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The Regulation of Land Disputes:

Promoting the Option of ADR: The Case of Ghana

Public conflicts including land conflicts and inefficient means for dealing with them lead to wasted resources, social instability, reduced investments, chronic underdevelopment and sometimes even loss of lives. Good negotiation, joint problem solving, facilitation and dispute management skills which together constitutes ADR (Alternative Dispute Resolution) on the other hand can help those with differing interests, values and cultures cope with their differences. For many people in Ghana and Africa in general, lack of a functioning justice system is a major concern. Despite the fact that a dual justice system has been in place since colonial times, both the formal justice system (courts) and the customary system are inefficient and unable to satisfy the justice needs of the populace.

The result is a backlog of unresolved court cases, especially land related cases where families and individuals are unlawfully deprived of their ancestral lands and livelihoods by the rich and powerful without notice, compensation or relocation; grieving widows are dis-inherited by surviving in-laws, fraudulent land transactions and the contracting of land guards which has led to several violent clashes and social unrest in recent times. It is very clear that the courts cannot keep pace with the sheer number of land cases and the public is losing confidence in the courts and are looking for an alternative conflict resolution system.

This Research aims at reducing the pressure on formal court systems by encouraging and promoting the use of existing ADR systems as an option in land dispute resolution. The specific objectives are to identify which ADR systems are available in Ghana, identify the reasons why the existing ADR systems are not patronized by the people and recommend measures that will make the ADR systems more effective and more appealing to the public. The study was conducted by first of all reviewing available literature on the subject. Based on the literature the problem was identified and both secondary and primary data was collected through interviews with experts on the field, field survey with questionnaires, observation of some ADR proceedings as well as the study of documents and reports related to the subject.

An analysis of the data collected revealed several issues including the fact that there is a clear distinction between the customary system and modern ADR systems. Again the assumption that the

customary system which is an informal justice system founded on custom and tradition should be the natural alternative taking into consideration the fact that it is already very popular in the African society is not the case, the study revealed that apart from people living in the rural areas, most people prefer modern ADR options which are not customarily based and these systems are not readily available in the country. The few that do exist are poorly patronized probably because the public is not aware of their existence.

In order to encourage people to make demands on the various ADR options including the customary system and make them more effective in their response to the justice needs of the people especially the poor and underprivileged, some basic changes are required. These changes include the elimination of outdated doctrines which are unacceptable to the modern society and replacing them with a unified compatibility of norms of customary law and constitution as well as the establishment of more private and state supported modern ADR systems and publicize their existence.

Key words: Land conflicts, ADR options, customary systems, mediation, Ghana in Africa.