

# The Need for Reform towards Comprehensive Legislation on Court Annexed ADR in Ethiopia

---

Samuel Ephrem \*

## Abstract

In spite of various legal reform measures in Ethiopia, delay in the judicial process, predictability and access are still challenges of utmost concern. This article examines whether court annexed ADR can serve as an effective reform measure to lessen these judicial problems. Compared with litigation and private ADR, court annexed ADR's institutional merits and procedural advantages –in resolving certain civil suits within reasonable time, less cost and improved fairness– are examined. I argue that settlement of civil disputes through court annexed ADR reduces courts' caseloads. Such reduction of case load in courts can significantly improve litigation processes and enables courts to resolve other civil suits within reduced time, cost and quality. Moreover, the referral to ADR by courts enables disputants to choose and access dispute resolution methods. However, lack of comprehensive national regulation, inadequate awareness, ineffective administration and execution, are among the potential challenges in the optimal utilization of this dispute resolution tool. It is argued that there is the need for a comprehensive law on court annexed ADR. And subsequently, courts can carefully implement court annexed ADR with the requisite level of competence and diligence to minimize the challenges.

## Key terms:

Court Annexed ADR · Judicial problems · Prospects · Challenges · Reform measures

DOI <http://dx.doi.org/10.4314/mlr.v17i1.5>

This article is licensed under a Creative Commons Attribution-NonCommercial-NoDerivs (CC BY-NC-ND)

**Received:** Revised Version, 30 March 2023

**Accepted:** 13 August 2023

## Suggested citation:

Samuel Ephrem (2023). "The Need for Comprehensive Legislative Reform on Court Annexed ADR in Ethiopia", 17(1) *Mizan Law Review*: 151-166.

---

\* Samuel Ephrem (LLB, Gonder University, LLM in Business Law; Addis Ababa University), Lecturer of Law, Wolaita Sodo University.

Email: [zephremson@gmail.com](mailto:zephremson@gmail.com)

ORCID: <http://orcid.org/0000-0002-8248-375x>

---

## Contents

Abstract

1. Introduction

2. Court Annexed ADR: Brief Conceptual Overview

3. Court Annexed ADR: Recent Developments in Ethiopia

4. Court Annexed ADR: Reform Measure for Judicial Problems in Ethiopia

5. Challenges of Court Annexed ADR

6. Concluding Remarks

---

## 1. Introduction

Relationships and disputes are taken as an inevitable fact of life in human history.<sup>1</sup> Access to the resolution of disputes within a short time, lower cost, and in the context of fairness is thus the legitimate expectation of disputants. In order to fulfill disputants' expectations and interests, modernization and strengthening civil justice systems has drawn due attention.<sup>2</sup> To this end, different joint reform measures have been undertaken by federal courts. This includes the 2008 new procedures for resolution of civil disputes that are partly put into practice.<sup>3</sup> Moreover, the 2005 *Comprehensive Justice System Reform Program*, *inter alia*, included judicial reform.<sup>4</sup> There is a steadily increasing attention towards judicial reform which can be observed principally from the establishment of new benches, new buildings, and

---

### Acronyms

ADR	Alternative Dispute Resolution
MOU	Memorandums of Understanding
EACC	Ethiopian Arbitration and Conciliation Center
LMDC	Lagos Multi Door Court House

<sup>1</sup> See, Osher, D. *et al*, (2020), "Drivers of Human developments: How Relationship and Context Shape Learning and Developments, *Applied Developmental Science*, Vol. 24, Issue 1.

<sup>2</sup> Yoseph Aemiro (December 2012). "የፍትህ-ብሔር ክርክሮች ሂደት፣ ፈተናዎችና ተስፋው/ The Litigation Process of Civil Cases, Challenges and Prospects" (Amharic), *Ethiopian Business Law Series*, Vol. V, p. 9

<sup>3</sup> Ibid

<sup>4</sup> See details of the reform measures from *Comprehensive Justice System Reform Program Baseline Study Report* (February, 2005), Ministry of Capacity Building Justice System Reform Program Office, pp.159-178 (Hereafter the Reform Program). See also Federal Judicial Administration Commission Establishment Proclamation No.24, (1996), Article 8 and 7; and Ombudsman Proclamation No.165, (2000), Article7(2)

---

application of new technology, and the budget augmentation of federal courts since 2019.<sup>5</sup>

Delay, excessive cost, unfairness, unpredictability and inaccessibility of litigation process are among the major factors that erode public confidence in courts.<sup>6</sup> Case congestions exacerbate these problems. Delayed justice is a major problem in federal courts' dispute resolution services. Delayed services directly and indirectly affect economic and social lives of citizens. And there are various problems specified as causes for the delay of cases before federal courts which relate to inadequate number of judges, litigation patterns including delay techniques by some trial lawyers and other factors.<sup>7</sup>

Other major problems include some instances of inconsistency in Federal Supreme Court Cassation decisions<sup>8</sup>, delay in hearing schedules whereby client appointed at 9 AM in the morning may wait until 12.00 AM.<sup>9</sup> And there are times when some federal judges mistreat clients and attorneys.<sup>10</sup>

With regard to the afore-stated problems, this article investigates whether court annexed ADR can serve as a reform measure. To this end, Court Annexed ADR in four major jurisdictions are examined. The article further includes some comparative discussion on court annexed ADR in USA, India and Nigeria. The article further investigates prospects and challenges of court

---

<sup>5</sup> Interview with Ato Getaw Legese, (on 12 Tir 2013. E. C.), newly appointed coordinator to supervise court annexed mediation centers in Addis Ababa (hereafter Ato Getaw L.)

<sup>6</sup> There are also other factors that adversely affect public confidence in the services of courts.

<sup>7</sup> See, *Case Study Report on Continuing -Job-Training Needs for Judges of Federal Supreme Court, Ethiopia* as cited on the Reform (2003 ), p.160

<sup>8</sup> Contradictory and inconsistent decisions erode public confidence on judicial services. For example, see the following decisions of Cassation Bench in general: Addis Ababa City administration vs. Dinku PLC, September 24, 2004 G.,C., Federal Supreme Courts Cassation Bench File No.54697; Decision of Federal Cassation Division on Tikemt13/2002 EC; Decision of Federal Cassation Division, 2002(E.C.), Cassation file No. 696/5738. See also W/o Amzia Sh/Abraham vs Ato Abdu Ismail, 2002., E.C. Federal Supreme Court Cassation Division, Cassation File, No. 696/5738

<sup>9</sup> Yoseph, *supra* note 2, p. 23

<sup>10</sup> Judicial systems are neither accessible nor responsive to the needs of the poor. The indigent and powerless simply do not see courts as an institution that serves their interest and poor system for case management, little knowledge of the justice system by general public and hence very limited confidence of the general public in courts and other institutions in the administration of justice. The Reform Program, *supra* note 4, pp.159-178.

---

annexed ADR if it is employed as a reform measure against judicial problems.

The next two sections of this article mainly discuss conceptual overview and recent developments of court annexed ADR in Ethiopia. Section 4 deals with litigation methods and discusses prospects of court annexed ADR as appropriate dispute resolution. The section discusses court annexed ADR's potential to reduce courts' case congestions. The fifth section examines the factors that can potentially hinder the introduction and implementation of court annexed ADR in Ethiopia.

## 2. Court Annexed ADR: Brief Conceptual Overview

There are various dispute resolution processes that have been used for resolution of disputes. These are broadly classified into rational and irrational processes. The irrational process involves chance and physical strength.<sup>11</sup> Rational dispute resolution processes, *inter alia*, include judicial dispute resolution, private ADR and court annexed ADR.<sup>12</sup> Private ADR has received enthusiastic support from citizens.<sup>13</sup> This has prompted courts of some legal systems to adjust their services mainly through introduction of different types of ADR into court systems.

Court annexed ADR is defined as:<sup>14</sup>

... an alternative to trial modes of dispute resolution that takes place inside a court. It is when trial court launches a program that would supply range of alternative dispute resolution mechanisms for litigants. It occurs after case is filed in a court and when a disputant initiates an ordinary law suit.

Court Annexed ADR is a model which contains some attributes that are different from private ADR. These features include state funding of ADR, state offices, multi-door court house and compulsory use of some ADR

---

<sup>11</sup> D. Paul Edmond (ed.) (1986). *Alternative to Litigation*, Edward Street Aurora Centirio, Canada Law Book Inc. pp.16-17 (hereafter Edmond1.)

<sup>12</sup> See Robert M. Cover (1979), "Dispute Resolution: A Foreword," *Yale law Journal of Dispute Resolution*, Vol. 88, No. 5. pp. 910-915. See also: Iftikhar Hussain Bhat, (2013) "Access to Justice: A Critical Analysis of Alternate Dispute Resolution Mechanisms in India", *International Journal of Humanities and Social Science Invention*, Vol.2, Issue No.5, p. 47

<sup>13</sup> See Frank Sander, (1976), "Varieties of Dispute Processing", *F.R.D*, Vol.70, pp. 111,130.

<sup>14</sup> See in general Patricia M. Wald (1997), "ADR and the Court: An Update" *Duke Law Journal* Vol. 46, No.6

---

techniques by court in specialized circumstances.<sup>15</sup> In court annexed ADR, the court regulates the process by issuing procedural rules and certifying court annexed ADR practitioners. The court systems that adopt such programs offer them with their implicit endorsement as a public service, and practitioners are responsible and accountable to the public.

### **3. Court Annexed ADR: Recent Developments in Ethiopia**

ADR is recognized under the 1960 Civil Code and the 1965 Civil Procedure Code.<sup>16</sup> Moreover, the FDRE Constitution impliedly recognizes ADR's role in promoting and enhancing accessibility of justice in Ethiopia.<sup>17</sup> Indeed, ADR is expressly given priority under various modern private laws in Ethiopia.<sup>18</sup> This is substantiated in the interpretations of Federal Supreme Court Cassation Bench.<sup>19</sup>

Proclamation No.1237/2021 –A Proclamation to Provide for Arbitration and Conciliation Working Procedure– gives due attention to the establishment of ADR in order to complement the constitutional right to justice and in particular, to contribute to the resolution of investment and commercial related disputes and to the development of the sector.<sup>20</sup> The preamble of the Proclamation underlines the importance of arbitration and conciliation in rendering efficient decision by reducing transaction costs of contracting

---

<sup>15</sup> Some “first-Stage models of ADR” are now privately institutionalized operating within their own jurisdictional settings. See, General Peter B. Edelman (1984), “Institutionalizing Dispute Resolution Alternatives” *The Justice System Journal*, Vol. 9, No. 2, pp. 134-150. See also Stevens H. Clarke and Elizabeth Ellen Gordon, (1997), “Public Sponsorship of Private Settling: Court-Ordered Civil Case Mediation”, *Justice System Journal*, Vol.19, No.3, pp. 311-339.

<sup>16</sup> Article 3347(1), and Article 3307-3318 of Ethiopian Civil Code.

<sup>17</sup> Article 34(4), 78(5) and 78(4) of Constitution of Federal Democratic Republic of Ethiopia, August 1995, Federal Negarit Gazette, Extra Ordinary Issue No.1, Addis Ababa,

<sup>18</sup> See for instance, Articles 274-277 of Ethiopian Civil Procedure Code. And for mandatory ADR see in general Cooperative Societies Proclamation No. 147/1998, Federal Negarit Gazzetta 5<sup>th</sup> year, No. 27, Addis Ababa; see also Federal Revised Family Code Proclamation No. 213/2000, Federal Negarit Gazzetta, Extra ordinary Issue No.1, Addis Ababa, 2000,

<sup>19</sup> See for example, Demise Oda vs. Asfaw Worku Federal Supreme Court, Cassation Bench Decision, 2013. E.C., File No. 196228.

<sup>20</sup> Proclamation No.1237/2021, A Proclamation to Provide for Arbitration and Conciliation Working Procedure, Preamble, Paragraph 1.

---

parties, protecting confidentiality, allowing participation of experts and use of simple procedure which provides freedom to contracting parties.<sup>21</sup>

In spite of the legal recognition accorded to ADR in general, Court Annexed ADR has not yet been introduced through legislation in Ethiopia.<sup>22</sup> Pilot court annexed mediation program was introduced by Federal courts in Addis Ababa since December 2013 based on memorandum of understanding (MOU) entered between the Ethiopian Arbitration and Conciliation Center (EACC) and Federal Supreme Court.<sup>23</sup> The program was subsequently launched before the Federal First Instance Courts in Addis Ababa –in particular before *Lideta, Menagesha, Kirkos, and Akaki* Federal First Instance Courts. The pilot program operated under some relevant articles of the Civil Procedure Code, the Labor Proclamation and other guidelines prepared by Federal Supreme Court.<sup>24</sup>

Since 2012, E.C. (i.e. 2019/2020), court annexed mediation is organized as department under the Vice President office of federal first instant courts.<sup>25</sup> Under this new restructuring, the pilot court annexed mediation was introduced at five centers in Addis Ababa. Those centers were *Lideta, Kolfe, Bole, Yeka, and Kirkos*. The pilot programs handled family, labor, and commercial disputes. Each center had at least 10 mediators selected among assistant judges. Furthermore, in 2013 E.C. (2020/2021), the Federal Supreme Court signed MOU with EACC and German International Mediation Campus to strengthen the program and provide training for mediators.<sup>26</sup> The Federal Supreme Court actively supports the program through, *inter alia*, organizing various discussion panels with scholars, federal court judges and lawyers.

The achievements in the program include a draft legislation for federal court annexed mediation that was submitted to the parliament; and ultimately Court Annexed Mediation legal provisions have been embodied under the Federal Court Proclamation No. 1234/2021.<sup>27</sup> The Proclamation is intended

---

<sup>21</sup> Id., Preamble Paragraph two

<sup>22</sup> Other than court annexed mediation at federal courts in Ethiopia.

<sup>23</sup> Activity report of Ethiopian arbitration and conciliation centers, (2004-2010); available at: [www.eacc.com.et](http://www.eacc.com.et)

<sup>24</sup> See relevant provisions of Civil Procedure Code Decree No. 52 of 1965; and the Civil Code of 1960.

<sup>25</sup> Interview with Ato Getaw L., *supra* note 5.

<sup>26</sup> International Mediation Campus is German based mediation campus that well recognized in terms of giving training for mediators through our Europe.

<sup>27</sup> See Articles 45-48 of Federal Court Proclamation No.1234/2021

---

to ensure effective, efficient and predictable services by federal courts.<sup>28</sup> The Proclamation enables civil cases (suits to Federal First Instances Court and Federal High Court) to be referred to Court Annexed Mediation Centers for resolution.<sup>29</sup> The Proclamation embodies provisions that state the criteria to be appointed as mediator, mediators' fee, mediation procedures, mediation principles, criteria for courts' recognition of mediation settlements and legal effect of court annexed mediation settlements.<sup>30</sup>

However, the Federal Court Proclamation No. 1234/2021 does not address issues such as the extent of judicial intervention in Court Annexed Mediation proceedings with a view to avoiding over-regulation that adversely affects the independent nature and operation of ADR. Moreover, the legal criteria such as the amount of money involved and complexities of cases that can be referred to Court Annexed Mediation are not addressed in the Proclamation. Thirdly, it deemphasizes the importance of respecting disputants right to voluntarily opt litigation method over Court annexed Mediation for their cases. Another major limitation is that the Proclamation only applies to federal courts. There are also types of Court Annexed ADR that are not covered under the Proclamation which include Court Annexed Conciliation, Court Annexed Arbitration, Court Annexed Early Neutral Evaluation and other more newly emerging ADR schemes.

Based on its mandate under Articles 45(7), 48(5) and 48(8) of Proclamation No. 1234/2021 the Federal Supreme Court has enacted Federal Court Annexed Mediation Directive No. 12/2014 (EC). The Directive aims at supporting the reform measures and embody ethical rules of conducts that clearly state the duties and rights of mediators.<sup>31</sup> It, *inter alia*, provides standards and quality in performance, competence, and discipline required from mediators. Moreover, it provides reasonable timeframe within which the mediation process ought to be finalized by mediators.<sup>32</sup>

The Directive also establishes disciplinary committee that investigates disciplinary issues of mediators.<sup>33</sup> And it also provides foundational principles of mediation process such as the need to respect parties' freewill and privacy,

---

<sup>28</sup> Id. Preamble Paragraph 4.

<sup>29</sup> Id., Article 45

<sup>30</sup> Id., Articles 45 -48.

<sup>31</sup> Federal Court Annexed Mediation Directive No.12/2014 E.C. Preamble Paragraph 3.

<sup>32</sup> Ibid

<sup>33</sup> Id., Preamble Paragraph 4.

---

neutrality and equal treatment of parties by mediators.<sup>34</sup> The directive provides detail procedural rules that direct mediation process and penalties for the violation of the provisions on ethical rules of conducts.<sup>35</sup> Furthermore, Article 13(2) (a) &(b) of the Directive requires the referral of certain specified cases to Court Annexed Mediation services at any stage of formal proceedings. This shows improved level of state recognition for court annexed mediation. Thus, such formal legislation for court annexed ADR deserves appreciation.

Although the Directive<sup>36</sup> requires certain types of cases to be referred to court annexed mediation, such stipulation shall not preclude disputants' right to opt for direct court proceedings whenever disputants are able to provide proof and show sufficient causes such as the exhaustion and repeated failure of informal methods in order to resolve their disputes. Hence, for such types of cases, prior exhaustion of other informal methods and attempt for mandatory court annexed mediation may merely result in wastage of resources and time.

## **4. Court Annexed ADR: Reform Measure for Judicial Problems in Ethiopia**

### **4.1 Court Annexed ADR: Comparative procedural advantages**

The nature and qualities of procedural rules employed by certain dispute resolution processes partly determine the method's capacity to resolve disputes fairly, economically and without delay. For example, unlike ADR methods, court litigation processes have win/lose features; and they involve adjudicatory, straightjacket and complex procedures for the resolution of disputes thereby, *inter alia*, potentially involving excessive emotional and economic cost, delay, and unfair outcomes.

On the other hand, ADR enables disputants to control the process and outcomes of dispute resolution, and it creates sense of ownership of the overall process. Win/win, transparent, predictable, flexible, and precise processes of mediation and conciliation reduces unreasonable emotional, economic and time cost which in turn can improve disputants' satisfactions and trust. Reduced litigation time in turn allows the parties in dispute to allocate their time to different economic and social activities. Win/win outcomes of court

---

<sup>34</sup> Id, Chapter 2

<sup>35</sup> Id, Chapters 3 and 7 respectively.

<sup>36</sup> Id., Art. 3(1), 13(1) (a)&(b)

---



annexed ADR process also preserves the post-litigation relationship among disputants.

Focus Group Discussion with lawyers at Federal Courts conducted in September 2022 shows merits of Court Annexed ADR.<sup>37</sup>

... Currently courts have huge backlog of cases with increasing number of files each year. There are a number of cases that could have been resolved through amicable solutions. Thus, Court Annexed ADR gives the chance for litigants to reconsider settling their disputes amicably with reduced cost and shorter time. Above all, Court Annexed ADR led by court increases the trust between parties and makes resolution [of disputes] easily enforceable. Therefore, commencing it in full scale throughout the country will save unnecessary litigation cost and time”.

Currently court annexed Mediation for divorce cases are launched before family benches of four federal courts. These are the Federal High Court Lideta Bench, Federal First Instance courts: Yeka, Nefassilk Lafto. Child justice project office functions under the auspices of Federal Supreme Courts.<sup>38</sup> The principal purposes of this program, *inter alia*, are meant to promote children’s best interests and to save institutions of marriages.<sup>39</sup> Bezawit notes the benefits of Court Annexed mediation over litigation method for resolutions of divorce disputes.<sup>40</sup> This is because Court Annexed Mediation procedures are more confidential and may reduce economic and emotional costs. Mediation for divorce cases also saves courts’ resources.<sup>41</sup>

#### **4.2 Court Annexed ADR: Institutional and legislative Merits.**

Court Annexed ADR results from creative integration of ADR with formal justice systems as discussed under preceding section. ADR assimilated into courts systems acquires institutional merits in addition to its inherent procedural qualities. Most importantly, institutional merits like public acceptance that is acquired due to integrity and impartiality established by court can be shared by ADR that is connected to the same court. ADR annexed

---

<sup>37</sup> Focus Group Discussion, (September 16, 2022) undertaken with senior Licensed lawyers (namely Belachew Girma Degife, Addissu Ayenew Yemeta, and Taklewold Tilahun ), Addis Ababa.

<sup>38</sup> Bezawit Eshetu (2017). “Court Annexed Mediation Services in Divorce Cases; the Case of Four Federal courts”, (LLM Thesis, Addis Ababa University).

<sup>39</sup> *Id.*, at 63.

<sup>40</sup> *Id.*, at 72.

<sup>41</sup> *Ibid.*

---

to a court can also use properties, finance, and facilities, human and other resources of the court. This enhances the effectiveness of court annexed ADR as a reform measure for judicial problems.

Court Annexed ADR operates under the control, support, guidance and supervision of court. This enables it to be complimentary and not competitive with the formal dispute resolution mechanism. The complementary relationships between Court Annexed ADR and courts improves efficiency and effectiveness.

An interview with a coordinator who supervised court annexed mediation centers in Addis Ababa showed that the attitude of lawyers and judges is positive regarding the success of pilot court annexed mediation in Addis Ababa.<sup>42</sup> Awareness enhancement sessions –such as the session conducted in Tir 2012 E.C. (January 2020) – were provided to federal judges by the Federal Supreme Court; and responses showed that trust upon pilot court annexed mediation has improved.<sup>43</sup> As a result, the number of cases referred by judges to court-annexed mediation centers has progressively increased.<sup>44</sup>

For instance, between Yekatit 2012 E.C. (February 2020) to Hamle 2012 EC (July 2020); 39 cases were referred to the centers.<sup>45</sup> Both parties appeared in 23 cases, and 17 cases were settled.<sup>46</sup> Hence, the settlement rate of court annexed mediation was 74%. According to the interview response of the coordinator of court annexed mediation centers in Addis Ababa, the success of court annexed mediation in 2013 E.C. (2020/21) has led to the increase in the number of suits that were referred to court annexed mediation centers in 2014 E.C (2021/22).<sup>47</sup>

The experiences of USA, India, Nigeria and other legal systems<sup>48</sup> show the effectiveness of court annexed ADR both in the quality and the number of

---

<sup>42</sup> Interview (April 25-2 2007. E.C) with attorneys, presidents, senior judges and court annexed mediators of Federal First Instance Courts of Lideta, Menagesha and Kirkos branches in Addis Ababa.

<sup>43</sup> Interview with Ato Getaw L. *supra* note 5.

<sup>44</sup> *Ibid.*

<sup>45</sup> *Ibid.*

<sup>46</sup> *Ibid.*

<sup>47</sup> *Ibid.*

<sup>48</sup> Court annexed ADR also set in motion in other number of legal systems. In most countries an average mediation session takes 1.5 days and 80% of cases referred to [court annexed] mediation are settled on that very day. The remaining 20% settle within a three week period after adjournment of the initial session.

---

cases that are disposed. This has progressively reduced cost and time required to resolve disputes in USA. Court annexed ADR in these jurisdictions has succeeded in terms of improving clients' satisfaction, trust and access to justice.<sup>49</sup> In India, appreciable success of court annexed ADR was reported in terms of quality and quantum of case disposal.<sup>50</sup> Court connected ADR in Nigeria shows similar success stories as a reform measure for similar judicial problems.<sup>51</sup>

Court annexed ADR that is introduced through comprehensive regulatory frameworks is more effective. This is because it proves government's level of commitment, serves as platform for the program, improves recognition of judges, lawyers and general public. It also enhances uniform practices, controls potential arbitrariness and makes all substantive and procedural issues (in relation to court annexed ADR) predictable and clear.<sup>52</sup>

Therefore, procedural qualities and the institutional and legislative merits of Court Annexed ADR gives them enhanced capacity to settle relevant civil suits timely, economically, fairly, and satisfactorily than the formal litigation method that follows intricate procedures. This in turn improves disputants' faith upon court which provides such mechanism. The enhancement of public

---

Lecture Given to Strathmore University (2004). *Mediation – A Solution for Legal Sector Crisis -The Role of Legal Ethics and Jurisprudence in Nation Building*. pp. 13—15

<sup>49</sup> See Sharif (2019). "Using Court-Connected ADR to Increase Court Efficiency, Address Party Needs, and Deliver Justice," *Massachusetts Boston Update*. Vol. 8, p. 279.

<sup>50</sup> See Bhat, *supra* note 12.

<sup>51</sup> Between 2002 and 2011, a total of 1,136 civil disputes were filed before Lagos multi door court house (LMCH); from this 1,071 cases was mediated by court and 321 (30%) were resolved while 467 (43.6%) were unresolved and 327 (29%) were withdrawn or discontinued. In terms of time within which settlement was reached, arbitration through LMDC can take up to a year whereas mediation takes an average of three months. See Emilia Onyema (2013), "The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC," *Apogee Journal of Business Property and Constitutional law*, Vol. 2, No. 7; Ayinla Lukeman (2014) "Enhancing Sustainable Development by Entrenching Mediation Culture in Nigeria", *Journal of Law, Policy and Globalization*, Vol. 21.

<sup>52</sup> For instance, "the concept of court annexed ADR [and the] insertion of section 89 into Indian Civil Procedure Code (CPC) ... gave massive boost to ADR revolution in India for it legalized court annexed ADR. This legislation also assisted development of settlement culture in India." See Bhat, *supra* at note 12.

---

confidence and trust upon court in turn improves access to justice because the public will be motivated to bring disputes before such courts.

#### **4.3 Court Annexed ADR: Additional and Alternative Merits**

Congestion of cases compels courts to make long and frequent adjournments which naturally result in delayed justice which exposes disputants and courts for extra litigation cost. One of the factors for delay of cases before Ethiopian federal courts is incompatibility between numbers of cases with number of Judges.<sup>53</sup> In addition to delay, such case congestion compels judges to rush on cases which adversely affects the quality of their decisions.

As an additional tool for the resolution of civil disputes, Court Annexed ADR indeed reduces congestion of cases at courts, and reduced caseload in turn gives some room for the litigation process to settle legal suits with improved speed, cost and fairness. Thus, the integration of ADR into the court system as additional tool of dispute resolution enables litigation method to effectively resolve disputes.

Providing court annexed ADR as alternative mechanism also enables disputants to access and choose dispute resolution methods of their interest. This can promote client satisfaction and increase access to justice. In effect, disputants, both from domestic and international business communities, prefer ADR to litigation methods.<sup>54</sup> The following statement of a disputant in a succession dispute among close relatives –and whose case was resolved through Court Annexed Mediation– illustrates its merits:

We are satisfied by court annexed mediation process since it is family issue; we [all disputants] are from the same extended family; our case is resolved through peaceful means, and this strengthens our future relationship. Ato Alelign further goes on to say that under this mechanism, our cases are resolved within a short period of time and with reduced cost.<sup>55</sup>

---

<sup>53</sup> Yoseph, *supra* note 2

<sup>54</sup> Hailegabriel G. Feyisa (2010). “The Role of Ethiopian Courts in Commercial Arbitration” *Mizan Law Review*, Vol.4. No. 2. p. 203

<sup>55</sup> Interview with Ato Alelign, litigated over succession and business cases before Menagesha and Lideta Branch, Addis Ababa, cited in Samuel Ephrem (2016), *The Call to Legally Introduce Court Annexed Alternative Dispute Resolution in Ethiopia*, LLM Thesis, Addis Ababa University, School of Law, Footnote 82, page 47.

---

## 5. Challenges of Court Annexed ADR

### 5.1 Ineffective regulatory frameworks

The *first* challenge can be lack of comprehensive and clear national regulatory framework that rules all substantive, procedural and institutional issues in relation to Court Annexed ADR. Such challenge substantially hampers its effective application. For example, unreasonably narrow scope of its application reduces quantum of case disposal based on this tool.

*Secondly*, some drawbacks relating to institutional rules can hamper its effective implementation. This, *inter alia*, includes absence of requirements for continuous awareness creation such as continuous training; and the absence of timeframe for finalizing the proceedings of Court Annexed ADR thereby causing unreasonable extensions of time needed for disputes resolution.

The *third* caveat relates to the extent of courts' intervention into Court Annexed ADR proceedings which should not be left unregulated and non-demarcated. Such legal gaps open rooms for courts to abuse their discretion to the extent of compromising and frustrating the independent operation of ADR. It is to be noted that efficacy of ADR cannot be fully obtained if the law permits broader and excessive judicial intervention against the independent operation of Court Annexed ADR.

### 5.2. Implementations gaps

The *first* potential challenge during implementation can be the historical tension<sup>56</sup> between courts and ADR in Ethiopia. This can result from the judiciary's intervention which compromises the independence of ADR. Hence, courts should strive to clearly understand the limits and extent of their role in court annexed ADR proceedings based on the relevant law.<sup>57</sup>

---

<sup>56</sup> See, for example, Marta Belete (2012), "Good Faith in Investment Arbitration and the Conduct of the Ethiopian Government in the Saline Case: Exercise of Legitimate right or Exhibits for Guerrilla Tactics," *Ethiopian Business Law Series* Vol. V.; Tewodros Meheret (2012), "Reconnaissance of the Ethiopian Law of Arbitration: Is reform due?" *Ethiopian Business Law Series* Vol. V, p. 241; Mekbib Tsegaw, (December 2012), "The Necessity For and Extent of Courts Interventions in the Process of Arbitrations", *Ethiopian Business Law Series*. Vol. V, p.154.

<sup>57</sup> See, Robert A. Baruch Bush (2008), "Staying in Orbit, or Breaking Free: The Relationship of Mediation to the Courts over Four Decades", *84 N. DAK. L. REV.*, Vol. 54, No.705; pp. 135-137.

---

The *second* factor that can be considered as a challenge is the level of awareness about Court-Annexed ADR as a result of which disputants may – due to lack of awareness– fail to choose this mechanism. Some disputants may not also have strong belief that their disputes can be settled through this mechanism. The challenge related to gaps in awareness was manifested during the pilot court annexed mediation because there were some disputants who declined to make full payment to lawyers merely because their disputes were resolved within a short period of time.

The *third* challenge can be related to disputants' rigid position, lack of readiness for settlement during mediation proceedings because these problems were observed thereby limiting effectiveness of court annexed mediation in Addis Ababa.<sup>58</sup> Likewise, Bezawit states that limited awareness and couples' unwillingness to participate in mediation process are among the challenges that limit the success of court annexed mediation for divorce disputes.<sup>59</sup>

With regard to labor disputes that come before Federal pilot mediation centers, a unique challenge caused by employers was observed. As some labor disputes were resolved through mediation at the centers within few days, the number of employees who institute their cases increased because many employees used to ignore such suits against employers due to fear of intricate litigation process.<sup>60</sup> On the contrary, many employers had the tendency of impeding mediation proceedings through non-appearance, rejecting mediation and using various techniques.<sup>61</sup>

Lack of persistent and periodical evaluation and assessments regarding the successful implementation of Court Annexed ADR was another challenge during the pilot program.<sup>62</sup> The issues relating to adequate budget is also a key factor in implementation because it is indispensable in the realms of human resource and facilities, including infrastructure.

---

<sup>58</sup> Interview with Ato Getaw L. *supra* at note 5

<sup>59</sup> Bezawit, *supra* note 38, pp.72-73.

<sup>60</sup> *Ibid*

<sup>61</sup> *Ibid*.

<sup>62</sup> Interview with Ato BeraneMeskel, President of Federal First Instance Court, cited in, Samuel Ephrem (2016), *The Call to Legally Introduce Court Annexed Alternative Dispute Resolution in Ethiopia*, LLM Thesis, Addis Ababa University, School of Law, Footnote 69, page 45.

---

## **6. Concluding Remarks**

As discussed in the preceding sections, Court Annexed ADR has comparative advantages in the settlement of civil disputes fairly at lower cost and without delay in contrast to the formal litigation method that follows complicated procedures. This enhances disputants' faith in court and it renders the justice system more accessible. The good practices in USA, India, Nigeria and other legal systems show frequent use of ADR service by courts accompanied by the benefits thereof both in terms of quality and quantum of case disposal.

As highlighted earlier, settlement of cases through Court Annexed ADR, in addition to its comparative procedural advantages, indeed reduces courts' caseloads. In so doing, it improves problem of delay, cost, and unfairness that can arise from congested legal suits in courts' archives. Providing court annexed ADR as one of the alternative mechanisms also enables disputants to access and choose the dispute resolution method of their interest. This can promote clients' satisfaction and improves access to justice.

Yet, there can be major challenges in the process of enhancing the usage of Court Annexed ADR which include lack of clear and comprehensive legislative framework for Court Annexed ADR, and the risk of excessive judicial intervention in the absence of clear demarcation by the relevant law thereby impeding independent and fair operation of court annexed ADR. Other limitations can relate to lack of adequate awareness and poor administrative system such as lack of persistent and periodic evaluation, lack of proper internal cooperation, lack of quality training and lack of adequate budget that is required for effective operations of the program.

In order to effectively utilize Court Annexed ADR, as a reform measure for some judicial problems in Ethiopia, a comprehensive legal framework is thus indispensable. It is also to be noted that its introduction and execution should be comprehensive and it should not merely be restricted to the federal jurisdiction. Moreover, the role and discretions of courts in relation to this reform measure should be clearly demarcated by law, and the challenges highlighted above should be proactively addressed. \_\_\_\_\_■

---

### Cited References

- Bezawit Eshetu (2017). "Court Annexed Mediation Services in Divorce Cases; the Case of Four Federal courts", (LLM Thesis, Addis Ababa University)
- Bhat, Iftikhar Hussain (2013). "Access to Justice: A Critical Analysis of Alternate Dispute Resolution Mechanisms in India", *International Journal of Humanities and Social Science Invention*, Vol. 2, Issue No. 5
- Bush, Robert A. Baruch (2008). "Staying in Orbit, or Breaking Free: The Relationship of Mediation to the Courts over Four Decades", 84 *N. DAK. L. REV.*, Vol. 54, No. 705.
- Clarke, S. H. & Gordon, E. E. (1997). "Public Sponsorship of Private Settling: Court-Ordered Civil Case Mediation", *Justice System Journal*, Vol.19, No.3
- Cover, Robert M. (1979). "Dispute Resolution: A Foreword," *Yale law Journal of Dispute Resolution*, Vol. 88, No. 5.
- Edelman, Peter B. (1984). "Institutionalizing Dispute Resolution Alternatives" *The Justice System Journal*, Vol. 9, No. 2
- Edmond, D. Paul (ed.) (1986). *Alternative to Litigation*, Edward Street Aurora Centririo, Canada Law Book Inc.
- Hailegabriel G. Feyisa, (2010). "The Role of Ethiopian Courts in Commercial Arbitration" *Mizan Law Review*, Vol.4. No .2
- Lukeman, Ayinla (2014). "Enhancing Sustainable Development by Entrenching Mediation Culture in Nigeria", *Journal of Law, Policy and Globalization*, Vol. 21.
- Marta Belete (2012). "Good Faith in Investment Arbitration and the Conduct of the Ethiopian Government in the Saline Case: Exercise of Legitimate Right or Exhibits for Guerrilla Tactics," *Ethiopian Business Law Series* Vol. V.
- Mekbib Tsegaw (Dec. 2012). "The Necessity For and Extent of Courts Interventions in the Process of Arbitrations", *Ethiopian Business Law Series*. Vol. V
- Onyema, Emilia (2013). "The Multi-door Court House (MDC) Scheme in Nigeria: A Case Study of the Lagos MDC," *Apogee Journal of Business Property and Constitutional law*, Vol. 2, No.7
- Osher, D. et al, (2020). "Drivers of Human developments: How Relationship and Context Shape Learning and Developments, *Applied Developmental Science*, Vol. 24, Issue1.
- Samuel Ephrem (2016). *The Call to Legally Introduce Court Annexed Alternative Dispute Resolution in Ethiopia*, LLM Thesis, Addis Ababa University, School of Law
- Tewodros Meheret (2012). "Reconnaissance of the Ethiopian law of Arbitration: Is reform due?" *Ethiopian Business Law Series*, Vol. V
- Wald, Patricia M. (1997). "ADR and the Court: An Update" *Duke Law Journal* Vol. 46, No.6.
- Yoseph Aemiro (2012). "የፍትህ ስርዓት ክርክሮች ላይ ፈተናዎችና ተስፋው/ The Litigation Process of Civil Cases, Challenges and Prospects" (Amharic), *Ethiopian Business Law Series*, Vol. V.