as conflict resolution model in courts when accessing justice. Maranlou's (2018) study in Iran reported that parties with low financial resources to afford transport fares to the court or hire a lawyer in litigation adopted mediation in resolving their conflict, which is in line with the findings of this study.

Dome et al.'s (2020) findings are also consistent with this study, where they found that some Ghanaians do not use the justice system because it is expensive, favours the rich, the demand for money favours, the absence of legal aid, and law courts are not accessible to people based on the distance of court locations. The findings of the current study in terms of filing fees that parties reported are in line with the civil proceedings cost and fees amendments rule 2014, ci 86 in District courts detailing the filing fees for the initial court processes in addition to bailiff costs in terms of a writ, motions as: Where the claim is Gh₵500 parties pay Gh₵10 but if it exceeds Gh₵500 but up to Gh₵2500 parties are to pay Gh₵30, however, if the claim is up to Gh₵5000 parties will pay Gh₵50. And up to Gh₵20,000 will pay Gh₵100.00.

Vidmar's (1984) study of mediation in the USA reported that parties in mediation saved an additional $4000 on average compared to when the case had gone to a full litigation trial while Shahla (2021) reported that the Philippines court users saved as much as $500 through mediation practice while in Florida parties in CCADRM cost was subsidized for the first two hours. These findings are consistent with the views expressed by the participants in the Twifo Praso court who adopted mediation as a dispute resolution model because of its cost-effectiveness.

Shahla (2021) and Saeb et al. (2018) study in Iran, and Goldberg et al (1983) reported two perspectives of cost implication where parties aim to reduce legal costs, and the government aims to reduce judicial costs, which made court users adopt mediation in

accessing justice. Moreover, Rundle's (2010) study found that mediation users adopted mediation as a conflict resolution model because it reduced costs associated with parties in litigating, including wasted time costs, reduced quality of decision costs, loss of skilled employment costs, and costs that occurred as a result of parties absenting themselves in Tasmania. These findings from both local and global practice of why court users adopt mediation as a conflict resolution medium are consistent with the findings of the participants in this study.

4.6.3 Time in mediating cases

The interviews with participants revealed that the time needed by parties to enhance the resolution of their dispute was a critical resource factor they considered in adopting mediation as a conflict resolution model in the Twifo Praso court. Participants used mediation because it was faster and avoided the delay of its emotional and psychological trauma. Others explained the economics of time mediation from the perspective of no appeal after the case settlement has been generated. Some also explained the economics of time based on the "determined time limits" in which a case must be settled," the flexibility on the part of disputing parties to determine the time that they want to use in the mediation" to save productive business, social and educational time. It was further revealed from the interviews that mediation time at any level of referral, irrespective of the time involved, was faster than if their cases had been litigated. This appears to be in line with the integration of CCADRM into Ghanaian courts, as the speedy resolution of cases and reduction of delays, with a time limit of between thirty days, with an extension of an additional 3 weeks (Act 798, 2010).

Most of the participants in the study adopted mediation as a conflict resolution mechanism in the Twifo Praso court because it was faster. Some reported that the very day that their cases were referred to the mediation session, it was duly settled. This avoided time wastage characterized by case litigation. For instance, participant CCC13 made the point *" I chose mediation because I was told by the judge and the court staff that it was very fast and at times even the same day it can be settled by the assistance of the mediator"*. This assertion of client CCC13 meant participants chose mediation instead of adversarial court litigation because it was very fast and reliable, cutting off any psychological and emotional constraints that may be associated with delay (Van de Graaf, 2021). Another participant expressed why he used mediation instead of the litigation process indicated "the avoidance of delay" since he was a businessman and did not have the luxury of time to waste in court. He noted: "*Since my work is very demanding and every minute of my time is scheduled for one program or the other, I had no option but to select mediation as my door of conflict resolution*. This participant's choice of mediation was influenced by the busy schedule of his work, and he did not want to lose the active time needed to attend to people in his business. This was corroborated by another participant, CC18, who described his bad experience with litigation as a basis for selecting mediation.

> I have witnessed how my previous litigation at the court drained me and my resources, which nearly resulted in my sacking by my employer because I was always in court. But with mediation, I came to the session only twice, and the case settled amicably, saving me from my job loss and its implications of not being productive at the workplace.

This participant evaluated the challenges associated with the formal litigation process to choose mediation, and fortunately for him, he attended only two mediation sessions and had his case resolved. This, in a way, reduced the delay that was initially envisaged to be associated with the court system in Ghana. Apart from the mediation being fast in

case resolution and timely, others adopted mediation as a conflict resolution model based on the fact that cases do not go for an appeal, and the moment a settlement was generated, the case died naturally. For instance, CCC21 noted that:

> ”Since the mediation settlement agreement was characterized by no appeal, I preferred using it to resolve my conflict so that I would not have a cause to worry in terms of the resurgence of the case. Finality has been given to the case, which both of us were comfortable with.

Others adopted mediation based on their appeal of the pre-determined period allocated for its resolution by Act 798 (2010). At most three meetings, but the time was mutually determined by the actors, who considered their own convenience time, making it a flexible dispute resolution model you could trust. This advantage helped to avoid disruptions in business, social activities, and capital generation time. This view was shared by participants in CCC18:

> The ADR Officer during the education time told us that the mediation meeting is only three times, and after that, if our case gets resolved, that is all, and if it doesn’t, there is still a window of opportunity for the case to commence with litigation. I think that was a fair deal to try.

Parties whose cases were resolved by mediation within the time frame offered by the court revealed that CCADRM was speedier and resolved cases on time. A school teacher (CCC12) who has brought a case to CCADRM for mediation retorted:

> Looking at my condition as a pregnant woman who is about to deliver, if the case had not been timeously resolved, it would have wasted my time to bring my child to court. However, we agreed on the settlement on the first day of the meeting with the mediator. My schedule at school and time to prepare for the two kids will be fruitful.

Another view expressed by the court users in terms of time as a resource in mediation was shared by a participant (CCC30)

> Per my experience in litigation, it takes a longer time to be heard, after which, even when the verdict is given, you must apply to the court before you can execute the judgment given by the court. My previous case took about two and a half years in court. Even after the judgment, the defendant still refused to honour the payment, and I had to come back to court to do another garnishee and 5/8 orders to sell the products or

> assets to repay the loan. But for mediation, at most, the 30 days with three meetings, we were able to talk through the problem and because we all agreed on a payment plan, he paid some on the first day. Based on this, I see CCADRM as faster in terms of the time of disposition and settlement.

Based on these experiences, participants preferred to use mediation as a conflict resolution model because it is fast, reliable, flexible and efficient. In Ghana, parties have the opportunity to discuss among themselves and the court the timing of the mediation process. Such participation led to cooperation and settlement and avoided delay tactics since court programs were faced with both human and material resource constraints. In terms of the time that parties used in their resolution, the following participants expressed their views. CCC19, a cocoa purchasing clerk, remarked:

> Looking at the nature of the case, I needed more time to consult, make decisions and compromise since I am not the only interested party in the dispute. My father, mother and other siblings are equally interested in the case under mediation.

This was further corroborated by the court mediator (CC5):

> Depending on the case under mediation, at times more time is needed to explore the major issues so that parties can be satisfied with the mediation process. At times, a whole day is given to some cases which have a lot of parties in them, warranting the call for an extension of time beyond the 30 days that the ADR Act gives for mediation. You see!!! We do all these to have a very comprehensive mediation where all the parties will be satisfied, even if the cases are not resolved, they might have been well educated about the status of their case.

However, parties with unresolved cases after mediation did not feel their time was wasted, but got more insight into the views, options, interests, and position of the other party. A participant (CCC 27), a taxi driver who has been in court for a case resolution, remarked:

> See!!, this case has travelled for about a year now, and though I have enjoyed the mediation process and gotten a comprehensive view of the other party, I still feel my time has not been wasted, though my case is referred back to court for litigation. The insight I have gotten about the case is enough for me. My initial attempt to engage a lawyer was scrapped because I had gotten more confidence in the case.

Participants' time in mediation from the responses above revealed calls for a ripe moment, opportune time, or the right time necessary for mediation of their case at CCADRM (Adzhalie & Benson, 2018; Mitchell, 2003). According to the participants, mediators offered them varied time based on the nature of the conflict and that adequate time was given to clients to construct a settlement agreement (Zartman, 1984).

The narratives from the parties in the study further revealed mixed schedules for mediation. For instance, some parties wanted enough time at the mediation where most of the pertinent issues could be identified by the parties in disputes. Experiences of clients revealed that some mediation cases took either a day or some hours for the cases to be settled, while other cases even went beyond the stipulated thirty (30) days period of mediation based on the nature of the case. It could be inferred that, irrespective of the time used in mediation, it was better than the continuous litigation of their cases and their subsequent judgment, which was full of animosity, hatred and a continuous strained relationship. Participants' responses revealed that parties with bad experiences of litigation saw CCADRM as the faster disposition of cases. This assertion meant that conflict resolution is not a simple matter and needs parties to engage over a long period to get over their incompatibilities; it needs time and space to be able to be on the same page.

Moreover, time is needed for parties to integrate their views, interests, and positions, and to reach compromises to enhance peaceful settlement. The views of the participants are in line with Pearson and Thoeness's (1985) study in Minnesota, which found parties demand 3-5 hours daily to resolve cases in mediation, while the Connecticut CCADRM mediation program found an average duration of a minimum of 1 hour and a maximum of 30 days. Shahla's (2018) study reported that Los Angeles court mediation used 7

hours on average for case settlement, with the majority of the cases resolved within a day. While Lazaro et al (2003), Crook (2012), and Maryland Mediation and Conflict Resolution Office (2010) studies found that participants favoured mediation as a dispute resolution mechanism because it gave them ample time to resolve their cases, especially cases involving issues of value, principle, and honour, ideology, and sovereignty, among others. They further reported that because parties are allowed to discuss the settlement agreement, ample time was given in mediation, but was within 30 days.

Shahla (2021) found that a party's ability to ask for an extension of time, even after 30 days, depending on the case type, where significant others could be consulted in critical situations, influenced mediation users to adopt it at the court. Lind and Tyler (1988) and Adzhalie-Mensah and Benson (2018) reported more periods in mediation so that pertinent issues could be explored, leading to a satisfactory mediation settlement. National Standard for Court Mediation Program Act 4:4 in the USA, the Ghana ADR Act (798) gives mediation practitioners 30 days with a maximum of three meetings, though an extension can be sought at the court through the registrar and the magistrate for the final settlement of cases.

The Minnesota ADR program reported 45 days as the period of mediation, while the National Standard for Court Mediation (2006) reported 15 days for mediation practice after referral to the mediation court. The findings show that the global average mediation time hovers around an hour to 40 days. Notwithstanding the ample time given for parties to discuss settlement generation in mediation, the time never crossed six months (GJD, 2021) compared to an average time of 9 months, which is the fastest time of litigation in Ghana (GJS, 2021; WBR, 2019).

Findings from document analysis of the mediation practice based on the logbooks available at Twifo Praso court were contrasted with the time and cost spent in mediation and litigation. The analysis was consistent with the findings of the participants of the study. The time and cost analysis from the ADR logbook provided some implications. For instance, the case involving A vs. S was registered on 8th November 2019. The parties had gone to the court for 12 consecutive sittings until 28th April 2021 when this case was referred to mediation. In mediation, three sittings resulted in the resolution of the case.

Now in terms of time usage comparing 12 times of sitting and adjournment and three sittings in mediation which resulted in the resolution of their case showed time effectiveness in court-connected mediation. This finding was consistent with the views expressed by the parties that they used mediation as a multiple-court door to access justice because it was faster. In terms of cost, if parties pay Gh₵10 per sitting multiplied by the 12 meetings (12×10= Ghc₵120) while the mediation meeting of three multiplied by ten (10×3= Gh₵30) this means in terms of cost the mediation was cheaper and came about as a reduction of time used for the settlement. In another case, between FA and JOA, the case was filed on the 5th of -February 2020 with 11 sittings at litigation before referral to mediation. This case was resolved during the first day of the mediation meeting (11×10= Gh₵110) against mediation of (10×1= Gh₵10). In another case involving EB and YN filed on the 5th -of December 2018, the litigation took 26 times till the 9th -of June 2021 when it was sent to mediation. In mediation, it took two meetings for the case to be resolved. In terms of time, 26 periods of a court sitting against two (2) meetings show a drastic reduction of time and cost (26×10= Gh₵260) litigation against (2×10= Gh₵20) in mediation.

In the MA and I.O case which was filed on 19th August 2019, it took 21 court sittings but through mediation, it was resolved within two meetings (21×10= Gh₵210) against (2×10= Gh₵20). In another case, GO and AA had filed their suit on the 13th of February, 2017, with 38 sitting periods in litigation. This case was however referred to mediation on the 19th of December 2020. The analysis of the mediation logbook revealed that the mediators sat on the case three times to get it resolved. The economics of time as a basis disputing parties used mediation in Twifo Praso court from the logbook, and dockets of suits at the court was consistent with the views expressed by participants of this study that, timeous resolution of mediation cases influenced their use of mediation s a dispute resolution model. This finding from the document analysis meant that mediation is very time effective, affordable, and increases cost efficiency since there is a drastic reduction in the number of times parties visit the court and the cost implications were very minimal.

However, this finding is inconsistent with some studies. Other studies reported a contrary timeline ranging from months. This assertion is rejected by Kleibor (1996) that clock timing of mediation programs is old-fashioned, but the focus should be on social time, where all conditions are favourable for the dispute to be referred, and ample time given to practitioners to facilitate the mediation process to enhance amicable resolution of the cases. However, the researcher argues that how time in mediation as a resource is utilized can be a curse or blessing, depending on how it is utilized. When attention is given to the "opportune time or its ripe moment" in mediation, it can be seen as a blessing because it can lead to the resolution of the conflict, but whenever it is used at the "unripe moment", it can escalate the whole conflict situation, creating a curse out of it. In the Twifo Praso court in Ghana, the researcher observed that parties were allowed to discuss among themselves the timing of the mediation process; such

participation led to cooperation and the building of trust within the justice system, thereby helping to advance the enjoyment of citizens' fundamental human rights and the achievement of the Sustainable Development Goals

4.7 Administrative Elements of Effectiveness of Mediation

Most scholars have evaluated mediation effectiveness from the perspectives of clients and mediators (Barnes & Obeng, 2021; Charkoudian et al., 2017; Crook, 2012; Shahla, 2018) while others have advocated for a shift from the mediator–client perspective to the administrative perspective, especially case backlog accounting as a criterion for evaluating mediation effectiveness (Kliebor, 1996; Zartman & Touval, 1996). The researcher, however, took the direction suggested by Kiebor and Touval to explore the perspectives of administrators of court-connected mediation on their evaluation of the mediation program in the Twifo Praso court. The interview focused on the administrators, namely the court registrar, the judge and the ADR officer attached to the Twifo Praso court. The question that the researcher asked was how CCADRM has been effective in the Twifo Praso court. Based on the feedback from the interview, the researcher identified reduction of caseloads, celebration of ADR week and management support as the causal factors of mediation effectiveness in the Twifo Praso court.

4.7.1 Reduction of backlog and high settlement rate

A theme that emerged from the interviews was the improvement of the judicial system of Ghana through the clearing of the backlog, with a high settlement rate. The geographical location of the Twifo Praso court stretches from Jukwa near Cape Coast through to Wasa Ateiku, Twifo Hemang, Twifo Mampong, Twifo Atti-Morkwa and part of Assin. This extensive coverage resulted in more cases that were not resolved in the court, making it the largest court with a huge backlog of cases in 2018. However,

after the integration of the mediation program in this court, the administrators' responses revealed some reduction in case backlogs.

A participant, CCR, narrated:

> From the statistics available to me, the CCADRM outfit has been able to reduce the number of cases by about 50% through the effective settlement of cases sent to the mediation office. Initially, the judge was doing 35 -40 cases a day since there were so many cases piled up to be litigated. The problem came about as a result of the constant transfer of judges from the court, which increased the delays and the timely resolution of cases in the court.

This statement was corroborated by participant CCJ, who said:

> CCADRM has been effective in managing case backlogs since the aim of the Judicial Service in introducing CCADRM is to enhance the clearing of a backlog of cases that have been pending for a very long time. Look, there are cases such as land, contract cases, inheritance and chieftaincy cases that have choked the court by passing through the hands of four judges and are still in litigation. Some of these cases have been resolved by the mediators. Indeed, the mediators are very professional since they have really helped to dispose of the majority of the cases, and now I do fewer than 10-15 cases.

CCR and CCJ narratives pointed to the fact that the introduction of mediation within the Twifo Praso court has helped to reduce the backlog of cases that have piled up. They found that mediators helped the judge to settle cases that bothered on relationship, business and family-related cases. This was refreshing because if parties filed cases and were not able to see it ending any time soon, based on frequent adjournments, it casts a slur on the integrity of the judicial system. However, the timely intervention of the mediators has made the system efficient.

Another perspective on backlog cleared was reported by ADRO:

> The official target given to mediators was to settle cases within 30 days upon referral and send back the same if cases are not duly settled. In this court, disputes over a decade were resolved within the stipulated three sittings, which has drastically reduced the large number of cases pending in this court.

This participant pointed to the positive image of the judiciary as one of the effective outcomes associated with the reduction of the backlog of cases in the Twifo Praso Court. When case dispositions were stifled as a result of administrative challenges within the court management, it reduced the confidence and trust in the image of the judiciary in Ghana. Notwithstanding, with the prompt backlog clearance of cases facilitated by the mediation integration in this court, the program has become a face-saving mechanism.

Pointing to the effectiveness of the mediation program in the Twifo Praso court, others identified a different perspective on mediation effectiveness evaluation by looking at the settlement rate, which deals with the differences between the number of cases referred to the CCADRM program and the number of cases that mediators were able to settle or referred back to court. This has been the most widely used measurement of mediation effectiveness from both local and global actors. Responses from the participants pointed out that the settlement rate of mediation at the Twifo Praso court was higher compared to the national average settlement rate of 45%. CCR narrated:

> The mediation settlement record in the court shows that cases referred to mediation were easily resolved, with a few cases that the mediators referred back to court. On average, the settlement rate is about 80%, which is quite excellent and has helped to reduce the backlog of cases in this court. This has helped enhance access to justice, especially for the less privileged ones who may not have been able to endure the insurmountable challenges of litigation facing the court system.

From the narratives of the participants, mediation increased the settlement rate, parties' trust in the courts through a swift resolution of cases, and a reduction of case backlog in the Twifo Praso Court. Moreover, the parties in dispute and the judge's time were not wasted on cases that got resolved. CCR, ADRO & CCJ views on high settlement rate, and caseload reduction pointed to the mandate that has been given to CCADRM, which is primarily based on how it can help reduce the over-exploded cases within the

Ghanaian court system to enhance access to justice discourse. The participants' narratives further pointed out that when mediators helped resolve cases within the stipulated 30 days, they reduced the number of cases that judges would have spent additional time and resources, from their already tight schedule to hear the cases and write judgments.

Secondly, some of the interviewees commented that mediation not only reduced the cases pending in the court, but its characteristics of "no appeal" after resolution contributed to case reduction.

The ADR Officer (ADRO), who was responsible for collating caseloads, noted that:

> The fact that mediated cases do not go for appeal reduced cases that would have revisited the court influenced the reduction of backlog cases. Once a case was settled and adopted as a consent judgment, there was no appeal from the decision that was made in the mediation room.

A similar quote was expressed by CCR by contrasting the "no appeal in mediation" to the mainstream court system.

> In the open court system where litigation takes place, a single case can travel from the magistrate court, the circuit court, the high court, the appeal court, and then to the apex court, which is the Supreme Court. However, in mediation, once parties agreed to the terms of the settlement, the magistrate adopted it as a court consent judgment that ended the future of the case. This has been one of the ways court mediation has helped to reduce case backlog in the Twifo Praso court.

ADRO & CCR assertions confirmed that mediation integration in the Twifo Praso court was responsible for the backlog case reduction. When the lifespan of cases was terminated after a mediation session, such cases could not reappear in the court in any other form. It could further be noted from the above narratives that this feature of mediation was essential for case management since parties were made aware of this provision in the mediation room.

CCR justified mediation effectiveness by comparing the national settlement rate to the settlement rate recorded in the Twifo Praso court. He reported that "The annual settlement rate in this court hovers around 71% to 83% on average, which was higher than the national annual average of 45%. They evaluated the success of mediation by using the percentage change of cases resolved against cases referred to mediation. This was a practical way of assessing how effective mediation had fared, and it was also in line with mediation's goal of increasing the settlement rate of cases sent to the CCADRM office, but not based on the general backlog piled up in that court.

It could be further deduced that these practitioners were fixated on settlement rates but not the settlement procedures that mediators must follow to get cases resolved in this court. To authenticate the views of how the court was performing in terms of the settlement, the researcher analyzed the settlement logbook of the mediation office and found the following:

Table 3: CCADRM Case Distribution in Twifo Praso Court

Year	Total number of cases referred	Total cases settled in percentage	Total cases sent back to court
2018-2019	66	47 (75%)	19(4.5%)
2019-2020	25	20 (71%)	5 (2%)
2020-2021	146	130 (89%)	16 (3.5%)
2021- 2022	100	75 (75%)	25(5.5)
2022-2023	120	100 (83%)	20 (5%)
Total	**452**	**367 (80%)**	**85 (20%)**

Source: **CCADR office Logbook (2018/ 2019-2023**).

Cases that were referred to the CCADRM court in the Twifo Praso court had the following breakdown. From 2019 to 2023, a total of 452 cases were referred to the mediation office; out of this, 367 cases were resolved, representing 80 % of settlement while 85 were unresolved in the Twifo Praso Court. The 2019/ 2020 legal year recorded

the fewest 25 cases that could be attributed to the Covid 19 pandemic, where most parties could not come to court for mediation, but the mediators, notwithstanding, used phone mediation to achieve that feat. This data is consistent with the narratives of the participants in the study that mediation has reduced the backlog of cases at the Twifo Praso court.

The 80% settlement rate on average found in Twifo Praso mediation, however, is consistent with the following international mediation practice. Povey et al. (2020) study revealed that 'The CCADR mediation settlement rate in South African courts ranges between 80% to 100% settlement, Brentte et al. (2012) sampled the case settlement rate of mediators in the USA, the study reported a settlement of 70% to 90% (p 4), Kresser and Pruitt (1989) study reported a settlement of 70% to 80% in Europe, Henderson (1996) study reported 75% in Canada, whiles Cox and Parsons (1992) reported 82% settlement in Italy. Mwenda (2006) argued that the 'mediators' settlement rate accepted to renew one appointment as a mediator should be between 60% and 90 % is also in line with mediation effectiveness through the settlement rate in the Twifo Praso court.

Moreover, the findings and the data therein presented concur with the first objective of GJS concerning Ghana's CCADRM program, identified 'improving court output (settlement rate) as its primary objective, followed by efficiency (Procedural and facilitative as its last objective (CCADR Manual, 2010; JSG, 2019). Furthermore, the findings from the interview concur with Shahla (2021) that a principal justification of international mediation programs is the reformation of civil justice through caseload reduction. He further asserted that India's story is particularly noteworthy because the

country had struggled for the past two decades with explosive court backlogs, but adopted mediation, which reduced the national backlog of cases to about 65% in India.

The current study's findings also corroborate those of Pel (2008), who reported CCADRM as a saviour to the Netherlands court in the early 1990s, and the mandatory CCADRM in Australia resulted in half of the cases being disposed of by mediators, reducing the backlog of cases (Shahla, 2021). The views of participants in the Twifo Praso court corroborate the views held by McEwen and Wissler (2002) that courts' primary aim of introducing CCADRM is to relieve courts of backlogs, while Lazaro and Carmelina (2003) reported that the judges are interested in CCADRM because of its characteristic of reducing courts' backlog of cases.

On the contrary, the findings of this current research contradict the Judicial Service of Ghana (2018) report, which identified the Twifo Praso court as the court with the highest backlog of civil cases and the second highest in terms of criminal cases in the Central Region of Ghana. This study's findings are also inconsistent with Ngetich's (2019) study in Kenya, which found that the ADR system cannot manage case backlog. Wahab's (2013) study in Australia's findings is also in contradiction with the current study, which found CCADRM to be inefficient in settling disputes and has, to a large extent, failed to achieve the desired result in reducing backlogs.

4.7.2 Management support and backing

From the participant's responses, it was deduced that mediation effectiveness was judged based on the availability of management backing and support. This was a key factor in the development of mediation since their actions and inactions could create procedural challenges for mediation. The responses further revealed that the growth and development of institutionalized mediation effectiveness was based on the attitude of

judges towards mediation, the influence of regional ADR coordinators, and the court registrar. Their roles in supporting the use of mediation were no less important in the Twifo Praso court.

Some participants of the study recognized the importance of leadership support to mediation, especially the judge who is the principal referral agent of cases amenable to CCADRM. A participant (ADRO) identified the magistrate as very critical in the discharge of the mediation process. He noted that:

> I have worked under four judges from 2018 to 2023. I can tell you that some judges are anti-CCADRM and would not even want to refer cases, even though such cases are suitable for mediation. I recall a former magistrate; throughout the year, few cases were given to mediation. He felt so bossy and would want to deal with every case in the court. However, the current judge is a pro-ADR man who believes in the workings of ADR and now refers cases to us to help with the early settlement of cases.

The view of this ADRO was corroborated by CCR. He based his argument on the ADR logbook as the basis for his argument on leadership support.

> If you look at the statistics from the referral logbook, you will see that some of the judges do not refer cases to mediation, even though the few ones they referred were resolved. Yet the previous judge referred only 25 cases to mediation. In the same court with a new magistrate, he sent about 120 cases to mediation for resolution. This judge, at times, calls mediators to his chambers and guides them on how to approach some critical cases after mediators have exhausted all their styles in mediation.

These participants (CCR &ADRO) preferred to look at the statistics from the logbook to evaluate the relative contribution of each magistrate who has been in the court, the number of cases they referred to mediation, and how they were committed to court efficiency. It could be deduced from their statements that magistrates who referred amenable ADR cases to mediation contributed to mediation and court efficiency since the mediators were skilful in resolving cases in mediation.

Another dimension of management efficiency was when mediation staff were integrated into the main court system in all social activities of the court. The ADR Officer, who was the immediate supervisor of the mediation program, remarked:

> It is the vision of the magistrate to make this court an ADR court in the region. The judge and the court registrar have integrated the ADR staff into all activities of the court. Talking of marriage ceremonies, birthday parties, funerals, and other welfare services.

This was corroborated by the CCR:

> Now, through the judge, both the ADR staff and the main court staff see ourselves as one because we see how helpful they are to the delivery of justice in the court. As a result, we do not discriminate against mediators from the core court staff. I prepare the monthly returns early so that they can have their allowances on time. They have also furnished the mediation office with new chairs and even appointed one court staff member to manage the ADR office, where issues concerning parties and mediators in terms of dockets, settlement agreements and other issues are easily attended to by the officer.

The ADRO of the court in support of the above statement noted:

> We have integrated the ADR into the main court administration so that any time there is a social event concerning any member of the staff, we all go as a team to support them, not excluding mediators. The judge has included the mediators in our welfare scheme.

Participants *CCR&ADRO* provided insight on how collaborative the mediation practice has been with the formal court staff, all geared towards the vision of the magistrate in turning this court into an ADR court. Because of the nature of the community of practice, which has experienced intermittent conflict infractions emanating from the chieftaincy disputes between the three paramount chiefs in the jurisdiction of the court. Again, the presence of agro-based industry, precisely Twifo Oil Palm Plantation, the Wasa Akyempim mines, and Kakum National Park, could spark conflict which the formal court may not be able to deal with. Moreover, litigating alone will threaten the security of this area based on these complex social dynamics.

4.7.3 The celebration of ADR week as an administrative effectiveness of mediation

Another management support which came out of the interview was the institutionalization of the ADR week celebration. Participants see this national policy, which has been strengthened by the management of the Twifo Praso court, as a measure of mediation effectiveness. An education on how this celebration was created for mediation effectiveness was narrated by the CCJ.

> The ADR week is observed every three months, where the court is open to only ADR matters for the whole week. During this period, intensive education is given to parties and the whole community on the need to have their cases resolved through mediation. This period further gives opportunities for national ADR coordinators and me to visit the nearby communities and some media outlets within my jurisdiction to educate the citizenry about the ADR Program, thereby demystifying the judicial process to the communities and encouraging parties to see ADR as an integral part of justice delivery in Ghana.

The court registrar corroborated the views of the magistrate when he identified the visitation the court receives from the national presiding judge for ADR, the national and regional ADR coordinators, to the Twifo Praso court. He believed it contributed to the efficiency of mediation in the court. He remarked

> The presiding judge has visited this court three times from 2018 to 2023, not alone but with the National ADR coordinator and other regional coordinators, to identify the status quo of the mediation practice in this court. These visits encourage mediators to continue doing their best since national leaders have recognized the work we are doing… it makes us humble.

Another interviewee corroborated the effort of national stakeholders by organizing a workshop for the court staff involved in the mediation program.

The ADRO noted

> The efficiency of CCADRM practice is championed by the Chief Justice herself. He, I believe, is committed to the idea of resolving disputes in the fastest of times. The professional development that judges, court registrars, and I receive is the initiative of the national presiding CCADRM judge, and this demands recommendation. Conferences on

> CCADRM are routinely organized to equip the practitioners to give their best in the course of justice delivery in making mediation practice very fruitful.

The views expressed by participants meant that management support has influenced the efficiency of CCADRM through providing a decent office for mediators and their clients, the appointment of ADR officers into the mediation office, the integration of ADR staff into the social networking of the court and the knowledge and interest of the judge in promoting mediation, all aim at improving and making the program a success. Crook's (2012) study corroborated the findings of this study where he reported that in some courts the judges were more proactive in mediation referral. In the same vein, Wahab's (2013) study in Malaysia found judges and court registrars were sponsored by the UK and the US governments to study their mediation programs so that upon return to their countries they can implement the best international practices such as screening and protocols of mediation practice.

Rundle (2020) also reported institutional support as a basis for increasing CCADRM in Tasmania. A study by Palihapitiya et al. (2019) on the efficiency of the Massachusetts ADR program also confirmed that ADR coordinators and magistrates who were the management members of the court played a vital role in promoting the efficiency of the court's ADR program. In the same vein, Chitsa's (2019) study of CCADRM in Zambia reported local court managers have a profound influence on the CCADRM program through the routine revision of some of the policies of mediation such as payment of fines for parties who intentionally absent themselves from mediation were surcharged by the court to serve as a deterrent. Whiles Tvaronavicienen, et al., (2021) reported the influence of critical stakeholders such as judges and court staff as a basis for the efficient functioning of the CCADRM Program in Lithuania. They further reported that if parties were not interested in the working of CCADRM it could lead to stagnation of

the program. Shahla (2018) argued that the attitudes of court-connected practitioners when positive have an impact on the success of the mediation program.

Wood (2013) reported that initial actors of the CCADRM program received governmental support to travel to the USA to learn about the tenants of CCADRM which led to its introduction in Ghana. This view was corroborated by Shawawry's (2020) study reported that before CCADRM can be effective then the commitment of critical stakeholders must be positive towards the practice and the funding and allowances duly budgeted and paid as scheduled. In the view of Crook (2012) the courage of the government of Ghana to promulgate the ADR act now applicable in 131 courts was very encouraging and aimed at enhancing effective mediation through the annual training of mediators at the Judicial Training School in Ghana. While this study's participants saw general management support of ADR as effective, the contrary was reported by Palihapitiya et al., (2019) study in the Massachusetts court-connected mediation reported management support was limited to only a few individuals in the court who took it upon themselves to promote ADR but the moment they were transferred then the system became weak since management support was not institutionalized.

4.8 Application of the Research Finding to the Relevant Theories

The study's findings provided valuable insights into how the diversity of mediation conceptions applies to procedural fairness, access to justice, and change management theories. It further showcased the interconnectedness of these theoretical frameworks within the context of mediation practices in the Twifo Praso court. The theoretical findings could be effectively summarized as follows:

4.8.1 Procedural fairness theory

In the realm of procedural fairness theory, the study's findings underscored the capacity of diverse mediation conceptions and practices to enhance procedural fairness by accommodating various perspectives in ensuring a just process. The integrative conceptions emanated from facilitative, problem-solving, and settlement styles, which prioritized crucial aspects that allowed sufficient time for parties to express themselves, fostered compromise for social harmony, and addressed social imbalances arising from conflicts. These aligned seamlessly with procedural fairness by emphasizing the pivotal role of fair processes in achieving equitable outcomes.

The findings further demonstrated a steadfast commitment to procedural fairness throughout the entire mediation process. From the signing of the consent forms, meticulous mediator selection, and the provision of education to conflicting parties on the merits of mediation, a consistent effort is made to uphold the rights and responsibilities of disputants. Diverse approaches, including initial joint sessions, caucusing, and co-mediation, collectively contributed to a fair process, fostering satisfaction with the procedural facets of mediation. Moreover, the detailed examination of mediation protocols at various stages, such as pre-mediation, initial joint sessions, caucusing, and adjournment, aligned cohesively with procedural fairness theory. The extension of time for complex cases further underscores a commitment to providing fair procedural opportunities, and the economic considerations discussed in the study, particularly regarding cost and time implications, resonated with procedural fairness theory. Clients' assessments of the cost-effectiveness of mediation vis-à-vis formal court systems and the avoidance of legal fees and potential appeals contributed to perceived fairness in the process. Procedural fairness theory posits that fair processes yield higher satisfaction with outcomes, a notion corroborated by the study's findings,

which resulted in positive client perceptions of mediation. The cost-effectiveness of mediation and its avoidance of protracted legal procedures are in harmony with the principles of procedural fairness, ensuring that the process is not unduly burdensome or intimidating for the parties involved.

Furthermore, the study highlighted that the institutional and legal frameworks regulating mediation practice, notably Act 798 and the Civil Procedure Act (2014), contributed significantly to procedural fairness. These frameworks established a foundation for conducting mediation in a fair and regulated manner, defining roles and providing legal protections for practitioners. Act 798's legal backing ensured the confidentiality of mediation, which safeguarded against the use of disclosed information for prosecution. This alignment with procedural fairness theory underscores the study's emphasis on fair processes and the protection of disputants' rights.

4.8.2 Theory of Justice

The study's findings resonated with the theoretical framework of justice proposed by Rawls (1971), particularly emphasizing the necessity for adaptable and nuanced conceptions of justice to cater to the needs of the less privileged. In alignment with the access to justice theory, the diverse backgrounds and conceptions of mediation among participants presented multifaceted opportunities for dispensing justice to individuals with varying needs. This inclusive approach aligned with the overarching objective of justice systems that were responsive to the diverse needs of both individuals and society. Furthermore, the study exhibited fidelity to justice theories, such as Rawls' theory, by illustrating a commitment to providing fair and nuanced conceptions of justice. The pre-mediation considerations, encompassing factors such as the nature of

relationships, animosity levels, and the characteristics of disputants, reflected a sophisticated approach to justice that took into account individual and relational dynamics.

The study illuminated that case referral to mediation was influenced by judges and magistrates, who considered factors such as the nature of relationships, the duration of pending cases, and the type of conflict. This aligned with justice theories, particularly Rawls' proposition that justice should exhibit flexibility to accommodate the less privileged. The diverse selection of mediators based on recommendations, familiarity, profiles, and specialities further aligned with the principle of providing equitable opportunities for justice.

The emphasis on relationship-building maintenance as a pivotal factor in clients' selection of mediation resonated with justice theory, advocating for swift and equitable conflict resolution. Mediation's consensual nature, where parties took ownership of the process, facilitated the avoidance of hostility, the fostering of amicable settlements, and the rebuilding of relationships. This aligns with the justice theory's assertion that justice delayed is justice denied, supported by the notion that mediation provides a more expeditious resolution, aligning with the expectations and needs of disputing parties. The study's revelation of an 80% settlement rate, surpassing the national average of 45%, aligned with justice theory's advocacy for fair and equitable outcomes in conflict resolution. This high settlement rate suggested that mediation in the Twifo Praso Court effectively achieved its goal of providing “just” resolutions to disputing parties. The legal framework provided by Act 798 ensured that practitioners executed their roles without the apprehension of legal repercussions, thereby contributing to an effective mediation process.

4.9 Summary of Chapter Four

The findings were organized into thematic categories, which included diversity in the meaning and definition of mediation, procedural fairness in mediation practice, factors influencing clients' decisions to use mediation, the multiplicity of mediation practices, and the administrative impact of mediation effectiveness. The first theme highlighted the varied conceptions and meanings attributed to mediation practice by the participants. The second theme explored the multitude of protocols adopted by practitioners throughout the mediation process, including pre-mediation, actual mediation, and post-mediation practices. The third theme delved into the procedural aspects and ethical considerations governing mediation practice in Ghana, focusing on procedural fairness, neutrality, the first speaker dilemma, and confidentiality. The fourth theme addressed clients' perceptions of mediation practice, shedding light on the factors they considered before opting for mediation as a conflict resolution method. Finally, the fifth theme examined the effect of mediation as a contemporary tool for conflict resolution in the Twifo Praso court, highlighting its impact on the legal landscape and the broader community. Overall, Chapter Four provides a comprehensive analysis of the findings, offering valuable insights into the intricacies of mediation practice in the Ghanaian context.

CHAPTER FIVE

SUMMARY, CONCLUSIONS, AND RECOMMENDATIONS

5.1 Introduction

In this chapter, the researcher provides an overview of the study, summarizes the research process, and highlights the key findings of the study. Additionally, the discussion of the implications and contributions of the research, recommendations, limitations of the study, and suggestions for further research are highlighted by the researcher.

5.2 Summary of the study

The purpose of this research was to explore mediation as a tool for resolving conflict in Ghanaian courts from the experiences of mediation practitioners and their clients in Twifo Praso court. To achieve this purpose, the researcher formulated specific research questions. The five research questions were:

1. How do CCADRM practitioners and their clients conceptualize mediation?
2. What protocols do CCADRM practitioners follow in resolving conflicts in Twifo Praso court?
3. What factors do mediation users consider before using mediation to resolve their conflict in the Twifo Praso court?
4. How effective is CCADRM from the perspective of mediation administrators in the Twifo Praso court?

To address these research questions, the researcher used interpretive research as the paradigm to underpin the study. This paradigm assumes that there is no single reality, but multiple; not fixed but changeable; and not universal but context-specific. Knowledge is understood as being the intersubjective experience of people. An

interview guide, observation guide, and document analysis were employed as methods for data collection. Census was used to select practitioners of mediation in Twifo Praso Court, whereas the users of the court, also called clients, were conveniently selected based on their experiences, availability, and their willingness to accept mediation as an alternative to resolving their conflict in Twifo Praso Court. In all, 30 participants were selected for the study. Thematic analysis was used to analyse the data gathered from the participants of the study.

5.3 Main Findings from the Study

5.3.1 CCADRM practitioners and clients conceptualization of mediation

The study revealed that participants conceptualised mediation from different perspectives. These perspectives included socio-cultural, socio-legal, role and style definitions, and integrative perspectives. Socio-cultural conceptions were influenced by prompters such as culture, social peace, process-focused, settlement, problem-solving, and social harmony. On the other hand, socio-legal perspectives were shaped by evaluative prompters, including predicting, proposing, assessing, settlement pressing, convincing, activist, deal maker, and directive.

According to the study, some practitioners defined mediation based on the roles they performed in mediation. Such roles were influenced by their understanding of the process, which affected their approach to mediation and the styles. Practitioners who viewed mediation from a socio-legal perspective performed their roles more proactively, such as proposing options to the parties, influencing settlement and giving their opinion on the status of the case. They also guided the process, acted as investigators, and evaluated the cost and benefit of the case. On the other hand,

practitioners who explained mediation from a sociocultural perspective performed their roles through problem-solving and intervention.

Overall, the study found that practitioners' conceptions of mediation had a significant impact on how they performed their roles and the styles they adopted while dealing with parties in conflict.

The study further found that most of the mediation practitioners utilised integrative conceptions of mediation. They integrated socio-cultural, socio-legal, and the roles and styles depending on the cases under resolution. Integrative mediation practitioners switched between various styles, including evaluative, settlement, and problem-solving. Thus, the participants defied “a single and monolithic definition of mediation. Moreover, the study discovered that the majority of the participant's perceptions of mediation were influenced by their backgrounds. Those who were aligned with the traditional backgrounds viewed mediation through the lens of their social and cultural values. Whereas those who came from teaching backgrounds focused on evaluating the situation, identifying the root causes of conflict, and helping the parties involved to reconcile their differences. On the other hand, mediators from social welfare, law, and business backgrounds adopted a facilitative and settlement-oriented approach to mediation. They saw conflict as the cause of social imbalances and believed that both parties must compromise to achieve social peace. This involved giving each party “the time to express themselves, and be heard, and empathised, taking into account the negative impact of conflict”.

5.3.2 Procedural fairness experiences of clients

In the field of mediation, ethical considerations were followed to ensure procedural fairness. This study found that when parties were given a chance to voice their demands and those demands were considered in the development of the BATMA and WOTMA, they judged the mediation process as fair. Studies on procedural fairness have shown that parties perceived mediation to be fair when they were allowed to decide who would speak first. This issue, known as the "first speaker dilemma," had cultural and social implications. For those in traditional settings, speaking first held spiritual significance, as they believed that their views would dominate the mediation agreement. However, those who were justice-oriented found it unfair to appoint one speaker, typically the plaintiff, to speak first. If the case involved a male and a female, the male spoke first, based on the cultural settings of the court. Some participants in the study rejected the popular culture in which, when cases involved a male and a female, males must speak first, using the tossing of a coin to decide the first speaker.

Confidentiality of the process was epitomized through secrecy, the neutrality of the mediators was epitomized through non-bias to the dispute settings, when parties were made to tell everything about the dispute without intimidation, when cases sent to mediation got settled, and when portions of participants' demands, interest and positions were considered in the generation of the settlement were considered by the participants as a basis for judging procedural fairness hallmarks.

5.3.2 Protocols CCADRM practitioners followed in resolving conflicts

The study found three general mediation protocols consisting of pre-mediation, actual mediation, and post-mediation practice. From the study, it was found that apart from the pre-mediation protocol, which was consistent with international standards and

practice, the actual and post-mediation protocols were not consistent with international standards. The findings revealed that practitioners' protocols were dictated based on the characteristics of the case and the parties who were involved in the mediation process. Participants in resolving their cases adopted creative protocols to encourage parties to resolve their conflict, but not by subscribing to the laid-down protocols of the Ghana Judicial Training School.

From the study, participants started the pre-mediation stage with the filing of cases and the provision of education by either the ADR Officer or the Judge on the availability of mediation as a conflict resolution option in the court. The education focused on convincing parties about the benefits of ADR and the need to accept the referral of their cases to mediation. Whereas the standard protocol is that judges refer cases to mediation, this study found that at times the parties officially requested that their cases be referred to mediation through oral request or written documents, but were subjected to the approval of the court judge. The study further found that participants preferred either late or early referral of cases because they would have known and appreciated each other's positions, interests, and stands. In the same vein, the study found that parties wanted early referral where the cost was minimal, and emotions and animosity were still at the foundation stage. In terms of periods in mediation, some practitioners advocated for a longer time, while others wanted regulated periods. Parties preferred pre-mediation before filing cases. Another striking finding of the study was that judges who were ADR-biased referred more cases to mediation and allowed the ADR clerk to educate parties about mediation. In contrast, judges who were not ADR biased seldom referred cases or allowed the ADR clerk to educate parties about mediation, except during mandatory ADR week celebrations.

The study found that assault, theft, and environmental cases were not amenable to mediation as stated in the ADR Act; such cases were, however, referred to mediation, especially if the offense was minimal, where some compensation could be paid to the offenders or victims. The study further found that old cases (cases that have travelled for years without resolution), the relationship between the disputing parties (such as family, business, and social relationships), contracts stating mediation as the primary means of resolution, the characteristics of the disputants, and the type of animosity that has developed among disputing parties were the factors judges and magistrates considered before referring cases to mediation.

The study found that instead of parties selecting their mediators to handle their cases, the practice of the court was that cases were referred to mediators who were available during the referral period. When two or more mediators were available in the court during the referral, clients selected their mediators based on the mediator's album. Apart from the album parties, selected mediators are based on recommendations from court staff, familiarity with the mediators by disputing parties, their credentials, status, specialities in dispute resolution settings, and current or previous practices. Another finding of the study at the pre-mediation was that parties who missed the initial mediation referral education had misconceptions about the process and found it difficult to resolve their conflicts. Adequate knowledge of mediation, particularly during the pre-mediation stage, helped parties understand the process and led to more effective mediation. During the second stage of mediation, practitioners did not follow the manual of mediation protocols. Rather, the study found that mediation practitioners crisscrossed between both an initial joint session and initial caucusing based on the nature of the case and the parties involved.

The mediators who were aligned to the initial joint session used it to determine the best time for the mediation, introduce the parties, listen to the parties' side of the story, and explain their role in the dispute resolution process, including the principles of confidentiality, neutrality, and self-determination. The study further reported that the initial joint session was used to invoke God, who is peace-loving, to take a central role in the mediation process, and called parties to offer prayers based on the religion of the conflicting parties (Christians, Muslims, and Traditionalists). This created a harmonious environment for the dispute resolution process, unlike the formal court systems, where the clients had to swear on either the Bible or Quaran. The initial joint session was further used as a fact-finding, diagnosis, and dialogue stage to establish rapport and make the parties comfortable without intimidation.

The study revealed that the majority of mediators initiated the mediation process with "initial caucuses" instead of the prescribed initial joint session outlined in the handbook for mediation practitioners. This deviation occurred because these mediators did not endorse the idea of commencing with an initial joint session. It was observed that when a party opted to file a case in court rather than explore consensual mechanisms within the community, tensions escalated, leading to strained relationships. This strained relationship was evident from the outset of the court's initial sitting before the case was referred to mediation hence initial caucusing was critical to tame this latent tension. The study found that most mediators adopted initial caucusing in “high stake and jackpot cases” spanning from abused cases where the abused (Victim) did not want to have a face-to-face meeting in one big room with the abuser because of the pain caused. Land cases characterized by strong acrimony, tensions, uncompromised positions where parties were traumatized, and marriage cases where the love parties shared have died out. The study found that initial caucusing was utilized by mediators to ease

tensions, control emotions, and confrontations, and reach a compromise on the confidential nature of caucusing with a traditional flavour. Some mediators chose initial caucusing because it promoted peace, reconciliation, healing, and user-friendly relationships.

Another finding this study reported during the "Actual mediation" was the adjournment of cases, where parties went home to consider the options presented during the initial joint session or caucusing stage. The study found that this stage was characterized by parties' reflections on their positions, interests, and possible outcomes. The party at fault showed remorse through an apology and pleaded for forgiveness and consultation with the "invisible hands and significant others" who were directly or indirectly involved in the case. The study found that the influence of supporters was a critical factor in cases involving divorce, inheritance, land ownership, and cash recovery since these cases demanded sureties and guarantors from significant others. Participants conferred with significant others who contributed to fine payment and provided a haven for disputants who had a vested interest in the case under mediation.

Co-mediation which was a novelty by the mediators was also found as part of the mediation process in the court. Ordinarily, mediation demanded "one neutral third party" who assisted the disputing parties in resolving their conflict. However, this study found that the advanced joint session period was characterized by two mediators who sat on the case to help parties resolve their cases. They argued that since the case getting to its terminal stage there was a need for collaboration among the mediators to bring their different expertise to the dispute settings to help in the final resolution of the case.

The study showed that cases resolved during the initial joint sessions, initial caucusing, or advanced joint sessions were documented through the terms of the settlement agreement and then sent to the judge for adoption. If the cases were adopted as consent judgments of the court, they could not be appealed, and the parties were expected to abide by the terms of the settlement. However, if the parties could not reach an agreement or a compromise resolution after the third meeting, depending on the nature of the dispute, the cases were sent back to court for litigation to continue. In cases where the stakes were high, more consultation was granted, and the mediators wrote to the court for an extension of time that helped the mediation process to conclude the case.

5.3.3 Factors mediation clients consider before using mediation in the Twifo Praso Court

The study investigated the experiences of CCADRM clients who used mediation as an alternative to accessing justice in the Twifo Praso court. The study revealed several factors that influenced the client's decision to use mediation. “Relationship building and maintenance” emerged as one of the critical experiences clients recounted. This was influenced by the “no winner and loser”, the consensual nature of mediation where parties owned the process, and the mediator's role as a guide, which were significant factors that improved the relationship of participants and compelled parties to choose mediation in the Twifo Praso court.

Moreover, the” economics of cost” was also a factor that parties considered in using mediation in the Twifo Praso court. The participants evaluated the cost of conflict resolution in two ways. First, they compared the cost of using the formal court system to that of the traditional chief court system. Second, they found that mediation was cheaper than the other two models of conflict resolution, making them choose

mediation in court over the others. The study also found that mediation avoided the cost of engaging a lawyer, which could cost parties an average of Ghc3000 to GHC4000, excluding transportation fares ranging between GHC 600 from Cape Coast to Twifo Praso where, the court was located. But for mediation in the same, court, parties did not pay any money for accessing justice apart from the initial filing fees, which averaged GHC150 and could increase based on the nature of the case and the relief sought. The economics of cost, from the perspectives of the participants, expanded the access to justice discourse to the poor and vulnerable who would have been blocked from accessing justice through the formal court system because of financial constraints. The study revealed, that some participants advocated for imposing fines on parties who failed to attend mediation sessions without valid reasons. This suggestion aimed to deter parties from exploiting the mediation process and emphasized the importance of proper communication and seeking permission from the court if unable to attend.

In terms of the" economics of time" as a basis for utilizing mediation in the Twifo Praso court, the study found that on average, parties visited the court three times within 30-day periods for their cases to be resolved. Another critical finding in the economics of time was that in mediation, the moment a case was settled, appeal was impossible and the case was considered dead. Since time is money this delay occasioned by the appeal of judgment was a reason why parties utilized mediation instead of a formal court system.

5.3.4 Administrative effectiveness of mediation practice in Twifo Praso Court

The study found that mediation practice was effective, with a settlement rate of 80%, which was significantly higher than the national average of 45%. The study also discovered that the institutional and legal framework regulated mediation practice, such

as ACT 798, the Civil Procedure Act (2014), and the ADR manual for mediators, contributed to the effectiveness of mediation in the Twifo Praso court. Another noteworthy finding was the integration of mediators into the court system through social activities such as naming ceremonies, birthday celebrations, funerals, and other socially acceptable functions without discrimination. The study found that mediation effectiveness was further judged by the reduction of the backlog of cases that were in the Twifo Praso court. Before the incorporation of mediation in this court, judges and magistrates handled 35-40 cases a day, but this has significantly reduced through the institutionalization of mediation in the study area, where most of the cases were settled in the "mediation room". ADR week, which was celebrated every three months, further provided avenues for public education on mediation. This celebration saw court mediation practitioners go to radio stations and the community information centre to demystify the practice of mediation. This, the study revealed, was dedicated to the referral of cases to mediation for prompt settlement of cases.

5.4 Conclusions

The study identified several themes that influenced mediation practice and court efficiency. Based on the findings, the following conclusions were drawn.

Twifo Praso CCADRM highlights a disparity between clients' limited understanding of mediation, influenced by cultural factors and a win-lose mindset, and practitioners' view of mediation as an artistic and adaptable process. This difference poses challenges in aligning expectations and understandings, underscoring the need for improved communication and education to enhance court efficiency and access to justice.

The ADR manual suggested a limited confidentiality model for primary parties and a facilitator, while Act 798 (Clauses 71, 78, 79) provides a broader confidentiality framework that includes legal counsel, significant others, and witnesses in the process, and practitioners adapted their approach by using both joint sessions and caucusing based on the case dynamics, which contradicted the stage-based protocols in their manual.

Clients were motivated by mediation's cost-effectiveness, expeditiousness (capped at three sittings with no appeal), and its capacity for relationship preservation and procedural fairness was tied to who speaks first and integration of clients interest in settlement generation.

Local innovations such as co-mediation, the integration of mediators into court welfare services, and the strategic use of mediation for backlog clearance emerged as home-grown strategies for ADR effectiveness at Twifo Praso Court

5.5 Recommendations

In light of the findings made, the following recommendations are proposed:

1. The Judicial Training School should review its curriculum and pedagogy to reflect expansive, adaptive, and context-driven strategies for cultural competency to manage client expectations and to build trust and confidence in CCADRM.
2. The ADR manual should be revised and reissued as a statutory instrument or an official practice directive under Act 798. This would elevate its status from an advisory guideline to a binding procedural code, ensuring its provisions on restricted confidentiality are either harmonized with the Act's extended

framework or explicitly justified as a best-practice standard operating within the Act's permissible boundaries

3. Practitioners in the Twifo Praso court must acknowledge the impact of relationship building, cost effectiveness, and faster resolution of cases and clients in mediation, and should consensually select who should speak first to enhance procedural fairness to improve trust and confidence in CCADRM
4. The Ghana Judicial Service should reward local initiatives by mediation practitioners which result in mediators' empowerment, caseload reduction, and drive mediation effectiveness.

5.6 Limitations of the Study

The first limitation identified was translating what was said at the interview in Twi (the language of the Twifo Atti-Morkwa people) into the English Language. Translating some statements, especially proverbs and idiomatic expressions, appropriately from Twi to English was pretty difficult. The use of proverbs and idiomatic expressions was also common as the interviews involved mediators and traditional actors who settled cases based on the local culture of the people. To overcome language barriers, the researcher relied on a trained translator or bilingual individuals who accurately translated the local language (Twi) into English. Ensuring that translated materials are reviewed by native speakers for accuracy was very crucial.

A second limitation identified in the study was that the sample size of 30 was not sufficient to generalize the findings to a broader population of practitioners and other stakeholders. This lack of diversity in the sample did not adequately represent various aspects such as culture, tribe, and language.

Another challenge had to do with building trust with participants. The fear of some of the participants was that the researcher was working for the Ghana Judicial Service, hence, whatever they told him could be used against them as individuals and the court as a whole. This had the likely effect of making the respondents falsify some information they were providing to me. The building of trust challenge with participants was resolved through transparent communication, active engagement with stakeholders, and establishing strong relationships within the communities where mediation occurs. The researcher being the Executive Director of the Centre for Peace-Building and Conflict Mediation (CEPECOM) located within the area would not want to give a bad report of the Court mediation program and would not want to put the people into trouble. This explanation managed the trust issues largely.

Disappointment concerning getting participants was prevalent because of the constant absence of court sitting as a result of judges attending workshops, going on leave, and some impromptu travels, which caused a great inconvenience to the researcher since parties and the ADR officers depending on the availability of the judges to commence mediation referral and sitting. This made the researcher reschedule most of the scheduled interviews and consistently led to a waste of time. This challenge was resolved by consistently contacting the court registrar and receiving updates about the availability of the judge and the parties before going to the research site.

Moreover, contacting participants to remind them of my interviews was also problematic, this made most of the participants not coming for the scheduled interview, especially during the rainy season where most of the roads leading to Twifo Praso from the various villages become inaccessible. The mobile networks during such rainy seasons become bad making it further difficult to contact participants for the study. This

challenge was resolved by contacting different clients who were willing and ready to replace those who could not come because of the bad road network.

Ethical and confidentiality concerns were raised by participants since mediation often involved sensitive and confidential information with ethical considerations, such as protecting the privacy of participants and limiting the amount of information that was shared in the thesis. Some clients and mediators disallowed the researcher from sitting in their meetings, citing the confidential nature of the case, especially marriage and chieftaincy mediation. This affected my interview time since the researcher had to find another meeting in which the parties and the mediator agreed to allow the researcher to observe the mediation and conduct further interviews. This was resolved by the researcher and practitioners by establishing clear ethical guidelines and procedures for handling sensitive information and respecting the privacy and confidentiality of participants during the mediation process.

The time of the scheduled interviews with the court registrar and the magistrate was interrupted by disputants and other people flooding into their offices whereas most of the parties after the referral were in a hurry to go home citing transportation challenges that affected the early completion of my data collection. This challenge was managed by the researcher by going to the court during non-market days when the court appeared not all that busy and the registrar and the judge were able to attend to me.

5.7 Further Study

Because of these limitations, the following suggestions are offered for further studies.

1. Other studies must be conducted on the impact of first speaker selection on mediation practice using either a multiple case study or surveys.

2. Because at the High Courts, there is compulsory mediation for all commercial cases future studies must evaluate the applicability of compulsory mediation in Ghanaian District and Circuit Courts.
3. The role of ICT in mediation is another area the researcher suggests other studies must explore to evaluate how it can influence swift resolution and cost-effectiveness.
4. The effect of the ADR week celebration on case settlement in Ghanaian courts is another area the researcher suggests other scholars explore as a way of enhancing the practice and effectiveness of mediation in Ghanaian Courts.

5.8 Contribution to Knowledge

This section presents the contribution of this work to existing knowledge and literature, as academic research is expected to fill identified gaps. The following are the contributions of this work.

In the first place, this study provided the public with a vivid description of the diversity of mediation conception based on meaning and styles premised on a structural approach to conflict resolution in the Twifo Praso court. This allowed for a good understanding of integrating the different mediation conception models and their effect on case resolution in the court.

Secondly, this study revealed that the education provided to clients who used mediation in the Twifo Praso court by the magistrate and the ADR officer influenced their acceptability of mediation referrals. This knowledge was significant because when other practitioners learn from this, it would help increase the national settlement rate from the current 45%.

Furthermore, this study revealed that mediation practice protocols are not staged managed; the adoption of expansive mediation protocols was based on the nature and characteristics of the disputing parties. The crisscrossing of the initial joint session, initial caucusing and advanced joint session created mediation effectiveness in the Twifo Praso court. This was significant because some scholars, especially of Western origin, argued that mediation practice must follow a certain kind of protocol. This calls for the revision of the mediation practice protocols for the interest of the parties and the court, especially when evaluating the success of mediation protocols within the Ghanaian context.

Moreover, this study has added to the African and Ghanaian conception of mediation fairness as premised on the first speaker dilemma, when parties are being heard, when an element of the party's pie of the resolution options is considered in the generation of BATMA or WOTMA. This finding should be considered by international actors when evaluating mediation programs. Understanding the extent to which mediation enhances access to justice for all segments of Ghanaian society, including marginalized and vulnerable groups, can be a valuable contribution to knowledge. This information can help assess whether mediation serves as an inclusive tool for resolving conflicts or not. Mediation as a tool for resolving conflict contributed to the development of social studies education by creating a safe and inclusive learning environment, promoting active participation, developing critical thinking and problem-solving skills, enhancing communication and collaboration skills, cultivating empathy and understanding, preparing students for civic engagement, and encouraging critical analysis of conflicts. Mediation practitioners and court users in Ghana brought a unique cultural and contextual perspective to the practice of mediation. They contributed to a deeper

understanding of how traditional norms and values influenced the mediation process, as well as the challenges and opportunities that arose from this cultural context.

Court users offered significant insights into their experiences with mediation, including their levels of satisfaction with the process and outcomes. This information can help refine the mediation process to better meet the needs and expectations of those seeking resolution. Finally, the findings contribute to knowledge based on the fact that mediation practitioners selected mediation based on the economic and time comparative advantage to both the formal court and the chief court in terms of cost, time, and easier settlement of cases. This finding in the Twifo Praso court needs international recognition and replication.

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APPENDICES

APPENDIX I

Interview Guide for Mediation Practitioners

UNIVERSITY OF EDUCATION, WINNEBA

FACULTY OF SOCIAL SCIENCE EDUCATION

DEPARTMENT OF SOCIAL STUDIES

My name is Stephen Kwabena Asaah-Junior a Doctor of Philosophy (PhD) student in the Department of Social Studies, Faculty of Social Science Education, University of Education, Winneba. My area of specialization is mediation practice. A major requirement for the award of a PhD degree in the university is the conduct of research resulting in the writing of a thesis. As a result, I am undertaking a study on the topic "Mediation as a Tool for Resolving Conflict in Ghanaian Courts: Experiences of Mediation Practitioners and Their Clients in Twifo Praso Court". This interview guide is prepared to collect information related to the experiences of mediation practitioners and their clients in Twifo Praso court concerning how their conception influences mediation effectiveness. You have been identified as key a person to provide significant and useful information to make the study effective. The information collected through this interview will only be used for academic purposes. I therefore, kindly request you to participate actively and voluntarily in all the processes of providing responses and sharing your experiences on the issues to be raised for discussion as the quality of this study greatly depends on your genuine responses.

Thank you in advance for your kind cooperation.

Questions

SECTION A: Background Information of Participants

1. Gender Male [ ] Female [ ]

2. Age…….

3. Level of education……..

4. Location of participants

Section B

1. Please, describe yourself to me
2. Kindly take me through how you understand mediation practice in this court.
3. Please, does your background influence your definition of mediation conception?
4. How does your style influence your understanding of mediation practice?
5. Kindly explain how your role as a mediator influences your understanding of mediation conception
6. Describe the protocols you normally follow when resolving conflict through mediation.
7. Why do you educate parties to accept mediation as an alternative dispute resolution model in your court?
8. Why do you adjourn cases during mediation?
9. Explain the reasons why you refer cases to mediation.
10. Please how does administrative management of the court influence mediation in Twifo Praso court?
11. What factors create mediation effectiveness in Twifo Praso Court?
12. How effective is the mediation program in Twifo Praso court?
13. How does ADR week impact mediation practice in Twifo Praso court?
14. How has mediation practice influenced the backlog of cases in Twifo Praso court?

APPENDIX II

UNIVERSITY OF EDUCATION, WINNEBA

FACULTY OF SOCIAL SCIENCE EDUCATION

DEPARTMENT OF SOCIAL STUDIES

INTERVIEW GUIDE FOR CLIENTS (MEDIATION USERS IN TWIFO PRASO COURT)

My name is Stephen Kwabena Asaah-Junior a Doctor of Philosophy (PhD) student in the Department of Social Studies, Faculty of Social Science Education, University of Education, Winneba. My area of specialization is mediation practice. A major requirement for the award of a PhD degree in the university is the conduct of research resulting in the writing of a thesis. As a result, I am undertaking a study on the topic "Mediation as a Tool for Resolving Conflict in Ghanaian Courts: Experiences of Mediation Practitioners and Their Clients in Twifo Praso Court". This interview guide is prepared to collect information related to the experiences of mediation practitioners and their clients in Twifo Praso court concerning how their conception influences mediation effectiveness. You have been identified as key a person to provide significant and useful information to make the study effective. The information collected through this interview will only be used for academic purposes. I therefore, kindly request you to participate actively and voluntarily in all the processes of providing responses and sharing your experiences on the issues to be raised for discussion as the quality of this study greatly depends on your genuine responses.

Thank you in advance for your kind cooperation.

Questions

SECTION A: Background Information of Participants

1. Gender Male [ ] Female [ ]

2. Age…….

3. Level of education……..

4. Location of participants

Section B

1. Please, describe yourself to me
2. Kindly take me through how you understand mediation practice in this court.
3. Please, does your background influence your definition of mediation conception?
4. Why do you use mediation as a model of resolving your conflict in Twifo Praso court?
5. Please, kindly explain your experience in mediation as a dispute resolution model in Twifo Praso court.
6. How fair were the mediation procedures that you were engaged in?
7. How does cost influence your choice of mediation as a dispute resolution model in Twifo Praso court?
8. How does time influence your choice of using mediation as an alternative to litigation in open court in Twifo Praso court?
9. Kindly explain the cases you think should be referred to mediation
10. How did you experience ethical hallmark mediation practice at Twifo Praso court?

APPENDIX III

Observational Guide

1. Protocols used in mediation practice at Twifo Praso court
2. Referral procedures in Twifo Praso court
3. Gestures and signs used in mediation practice
4. Prayers and apology in mediation
5. Settlement procedures of mediation
6. Attitudes of parties in mediation
7. Expression of emotions after settlement
8. Use of words

APPENDIX IV

Letter of Introduction

UNIVERSITY OF EDUCATION, WINNEBA
FACULTY OF SOCIAL SCIENCE EDUCATION

5th October, 202

TO WHOM IT MAY CONCERN

LETTER OF INTRODUCTION: MR. ASAAH-JUNIOR STEPHEN KWABENA

We write to introduce Mr. Asaah-Junior Stephen Kwabena to your outfit. He is a PH. D Soc Studies student with registration number 202122401 from the above-named Department.

He is undertaking research on the topic *"Mediation as a Tool for Resolving Social Conflic Perspectives of Court Connected Mediators and their Clients in Twifo Praso Court"*.

We would be grateful if he could be offered any assistance, he may need to enable him wo on his thesis

Thank you.

Yours faithfully,

Margaret G. Nyala (Mrs.)
Ag. Head of Department