

# **Alternative Dispute Resolution in Ethiopia - A Legal Framework**

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## **Abstract**

*Ethiopia has for centuries been using traditional methods of dispute resolution. The institutions of Gadaa among the Oromo, the Shimagelle by the Amhara, and the other ethnic groups were used. But Alternative Dispute Resolution has not attained any significant position of usage and acceptance in its modern form. Recent incorporation of Alternative Dispute Resolution mechanisms in the legal polity has been greeted with a lukewarm attitude by the government, judiciary and the civil society. However, existing realities on the ground and in practice have pepped-up the need to resort to other means of dispute resolution rather than relying entirely on the conventional courts. This article will attempt to explore the regime of Alternative Dispute Resolution in Ethiopia, its legal framework, current practices and the way forward. The implication of the need to embrace the use of Alternative Dispute Resolution by all stakeholders was also be analyzed.*

## **Introduction**

*Human existence is characterized by struggle. In fact, it is said that life itself is a struggle. As we struggle in life for our needs, there are bound to be consequences arising out of such struggles. Sometimes, the struggles in life results into conflicts and to get out of this quagmire we need to put an end to, or resolve such conflicts. Conflicts may arise out of the family, such as between husband and wife, parents and children, between communities, nations, and in labour relations, etc. When they arise, we try to resolve them. There are many ways to resolve these conflicts. For example, by surrendering, running away, overpowering your opponent through the use of violence or filing a lawsuit. Filing a lawsuit has in the last one hundred years or so has been widely used as a common means of settlement. But due to*

certain reasons, lawsuits have become expensive, slow to achieve results and open to abuse. So a shift from the conventional law court processes has become a thing “en vogue” these days.

This shift has resulted in the birth of a movement; the Alternative Dispute Resolution (ADR) campaign. It is sometimes referred to simply as “conflict resolution”. This movement grew out of the belief that peaceful resolutions of matters are better options than using violence or going to court. Today, the terms Alternative Dispute Resolution and conflict resolution are used somewhat interchangeably and refer to a wide range of processes that involve non-violent dispute resolution outside of the traditional court system. The field of conflict resolution has broadened recently to include efforts in schools, work places and communities to reduce violence and help young people develop communication and problem solving skills. Alternative Dispute Resolution, believed by some to be outside the traditional mainstream of state jurisprudence, have gained acceptance among both the general public and the legal profession. With the ceaselessly growing caseload, and with the attendant effect of placing great strain on conventional courts, many judges have come to see dispute resolution as an acceptable means of decreasing caseloads, while settling disputes in a fair and equitable way. This line of reasoning is rejected by others who insist that it is not all alternative methods that are always fair and equitable. The unchallenged benefit, however, is that such methods are much less expensive than a traditional lawsuit. Alternative Dispute Resolution is generally classified into at least three major sub-types, namely, negotiation, mediation, and arbitration. A fourth category, conciliation is also usually included here. Under the Ethiopian legal system, it might not be wrong to include the Ombudsman as an Alternative Dispute Resolution institution.

The essence of this paper is not an exhaustive description of Alternative Dispute Resolution in Ethiopia, but an illustrative analysis to show its legal status, trend and potency in the ever expanding

world. To begin with, the paper will briefly examine the basic forms of Alternative Dispute Resolution.

**Negotiation-** When conflicts occur, the parties involved will try to settle amicably. This effort by parties to settle the conflict themselves usually takes the form of negotiation. Here participation is voluntary and there is a third party who either facilitates the resolution process or imposes a resolution. If negotiation is deadlocked it means the parties will revert back to the status quo. That is the position of the conflict. Also, in negotiation the parties are free to opt out of it, but the essence of Alternative Dispute Resolution is to ensure that parties resolve their disputes without recourse to violence.

**Mediation-** In mediation, participation is voluntary because even though a court may order the process itself, the parties in dispute are not required to reach a solution. In mediation there is a third-party, a mediator, who facilitates the resolution process but does not impose a resolution on the parties. Mediators are individuals trained in negotiations and bring opposing parties together to attempt to work out a settlement or agreement that both parties accept or reject. Mediation is used in a wide range of cases such as juvenile felonies, disputes between communities, states, labour disputes between employers and employees etc.

One characteristic of mediation is that it is voluntary and is a process in which a neutral third party brings the opposing parties to a peaceful resolution of issues. Mediation steps include efforts such as gathering information, framing the issues, developing options, negotiating and aiding agreements. Parties in mediation create their own solutions and the mediator does not have decision making power over the outcome of the negotiation.

**Arbitration-** Arbitration is a process in which a third party who does not have an interest in the case, after reviewing evidence and arguments from both sides, issues a decision to settle the case. This

decision is termed arbitral award. Arbitration was actually one of the earliest forms of dispute resolution. It was practiced, and is still being practiced, by many traditional African societies, including the Oromo nations under the Gadaa system, the Amhara elders- Shimagelle. It was used by the *juri consults* of the Roman Empire, and in fact it predates the adversarial system of the common law by at least 1000 years. The continental/civil law inquisitorial system also allowed for some measures of alternative conflict resolution.

**Conciliation** – Conciliation is a term broadly used to refer to proceedings in which a person or panel of persons assist parties in their attempt to reach an amicable settlement of their disputes. An essential feature of conciliation is that it is based on a request addressed by the parties in a dispute to a third party to help them resolve a conflict. Conciliation differs from negotiation, mediation and arbitration. In arbitration the parties entrust the dispute resolution process and outcome of the dispute to the arbitral tribunal that imposes a binding decision on the parties, while conciliation involves third party assistance in an independent and impartial manner to settle the dispute. In conciliation, the parties retain full control over the process and the outcome, and the process is adjudicatory.

The above are by no means an exhaustive list of conflict resolution methods in modern days. The paper hereunder proffers other existing forms of alternative dispute resolution that could be adopted by the government, the civil society, the bar and the bench as alternatives in resolving disputes.

a) **Community Conferencing-** is a structured conversation involving all members of a group, for example offenders, victims, family members, friends, who have been affected by the dispute. These all come together, through the efforts of a facilitator, who requests the parties to freely state their cases for and against. This will involve the parties expressing how they were affected, how they feel and how to address the dispute and repair the harm occasioned. If this procedure

is followed to the letter and compromise is achieved, then the dispute may terminate. This is a very effective tool that this paper wishes to recommend to solving disputes among African communities. For example, after the genocide in Rwanda, the Hutu and Tutsi have used Gachacha, a form of local community courts, where victims and offenders of the genocide meet under trees and in community halls to admit their roles in the genocide and calls for forgiveness which are encouraged to be accepted. When the public confrontation is concluded, the parties then shake, hug and backslap themselves amid tears of reconciliation. This lays a foundation of the process of reintegration into the good old days. Community conferencing can be employed in all sorts of disputes resolutions.

**b) Peer Mediation-** refers to a method where young men or age groups act as mediators to help settle disputes among their peers. This akin to the Oromo Gadaa system of settling dispute these days. This method will be very important nowadays where there are recurring disputes between the youth in our schools and university campuses. The student mediators are trained and supervised by other adults. The recommendations and solutions arrived at are usually encouraged to be accepted as binding on the disputing parties.

**c) Negotiated Rule Making -** is a collaborative process in which government agencies get the feeling of stakeholders on any issue before issuing a new rule. The importance of this rule is that it enables government agencies to avoid situations of bringing out laws that the community or affected sector will resent. Therefore, by sampling the feelings of people either through referendum and public pulse sensing, conflict resolution can be achieved.

**d) Early Neutral Evaluation-** involves using a court appointed lawyer to review a case before it goes on trial. The lawyer is empowered to look into the merits and demerits of a particular suit and encourages the parties to resolve their disputes rather than waste their time and that of the court by pursuing the action. If the parties

see the likely outcome of the case to be a wild goose chase then they agree on a possible resolution of it. Trials before courts entail a lot of processes, for example hiring a lawyer, assembling of witnesses, paying of costs, adjournments, etc. To avoid these, embarking on alternative means of peaceful settlement will be the most preferred by a wise disputant.

### **The Position of Alternative Dispute Resolution in Ethiopia today**

In practice, and by veiled reference to the provisions of some legislation, the Alternative Dispute Resolution has been part of the Ethiopian legal system. In the olden days, and most especially under the Fetha Negast, disputes between individuals or communities were encouraged to be settled amicably. This process usually entailed the comity of elders-Shimagelle - or people appointed on ad-hoc basis to settle particular disputes that have arisen either in matrimonial cases or between communities. There are other traditional methods of settling disputes through religious leaders. All these options provide a good forum for conflict resolution.

The modern attempt at introducing ADR into the Ethiopian legal system started with the promulgation of the Civil Code of 1960 and the Civil Procedure Code of 1965. Under the provisions of the Codes, conflict resolution is centred more on contractual or legal relations. The term compromise enjoys a wider scope by the legislation and is used as the generic name and springboard to Alternative Dispute Resolution.

Article 3307 of the Civil Code defines a compromise as “a contract whereby the parties, through mutual concessions, terminate an existing dispute or prevent a dispute arising in the future.”

From the foregoing provision, it is to be implied that matters of dispute resolution may relate to disputes pending between the parties or the parties may have agreed that while their relationship exists, in case of any conflict, they will try to settle it peacefully. The second

part of the provision relates to anticipated disputes that may crop up as of course. Under the Ethiopian law, compromise is a means of creating, modifying or terminating a contractual obligation. The Civil Procedure Code provides that parties may by a compromise agreement relating to all or some matters in issue terminate a dispute with respect to which a suit has been instituted. Here, the intention of the legislation is that where a conflict arises between parties, they may use compromise to extinguish the points of disagreement, whether relating in its entirety to or in part to the subject matter in dispute. Under the Ethiopian law compromise may be initiated at the insistence of the parties or by the court, when such matter is still or outside the courts form consideration. When the assistance of the court is sought, the law empowers the courts to guide the parties on the terms of reference or line of action in arriving at compromise. What the law has not been able to make clear is what the effect of a compromise is? Whatever the poor draftsman ship, as observed by this author, the law, through the courts has been able to lay a foundation for the resolution of conflict between parties when such conflicts rear their ugly heads.

If a compromise is ordered by the court there shall be a format of such including sundry matters like the name and jurisdiction of the Court, the title and case number of the suit, a proper description of the parties with their names and a determinable address for the effecting of service and finally the particular scope of application of the compromise. Here, it means that the issues the disputes to be resolved shall be spelled out devoid of rigmarole. The Civil Code provides that the terms of a compromise including the right to renunciation shall be interpreted restrictively. Since the essence of compromise is to arrive at an amicable resolution of dispute, it is commendable to the terms of reference. If it were not so, man being given to the propensity of exceeding limits will import extraneous matters into dispute resolutions.

Once a party to a compromise renounces unequivocally his entire rights, actions and claims in a suit, it automatically results in the

wiping out of such rights and claims only in respect to the matter which the compromise has been reached. It does not preclude him from pursuing his rights and claims in matters in the suit that are not intended to be compromised. In disputes involving multiple parties having an interest in the matter at hand, the compromise made by one party shall not be binding on the other parties. This is so because from the intention of the legislator, compromise is contractual in nature, therefore, it can be done only with the freewill of parties. This intention and purpose of the draftsman is also commendable. Once a compromise is arrived at between the parties it now becomes a final and settled matter – *res judicata*. It cannot be appealed against for trivial reasons except for fraud, duress and other compelling illegalities in the process of reaching the compromise. Since the essence of compromise is alternative to the court proceedings, where the parties either in the hearing of the court or outside the court's determination have agreed to settle, then the court will take two steps in ending the conflict:

- I. After entering the compromise in the case file, the court may on the application of any of the parties, make an order or give judgment in terms of such agreement.
- II. Where however, a compromise agreement is made outside of the Court, the court shall be notified of such fact and the plaintiff may apply to the court for the discontinuance of the suit. If discontinued as a consequence of the compromise arrived at then the matter terminates as between the parties.

It can be observed that compromise has been a viable means of settling disputes outside the traditional court system in Ethiopia, but as observed earlier, it is limited in form and character to contractual relationship. There has been however a snail paced development of law in the field of Alternative Dispute Resolution, given the new dimension of Ethiopia in embracing the outside world. There is a move towards free market economy now which has accentuated the need for the welcoming of investors into the polity. For these

investors to come comfortably and play their role in this level playing field, there is the need to expand the law to cover these emerging circumstances.

Another means of settling disputes today in Ethiopia is through the process of conciliation. Interestingly, it is only the Civil Code that deals with this issue. The Civil Procedure Code is, however, silent on this all important topic. Justice will be done to this aspect borrowing from international procedures as Ethiopia is moving towards ratifying the United Nations Commission on International Trade Law (UNCITRAL) Rules.

There is no definition of what conciliation is, but the Civil Code allows for the appointment of a conciliator by parties to settle any dispute arising between them. Under the law, the parties entrust to a third party the mission of bringing them together and if possible, negotiating a settlement between them. The conciliator may be appointed at the request of the parties, by an institution or by a third party and if appointed, he/she is at liberty to accept or refuse such appointment.

From the above there are certain clear issues to be understood before we proceed.

- a. The process of conciliation invariably includes negotiation. As we have seen, negotiation involves a discussion among two or more people with the ultimate goal of arriving at an agreement.
- b. Under the Codes, the requirement of appointing a conciliator for the parties by another body is not mandatory. A cursory look at the wording of the law supports this view. What is of relevance is that the law allows for the efforts of conciliation either by the parties themselves or through the help of a third party. If the parties agree on a conciliator between them then they shall cooperate likewise in providing him with all the

information necessary in the carrying out of his duties. They shall not hide any material fact to the conciliator and should refrain as far as possible from frustrating the carrying out of the duties or create circumstances by their actions, words or conduct which will make his work impossible to accomplish.

Once an enabling environment is created, the conciliator shall embark on the task of expressing his finding by giving the parties ample opportunity of stating their facts. Using the facts available at his disposal the conciliator is expected to draw up what we call compromise terms, but in case no compromise is achieved he shall draw up a memorandum of non-conciliation.

It is expected that, whatever the case is, the conciliator is expected to communicate to the parties his findings or documents. Dispute resolution is an alternative to court processes, therefore it is expected that time is of the essence in the task of a conciliator. The parties are required to give a completion time or in its absence the law provides that conciliation shall be carried out within six months from the date of appointment. During the process of conciliation the parties are expected to perform such acts as are necessary to preserve their rights and may not bring their case before the court until the expiration of the time schedule given to the conciliator or if he has not achieved a compromise, then he is required by law as earlier said to draw up a memorandum of non- conciliation. In conciliation, the powers of the conciliator shall be interpreted restrictively because the parties are bound by his decision unless a contrary intention or agreement has been reached by the parties. The agreement to be bound must be in writing signed by both parties. The conciliator's services shall be *pro bono* (free of charge), unless the parties agree to remunerate him. He is however entitled to re-imbursments for legitimate expenses incurred in the course of the discharge of his responsibilities. In conciliation the law does not specify the required number of conciliator (s). This is left at the discretion of the parties or the appointing authority. Arbitration as a means of conflict resolution is

given a more elaborate analysis under the Ethiopian legal system. It is a widely used process, but has a blend of other forms of conflict resolution mechanisms.

Arbitration is defined as “a contract whereby the parties to a dispute entrusts its solution to a third party, the arbitrator, who undertakes to settle the dispute in accordance with the principles of law.” Here arbitration involves a third party, who is required to settle the dispute in accordance to legal rules. By implication, for an arbitrator to be appointed he should be knowledgeable in law. The legislator at the time of enacting this law did not take into cognizance the level of legal knowledge of the majority of the populace. Over 47 years after the enactment of Civil Code, the legal system is not very advanced, so putting the requirement of settling disputes by arbitration in accordance with the principles of law may be asking too much from a legally impecunious system. However, Ethiopia is a country given to adopting indigenous techniques for the solution of its problems; therefore we may not be wrong to say that any person who has acquired a particular knowledge whether of custom, trade or practice can do the work of an arbitrator. Traditional arbitral methods are very much in use today. For example the abbo – gerreb system used by the Wejeret and Raya-Azebo communities of southern Tigray to settle conflicts with their neighbors in the Afar region is active till date. These conflicts in fact, include homicide cases.

A critical reading of the provisions of Article 221 of the old Penal Code and certain provisions of the 2004 Criminal Code on the right of withdrawal of complaint by the plaintiff does suggest arbitration. Who knows why a plaintiff may want to withdraw. It may be the need to settle amicably.

The 1965 Civil Procedure Code has tried to ameliorate the defects of the 1960 Civil Code by giving arbitration some legal clout. The position now is that where arbitration is required by law or an arbitrator is appointed by the parties themselves or if agreed by the

court, it may be either in a clause inserted in the original contract or subsequently, in which case it may be one or several of the arbitrators appointed. If no number is specified then it is encouraged that each party appoints one. But, what happens in the case of a tie in a decision taking or who heads the arbitration panel the law does not mention. It is good however, that the arbitrators appoint one of them to head or appoints a third member. This is for the purposes of achieving results quickly, fairly and with justice.

The Court has the power to appoint arbitrators on behalf of the parties. In performing their duties, the arbitrators may be given a term of reference by either the parties or the Court, but limited to the area for arbitral consideration. Arbitrators are appointed for a wide range of cases including family arbitration. Under the law a judge shall not be eligible for appointment as an arbitrator but may act as a family arbitrator. The procedure before an arbitration tribunal, including family arbitration, shall be in conformity with that of the Civil Code. Arbitral awards shall not be subject to appeal except in certain circumstances.

### **Is Alternative Dispute Resolution needed in Ethiopia?**

The answer to this question is a capital “YES”. The significant role of Alternative Dispute Resolution mechanisms as an extra judicial settlement, both in the domestic and international realms, cannot be over-emphasised. The fact that Ethiopia does not yet have coherent and modern arbitration laws, coupled with the tortoise pace effort at adopting the UNCITRAL Model Law on Intentional Commercial Arbitration (1985) and to ratify the New York Convention on the Recognition and Enforcement of Arbitral Awards (1958) has created a doubt as to whether it is committed to arbitration. In most enactments, the word arbitration and conciliation are used interchangeably, as if they are the same. It is to be noted that going by the wording of most of the legislations, the practice of compromise leading either to means of arbitration, conciliation, negotiation or mediation is commendable. More importantly, arbitration is recommended as compulsory for the

settlement of certain disputes. Before we see the need for having ADR strongly entrenched in the legal system of Ethiopia, it is worthwhile looking at its advantages.

The primary advantage of conflict resolution is that it is cheaper and faster to terminate disputes. In a society where the majority of the populace is poor with widespread illiteracy culminating in lack of access to justice and the high cost and scarcity of lawyers, ADR stands out as the best method of conflict resolution.

Secondly, in embarking on mediation as a means of conflict resolution, the privacy of the parties is assured. The process of mediation by the parties and their lawyers is generally confidential, so also are any documents exchanged in the process. On the overall the outcomes of mediation are not for public knowledge.

Thirdly, in mediation the parties have control over the outcome of the compromise. They do not need a judge, or jury to determine the fate of their dispute. They need not worry whether their witnesses will tell the truth or their evidences will be admissible or inadmissible. In short, the parties in mediation are each other's bridge builders leading to permanent friendship. Take your friend to court and see what will happen.

Fourthly, in ADR there is not always a victor and a vanquished. All the parties need do is to resolve matters peacefully; no one is to be placed in an advantaged position over the other. The situation is "win-win" neither "loses". This however does not mean that the parties will walk away happy at the outcome the dispute, but at least the bone of contention is softened. In conflict resolution we hear maxims like 'even a poor settlement is better than the best fight' 'each side needs to be at least a little bit unhappy with the result as each side gave up something of value to the other' "and 'closure and certainty are everything.'

With these merits of conflict resolution mechanism, let us now turn to seeing how it can be an alternative to civil litigation in Ethiopia. It is to be noted that civil adjudication in Ethiopia like any other sovereign nation is fraught with criticisms. Law is regarded as a normative value and its interpretation and enforcement is in the hands of judges and lawyers. In some societies where there is high incidence of corruption and also high cost of hiring lawyers, phobia of the unknown makes it extremely hard for any poor person to embark upon law suits. It is a common saying that the bench and bar is a society of men brought up in the art of changing black into white and white into black according as they are paid. Therefore the fear of how the law turns against a litigant is an obstacle to seeking justice.

Secondly, economic factors play a great role in the denial of access to justice in Ethiopia. The ordinary citizen barely has three square meal on his table, you do not expect him to file a suit, hire a Lawyer, go to courts all seasons etc? God forbid. He has no such time to waste, but if an alternative means of resolution of a case is offered to him be sure he will jump at it.

Thirdly, the procedural requirements of law are a scare to litigants. What with the cost, procedural formality, which may not even bring about vindication of rights? This then necessitated the search for Alternative Dispute Resolution (ADR) processes which are cheaper, quicker and less formal.

Two major arguments are advanced in support of ADR in Ethiopia. First, ADR is quantitative, caseload reducing with ultimate good management. The processes of ADR are wide but give in quickly to conclude.

Secondly, ADR process is qualitative in that both steps we aimed at achieving results and the results are good breed of action. This is premised on the fact that it is all inclusive as more parties are involved and they control the means of resolution without any man (Judge)

sitting up there with a bunch of people (witnesses and/or juries) that determines the dispute. ADR processes also serve the interest of parties as the solutions are more flexible and not arrived at in a tailor made form.

The problems associated with formal court processes are deeply rooted in Ethiopia. The Constitution is federal in character. With a bi-legal structure at the Federal and state levels, this hierarchical arrangement evidently will produce bureaucracy and red-tapism in the adjudication of cases. A similar problem associated with the above is the workings of the legal system. In Ethiopia, the administration of justice is entrusted into the hands of courts whose jurisdiction extends to customary dispute settlement with a civil procedure which is common law oriented. The common law adversarial system rather than the civil law inquisitorial method, which the system would have adopted, present a litany of problems. In an adversarial system, examination and cross examination of witnesses is in vogue and this is carried on by the parties with the judge playing only a listening and recording role. Despite the fact that the constitution provides for equal access to justice as a human right issue, in practice this is not happening. This is as result of a plethora of problems which we have highlighted such as economic, geographic, and psychological pessimism on the part of the citizens. Also the judges are not well trained. More worrisome is the fact that they are not free from executive or social pressures and corruption, so they usually pass judgments to the highest bidder. With all these limitations, the traditional court systems are becoming an eye sore to the people. Thus the rise of ADR is being embraced firmly.

### **Alternative Dispute Resolution in Ethiopia – A leap forward?**

We have noticed that negotiation, mediation, conciliation, arbitration and Ombudsman do remain as the primary sources of conflict resolution processes in Ethiopia. The big question is, are these processes given legal recognition to. After observation of the practice and facts on the ground it is to be concluded that they do have legal

effect. But the irony is that they have not been recognized, institutionalized or professionalized to complement court processes as is the obtainable practice in some western countries and the United States of America. The great leap forward in this direction is that all stakeholders in Ethiopia do have a contribution to make.

### **The Role of the government**

The government of Ethiopia should be in the lead in promoting ADR. The role of government at all levels here should be multi-dimensional:

- i. It should embark on the active sponsorship of Alternative Dispute Resolution processes as a measure of reducing case-load on the conventional courts. The practice in Ethiopia is that in most civil and criminal cases legal aid is not provided to indigent members of the society.
- ii. The government must embark on concrete judicial reforms with the ultimate objective of removing barriers to justice and improving the efficacy of ADR institutions like the Ombudsman. The government needs to reform the persons and institutions of its legal system.
- iii. ADR courses should be incorporated in universities curricula. The Universities, both public and private, must be encouraged in this regard. The reasoning here is that once law graduates are conversant with ADR processes some of them who will be private practitioners can set up ADR consultancy services.
- iv. The government should establish intuitions that provide ADR services so that if the courts need to refer cases for arbitration, conciliation, mediation, etc, they can do so.
- v. The government must quicken its space in ratifying or acceding to international conventions, e.g. UNCITRAL and other regional ADR instruments so that disputes arising between nationals and expatriates (persons and business outfits) can be resolved amicably.

### **The Role of the Judiciary / Judges**

For ADR to move forward in Ethiopia, the role of the judges and the judiciary itself cannot be ignored. Flowing from the concerted efforts of government in establishing ADR institutions and encouraging referral of cases to them, a judge with the knowledge of ADR will now know cases to be referred to the institutions concerned. In Ethiopia, most judges are burdened with caseloads incorporating all shades of matters and, thus it will be a welcome idea if an ADR conscious judge reduces his work load by surrendering some matters for ADR adjudication.

### **The Role of Lawyers**

A lawyer with the knowledge of ADR stands in a better position than that with none. The traditional role of the lawyer is to handle matters in court and in the process it is expected that he will have a lot of cases before the courts. It will be a welcome development for him if he reduces the workload by settling other cases through ADR processes. In so doing, his productivity would be increased and thus boost his career development.

An exclusively ADR lawyer is better than the workaholic advocate. Therefore it is suggested that persons qualified to practice law should opt for ADR practice taking into account its less strenuous advantage. It is, however, disheartening to note most lawyers in Ethiopia are not interested or at most not knowledgeable in ADR. So, with this gloomy picture, cases that need to be encouraged to be settled through arbitration are left until much later when there is no way out that a lawyer finally resorts to peaceful resolution method.

### **Qualities of Good ADR Personnel / Conflict Resolution Mechanisms**

We have noticed that ADR stands a good alternative to civil litigation due to its numerous advantages. The next question may be “Do I need some qualities to be able to negotiate, conciliate, mediate, arbitrate, etc?” The requirements may be summarized as follows:

- i. One has to acquire an in-depth or at least a minimum knowledge of ADR processes. You do not jump into doing something without knowing its rules. If you do not know the rules, it will just be like someone who wants to participate in a football competition but does not know that he needs a ball, a field of certain meters, 11 people on both sides, a central and assistant referees, two goal posts facing each, 90 minutes (45 minutes apiece) with a 15 minutes' break, etc. Therefore knowledge of the rules of ADR is a *sine qua non* for conflict resolution.
- ii. You need to use humour as a negotiation strategy. It is said that humour has a way of uniting even the most diverse of people. If you are an Arbitrator, the parties to the dispute are before you, and you have a stone- like face and go about the work grudgingly, next time, no one will come to you.
- iii. You need to listen well, that means you must be a good listener or you have to develop such skills to enable you help the parties. If the parties understand that you listen to them attentively, they will be encouraged to speak themselves out and as they speak out you will understand and resolve the matter well. Ask them questions when you do not understand them. Encourage them to be free. In these ways you can give yourself and the parties' confidence in the conflict resolution outcome.

### **Implications of Embracing ADR in Ethiopia**

The implication of the embrace of alternative dispute resolution in Ethiopia cannot be over emphasized. As we have noted, this practice has long usage in Ethiopia but it has not been elevated to any higher pedestal. The government, the academia, the judiciary, social and professional bodies are all aware that the courts can not be the only means of conflict resolution. There is now a shift to alternative means of conflict resolution in all fields. The Labour Proclamation encourages the settlement of labour and industrial relations dispute through peaceful means rather than by the courts.

On the 28th December 2007, the Minister of Justice, Mr. Asefa Kesito, at a workshop, said strengthening Alternative Dispute Resolution (ADR) mechanisms and institutions would have positive impact not only on Ethiopia but also on the interests of all development partners of Ethiopia. This means that the government is concerned about ADR as means of strengthening and reforming its judicial system. The Minister went further to reiterate the intention of the government in working out modalities for the institutionalization of ADR to provide fast and effective alternative conflict resolutions that will serve the interests of both nationals and foreigners. The Minister concluded that strong ADR mechanisms and institutions would benefit the country in its efforts to attract investment, facilitate commerce and enhance its conduct of international relations.

In the academic world, the current syllabi of most public and private universities have incorporated Alternative Dispute Resolution as a course. This move is commendable as it marks a departure from the old order. One reason for the lack of the awareness and progress of ADR in Ethiopia has been the neglect of its delivery as a course in the universities. With the proliferations of Universities, we look forward to seeing the impact of ADR in the system.

The elements of the traditional methods and practices of conflict resolutions are being incorporated or used alongside modern forms. It is gratifying to note that the political logjam in Ethiopia that arose out of the 15th May 2005 general elections was eventually settled by the intervention of the Committee of Elders. The report of the elders was used as the term of settlement by the government and the opposition leader at the Federal High Court in Addis Ababa.

One cannot be wrong to assert that ADR, as an alternative to court processes, has formed a veritable means of conflict resolution in Ethiopia. ADR is generally accepted and used by the government, the civil society (traditional and modern), the academia, legal practitioners, the judiciary, etc.

## **Conclusion**

Alternative Dispute Resolution in Ethiopia is as old as memory can tell. The various ethnic groups have used this method to settle family disputes, matrimonial conflicts, wars between communities and many other problems. Complementary to the communal settlement of disputes there existed and still exist other forms of conflict resolution through religious leaders, the courts and modern ADR methods like negotiation, mediation, arbitration, conciliation, the ombudsman.

However, as old as the ADR institution is in Ethiopia, we still see situations where it is not been utilized fully by the citizens. Legal effect is finally being given to the processes now. The importance of ADR as an alternative to court processes cannot be over-emphasized. ADR is in vogue today in the western legal system as a means of conflict resolution because it is cheaper, faster and has built bridges of friendship. If the western world with its high level of development and multitude of lawyers has now shifted emphasis to ADR, Ethiopia and other countries with lesser developed legal system should not waste time in institutionalizing

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