

USAID Supports Alternative Dispute Resolution In Latin America and the Caribbean

Overview

Alternative Dispute Resolution (ADR) is an exercise through which community-based disputes are resolved by facilitated negotiation, conciliation/mediation, and arbitration. These mechanisms often precede or replace formal court proceedings and may include processes designed to manage community tension.

Typical characteristics of ADR include:

Flexibility and informality: ADR processes are less formal than judicial processes and lack the extensive written documentation of formal proceedings. They increase access and facilitate solutions for citizens who are intimidated by or unable to participate in more formal judicial systems.

Equity: ADR is more concerned with equality than the rule of law. Resolutions are based on principles and terms that are determined to be equitable for each particular case rather than on uniformly applied legal standards. This becomes particularly important in societies, in which citizens do not receive fair justice under the formal legal system.

Direct participation and communication between disputants: With ADR, disputants design their own settlements and therefore are required to engage in direct dialogue with one another in the interest of reconciliation. This participation is essential to lasting and solid resolutions.

Alternative dispute resolution is an important option in countries where:

- Case backlogs or complex procedures impair court effectiveness;
- Illiterate and/or poor people cannot afford to navigate conventional legal channels; or
- Small informal systems can better reach a geographically dispersed population.

ADR models can emphasize the importance of reconciliation and relationships over “winning” in dispute resolution. Mutually agreed-upon outcomes allow for creativity and increased satisfaction with judicial processes (thereby increasing court responsiveness to local conditions and compliance with court judgments).

USAID ADR activities in LAC:

The USAID democracy and governance program in Latin America and the Caribbean (LAC) strives to increase transparency, improve good governance and reduce corruption in government activity. Without a reliable and fair justice system, investor confidence and a stable trade environment are jeopardized. With USAID assistance, though, ADR in Latin America and the Caribbean has led to a stronger civil society, the reduction of corruption and an improvement in local government skills. Long term benefits of

USAID's programs in these countries will ultimately lead to better trade negotiating skills, more opportunity for foreign investment, and increased productivity.

To provide reliable and fair justice for the people of Latin America, USAID, along with its partner agencies, initiated several ADR programs in the region, summarized below:

Mexico: In September 2001, the American Bar Association (ABA), Latin American Law Initiative Council, the ABA Section of Dispute Resolution, and Freedom House initiated a project to promote mediation in Mexico. Funded by USAID/Mexico, the project created a partnership among states, the Federal District of Mexico, the Supreme Court of Mexico and other key national organizations. The project provided technical and administrative assistance to states and national organizations for their mediation initiatives through stakeholder exchanges and with the input of mediation experts.

To date, the project has helped to draft twelve Mediation Law Proposals, five of which have already been approved.¹ As a result of the project, 18 Mediation/ADR Centers are in full operation.² The USAID/Mexico mediation project has sponsored six basic mediator training courses (training a total of 144 mediators), three workshops on the design, operations and management of Mediation Centers (training a total of 71 people), and one Train-the-Trainer Course (training 24 people).

After one year in operation, the Mediation Center in Oaxaca had opened 608 cases. The Mediation Center has improved trust between the Oaxacan community and the judicial branch. The Mediation Center is also responsible for the preference of ADR processes. The Oaxaca Mediation Center (measured in agreements reached between parties) boasts an outstanding 75-80 percent success rate.

Similarly, after one year in operation, the court-annexed Mediation Center in Puebla has opened 1,684 files. Of these, 73 percent have undergone a mediation process. Ten percent have been resolved through simple orientation and 17 percent have been channeled to other court procedures.) Fifty percent of the cases referred to mediation have already resulted in a positive agreement and the remaining 50 percent remain in mediation.

Guatemala: A large segment of the population is indigenous (43 percent), poor (75 percent), and/or illiterate (24 percent)³ and often without access to formal means of

1 Guanajuato, Oaxaca, Puebla, Quintana Roo y Colima

2 Aguascalientes, Baja California Sur, Distrito Federal, Guanajuato, Jalisco, Oaxaca, Puebla, Querétaro, Quintana Roo, Sonora y Tabasco

3 CIA World Factbook <http://www.odci.gov/cia/publications/factbook/geos/gt.html>

justice. USAID has established complementary mediation centers in more than 20 indigenous communities—those communities hardest hit during the 36-year civil war.⁴ These centers now provide unprecedented service to indigenous communities and have become an acceptable mechanism to informally resolve disputes, including the application of Mayan law principles when agreeable to the disputing parties.⁵

USAID also supported the government's land conflict resolution institution, which resolved over 600 land conflicts in 2002. This includes the long-standing Los Cimientos conflict. Finally, USAID support has led to the expansion of the number and geographic allocation of judges, further increasing access to justice.⁶ A recent evaluation conducted by an independent firm reminded USAID/Guatemala of the importance of not confusing Mayan law with ADR. USAID will seek to keep this difference in mind when supporting the Justice System, so that the Mayan law can be respected and developed according to national and international laws, specifically ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries.

El Salvador: USAID's Rule of Law program was the catalyst for major reforms in El Salvador's judicial process. ADR methods have increased access to justice, provided relief to the congested court system, and contributed to a culture of peace. In El Salvador, USAID currently focuses on supporting alternative dispute resolution through the establishment of community-based mediation centers, working with municipalities as well as the Public Defender's Office.

In 2002, USAID-supported community-based mediation centers handled 1,870 cases. To date, six centers have been opened with USAID assistance. Twenty-one more centers, affiliated with the Public Defender's Office and selected municipal governments, will be opened by June 2005. USAID is also providing assistance to the Arbitration Center of the Salvadoran Chamber of Commerce.

Panama: USAID Panama has provided technical assistance to the courts, civil society organizations and judicial authorities at the local level. The program with the courts complemented an Inter-American Development Bank investment in infrastructure by providing specialized training to manage the court's mediation center. The work with civil society included training in mediation and organization of community-based centers at local universities and in one "*corregiduría* ".⁷ These community-based centers provide

4 Guatemala: Rule of Law Achievements—draft 12/10/01, Geiger, T. "Guatemala Country Summary for ROL Programs" (2004).

5 Guatemala: Rule of Law Achievements—draft 12/10/01

6 Guatemala: Rule of Law Achievements—draft 12/10/01

7 *Corregidores* are similar to justices of the peace who administer justice at the local level. A *Corregiduría* represents the respective *corregidor*'s jurisdiction.

unprecedented access to justice and promote the use of informal resolution of conflicts as an acceptable mechanism to solve disputes without clogging the courts. USAID/Panama will continue to work with civil society at the local level to promote use of ADR.

Nicaragua: USAID Nicaragua has provided technical assistance to civil society and human rights organizations that helps victims of domestic violence and other human rights abuses through ADR and Peace Commissions. The Organization of American States through its Peace Commissions has been focusing on conflict resolution, reconciliation, improving local government, and extending legal infrastructure in municipalities that were affected most adversely by the decade-long civil war. The Peace Commissions, in conjunction with Catholic Relief Services (CRS), help maintain more than 200 Peace Commissions in the northern and central parts of the country. These give inhabitants a means to resolve disputes, to monitor human rights abuses, and to express their concerns to government authorities. Many of the Commissions operate in areas where there is no government presence, and serve as surrogates for absent police and courts.

In support of the U.S./Central America Free Trade Agreement (CAFTA), USAID/Nicaragua has also initiated assistance for legal reforms related to transparency that are needed to facilitate a better investment climate for economic growth and to improve Nicaragua's competitiveness. USAID supported the Nicaraguan Chamber of Commerce in drafting Nicaragua's Law on Arbitration, Mediation and Conciliation during 2003-2004 through a cross-sectoral activity between the Office of Democratic Initiatives and the Trade and Agribusiness Office.

USAID supports court-annexed ADR in the criminal justice area to promote efficiency to resolve cases and to reduce backlog. Finally, USAID/Nicaragua also provides technical assistance to law schools in designing curriculums to promote ADR.

Guyana: In 2003, USAID undertook an experiment in ADR to address the backlog of cases, the result of inefficient judicial practices, through its Democracy and Governance program. USAID's implementing partner, The Carter Center, began training and technical assistance for a pilot project in court-connected mediation. The Carter Center trained 24 lawyers in mediation and created a Mediation Center. Initially, seven types of civil cases were identified to be eligible for the pilot project. Criminal and family cases were excluded. In addition, a new course on ADR was introduced in the curriculum of the University of Guyana Law Department. Two Guyanese non-governmental organizations NGO's -- the Guyana Bar Association and Guyana Association of Women Lawyers -- proved to be strong advocates for ADR, and provided leadership and support for USAID's ADR initiative in Guyana.

The concept of mediation is not only endorsed by the justice sector in Guyana but is also enthusiastically *practiced*. Between November, 2003 and March, 2004, 98 cases were referred to the program. Some very difficult cases were brought to mediation, including a case involving a bitter split between factions of a church (the first settled case under the

pilot project) and a case involving a land dispute among family members. More judges referred cases to the program as the mediation project became more integrated into the justice system and more justice sector personnel became familiar with the concept of mediation. The Chief Justice and Chancellor placed their considerable influence firmly behind the development of ADR in Guyana and attorneys continue to volunteer cases for mediation. The court's registrar endorsed mediation in the 2003 Annual Report, and the Attorney-General continues to support the project.

Given the success of court assisted mediation in Guyana, USAID plans to continue support for this project with wider publicity and by expanding the cadre of lawyers trained in mediation. This support will begin in July 2004 under its new five-year program. USAID also plans to explore the use of other ADR methods for criminal cases.

Colombia: To increase access to justice in Colombia, USAID continues to work with the Ministry of Justice to expand coverage through Justice and Peace Houses, community-based centers for ADR and other legal services. To date, 23 Justice and Peace Houses have been established and have resolved 1.4 million cases. USAID provides financial and technical assistance to equip these facilities, train staff, and conduct community outreach and education.

Chile: In 1995, USAID contracted the Corporación de Promoción Universitaria to coordinate training of ADR professionals in Chile. It is responsible for the ongoing development of ADR options and programs in Chile. Chile opened two mediation centers in 1996 which continue to settle a high percentage of cases brought as a result of the organization's collaboration with USAID.

Bolivia: One of the most serious challenges facing the Government of Bolivia is a lack of public access to the formal justice system. This poses serious threats to the legitimacy of the Bolivian government. USAID supports the use of ADR, especially commercial arbitration and conciliation, as a way to increase public access to justice and reduce the backlog of cases in the Bolivian court system. This alleviates the burden placed on courts and allows them to focus on anti-narcotics and broader judicial reform objectives.

Through the Inter-American Bar Foundation and the Bolivian Chamber of Commerce, USAID has established Conciliation and Arbitration Centers within the Chambers of Commerce in Bolivia's three major cities. Since 1994, the centers have recruited and trained conciliators and arbitrators from the business community, provided education and outreach to potential participants of their services, and helped draft a new Arbitration and Conciliation Law to make agreements and arbitration decisions enforceable by courts.

Most recently, USAID/Bolivia through its subcontractor MSD developed a program of Integrated Justice Centers. The Centers provide both formal and alternative forms of justice and conflict resolution to the most vulnerable citizens of society. The centers inform citizens of their legal rights, provide conciliatory services, and work closely with the formal justice system to address the needs of the centers' clients. These pilot Justice Centers, located in Yungas, Chapare, and within various districts of El Alto, are intended

to open the way for more centers throughout Bolivia where citizens lack access to the legal system.

Ecuador: In 1996, USAID provided support and technical assistance for modification of the Cassation law and for the introduction of ADR laws in 1997. Since 1996, USAID has supported the expansion of ADR as a formal option within the judicial process, enfranchising indigenous persons, women and the poor. As a result, 660 indigenous families utilized ADR and related legal services in 1999.

Paraguay: USAID provided technical assistance to develop ADR mechanisms in Paraguay. Pilot ADR programs were implemented in the municipalities of Asunción and Tobatí. By September 2000, four centers were operational and processed 100 cases within four months. The ADR mechanism is currently expanding throughout Paraguay.

Peru: From 1997 to 2002, USAID supported the design and application of alternative dispute mechanisms in Peru with a focus on conciliation. Under this program, USAID-financed legal and conciliation centers of the Ministry of Justice, which provided free legal conciliation services to the poor in nearly 700,000 cases. A significant percentage of these involved domestic violence and child support cases brought by women. This combined with support to private groups that promoted conciliation resulted in conflict resolution training to 1,500 conciliators and the establishment of approximately 570 conciliation centers across the country. By 2004, there were more than 17,000 accredited private conciliators and 615 public and private conciliation centers in Peru.

ADR Contacts:

Contact information for USAID funded ADR activities in Latin America and the Caribbean are listed below:

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Additional information about USAID's alternative dispute resolution partner programs can be found at:

(Bolivia Case Study, pages 72-80) - http://www.dec.org/pdf_docs/PNACB895.pdf

Hendrix, Steven E. and Victor Ferrigno F. Dispute Settlement and Customary indigenous Legal Practice in a Multicultural Guatemala: Empirical Data on Conflict Resolution and Strategies to Advance Access to Justice in Rural Areas. 3 Sistemas Judiciales 108 (Dec. 2003), p. 108-117

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