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## Exploration on professional family mediation practice in courts of Addis Ababa, Ethiopia

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### ABSTRACT

The literature recognizes that professional family mediation studies are generally scarce in Africa compared to the developed countries. Despite the overall dearth of mediation studies in Ethiopia, most of the research conducted on issues of mediation until now excluded professional family mediation practices. Qualitative research design was used to explore and describe the practice of professional family mediation in three courts of Addis Ababa, Ethiopia. Observation, interview, and document reviews were used to collect data. The child friendly space for the children and spouses counseling rooms were observed and mediated case files were reviewed. The generated data were analyzed by using thematic analysis. Four professional family mediators, three lawyers, three family bench judges and a mediation coordinator were participants of the study. The article explores benefits of mediation and the roles and challenges of the mediators. The mediation process promotes a win-win solution and helps spouses to build a stronger relationship. Mediators facilitate conversation through negotiation. The study found out facilitating conversation, educating, encouraging, confronting, bringing scenarios, and referral as the roles of the mediators. Lack of cooperation, limited source of referral, short appointments from judges were challenges mediators face. This article sheds light on the practice of family mediation in courts in Ethiopia. The research has social work implications on how to enhance the quality of mediation services.

**KEY TERMS:** child justice project office, courts, family mediators, roles, Ethiopia, Social Work, Africa

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## INTRODUCTION

This article presents the intents of the court to include professional family mediators in the court system and the benefits of professional family mediation to families and the court. The study aimed at exploring the roles and challenges of professional family mediators in the Child Justice Project Children's Legal Protection Centers in Ethiopia. A case study qualitative research method has been employed. The first part of the paper is about the causes and impacts of divorce on the parents and children and the need for professional family mediation. The second part of the paper presents about benefits of mediation and the roles and challenges of professional family mediation from the literature. The third part presents the research methods used to collect and analyze the data. The final part of the paper lies on the findings of the research with the associated discussion. Lastly, it presents the conclusion and implication of the research for social work education, policy, research and practice.

## BACKGROUND

### Social work issue

Estimates suggest that forty-five percent of first marriages in Ethiopia end in divorce within 30 years due to conflicts (Tilson and Larsen, 2000). Causes of family conflicts are many in number. In Ethiopia, early age of first marriage and childlessness within the first marriage are included within the causes of divorce (Tilson & Larsen, 2000). Divorced individuals experience higher levels of depression, lower levels of life satisfaction and more health problems than married individuals. Upset, anger and devastation are the possible impacts of divorce on children.

### Literature and the gaps in the literature

#### *Mediation: cultural and professional aspects*

Mediation is a commonly practiced form of dispute resolution that assists people in dispute to reach to their own solution with the help of a mediator. According to Schepard (2001) family mediation is a process in which a mediator, an impartial third party, facilitates the resolution of family disputes by promoting the participants' voluntary agreement. Conflicts can destroy any family which makes family mediation services extremely necessary (Osmuk, 2013). Family mediation can take place in two settings: one is in-court mediation and the other one is a mediation that can take place anywhere else. In the in-court mediation, the idea of mediation is initiated from the court (Mantel & Critchley, 2004). Mediators try to resolve conflict between the families and if they are not successful, they forward the case to the court (Boniface, 2012).

In traditional Africa mediation of conflicts are not seen out of the social context. All the necessary information that are needed in the mediation are covered and the consequences that will bring to the other members of the family is critically seen (Boniface, 2012). In Ubuntu style, mediation is informal, flexible and enables the disputing parties to feel that social harmony is promoted which is a big asset for most African countries (Boniface, 2012). Some research in East Africa community identified Ubuntu as a philosophical framework for a Pan-African thinking that can also shade light for professional practices including social work (Tiwikrize & Spitzer, 2019). As a philosophical framework that reflects the collective nature of African societies, the Ubuntu spirit can still work in mediation. Such traditional structures contributed a lot for marital stability (Mabeyo & Kiwelu, 2019, p. 98).

Like other African nations, Ethiopia has been using traditional conflict resolution methods at different levels. The country is endowed with many cultures that have brought up a wide range of mediation styles. Some of the common conflict resolution techniques in Ethiopia are Kitcha of the Gurage, Occudo of Gambella, Gadaa of Oromo, Medda of Afar, Shimgelena of Amhara people (Stella, 2013). These types of mediations are common in the rural parts of the country and their current practice worth independent explorations. In Ethiopia, mediation is referred as '*Shimgelenain*' in which a third person who could be a relative, neighbor, or religious leader helps the spouses to reach to an amicable settlement. These significant members talk the spouses on a private and in common sessions. Instead of looking for the root causes of the problem, mediators focus on the peaceful solution without properly seeing the issues in detail. It is a public knowledge that they even force the spouses to stay together for the sake of their children.

In their study in Tanzania Mabeyo & Kiwelu (2019, p. 98) identified that some social workers do not believe in the applicability of some of the Western social work methods such as modern social work models for marital conflicts as delay in providing the appropriate services that the models require can create more enmity. This is very true in the context of rural areas and most of the urban settings. However, when traditional conflict resolution mechanisms such as the *Washenga* of Tanzania (group of elders) fail to bring reconciliation cases go to courts and other authorities.

### *Benefits of professional family mediation to families and courts*

The process of mediation is less confrontational and reduces the likelihood of win or loss mentality (Eshetu & Getu, 2009). Mediation facilitates preservation of the family and other ongoing relationships, resolves control and power imbalances (the parties themselves design their own resolution and thus are more likely to be committed to its success), and helps to deal with the emotional aspects of cases (Eshetu & Getu, 2009). Mediation encourages clients to understand themselves as responsible, active decision makers, rather than as passive recipients of others' decisions (Barsky, 2001).

### *Roles of mediators*

The role of the mediator is to ask parties different kinds of questions regarding the conflict so as to explore the needs and interests of the parties and help parties to find resolution. According to Foster (2003), disputing parties fully bound themselves in the conflict and the mediator helps them to view the conflict from a distance, or as an outsider through storytelling. Barsky (2001) had also mentioned that a mediator has the role to help parties to move from competitive and destructive perspectives to collaborative and conducive problem-solving strategies.

### *Challenges of family mediators*

The basic challenge that family mediators face when deciding on the matter is whether it is appropriate or inappropriate to use conflict resolution/mediation (Kelly, 2014). The other major challenge has to do with principle of impartiality, which is the basic principle in family mediation, in the case of power imbalances and personal safety. In principle, impartiality means staying neutral or unbiased to any party. In the process of mediation one party could speak more and the other may not be good at speaking or becomes too emotional when speaking (Barsky, 2001, p.29). In the case when there is a safety issue and when the mediator knows that one party is threatened by the other, it influences the process of mediation which also poses a big challenge for a family mediator. Research on the family mediation process and the actual working methods of mediators has received very little attention and should be the focus of research to elevate the field to a more sophisticated and effective level of practice (Kelly, 2014). In the same vein, we did not find any study on the practice of professional family mediation in Ethiopia. To that end, this article aimed to document the practice of family mediation in selected courts in Addis Ababa.

The research aims at addressing the following questions. What was the intention of the court to make family mediators be part of the court system? What are the benefits of professional family mediation to families and the court? What are the roles of family mediators in the court? What are the challenges of family mediators in the court? Family is the basic institution for every society; and hence has to be well protected in order to have better social functioning. Professional family mediation is believed to bring advantages to families and the court; therefore, it has to be explored and widely applied to minimize the negative effects of divorce on the parents and their children and the society at large.

## **METHODS**

The study was conducted in the Federal Supreme Court Child Justice Project Office, Children's Legal Protection Centers that were found in the premises of the Federal Supreme Court, Yeka First Instance Court and Lideta First Instance Court. Exploratory qualitative research design was used for the research as it relies on open-ended questions and probing through in-depth interviews and key informant interviews. We obtained ethical clearance from the School of Social Work at Addis Ababa University before data collection. There were eleven participants in this study, four professional family mediators, three judges, three lawyers and the mediation coordinator of the three centers. All the research participants provided consent to be part of the research. Observation and document review have also been used as other sources of data collection. Through observation we have observed the rooms of mediation, child playrooms and the way how the documents are filled in and filed up. Available brochures, guidelines, pamphlets and reports on the mediated cases have been reviewed.

Data was analyzed through thematic analysis and was done manually. All the interviews were conducted in Amharic (State language of Ethiopia) and were audio taped. Data was first transcribed to Amharic text. Next, the Amharic text was translated to English. 30 codes have been identified after reading the translated data. These codes were re-categorized into 11 categories based on similarity. Later, three themes were developed that clearly show relationships between the identified codes and categories. These themes were benefits of mediation, roles, and challenges. As part of the dissemination, a copy of the technical report was shared to the Federal Supreme Court. A member of our team was invited to present the findings of the research to family bench judges, the police,

attorneys, lawyers and social workers of the Oromia Regional State on a seminar to share the experience of professional family mediation in Addis Ababa to Oromia.

## **FINDINGS AND DISCUSSION**

### **Background**

Findings show that there are four professional family mediators who work on a volunteer basis in the Child Justice Project Office and Children's Legal Protection Center. These mediators work once and twice in a week and come from educational backgrounds of Social Work, Marriage and Family Therapy, and Psychology and worked in the project for 2-3 years. From the four mediators, two have taken the trainings that were provided in the Project and joined the center but the other two just joined the project based on their previous experiences in family issues. Other key informants came from the background of law. The basis for the establishment of the Child Justice Project Office was Article 36 of the Federal Democratic Republic of Ethiopian Constitution that devotes a full article about the rights of children and stated the following: 'In all actions concerning children undertaken by public and private welfare institutions, courts of law, administrative authorities or legislative bodies, the primary consideration shall be the best interest of the child' (Federal Negarit Gazeta, proclamation No.1/1995). Under the Child Justice Project Office, Children's Legal Protection Centers (CLPC) was established in September 2012 through the collaboration of the Federal Supreme Court and the African Child Policy Forum to guarantee the rights of children coming in contact with the justice system is respected. These centers provide legal aid services and psychological services to see the right and best interest of the child are assured. The services that are provided under the center include giving legal aid services to children and those who bring the children and litigating in and outside the court on issues that threaten the right and interest of the child. The office established referral networks through which children involved in the justice system get legal and psychological services from governmental and nongovernmental organizations. It establishes court advisories to resolve conflict that touches the rights and wellbeing of children through mediation. Therefore, according to research participants the intent of the court to include professional family mediators in the court is to promote the best interest of the child when there are complicated civil cases that might affect the same. The children's legal protection centers have child-friendly setting where there are pictures and toys to the kids and the mediation rooms are quite where there are three chairs that are used as a seat for mediators and disputant parents.

### **Causes to appeal for divorce**

Findings show that verbal and physical abuse, mistrust, hiding income, sexual incompatibility, pregnancy as the only reason to sustain marriage and staying in marriage for the sake of children and wanting divorce when children grow up are some of the causes of divorce as identified by the mediators. The mediators reported that drug abuse, when spouses cannot communicate well, hiding one's true history, interference from friends and parents of the spouses, disagreement on the punishment of teenage children, when the father thinks that the mother is raising the children without manner and the mother thinks that the father is abusing the children were also other reasons of divorce. Furthermore, living apart for many years and not being happy when moving back together was another factor. This has been common particularly among women who came back from Arab/Middle East countries after many years of domestic employment.

### **Benefits of professional family mediation to families and the court**

Regarding the benefits of family mediation, the findings from the mediators show that "mediation promotes a win-win solution to parties". A mediator at Yeka First Instance Court added "the 'informal nature' of the mediation helps parties to express their angers, stress and even to cry out. In the mediation, parties do not suffer from the long appointments like in the court because mediation takes from 3-4 sessions within few weeks." In the court system, on the other hand, clients might wait for three up to four months to finish their case. There is no payment for getting mediation services in the centers as reported. Except for issues related to physical abuse and domestic violence, every issue discussed with the mediator is kept confidential because if parties are unhappy by the mediation service, they can precede their cases to the court but none of the secrets are reported to the court. Mediation also "promotes a stronger relationship among parties." Parties openly breathe out everything that they have been holding for long. When they speak and listen to each other, it creates an environment for more understanding. Understanding each other gives the chance to apologize for the wrong things that they have done. Furthermore, it reduces the workload of the judges if the mediation endeavor can become successful. Likewise, according to Schepard (2001) mediation has the benefit of increasing the self-determination and empowerment of parties and their ability to communicate, promote the best interest of the child and reduce the economic and emotional costs associated with the resolution of family disputes. In addition to that, preservation of the family

and other ongoing relationships, control and power imbalance, and a great satisfaction with the dispute resolution process and the outcomes are among the benefits of mediation (Eshetu & Getu, 2009). Caller (2013) on the other hand has mentioned that mediation protects the confidentiality of parties and that parties will have an agreed deal of control on the process and outcome of mediation. And hence, brings more satisfaction and fastens settlement compared to the formal procedure in the court. Mediation helps parties to have a stronger relationship as they openly discuss issues of their family with the mediator. They can reach to understanding with each other that helps them to know more about their spouses. Consistent with that, Kelly (2014) sees conflict as an opportunity to build a stronger relationship and stronger families and therefore conflict as not always a bad thing. The idea pointed out by Kelly in conflict resolution and the findings of this research are similar in that conflicts can contribute to stronger relationships and build stronger families. Azcona (1999) has also mentioned that resolutions of conflicts are the very secure steps that bring happiness and fulfillment to the family.

## **Roles of professional family mediators**

### *Assessing needs*

The common tasks of the mediators include introducing their roles and discovering the needs of the parties. One of the mediators said “We [Mediators] do ask spouses their need because some clients could report that they came just because the court ordered them, some came with the sense of appearing in front of the court, some came thinking that it is women’s affair.” Therefore, asking the needs of the parties is found to be the role of the mediators. The mediators also check whether there are children who are under age 18 as the Project Office mainly serves those targets of the population.

### *Facilitating conversation*

During facilitating the sessions, mediators ask different questions to understand the problem in detail and to identify specific needs. To elaborate this, one of the mediators explained: “The wife could say financial problem is the case. My role in facilitating this is that: what is the specific thing? Does he [the husband] hide his income from you? Is he extravagant? Is he not giving enough money for the house? These are the questions I ask so as to understand the problem and to make the other party reason out why he is doing that.” As to the literature, mediators play the role of facilitator to support parties’ expression of their needs and wants by asking different questions to parties in order to raise the level of understanding between parties. If, for example, an economic problem is the issue the mediator asks different kinds of questions related to finance in order to facilitate the articulation of the problems and raise an understanding among parties. Kelly (2014) similar to this mentioned that in facilitative mediation parties are encouraged to negotiate their needs and interests with the help of the mediator facilitating the process. According to Kelly (2014) the role of the mediator is asking parties different kinds of questions regarding the conflict, explores the needs and interests of the parties.

### *Educating*

Educating was also another role of the mediators focusing on parenting skills, psycho-education and sex education. One of the mediators at Lideta First Instance Court said: “Parents are given education on how to remain as responsible parents even after separation.” Another mediator in Yeka First Instance court also said: “If parents want to reconsider their marriage, we [Mediators] give them trainings on parenting skill, conflict resolution methods and anger management.” Parents who participate in the mediation can also learn about the effects of divorce on children’s education, future relationship, and related issues. One of the mediators in the Center explained this as:

*There are some economically well to do women who insist on divorce thinking that they can do everything for their children without expecting anything from the father. For such parents, I bring data from studies and tell them what a father means to his children and what he contributes for the psychological and physical growth of his children. I bring them researches that compare the educational performance and future relationship of children whose parents are living together peacefully and those who got divorced.*

### *Confronting*

Sometimes mediators directly or indirectly inform that the behavior or the attitude of parties is wrong. Some of the common issues in marriage are behavioral problems (drinking, coming late home, physical, and verbal abuses, loss of respect and love, communication problems and the like). To elaborate the role of a family mediator on issues that should be confronted a mediator expressed, “The wife could say he does not respect her, he mistreats

her in public or such things, and I would table this issue for confrontation and if the husband accepts that I will tell him that she is his wife and should respect her before anyone else.”

### *Encouraging*

Positive changes among the parties are well encouraged by mediators. Mediators encourage parties throughout the process of the mediation session. One of the mediators at Lideta Instance Supreme Court explained this as follows:

*In the first session of mediation, clients are encouraged to vent out the emotional feelings that they have hold in their house and in the court. The other way in which parties are encouraged is in the next sessions of mediations. There might be phone calls between disputing parties, text messages, and visitations that took place among parties after the first sessions.*

### *Bringing scenarios to instill hope*

Mediators bring the stories of others or their own to teach the parties and give them hope. One of the mediators at the Yeka Instance Supreme court explained it as:

*I even share my stories to give them hope and believe that their marriage can also be improved. I tell them that my parents have lived together for 30 years, when my father becomes aggressive my mother used to do this... and say this... because of this they were able to live together for the last 30 years. When I share my stories to them, they hoped that their relationship can be fixed.*

Mediators also bring scenarios to disputant parties not only to give them hope but also that their problems are solvable and to teach them about the negative consequences of their actions by bringing the stories of themselves or others. Posing scenarios which is also the other role of family mediators has two major goals. One is to teach clients about the effect of divorce on themselves and their children’s educational performance, peace and future relationship. The other purpose of telling the stories of others is to give parents the hope that their problems can be solved. Consistent with this finding, Foster (2003) has mentioned that mediators work together with the parties to create a story where conflict is replaced by an agreement or settlement because of the stories that are told by the mediator.

### *Making referral*

Regarding referral, parties are referred to different places based on the problems that they brought to the mediation. Physically abused women are referred to a common place called ‘women’s shelter’, those with drug abuse problem are sent to a hospital that closely works with the Project Office; and on the other hand, children in unsuitable conditions are sent to governmental and non-governmental organizations that work with the Child Justice Project Office.

### **Challenges of family mediators**

Family mediators face challenges that emanate from the work itself, the police officers, the judges and the Mediation Centre itself. As the place of the center is found in the court, it is frustrating for considerable number of clients. In the case of court-annexed mediation, some parties participate in the mediation just because they are ordered by the court which has been found to minimize the effectiveness of the mediation. On the other hand, some female clients needed the favor of female mediators so as to threaten their husbands. Some clients minimize the roles of mediators or express their dissatisfaction on the process and say, “is this all you can do for us?”. The challenge from police officers is that they are not willing to work with mediators. One of the mediators said, “There are times when I wanted to make sudden visit to my clients’ home depending on the requirements of the case. In such conditions, I want to go with police officers for safety purpose, but most of the time police officers are not cooperative.” The other challenge as reported by one of the mediators is that, “Judges give short appointment to the mediators in the case of court-ordered mediation. Short appointments will not allow us to conduct multiple sessions with disputant spouses and prepare comprehensive report regarding the process”. The last challenge identified by the mediators is the setting of the mediation service. A mediator said that, “The fact that the service is provided in the court compound makes most of the clients to come to the mediation out of fear and undue respect for the court; and not necessarily with a vision to benefit from the mediation process.” The table below shows the data obtained from the dossiers of the families documented at each center and presents the number of families who had received mediation services. As shown below, the centers are named as C1, C2, and

C3. It displays the number of petitions to divorce, number of divorced and reconciled spouses. It also shows the number of cases that were stopped and were on appointment from the years 2014 to 2016.

*Table 1: Mediation cases handled by the three courts*

Center's name	Year	Petition of divorce	Divorced	Reconciled	Stopped	On appointment
C-1	2014 to 2016	263	54	142	30	37
C-2	2014 to 2016	160	60	78	10	12
C-3	2014 to 2016	38	20	4	6	8
Total in the three courts		461	134	224	46	57

*Source: Annual documents of families who came to mediation from the three courts*

Every service given in the center is free of charge and the mediators are all volunteers but work once or twice in a week. This makes mediation inaccessible for families who want the service either from court order or families who come to the center directly on their own. In line with this, Kelly (2014) identified that deciding whether to use mediation or therapy and inaccessibility of mediation to those who want to get the service at minimum cost are challenges of mediation.

## CONCLUSIONS

Findings show that Article 36 of the Federal Democratic Republic of Ethiopian Constitution which devotes full article about the right of a child is a base for the establishment of the Child Justice Project Office. Decisions by the court might not always secure the best interest of the child. Decisions on child custody, visitation and maintenance might not always consider the best interest of the child. For this reason, a Project Office was established under the Federal Supreme Court and under that the children's legal protection centers (CLPCs) were established that could guarantee the best interest of the child. From the findings we can understand that faster settlement of conflicts, learning about parenting skill, conflict resolution methods and sex education, chance to build stronger relationship, opportunity for apologies are benefits that spouses could get in the mediation. Lack of trust of families in the service as professional family service is not common in the country, minimizing the roles of mediators by parties because of high expectation from the process, need of favor from women clients to threaten the husbands as the place of mediation is given in the court compound are some of the challenges of family mediators. Limited referral system that interrupts mediation services, lack of follow up techniques to know the conditions of families who have taken the mediation services are living peacefully or not, lack of cooperation from police officers as there are times that need to go to the homes of parties to see their condition, the short appointments that are given by judges to get the reports in the case of court-annexed mediation are the major challenges that are identified in the study.

## IMPLICATIONS AND RECOMMENDATIONS

Findings show lack of referral and follow up mechanisms. There are parents who need psychiatric support but because of the limited links and referral systems mediation will not continue as the data shows. Hence, the Child Justice Project Office should look for governmental and non-governmental organizations that could support the process of mediation to have a noble mediation practice. Mediation unlike the court process gives more attention to the psychological and emotional aspects of spouses. It also promotes the best interest of the child more than the decisions in the court. Therefore, the practice should be well promoted and appreciated in every courts of the country as it is also reducing the workload of the court at the family benches. Findings have also shown a lack of cooperation among police officers for the success of mediation. Training should be provided to police officers that mediation is not a task that can only be completed in the mediation rooms but needs the collaboration of other professionals like police officers that could assist the works of mediators. Social workers can involve in such tasks. With regards to social work education, the social work curriculum should incorporate conflict resolution mechanisms in the bachelor and/or masters programs as one or more courses. In addition to teaching the conflict resolution theories, models and therapies, Schools of Social Work should teach students about the mediation process in practical terms through Field Education Programs. This will in turn increases the number of mediators who are working in the Child Justice Project Office and in other similar settings. Of course, the courses should not offer only western approaches of mediation but should also integrate and offer the opportunities to instructors

and students to explore indigenous knowledge and practices such as '*Shinglena*' or other similar African theories that lie under Ubuntu. This research has explored the mediation only from the mediators' points of view and from those who are involved in the legal system. A further longitudinal study is needed in order to know the impact of mediation on families who have taken mediation service. Post-mediation services must be applied to families who have reached to amicable settlement whether they are living peacefully or not. Those who are separated, whether they are visiting and giving maintenance supplies to their children must be assessed in order to see if mediation has brought the changes that are mentioned by participants of this current study. As it has been shown in the finding of the research, only four mediators are working in the project as volunteers. Government should pay more attention to families in conflict and come to mediation by investing more budgets to the Child Justice Project Office of the Federal Supreme Court to increase the number of mediators to promote the best interest of children and help parents to reach to their own agreements. The policy of the legal system should include family mediators as part of the court system by creating a work position/structure for mediators so that families can receive the services every time they come to the court. This will expand the service and increase the accessibility of the service.

## CONCLUSION

The article presented the intention of the court to include professional family mediators to promote the best interest of the child during divorce cases. The roles of the family mediators in the mediation process have been discussed. While discharging their roles the types of challenges they face from the police and the family bench judges as well as from the disputant parties have also been presented. The implications of the findings to social work practice, research and education have been included in the article.



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