



Implementing ADR Programs in Developing Justice Sectors

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Case Studies and Lessons Learned

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The robust network of ADR programs and activities in the United States today—ranging from community-based nonprofit work to the federal-level Interagency Alternative Dispute Resolution Working Group—has a tremendous impact on expanding access to justice, reducing burdens on court systems, introducing greater flexibility and creativity to the dispute resolution process, and opening avenues for conciliatory resolutions.

If the benefits of ADR are important in developed countries such as the United States, the positive impact of such mechanisms in developing countries is even greater. The problems facing justice systems in the developing world are daunting—case backlogs are in the order of years or even decades on the dockets; formal court infrastructures are incompatible with transient, scattered, or rural populations; and illiteracy and extreme poverty are the norm, while access to basic services is the exception. In these environments, the use of ADR brings justice directly to the less-advantaged by providing them with the opportunity to voice their problems and demands and empowering them to find their own solutions. Through the correct implementation of well-designed ADR programs, improved efficiency and effectiveness of the justice system can be achieved.

DPK Consulting, an international rule of law technical assistance, management, and advisory services firm,

has been working to foster good governance and the rule of law in developing or transitioning societies for more than 17 years. A great part of DPK's work in designing, implementing, analyzing, and assessing ADR systems and processes has occurred in Latin America and the Middle East. Throughout, our approach to working with alternative dispute resolution systems has drawn upon existing traditions of informal justice and reconciliation to encourage dialogue and collaboration.

DPK has provided support to ADR programs in the private sector such as the Chambers of Commerce in Chile and Ecuador; the public sector through support to courts, prosecution, and defense in Argentina, Costa Rica, the Dominican Republic, Ecuador, Morocco, Jordan, and El Salvador; and community-based organizations in Ecuador, Guatemala, El Salvador, Peru, and the Dominican Republic. Our experience in El Salvador is particularly illustrative of how community-based ADR programs can improve access to justice. In this article, we present case studies from two of the community-based dispute resolution projects.

El Salvador

From 2000 to 2005, DPK worked on two USAID-funded rule of law projects in El Salvador. A major component of both was to promote the development of ADR mechanisms, a goal that was initially reached through rural

legal centers designed to improve access to justice.

When the project started, the concept of mediation had very little visibility in El Salvador. A growing level of violence in the country and an overburdened criminal justice system had provided the backdrop and basis for U.S. government funding and support to make mediation a viable alternative

to resolving disputes through the challenged formal justice system or further violence.

The project implementation team worked with municipalities to set up 10 *casas de justicia* (rural justice centers) in separate communities and 14 *centros de mediación* (mediation centers), which were affiliated with the public defender's office.

Each casa de justicia was established in partnership with a local municipal government through a memorandum of understanding, with the blessing of the local mayor. Although the casa program was separate from the formal court structure, the project team selected cities that had significant court volumes and were in former conflict areas, so community-based means to resolve disputes were particularly relevant. The judiciary was involved in local coordinating committees from the outset and was highly supportive, as its members saw that the casas could significantly reduce the volume of cases entering the court system, particularly in the category of neighborhood or family disputes. In their first year of operation, the casas de justicia and centros de mediación facilitated a few thousand cases through either mediation or provision of legal assistance.

Of particular note is the impact of ADR on women. Women in the six communities where the casas and centros were located took far more advantage of the mediation services than men. For example, in three of the communities, women requested 70 to 75 percent of the mediations carried out. In the majority of cases, women requested mediations that dealt with family matters. The heavier use of mediation services by women was ascribed to their greater awareness of the program. In several of the communities, women comprised 70 percent or more of the audiences that received informational presentations by Casa personnel.

In 2007, DPK returned to El Salvador to implement the next stage of ADR reforms through the USAID-funded Mediation Program. Building on prior developments, the project worked to harmonize the legal framework for ADR in El Salvador, disseminate

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information about available mediation services, and monitor the impact of mediation. The team assisted the existing network of mediation centers to strengthen their skills and services as a means of preventing social and youth violence in targeted geographic areas through school-based mediation programs. Another major component of the program's work

centered on developing outreach campaigns with local partners on using peaceful means to resolve conflict to raise awareness and utilization of ADR services. To this end, the project team conducted a public outreach campaign to promote the use of the nationwide mediation network (32 centers and 40 school programs), helping to obtain hours of TV and radio coverage as well as written articles in a major newspaper, and an essay-writing competition for local schoolchildren about ADR.

A research study conducted as part of this project by a program consultant based on cases from a criminal mediation pilot program revealed that mediation allows for access to justice "free of obstacles based on gender, educational background, or type of dispute." The consultant's research indicated a 78 percent success rate, and reported that 92 percent of service users stated that they would use mediation again.

Lessons Learned

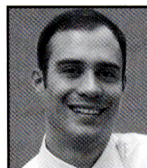
Through our experiences in El Salvador and elsewhere, DPK has gathered an extensive set of best practices and lessons learned about the elements critical to successful establishment of ADR programs in the developing



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world, which include the following:

Judicial system leadership must be familiar and comfortable with the processes. Buy-in and support from key justice system stakeholders such as lawyers, judges, and justice sector officials is essential to the success of ADR programs. Justice sector actors unfamiliar with ADR are often apprehensive that mediation will detract from their livelihood or undermine the standing of the courts.

To implement an ADR initiative, it is crucial to find positive voices within the system, who, internally or externally, can be enlisted as its *visionary* or *champion*. The role this leadership plays is vital as it will drive the organizational culture change. A successful approach to gain support from the higher ranks is the organization and implementation of pilot programs upon which success stories can be built. In El Salvador, after nearly three years of successful activity in developing ADR programs in El Salvador, the supreme court only recently changed its position to support the efforts after seeing the impact on those participating in the processes and that initial concerns proved unjustified. Similarly, in Jordan, the Judicial Council took the initiative to work with the ministry of justice to establish an ADR center led by judges in the main courthouse in Amman.

Further to this end, training and other types of orientation programs such as seminars and conferences on mediation and arbitration have also proven to be highly effective in breaking down misconceptions about ADR.

- **Engage key stakeholders.** Lawyers, courts, and industry players have to be engaged, and their needs and interests identified. How effectively the system will address their concerns will determine its success. The creation of advisory councils or committees, for example, has proven effective in bringing the relevant stakeholders to the table.
- **Public campaigns must be utilized to educate and inform the general population.** Similar to education of justice sector actors, public awareness initiatives targeting community-based organizations, business associations, community leaders, bar associations, law schools, and civil society at large are vital to foster the necessary understanding that ADR justice is not lesser justice, and that rapid and equitable resolution of disputes can be achieved through ADR. In El Salvador, the USAID-funded Mediation Program effectively launched a month-long outreach campaign centered around the legislatively designated National Mediation Day. Activities included an inaugural conference and several discussion seminars and roundtables targeted to diverse audiences.
- **Emphasize the importance of learning from others.** It is vital for ADR program implementers to share experiences and build on learning. By

joining ADR associations, attending national and international conferences, and studying other systems, ADR programmers not only learn new approaches, but also have the opportunity to update their designs and processes toward more effective and efficient outcomes.

- **Design a context-specific system.** A well-designed ADR system will address the following questions:
 - Who will provide the service?
 - How will fees be structured?
 - How will cases be referred?
 - How will settlements be enforced?
 - What kind of regulatory framework should support the system?
 - What is the relationship between the ADR system and the courts?
 - What are the sources of funding?
 - How will the trained personnel be obtained?
 - What types of facilities will be used?
- **Program sustainability must be established with counterparts.** The sustainability of an ADR program begins with its design. Because DPK's work is funded by international donors, such as the U.S. Agency for International Development and the World Bank, and for predetermined amounts and periods of time, ongoing financial and programmatic support for ADR programs must be established with counterpart organizations to ensure continuation of services once the project is complete. In El Salvador, for example, where DPK worked with municipalities to set up the *Casas de Justicia* and with the Public Defender's Office to set up the mediation centers, partnerships were established with local municipal governments based on formal agreements through which the local municipalities agreed to provide the physical space and eventually assume the operating costs for the centers. This approach offered greater assurance that the centers and *Casas* would continue to operate following the project's completion, while also engaging counterparts to participate in the process from the beginning.

As in the United States, ADR in the developing world offers tremendous opportunities, particularly for access to justice, but also faces complex challenges. As champions of creative solutions for improving the quality of life of individuals throughout the world through work that supports furtherance of the rule of law, we as ADR practitioners must continue to learn from and share our experiences in advancing the understanding and use of ADR in a variety of environments. In doing so, we serve broader communities and empower them to adopt and adapt ADR mechanisms in ways that work for them. ♦