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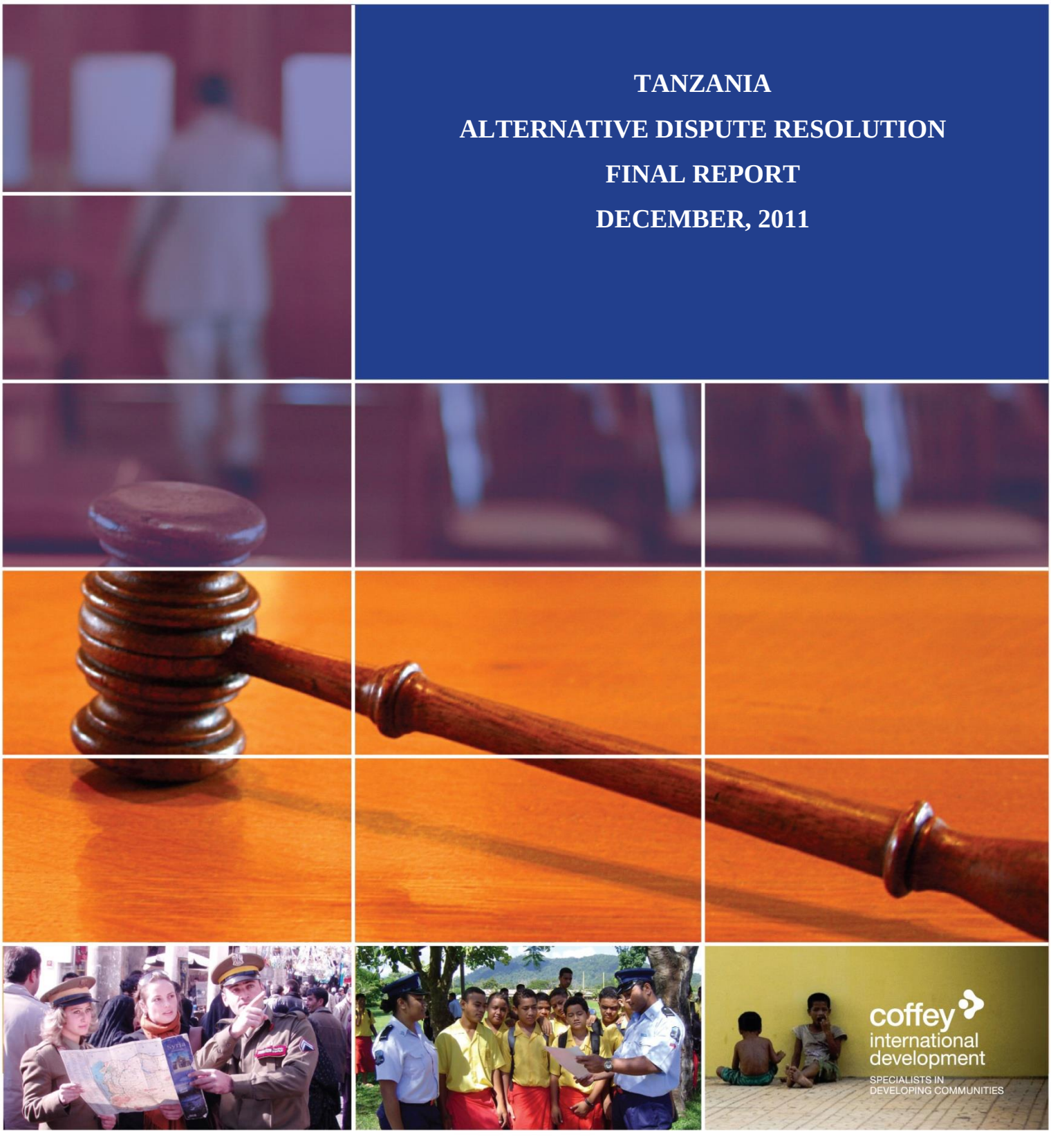
In Association with
The Faculty of Law
The Open University of Tanzania

TANZANIA
ALTERNATIVE DISPUTE RESOLUTION
FINAL REPORT
DECEMBER, 2011



1 EXECUTIVE SUMMARY

The Conducting an Analysis of Alternative Dispute Resolution in Tanzania and for Training of Trainers for Enhancement of Alternative Dispute Resolution to Judicial Officers in Tanzania project (short named Tanzania ADR Project) was a six month assignment funded by the World Bank and delivered on behalf of the Registrar Court of Appeal of Tanzania. The request for support came about partly because of the six ADR trainers originally trained in 1994, only one is still in service in the Judiciary of Tanzania. Additionally, analysis of the effectiveness of the ADR legislation, mechanisms and practices in Tanzania was required to determine if adjustments were needed to reduce the potential burden on the court and to ensure sustainability of the ADR process.

The objectives of the consultancy were:

(a) To provide the Judiciary, Ministry of Justice and Constitutional Affairs, and Tanganyika Law Society with an evaluation of the successes and failures of the ADR mechanism to date. To thereafter provide recommendations of any legislative, procedural, administrative, or managerial improvements to the ADR mechanism set out in the Civil Procedure Code 1966;

(b) To develop a plan for sustaining long term ADR training in Tanzania;

(c) To design a comprehensive training programme for the training of ADR trainers; and

(d) To conduct training of 50 trainers as selected by the Client.

The contract was awarded to the Global Justice Solutions/ the Open University of Tanzania consortium and following preparation arrangements the project was implemented within three phases, namely: Inception; Analysis and Development and Training.

The project commenced on 12 July 2010 and during the Inception Phase the project office was established, the team of experts were mobilised and inducted and the project work plan, risk management plan and quality assurance processes finalised. A Key Focus Group was also identified in consultation with the Client.

Desktop research was initially conducted during the Analysis Phase by reviewing relevant legislation and policies which are likely to have impact on the effectiveness of ADR practices. This included the Civil Procedure Code, Government Notice No. 422 of 1994 which amended the Civil Procedure Code of 1966 incorporating ADR in civil cases for the first time in Tanzania; a Position Paper on The Review of the Civil Justice System which was prepared by the Law Reform Commission of Tanzania under the BEST program of December, 2006; The Study on Court Cases involving Banks in Mainland Tanzania conducted by IMMA Advocates an independent Law Firm based in Dar es Salaam; The Village Land Act Cap 114 of the Revised Edition 2002 Section 61; The Employment and Labour Relations Act No. 6 of 2004; and a previously introduced Manual for ADR training popularly known as the “Red Book”. Interviews were also administered focusing on: *What has worked? What hasn’t worked? and; If something hasn’t worked, why didn’t it?* Research methodology also included a questionnaire which was distributed to relevant members of the judiciary.

To some extent the ADR mechanism in Tanzania has been successful however; ADR has not substantially resulted in expeditious disposal of cases. In 2010 for example, a total of 2753 cases filed at the Commercial Court were pending and the backlog totalled 2740 and of the 110 cases decided in that year, only 7 cases (6.4%) were disposed through mediation.

Analysis also revealed that mediation is seemingly successful both at the lower courts and the High Court where the matter involves an Insurance Claim where parties’, in particular insurance companies try to mitigate loss.

Review of the report on "Study on Court Cases involving Banks in Mainland Tanzania" also suggested that ADR in a broad sense has not been as successful as anticipated. The report suggests however that approximately 10% of the cases filed at the High Court Land Registry in Dar es Salaam are resolved by ADR.

One perceived 'weakness' of GN No. 422 of 1994 is that the court can not dismiss the suit or enter default judgment because of non appearance during the pre-trial hence prolonging the trial. Additionally, GN No. 422 of 1994 is not very clear on the consequences of exceeding the speed track set by the Court.

A review of Commission for Mediation and Arbitration (CMA) records revealed that since 2007, a total of 33,230 disputes were registered out of which 31,367 (94%) were resolved. It was further revealed that of the disputes resolved 22,652 or 72% of all the disputed registered with CMA were resolved through Mediation while 8,715 or 28% of all the disputes were resolved through Arbitration. The remaining 1,863 or 6% of total disputes registered at CMA remain ongoing after failure to resolve through Mediation and Arbitration. According to sources at CMA the failure to resolve disputes through mediation and arbitration is attributed to advocates who are reluctant to resolve disputes through ADR, instead opting for the tradition adversarial system. The introduction of the CMA has substantially reduced the time which is spent in resolving disputes from the original average of three (3) years to the average of 21 days to 30 days.

The value of Judges and Magistrates mediating was also questioned with 75% of questionnaire respondents believing that ADR should be conducted by officers other than Judges and Magistrates, but the ADR mechanism should remain court annexed.

Tanzania has not yet explored other potential support options such as the use of professional organizations like the Tanzania Association of Arbitrators, the Tanzania Chamber of Commerce Industries and Agriculture or the Contractors Registration Board to resolve disputes through mediation and/or arbitration.

The project also analysed ADR practices and mechanisms in Tanzania in the context of international best practice. This was achieved through a multi-continent comparative study involving Bangladesh, Brazil, USA and South Africa. Key lessons learnt included Bangladesh's ADR training of relevant non-lawyers, the trend for court-annexed ADR mechanisms and the pivotal role that retired judges and magistrates are playing to oversee the ADR systems in the countries reviewed, Brazil's introduction of ADR at the Appellate level and USA's introduction of standardised ADR training and certification have also been considered and captured within the project team's recommendations for Tanzania.

During the Development and Training Phase the project team developed a comprehensive training plan, train the trainer program, course curriculum, training materials and teaching aids, a training manual for ADR trainers and a strategy for sustaining long-term ADR training in Tanzania. Additionally, 44 participants identified by the Client were trained in ADR[1].

Challenges and project risks were identified, prioritised and mitigated throughout the life of the project to minimise potential impacts on project effectiveness. Whilst it is not yet possible to measure the long term impact of project activities, the project has provided the immediate benefit of training 44 Judges, Magistrates, Advocates and State Attorneys who will potentially have a far reaching impact in the ADR process and civil justice system in Tanzania particularly if training is subsequently cascaded to other judicial officers.

A number of recommendations have been made aimed at sustaining ADR in Tanzania:

[1] The Client assumed the responsibility of selecting and nominating training participants, however of the 50 nominated by the Client 6 did not attend training.

1. The ADR mechanism in Tanzania should remain court-annexed however the introduction of a model which sees cases referred to mediators (men and women) who are not serving Judges or Magistrates should be considered. The mediators to be considered under this framework should be retired Judges, retired Magistrates as well as experienced and skilled State Attorneys and Advocates as long as they are certified. This will enable mediators to have full focus on the ADR process. The court should continue to require parties to undertake a mediation process;
2. The project team is of the view that Tanzania should consider introducing ADR system at Appellate level to test its efficacy in disposing appeals;
3. An automated and integrated case management system should be introduced to ensure alignment with international best practice but more importantly to provide the Judiciary with the ability to effectively manage, consolidate, share, and protect case information. The functionality should include, but not be limited to, the management of parties and their advocates, the production of court ADR documents, the recording of fees; case types; ADR stages and dispositions, and the scheduling of ADR events and other important dates and times. The CMS should also be capable of automatically generating user-defined ADR case management reports. An ADR Case Management Officer should be appointed by the Chief Justice to manage and record cases within an ADR system, monitor mediation progress and identify any emerging issues or shortfall within the ADR mechanism;
4. Steps need to be taken to provide for retired Judges and Magistrates to form a core team for oversight of ADR in Tanzania;
5. The project team recommends that the compulsory nature of ADR should be adopted by the court in Tanzania in all civil matters unless the Presiding Judge or Magistrate is of the view that the case is not amenable for ADR;
6. Tanzania should consider the involvement of NGOs that could support the ADR system. The Tanganyika Law Society, National Construction Council, Tanzania Institute of Arbitrators, the Tanzania Chamber of Commerce Industries and Agriculture, the Tanzania Industrial Relations Association and the Contractors Registration Board should be engaged to establish the administrative steps required to enable practitioners and retired Judges and Magistrates to act as mediators and arbitrators;
7. Amendments are recommended to The Civil Procedure Code Order VIIIA to reflect the following wordings:

    i "In every case assigned to a Judge or Magistrate, the Presiding Judge or Magistrate shall after consultation with the parties or their recognized agents or advocates refer the matter for settlement to be placed before an ADR practitioner not being a serving judicial officer."

    ii "The Presiding Judge or Magistrate shall not refer the matter for ADR if the Presiding Judge or Magistrate has reasonable cause to believe that the matter is not amenable for settlement."

    iii "In the event of failure of settlement the case shall be referred back to the Presiding Judge or Magistrate for full trial."
8. In addition to the above, O VIII A of the the Civil Procedure Code needs to be amended. The amendment should focus on clarity of the scheduling orders which at the present

status is a subject of controversy. It is recommended that instead of using the word 'expire' in the scheduling order the word 'elapse' should be used instead to remove the controversy associated with the word expire when one wishes to renew the scheduling order. The amendment should also address issues such as obligation of parties when scheduling orders expires, in terms of application for renewal, the limitation period and the extent to which a court can grant such extensions and judges powers and or discretions in extending the scheduling orders. Further to that the amendment should provide clearly as to who is obliged to make an application for amendment and for how long for should a judge allow the extension to go beyond.

9. It is further recommended that the Civil Procedure Code (Cap 33 of the Revised Edition 2002) needs to be amended so that Speed Track Four as provided under O. VIII A should cover all cases which cannot be disposed within Speed Track One, Two or Three.
10. The court should be empowered to enter judgment in default in case the Defendant is persistently defaulting to appear during the pre-trial hence leading to protracted delay in disposal of case through ADR mechanism.
11. The strategy for sustaining long-term ADR training in Tanzania developed during the execution of this project (Annex G) should be adopted and applied;
12. In the interests of sustainability, an independent review of ADR practices and understanding should be performed towards the end of 2011 to determine the effectiveness and impact of the ADR training implemented by this project;
13. ADR training should be provided to a wider horizon, and should encompass Judges, Magistrates, State Attorneys Advocates, Academicians and the general Public throughout the country. This should be achieved by optimising the resources developed during the course of this project. That is, utilising the trainers trained to facilitate and deliver further training through the application of the ADR Training Curriculum and Training Manual;
14. To sustain the pool of skilled trainers and practitioners who will be used to provide public awareness programmes on ADR system. Refresher training should at some point be provided to those already trained to ensure that contemporary ADR knowledge and skills are maintained and emerging issues are addressed. The Institute of Judicial Administration should be involved in ADR Trainings, and any ADR Training Manual prepared should be subjected to professional trainers for their opinion on its sufficiency and efficiency in training ADR in Tanzania before the same can be approved for use in training.
15. ADR as a compulsory subject to LLB and Law School students needs to be taught in practical sense. For ADR to succeed in practice, the teaching should be practical not theoretical as it is now. To affect this, University Academicians who will be tasked to teach LLB and law school students should first go through ADR Training which is offered to judicial personnel.
16. An awareness-raising and sensitization programme is required to sensitise the legal community. Information communicated through various media should include the importance of ADR, an overview of the ADR mechanism and the proactive steps which have been taken to enhance ADR in Tanzania. The reported CMA ADR results should be socialised within the judiciary and Advocates also emphasising the practice at CMA of encouraging parties to settle disputes amicably through the use of both mediation and arbitration, subsequently reducing case backlog.

The Tanzania ADR Project has fulfilled its objectives. Despite the challenges that emerged during project implementation, this report also demonstrates that the project team have adopted a flexible and collaborative approach to achieve desired outcomes.

2 PROJECT DESCRIPTION

2.1 Project Name and Duration

Project Name: Conducting an Analysis of Alternative Dispute Resolution in Tanzania and for Training of Trainers for Enhancement of Alternative Dispute Resolution to Judicial Officers in Tanzania.

Project Short Name: Tanzania ADR Project.

Project Duration: Six months – Originally 12th July to 13th December 2010, however by agreement project completion was extended for 3 months to 20 April 2011 to 20 September 2011 and again to 20th December, 2011.

2.2 Funding and Oversight

2.2.1 Funding

The World Bank funded The Government of Tanzania to implement the project.

2.2.2 Oversight

The Government of Tanzania with the support of The World Bank is implementing the Programme for Business Environment Strengthening for Tanzania (BEST). The BEST Programme comprises of five components representing critical areas for immediate reforms, one of which is the Commercial Dispute Resolution Component being implemented under the auspices of the Ministry of Justice and Constitutional Affairs and the Judiciary. This component includes, among other activities, enhancing the effectiveness of Alternative Dispute Resolution (ADR) in Tanzania.

The Registrar Court of Appeal, Judiciary of Tanzania was responsible for project oversight with the requirement for the project to also report to the Ministry of Justice and Constitutional Affairs and the Tanganyika Law Society (TLS).

The Open University of Tanzania (OUT) and Global Justice Solutions (GJS) consortium was awarded the contract to implement an ADR Project through the delivery of administrative technical assistance and capacity development activities as approved. GJS had overall authority and responsibility for delivery of the services and OUT provided resources which included project office accommodation and technical support.

In consultation with the Client a Key Focus Group was established to provide technical consultation and oversight for project implementation.

Upon receipt of the project Draft Interim Report, The Registrar Court of Appeal, Judiciary of Tanzania also established a Technical Committee/ADR Task Force to consider the report's content and to make recommendations to the Managing Contractor and the project team.

2.3 Governing Agreement

Contract CDR/C/5 between The Registrar Court of Appeal Tanzania and Global Justice Solutions was executed on 22nd June 2010, thereby regulating contractual matters relevant to the project.

2.4 Key Dates

DATE	EVENT
12 July 2010	Project Team Mobilisation
12 - 26 July 2010	Inception Phase
26 July 2010	Inception Completion - Inception Report Submitted
26 July – 5 August 2010	Analysis Phase
5 August 2010	Draft Interim Report Submitted
5 Aug – 13 Dec 2010	Development and Training Phase
13th August 2010	Draft Training Strategy Developed
20th August, 2010	Training Curriculum Completed
30th August,2010	ADR Training Manual Completed
2 September 2010	Technical Working Group/Task Force Composed
6 September 2010	Training Commenced
20 September 2010	Feedback Received on Draft Interim Report
20 Sept – 30 Oct 2010	Draft Interim Report Enhancement Following Feedback
1 October 2010	Training Completed
2 October 2010	International Experts De-mobilised
12th November, 2010	Draft Final Report Submitted
19th November, 2010	Feedback to be Received on Draft Final Report
26th November, 2010	Final Report Scheduled to be Submitted
13 December 2010	Scheduled Project Closure
20 April 2011	1st Revised Project Closure
30 September 2011	2nd Revised Project Closure
20 December 2011	3rd Revised Project Closure

3 BACKGROUND

3.1 Request

The request for support came about partly because of the six ADR trainers originally trained in 1994 and subsequently 274 Judges, Magistrates and Advocates from all High Court zones were trained on ADR between 1999 and 2000. Additionally, analysis of the effectiveness of the ADR legislation, mechanisms and practices in Tanzania was required to determine if adjustments were needed to reduce the potential burden on the court and to facilitate sustainability.

3.2 Context and Rationale

Alternative Dispute Resolution (ADR) is an "umbrella" term that refers to various methods used to resolve disputes without resorting to litigation. The genesis of ADR in Tanzania dates back to 1992 when the former Chief Justice the late Hon. Francis Nyalali visited the Superior Court of the District of Columbia in the United States of America, for the purposes of learning their approach to civil delays' reduction. Upon his return to Tanzania he requested Judges Shuker and Huhn, from the United States to visit Tanzania, and study the country's judicial system in order to recommend for the necessary changes. . As a consequence in 1994 the Civil Procedure Code was amended by Government Notice 422 of 1994 to incorporate ADR into the court process. Government Notice No.422 of 1994 provided no guidance on the procedure for practising ADR. Four Judges and two magistrates subsequently participated in mediation training in USA. Between 1999 and 2000, 274 Judges, Magistrates and Advocates from all High Court Zones of Tanzania were trained, however most have since been promoted, have retired, seconded to other positions or have passed away.

As the originally funded program did not extend beyond 2000, Judges and Magistrates recruited since then have not been formally trained in ADR. Consequently not all Judges and Magistrates are fully trained to mediate even when a case has willing and available parties. This equally applies to Advocates who represent parties before the courts of law.

Seventeen years since the introduction of the ADR in the Civil Justice System in Tanzania, the problem of case delays still prevail despite the good intentions behind the changes introduced by GN No. 422 of 1994. This issue will be discussed in greater detail later in this report.

3.3 Objectives

The objectives of the Consultancy were:

a) To provide the Judiciary, Ministry of Justice and Constitutional Affairs, and Tanganyika Law Society with an evaluation of the successes and failures of the ADR mechanism to date. To thereafter provide recommendations of any legislative, procedural, administrative, or managerial improvements to the ADR mechanism set out in the Civil Procedure Code 1966;

b) To develop a plan for sustaining long term ADR training in Tanzania;

c) To design a comprehensive training programme for the training of ADR trainers; and

d) To conduct training of 50 trainers as selected by the Client.

3.4 Preparation Arrangements

As the managing contractor GJS performed significant preparation activities prior to project inception. These included:

- Development of the ADR Project Work Plan[2] (approved by the Client 14 June 2010);
- Development of the ADR Project Inception Schedule (approved by the Client 8 July 2010);
- Development of project policies and operational guidelines[3];
- Establishment of project financial controls; and
- Preparation for mobilisation and induction of the project team.

4 PROJECT IMPLEMENTATION

The agreed project Work Plan (Annex A) demonstrates that the Tanzania ADR Project was implemented through three phases of logically scheduled activities:

- Inception Phase;
- Analysis Phase; and
- Development and Training Phase.

4.1 Inception Phase

The project commenced on 12 July 2010 as planned and during the Inception Phase the following activities were performed:

- Establishment of project office;
- Mobilisation of project team;
- Induction of project team; and
- Finalised project work plan, risk management plan and quality assurance processes.

4.1.1 Project Office

A project office was established at the Open University of Tanzania (OUT) Faculty of Law, Dar es Salaam Tanzania with support also provided by OUT Consultancy Bureau (OCB).

4.1.2 Project Team

The mobilised project team comprised of the following:

- Contractor Representative: Mr. Bryn Jones, Senior Program Manager, Global Justice Solutions;

[2] Annex A – ADR Project Work Plan (July to December 2010)
[3] Copies provided within project Inception Report – July 2010

- Team Leader: Dr. Paul Kihwelo, Dean Faculty of Law, the Open University of Tanzania;
- ADR Specialist: Dr. Steven Kairu, Arbitration and Mediation practitioner, Nairobi, Kenya;
- ADR Trainer of Trainer Specialist: Dr. Cephus Lumina, HURICON Consultancy, South Africa; and
- ADR Materials Specialist: Retired Judge Buxton Chipeta, Hallmark Attorneys, Tanzania.

Global Justice Solutions also provided remote support throughout the life of the project for the development and refinement of project policies and procedures, financial management and control, logistics and administration and quality assurance. The Open University of Tanzania provided resources for project implementation including office accommodation, communication and IT and office support.

4.1.3 Inception and Induction Activities

Global Justice applies recognised project management methodologies within each program it delivers. To ensure consistent administration and sound governance of the Tanzania ADR Project, GJS Contractor Representative travelled to Dar es Salaam to initiate project activities and to induct team members. Induction activities included an introduction to project policies and procedures including financial management and accountabilities, the project's monitoring and evaluation framework and risk management and reporting requirements. During induction project objectives, scope of work and specific Terms of Reference were reiterated to each team member to ensure understanding.

During the Inception Phase the Contractor Representative, project Team Leader and individual team members commenced consultation with key stakeholders. This included meeting with The Client where the project work plan was finalised, proposed implementation methodology was discussed and client expectations were presented. Clarification was also sought from The Client relating to the contract's Terms of Reference.

A Key Focus Group was also identified in consultation with the Client, as per the requirement of the contract[4].

The Inception Report outlining project activities performed to date, proposed methodology, project Work Plan and framework was submitted to The Client on schedule on 27 July 2010.

4.2 Analysis Phase

The project ADR Specialist had primary responsibility for performing analysis with support and guidance from the project Team Leader and input from the project team.

4.2.1 Analysis Methodology

Desktop research was initially conducted by reviewing relevant legislation and policies which are likely to have impact on the effectiveness of ADR practices. Reference sources included the following:

- Civil Procedure Code, Government Notice No. 422 of 1994 which amended the Civil Procedure Code of 1966 incorporating ADR in civil cases for the first time in Tanzania;
- A Comprehensive Review of the Civil Justice System in the United Republic of Tanzania conducted by the Law Society of England and Wales in 2010;

[4] Annex B: Key Focus Group Representatives

- The Study on Court Cases involving Banks in Mainland Tanzania conducted by IMMA Advocates an independent Law Firm based in Dar es Salaam;
- The Position Paper on The Review of the Civil Justice System which was prepared by the Law Reform Commission of Tanzania under the BEST of December, 2006;
- A previously introduced Manual for ADR training popularly known as the "Red Book" which was supplied to the project team by the Client;
- The Village Land Act Cap 114 of the Revised Edition 2002 Section 61 within which Mediation forms common element;
- The Employment and Labour Relations Act No. 6 of 2004; and
- Referred Cases: Civil Revision No. 2 of 2008, Napkin Manufacturers Limited versus Charles Gadi and Another, Court of Appeal of Tanzania (Unreported), Tanzania Habours Authority Vs Mathew Mtalakule and 8 others Civil Appeal No. 46 of 1992 (unreported), Tanzania Fertilizer Co. Ltd Vs National Insurance Corporation of Tanzania and Another, Commercial Case No. 71 of 2004 (unreported), Absolom Msaka Vs Peter Massawe and NIC, Civil Case No. 124 of 1998 High Court of Tanzania (unreported), Mwanza City Engineer and Another Vs Anchor Traders Ltd, Civil Appeal No. 17 of 2005,High Court of Tanzania.

Interviews administered were semi-structured facilitating flexibility through open ended questions designed to solicit in depth and relevant information. This approach also enabled the project team to objectively obtain information from respondents. During analysis the team focused on probing a variety of ADR related issues. In particular however the team focused on the following set of questions:

- What has worked?
- What hasn't worked?
- If something hasn't worked, why didn't it?

Research methodology also included a questionnaire which was distributed to relevant members of the judiciary, State Attorneys and Advocates.

The project team also consulted mediators from the Commission for Mediation and Arbitration (CMA) in Dar es Salaam. This included a semi-structured interview conducted with Mr. Mwidunda. The CMA was subsequently able to provide to the Project Team ADR case outcomes recorded since 2007.

Practices in Tanzania were also considered in light of international best practice through a multi-continent analysis involving the ADR mechanisms in Bangladesh, Brazil, the United States of America and South Africa.

4.2.2 Analysis Outcomes

Analysis resulted in the following key findings:

Analysis Outcomes: ADR Successes or Otherwise

To some extent the ADR mechanism in Tanzania has been successful and the objective fulfilled from the perspective of the Judges and Magistrates as mediators, however the success rate is not as high as might have been expected. ADR as currently practiced in Tanzania has not substantially resulted in expeditious disposal of cases as can be seen within the figures that follow illustrating Tanzania's ADR performance in 2010.

Figure 1: Tanzania Commercial Courts ADR Performance 2010.

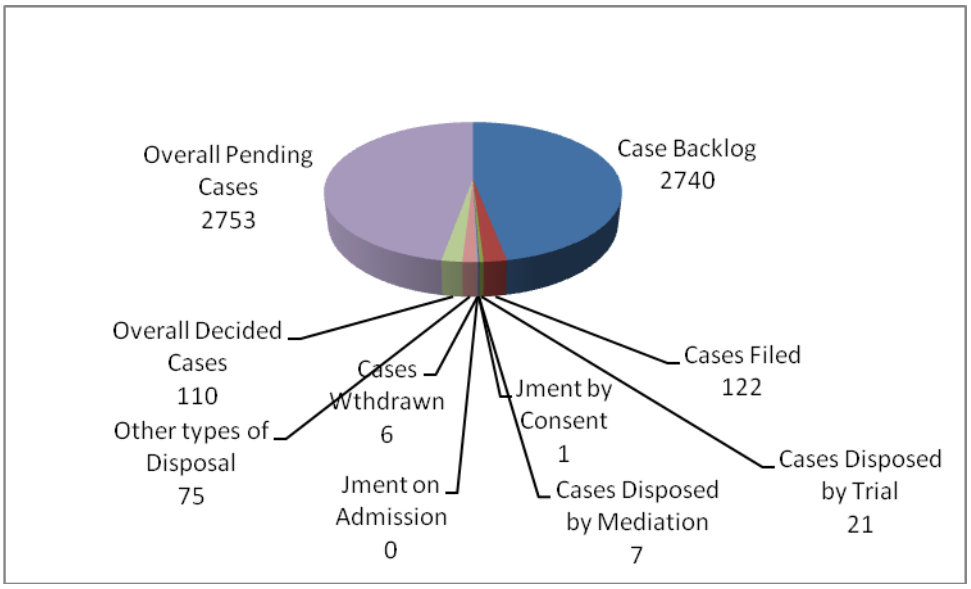


Figure 1 above demonstrates that in 2010 a total of 2753 cases filed at the commercial Court were pending and the backlog totalled 2740. Out of 110 cases decided in 2010 only 7 cases (6.4%) were disposed through mediation. This demonstrates that the success rate in ADR is very minimal when compared to cases disposed by trial (21 cases or 19%) and those disposed by way of preliminary points of objections, return of Plaint or rejection of Plaint and the like (75 cases or 68.2%).

Figure 2: Summary of Tanzania Commercial Courts Performance 2010 by month.

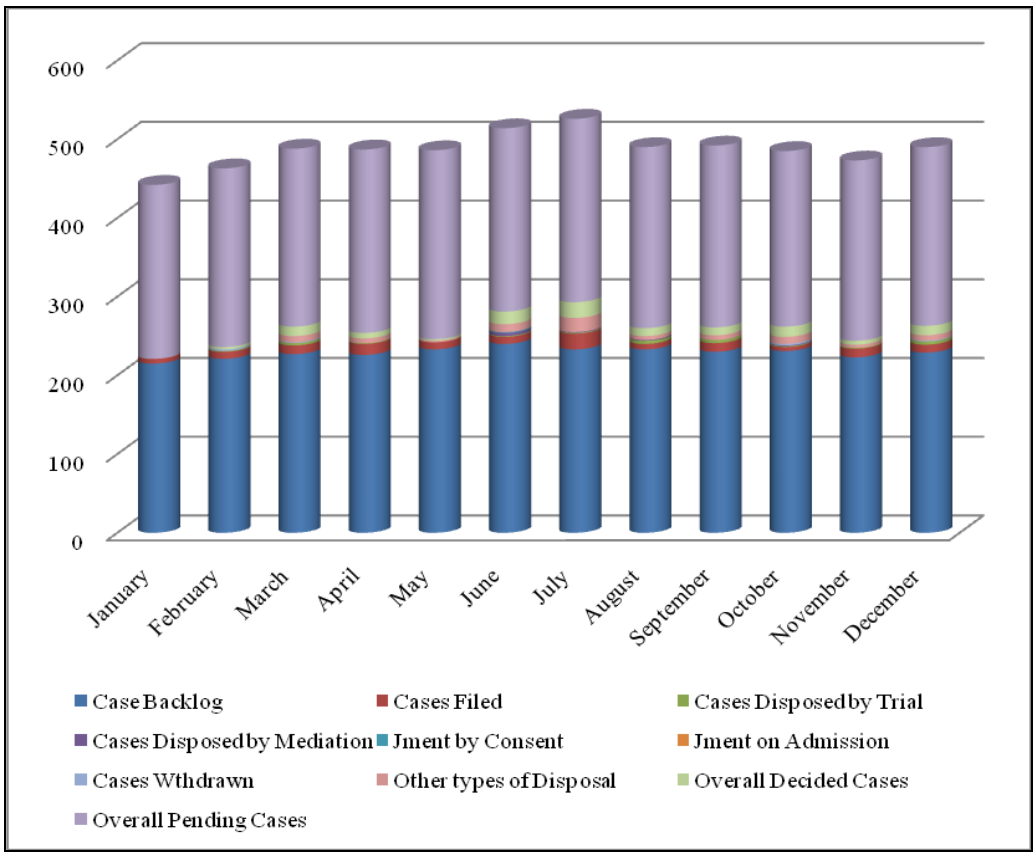


Figure 2: above is a clear demonstration that case backlog is still a serious problem despite the introduction of ADR in the court system in Tanzania. Majority of the cases in each month are those which are in the backlog and those pending while cases disposed by mediation are very few such that one cannot even easily notice in the chart.

A comprehensive analysis of available information and data has shown that:

- ADR successes in the Commercial Court, albeit limited, can be attributed to the support of the program by the Chief Justice and commitment by Judges to mediate. Further, success in Kisutu Resident Magistrates' Court can be attributed to the fact that ADR was piloted in that location between 1994 and 1999 and Magistrates received some training in mediation.

- Mediation is seemingly successful both at the lower courts and the High Court where the matter involves an Insurance Claim where parties', in particular insurance companies try to mitigate loss. This is thought to be because insurance companies may be conversant with the rules of settling matters through ADR and it is easier to predict the amount payable than in litigation where one may not be able to predict the result.

- Mediation also seems to be succeeding in cases involving banking business where they have an awareness of ADR. and the desire for Some cases have been mediated where matrimonial causes are involved - once parties have been able to control emotions they have been able to settle through ADR.

- Mediation is seemingly successful both at the lower courts and the High Court where the matter involves an Insurance Claim where parties', in particular insurance companies try to mitigate loss, or in cases involving banking business. This is thought to be due to parties being conversant with the rules of settling matters through ADR, where it is easier to predict the amount payable than in litigation where one may not be able to predict the result.

- Mediation was successful in some cases where matrimonial causes are involved - once parties have been able to control emotions they have been able to settle through ADR.

- Mediation has indicated to be most difficult to achieve in land disputes in particular where land ownership is involved since none of the litigants are likely to be ready to relinquish their right to ownership unless there is an alternative offer and the area offered is prime area. However, this does not equally apply to land disputes relating to landlord and tenant.

- Although the project team was unable to access existing empirical evidence about the success of the ADR process in the mainstream judiciary in Tanzania, the report on "Study on Court Cases involving Banks in Mainland Tanzania" revealed that ADR in a broad sense has not been as successful as anticipated. The report suggests however that approximately 10% of the cases filed at the High Court Land Registry in Dar es Salaam are resolved by ADR.

- One area however where ADR successes have been verified is the Commission for Mediation and Arbitration (CMA) established under the Labour Institutions Act, 2004 Act No.7 which came in force in 2007. A review of records at the CMA revealed that since 2007, a total of 33,230 disputes were registered out of which 31,367 (94%) were resolved. It was further revealed that, of the disputes resolved 22,652 or 72% of all the disputed registered with CMA were resolved through Mediation while 8,715 or 28% of all the disputes were resolved through Arbitration. The

remaining 1,863 or 6% of total disputes registered at CMA remain ongoing after failure to resolve through Mediation and Arbitration.

- The introduction of the CMA has substantially reduced the time which is spent in resolving disputes from the original average of three (3) years to an average of 25 days.

- The success rate at CMA is attributable to a number of factors such as proper structure of the Mediation and Arbitration within the statute establishing the CMA as well as the willingness of the parties to mediate and arbitrate.

- Mediators and Arbitrators working at CMA at present have received specialized ADR training including a number of related seminars and workshops on ADR. Additionally, the mediators have studied a Postgraduate Diploma in Labour Studies at the Institute of Social Studies in Kijitonyama, Dar es Salaam; a course within which ADR forms a significant part.

- According to sources at CMA the failure to resolve disputes through mediation and arbitration is attributed to advocates who are reluctant to resolve disputes through ADR, instead opting for the tradition adversarial system. This is also a result of lack of clear understanding of ADR by advocates. This was highlighted on one such occasion when informed by the Magistrate that the matter was coming for First Pre-Trial Conference one of the Advocates said, "Your Honour What is PTC and what are we supposed to be doing?"[5]
- Another reason for limited success of the ADR practice in Tanzania to achieve the most as originally intended is absence of clear rules on ADR. The Chief Justice is mandated to create ADR rules[6] but at the time of compiling this report had not yet done so.

Analysis Outcomes: The ADR Mechanism

While it's difficult to demonstrate any definitive results of the court-annexed mediation, some tentative conclusions can be drawn:

a) Judges don't necessarily make good mediations - their approach tends to be 'rights-based'. The same can also be said of Magistrates who don't necessarily make good mediators. However, some Judges and Magistrates are very good mediators demonstrating a very high mediation success rate. An exception is often when parties and their Advocates are reluctant to mediate;

b) Some litigation lawyers often appear out of their depth when representing clients in mediations and many lawyers do not negotiate or mediate well in a dispute resolution context; and

c) Mediation is far from the universal cure for all ills that its evangelical exponents would have us believe as a cure to the endemic problem of case delay[7].

[5] This was revealed during interview with Mr. Dickson Mtogesewa

[6] Part IX to the Civil Procedure Code Act Chapter 33 of the Revised Edition 2002 in particular Section 81 empowers the Chief Justice with the consent of the Minister responsible for Legal Affairs to make rules.

According to Dickson Mtogeswa, to some lawyers, mediating a case is a sign of failure to properly represent a client as a result they end up advising wrongly their clients so that their clients should not agree to mediate." (In this case an advocate advised his client not to settle the matter through mediation and unfortunately the case backfired during trial stage)[8]

The reluctance of advocates to resort and settle matters through ADR was also reported by the Tanganyika Law Society, National Bar Association when the view was expressed that in some cases advocates becomes the obstacle to a successful ADR process.

During consultation and analysis, the project team formed the view that lack of effective case management practices may be reducing the current effectiveness and potential of ADR. Until recently, cases have been managed within a manual system and whilst the judiciary has now made some transition to the use of information communication technology, the current Case Management System (CMS) is yet to include critical functionality such as producing court documents, recording of fees; case types; stages and dispositions; the scheduling of ADR events and case outcomes.

Whilst the Project Team acknowledges the view expressed by a representative of the TLS that the ADR system should remain confined to the judiciary, during the majority of interviews conducted, the value of Judges and Magistrates also mediating was consistently questioned. Of the questionnaire respondents, 75% believed that ADR should be conducted by officers other than Judges and Magistrates, but the ADR mechanism should remain court annexed. Of the 41 relevant judicial stakeholders initially consulted only one person supported the prospect of an ADR mechanism external to the court. However, after further consultation some Advocates were of the view that an ADR mechanism external could be preferred if this will enable the spirit of GN 422 of 1994 to be achieved. This position is equally shared by the Legal and Human Rights Centre which in its report[9] castigates the court system for delays and corruption and makes a general call for the adoption of ADR mechanisms that are not court annexed and simplification of procedures of the court.

Although ADR ordinarily refers to mediation, negotiation, arbitration and conciliation, in the judiciary in Tanzania only mediation is actively practiced by the courts under the auspices of the Civil Procedure Code as it was amended by Government Notice No. 422 of 1994.

Tanzania has not fully explored other potential support options such as the use of professional organizations like the Tanzania Association of Arbitrators, Contractors Registration Board, Tanzania Construction Council, the Tanzania Chamber of Commerce Industries and Agriculture as well as the NGOs such as the Tanzania Industrial Relations Associations to resolve disputes through mediation and/or arbitration. Whilst it is appreciated that the proposition may involve additional cost, these bodies could play a significant role in soliciting and preparing a pool of personnel (other than Judges and Magistrates) who could discharge the ADR function.

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[7] This is in accordance to the views expressed by Judge Robert Makaramba the Judge in Charge of the Commercial Court of Tanzania in his article which was published in the Tanzania Lawyer, A special Issue in Commemoration of 10th Anniversary of the Court in 2009.

[8] Dickson Mtogesewa, an Advocate who participated in training on Mediation and Arbitration provided through the Institute of Social Affairs.

[9] "Legal Aid Provisions in Tanzania: Improving Access to Justice" 2004 pp 22-28.

Analysis Outcomes: Relevant Legislation

In the main, The Civil Procedure Code as it was amended by Government Notice No. 422 of 1994 generally meets Tanzania's requirements given the current ADR mechanism.

One shortfall of GN No. 422 of 1994 however, is that the court cannot currently dismiss the suit or enter default judgment because of non appearance during the pre-trial hence prolonging the trial. The Court of Appeal of Tanzania in *Tanzania Harbours Authority Vs Mathew Mtalakule and 8 others*[10] , faulted the High Court for entering a default judgment for want of "appearance" in a pre-trial conference on the grounds, inter-alia, that:

> "That sub-rule provides that a court shall make such orders against a defaulting or unprepared party, agent or advocate as it deems it fit, including an order for costs. Admittedly, there is no list of the sort of orders it could give. The question is, can a court order a default judgment? We think not. The clause "including an order for costs" indicates that the legislature regarded costs to be more serious harm than "such orders' a court could deem fit to give. It is abundantly obvious that default judgment, and when it is against the defaulting party, is by far more serious than costs. So default judgment cannot be given in such a situation."

Additionally, GN No. 422 of 1994 is not very clear on the consequences of exceeding the speed track set by the Court. The High Court is divided on the point. According to Massati J (as he then was)[11] Kimaro J (as she then was)[12] and Rweyemamu J[13]:

> "the consequences are fatal for whoever exceeds speed tracks and that the court will dismiss every part of the proceedings, order or decree conducted or given at a stage /time after the expiry of the speed tracks unless one has applied for and was granted extension of the time within 60 days prior to the issuance of the said order or decree. The court has no jurisdiction to determine cases that have exceeded their speed tracks".

Mroso J[14] (retired) (as he then was) however is of a different view. He believes that: "exceeding speed track is a curable irregularity as the spirit of GN. No. 422 of 1994 is to speed up cases and not to relinquish rights". He thus urged the Chief Justice to review the rules so as avoid the potential harsh consequences of the GN.

Additional review of Section 61 of The Village Land Act Cap 114 of the Revised Edition 2002 revealed that it provides for parties in the land dispute to agree and call in the services of the village land council or its members to mediate between and assist those parties to arrive at a mutually acceptable solution

[10] Civil Appeal No. 46 of 1992 (unreported)
[11] Tanzania Fertilizer Co. Ltd Vs National Insurance Corporation of Tanzania and Another, Commercial Case No. 71 of 2004 (unreported),
[12] Absolom Msaka Vs Peter Massawe and NIC, Civil Case No. 124 of 1998 High Court of Tanzania (unreported)
[13] Mwanza City Engineer and Another Vs Anchor Traders Ltd, Civil Appeal No. 17 of 2005, High Court of Tanzania.
[14] Mrs Asha Ramadhani Laseko (through her constituted Attorney Kurthum Ramadhan Luseko) Vs Ramadhan Ali Luseko and Another, Civil Case No. 40 of 1996 (unreported) High Court of Tanzania at Arusha.

to the dispute. The village land council is empowered to exercise its function in accordance with any customary principles of mediation.

Further review of the Employment and Labour Relations Act No. 6 of 2004 revealed that this Act perhaps represents the best contemporary explanation of the three classical methods of dispute resolution:

a. Mediator (section 86) through the Commission for Mediation and Arbitration (CMA) established under section 12 of the Labour Institutions Act, No. 7 of 2004;
b. Arbitrator (section 88) appointed under section 12 of the Labour Institutions Act capable of issuing an award enforceable through the Labour Court as a decree of a court of law (section 89(2)); and
c. Adjudicator (section 94) by court of law which is the Labour Division of the High Court of Tanzania established under section 50 of the Labour Institutions Act, 2004 and vested with exclusive jurisdiction.

A review of Civil Revision No. 2 of 2008 (Court of Appeal of Tanzania, unreported) which arose from Land Case No. 216 of 2004, *Napkin Manufacturers Limited versus Charles Gadi and Another*, revealed that the Court of Appeal discussed the application of ADR and the effect of non-appearance of the party when the matter is fixed for First Pre-trial and Scheduling Conference, however apart from brief mention the case appeared to have little further relevance to the current assignment.

Analysis Outcomes: ADR Training

When the ADR program was formally introduced in the country in 1994, initially only four judges and two magistrates were trained and equipped with ADR skills. Further training was subsequently provided between 1999 and 2000 to additional 274 Judges, Magistrates and Advocates from all High Court zones in Tanzania, however the majority of Judges and Magistrates trained have since retired, seconded, promoted or have passed away.

ADR training has not been sustained in Tanzania since 2000 and has therefore not prepared sufficient numbers of skilled mediators.

Lack of skills and interest on the part of mediators and lack of training may have significantly contributed to failure of some mediation cases in Tanzania.

Analysis Outcomes: ADR Multi-Continent Review

The project team also analysed ADR practices and mechanisms in Tanzania in the context of international best practice. This was achieved through a multi-continent comparative study involving Bangladesh, Brazil, USA and South Africa. The following summarises the key findings by-country:

ADR in Bangladesh

Background

In June 2000, formalized ADR was introduced in Bangladesh by means of court annexed judicial settlement pilot projects, in an effort to decrease delays, expenses, and the frustrations of litigants labouring through the traditional trial process. Three Pilot Family Courts were established in the Dhaka Judgeship, which exclusively used judicial settlement to resolve family

cases including: divorce, restitution of conjugal rights, dower, maintenance and custody of children. An amendment to the Code of Civil Procedure was not necessary due to an existing 1985 Family Courts Ordinance, which authorized the trial judge to attempt reconciliation between parties prior to and during trial. The pilot courts were staffed by 30 Assistant Judges selected from all over Bangladesh, lawyers and non-lawyers, who were given training by a United States mediation expert. During this assignment, the Assistant Judges were relieved of all other formal trial duties. All three pilot programs were fully functioning by January 2001. Once judges had begun successfully settling cases, the program was expanded slowly to additional courts throughout the country. By the end of the first year of the program, the judicial settlement procedure in family disputes had effectively been introduced in 16 pilot family courts in 14 districts of Bangladesh. Due to the high settlement rates these courts were achieving, the Law Minister convened a conference in 2002 in order to spread awareness of the achievements.

In 2003, the Civil Code of Procedure was amended to introduce mediation and arbitration as a viable means of dispute resolution in non-family disputes. In addition to this amendment, the Money Loan Recovery Act stipulated the use of Judicial Settlement Conferences for money loan recovery cases. A training program led by former Chief Justice Mustafa Kamal took place at the Judicial Administration Training Institute (JATI) in Dhaka for the forty judges that have exclusive jurisdiction over money loan recovery cases. Mediations began in non-family disputes in July 2003.

Mechanisms

Bangladeshi mediation is a facilitative, informal, non-binding, confidential process directed by judicial officers. The case, once filed, is immediately assigned to either an ADR track or a trial track. For cases assigned to ADR, mediation proceedings take place within two months of filing. If a settlement is not reached within this period, the case begins a continuous trial over the course of six months. If a resolution is reached through mediation, parties can request a refund of the fees paid to the court. Under this system, each case assigned to the ADR track is resolved by adjudication or by mediation within six months of filing.

Institutional Framework

The majority of ADR in Bangladesh is court-annexed; a private mediation facility has not yet developed. Judicial mediators are compensated in the same amount as the traditional trial judges.

Coordination & Oversight

The mediation program is coordinated through the court registration process, which assigns cases to either the mediation or the regular trial track.

Implementation Strategies

Within two years, the Judiciary (or the ADR process) had successfully eliminated all opposition from the Bar Association by demonstrating that ADR did not decrease lawyers' income; within this short span of time, ADR gained great acceptability within Bangladeshi society. At the conclusion of the Bangladeshi ADR pilot project Justice Kamal noted the importance of a adhering to a thorough plan of action when implementing an ADR program. Without a decisive plan, ADR resources can be overwhelmed by undisciplined case referral or misused by the referral of cases inappropriate to ADR, causing settlement rates to suffer. The use of pilot projects allowed the program to evolve while being closely supervised and adjusted to overcome potential difficulties.

Also clear from the Bangladeshi project was the necessity of a dedicated oversight team in order to spearhead and monitor the development of the project. In Bangladesh, retired judges presented an accessible and appropriate group to fulfil this necessary function.

Success and Limitations

Two years after the initiation of the pilot Family Courts, 1322 family cases had been disposed of through mediation. Rates of disposal varied from 35%-83% of pending family cases, depending on the court. Between July 2003 and July 2004, 3,432 non-family cases were disposed of through mediation. In money loan recovery cases, the Loan Courts have disposed of 13,157 cases between May 2003 and July 2004.

The current widespread use of mediation has necessitated consideration of a national training facility for mediators, to provide standardized training and certification for all mediators. Efforts are now being made to expand the ADR program to include commercial cases.

NGO-supported Community Mediation

Apart from the court annexed ADR, Bangladesh has NGO-Supported community mediation system. The system emerged as an intermediary result to enhance access to justice to women who were identified as victims of injustice by the USAID-Bangladesh national customer need survey in 1995.

The program is managed by the Maduripur Legal Aid Association (MLAA), a Bangladeshi NGO. The MLAA community mediation program uses a multi-tier structure of village mediation committees supported by MLAA field workers to deliver ADR services. Local mediators are selected, trained and supervised by MLAA field workers in consultation with local officials, religious, and social leaders. The local committees meet twice a month to mediate village disputes, free of charge. Most disputes involve property or marital problems. Agreements are voluntary and are not enforceable in court. The MLAA program currently mediates roughly 5000 disputes annually and resolves roughly two-thirds of them. Satisfaction with the program is high. Most users prefer the program both to the traditional village dispute resolution system and to the courts.

Design:

The program design builds on the traditional (*shalish*) system of community dispute resolution, which has much greater legitimacy than the court system. The MLAA program reduces the *shalish* system's cultural bias against women through legal education for local mediators and disputants, and through the selection of women as mediators.

Operation:

To ensure the quality of dispute resolution services, the program provides training and ongoing oversight for mediators and field workers. To minimize costs, the program uses a word-of-mouth outreach strategy, volunteer mediators, and simple procedures with a minimum of written documentation. Although it is highly cost-effective compared to the courts, the program is not financially self-sustaining. To ensure sustainability, it must continue to secure grants, begin charging user fees, or both.

Impact:

MLAA's community mediation program has demonstrated the potential for community mediation to increase access to justice for disadvantaged rural groups, especially women. Its impact is limited primarily by the small scale of the program relative to national needs. Scaling up to the national level would require substantial additional financial and human resources.

Relevance to Tanzania

The Bangladesh ADR program has some similarities to that of Tanzania in the sense that they each have court-annexed ADR (See Table 1 on page 23 of this report). Bangladesh commenced ADR a little later than Tanzania and unlike Tanzania, Bangladesh commenced ADR in the Family Court and initially did not amend its law on civil matters.

Tanzania may learn from the Bangladesh ADR positives, including the provision of training for both lawyers and relevant non-lawyers; relieving mediators from all formal trial duties to enable a full focus on ADR, holding regular conferences to spread awareness of the ADR, ensuring that retired judges and magistrate form a core team for oversight of ADR in Tanzania and supporting the move of establishing NGOs that will support ADR in Tanzania.

ADR in Brazil

Background

In March 2003, the Sao Paulo Court of Appeals created a special conciliation program, as the result of a legal study of California ADR models. The program sought to reduce the backlog of civil cases being appealed to the higher courts. As a result of the projects initial successes, Sao Paulo Lower Court (trial court) has since adopted a similar ADR model in August 2004.

Mechanism

Under the Sao Paulo Court of Appeals ADR system, parties in every appeal receive notification for a conciliation meeting, giving the parties the first opportunity to discuss settlement with a conciliator selected by the court. All parties must be represented by counsel to participate in conciliation. In order to become a conciliator, one must be a retired Judge, a public attorney, a private attorney (with 20 years legal experience), or University professor (with 20 years of teaching experience).

There are 65 conciliators working in this capacity within the conciliation division.

Most dedicate 4 hours a week to conciliation proceedings. Within the Sao Paulo Lower Court there are more than 120 conciliators distributed among forty-two Lower Courts. The City of Sao Paulo initiated Conciliation Division arranges settlement meetings between parties at the courthouse. Parties are not required to retain legal counsel for conciliation hearings. Conciliators may be retired or active judges, retired public attorneys, private attorneys, and professors with more than 5 years of experience; however, nearly all conciliators are lawyers. Cases involving ordinary collection, indemnification for car accident, indemnification for pain and suffering, summary collection and eviction for non-payment are eligible for conciliation.

Institutional Framework

Brazilian conciliation is a court-annexed program at the appellate and lower courts. Conciliators in the Sao Paulo court system are not paid for their services.

Coordination & Oversight

Within the Sao Paulo Lower Court one judge serves as the coordinator of the Conciliation Division. Conciliators are trained in 40-hour training courses.

Implementation Strategies

ADR implementation in Brazil began at the appellate level and, due to initial success, was installed in the Lower Courts. The Sao Paulo Court of Appeals conciliation program initially faced significant resistance from the legal community due to the perception that parties that had

received a favourable verdict at the court of first instance would not be amenable to conciliation. This perception proved to be unwarranted due to the long delay for adjudication of a case at the Court of Appeals; both the party filing the appeal and the opposing party have demonstrated openness to conciliation in order to settle the case in a timely fashion.

Successes & Limitations

Though parties are not required to attend these conciliation meetings, as a result of the conciliation program at the appellate level, nearly 40% of cases settled in the first year of the program (289 conciliation meetings in total), and 45% in the second year (with a total of 1063 conciliation meetings). At the Lower Courts settlement rates are approximately 30%. This settlement rate could in part be due to the voluntary nature of the hearings; as parties are not required to appear, the program faces the common problem that one or both parties will be absent at the hearing.

The Brazilian Congress currently has a mediation bill under consideration that will stipulate mandatory mediation in every civil case, establish in-house and court annexed mediation divisions, standardize mediation training and certification (including study of mediation techniques and ADR theory), and provide compensation for mediators. Mediators will be required to be private attorneys with 3 years experience.

Relevance to Tanzania

Again, Tanzania may learn from Brazil's ADR experiences, such as an introduction of ADR at the Appellate level and the engagement of retired Judges and Magistrates to act as mediators. Tanzania needs also to establish a standardised mediation training and certification.

ADR in the United States of America

Background

The United States of America has the widest range of formalized ADR mechanisms, which are administered through developed ADR systems. Due to the great diversity of ADR models and the high rate of settlement in the U.S. courts, the United States has served to inspire some countries in the development of their respective ADR models.

ADR was introduced in U.S. courts in the early 1980s in an effort to rapidly resolve the large numbers of backlogged cases pending before the courts and to address the considerable expense associated with trial. The four most prominent ADR mechanisms utilized in the United States are described below.

Mechanism

ADR in USA is comprised of two components:

(1) Early judicial case management and

(2) An "ADR mechanism," such as mediation, arbitration, judicial settlement or early neutral evaluation (ENE).

Judges play an important role in expediting the resolution of civil cases through judicial *case management*. First, they monitor the progression of a case through the court system with regular status conferences. These conferences obligate opposing attorneys to begin work on the case early, and ensure continual advancement.

Judges also require attorneys to identify the legal and factual claims in dispute prior to the early status conferences, which focus and limit the scope of the case. By requiring parties to share

this information, each side is able to pinpoint the strengths of their case and get a sense of the strengths of the case made by the opposing side, paving the way for early settlement.

Judges also encourage parties to attempt out of court settlement before trial by providing a stipulation to ADR after the initial case management conference. The importance of case management before the initiation of ADR proceedings helps parties to be more amenable to the ADR process. Finally, judges set firm deadlines that ensure the timely movement of the case to trial. The role of the judicial officer in case management is to promote the progression of the case rather than to evaluate the legal merits of the case.

The most frequently employed ADR mechanism in the United States is ***mediation.*** Mediation is a voluntary and confidential process, in which a neutral mediator assists parties to reach a mutually agreeable settlement. Parties, rather than the mediator, drive the mediation process. Mediation is an incentive based process; the mediator facilitates an exchange of information between parties by focusing on the interests of both parties, rather than evaluating the legal merits of each claim and passing judgment.

Many courts require parties to *attempt* settlement through ADR, but cannot require parties to settle. Though non-binding throughout the mediation process, a mediated settlement is binding once signed by both parties. If parties successfully reach a settlement, they typically outline the terms and conditions in a signed, binding contract and dismiss the pending claims. (In some other countries, and in rare cases in the United States, litigants may return to court to enter their agreement formally into court record and receive a ruling / dismissal directly from a judge.) Though such instances are rare, if a party to a dispute fails to honour the terms of the agreement, the opposing may seek enforcement by the courts.

The introduction of a preliminary case management hearing (even without an ADR mechanism) reduced the duration of the case by 60%. Court may require case management conferences 30, 60 and 90 days after the case is filed. After 150 days, the parties must select which type of ADR they will pursue, if they cannot agree, the court will assign an ADR process for them. (So there is usually no reason for one party to violate the terms of the agreement.)

If parties fail to reach a settlement, they continue upon their original litigation track. They return to court and their case is ultimately tried by an entirely independent trial judge. All information introduced during the settlement attempt is privileged and may not be used as evidence in court.

Judicial settlement is similar to mediation with the condition that a judge will serve as mediator. However, judicial settlement is also more evaluative than American mediation; after promoting communication among the parties and holding one-on-one sessions with each side, the settlement judge will offer an objective assessment of the case and suggests various settlement options (unlike facilitative mediation in which the mediator refrains from providing an appraisal of the case). Judicial settlement is similar in process to early neutral evaluation (ENE) which is a process conducted by a senior lawyer with expertise and experience in a particular subject matter. In this process, the parties convene in the office of the early neutral evaluator (the “neutral”), who evaluates each side of the case. Following a joint session and private caucuses, the neutral prepares an outline of the issues and an informed evaluation of the potential outcome of the case, which is then related to the parties either jointly or (more frequently) separately. This process results in the parties gaining a better understanding of their respective positions and the likely outcome if they proceed with litigation.

Arbitration is less commonly used in the United States. An arbitrator “hears” both sides of a civil dispute and hands down an award, which may be accepted or rejected by the parties. If the

resolution is accepted, it becomes legally binding; if rejected, parties return to the court process.

Institutional Framework

The United States utilizes court annexed and private ADR programs. Parties can seek settlement either via a neutral retained by the court (through a court-annexed program) or via a private neutral (usually employed by a for-profit mediation centre) through court-annexed ADR programs, litigants in the United States are able to attempt to resolve disputes through a wide range of mechanisms. (Programs which offer the option to select between multiple ADR options are called "Multi-Option Programs.")

Court-annexed or in house ADR programs generally provide a mediation session free of charge and only require payment by the parties once the mediation has exceeded a certain time limit.

Private ADR

Many parties considering litigation elect to entirely bypass the court system and instead attempt settlement through private ADR offices. (This is particularly true in complex commercial disputes.) One example of a prominent private mediation body is Judicially Arbitrated Mediation Services (JAMS). JAMS was founded in 1979 as one of the United States' first private (i.e. not court affiliated) ADR centres. With offices throughout the United States, JAMS continues to serve the legal community by providing highly competent and specialized neutrals to act as mediators, arbitrators and early neutral evaluators in civil cases. These neutrals are frequently retired judges, who have chosen to enter the workforce as mediators and arbitrators after their retirement from the court, or highly skilled attorneys.

JAMS is a for-profit institution that is privately owned by the neutrals that it employs. Litigants who choose to hire private JAMS neutrals are required to pay market rates for their services. While some private ADR centres are highly specialized some parties prefer to engage private, paid settlement officer for the following reasons:

- Parties that choose private ADR may select the settlement officer of their choice (whereas some court-annexed programs assign settlement officers without consulting the parties.)
- Some litigants believe that parties will be more dedicated to reaching a settlement if they are paying for services.
- Some parties believe that the quality of settlement services in private ADR programs is superior to that of court-annexed programs. (This is not always the case; however, as court programs have stringent training requirements and oversight procedures to ensure the quality of their program officers).
- JAMS employs settlement officers with a wide range of experiences, and accepts all types of cases.

Coordination & Oversight

Typically, court-annexed ADR programs are administered by ADR Coordinators, who specialize in pairing litigants with appropriate settlement officers. Coordinators require litigants to submit surveys indicating their ADR preferences and their synopses of the facts and laws at issue in the case. Based upon this survey, Coordinators either assign a settlement officer to a case or refer the litigants to a court-approved body of settlement officers (and litigants will jointly choose a settlement officer.) Once referred, the litigants usually contact their settlement officer directly and the court's official involvement is suspended.

ADR Coordinators also provide oversight in court-annexed ADR programs. They are responsible for recruiting mediators to the court maintained body of neutrals, upholding strict training and certification procedures, and monitoring actual mediation sessions. Mediators are also evaluated through use of questionnaires submitted by attorneys and parties after the mediation is complete.

Most mediators in the United States are attorneys or retired judges, who have been certified as mediators. There are no nationally standardized training requirements for mediators, but most court programs have stringent local training requirements. Private (non-court) mediators gain their business through their reputations as successful mediators; therefore those that are insufficiently trained are less able to resolve disputes, and therefore have a harder time gaining business. Mediators must be neutral and must ensure confidentiality of the process. Those that are creative and flexible are most likely to assist settlement effectively.

All court-annexed ADR programs in the United States are governed by local rules, which are developed by the judges of the court. Local rules establish quality control standards (e.g. establish statutory-minimum training requirements for all settlement officers involved in the program), define key concepts, determine payment schemes for settlement officers, and generally seek to ensure standardization in the treatment of cases. The common requirement that a mediator must have practiced law for at least seven years and undergo a 40-hr training program. U.S. legislation (which applies to all states and all courts) broadly requires courts to provide citizens with rapid access to justice and allows individual states to develop the mechanisms necessary to do so. While state legislations differ, all states allow, and many states require, courts to utilize ADR to rapidly resolve civil cases. Many states, such as California, allow local courts (county courts) to develop local rules governing their ADR processes.

Implementation Strategies

ADR in United States is flexible, being governed by broad legislation, which allowed courts throughout the country to develop unique ADR programs. As pilot projects developed, committees were formed to make adjustments and provide oversight, incorporating members of both the bar and the judiciary. The inclusion of attorneys in the formation and advancement of ADR programs assisted in overcoming some initial bar resistance to ADR. One such significant program advancement was the development of data collection models. Data collection enabled program officers to substantiate the programs' settlement rates, which provided a basis for program amendments.

ADR education for the general public was court based, providing information to litigants and counsel within the context of their case. Within California's 58 counties, ADR models emerged in response to a California Supreme Court decision requiring that civil cases proceed through the system within one year. Under this mandate, individual counties developed ADR processes to deal with the particular problems (backlog, expense of court and attorney fees, lengthy trial duration) and unique circumstances (low vs. high volume, limited vs. extensive resources, geographic location) of each court. The central criterion determining the success of a mechanism was agreed to be its utility in achieving settlements. This system allowed for the evolution of the plethora of ADR mechanisms that are in use today.

Successes & Limitations

ADR programs and mechanisms have been monitored, critically evaluated, and refined in the thirty years since their introduction. Today, over 98% of civil cases filed in the United States are resolved through private or court-annexed ADR. ADR has helped diminish the substantial

backlog of cases, and ensured timely access to justice by guaranteeing the expeditious movement of cases through the system within one year.

Though statistics vary, most court ADR programs report that between 60-80% of cases referred to the program are successfully resolved through ADR. ADR programs at the appellate level tend to report even higher settlement rates due to the discretion with which cases are referred.

Relevance to Tanzania

Like several other developing countries, Tanzania has adopted principals of ADR systems operating in USA. What we have learnt from USA is that it is crucial also that retired Judges and Magistrates as well as highly skilled and experienced public and private attorneys are actively involved in the ADR process in Tanzania once they are certified.

Tanzania like US should introduce strict procedures of ADR training and certification of ADR practitioners coupled with introduction of monitoring of actual mediation sessions.

ADR in South Africa

Background

In South Africa the earliest ADR mechanism was initiated in 1980's by an NGO, acting as independent Mediation Services of South Africa (IMSSA), in the mediation and arbitration of labour disputes. After the establishment of IMSSA, the African Centre for the Constructive Resolution of Disputes (ACCORD), the Vuleka Trust, the Community Law Centre, the Wilgespruit Fellowship Centre, the Community Dispute Resolution Trust (CDRT), the institute for Multi-party Democracy (MPD), and the Community Peace foundation (CPF), among others, implemented a variety of training, mediation, and community reconciliation programmes to help manage and control community tension, resolve neighbourhood disputes, train community leaders in negotiation and conflict management techniques and establish neighbourhood justice centres.

The program works to resolve union-management disputes, primarily in the organized labour sector. Participation in the ADR processes is voluntary, and arbitration agreements are legally enforceable. Mediated agreements are not enforceable, but are reported to enjoy a high compliance rate. Panellists are well-trained, and they may collect fees for their work. IMSSA finances its ADR work through a mix of fee-for-service (about 20 percent) and donor funding. Its caseload has grown from 44 cases in 1984 to almost 1500 in 1996. Cases can be handled within a few days. There is no systematic follow-up or monitoring, although satisfaction appears to be high.

IMSSA's program addresses tensions and poor relations between management and labour. It was established to overcome the ineffectiveness (costly, time-consuming with low user satisfaction) of the government-run labour dispute resolution system. With the political transition in South Africa, IMSSA's ADR program has served as a model for the new governmental structure for addressing labour disputes—the Commission for Conciliation, Mediation, and Arbitration (CCMA).

After the transition of power from the apartheid government to democratic government, the new South African Government saw the above ADR programmes as models for new governmental dispute management. The Commission for Conciliation, Meditation, and Arbitration (CCMA) was established in 1995. The aim of its establishment is to resolve labour dispute in a workplace environment. The CCMA was patterned after the success of IMSSA and its operational activities were influenced by a similar ADR system in Australia where it has been a

huge success in resolving labour dispute. In South Africa, the CCMA has been very useful in resolving labour disputes

Apart from the IMSSA and CCMA, there are other institutions in South Africa conducting ADR these include:

(a) The local community courts established by Department of Justice;

(b) The family mediation boards which is to help in resolving local family disputes; and

(c) The National Land Reform Mediation Panel to help resolve disputed land claim; and several other national and state agencies which are considering their own dispute resolution mechanisms that totally exclude the normal litigation process.

Mechanism

IMSSA's program uses Western ADR models, which fit well with the institutional and cultural norms within the industrial relations sector. IMSSA's organizational and institutional creativity has been instrumental in its continuing success, as these qualities have helped it to adapt its program to meet challenges to its financial resources and to its mandate posed by the recent political transition and accompanying changes.

With regards to CCMA, The CCMA has the power to licence Private Agencies and Bargaining Councils to perform any or all of its functions. This allows parties in dispute the choice of which institutions to assist them although the Bargaining Council where it exists for parties is always the first institution of engagement and if there is no Bargaining Council then the CCMA has jurisdiction.

As soon as the dispute is referred to CCMA, a commissioner must be appointed to attempt to resolve the dispute within 30 days through „conciliation", which may include mediation, fact-finding, and advice. At this stage, commissioners have no prescriptive powers, other than to subpoena persons for questioning, to inspect documents and enter premises.

If a dispute cannot be settled by conciliation, the CCMA must appoint a commissioner to arbitrate. The arbitrator maybe the same as the one who conducted the conciliation process, unless one of the parties objects. The parties may choose their arbitrator from a list, and request a senior commissioner in complex cases. The application for arbitration must be made within 90 days of the date of which the certificate was issued.

Arbitration proceedings are meant to be relatively informal and employee parties are entitled to be represented, if they so wish, by legal practitioners or union officials, while employers can appear in person or be represented by a lawyer or employers" association official.

Success and Limitation

IMSSA has conducted a large number and good training of the panellists; the high unmet demand for dispute resolution services in this sector; and the consequent support for the program from labour and management, its key constituents. Its relationship to legal structures has been clarified and strengthened with a 1995 law; IMSSA's clear independence from an ineffective and illegitimate legal system and government structure was critical to its success at the time of IMSSA's origins and until the transition to the new government, though it is now working closely with the new CCMA.

In recent times, the number of CCMA cases has been on the increase every month. For the month of February 2010, a total number of 13118 cases were held at the CCMA.

In terms of providing cheaper, quicker, more satisfactory resolution of labour disputes, IMSSA cites its ever-increasing caseload as evidence, although there is no systematic evaluation of its

work. IMSSA's impact in the ADR field is established by the proliferation of ADR programs and particularly by the creation of CCMA. IMSSA can also take credit for developing leadership at the grassroots level. One of its former founders and director is now the head of the CCMA. IMSSA faces new challenges in the face of the new government ADR system, and plans to complement and supplement CCMA work, and branch out into more specialized services. Modifications of the funding sources to rely more on fee-for-service work are also planned.

Relevance to Tanzania

Tanzania's ADR model has some similarities with that of South Africa. For example South Africa has a Commission for Conciliation, Mediation and Arbitration (CCMA) and Tanzania has a Commission for Mediation and Arbitration (CMA). Other similarities include the existence of the following in countries, family mediation processes and local community courts and tribunals operating at the grass root level. South Africa has a vibrant NGO led ADR system; something for Tanzania to explore in the future.

Whilst limited in terms of sample size, the project team's comparative review of ADR practices in Bangladesh, Brazil, USA and South Africa has revealed some common themes which have been considered in terms of 'international best practice'. Of particular note in countries studied, is the trend for a court-annexed ADR mechanism and the pivotal role that retired judges and magistrates are playing to oversee the ADR system. Brazil's introduction of ADR at the Appellate level and USA's introduction of standardised ADR training and certification have also been considered and captured within the project team's recommendations for Tanzania.

Table 1 on the following page provides a summary of ADR practices in Bangladesh, Brazil, USA and South Africa; also considered within the context of Tanzania's current ADR model.

Table 1: Comparative Summary of ADR Practices in Bangladesh, Brazil, USA and South Africa

Country	Similarities with Tanzania	Differences with Tanzania	Strengths	Weaknesses
Bangladesh	Court-annexed ADR Trained by USA Amended law to accommodate ADR in civil matters	Trained lawyers and non-lawyers Assistant Judges relieved of all formal judicial duties National conference held in 2002 Retired Judges play an oversight role Cases immediately after filing are either set for ADR or trial tracks NGO supported ADR	Maximum period for a case in ADR track is 6 months Decisive Plan of Action	NGO supported community mediation not self sustaining Agreements are involuntary and not enforceable in court
Brazil	Adopted from USA in particularly California State model Court annexed ADR	Appeals ADR System Mediation Bill under consideration Retired Judges, Private and Public Attorneys with 20 years working experience or University Professor with 20 years teaching experience	Succeeded at Appellate level Bill is in the pipeline	No strong private ADR system
USA	Tanzania ADR system draws its origin from USA Court annexed ADR	Private ADR programs (Not for profit and for profit) Retired judges or highly skilled Attorneys Strict training and certification procedures ADR system at Appellate level	Widest range of formalized ADR mechanisms Developed ADR systems	No national standardized training.
South Africa	Commission for mediation and arbitration in labour matters Conciliations system at community and local level on land matters and family disputes	Mediated agreements not enforceable No court Annexed ADR Well trained panellists Initiated by an NGO in Labour disputes	Well established NGO and community based conciliatory system	No well established court annexed ADR system

4.2.3 Draft Interim Report

A Draft Interim Report describing analysis performed during the Analysis Phase and outcomes of analysis was submitted to The Client on 5 August 2010 (on schedule as per agreed project Work Plan). Feedback on the Draft Interim Report was received from The Client on 20 September 2010 and the Final Interim Report was subsequently amended to reflect feedback and submitted to The Client on 5th November, 2010.

Following submission of the Draft Interim Report, The Client formed a Technical Committee/ADR Task Force to inform the direction of the project[15]. The project team has since been guided to some extent by the Technical Committee/ADR Task Force.

4.3 Development and Training Phase

The Development and Training Phase saw the project team conduct the following activities:

- Development of a comprehensive training plan including, train the trainer program, course curriculum, training materials and teaching aids;
- Development of a training manual for ADR trainers;
- Conducted training of participants identified in consultation with the Client; and
- Development of a strategy for sustaining long-term ADR training in Tanzania;

4.3.1 ADR Training Plan

Initially, it was proposed that initial ADR training would be provided to two groups each consisting of 25 participants and that the duration of training would be ten days for each of the two training courses. During training preparation and planning however, the following concerns were raised:

- Potential disruptions to the courts;
- Protocols and training efficiency concerns if Judges are to be trained with others; and
- Problems associated with 10 day attention and concentration spans.

In consultation with the Client, it was subsequently decided that the training would be provided to four separate groups, enabling the Judges to be separated from other participants.

An ADR training curriculum was developed to address Tanzania's immediate training need[16]. This was designed with aim of achieving the following training objectives:

- To provide participants with appropriate knowledge of ADR concepts, principles and techniques; and
- To provide the participants with the opportunity to acquire skills in facilitating ADR training programmes and to enhance their abilities as trainers in order to enable them to transmit their knowledge and experience of ADR to others.

4.3.2 ADR Training Manual

A fourteen chapter ADR Training Manual was developed specifically for the Tanzania training[17].

[15] Annex C: Members of the Technical Committee/ADR Task Force.
[16] Annex D: Tanzania ADR Training Curriculum.
[17] Annex E: Tanzania ADR Training Manual.

4.3.3 ADR Training Conducted

ADR Training was conducted at the Protea Courtyard Hotel, Dar es Salaam, Tanzania between 6 September and 1 October 2010 with participants selected by the Client. Whilst the Client nominated 50 training participants, for reasons unknown, 6 nominees did not attend the actual training. The Tanzania ADR Training Register within Annex E of this report displays participants[18].

4.3.4 ADR Long Term Training Strategy

A strategy for sustaining long-term ADR training in Tanzania was developed in accordance with the contract description of services[19].

The strategy proposes that the sustainability of an ADR programme begins with its design. In this regard, it sets out a training model consisting of the following four key elements:

- Identifying training needs;
- Planning action;
- Delivery of training; and
- Evaluation.

Using this training model as a foundation, the training strategy also provides the following key thrusts:

- Creating general awareness of ADR;
- Developing capabilities for ADR training and service provision;
- Ensuring financial sustainability of the training programme;
- Monitoring and evaluation; and
- Regulation of ADR practitioners through a code of ethical standards.

The strategy paper concludes with a recommendation that a comprehensive needs assessment should be undertaken before any training programme is implemented.

5 CHALLENGES AND RISK

5.1 Project Challenges

Whilst the project team was able to access enlightening records of CMA cases handled since 2007, there was a lack of reliable and valid statistical data relating to previous ADR cases and results within the mainstream judiciary, with the exception being the High Court of Tanzania Commercial Division. The project team however gathered sufficient qualitative information through consultation and interviews to arrive at valid conclusions. Questionnaires distributed to relevant key stakeholders subsequently supported to some extent the previously gathered qualitative and anecdotal information.

The following additional challenges were confronted during project implementation:

- During the analysis phase some key stakeholders were unavailable for consultation. The project team however gathered sufficient information through targeted interviews.

- Despite the efforts of the project team and Client representative, a copy of the significantly important document known as the Mroso Report could not be located. The project team

[18] Annex F: Tanzania ADR Training Register.
[19] Annex G: Strategy for Sustaining Long-Term ADR Training in Tanzania.

however, overcame this challenge by interviewing members of the original Mroso Committee to gather and understand key issues within the report.

- The project team initially experienced problems in scheduling ADR training to the satisfaction of the contract description of services, as the originally prescribed timing would have required Judges and Magistrates to share training sessions with other judicial officers. This was overcome through re-scheduling in consultation with the Client.

- The project team experienced a significant delay in receiving feedback from the Client on the Draft Interim Report (scheduled within the agreed work plan). By the time the feedback was received, the project team had already commenced implementation of the Development and Training Phase stated within the agreed work plan. This subsequently made it difficult for the project team to re-visit suggested project analysis activities and to re-draft the Interim Report to the satisfaction of the Client.

- Following receipt of the Draft Interim Report the Client elected to establish a Technical Committee/ADR Task Force to guide and monitor project activities. This initially delayed feedback and confused project communication and liaison requirements; issues which were subsequently resolved in collaboration with the Client.

- The Project Team also experienced delays in receiving Draft Final Report feedback from the stakeholder groups specified within the contract.

- The original project design occurred in 2007 however due to a delay in procurement, implementation did not take place until July 2010. This challenged the project budget requiring significant expenditure adjustment against original estimates.

5.2 Project Risk

A Project Risk Matrix was developed during the Inception Phase to identify and analyse project risks and challenges and to assess the likelihood, impact and degree of control. It also considered risk mitigation strategies and identified the approach needed to reduce impact upon the project's objectives.

During the life of the project, the team undertook periodic reviews of the Risk Management Matrix[20].

To some extent initial risks identified by the project team during project inception actually materialised during the project's Analysis Phase following submission of the Draft Interim Report. Client feedback on the Draft Interim Report was significantly delayed beyond what was agreed to within the project work plan. This created a level of uncertainty as the project team progressed implementation of scheduled Development and Training Phase activities without the required feedback needed to inform strategies and clarify expectations. The potential adverse impact to project effectiveness was eventually mitigated however, once the formal feedback was received and the Client clarified communication protocols and appointed a Technical Committee/Task Force. This enabled the project team to re-focus on required specific analysis activities and enhance collaboration through open and constructive dialogue. The feedback and improved communication subsequently also enabled a re-focus on intended project activities and objectives.

[20] Annex H: Tanzania ADR Risk Management Matrix.

6 IMPACT AND SUSTAINABILITY

6.1 Impact

Whilst it is not yet possible to measure the long-term impact of project activities, the project has provided the immediate benefit of training 44 ADR trainers within the judiciary. The five Justices of Appeal, seven High Court Judges, 24 Magistrates, seven State Attorneys and seven Advocates will potentially have a far reaching impact in the ADR process and civil justice system in Tanzania, particularly if training is subsequently cascaded to other judicial officers and relevant non-judicial officers.

ADR training provided has resulted into greater understanding of the ADR principles, mechanisms and practices, and Government Notice No. 422 of 1994 which amended the Civil Procedure Code of 1966 is now better understood.

6.2 Sustainability

Whilst the training of 44 judicial officers alone will not ensure sustainability of ADR in Tanzania, the project has provided a cadre of trainers who are strategically placed to provide ongoing training. The long term training strategy developed by the project team also provides the foundation needed to sustain long term ADR training in Tanzania. One challenge is to now sustain the pool of skilled trainers and practitioners through periodic ADR training and regular conferences to spread awareness of the ADR.

The project has also analysed and considered the sustainability of the ADR mechanism in Tanzania. Notwithstanding the views expressed by the TLS, the Project Team accepts the overwhelming view that the current practice of only serving Judges and Magistrates performing the ADR role is diminishing the potential effectiveness of the mechanism. Some related recommendations are therefore made within Section 7 of this report.

6.3 Cross-cutting Issues

6.3.1 Gender

With support from the Client, the ADR project team's approach included a contemporary and contextually relevant gender and equity strategy to inform the direction of its activities and to ensure that its capacity development efforts in Tanzania reflected interests and needs in an appropriately balanced manner. Of the judicial officers who participated in ADR training 76% were women. This was a positive step for women to play an active development role in the promotion of ADR in Tanzania whilst also sending a message of confidence to the larger group of women as litigants or would be mediators.

It is therefore critical that in the implementation of the ADR Long-Term Training Strategy, that trained women are continually developed and used as mediators in Tanzania's ADR process.

6.3.2 Corruption

The ADR project was managed and implemented in a transparent and accountable manner to foster stakeholder confidence, personal integrity and organisational responsibility. Additionally, project policies, frameworks and procedures required the application of consistent and accountable management practices and standards which were also be subjected to internal scrutiny within the Global Justice Quality Assurance Framework.

7 RECOMMENDATIONS

The following recommendations are provided by the Tanzania ADR project team:

The ADR Mechanism

1. The ADR mechanism in Tanzania should remain court-annexed, however the introduction of a model which sees cases referred to mediators (men and women) who are not serving Judges or Magistrates should be considered. To effect this, there should be a monitoring desk in each Court/ Registry which will ensure proper record keeping, accountability, and timely follow up of case status.

   The mediators to be considered under this framework should be retired Judges, retired Magistrates as well as experienced and skilled State Attorneys and Advocates as long as they are certified. This will enable mediators to have full focus on the ADR process. It is appreciated that this initiative would have cost implications and if adopted, this model should still require the court to determine if a case is amenable for mediation, refer cases to the mediators and make enforcement determinations if required. The court should continue to require parties to undertake a mediation process;

2. The project team is of the view that Tanzania should consider introducing ADR system at Appellate level to test its efficacy in disposing appeals;

3. An automated and integrated case management system should be introduced to ensure alignment with international best practice but more importantly to provide the Judiciary with the ability to effectively manage, consolidate, share, and protect case information. The functionality should include, but not be limited to, the management of parties and their advocates, the production of court ADR documents, the recording of fees; case types; ADR stages and dispositions, and the scheduling of ADR events and other important dates and times. The CMS should also be capable of automatically generating user-defined ADR case management reports. An ADR Case Management Officer should be appointed by the Chief Justice to manage and record cases within an ADR system, monitor mediation progress and identify any emerging issues or shortfall within the ADR mechanism;

4. Steps need to be taken to provide for retired Judges and Magistrates to form a core team for oversight of ADR in Tanzania;

5. The project team recommends that the compulsory nature of ADR should be adopted by the court in Tanzania in all civil matters unless the Presiding Judge or Magistrate is of the view that the case is not amenable for ADR. This could be achieved through administrative and procedural changes and mechanism established and approved by the Chief Justice and subsequently published;

6. Tanzania should consider the involvement of NGOs that could support the ADR system. The Tanganyika Law Society, National Construction Council, Tanzania Institute of Arbitrators, the Tanzania Chamber of Commerce Industries and Agriculture, the Tanzania Industrial Relations Association and the Contractors Registration Board should be engaged to establish the administrative steps required to enable practitioners and retired Judges and Magistrates to act as mediators and arbitrators;

ADR Legislation

7. Amendments are recommended to The Civil Procedure Code Order VIIIA to reflect the following wordings:

i. "In every case assigned to a Judge or Magistrate, the Presiding Judge or Magistrate shall after consultation with the parties or their recognized agents or advocates refer the matter for settlement to be placed before an ADR practitioner not being a serving judicial officer."

ii. "The Presiding Judge or Magistrate shall not refer the matter for ADR if the Presiding Judge or Magistrate has reasonable cause to believe that the matter is not amenable for settlement."

iii. "In the event of failure of settlement the case shall be referred back to the Presiding Judge or Magistrate for full trial."

8. In additional to the above, O VIII A needs to be amended in order to clarify the provision and remove ambiguity associated with the wording and omission on the provision. The Order, should, instead of using the word 'expire' in the scheduling order the word 'elapse' or 'run out' should be used to remove controversy associated with the word expire when one wishes to renew the scheduling order. The amendment should also address issues such as obligation of parties when scheduling orders expires (elapses/run out), in terms of application for renewal, the limitation period and the extent for which a court can grant such extensions and judges powers and or discretions in extending the scheduling orders, aspects which are currently not provided. Also the amendment of the Order should make the departure from the scheduling conference order without leave of the court a curable irregularity since the spirit of GN No. 422 of 1994 is to speed up cases and not otherwise.
9. It is further recommended that the Civil Procedure Code (Cap 33 of the Revised Edition 2002) needs to be amended so that Speed Track Four as provided under O. VIII A should cover all cases which cannot be disposed within Speed Track One, Two or Three.
10. The court should be empowered to enter judgment in default in case the Defendant is persistently defaulting to appear during the pre-trial hence leading to protracted delay in disposal of case through ADR mechanism.

ADR Training

11. The strategy for sustaining long-term ADR training in Tanzania developed during the execution of this project (Annex G) should be adopted and applied;
12. In the interests of sustainability, an independent review of ADR practices and understanding should be performed towards the end of 2011 to determine the effectiveness and impact of the ADR training implemented by this project;
13. ADR training should be provided to ADR training should be provided to a wider horizon, and should encompass Judges, Magistrates, State Attorneys Advocates, Academicians and the general Public throughout the country.This should be achieved by optimising the resources developed during the course of this project. That is, utilising the trainers trained to facilitate and deliver further training through the application of the ADR Training Curriculum and Training Manual;
14. To sustain the pool of skilled trainers and practitioners periodic ADR training should be provided coupled with holding regular conferences to spread awareness of the ADR. Refresher training should at some point be provided to those already trained to ensure that contemporary ADR knowledge and skills are maintained and emerging issues are addressed. Further, the Institute of Judicial Administration should be involved in ADR Trainings, and any ADR Training Manual prepared should be subjected to professional trainers for their opinion on its sufficiency

and efficiency in training ADR in Tanzania before the same can be approved for use in training.;;

15. ADR as a compulsory subject to LLB and Law School students, needs to be taught in practical sense. For ADR to succeed in practice, the teaching should be practical not theoretical as it is now. To affect this, University Academicians who will be tasked to teach LLB and law school students should first go through ADR Training which is offered to judicial personnel. .
16. An awareness-raising and sensitization programme is required to sensitise not only the legal community, but the public at large. The public should not be side- lined in awareness and sensitization of ADR system as they are the main recipients of the system and determinant of the success of the system. Their understanding and acceptance of the system is crucial to the implementation and success of ADR in Tanzania. Information communicated through various media should include the importance of ADR, an overview of the ADR mechanism and the proactive steps which have been taken to enhance ADR in Tanzania. The reported CMA ADR results should be socialised within the judiciary and Advocates also emphasising the practice at CMA of encouraging parties to settle disputes amicably through the use of both mediation and arbitration, subsequently reducing case backlog.

8 CONCLUSION

The Tanzania ADR Project has fulfilled its objectives, specifically:

- An evaluation of the successes and failures of the ADR mechanism in Tanzania. The project has also recommended some legislative change in addition to some procedural, administrative and managerial improvements to the current mechanism;
- A plan for sustaining long term ADR training in Tanzania has been developed;
- A comprehensive training programme for the training of ADR trainers was developed; and
- A cadre of trainers identified by the Client were trained.

Despite the challenges that emerged during project implementation, this report also demonstrates that the project team have adopted a flexible and collaborative approach to achieve desired outcomes and within the timelines stated within the agreed project work plan. Following submission of the Final Report, the ADR Project Team Leader will provide formal presentations to the Client groups specified within the contract, at a time mutually acceptable to the parties involved.

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Contractor Representative

20th December, 2011

ANNEX A: ADR PROJECT WORK PLAN (JULY TO DECEMBER 2010)

ANNEX B: KEY FOCUS GROUP REPRESENTATIVES

ANNEX C: TECHNICAL COMMITTEE/ADR TASK FORCE

ANNEX D: TANZANIA ADR TRAINING CURRICULUM

ANNEX E: TANZANIA ADR TRAINING MANUAL

ANNEX F: TANZANIA ADR TRAINING REGISTER

ANNEX G: STRATEGY FOR SUSTAINING LONG-TERM ADR TRAINING IN TANZANIA

ANNEX H: TANZANIA ADR PROJECT RISK MANAGEMENT MATRIX