



Technical Report

Development of the ADR Framework and Implementing Guidelines for the Cooperative Sector

by the Conflict Resolution Group Foundation (CoRe Group)

Prepared for

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(OEDG), USAID/Philippines**

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Preface

This report is the result of technical assistance provided by the Economic Modernization through Efficient Reforms and Governance Enhancement (EMERGE) Activity, under contract with the CARANA Corporation, Nathan Associates Inc. and The Peoples Group (TRG) to the United States Agency for International Development, Manila, Philippines (USAID/Philippines) (Contract No. AFP-I-00-00-03-00020 Delivery Order 800). The EMERGE Activity is intended to contribute towards the Government of the Republic of the Philippines (GRP) Medium Term Philippine Development Plan (MTPDP) and USAID/Philippines' Strategic Objective 2, "Investment Climate Less Constrained by Corruption and Poor Governance." The purpose of the activity is to provide technical assistance to support economic policy reforms that will cause sustainable economic growth and enhance the competitiveness of the Philippine economy by augmenting the efforts of Philippine pro-reform partners and stakeholders.

Department of Finance (DOF) Undersecretary Gil S. Beltran, Executive Director, National Credit Council (NCC), requested EMERGE, by letter dated September 25, 2006, to assist the Cooperative Development Authority (CDA), among other things, to develop an alternative dispute resolution (ADR) mechanism. The Conflict Resolution Group Foundation (CoRe Group) won a competitive contract to do the job, and this is its final report of the task completed.

The views expressed and opinions contained in this publication are those of the CoRe Group and are not necessarily those of USAID, the GRP, EMERGE or the latter's parent organizations.

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FINAL REPORT

DEVELOPMENT OF THE ADR FRAMEWORK AND IMPLEMENTING GUIDELINES FOR THE COOPERATIVE SECTOR

1. INTRODUCTION

There has been expressed need at the Cooperative Development Authority (CDA) to speed up the resolution of intra-coop disputes and to promote the use of alternative means of settling disputes prior to bringing cases to regular courts. These concerns are in keeping with the Article 121 of the Cooperative Code which states that “*disputes among members, officers, and committee members, and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative, and in applicable laws.*”

It has been noted that the absence of a proper dispute resolution system to handle pending cases at the Cooperative level has resulted in waste of valuable administrative time and resources. To free these resources, empowerment of the all Coop to resolve their disputes at their level is essential.

It is therefore, critical for the CDA to embark on a project that will introduce and institutionalize the use of Alternative Dispute Resolution processes, with emphasis on mediation. Mediation is preferred the world over because it yields outcomes that are swift, less expensive, mutually satisfying, restorative of relationships, and more durable, aside from empowering disputants to take responsibility for finding solutions to their disputes.

2. OBJECTIVES

In order to empower the primary, secondary and tertiary levels to resolve intra-cooperative disputes, the following objectives for this program must be met:

- ❖ Formulate an ADR framework for the settlement of intra-cooperative disputes;
- ❖ Develop and finalize a set of IRR to be issued by the CDA in order to institutionalize ADR mechanisms for the cooperative sector based on the established framework.

3. METHODOLOGY

Several activities were conducted to generate data that will be pertinent in drafting the ADR Framework and Implementing Guidelines.

a. Quantitative Methods

- Survey conducted for the CDA
- Confirmatory Survey conducted for the Coops

- Survey conducted during the Deliberative Process to determine changes in opinions of participants

b. Qualitative Methods

- Questions and comments raised during the regional consultations
- Focused Group Discussions, Key Informant Interviews, paper research
- Structure dialogue and intentioned polling

4. TIMELINE

ACTIVITY	NOV	DEC	JAN	FEB
Preparation				
Data Gathering				
Survey & Interviews				
Design Team – Initial Framework				
CDA Board Approval 1				
Deliberative Dialogue 1				
Design Team – Initial Framework				
CDA Board Approval 1				
Deliberative Dialogue 1				
Analysis and Recommendation				
Program Report Writing				

5. CHALLENGES

1. Limited time was a major consideration as each phase had to be completed in less than the appropriate period.
2. Some data were not readily available which required more time and resources to generate.

6. PROJECT RESULTS

PHASE ONE

Assessment of CDA Conflict Resolution System

I. Methodology

The preliminary phase of this project resulted in the following deliverables:

- a) a study and assessment of the current conflict resolution system of the CDA; and
- b) a comparison of the CDA system with similar systems found in other government agencies.

These objectives were accomplished within a short 2-week period through combination of activities which included a review of records, key informant interviews, survey and focused group discussions. A detailed description of each activity can be found in Annex A “Assessment of the ADR System in the CDA.”

II. Results

A presentation of results was made for the CDA Board of Administrators on November 17, 2006 with the following major findings found below. A more comprehensive discussion of these research findings can be found in *Annex A*.

A. Awareness of ADR Policies

The ADR survey reveals that 100% of respondents from the CDA identified conciliation-mediation as the method of resolving dispute emphasized in the CDA policy. However, there is no clear understanding as to the current definition and guidelines of the conciliation-mediation policy. For instance, only 40% of respondents correctly responded to the question on the three-month prescribed period within which the agency must resolve disputes through ADR.

B. Nature of Disputes

The CDA Survey revealed that the most common types of dispute are those involving the officers of the coop, particularly member vs officer (35%) and officer vs officer (28%), as seen below in Table B1. This is affirmed by another question where “*Legitimacy of coop leadership or authority*” is found to be the most frequent complaint brought to the CDA.

▪ member vs officer	35%
▪ officer vs officer	28%
▪ member vs coop	23%
▪ coop vs coop	10%
▪ coop vs federation	2.5%
▪ federation vs federation	2.5%

THREE most frequent issues of disputes brought forth to CDA are:

- legitimacy of coop leadership or authority = 26%
- violation of the coop by-laws = 23%
- employment / termination in the coop organization = 14%

C. Organization and Structure

Both the Survey and FGD revealed that:

1. There are only 1-2 dispute resolvers in each region.
2. The presence of a Coop Development Specialist has helped alleviate the burden of caseloads from the regional extension offices.
3. The presence of a Conciliation Committee at the Coop level do not deter members from elevating disputes directly to the CDA since many of the cases involve officers of the Coop.

D. Dispute Resolution Process

The table below compares certain aspects of the International Standard for Mediation Process against the established ADR practices at the CDA. The development of a new ADR Framework and Guidelines aims to fill in the gaps illustrated below.

Table D1. Type of dispute resolution in the CDA vs International Standard for Mediation		
Features	MEDIATION	CDA Practice
Decision-maker	The parties.	Coop: Grievance Committee or BOD CDA: the parties
Basis of decision	Needs and interests	Evidence and merits of the case
Who controls the process	The Mediator: firmly but informally with the parties	(Coop) Conciliator-Arbitrator: Formal procedures, adversarial (CDA) ADR officer: Relatively informal
Role of third parties	Independent, impartial facilitator.	(Coop) Judge / Arbiter (CDA) Independent, impartial expert.
Direct involvement of the parties	Full participation on deciding on issues, creating, evaluating and agreeing options	(Coop) Input issues and background material then Conciliator decides (CDA) involved in identification of the problem and exploring options
Types of outcomes that emerge	Win-win, mutual acceptance	(Coop) Win-Lose: based on legal precedent and evidence (CDA) Compromise: between what parties want

The following observations may be inferred:

- The dispute resolution mechanism at the cooperative level has a semblance of arbitration particularly in the aspect of decision-making.
- There is strong consideration for case evidence and legal merit as basis of decisions or resolutions.

E. Effectiveness

Success Rate. Data gathered from the regions showed that the CDA resolved a total of 251 disputes in 2005 and 134 in 2004. This amounts to a 61% successful resolution of cases in 2005, an increase from the 49% resolved cases in the previous year.

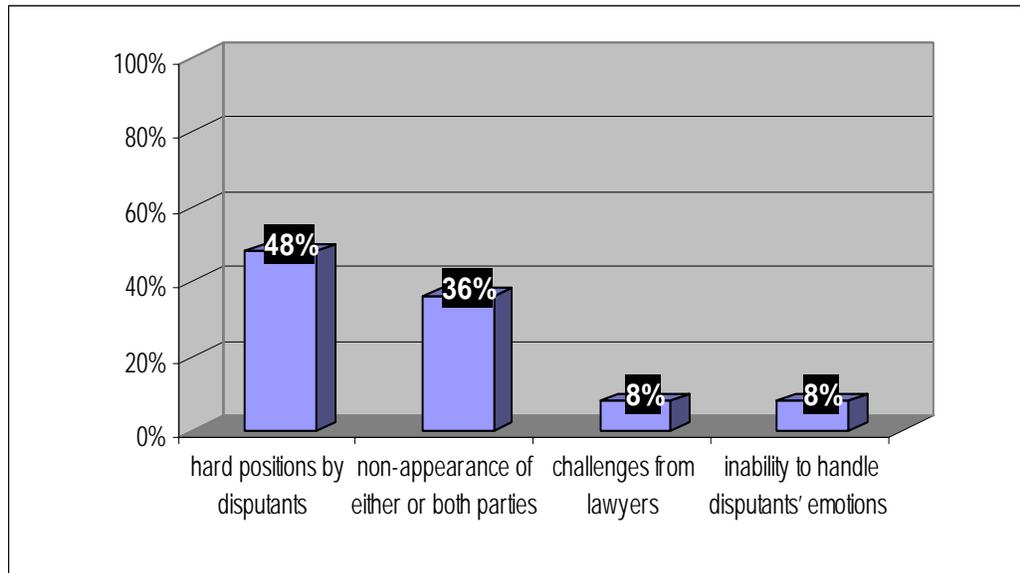
Backlog of cases. 71% of respondents claim there is NO back log of cases in their dockets. However, if there were pending cases, the average age of each would be 1-3 months.

Reasons for delay of case resolution. The most recurring reason for the delay of the process would be the failure of disputants to appear (43%) while the “*inability to present evidence*” appears as the second reason for delays in resolution of cases at 25%. The latter affirms the data gathered above in *Item D* that the CDA dispute resolution mechanism borders on arbitration and not conciliation-mediation as “*presentation of evidence*” is an adjudicatory procedure.

F. Education and Training

Survey results show that only 26% of the ADR staff in the regions had undergone training in ADR, mostly involving a 1-day seminar only. This lack of training was further reinforced by a question involving skills that dispute resolvers find most challenging.

Graph F1. Challenges faced by Dispute Resolvers



G. Monitoring and Reporting System

- Although 73% responded that their agency provides a way to monitor and evaluate effectiveness of their dispute resolution services, most reports are said to lack quantitative data, and have been found to be subjective and even anecdotal in nature.
- 57% survey respondents reported that they have no feedback mechanism to monitor client satisfaction
- 60% do not have a system to monitor outcomes of disputes addressed by coops under their jurisdiction
- 60% said that their agency has NOT launched a campaign or activity to promote their dispute resolution services

H. Comparative Assessment of CDA and Selected ADR Models

Below are two tables summarizing the various aspects of the ADR mechanisms found in other agencies compared with that of CDA:

Table H1. Comparison of ADR Profiles

AGENCIES	CLIENTELE	Types of Disputes Mandated by Policy	Unit/Division in-charge of Dispute Resolution	ADR Method Most Employed	No. of Staff in the ADR Unit	Ave. No. of Cases Rcvd/Mo.	Prescribed period to resolve dispute	Average Time in resolving disputes
NLRC	workers and employers	labor disputes	Regional Arbitration Branches (RABS) & Conciliation-Mediation Center (CMC)	preventive: Conciliation-Mediation	6	517	1 month	1 months
DOJ – PASIG	any individual or organization	criminal complaints where the imposable penalty does not exceed 6 years	Entire Agency - Office of the City Prosecutor	litigation, conciliation-mediation	1	n.a.	2 months	2 months
CDA	Coops, coop members, coop federations, coop unions	inter- and intra-coop disputes	Legal units and the CO Legal Division	conciliation-mediation	4 in CO Legal Division, Ave of 2 in Legal Units	19	3 months	3 months

Comments on the above Process Comparison:

- All models have been able to resolve disputes within their prescribed periods. However, the CDA should be able to further reduce the duration by which it is able to resolve disputes.
- The NLRC employs Conciliation-Mediation as a preventive measure to the formal filing of cases. Con-Med was institutionalized by the agency in 2004 with the establishment of the Conciliation Mediation Center (CMC).
- The Department of Justice mandated training for City Prosecutors and Officers nationwide as part of a project to institute Judicial Reform in the country

Table H2. COMPARISON BY ADR PROCESSES AND PRACTICE

Comparative Assessment of the CDA ADR PROCESSE with other operational ADR Models					
AGENCIES	DISTRIBUTION OF CASES	VENUE OF MEDIATION	HANDLING OF FAILED MEDIATION CASE	SCHEDULE OF MEDIATION CONFERENCE	CREDITING OF SETTLED CASE
NATIONAL LABOR RELATIONS COMMISSION	Upon receipt of complaint at the Receiving Section, cases are sent to the CMC for mediation. Cases are assigned to a Mediator randomly depending on his schedule.	Conciliation-Mediation Center or identified venue within the NLRC Office	Mediator issues a Report of Failed Mediation and submits to Arbitrator for compulsory arbitration	Mediator's discretion.	Mediators are credited additional 1 day of paid leave for every 4 cases handled
DEPARTMENT OF JUSTICE (Process A) *	New cases enter a pool of cases for mediation	Mediation rooms within the DOJ Hall of Justice	Returns the failed case to the pool to be assigned to other fiscals for Preliminary Investigation	The Mediators for the Day will get cases entering the pool	No one gets credit.
DEPARTMENT OF JUSTICE (Process B) *	Prosecutor personally identifies cases to be mediation from those assigned to him.	Sala of the Prosecutor	Failed cases go back to the City Prosecutor for re-assignment for Preliminary Investigation	Prosecutor's discretion.	The case will be credited to the Prosecutor's quota.
COOPERATIVE DEVELOPMENT AUTHORITY	Coop Level: Complaint is filed with the Grievance Comte which determines the merit of the complaint. Will dismiss if found baseless and without merit CDA: Legal officer of EO receives the Cert of non-resolution and written request or complaint. Conciliation-mediation commences when respondent submits his reply/comments	Coop Level: Coop Office CDA: CDA office with the option to hold conference in a comfortable venue outside the office	Coop/Federation Level: Certificate of Non-Conciliation issued CDA: issuance of Certificate of Non-Resolution which can serve as basis for filing before the proper courts	Notice of conference stating date, time and venue, is issued by Legal upon receipt of the comments/ answers	- o -

* NOTE: The Department of Justice pilot-tested two different processes to determine suitability to the department. At the end, it was recommended by Prosecutors that each City be given the flexibility to choose the process suitable for their distinct needs.

III. Recommendations

The materials gathered during this phase were used as reference and baseline data in drafting the proposed ADR Framework. These directed us to priority areas where the much improvement must be made. Here are some of our recommendations:

On ADR Process and Practice ...

- Need to review/revise policies and procedures that restrict confidentiality and candor during the ADR process
- Expanding the framework for resolving disputes beyond focus on the legal and technical aspects of resolving conflicts
- Addressing the need to strengthen mechanisms that ensure impartiality, mutual acceptance and freedom of choice, which have been compromised in the current ADR system

- Increasing opportunities of parties to express needs, wants and interests
- Need to install a process that will promote empowerment of and mutual recognition among disputants

On ADR Systems Implementation ...

- Need for a more institutionalized system for monitoring the satisfactory delivery of ADR services at the coop and CDA levels
- Implementing an information campaign to promote ADR in the cooperative sector
- Installing an effective system for monitoring and evaluating outcomes of dispute resolution in the CDA and Coops

On ADR Capacity-Building ...

- Need for skills training in ADR at all levels of the coop sector and the CDA
- Developing a workable strategy to provide ADR skills training for the estimated 20,000 registered cooperatives through the most efficient means possible
- Increasing capacity for promoting the ADR-Mediation process as the effective means to resolve disputes
- Importance of formulating an effective screening/selection process of Mediators to ensure effective delivery of ADR services
- Need to develop among ADR personnel the skills in listening, questioning, exploring interests, handling emotions, maintaining impartiality, etc
- Creating the proper mindset by renaming “LEGAL Units/Division”

On Developing the ADR Framework ...

- Need for uniformity in the rules of mediation at the cooperative level
- Establishing multi-access points/ mechanisms below CDA to enhance accessibility of ADR services
- Identification of sanctions/incentives to mitigate non-appearance by disputants
- Provision of conflict-coaching over and above conciliation-mediation
- Providing incentives to mediators-conciliators successful in resolution of disputes

PHASE TWO

Drafting and approval of the ADR Framework

I. Methodology

TWG Workshops. A Technical Working Group (TWG) was formed consisting of representatives from all stakeholders: CDA, Cooperatives, Union/Federations. A mini-workshop was facilitated by the CoRe Group where the proposed ADR Framework was presented to the group for deliberation of all comments and suggestions.

Board Approval. Following the approval from the TWG, the CoRe Group proceeded to present the proposed ADR Framework to the CDA Board of Administrators (BOA).

Regional Consultations. Six regional consultations were facilitated across the country by the CoRe Group accompanied by the representatives from the TWG during a 3-week period. Each consultation effectively generated substantial inputs from the participants using the Deliberative Dialogue Method which involved a combination of data gathering methods such as purposive sampling, structure dialogue and intentioned polling.

Table 1. Regional Consultations

AREA & VENUE	DATE	NO. OF PARTICIPANTS
Baguio (Hotel Elizabeth)	Dec 4	110
Pampanga (Fontana Leisure Estate)	Dec 5	153
NCR (Herald Suites)	Dec 8	65
CDO (Pearlmount Hotel)	Dec 11	179
Davao (Grand Men Seng Hotel)	Dec 13	96
Cebu (Montebello Garden Hotel)	Dec 15	73

Reporting of Results to the TWG and CDA BOA

After deliberating on the results of the Regional Consultations, a revised Framework was presented to the TWG on December 27, 2006. Taking into consideration additional comments from the TWG, the CoRe Group moved on to drafting the Implementing Guidelines based on the newly-revised ADR Framework. Workshops were held on January 5 and 9 to discuss the Guidelines prior to presentation to the CDA BOA.

On January 15, both the newly-revised ADR Framework together with three Implementing Guidelines for Cooperatives, Union/Feds and CDA were presented to the BOA.

II. Results

Attached to this report in *Annex C* is a comprehensive write-up on the ADR Framework as approved by the CDA BOA during the January 15 presentation. The write-up outlines three basic foundations of the ADR Framework: the principles behind the framework, enabling laws that support it, and distinct elements that make up the structure. Here is a summary of the write-up:

A. Principles Governing the ADR Framework:

In order to unify the ADR concept in all levels, the following principles must be deeply understood by all and serve as the basic foundation in drafting their own by-laws and policies on ADR:

- 1) PRINCIPLE OF SUBSIDIARITY – Where the coops are given free hand to settle the disputes amicably within their level before elevating it to the CDA.
- 2) SPIRIT OF COOPERATIVISM – Cooperation and collaboration should be promoted among members and cooperatives in the local, national and international levels.
- 3) VOLUNTARINESS – The process will only continue if principal parties voluntarily agree to submit to it.
- 4) IMPARTIALITY – Mediators shall not act in favor of any of the Parties at any point during the process.
- 5) CONFIDENTIALITY - The Mediator is bound to keep confidential all information obtained from the mediation proceedings, even when summoned into court.
- 6) ACCESSIBILITY – The service will be available in all levels and in all areas at an affordable rate.
- 7) EMPOWERMENT & PERSONAL RESPONSIBILITY – Enable the parties to define their own issues and to seek solutions on their own.
- 8) RECONCILIATION & PRESERVATION OF RELATIONSHIPS – The mediation process allows parties to reach an amicable settlement and re-build relationships.

B. Enabling Laws and Policies

To allow the ADR Framework to be effectively employed in all levels, here is a list of existing laws that give it more authority:

- **Republic Act 9285 or ADR ACT of 2004:** *“It is the policy of the State to actively promote and encourage the use of ADR as an important means to achieve speedy and impartial justice and to de-clog court dockets.”*
- **EO 523 Section 1:** *“All administrative bodies shall promote the use of alternative modes of dispute resolution such as mediation, conciliation as part of their practice in resolving disputes.”*

- **Coop Code, RA 6938, Article 121:** *“Disputes among members, officers, and committee members, and intra-cooperative disputes, shall... be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative...”*
- **CDA Charter, RA 6939, Section 8:** *“Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives. Provided, that if no mediation or conciliation succeeds within 3 months from request thereof, a certificate of non-resolution shall be issued by the commission prior to filing of appropriate action before the proper courts.”*

C. Elements of the Framework

These elements were found to be important to members of cooperatives and the CDA. Therefore, these must constantly be adhered to when drafting both the Framework and Guidelines.

STRUCTURE

1. **Multi-access to services.** Mediation services shall be available in CDA and the coop primary, federation and union levels.
2. **Pervasive.** Mediation-Conciliation shall be practiced in all levels of the coop sector and among all regional facilities of the CDA.
3. **Has low entry barriers to mediation practice.** Primary qualifications for accreditation of members to the pool of mediators shall be commitment to the mediation process and willingness to serve.
4. **Known to all.** Stakeholders shall be primed to become advocates and champions to promote the acceptance and use of mediation in coop communities and the entire sector.

III. RECOMMENDED PROCESS

The proposal is for the CDA and the entire Cooperative sector to employ Mediation as its primary dispute resolution mechanism because it embodies the abovementioned principles important to all cooperatives while allowing CDA to abide by its mandate. Mediation is where a trained neutral third party facilitates the negotiation between two or more parties in conflict, for the purpose of reaching a voluntary, mutually satisfying agreement. Conciliation, a process very similar to Mediation, shall also be applied whenever deemed necessary by the Mediator during the conduct of proceedings.

The Framework shall consist of three types of processes specifically designed for the Primaries, the Secondary/Tertiary and the CDA. However, all processes shall demonstrate the following important features:

- It was agreed that confidentiality and candor will be paramount to the process so provisions must be made in all three Guidelines to ensure these.
- To differentiate this new proposal from the previous adjudicatory procedure, legal and technical aspects of the dispute shall be de-emphasized in all levels.
- There will be an option to register Mediation Agreements with the courts in case of the need to enforce decision.
- Options shall also be made available for disputants to undergo ADR by private providers/practitioners in some or all levels.
- The Mediation process in all levels may be summarized by the following features:

Decision-maker	➤ The parties.
Basis of decision	➤ Needs and interests
Role of Mediator	➤ Independent, impartial facilitator
Role of the Parties	<ul style="list-style-type: none"> ➤ Full participation in decision-making ➤ Directly involved in creating, evaluating and agreeing on options
Outcomes	<ul style="list-style-type: none"> ➤ WIN - WIN ➤ Mutual acceptance of the decision ➤ Legally enforceable

Jurisdiction of cases. The initial Framework involved creating levels for which to refer specific types of cases. However, as a result of the inputs of many from regional consultations as well as the TWG workshops, it was agreed that **all** types of cases will be subject to referral to the Primary Cooperative Level subscribing to the Principle of Subsidiarity.

Process Flow. The succeeding pages show the three processes developed under the CDA's ADR Framework.

A. Brief Description of the Process Flow for Cooperative Level

1. Client submits complaint to the Committee
2. Coordinator assists the disputants in deciding whether to enter the mediation process or not via a Preliminary Conference
3. If Yes,
 - A mediator is chosen
 - The mediation proceedings begin
 - If Successful, parties sign a Mediation Agreement and a Mediator Evaluation Form. Agreement may be filed in the RTC where one party resides.

- If Failed, complainant may opt to go to the next level (Union/Fed) or other conflict resolution providers (including litigation)
- 4. If No, complainant may opt to go to the next level (Union/Fed) or other conflict resolution providers (including litigation)

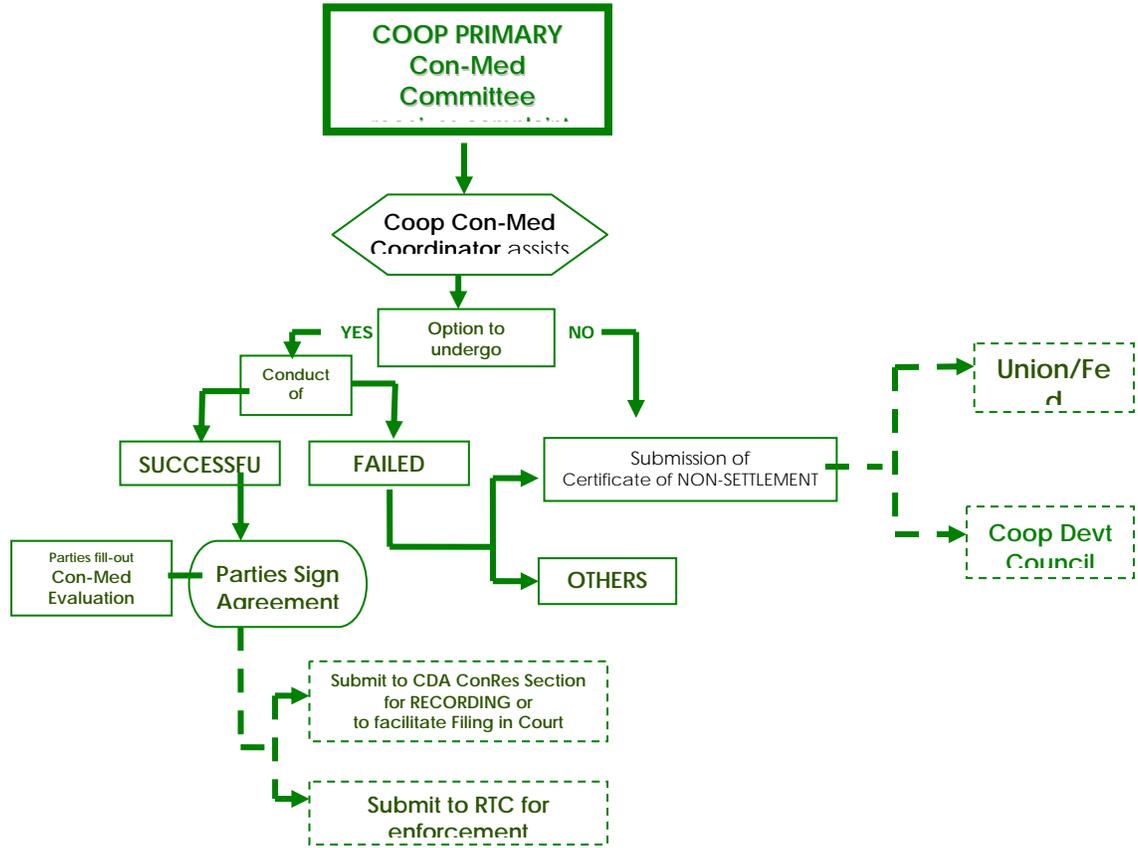
B. Brief Description of the Process Flow for Union/Fed Level

1. Client submits complaint to the Committee
2. Coordinator assists the disputants in deciding whether to enter the mediation process or not via a Preliminary Conference
3. If Yes,
 - A mediator is chosen
 - The mediation proceedings begin
 - If Successful, parties sign a Mediation Agreement and a Mediator Evaluation Form. Agreement may be filed in the RTC where one party resides.
 - If Failed, complainant may opt to go to the next level (CDA) or other conflict resolution providers (including litigation)
4. If No, complainant may opt to go to the next level (CDA) or other conflict resolution providers (including litigation)

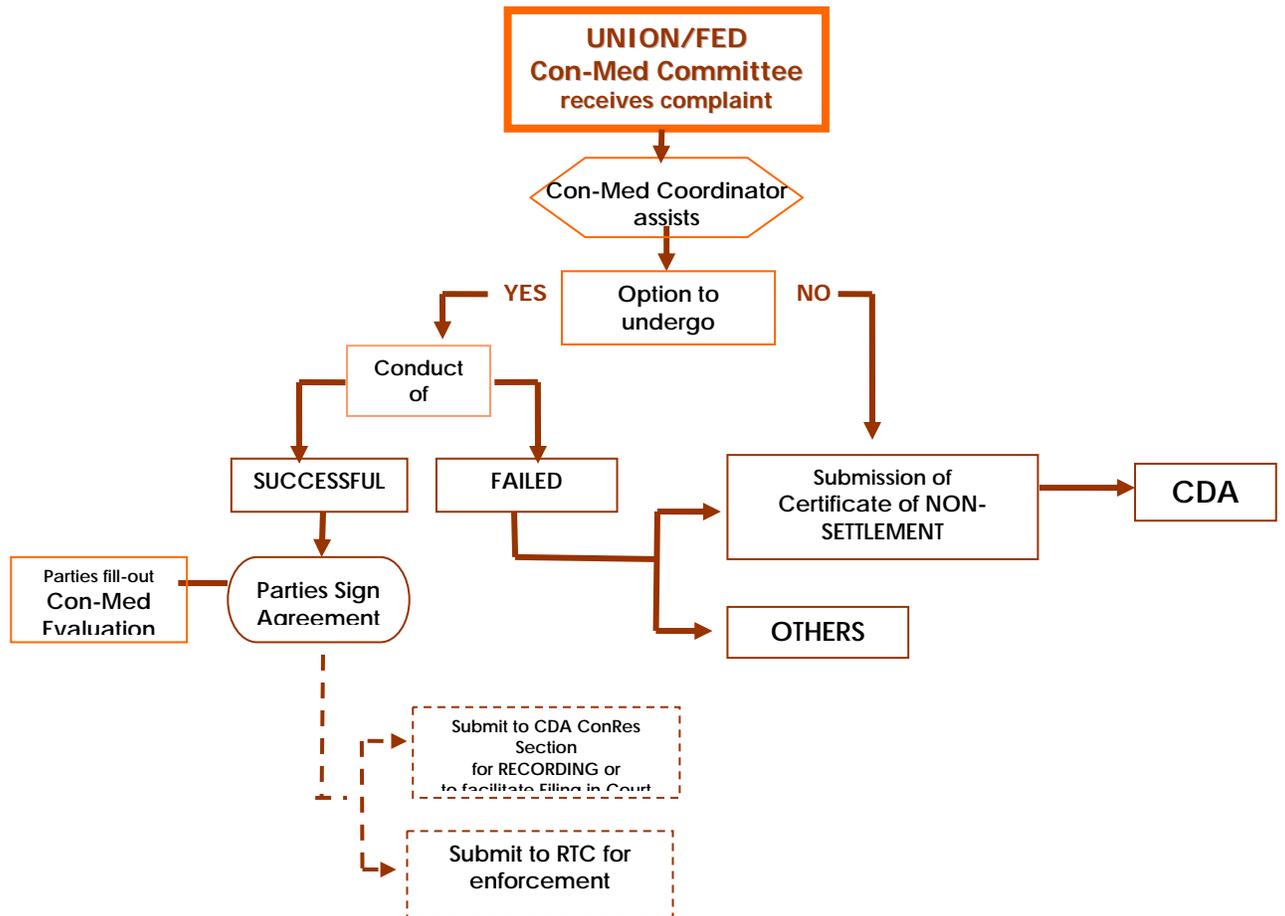
C. Brief Description of the Process Flow for the CDA

1. Client submits complaint to the CDA
2. Conciliation-Mediation Officer assists the disputants in deciding whether to enter the mediation process or not via a Preliminary Conference
3. Conflict coaching service is offered to the parties
4. If Yes,
 - A mediator is chosen
 - The mediation proceedings begin
 - If Successful, parties sign a Mediation Agreement and a Mediator Evaluation Form. Agreement may be filed in the RTC where one party resides.
 - If Failed, complainant may opt to go to other conflict resolution providers (including arbitration/litigation)
5. If No, complainant may opt to go to other conflict resolution providers (including arbitration/litigation)

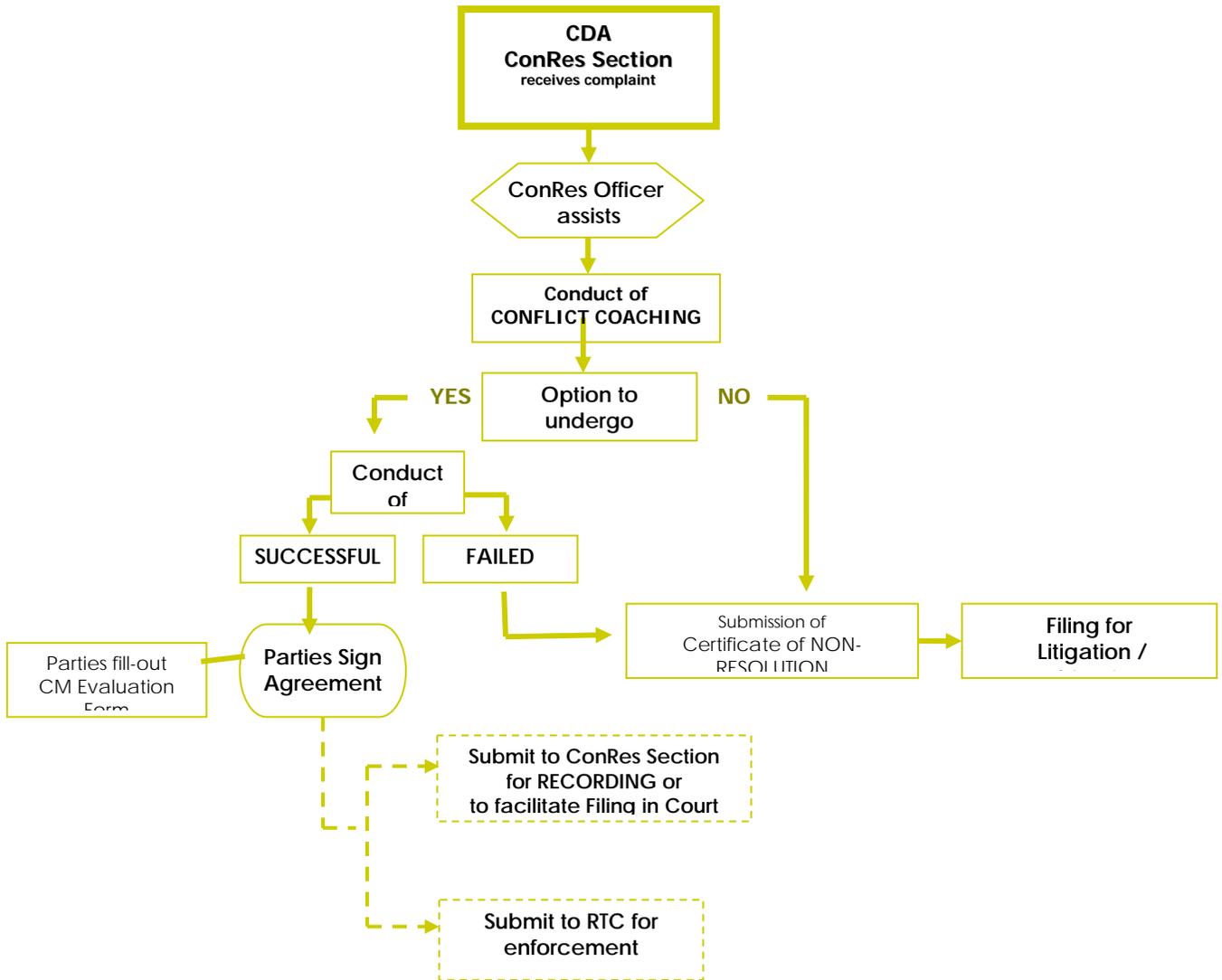
COOP PRIMARY LEVEL Process Flow



FEDERATION/UNION LEVEL



CDA LEVEL



IV. OTHER RECOMMENDATIONS

A. Education and Training

- Skills training in Conciliation-Mediation will be provided at all levels of the coop sector and the CDA.
- Screening/selection process of Mediators will be installed to ensure that competent and effective service providers will be accredited to the ADR Pool.
- Venues will be established to enable mediators to share lessons and best practices (without compromising confidentiality) as part of continuous training and skills enhancement
- Skills Training Program should be consistent with the ADR Law and conform to widely accepted INTERNATIONAL STANDARDS (at least 40 hours of classroom training and 40 hours of practical training)
- Training shall include ethical standards of practice
- Incentive schemes shall be implemented to reinforce effectiveness and good performance of Mediators. Incentives won't necessarily be monetary in nature.

B. Monitoring and Evaluation

- An efficient database management system shall be developed linking information from the primary, federation-union and CDA Levels.
- The overall information management system will track outcomes at all levels without compromising confidentiality.
- Customer feedback system will be installed to monitor effectiveness of the process and quality of the mediation service.

C. Advocacy

- Awareness-building activities will be incorporated in coop education activities including Inclusion in pre-membership education seminars, membership trainings and roadshows conducted by coop primaries and federation-unions.
- The use of alternative dispute resolution will be continuously promoted of at all levels.

PHASE THREE
**Drafting and approval of the
Implementing Guidelines of the ADR Framework**

I. Methodology

TWG Workshops. The remainder of the program, from January 15 to February 15, was spent deliberating on the three Implementing Guidelines for the Primary, the Secondary/Tertiary and the CDA. The first set of workshops were held prior to the January 15 CDA BOA presentation. The succeeding batch of workshops were conducted after the regional consultations where polishing touches were meticulously done on the guidelines, particularly on the Primary level version.

Board Approval. The CDA BOA signified their approval to proceed in the presentation of the three Implementing Guidelines during the regional consultations.

Regional Consultations. A second round of regional consultations were made in the same six areas as follows:

Table 1. Regional Consultations

AREA & VENUE	DATE	NO. OF PARTICIPANTS
Baguio (Golden Pine Hotel)	Jan 18	103
Pampanga (King Royale Resort)	Jan 19	57
NCR (Robbinsdale Hotel)	Jan 22	135
CDO (Dynasty Court Hotel)	Jan 24	87
Cebu (Golden Prince Hotel)	Jan 26	119
Davao (Paterno's Restaurant)	Jan 29	126

Reporting of Results to the CDA BOA

The final draft of the three Implementing Guidelines was presented and approved by the CDA BOA on February 15.

II. Results

- A. *Analysis of Data from regional consultations.* A significant amount of inputs were generated during the regional consultations that resulted to these key findings:

Key Finding # 1: Cooperatives are AWARE and ACCEPT that conciliation-mediation is the primary process by which they should resolve disputes.

Key Finding #2: Coops recognize the benefits in bringing disputes to the primary and union/fed levels. These benefits include:

- Less expensive
- Faster
- Impartiality is maintained

- There is confidentiality
- Prevents the problem from worsening or being blown out of proportion
- Less people will be affected by the dispute
- Will foster harmony
- Strengthens the coops as a self-governing institution
- Will encourage primaries to be members of federations
- Provides an opportunity to assess capability of federations to assist member coop
- Will de-clog courts

Key Finding #3: There is a need to redefine CONCILIATION-MEDIATION as understood and practiced by the coop sector.

Key Finding #4: There is a need to improve the coop sector’s capacity for Conciliation-Mediation. In the coop level, only 7% received any form of training on ADR.. Furthermore, only 20% claimed to have been satisfied with the outcome of CDA’s assistance on disputes filed for resolution in the past 3 years

Key Finding #5: There is a tendency for cooperatives to rely on CDA to render decisions on disputes.

- B. *Creation of the Implementing Guidelines.* Keeping in mind the above findings, the TWG and CoRe Group worked tirelessly to come up with three guidelines in the form of Memorandum Circulars to be issued by the CDA at a later date. The detailed guidelines are found in *Annex E to G*. Here is an outline of the salient features of the guidelines:

Table B1. Salient Features of the Guidelines Per Level

	PRIMARY	UNION/FED	CDA
Legal Basis	RA 9285, ADR Law 2004 Coop Code RA 6938, Article 121	RA 9285, ADR Law Coop Code RA 6938, Article 121 EO 95 & 96	ADR Law EO 523 CDA Charter RA 6939, Sec. 3 CDA-DARBC Supreme Court decision
Type of Coverage	INTRA – Coop	INTER – coop + Intra-coop Disputes unresolved at the primary level	All coop-related disputes not resolved at the primary and secondary levels
Implementing Unit	Conciliation- Mediation Committee	Conciliation- Mediation Committee	Conciliation- Mediation Section / Unit

	Function: Administrative, Reporting to CDA, Management of Pool of CMs, Advocacy	Function: Administrative, Reporting to CDA, Management of Pool of CMs, Advocacy	Function: Administrative, Info Mgmt, Management of Pool of CMs, Advocacy
Composition of IU	Members of Committee are either: (1) officers elected by GA (2) appointed by the BOD Prerogative of the primary; Accdg to by-laws	Members of Committee are either: officers elected by GA appointed by the BOD Prerogative of the union/fed; Accdg to by-laws	Staff appointed to the Section/Unit
Conditions for membership in IU	Trained and certified in Con-Med before elected / appointed to committee; MIGS throughout tenure	Trained and certified in Con-Med before elected / appointed to committee; MIGS throughout tenure	Regular employee of the CDA At least Basic Level Training in Con-Med
Person In-charge of Secretariat	Con-Med Coordinator	Con-Med Coordinator	Con-Med Officer
Qualification of the CONCILIATOR-MEDIATOR	MIGS Trained and certified by CDA-accredited trainer Non-coop/private CMs may also be members of the Pool	MIGS Trained and certified by CDA-accredited trainer Non-coop/private CMs may also be members of the Pool	CMs not necessarily staff of CDA Non-coop/private CMs may also be members of the Pool
Training	Training provided by group/institution accredited by CDA	Training provided by group/institution accredited by CDA	Training provided by group/institution accredited by CDA
Certification	By Coop Con-Med Committee endorsement & by CDA accredited training institute	By Union/Fed Con-Med Committee endorsement & by CDA accredited training institute	By CDA accredited training institution
Selection of CM for Con-Med	From Pool of CMs at the primary level or from certified CMs from other levels	From Pool of CMs at the union/fed/council levels or from certified CMs from other levels	From CDA certified CMs or certified CMs from other levels or private certified CMs
Purpose of Conflict	To clarify issues and interests	To clarify issues and interests	The parties are met separately,

Coaching	(stage WITHIN the Con-Med proceedings)	(stage WITHIN the Con-Med proceedings)	to consider con-med (stage before con-med)
Proceedings in case of FAILED Con-Med	Certificate of Non-SETTLEMENT is issued then dispute is referred to Union/Fed or private ADR or CDA	Certificate of Non-SETTLEMENT is issued then dispute is referred to CDA	Certificate of Non-RESOLUTION is issued before dispute is filed for litigation or arbitration
Proceedings in case of SUCCESSFUL Con-Med	Signed Agreement is: 1. submitted to CDA for recording, and/or 2. deposited to RTC for enforcement	Signed Agreement is: 1. submitted to CDA for recording, and/or 2. deposited to RTC for enforcement	Signed Agreement is: 1. submitted to CDA Con-Med Section for recording, and/or 2. deposited to RTC for enforcement
Reporting	Quarterly reports submitted to CDA (every April 15th, July 15th, October 15th and January 15th) SEMI-ANNUAL consolidation of recommendations on improving the ADR system (every July 15th and January 15th)	Quarterly reports submitted to CDA (every April 15th, July 15th, October 15th and January 15th) SEMI-ANNUAL consolidation of recommendations on improving the ADR system (every July 15th and January 15th)	Status report on con-med program released QUARTERLY (every May 15th, August 15th, November 15th, Feb 15th) SEMI-ANNUAL consolidation of recommendations on improving the ADR system (every August 15th and February 15th)

- C. *Drafting of Transitory Provisions.* Apart from the drafting of the Implementing Guidelines for the Conciliation-Mediation processes found in all levels, applicable transitory provisions were made to ensure seamless execution. These transitory provisions include a well-planned but easily enforceable series of activities. (summarize transitory provisions here)

III. RECOMMENDATIONS

A. Appointment of Project Development and Implementation Team within CDA

The new ADR Guidelines will involve considerable, but relatively painless, modifications in the organizational structure of the CDA. The Framework suggests that an ADR Unit be created in the CDA, as well as the regional offices. So communication of these new guidelines must effectively be transmitted to all concerned. It is, therefore, imperative that a senior official from the CDA be tasked to oversee the overall implementation plan. The CDA personnel shall act as Project Development and Implementation Team to do the following:

- a. Prepare a plan for the dissemination of the final Guidelines and its Implementation Plan;
- b. Serve as coordinating body between the CDA and the Project Consultant; and
- c. Provide all relevant data and information to the Project Consultant

B. Contracting a third-party Project Consultant

Based on the response from both sets of regional consultations, there is an overwhelming clamor from the cooperatives to begin training and implementation of the ADR Program the soonest time possible. Speed and level of effectiveness are key to making this ADR Program a success. The program must be implemented within the year to maintain the momentum of interest and enthusiasm from the cooperative stakeholders. Prior to the release of the Memorandum Circular and launch of the ADR Program, all support systems must be in place.

Thus, The CDA will require the assistance of a third party provider with the first-hand knowledge, expertise and track-record in establishing ADR Programs. The consultant shall craft an Operational Plan that would:

- a. Create a pool of 23,000 trained coop-based Mediators (based on the number of active coops) on Basic Professional Mediation within the first year from the time the Guidelines have been circulated by:
 - Training of 150 Service Providers (SP) within four months starting March '07.
 - Provision of multimedia training materials to help address the logistical challenge of training thousands over a short period of time.
 - Provision of Guidelines on the Training of Mediators, including:

- Selection process for the selection of trainees
 - Qualifications for training in Basic Professional Mediation
- b. Design a primer to be distributed to all levels guiding them on how to operationalize the ADR program. The primer shall contain printed forms necessary in the documentation of the mediation process.
- c. Design a CDA Recognition Process for the Pool of Coop Mediators that will include:
- A Code of Conduct and Standards In the Practice of Mediation in the Coop Sector that will spell out the following:
 - Qualifications of a Mediator
 - Standards of Practice for Mediators
 - Training Requirements for Various Levels of Mediators
 - Process Flow Chart
 - Documentation Forms



Assessment of the Alternative Dispute Resolution System of the Cooperative Development Authority

17 November 2006

For the Project:

PROMOTING THE INSTITUTIONALIZATION
OF ADR MECHANISMS
FOR THE COOPERATIVE SECTOR

Supported by:

Economic Modernization through Efficient Reforms and
Governance Enhancement (EMERGE)

1.0 BACKGROUND

There has been an expressed need at the Cooperative Development Authority (CDA) to speed up the resolution of intra-coop disputes in line with effectively implementing its regulatory mandate of enforcing policies, rules and regulations that will aid in the strengthening of the cooperative sector. However, the legal framework, which current CDA personnel are mandated to use is so far deemed inadequate in addressing the debilitating effects of disputes on operations of cooperatives. The absence of a proper dispute resolution system to handle pending cases at the cooperative level has resulted in the waste of valuable administrative time and resources.

As the regulatory agency and resource center for the cooperative sector, it is therefore critical for the Cooperative Development Authority to embark on a project that will introduce and institutionalize the use of Alternative Dispute Resolution processes with focus on mediation. Mediation is internationally preferred because it yields outcomes more efficiently and at less cost. Through mediation, outcomes are mutually satisfying, restorative of relationships, more durable, and more empowering for disputants as they are encouraged to take responsibility for finding solutions to their disputes.

2.0 OBJECTIVES of the Study

The Study was generally aimed to produce information to be employed in the effective formulation of the Proposed Mediation Framework to be presented to the CDA Board of Administrators.

The System Assessment Study specifically aims to:

- Identify the CDA's current practices and policies on ADR
- Determine gaps in the CDA's current ADR system relative to the needs of the Agency and its clientele
- Compare the ADR system of the CDA with existing systems of selected government agencies to aid project proponents in the creation of feasible linkages and collaborations
- Procure information that can aid in the effective planning and design of the Mediation Framework

3.0 METHODOLOGIES

Review of Records.

Secondary data consisting of previous studies, reports and documentation were utilized to determine current policies and practices in the cooperative sector and the Authority. Insights into typical disputes and issues in cooperatives were gleaned through this activity.

Key Informant Interviews.

In-depth interviews were conducted with central and regional CDA personnel involved in providing dispute resolution services for cooperatives under their jurisdiction. Key informants were primarily from the Legal Division and Legal Units of the CDA. ADR officers of government agencies including the NLRC, DOJ and DTI were also interviewed in pursuit of a comparative assessment of working ADR models in Government. The comparative

assessment is aimed at providing the project team with broader design and planning perspectives beneficial to the effective drafting of the framework.

ADR Survey.

A survey was deployed to all Legal Units of the CDA which generated information on common disputes plaguing the cooperatives; on existing dispute resolution mechanisms the CDA utilize to resolve intra-coop disputes, and on the needs of the agency particular to efficient resolution of disputes.

Focus Group Discussion

The first focus group discussion was conducted with representatives of the Legal Division-CDA Central and the Legal Officers of the Manila Extension Office (MEO). The activity provided the research team with preliminary information on the current practices and policies of the CDA and the cooperatives. A subsequent FGD conducted with the Legal Division served to validate and expand the results gathered from the ADR survey.

4.0 LIMITATIONS and COVERAGE

The results of the survey incorporate data submitted by the CDA Regional Extension Offices between the period of November 3 to November 14, 2006. In the event of delayed submission, data provided by the Central Office were utilized to ensure that all 15 CDA extension offices are represented in the Study. It must be noted, however, that there were some disparities found between data submitted by the E.O.s and the data consolidated by CDA Central. Measures were taken whenever possible to validate data so that errors in the study may be mitigated.

5.0 KEY FINDINGS

➤ *Enabling Laws / Policies*

The CDA promotes the amicable settlement of disputes principally at the cooperative level. This is in adherence to Section 2 of R.A. 6938 of 1990 or the Cooperative Code which accentuates the *principle of subsidiarity*, prescribing that the cooperative sector has primacy over the State in initiating and regulating coops within its ranks.

In matters of disputes, cooperatives are to employ conciliation or mediation as stated in Article 121 of the Code:

"Disputes among members, officers, and committee members, and intra-cooperative disputes, shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative..."

Although it cannot be determined how many of the primaries have actually operationalized such alternative mechanisms for resolving intra-coop disputes, all coops are claimed to have incorporated ADR in their by-laws.

In the likelihood of the coop's failure to conciliate or mediate, the CDA is mandated to provide conciliation-mediation services as accorded in R.A. 6939, also known as the CDA Charter. Section 8 of the CDA Charter particularly states:

"Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives. Provided, that if no mediation or conciliation succeeds within 3 months from request thereof, a certificate of non-

resolution shall be issued by the commission prior to filing of appropriate action before the proper courts."

The CDA later formulated the "Procedures for Mediation and Conciliation of Cooperative Disputes in the Cooperative Development Authority" in keeping with this provision in the Charter. A significant feature of the Procedures is the provision which states that the CDA can only mediate or conciliate when the requesting party presents a Certificate of Non-Conciliation issued by the Cooperative's Conciliation/Grievance Committee or the Coop Board Secretary. This reiterates the *principle of subsidiarity* which would require the resolution of disputes at the coop level FIRST before filing a complaint with the Authority.

More recently, the CDA issued Board of Administrators Resolution No. 214, Ss-2004, "Revised Procedures for Mediation and Conciliation in the CDA" which was made effective on June of 2004. This was partly to reinforce the Authority's conciliation-mediation procedures in response to the revocation of the Authority's quasi-judicial functions as decided by the Supreme Court. This decision was brought down through a ruling on the case between CDA and DOLEFIL Agrarian Reform Beneficiaries Cooperative Inc, in May 29, 2002. Prior to this, the CDA was exercising quasi-judicial functions since the passing of R.A. 6939 in 1990.

➤ **Awareness of ADR Policies**

The ADR survey reveals that awareness of enabling policies on conciliation and mediation is high among dispute resolvers of the CDA. All (100%) respondents claimed that they were generally aware of a policy of the CDA on the manner of resolving disputes. All (100%) identified conciliation-mediation as the method of resolving dispute emphasized in the CDA policy.

However, the survey illustrates the varying level of awareness for certain CDA prescriptions on dispute resolution. In accordance with existing procedures, the CDA is mandated to resolve inter- and intra-cooperative disputes. All (100%) attested to this provision. But the survey revealed considerably low (40%) awareness among ADR personnel with regards to the three-month prescribed period within which the agency must resolve disputes through ADR. Respondents gave varying answers as "1 month", "4-5 months", "none specified in rules", "don't know", "60 days", etc.

➤ **Nature of Disputes**

Primary data show that the Authority receives an average of 19 dispute cases PER MONTH. At the regional level, Extension Offices may receive an average 2 disputes monthly. And it has been found that coop members are those who most commonly bring dispute cases to the Authority (83%).

The most frequent type of dispute is between coop member/s and coop officer. (See table below.) This is reinforced by findings that *legitimacy of coop leadership or authority* is the usual issue brought to the CDA. And while the common number of disputants per case is 6, this suggests that disputes that frequently arise at the coop level may be between member/members and the coop board or committee.

Common types of Dispute

- | | |
|----------------------|-----|
| ▪ member vs officer | 35% |
| ▪ officer vs officer | 28% |
| ▪ member vs coop | 23% |

- coop vs coop 10%
- coop vs federation 2.5%
- federation vs federation 2.5%

THREE most frequent issues of disputes brought forth to CDA are:

- legitimacy of coop leadership or authority = 26%
- violation of the coop by-laws = 23%
- employment / termination in the coop organization = 14%

➤ **Organization and Structure**

The Legal Division and Legal Units of CDA

The Legal Units are responsible for dispute resolution in the regions whereas the Legal Division assumes responsibility for dispute resolution in the Central Office – CDA National.

Seventy-three percent (73%) of respondents claim that their agency employs 1-2 people to provide conciliation-mediation dispute resolution services for intra-coop disputes.

The Coop Development Specialist

In a less formal capacity, the Coop Development Specialists (CDS) of the CDA provide assistance to cooperatives in disputes. Cooperatives who are “less comfortable” with bringing their complaint before the coop’s conciliation/grievance committee opt for the third-party intervention of the CDS, thus being more assured of impartiality. This has been said to alleviate the conciliation-mediation caseload of the regional extension offices.

The Cooperative Conciliation / Grievance Committee

The Cooperative By-Laws define the following powers and functions of the Conciliation Committee thus:

1. To conciliate, hear and decide all intra-cooperative disputes between and/or among members, officers, directors and the community.
2. Subject to the approval of the General Assembly, to issue supplemental rules and procedures concerning conciliation processes as may be deemed necessary; and
3. To exercise such other powers as may be necessary to ensure speedy, just, equitable and inexpensive settlement of disputes within the Cooperative.

Members to the Committee are elected during a regular general assembly meeting. It is comprised of a Chairperson, Vice-Chair and Secretary who shall serve the Conciliation Committee exclusive of other committees for a maximum period of 2 years.

Focus Group Discussions previously held with selected representatives of the Cooperative Sector reveal that the Conciliation Committee is commonly vulnerable to lack of trust especially among coop members involved in intra-coop disputes. This is most true when the type of dispute is between a coop member and a coop officer. Members perceive that the Conciliation Committee members are likely to take the side of the coop officer(s) against whom they have a complaint. For this reason, a member in dispute is likely to overtake the Conciliation Committee and file a complaint directly to their CDA Extension Office. This has been claimed to contribute to the backlog of cases in the CDA extension offices.

➤ **Dispute Resolution Process**

The table below compares certain aspects of the MEDIATION PROCESS and the established ADR practices at the CDA. The comparison should illustrate the gaps which the regulatory framework and IRR should fill in developing a Mediation system in the CDA and cooperative sector.

Type of dispute resolution in the CDA vs Mediation		
Features	Mediation	CDA Practice
Decision-maker	The parties.	Coop: Grievance Committee or BOD CDA: the parties
Basis of decision	Needs and interests	Evidence and merits of the case
Who controls the process	The Mediator: firmly but informally with the parties	(Coop) Conciliator-Arbitrator: Formal procedures, adversarial (CDA) ADR officer: Relatively informal
Role of third parties	Independent, impartial facilitator.	(Coop Level) Judge / Arbitrator (CDA) Independent, impartial expert.
Direct involvement of the parties	Full participation on deciding on issues, creating, evaluating and agreeing options	(Coop) Input issues and background material then Conciliator decides (CDA) involved in identification of the problem and exploring options
Types of outcomes that emerge	Win-win, mutual acceptance	(Coop) Win-Lose: based on legal precedent and evidence (CDA) Compromise: between what parties want

The following observations may be inferred:

- *The dispute resolution mechanism at the cooperative level has a semblance of arbitration particularly in the aspect of decision-making.*

The cooperatives have to be influenced towards mediation where the disputing parties are the principal decision-makers. They decide based on what they believe they need. And mediators merely facilitate the process to explore desirable options on which the parties base their decision. The established impartiality of the Mediator reduces the possibility of a member made vulnerable to the decision of the Grievance Committee or Board of Directors who may also be represented by an officer or committee member with whom s/he is in dispute with. Section 10 signifies this arbitrary aspect as it states: “.. The Board of Directors, constituting a quorum, shall review and decide the case, specifically stating the reasons and basis of its decision.” And it is highly possible that a coop officer or director sway members of the coop committee to decide in their colleague’s favor.

- *There is strong consideration for case evidence and legal merit as basis of decisions or resolutions.*

Mediation is interest-based. Decisions or resolutions under mediation are based on what disputants need, not what they can prove as legal or “right”. But it is not only practiced but prescribed in Section 2a of the “Conciliation Procedures in the Coop Level” that a complainant should submit a statement which includes “rights violated and evidence or

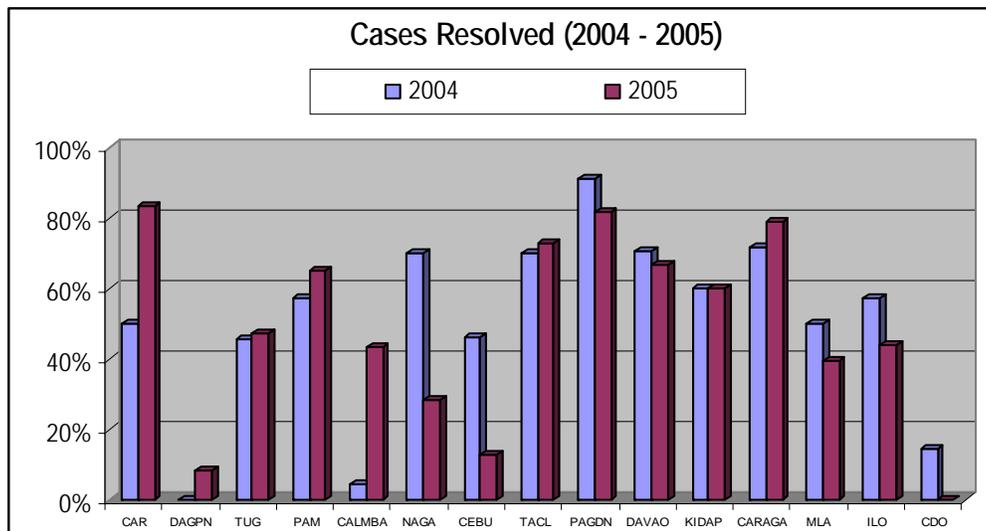
testimony of witnesses". Section 3 of the same Procedures follows through with "the [Conciliation] Committee shall determine the merit of the complaint... It may outrightly dismiss the same and inform the complainant in writing expressly stating the legal and factual basis of its decision."

The Authority, meanwhile, does maintain an effort at adhering to the non-legal process of conciliation-mediation. It defines the *conduct of conference* in Section 12.b of its Revised Procedures for Conciliation and Mediation as: "A mediation/conciliation conference is not judicial proceeding per se. Hence, the technical rules and procedures shall not be applicable in such cases." However, Section 13 states that the minutes of the conference proceedings shall form part of the records of the case.

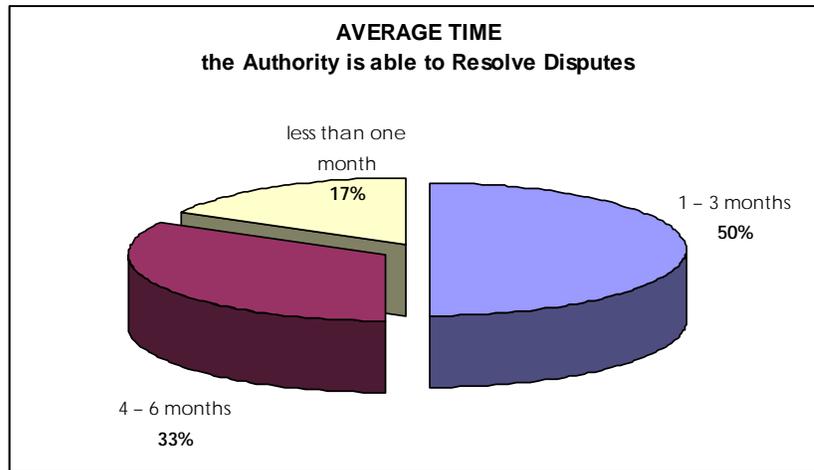
Contrary to practice, whatever notes and documentation taken by the Mediator shall be disposed of by the Mediator to maintain confidentiality. Also, the Mediator cannot be summoned by any court of Law to testify on the statements made by the disputants during the mediation proceedings.

➤ **Effectiveness**

The Authority resolved a total of 251 disputes in 2005 and 134 in 2004. This amounts to a 61% successful resolution of cases in 2005, an increase from the 49% resolved cases in the year previous.

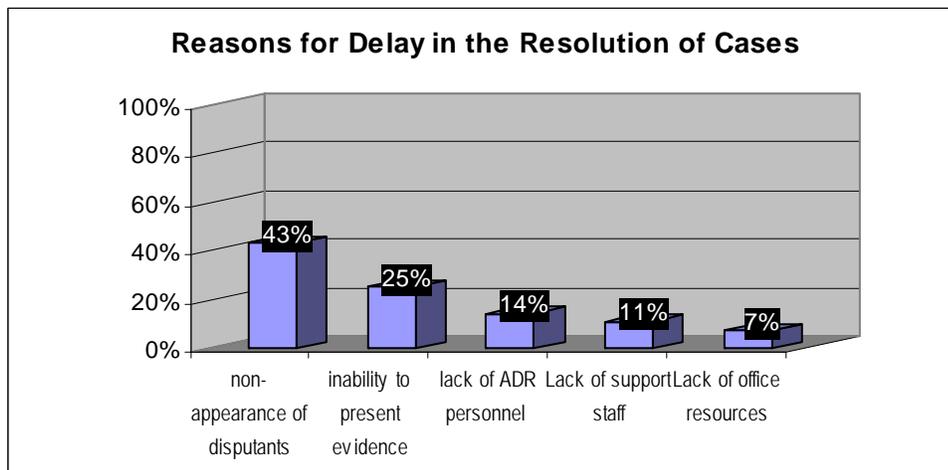


While this significantly shows positive performance in dispute resolution by the Authority, almost half of the extension offices reported a decrease in cases resolved between 2004 and 2005. (see graph above) Notably, the extension offices of Naga, Cebu, Pagadian, Manila, Ilo-ilo, Cagayan De Oro and Davao each show a decrease in their performance from 2004 to 2005. ARMM, on the other hand, posted no disputes filed nor resolved in light of the supposed effectiveness of their Community Development Specialist (CDS) in resolving coop disputes at its earliest stages, rendering intervention by the extension office unnecessary.



The Authority's ADR Procedures prescribe that a conciliation-mediation conference should be successfully conducted within three (3) months from filing of the written request/complaint. The survey shows that majority (63%) attest that the Authority indeed resolves disputes within the prescribed period. Seventeen percent (17%) of the respondents even observed that disputes are resolved in less than a month.

In this line, 71% of respondents claim there is NO back log of cases in their dockets. However, if there were pending cases, the average age of each would be 1-3 months. And the most recurring reason for the delay would be the failure of disputants to appear (43%), which is actually common among most working models of ADR (e.g. DOJ and the NLRC). This usually stems from apprehension or distrust, subsequently based on a general lack of knowledge in the ADR process.



Meanwhile, "inability to present evidence" appears as the second reason for delays in resolution of cases at 25%. But if the Authority were to observe Conciliation or Mediation in their true form, evidence and merits of the case would actually be considered irrelevant to the process. And if evidence were to be omitted as a requirement, then delayed resolution of cases will be significantly reduced.

The provision of ADR skills training for qualified staff of the Authority will also be necessary to address problems with the *lack of ADR personnel* to handle dispute cases especially in the regional extension offices. But *the lack of support staff and office resources* are less of a priority as they are least necessary in the conduct of Conciliation and Mediation.

➤ **Education and Training**

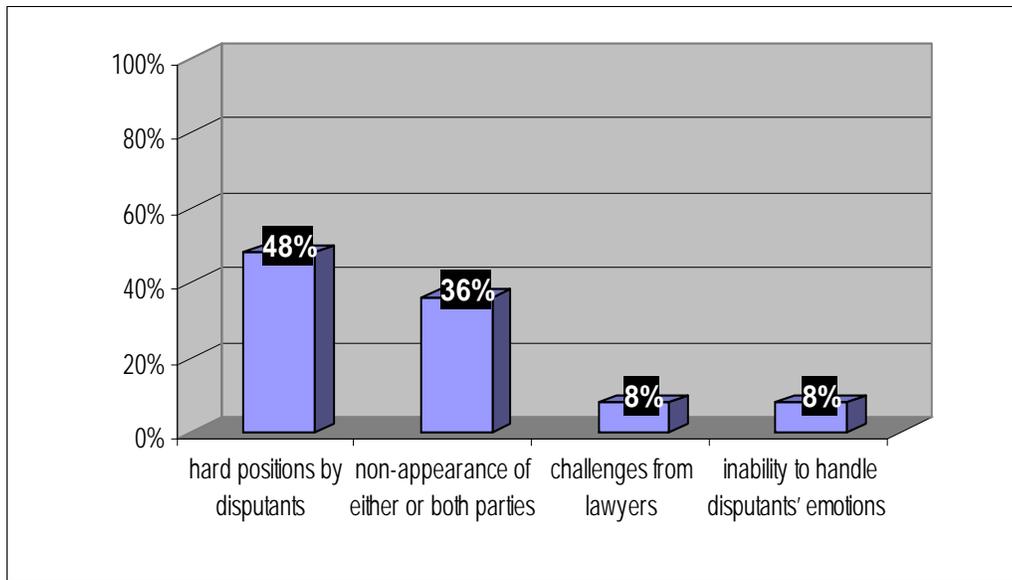
Survey results show that 74% of the Legal Units DO NOT have anyone in the organization who has formally trained in ADR. Majority (67%) further concede that their dispute resolver DOES NOT have formal training in dispute resolution. Most of those trained attended outside seminars.

As shown by the table below, there is an apparent disparity between the number of staff in the ADR unit and those actually trained in ADR. But among those that did undergo ADR training, majority are practicing or are currently providing ADR services. All Legal Units employ non-lawyers for conciliation-mediation, with an aggregate of 22 nationwide.

Extension Office	No. of Staff in ADR Unit	No. of Staff Trained in ADR	No. of Trained Staff Practicing ADR
CAR - BAGUIO	1	-	-
DAGUPAN	2	1	1
TUGUEGARAO	2	1	1
PAMPANGA	2	1	1
CALAMBA	3	1	1
NAGA	2	-	-
CEBU	2	-	-
TACLOBAN	2	-	-
PAGADIAN	1	-	-
CAGAYAN DE ORO	2	-	-
DAVAO	3	-	-
KIDAPAWAN	2	-	-
CARAGA	1	-	-
MANILA	4	3	1
ARMM	9	-	-

The lack of training has been cause for the weakened capacity of the Authority's ADR specialists to cope with some common challenges. The graph below presents that *"hard positions taken by disputants"* is the primary challenge for dispute resolvers while they have fared best in *handling disputants emotions* and *challenges from lawyers*.

Graph. Challenges faced by Dispute Resolvers



Meanwhile, the succeeding table presents the skills that ADR officers need to further develop. *Identifying problems* and *exploring interests* have been justly identified as the primary skills needed in ADR. However, *listening*, which also key to being an effective conciliation-mediator, is ranked as only tenth, perhaps believing that they already are effective at it.

1	how to identify problems& issues	11.10%
2	how to explore interests	11.10%
3	how to handle emotions	11.10%
4	Questioning	9.40%
5	writing agreements	9.40%
6	writing decisions	8.50%
7	how to address impasses	8.50%
8	keeping confidentiality	7.70%
9	summarizing	7.70%
10	listening	6.80%
11	being impartial	6.00%
12	Maintaining confidentiality	5.10%
13	reframing	5.10%

Notably, Memoranda of Agreements have been entered into recently by the CDA and selected coop federations in the NCR. This initiative intends to engage federations in assisting coop primaries in the effective resolution of conflicts within and between cooperatives. It is assumed that disputing parties at the coop level will more easily entrust dispute resolution to the coop federations as an impartial third-party. However, provision for ADR skills training have yet to be instituted nor planned by the CDA. Other concerns have also been left unaddressed such as:

- o To which accredited federation will the coop be referred if it is not a member of any in the locality?
- o What incentives will the federations be afforded for the provision of the ADR services?
- o If a skills training program were developed, where will the money be sourced and how much fees will be charged, if at all?
- o What is the system of screening and accreditation of mediators?
- o What form should the information management and feedbacking system take to monitor effectiveness and quality of performance?

➤ **Monitoring and Reportorial System**

- Although 73% responded that their agency provides a way to monitor and evaluate effectiveness of their dispute resolution services, many have systems that remain informal and ill-maintained. Most reports are qualitative and anecdotal in nature.
- 57% conceded that they have no feedback mechanism to monitor client satisfaction
- 60% do not have a system to monitor outcomes of disputes addressed by coops under their jurisdiction
- 60% said their agency has NOT launched a campaign or activity to promote their dispute resolution services

6.0 COMPARATIVE ASSESSMENT OF CDA AND SELECTED ADR MODELS

Table 1. COMPARISON OF ADR PROFILES

AGENCIES	CLIENTELE	Types of Disputes Mandated by Policy	Unit/Division in-charge of Dispute Resolution	ADR Method Most Employed	No. of Staff in the ADR Unit	Ave. No. of Cases Rcvd/Mo	Prescribed period to resolve dispute	Average Time in resolving disputes
NLRC	workers and employers	labor disputes	Regional Arbitration Branches (RABS) & Conciliation-Mediation Center (CMC)	preventive: Conciliation-Mediation	6	517	1 month	1 months
DOJ – PASIG	any individual or organization	criminal complaints where the imposable penalty does not exceed 6 years	Entire Agency - Office of the City Prosecutor	litigation, conciliation-mediation	1	n.a.	2 months	2 months
CDA	Coops, coop members, coop federations, coop unions	inter- and intra-coop disputes	Legal units and the CO Legal Division	conciliation-mediation	4 in CO Legal Division, Ave of 2 in Legal Units	19	3 months	3 months

Notes on the Process Comparison:

- All models have been able to resolve disputes within their prescribed periods. Still, the CDA should be able to further reduce the duration by which it is able to resolve disputes.

- The NLRC employs Conciliation-Mediation as a preventive measure to the formal filing of cases. Con-Med was institutionalized by the agency in 2004 with the establishment of the Conciliation Mediation Center (CMC).
- The Department of Justice mandated training for City Prosecutors and Officers nationwide as part of a project to institute Judicial Reform in the country

Table 2. COMPARISON BY ADR PROCESSES AND PRACTICE

Comparative Assessment of the CDA ADR PROCESSE with other operational ADR Models					
AGENCIES	DISTRIBUTION OF CASES	VENUE OF MEDIATION	HANDLING OF FAILED MEDIATION CASE	SCHEDULE OF MEDIATION CONFERENCE	CREDITING OF SETTLED CASE
NATIONAL LABOR RELATIONS COMMISSION	Upon receipt of complaint at the Receiving Section, cases are sent to the CMC for mediation. Cases are assigned to a Mediator randomly depending on his schedule.	Conciliation-Mediation Center or identified venue within the NLRC Office	Mediator issues a Report of Failed Mediation and submits to Arbitrator for compulsory arbitration	Mediator's discretion.	Mediators are credited additional 1 day of paid leave for every 4 cases handled
DEPARTMENT OF JUSTICE (Process A) *	New cases enter a pool of cases for mediation	Mediation rooms within the DOJ Hall of Justice	Returns the failed case to the pool to be assigned to other fiscals for Preliminary Investigation	The Mediators for the Day will get cases entering the pool	No one gets credit.
DEPARTMENT OF JUSTICE (Process B) *	Prosecutor personally identifies cases to be mediation from those assigned to him.	Sala of the Prosecutor	Failed cases go back to the City Prosecutor for re-assignment for Preliminary Investigation	Prosecutor's discretion.	The case will be credited to the Prosecutor's quota.
COOPERATIVE DEVELOPMENT AUTHORITY	Coop Level: Complaint is filed with the Grievance Comte which determines the merit of the complaint. Will dismiss if found baseless and without merit CDA: Legal officer of EO receives the Cert of non-resolution and written request or complaint. Conciliation-mediation commences when respondent submits his reply/comments	Coop Level: Coop Office CDA: CDA office with the option to hold conference in a comfortable venue outside the office	Coop/Federation Level: Certificate of Non-Conciliation issued CDA: issuance of Certificate of Non-Resolution which can serve as basis for filing before the proper courts	Notice of conference stating date, time and venue, is issued by Legal upon receipt of the comments/ answers	- o -

* NOTE: The Department of Justice pilot-tested two different processes to determine suitability to the department. At the end, it was recommended by Prosecutors that each City be given the flexibility to choose the process suitable for their distinct needs.

7.0 ISSUES TO CONSIDER

On ADR Process and Practice ...

- Need to review/revise policies and procedures that restrict confidentiality and candor during the ADR process

- Expanding the framework for resolving disputes beyond focus on the legal and technical aspects of resolving conflicts
- Addressing the need to strengthen mechanisms that ensure impartiality, mutual acceptance and freedom of choice, which have been compromised in the current ADR system
- Increasing opportunities of parties to express needs, wants and interests
- Need to install a process that will promote empowerment of and mutual recognition among disputants

On ADR Systems Implementation ...

- Need for a more institutionalized system for monitoring the satisfactory delivery of ADR services at the coop and CDA levels
- Implementing an information campaign to promote ADR in the cooperative sector
- Installing an effective system for monitoring and evaluating outcomes of dispute resolution in the CDA and Coops

On ADR Capacity-Building ...

- Need for skills training in ADR at all levels of the coop sector and the CDA
- Developing a workable strategy to provide ADR skills training for the estimated 20,000 registered cooperatives through the most efficient means possible
- Increasing capacity for promoting the ADR-Mediation process as the effective means to resolve disputes
- Importance of formulating an effective screening/selection process of Mediators to ensure effective delivery of ADR services
- Need to develop among ADR personnel the skills in listening, questioning, exploring interests, handling emotions, maintaining impartiality, etc
- Creating the proper mindset by renaming "LEGAL Units/Division"

On Developing the ADR Framework ...

- Need for uniformity in the rules of mediation at the cooperative level
- Establishing multi-access points/ mechanisms below CDA to enhance accessibility of ADR services
- Identification of sanctions/incentives to mitigate non-appearance by disputants
- Provision of conflict-coaching over and above conciliation-mediation
- Providing incentives to mediators-conciliators successful in resolution of disputes

- O -

PROGRAM BACKGROUND

PROGRAM OBJECTIVE: Institutionalize the use of Alternative Dispute Resolution processes in the Coop Sector with focus on mediation

RATIONALE:

- Intra-Cooperative disputes have been said to have some debilitating effects on operations of cooperatives.
- Coop Code Article 121: *“Disputes among members, officers, and committee members, and intra-cooperative disputes, shall... be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative...”*
- CDA Charter Section 8: *“ Upon request of either or both parties, the Authority shall mediate and consiliate disputes within a cooperative or between cooperatives. Provided, that if no mediation or conciliation succeeds within 3 months from request thereof, a certificate of non-resolution shall be issued by the commission prior to filing of appropriate action before the proper courts.”*



PRESENTATION OF FINDINGS

Assessment of the Alternative Dispute Resolution System of the Cooperative Development Authority

Board of Administrators Meeting
17 November 2006

OBJECTIVES OF THE STUDY

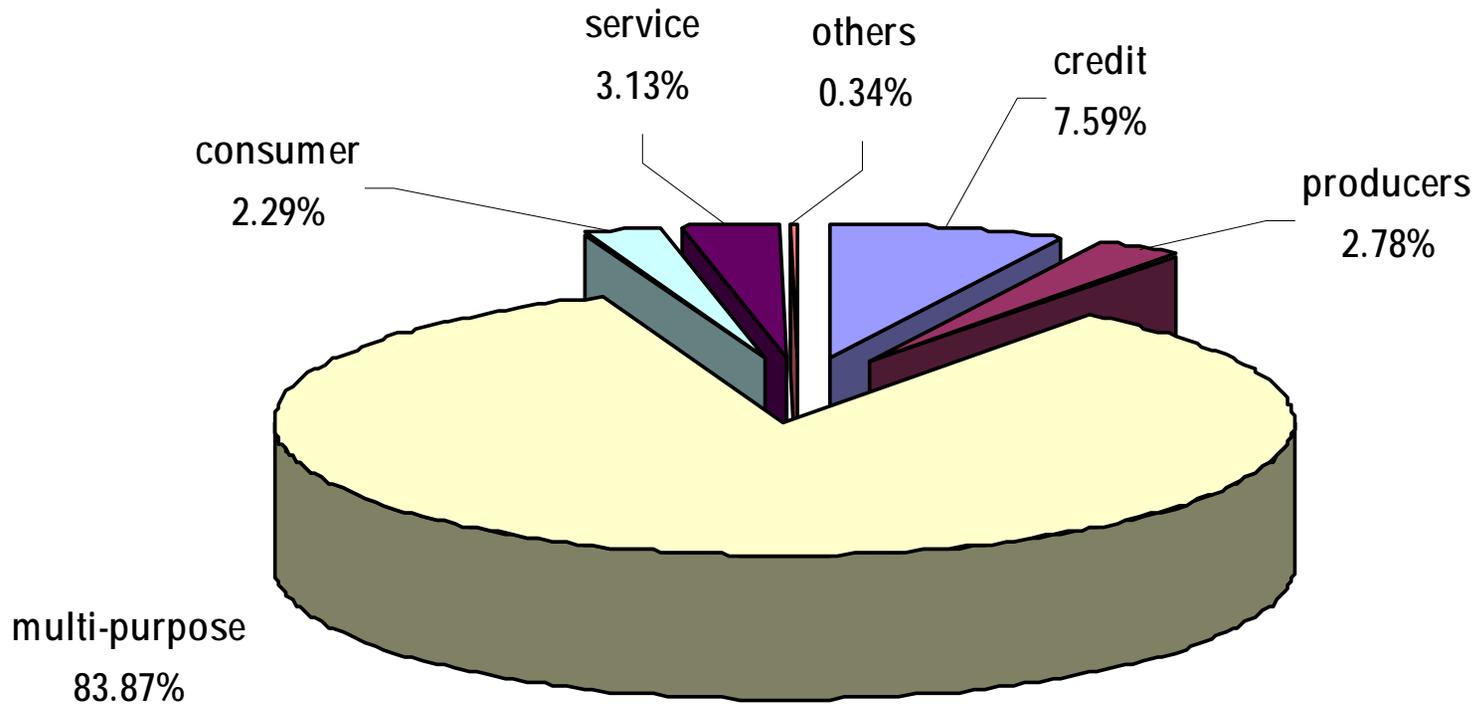
- Identify the CDA's current practices and policies on ADR
- Determine gaps in the CDA's current ADR system relative to the needs of the Agency and its clientele
- Compare the ADR system of the CDA with existing systems of selected government agencies to aid project proponents in the creation of feasible linkages and collaborations
- Procure information that can aid in the effective planning and design of the Mediation Framework

METHODOLOGIES

- Review of Records
- Key Informant Interviews
- ADR Survey
- Focus Group Discussion

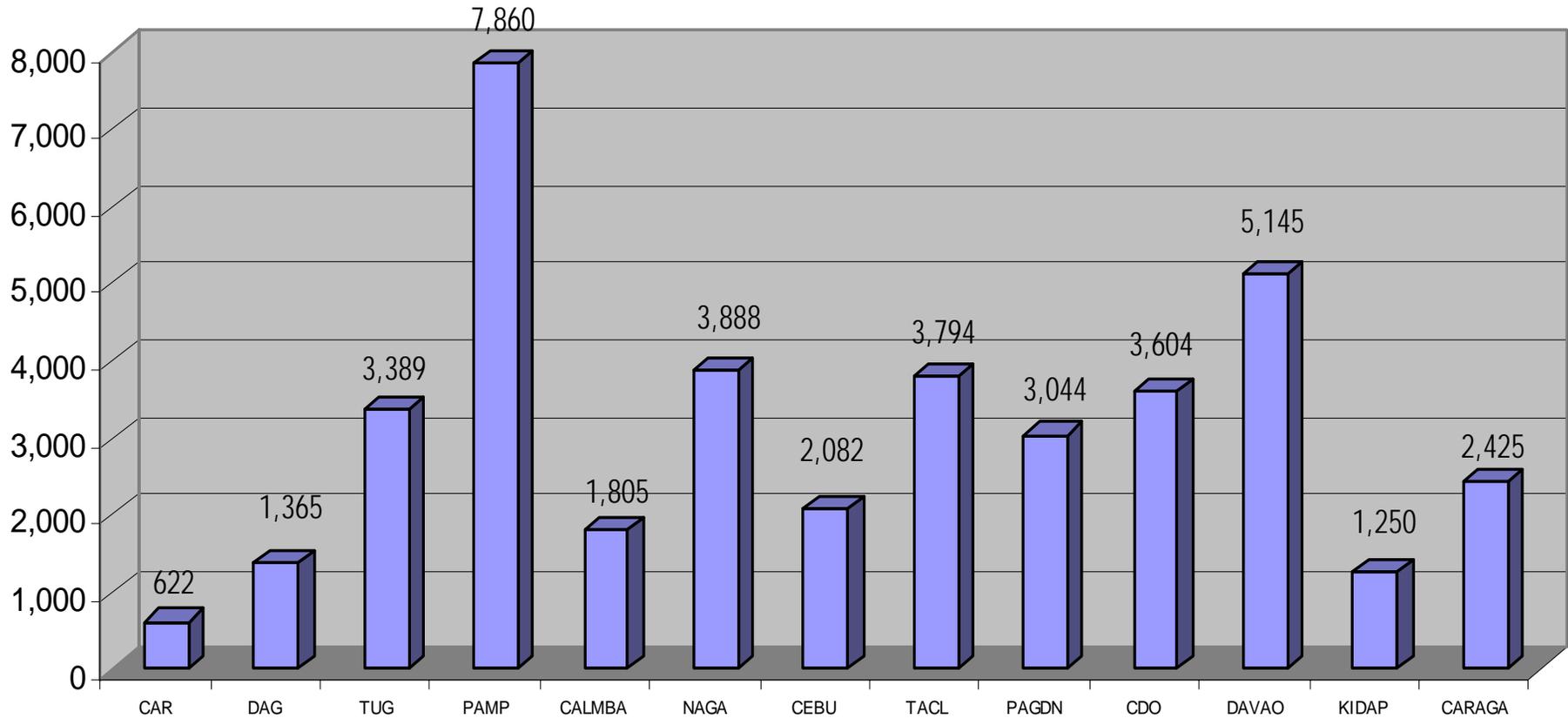
PROFILE OF THE SECTOR

TYPES OF PRIMARY COOPERATIVES



COOPS UNDER CDA JURISDICTION

No. of Registered Cooperatives, Per Region



Data exclusive of Ilo-Ilo, ARMM and Manila

Total = 40,273 (all coop categories)

ORGANIZATION AND STRUCTURE FOR ADR

- **Primary Level:**
 - *Coop Conciliation / Grievance Committee or the BOD*

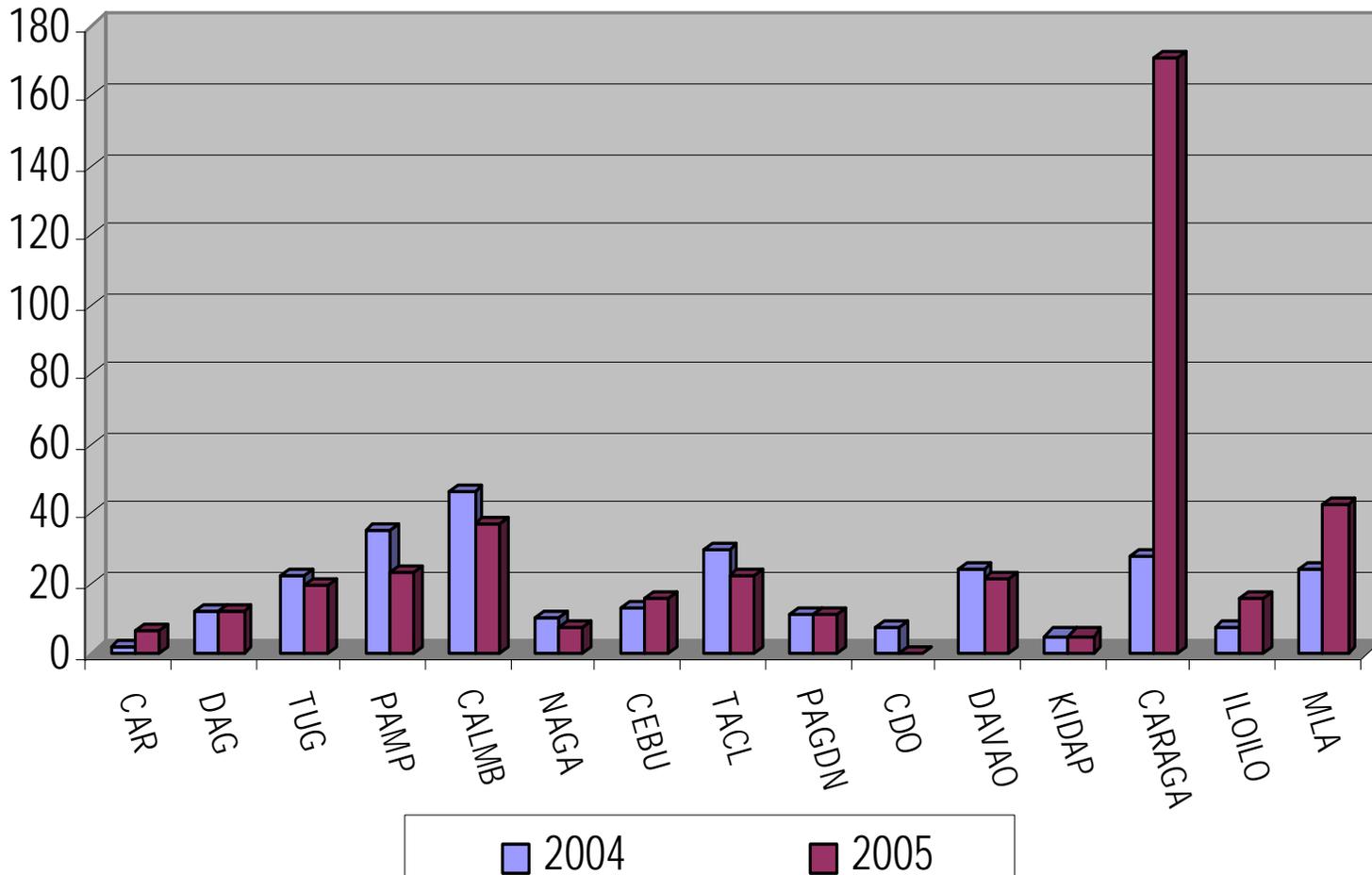
- **Secondary/Tertiary Level:** *None yet*

- **CDA:**
 - *Regional: Legal Units*
 - *Central: Legal Division*

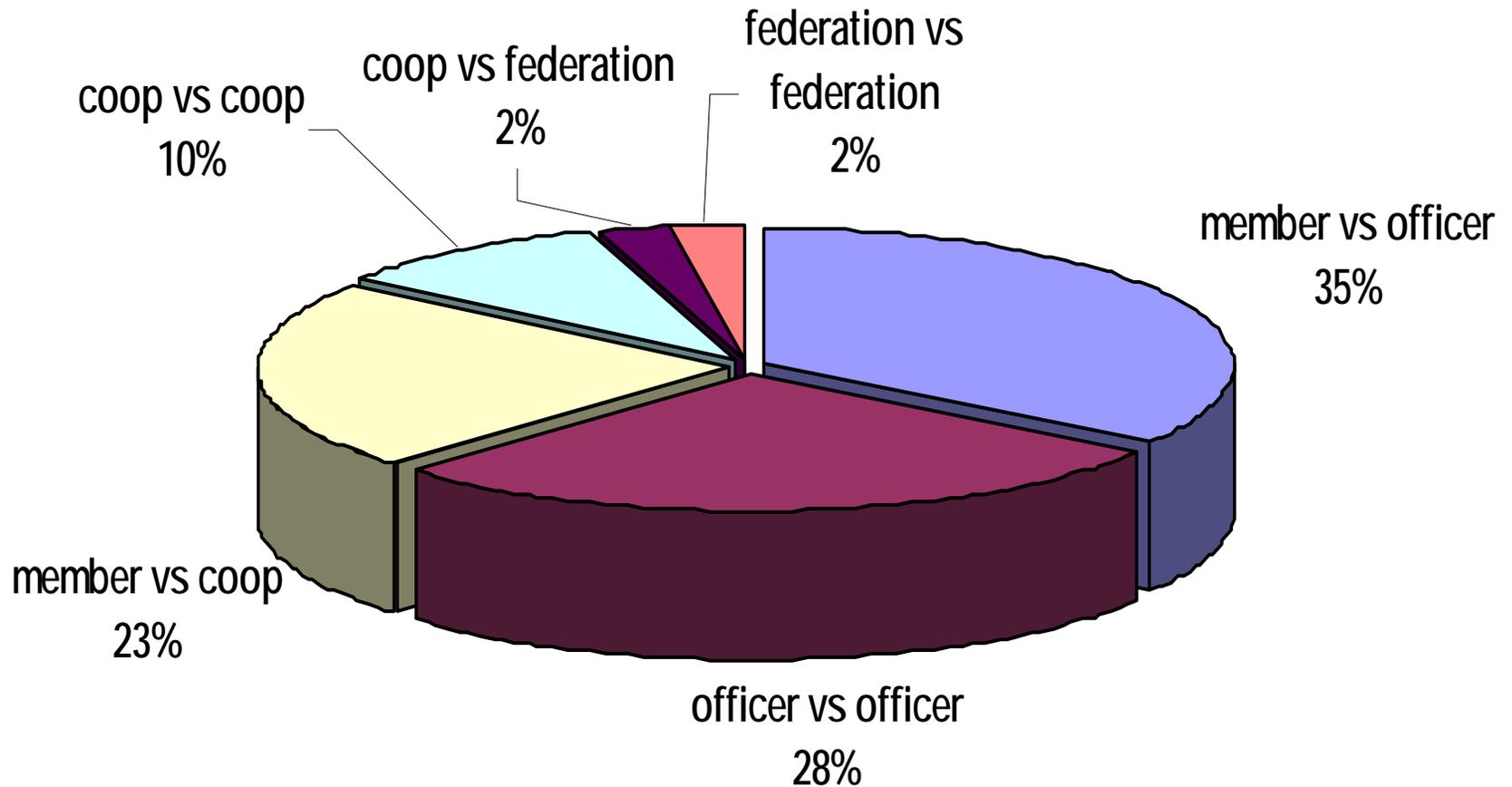
KEY FINDINGS

NUMBER OF CASES

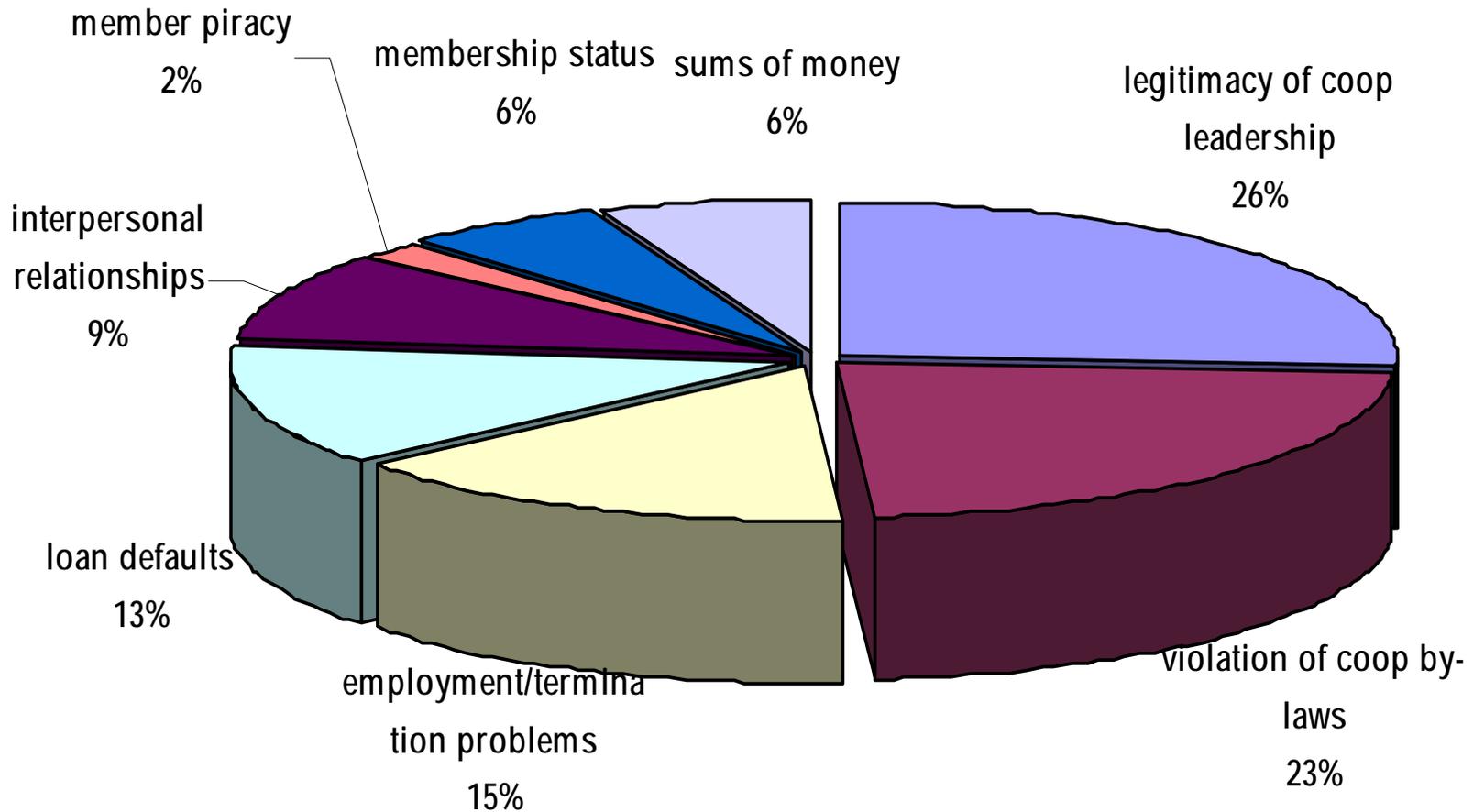
(2004 – 2005)



COMMON TYPES OF DISPUTES



COMMON ISSUES OF DISPUTES



COMPARATIVE ASSESSMENT, BY PROFILE

AGENCIES	CLIENTELE	Types of Disputes Mandated by Policy	Unit/Division in-charge of Dispute Resolution	ADR Method Most Employed	No. of Staff in the ADR Unit	Ave. No. of Cases Rcvd/Mo.	Prescribed period to resolve dispute	Average Time in resolving disputes
NLRC	workers and employers	labor disputes	Regional Arbitration Branches (RABS) & Conciliation-Mediation Center (CMC)	preventive: Conciliation-Mediation	6	517	1 month	1 month
DOJ - PASIG	any individual or organization	criminal complaints where the imposable penalty does not exceed 6 years	Entire Agency - Office of the City Prosecutor	litigation, conciliation-mediation	1	n.a.	2 months	2 months
CDA	Coops, coop members, coop federations, coop unions	inter- and intra-coop disputes	Legal units and the CO Legal Division	conciliation-mediation	4 in CO Legal Division, Ave of 2 in Legal Units	19*	3 months	3 months

* Average no. of cases / month filed in executive offices = 2

COMPARATIVE ASSESSMENT, BY PROCESS

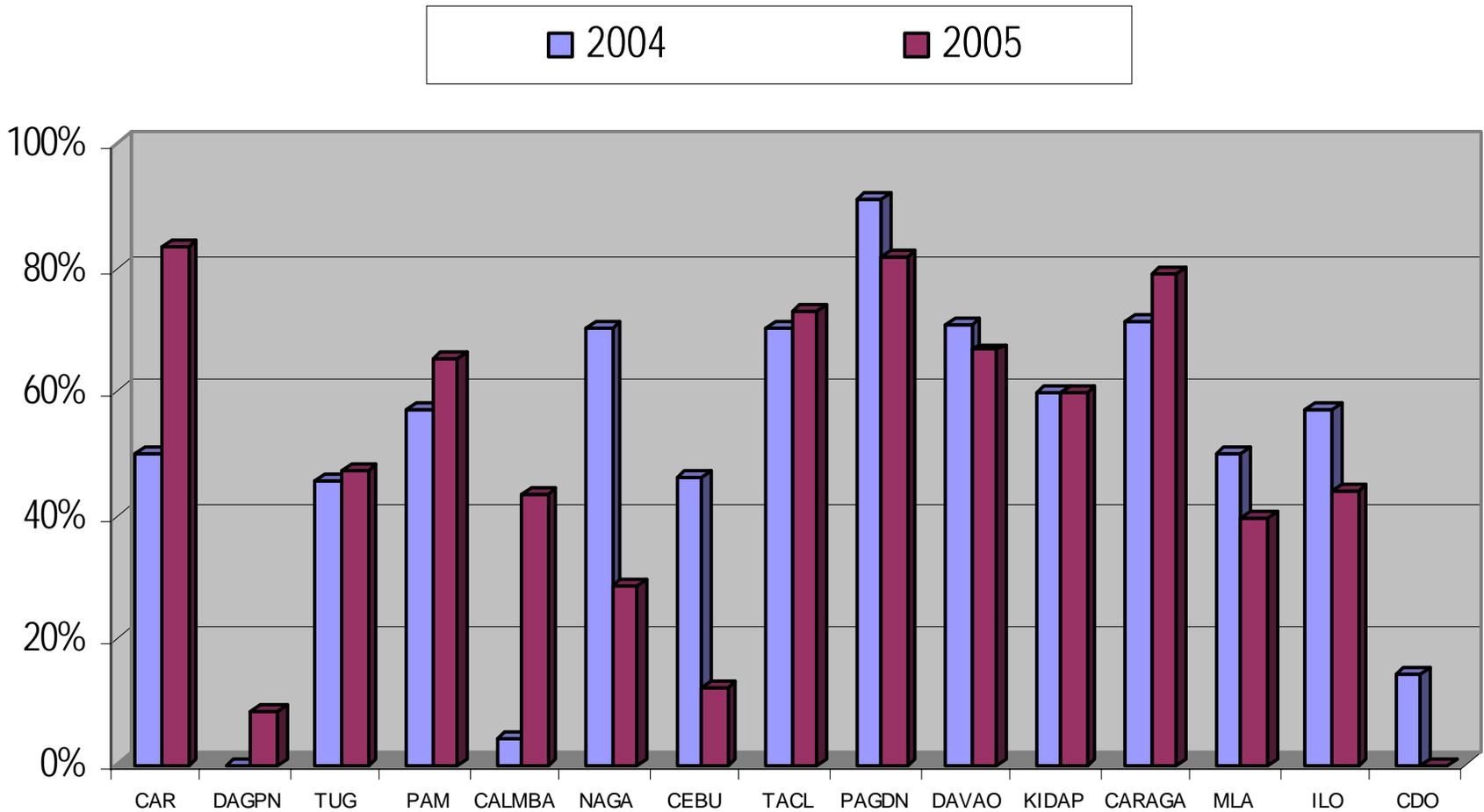
AGENCIES	DISTRIBUTION OF CASES	VENUE OF MEDIATION	HANDLING OF FAILED MEDIATION CASE	SCHEDULE OF MEDIATION CONFERENCE	CREDITING OF SETTLED CASE
NATIONAL LABOR RELATIONS COMMISSION	Upon receipt of complaint at the Receiving Section, cases are sent to the CMC for mediation. Cases are assigned to a Mediator randomly depending on his schedule.	Conciliation-Mediation Center or identified venue within the NLRC Office	Mediator issues a Report of Failed Mediation and submits to Arbitrator for compulsory arbitration	Mediator's discretion.	Mediators are credited additional 1 day of paid leave for every 4 cases handled
DEPARTMENT OF JUSTICE (Process A) *	New cases enter a pool of cases for mediation	Mediation rooms within the DOJ Hall of Justice	Returns the failed case to the pool to be assigned to other fiscals for Preliminary Investigation	The Mediators for the Day will get cases entering the pool	No one gets credit.
DEPARTMENT OF JUSTICE (Process B) *	Prosecutor personally identifies cases to be mediation from those assigned to him.	Sala of the Prosecutor	Failed cases go back to the City Prosecutor for re-assignment for Preliminary Investigation	Prosecutor's discretion.	The case will be credited to the Prosecutor's quota.
COOPERATIVE DEVELOPMENT AUTHORITY	<p>Coop Level: Complaint is filed with the Grievance Comte which determines the merit of the complaint. Will dismiss if found baseless and without merit</p> <p>CDA: Legal officer of EO receives the Cert of non-resolution and written request or complaint. Conciliation-mediation commences when respondent submits his reply/comments</p>	<p>Coop Level: Coop Office</p> <p>CDA: CDA office with the option to hold conference in a comfortable venue outside the office</p>	<p>Coop/Federation Level: Certificate of Non-Conciliation issued</p> <p>CDA: issuance of Certificate of Non-Resolution which can serve as basis for filing before the proper courts</p>	Notice of conference stating date, time and venue, is issued by Legal upon receipt of the comments/ answers	- 0 -

* NOTE: The Department of Justice pilot-tested two different processes to determine suitability to the department. It was later recommended by Prosecutors that each City be given the flexibility to choose the process suitable for their distinct needs.

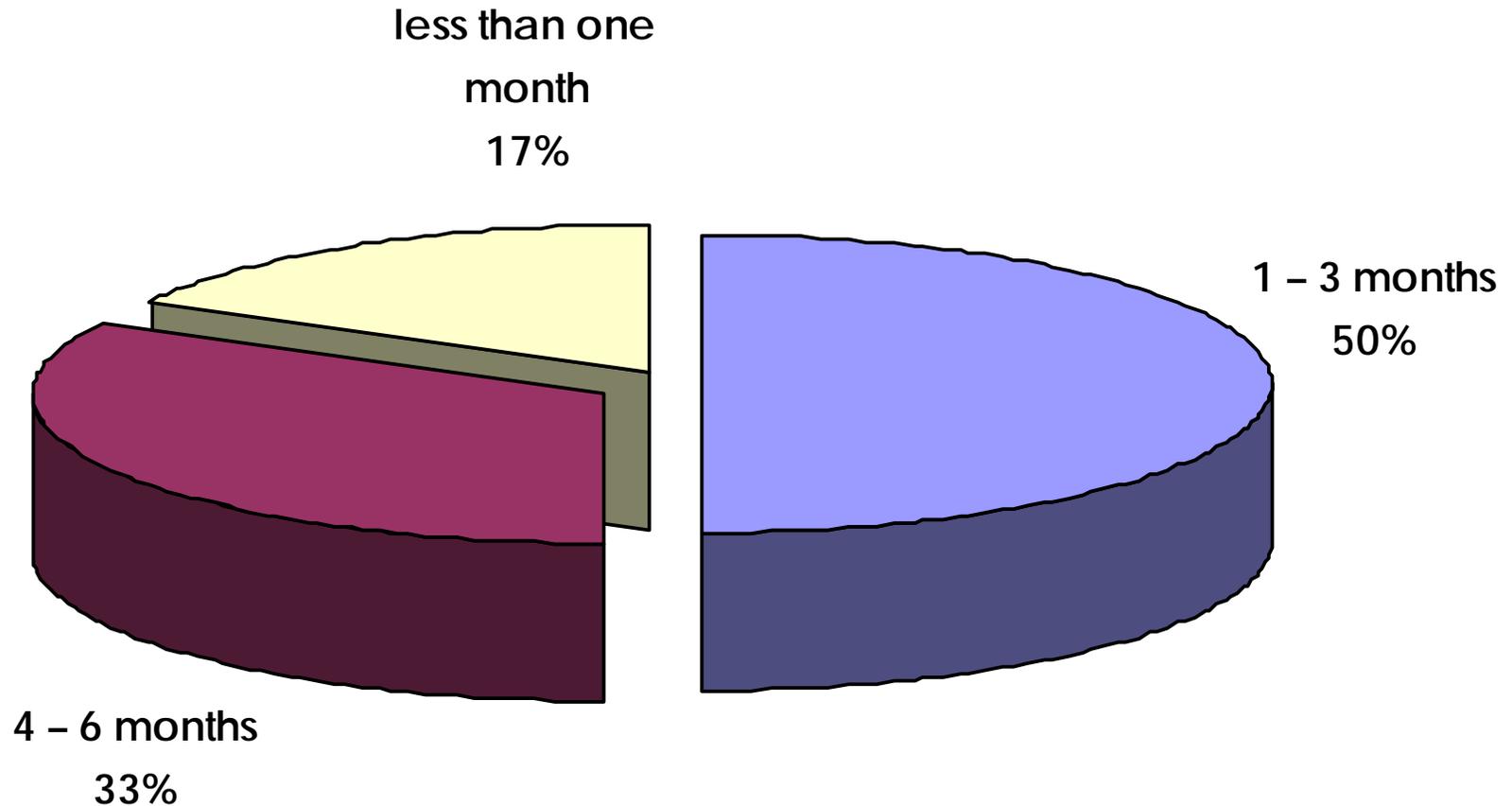
DISPUTE RESOLUTION IN CDA versus MEDIATION

Features	Mediation	CDA Practice
Decision-maker	The parties.	Coop: Grievance Committee or BOD CDA: the parties
Basis of decision	Needs and interests	Evidence and merits of the case
Who controls the process	The Mediator: firmly but informally with the parties	(Coop) Conciliator-Arbitrator: Formal procedures, adversarial (CDA) ADR officer: Relatively informal
Role of third parties	Independent, impartial facilitator.	(Coop Level) Judge / Arbitrator (CDA) Independent, impartial expert.
Direct involvement of the parties	Full participation on deciding on issues, creating, evaluating and agreeing options	(Coop) Input issues and background material then Conciliator decides (CDA) involved in identification of the problem and exploring options
Types of outcomes that emerge	Win-win, mutual acceptance	(Coop) Win-Lose: based on legal precedent and evidence (CDA) Compromise: between what parties want

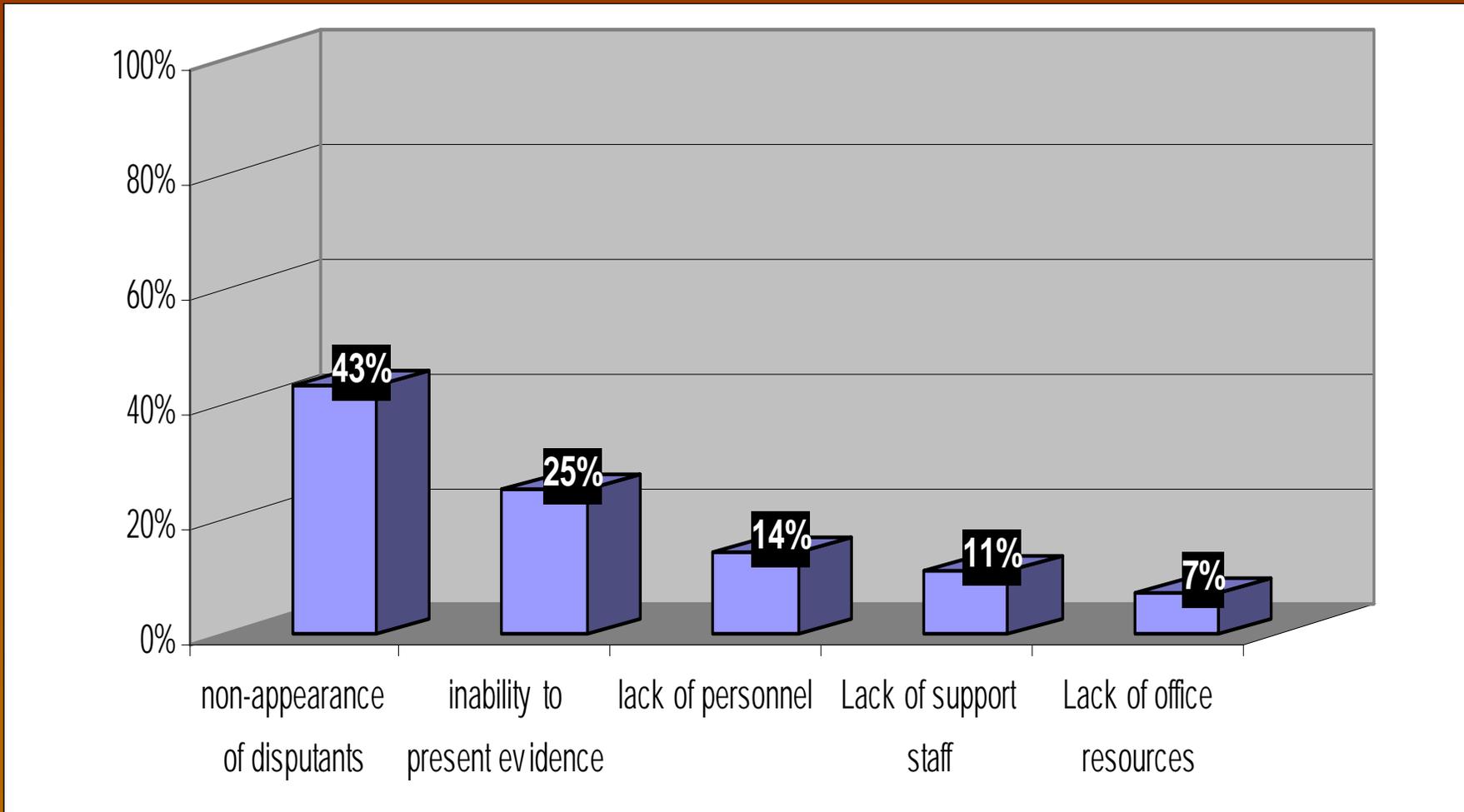
CASES RESOLVED



AVERAGE TIME THE CDA RESOLVES DISPUTES



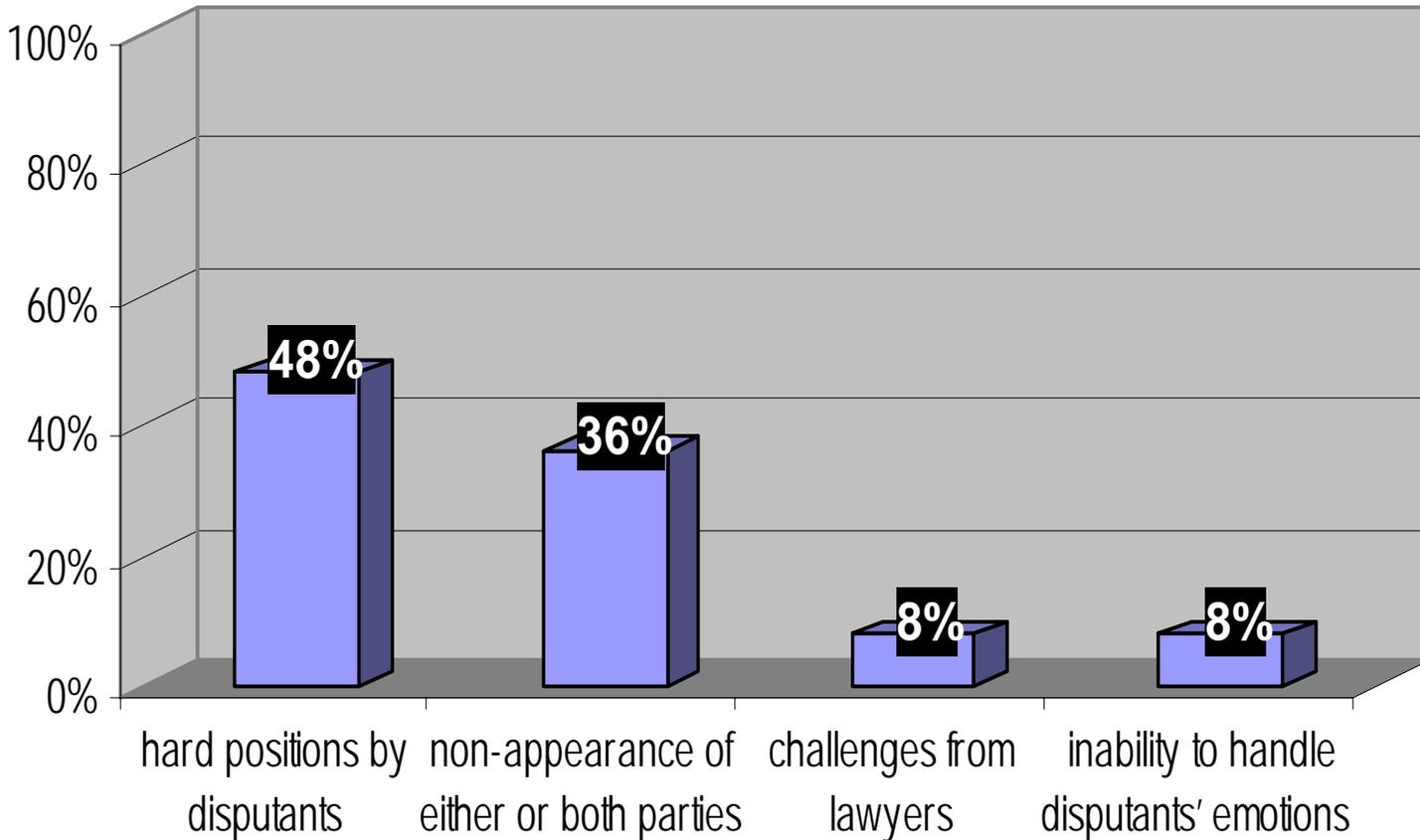
REASONS FOR DELAY IN RESOLUTION OF CASES



ADR – TRAINED PERSONNEL

Extension Office	No. of Staff in ADR Unit	No. of Staff Trained in ADR	No. of Trained Staff Practicing ADR
CAR - BAGUIO	1	-	-
DAGUPAN	2	1	1
TUGUEGARAO	2	1	1
PAMPANGA	2	1	1
CALAMBA	3	1	1
NAGA	2	-	-
CEBU	2	-	-
TACLOBAN	2	-	-
PAGADIAN	1	-	-
CAGAYAN DE ORO	2	-	-
DAVAO	3	-	-
KIDAPAWAN	2	-	-
CARAGA	1	-	-
MANILA	4	3	1
ARMM	9	-	-

CHALLENGES FACED BY DISPUTE RESOLVERS



SKILLS ADR OFFICERS NEED TO DEVELOP

1	how to identify problems& issues	11.10%
2	how to explore interests	11.10%
3	how to handle emotions	11.10%
4	Questioning	9.40%
5	writing agreements	9.40%
6	writing decisions	8.50%
7	how to address impasses	8.50%
8	keeping confidentiality	7.70%
9	summarizing	7.70%
10	listening	6.80%
11	being impartial	6.00%
12	Maintaining confidentiality	5.10%
13	reframing	5.10%

MONITORING SYSTEM

- Although 73% responded that their agency provides a way to monitor and evaluate effectiveness of their dispute resolution services, many have systems that remain informal and ill-maintained
- 57% conceded that they have no feedback mechanism to monitor client satisfaction
- 60% do not have a system to monitor outcomes of disputes addressed by coops under their jurisdiction

ISSUES TO CONSIDER

On the PROCESS ...

- Need to review/revise policies and procedures that restrict confidentiality and candor during the ADR process
- Expanding the framework for resolving disputes beyond focus on the legal and technical aspects of resolving conflicts
- Addressing the need to strengthen mechanisms that ensure impartiality, mutual acceptance and freedom of choice, which have been compromised in the current ADR system
- Increasing opportunities of parties to express needs, wants and interests
- Need to install a process that will promote empowerment of and mutual recognition among disputants

On Systems Implementation ...

- Developing a more efficient and integrative information management system in the CDA
- Need for a more institutionalized system for monitoring dispute resolution outcomes and the satisfactory delivery of ADR services at the coop and CDA levels
- CDA and cooperatives have yet to implement an information campaign to promote ADR in the cooperative sector
- Installing an effective system for monitoring and evaluating outcomes of dispute resolution in the CDA and Coops

On Capacity-Building ...

- Need for skills training in ADR at all levels of the coop sector and the CDA
- Increasing capacity for promoting the ADR-Mediation process as the effective means to resolve disputes
- Developing a workable strategy to provide ADR skills training for the estimated 20,000 registered cooperatives through the most efficient means possible
- Importance of formulating an effective screening/selection process of Mediators to ensure effective delivery of ADR services
- Need to develop among ADR personnel the skills in listening, questioning, exploring interests, handling emotions, maintaining impartiality, etc
- Creating the proper mindset by renaming “LEGAL Units/Division”

On Building the Framework ...

- Need for uniformity in the rules of mediation at the cooperative level
- Establishing multi-access points/ mechanisms below CDA to enhance accessibility of ADR services
- Identification of sanctions/incentives to mitigate non-appearance by disputants
- Provision of conflict-coaching over and above conciliation-mediation
- Incentivizing mediators-conciliators successful in resolution of disputes

THANK YOU!



**PROMOTING THE INSTITUTIONALIZATION
OF ADR MECHANISMS
FOR THE COOPERATIVE SECTOR**

SIGNIFICANT PROJECT DATES (November – December)

PHASE 1 - CDA Assessment Report	Nov 17
PHASE 2 - FRAMEWORK DESIGN	
First Consultative Workshop to Draft Framework	Nov 20
Follow-up Consultative Workshop	Nov 22
Finalization of ADR Framework for Presentation to CDA	Nov 24
PHASE 3 - APPROVAL OF ADR FRAMEWORK BY BOD	Dec 1
PHASE 4 - REGIONAL CONSULTATIONS (SERIES 1)	
Baguio	Dec 4
Angeles	Dec 5
NCR	Dec 8
Cebu	Dec 11
Davao	Dec 13
CDO	Dec 15
Presentation to CDA of Regional Consultation Results Framework, & Results of the Confirmatory Survey	Dec 20

SIGNIFICANT PROJECT DATES

(December 06 to February 07)

PHASE 5 - DRAFTING OF THE IRR	
First Consultation Workshop	Jan 4
Follow-up Consultation	Jan 9
Finalization of IRR for presentation to CDA	Jan 15
PHASE 6 - APPROVAL OF IRR BY THE CDA BOARD	Jan 22
PHASE 7 - REGIONAL CONSULTATIONS (Series 2)	
Cagayan De Oro	Jan 23
Davao	Jan 24
Cebu	Jan 25
NCR	Jan 26
Baguio	Jan 29
Pampanga	Jan 30
Presentation to CDA of Regional Consultation Results	Feb 7
PHASE 8 - FINAL ANALYSIS AND RECOMMENDATION	
Presentation to CDA Board of Finalized IRR	Feb 9
Submission of Comprehensive Report	Feb 28

REGIONAL CONSULTATIONS ON THE PROPOSED ADR FRAMEWORK
(December 2006)

Regional consultations attended by representatives of cooperatives, federations and unions were held in six major cities which includes Baguio, Pampanga, NCR, Cebu, Davao and CDO. Consultation participants were divided into groups for smaller workshops to generate comments and clarify issues pertaining to the ADR Framework. Here are issues that were raised:

KEY ISSUES & FINDINGS:

1. Many displayed a lack of understanding of the true nature of mediation as evidenced from the type of questions raised. This may be due to several factors:

"We are concerned that, eventually, the agreement we come up with is not honored or becomes even illegal because mediation does not deal with the legal aspects of the case."

"Mediation is simply a compromise?"

"I am a big fan of mediation. It is not taught in law school. Our coop has already taken steps to implement ADR. Will it help if I supply you with our (coop's) IRR?" (note that IRR is similar to CDA process geared towards arbitration)

- a. Misguided advocacy where the terms *mediation, conciliation, arbitration* are synonymously used.
 - b. Inadequate training of policy-makers in ADR
 - c. Insufficient advocacy activities to promote proper
2. Sufficient awareness among participants about the availability of ADR services (grievance committees) within their cooperative which could mean that there is:
 - a. Effective communication mechanism within the industry
 3. General acceptance of the Proposed ADR Framework but with a strong concern on how the new program will be implemented as it carries the following effects:
 - a. Financial issues

"Coops are required to pay a percentage of their assets to CDA when by-laws have to be changed. Can we request CDA not to impose these fees?"

- b. Organizational concerns

"Our current coop has already amended the by-laws to create a mediation committee, but not a single case was filed. I am concerned that we might open the flood gates that will affect the tranquility and peace of a coop... too many complaints from disgruntled employees can destroy the organization."

"Supply all coop members the IRR for ADR... to support advocacy! Everyone needs to be able to understand their rights and the rules. Before they become member, make sure that they sign off on the rules."

c. Policy concerns

"What will be the effect of ADR in the primary coop especially if there is already an existing grievance committee as stated in the bylaws?"

CDA will propose a framework that is applicable to all. So, we are here to *improve* and not *change* their existing system.

"Our coop does not have ADR policies in our bylaws. Can we just include ADR in the policies of the board to be ratified by the general assembly?"

Per Atty Puring of CDA, there is no need to put the new ADR System in the By-laws.

"Activate the ADR through a memorandum circular!"

"Suspend the mediation committee operations until such time that there are suitably trained mediators because it will erode the program if you have untrained mediators pretending..."

"Indicate the... mediatable cases."

"Where do we go for cases against the Chairman of the Board?... who also controls the committees?"

4. Expressed need to improve the conflict resolution system within their respective coops:

"...Coops are dying slowly because of conflicts..."

"Let's focus more on preventing conflicts rather than simply reacting to them... That's the job of the coop!"

*"Define what is voluntary and compulsory in mediation! Make all coop conflicts **compulsory** to be brought to the mediation committee. They cannot absolutely go to court! BUT (entering into) mediation will be already voluntary..."*

5. They want to reduce the chances of cases going to the Barangay Justice system:

"Let's not allow the case to go to the barangay!!! (Everyone agrees) Choose the case to bring to the barangay!"

"How do we go about withdrawing a case that is already in court?"

"The process flow is good BUT there is no assurance that it will be followed. Cases will still go to the barangay justice. What will prevent us from shortcutting the process?"

"Do we put sanctions on those who will bypass the coop mediation process?"

6. Majority of the participants are interested in who the mediators should be. The following insights were heard:

"Can we adapt the existing conciliation members to become future mediators?"

"Can we get mediators recommended by our church? Pastor?"

There are those who are lead to believe that only grievance committee members are allowed to become mediators.

"How many mediators will consist the mediation committee? If we only have 5 committee people, they cannot handle complaints of hundreds of coop members"

its not the question of how many... but how many you trust enough to mediate your conflicts

There are also those who think that the entire membership of the ADR Committee will preside on the mediation session.

"Do we need to have all of the grievance committee members present during the (mediation) sessions?"

There are still those who do not understand the functions and responsibilities of the mediator.

"The mediator must be knowledgeable of all cooperative laws, labor laws... in order for him to decide properly on the case."

"I suggest that the mediator can inhibit himself (from the case), inform the party if he is related to the other party... and that parties can change mediators any time."

"What if the other party doesn't want to go into mediation?"

There are those who wish to have the mediators watched:

"I would suggest that there be a system whereby parties can complain about erring mediators?... But, of course, the parties have to be able to validate it."

"What is the benchmark of a good mediator? How do you go about monitoring and evaluation?"

7. There are varying opinions of where the coop members can seek mediators:

a. Get it only from within

"No washing of dirty laundry in public... Resolve it before it goes up another level."

b. Get from within or other coops

"If there are cases that need to be decided by both parties, can they just go anywhere?"

"I agree with your framework of multi-access. But if you don't want to complain in your coop, I suggest that you can go to federations or unions."

"How do we go about filing complaint against the coop Board?"

"The process is lacking, it should go from primary – secondary – tertiary – and only then it (the case) will go to CDA."

c. Get from outside

"I disagree (with getting mediators from other coops) because of confidentiality issues... get from federations or unions upon the recommendation of the coop ADR committee."

On LGU involvement:

"I recommend that, for each province, a council should be created to take on the mediation of coops not affiliated with a federation or union."

d. Get from CDA

8. There is large clamor for good mediation training for the mediators and for the coop members:

"Not everyone is gifted to mediate so it will take a long process to make mediators."

"How do we ensure that they mediate properly? Who will guard the guardians?... I suggest that there be disciplinary measures for the mediator. Parties have complete control over the choice of mediator!"

"Who authorizes one to be a mediator? Maybe, CDA should be the one... They should have criteria."

9. Mediation fees and compensation were discussed:

"How much is mediation?"

"Where is the source of the incentive that will be given to the mediator?"

10. There are mixed inputs on CDA intervention on conflict resolution:

"If two people are in conflict but don't want to come forward?... What if there is a third party who is (indirectly) affected or simply knows about the conflict, can that person approach the mediation committee or CDA who will convince the parties to bring the problem to mediation?"

"What powers does CDA have with 'no appearance' of parties? How can CDA compel the other party to appear?... Can CDA put sanctions on those who will not appear?"

"Since CDA has no judicial power to try cases, how do we look at our program vis-à-vis the barangay justice system? We cannot prevent parties to go to barangay. We want CDA to have trained mediators."

"Can we have a look at the data on how many cases remain unresolved in CAR? There are a lot that I am already aware of! Maybe the data shown on conflict is small because not all cases are brought to the attention of CDA."

"...we have written several position papers to Congress and Senate to amend RA6939 giving CDA quasi-judicial authority."

There are those who want to lessen the responsibilities of the CDA on conflict resolution:

"Do away with the docketing of cases in CDA so CDA can maximize resources for regulatory functions."

"Let's exhaust all efforts to resolve the case within the coops... follow the principle of subsidiarity!"

"We can bring our cases to CDA... for record purposes. From there, CDA can send the case to accredited mediators from the coop or outside."

11. Additional considerations on the Proposed ADR Framework:

"Please consider the unique qualities of coop banks under the supervision of BSP because, for example, there are cases that need the decision of the CDA and BSP."

"ADR would be good for the courts, lawyers will benefit from it. What about 'coop-outsider' case? Example, conflict with government? It is not covered by the framework!"

On the Agrarian Reform cases:

"The DARAB case where growers are constantly in conflict must be given special attention..."

"... Some go violent... plantations suffer, loans do not get paid, people get hurt, communities destroyed... it is loose-loose."

On Unionized Coops:

"...Unionized coops have an arbitration procedure under their CBA. How will this be affected?"

"Won't there be an overlapping of jurisdiction because some coops go to the NLRC for labor disputes. Won't it bypass the new law? Won't it bypass the NLRC? (it will only bypass if its in the arbitration process already but because there is no case yet, there is no overlapping of jurisdiction. Besides, parties should get their mediation wherever they feel they can get the service that they deserve.)"

"I suggest that lahat sumonod! No shortcuts! Define jurisdiction of cases – labor to NLRC? to CDA and other cases to the coop..."

"Have a MOA with NLRC to refuse labor cases involving coops or coop members. Send them to the coop grievance committee first!"

Appendix D

PROPOSED ADR FRAMEWORK FOR THE COOP SECTOR

Approved by the CDA Board of Administrators

I. RATIONALE

- The Cooperative Sector is potent, but unresolved disputes threaten its development. The absence of a proper dispute resolution system to handle pending cases at the cooperative level has resulted in the waste of valuable administrative time and resources. And like the rest of the country, the Coop Sector continues to resolve its disputes by dumping cases in the courts.
- The Cooperative Development Authority (CDA) employs a legal framework which is so far deemed inadequate in addressing the debilitating effects of disputes on operations of cooperatives. There is an expressed need for the CDA to speed up the resolution of intra-coop disputes in line with effectively implementing its regulatory mandate of enforcing policies, rules and regulations that will aid in the strengthening of the cooperative sector.

II. PRINCIPLES GOVERNING THE ADR FRAMEWORK

- 1) PRINCIPLE OF SUBSIDIARITY – States that the cooperative sector has primacy over the State in initiating and regulating within its ranks. Adhering to this principle, the coops are given free hand to settle first the disputes amicably within their level before elevating it to the CDA.
- 2) SPIRIT OF COOPERATIVISM – Cooperation and collaboration should be promoted among members and cooperatives in the local, national and international levels.
- 3) VOLUNTARINESS – Mediation-conciliation will only proceed if involved principal parties voluntarily agree to submit their case for mediation. Any of the parties may terminate the process at any time.
- 4) IMPARTIALITY – Mediators shall not act in favor of any of the Parties individually in connection with the dispute. Before accepting an appointment to act as mediator, the mediator shall make an objective inquiry to determine whether there are known facts or matters that would likely affect his impartiality and which could present a possible situation for conflict of interest.
- 5) CONFIDENTIALITY - The Mediator is bound to keep details of the mediation proceedings confidential. No judiciary court may summon the mediator to testify about events, results or any information whether given orally or in writing which were disclosed or produced during and in relation to the mediation proceedings.
- 6) ACCESSIBILITY – Conciliation-mediation services will be made available at the cooperative primary, secondary and tertiary levels and the CDA. Other possible access points in the locality will be developed in order to ensure that parties in dispute maintain freedom of choice in availing of Mediation services. Mediation fees will also be kept at affordable levels.

- 7) **EMPOWERMENT & PERSONAL RESPONSIBILITY** – Empowerment means enabling the parties to define their own issues and to seek solutions on their own. Through empowerment, disputants gain "greater clarity about their goals, resources, options, and preferences" and that they use this information to make their own "clear and deliberate decisions." (Folger and Bush, 1996, p. 264)
- 8) **RECONCILIATION & PRESERVATION OF RELATIONSHIPS** – The mediation process allows parties to reach settlements with which they are both content, thereby enabling them to continue with pre-existing relationships.

III. ENABLING LAWS / POLICIES

- **Republic Act 9285 or ADR ACT of 2004:** *"It is the policy of the State to actively promote and encourage the use of ADR as an important means to achieve speedy and impartial justice and to de-clog court dockets."*
- **EO 523 Section 1:** *"All administrative bodies shall promote the use of alternative modes of dispute resolution such as mediation, conciliation as part of their practice in resolving disputes."*
- **Coop Code, RA 6938, Article 121:** *"Disputes among members, officers, and committee members, and intra-cooperative disputes, shall... be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative..."*
- **CDA Charter, RA 6939, Section 8:** *"Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives. Provided, that if no mediation or conciliation succeeds within 3 months from request thereof, a certificate of non-resolution shall be issued by the commission prior to filing of appropriate action before the proper courts."*

IV. ELEMENTS OF THE FRAMEWORK

A. STRUCTURE

- **Multi-access to services.** Mediation services shall be available in CDA and the coop primary, federation and union levels.
- **Pervasive.** Mediation-Conciliation shall be practiced in all levels of the coop sector and among all regional facilities of the CDA.
- **Has low entry barriers to mediation practice.** Primary qualifications for accreditation of members to the pool of mediators shall be commitment to the mediation process and willingness to serve.
- **Known to all.** Stakeholders shall be primed to become advocates and champions to promote the acceptance and use of mediation in coop communities and the entire sector.

B. PROCESS

1) FEATURES

- The primary dispute resolution process employed by the CDA and the coop sector shall be MEDIATION.
- MEDIATION is a process where a trained neutral third party facilitates the negotiation between two or more parties in conflict, for the purpose of reaching a voluntary, mutually satisfying agreement
- Policies and procedures shall encourage confidentiality and candor
- Legal and technical aspects of the dispute shall be de-emphasized
- Mechanisms installed ensure and promote:
 - Impartiality
 - Mutual acceptance
 - Informed choice
 - Freedom of choice
 - Mutual recognition
 - Empowerment

Type of dispute resolution in the CDA vs Mediation		
Features	Mediation	CDA Practice
Decision-maker	The parties.	Coop: Grievance Committee or BOD CDA: the parties
Basis of decision	Needs and interests	Evidence and merits of the case
Who controls the process	The Mediator: firmly but informally with the parties	(Coop) Conciliator-Arbitrator: Formal procedures, adversarial (CDA) ADR officer: Relatively informal
Role of third parties	Independent, impartial facilitator.	(Coop Level) Judge / Arbiter (CDA) Independent, impartial expert.
Direct involvement of the parties	Full participation on deciding on issues, creating, evaluating and agreeing options	(Coop) Input issues and background material then Conciliator decides (CDA) involved in identification of the problem and exploring options
Types of outcomes that emerge	Win-win, mutual acceptance	(Coop) Win-Lose: based on legal precedent and evidence (CDA) Compromise: between what parties want

➤ The Mediation process may further be summarized by the following features:

Decision-maker	➤ The parties.
Basis of decision	➤ Needs and interests
Role of Mediator	➤ Independent, impartial facilitator

Role of the Parties	<ul style="list-style-type: none"> ➤ Full participation in decision-making ➤ Directly involved in creating, evaluating and agreeing on options
Outcomes	<ul style="list-style-type: none"> ➤ WIN - WIN ➤ Mutual acceptance of the decision ➤ Legally enforceable

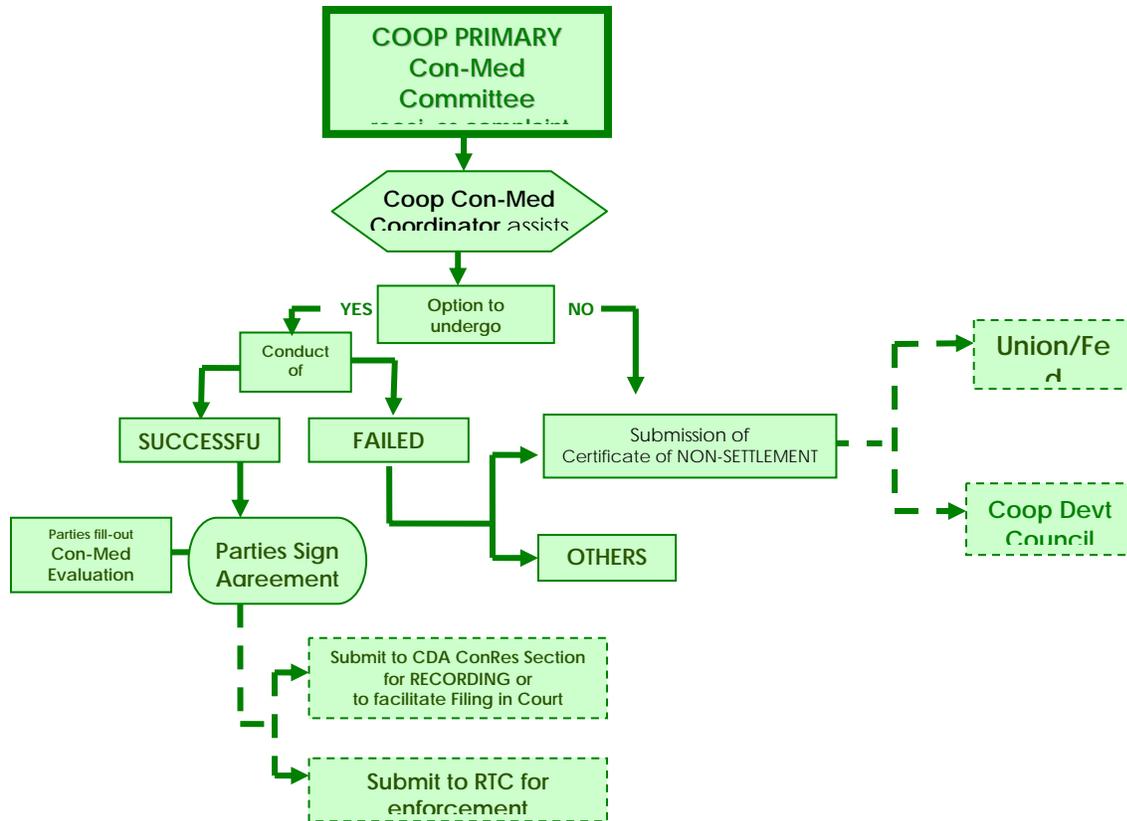
- There will be an option to register Mediation Agreements with the courts in case of the need to enforce decision
- Options shall also be made available for disputants to undergo ADR by private providers/practitioners
- Mechanism installed will allow referral to the CDA for resolution of issues and disputes which are perceived as needful of immediate intervention by the agency

2) TYPES OF DISPUTES REFERRABLE TO MED-CON

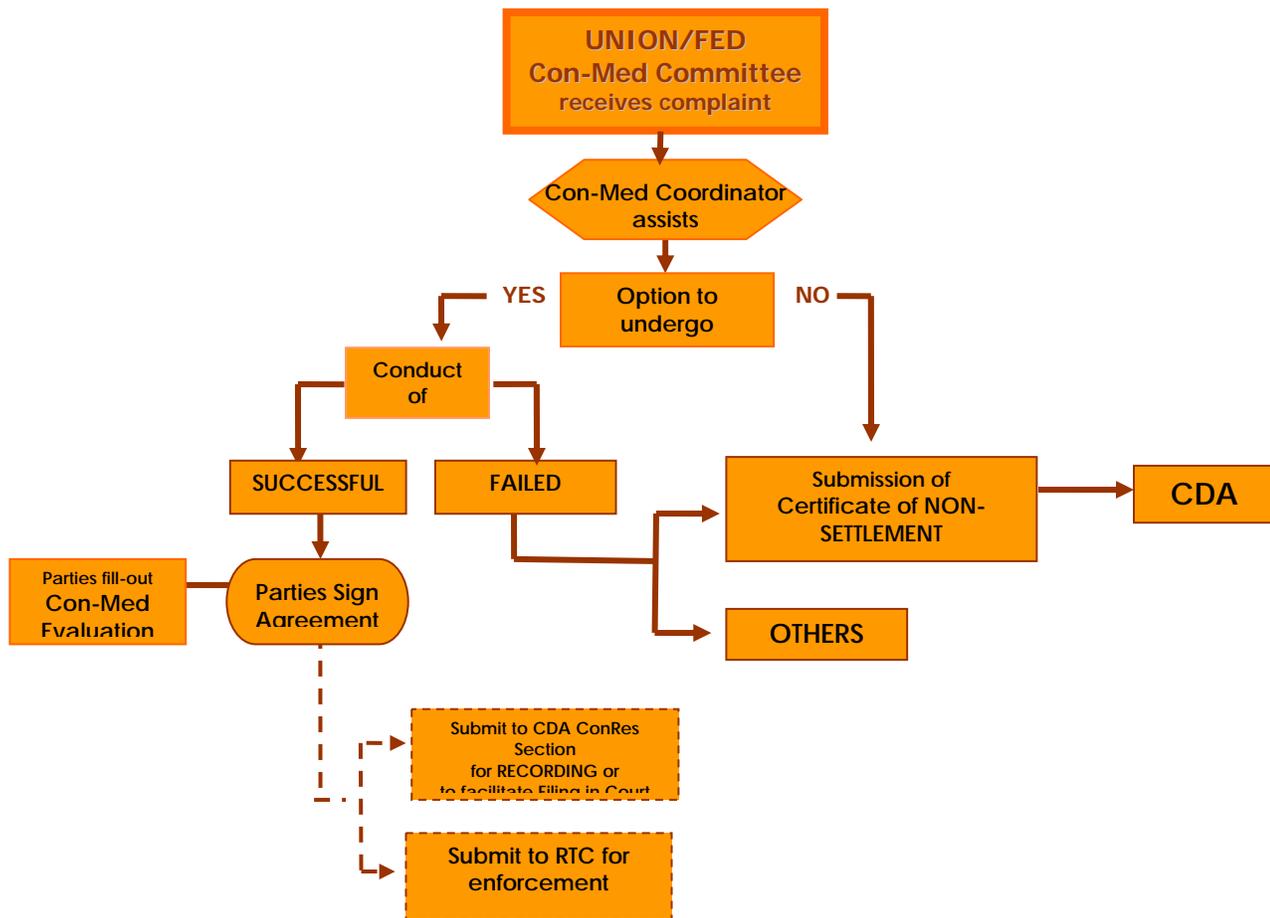
- Referral of Disputes PER LEVEL
 - PRIMARY Coop Level – INTRA-COOPERATIVE DISPUTES
 - Coop member vs coop member
 - Coop Officer vs Coop Member
 - Coop Officer vs Coop Officer
 - FEDERATION/UNION Level
 - ◆ INTER-COOPERATIVE DISPUTES
 - Coop vs Coop
 - Coop vs federation
 - Federation vs federation
 - ◆ INTRA-COOP DISPUTES - when no settlement/agreement has been forged at Primary Level
 - Coop Member vs Coop Officer
 - Coop Officer vs Coop Officer
 - Coop member vs coop member
 - CDA
 - Failed Conciliation-Mediation at the Primary or Secondary Levels
 - Federation vs federation

3) PROCESS FLOW

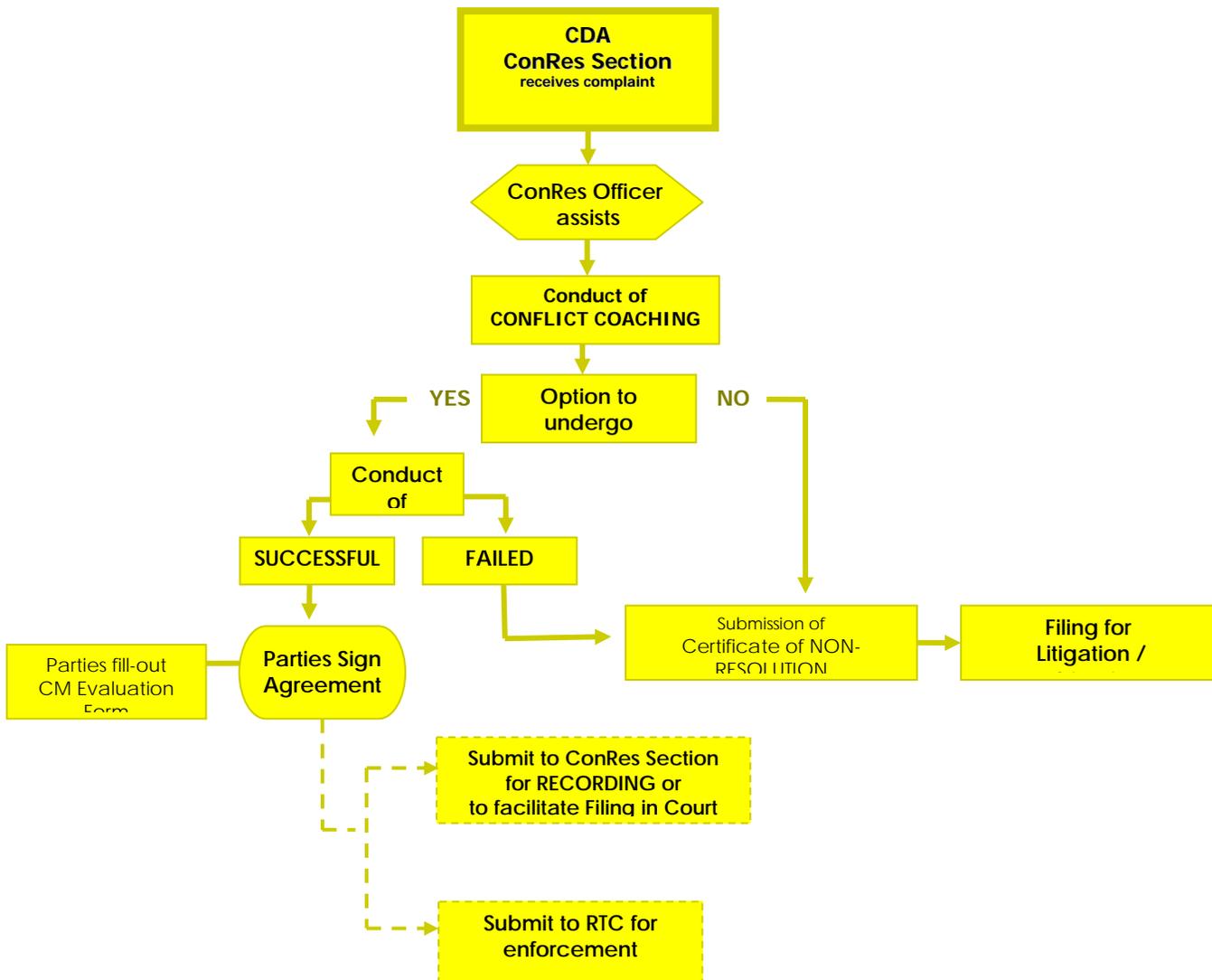
COOP PRIMARY LEVEL



FEDERATION/UNION LEVEL



CDA LEVEL



C. EDUCATION AND TRAINING

- Skills training in Conciliation-Mediation will be provided at all levels of the coop sector and the CDA.
- A screening/selection process of Mediators will be installed to ensure that competent and effective service providers will be accredited to the ADR Pool.
- Skills training will develop mediators' capacity for:
 - Listening
 - Questioning
 - Reframing
 - Summarizing
 - Exploring interests
 - Handling emotions of the disputants
 - Maintaining impartiality
- Venues will be established to enable mediators to share lessons and best practices (without compromising confidentiality) as part of continuous training and skills enhancement
- Skills Training Program should be consistent with the ADR Law and conform to widely accepted INTERNATIONAL STANDARDS (at least 40 hours of classroom training and 40 hours of practical training)
- Training shall include ethical standards of practice
- Incentive schemes shall be implemented to reinforce effectiveness and good performance of Mediators. Incentives won't necessarily be monetary in nature.
- RECRUITMENT OF MEDIATORS AND ADR PROVIDERS
 - COOP / FEDERATION LEVEL
 - The Pool of MEDIATORS shall initially be composed of representatives from the Federation/Union at a locality
 - A MEDIATOR need not be a member of the Con-Med Committee of the coop primary or Fed-Union
 - CDA LEVEL
 - Officers and staff from the Central and Regional Extension Offices
 - The CDA may also nominate competent members of its staff for ADR accreditation
 - CDA is to accredit the organization commissioned to conduct ADR training

D. MONITORING AND EVALUATION

- An efficient database management system shall be developed linking information from the primary, federation-union and CDA Levels.
- The overall information management system will track outcomes at all levels without compromising confidentiality.
- Customer feedback system will be installed to monitor effectiveness of the process and quality of the mediation service.

E. ADVOCACY

- Awareness-building activities will be incorporated in coop education activities including Inclusion in pre-membership education seminars, membership trainings and roadshows conducted by coop primaries and federation-unions.
- The use of alternative dispute resolution will be continuously promoted of at all levels.

IV. LIMITATION AND GAPS

A. CDA

- Tendency towards adjudication processes in resolving coop disputes; established legal mindset
- Lack of understanding of ADR
- Weak infrastructure for managing information from the coop primaries, federations and unions

B. COOP PRIMARIES

- Members lack confidence in the coop's internal capacity to resolve disputes
- Dispute resolution mechanism highly vulnerable to influence-peddling
- Pro-forma coop by-laws define conciliation-mediation as an adjudication process
- Tendency to look towards CDA as the authority on rendering decisions regarding coop disputes

C. COOP FEDERATIONS AND UNIONS

- Unclear structure to be able to determine capacity for ADR service provision and system management
- No authority to penalize and impose sanctions on erring primaries
- Inadequate database management system on member cooperatives
- Dependency on remittance of membership fees and contributions may be a source of conflict of interest

V. PRE-REQUISITE INFRASTRUCTURE

- CDA to Issue memorandum circular to encourage coops to amend Coop By-laws Section 37 (definition and functions of Conciliation Committee)
- CDA to formulate an incentive scheme for cooperatives to establish ADR clause in their by-laws
- CDA to develop a policy to make the incorporation of the ADR clause in the by-laws a requirement for coop membership registration
- CDA to establish a division to facilitate capacity-building for mediation and alternative dispute resolution (ADR) especially in the regional extension offices
- Formulate and implement an accreditation scheme for ADR trainers and accredit a group to provide quality training for the sector
- Establish an accreditation program to ensure effective recruitment of quality mediators at all levels of the coop sector
- Re-tooling of CDA staff appointed to the ADR / ConRes Division
- Development of a correct listing of cooperatives with or without internal ADR mechanisms, particularly conciliation-mediation
- Develop a system for effective communication with and regular performance monitoring of cooperatives for ADR
- Design and implement an advocacy program to ensure efficient buy-in of cooperatives into ADR
- Conduct institutional reviews of federations and unions for ADR service provision
 - Determine capacity for ADR service provision and system management
 - Re-tooling of Federation/Union staff for effective system management and coordination

- 0 -

Proposed

ADR FRAMEWORK

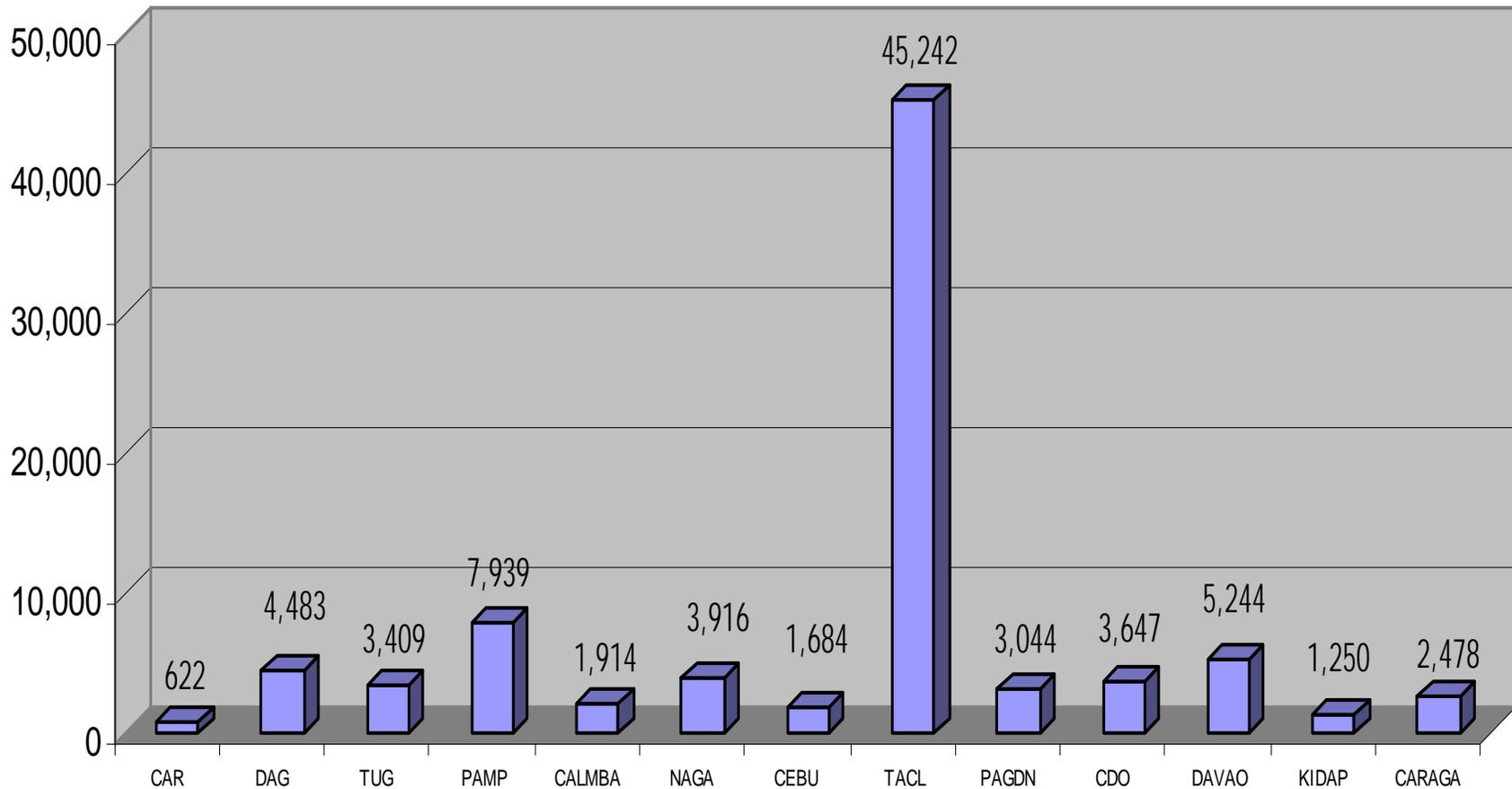
for the Cooperative Sector

Presented to the
CDA Board of Administrators
24 November 2006

WHERE ARE WE NOW?

1. The Cooperative Sector is potent, but unresolved disputes threaten its development.

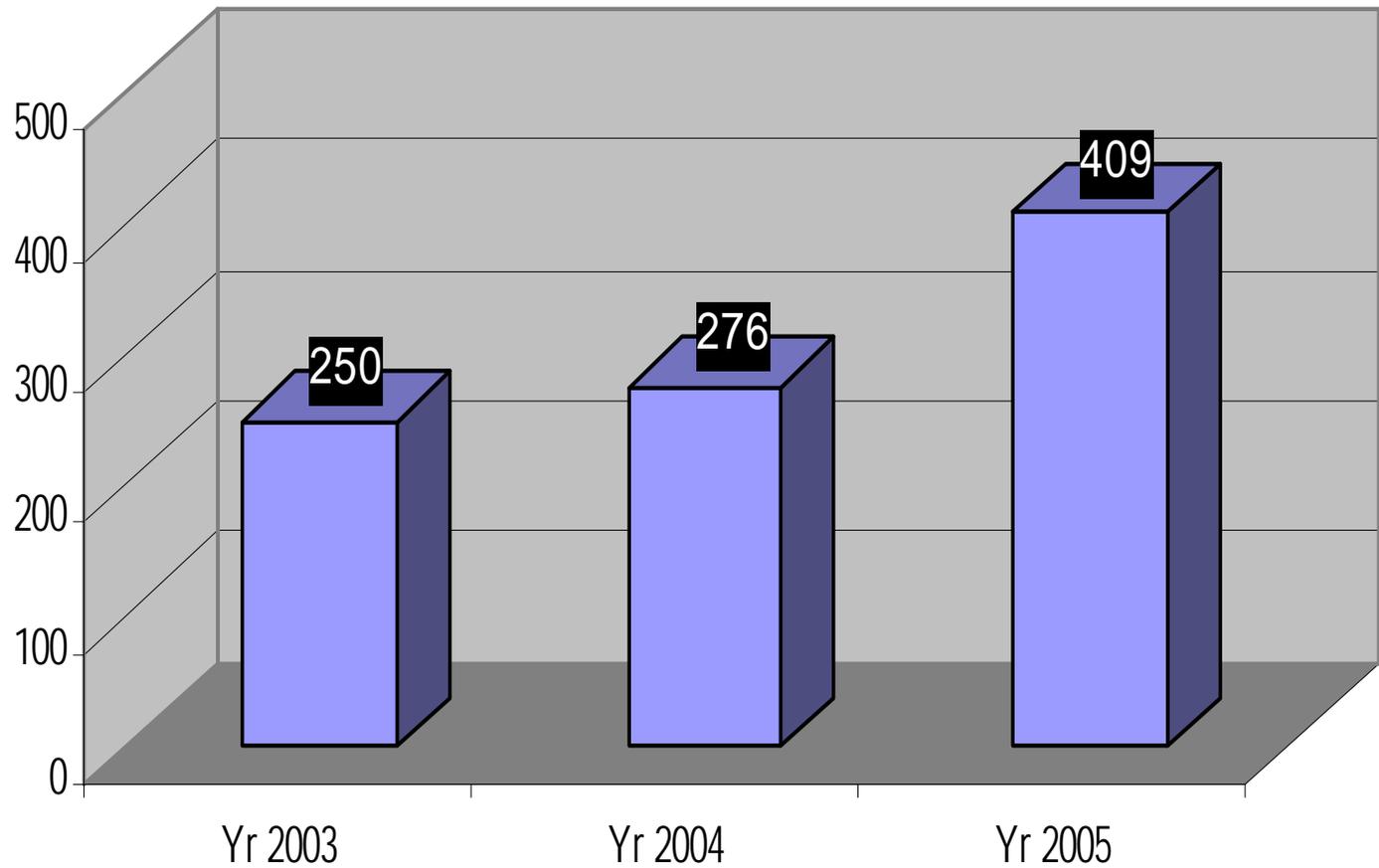
COOPS UNDER CDA JURISDICTION



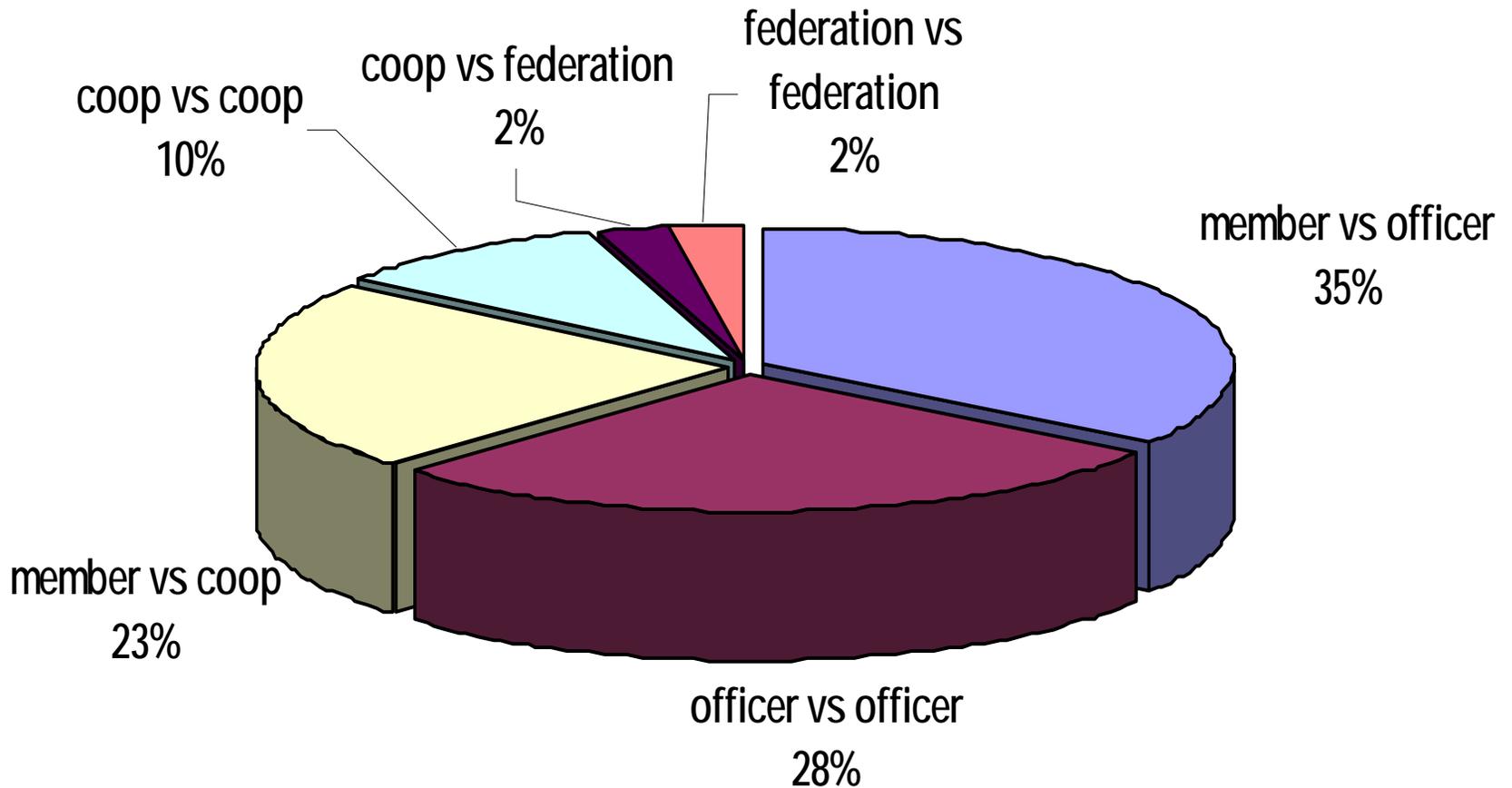
Data exclusive of Illo-Ilo, ARMM and Manila

Total = 84,872 (all coop categories)

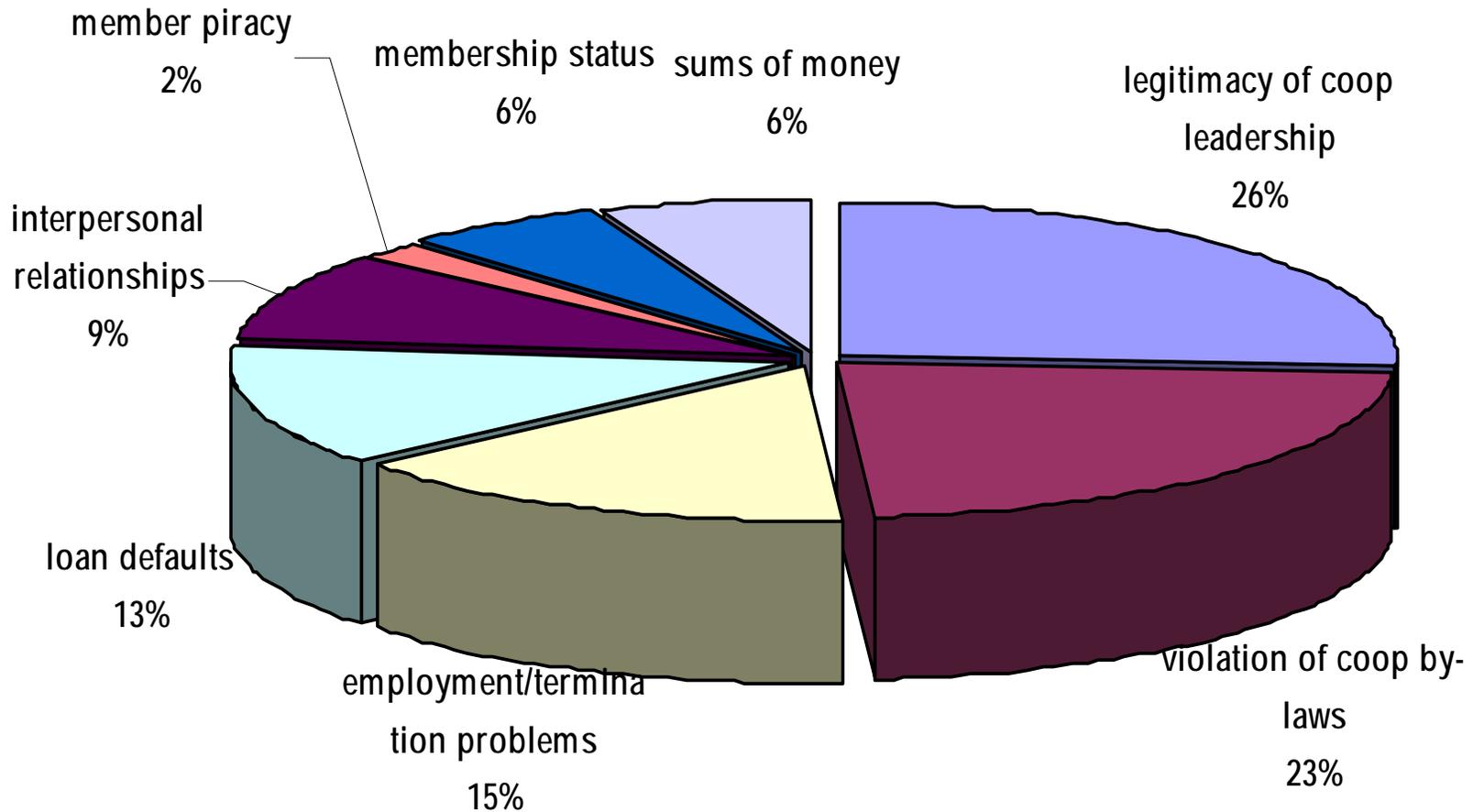
NUMBER OF CASES (2003 – 2005)



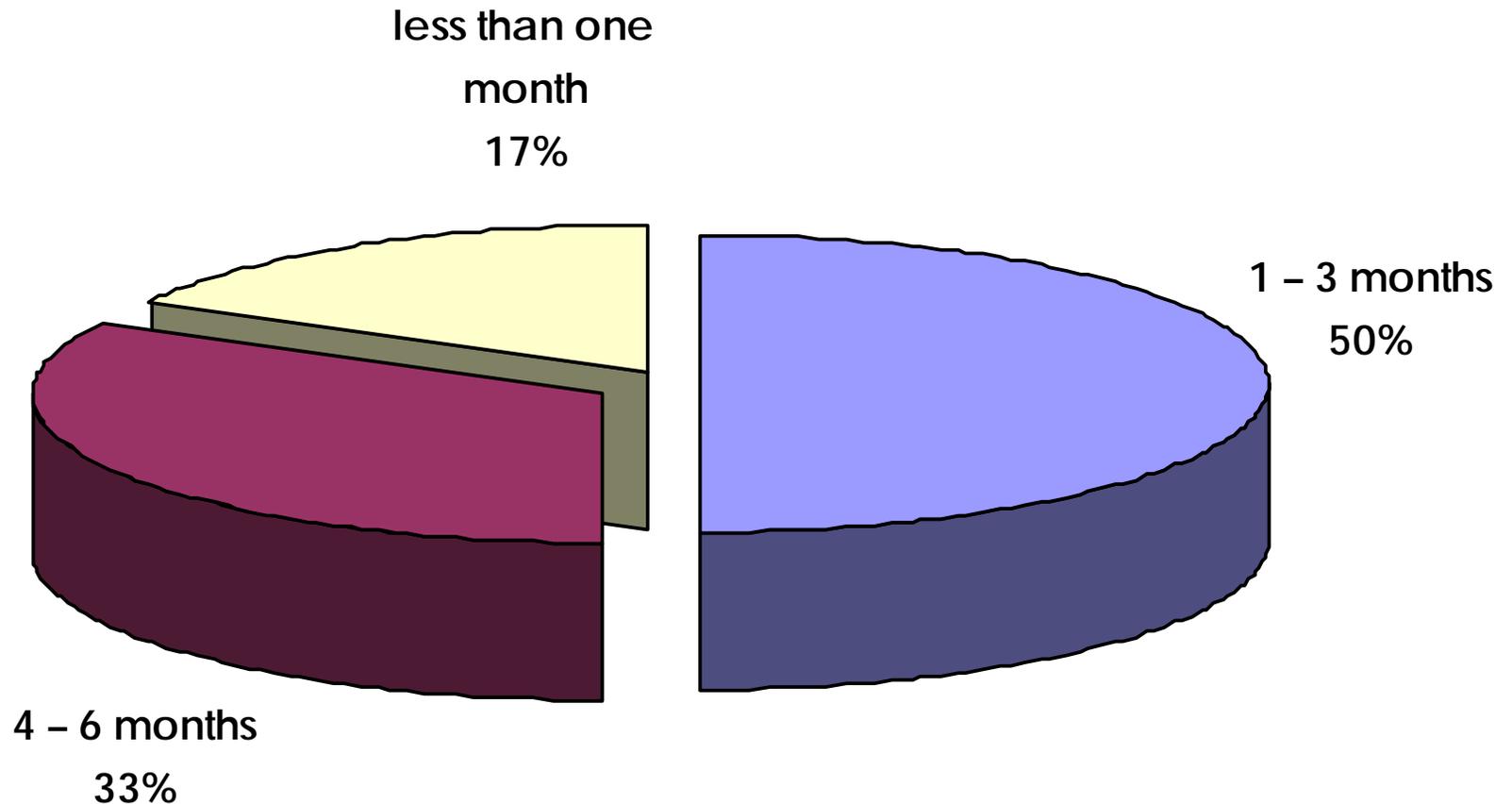
COMMON TYPES OF DISPUTES



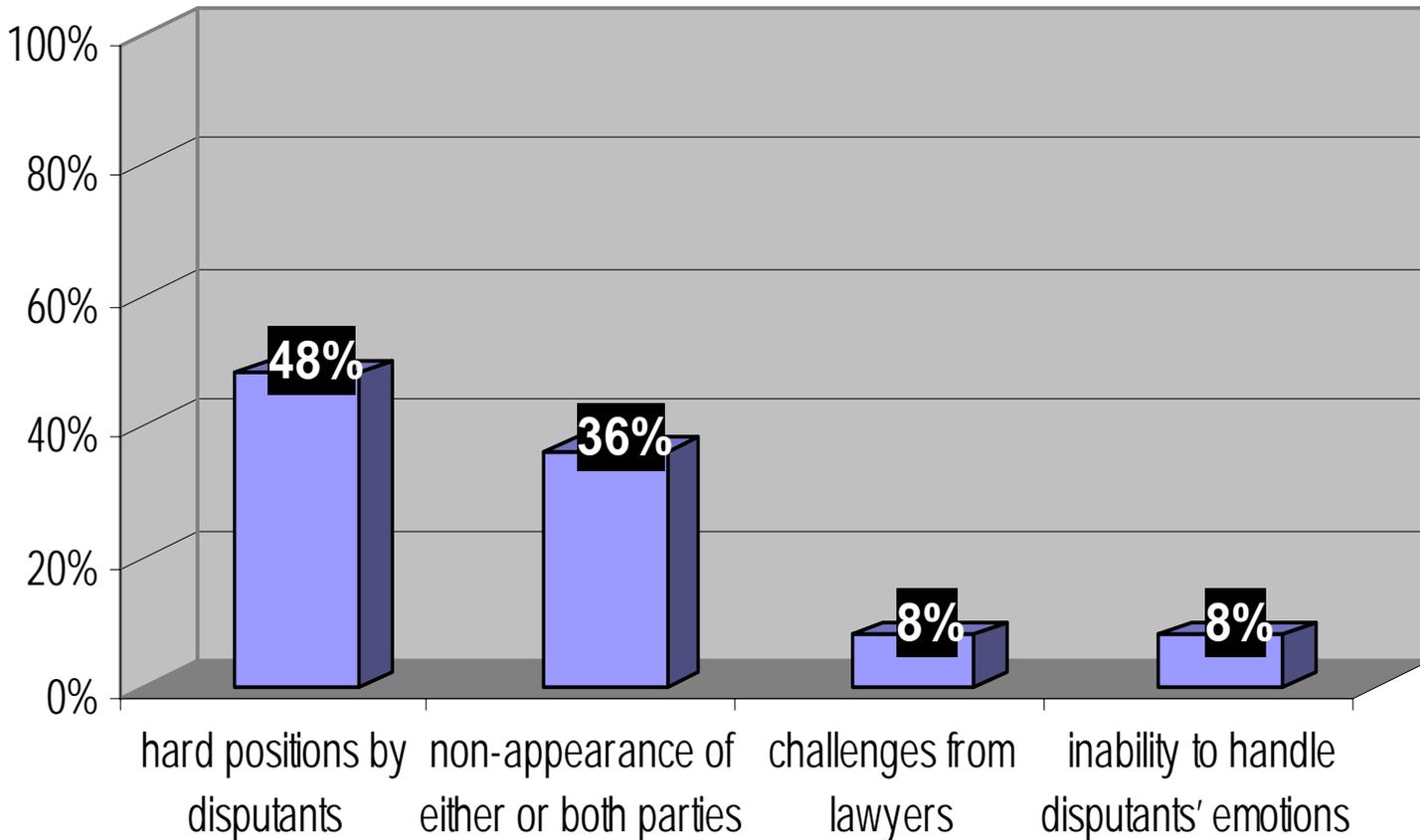
COMMON ISSUES OF DISPUTES



AVERAGE TIME CDA RESOLVES DISPUTES



CHALLENGES FACED BY DISPUTE RESOLVERS



ADR – TRAINED PERSONNEL

Extension Office	No. of Staff in ADR Unit	No. of Staff Trained in ADR	No. of Trained Staff Practicing ADR
CAR - BAGUIO	1	-	-
DAGUPAN	2	1	1
TUGUEGARAO	2	1	1
PAMPANGA	2	1	1
CALAMBA	3	1	1
NAGA	2	-	-
CEBU	2	-	-
TACLOBAN	2	-	-
PAGADIAN	1	-	-
CAGAYAN DE ORO	2	-	-
DAVAO	3	-	-
KIDAPAWAN	2	-	-
CARAGA	1	-	-
MANILA	4	3	1
ARMM	9	-	-

STATE OF MONITORING SYSTEM

- System is generally informal and anecdotal
- There is no feedback mechanism to monitor client satisfaction
- There is no system to monitor outcomes of disputes addressed by coops under CDA's Extension Office jurisdiction

Where are we now?

2. Like the rest of the country, the Coop Sector continues to dump cases in the courts.



Adversarial Processes aggravate disputes.

Adversarial Processes breed a destructive mind-set.

**You
deserve to
rot in jail.**

**You are
wrong.**

**Its all your
fault.**

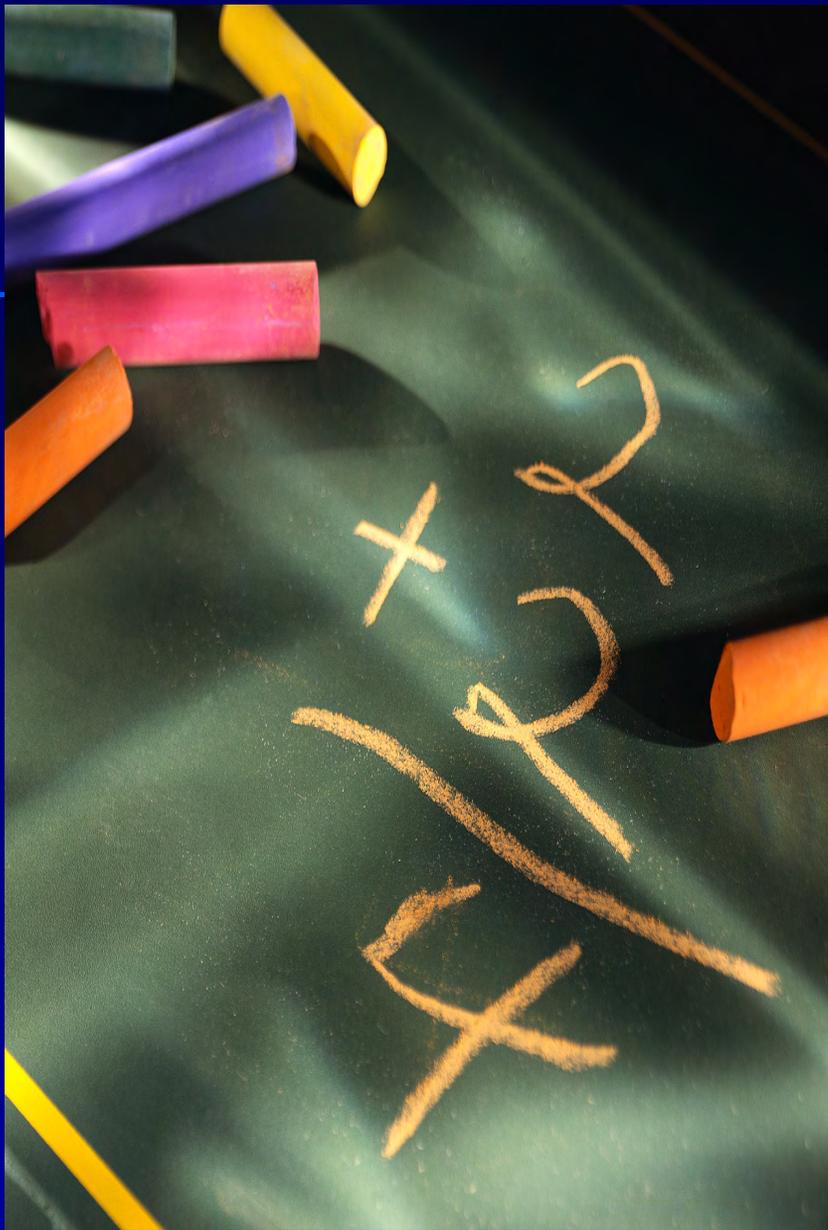
**I leave it
To the
Courts.**



**You
ruined
my life!**

**Talk to my
lawyer.**

**You are the
devil
personified!**



1 Million cases in courts

+

1 Million cases in
Quasi/Admin agencies

2 Million cases

x

2 parties per case

x

10 people they affect

=

40 million people affected

40 million people

blaming

lost voice

surrender choice

give up responsibility

give up power

re-live trauma



stuck

Where are we now?

3. Changes are heralding a new and more meaningful way of handling conflicts called ADR.

Consider this....

In the United States,

- 1970-2001 – **150%** **increase** in number of federal cases
- 1970-2001 – **80%** **decrease** in number of cases resolved by trial

THE VANISHING OF THE TRIAL

Why this new way of resolving conflict is preferred?

- Win in conflicts more than 90% of the time
- Reduce litigation cost to 10%
- Reduce settlement time anywhere from 2 hours to less than 30 days
- Ensure settlement is legally enforceable
- Be confident of a durable settlement
- Restore the parties relationship
- Emerge mutually satisfied
- Parties determine the final outcome

Alternative Dispute Resolution

MEDIATION

Conciliation

Early Neutral Evaluation

Mini Trial

Rent-a-judge

Judge Hosted Settlement Conference

Med-Arb/Arb-Med

Negotiated Rule-making

ARBITRATION

Mediation

the buzz word in ADR

Mediation has captured the imagination and interest of many countries especially those beset by charges of bias and corruption in the formal justice system.

Mediation

A process where a trained neutral third party facilitates the negotiation between two or more parties in conflict, for the purpose of reaching a voluntary, mutually satisfying agreement

Why Mediation

- **The rise of democratization**
- **The erosion of authoritarianism and top-down decision-making processes**
- **The desire of people to participate in decisions that affect their lives**

**The Philippines
has its own
success stories in
the use of
mediation.**

NLRC

SC

DEPED

BSP

BOI



DTI

HLURB

CHED

DOJ

IPO



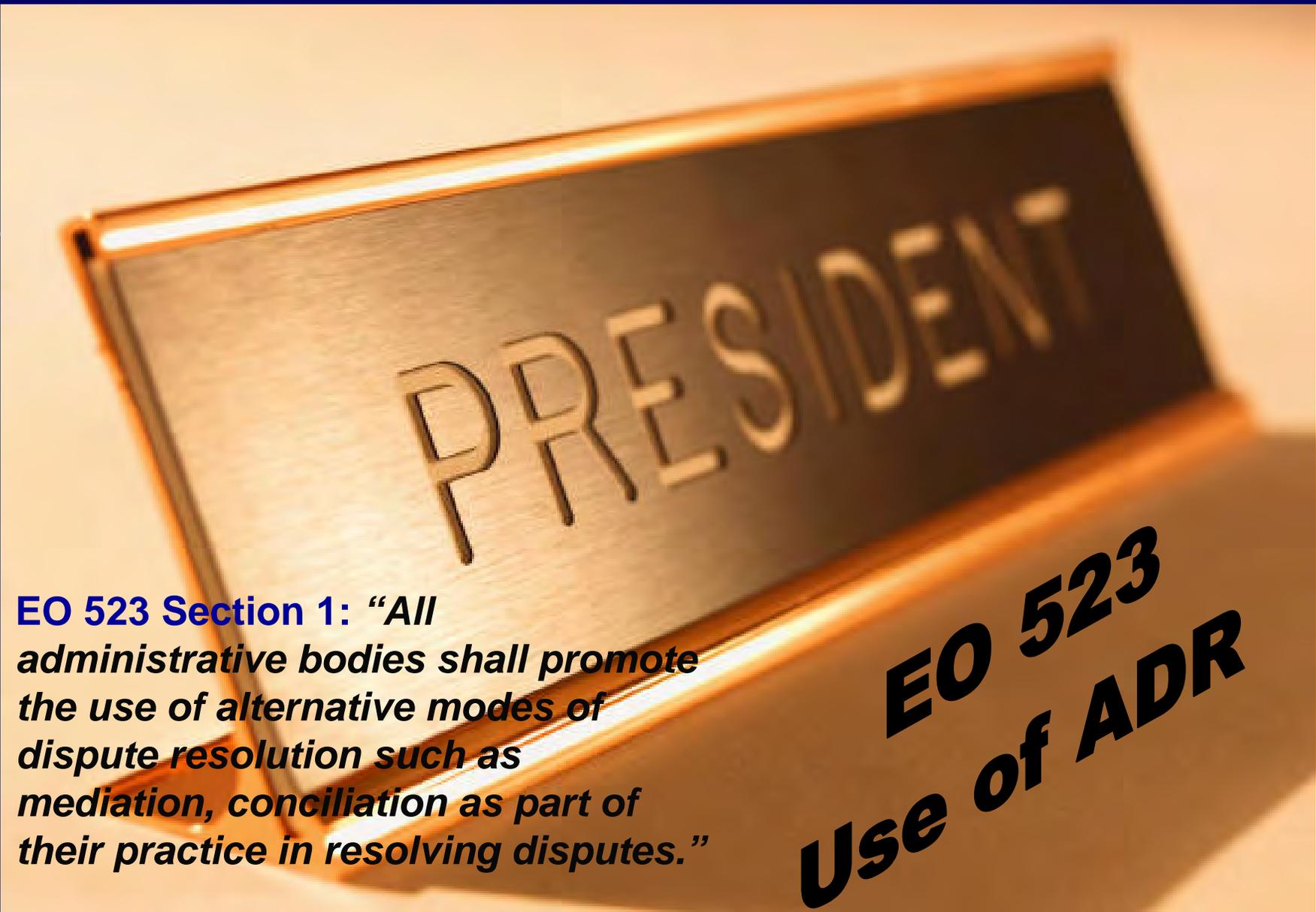
Where are we now?

4. The Supreme Court has ruled that CDA is not vested with quasi-judicial authority to adjudicate cooperative disputes. Its mandate is mediation and conciliation of disputes.



ADR Act of 2004

Republic Act 9285: *“It is the policy of the State to actively promote and encourage the use of ADR as an important means to achieve speedy and impartial justice and to de-clog court dockets.”*



PRESIDENT

EO 523 Section 1: *“All administrative bodies shall promote the use of alternative modes of dispute resolution such as mediation, conciliation as part of their practice in resolving disputes.”*

**EO 523
Use of ADR**

Mandate

- **Coop Code Article 121:** *“Disputes among members, officers, and committee members, and intra-cooperative disputes, shall... be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative...”*
- **CDA Charter Section 8:** *“ Upon request of either or both parties, the Authority shall mediate and conciliate disputes within a cooperative or between cooperatives. Provided, that if no mediation or conciliation succeeds within 3 months from request thereof, a certificate of non-resolution shall be issued by the commission prior to filing of appropriate action before the proper courts.”*

A CHALLENGE TO THE COOPERATIVE SECTOR

An illustration of a meeting around a large wooden table. Four people are seated: a man in a light blue shirt and tie on the left, a woman in a purple shirt at the top, a man in a light green shirt and tie on the right, and a man in a blue shirt at the bottom. The man in the light blue shirt is holding a sign that says "TIME FOR CHANGE". The man in the blue shirt is writing with a pen. A potted plant is visible in the top left corner.

TIME
FOR
CHANGE

A Proposed
FRAMEWORK
for Dispute Resolution
at the CDA
and Cooperative Sector

PRINCIPLES

- Principle of *Subsidiarity*
- Spirit of Cooperativism
- Impartiality
- Confidentiality
- Accessibility
- Empowerment & Personal Responsibility
- Reconciliation / Preservation of Relationships

Elements of the Framework

- Structure
- Process
- Education and Training
- Monitoring and Evaluation
- Advocacy

STRUCTURE

- Widely accessible
- Pervasive
- Multi-access
- Has low entry barriers to mediation practice
- Known to all

PROCESS

- Policies and procedures encourage confidentiality and candor
- De-emphasis on the legal and technical aspects of the dispute
- Mechanisms installed ensure and promote:
 - Impartiality
 - Mutual acceptance
 - Informed choice
 - Freedom of choice
 - Mutual recognition
 - Empowerment
- Option to register Mediation Agreements in case of the need to enforce decision

PROCESS

Decision-maker ➤ The parties.

Basis of decision ➤ Needs and interests

Role of Mediator ➤ Independent, impartial facilitator

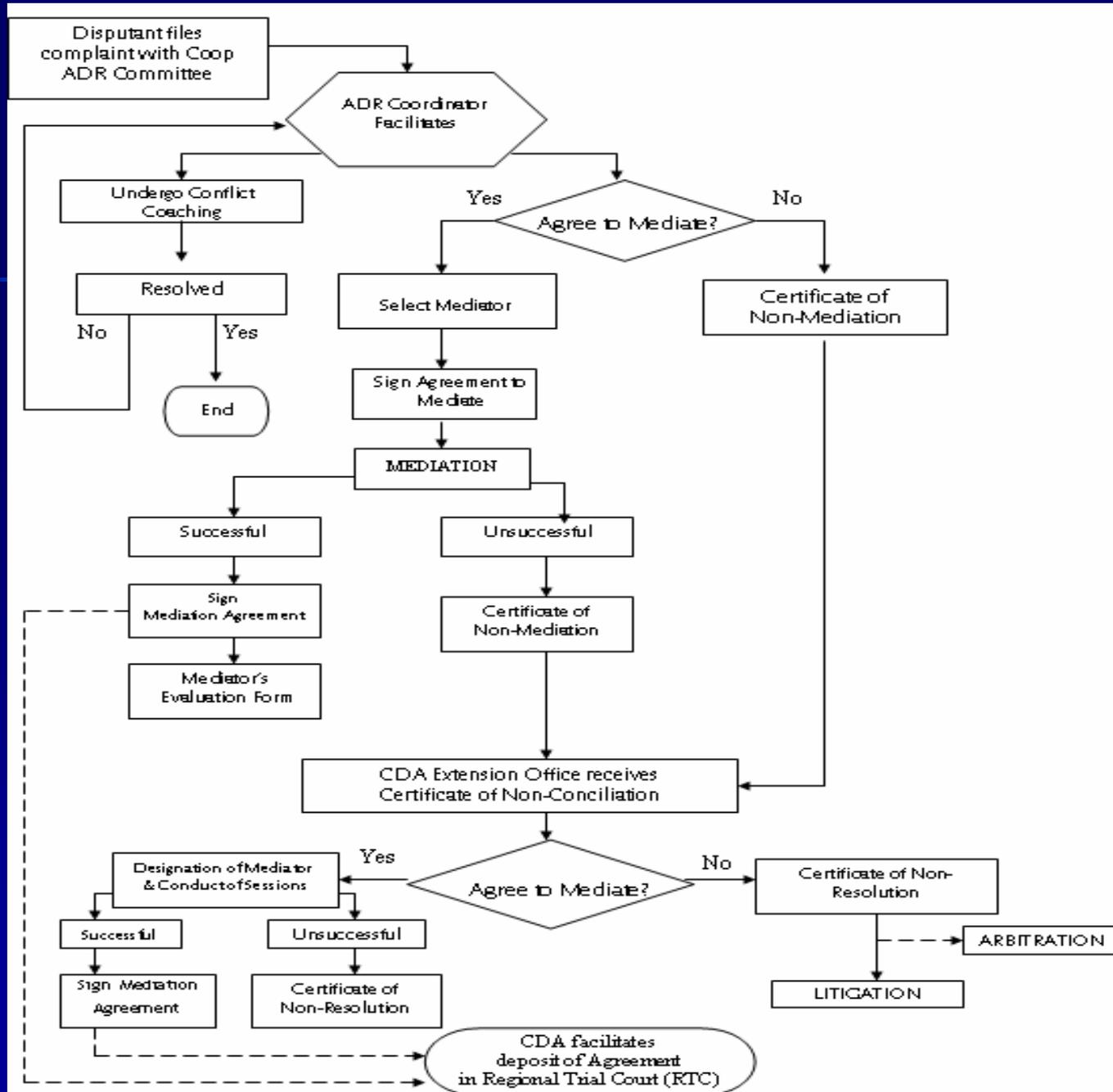
Role of the Parties

- Full participation in decision-making
- Directly involved in creating, evaluating and agreeing on options

Outcomes

- WIN - WIN
- Mutual acceptance of the decision
- Legally enforceable

PROCESS FLOW



EDUCATION & TRAINING

- Skills training in ADR-Mediation at all levels of the coop sector and the CDA
- Screening/selection process of Mediators to ensure competent and effective service providers will be accredited to the ADR Pool
- ADR Training will develop skills in:
 - Listening
 - Questioning
 - Reframing
 - Summarizing
 - Exploring interests
 - Handling emotions of the disputants
 - Maintaining impartiality

EDUCATION AND TRAINING

- Skills Training Program should be consistent with the ADR Law and conform to widely accepted INTERNATIONAL STANDARDS
- Incentives for Mediators to reinforce effectiveness and good performance
- Training shall include ethical standards of practice

MONITORING & EVALUATION

- An efficient database management
- Tracking of outcomes (from the primary to the CDA Levels) in the recording system for all levels
- Measure client satisfaction and quality of service

ADVOCACY

- Inclusion of dispute resolution orientation in pre-membership education seminars
- Continuous promotion of and education on the use of dispute resolution program at all levels

MEDIATE
Don't Litigate!

**REGIONAL CONSULTATIONS ON THE PROPOSED IMPLEMENTING ADR RULES AND
GUIDELINES FOR THE COOPERATIVE SECTOR**

(January 14 –29, 2007)

Below is a summary of key issues and concerns during the second round of consultations conducted in the same six major areas: Baguio, Pampanga, NCR, Cebu, Davao and CDO:

COVERAGE. Recommendations and queries were geared towards a need to state more explicitly the types of disputes which the Rules & Guidelines were to exclude (or include) in order to provide coops with definitive parameters for subjecting disputes to conciliation-mediation. Relevant issues included:

- Subjecting Criminal Cases or Cases with 6 + years penalty to Mediation
- Mediating disputes between a coop member and NON-member
- Allowing NON-members to file disputes for mediation by the primary or union-fed

STRUCTURE. Maintaining impartiality among Committee Members as well as of the Coordinator was the most significant concern of the participants. There was a prevalent sentiment that the credibility of the Committee and the Coordinator would be compromised especially when a Committee member was to mediate a dispute involving an ordinary coop member and a BOD Officer/member or a member of the Committee itself.

There were remaining misconceptions that (1) the Mediator was the one who shall render a decision on the dispute, and (2) if the Mediator was a Member of the Committee, his/her decision will likely be skewed in favor of the coop officer or director.

Other clarificatory questions raised included:

- Will the Con-Med Committee replace the existing Grievance Committees in cooperatives?
- For how long shall the members of the Con-Med Committee serve?
- Are members to the Committee to be elected by the GA or appointed by the BOD?
- Will a Member be allowed to mediate while serving his term in the Committee?
- Should BOD directors or officers be qualified for membership to the Committee?
- Is the Coordinator the same as the Committee Chairperson?

PROCESS. Concerns regarding some aspects of the Mediation process were expressed by the participants:

- Efficiency - Allowing the replacement of the conciliator-mediator at anytime during the mediation proceedings may be used as a delaying tactic by the disputant/s. Failed cases may also be prolonged if it will be required to go thru the Union-Fed prior to submission to the CDA.
- Impartiality – The Committee might be partial against a member who filed a dispute against a coop officer, committee member or director
- Effectiveness of the Agreement – The parties were uncertain if the Mediation Agreement would sufficiently bind the parties to the settlement and if it would be accepted in court as a legally-enforceable agreement in case one party reneges. The participants went so far as to suggest that Minutes of the mediation proceedings be taken so that this may be presented as evidence in the event that the case was submitted for litigation.

The previous clamor for the enhanced participation of the LGU was addressed when the Cooperative Development Authority was proposed as an alternative venue should efforts fail at the primary level. This proposal was received positively by the participants. However, separate guidelines will have to be drafted with the CDC or a MOA entered into with the CDA.

Notice was made on the lack of detail of section 11, Order of Con-Med proceedings. Specific steps should be laid out particularly for when the *disputant/s fail(s) to appear after the issuance of the first notice for conference.*

THE CONCILIATOR-MEDIATOR. Issues raised concerned the selection and qualification of the Mediator. Points raised included:

- Mediators accredited by other organizations (i.e. PhilJA) should be allowed automatic accreditation to the CDA Pool of Coop Conciliator-Mediators.
- While there should definitely be fees imposed for conciliation-mediation, the compensation package for the Mediators (allowance, honorarium or fee-for-service) should not be standardized in consideration of those coops which are financially smaller. Participants generally agreed that the compensation package for the Mediator should be at the discretion of the Coops.
- If Mediators were accredited to the Pool of Mediators based on their Member-in-Good-Standing (MIGS) status, then he/she will have to be disqualified from the Pool if at some point he/she loses MIGS status. Status in the cooperative as a requirement also suggests that only individuals who are coop members may be qualified to the Pool of Mediators. This could exclude non-members of coops who might be just as competent and qualified for mediation.

- Disputants should be given the option to choose Mediators who are outside of the Pool of Mediators so long as he/she is trusted and is mutually selected.

TRAINING AND IMPLEMENTATION. The participants' queries showed the participants' enthusiasm and willingness to undergo training and to install ADR Mechanisms in their organization. To note:

- How do we begin training for ADR?
- The guidelines propose training and accreditation delegated by CDA to an independent service provider. Has an ISP been chosen? Who?
- How will ADR be implemented in the coop sector without ADR Training conducted in all levels?
- Is there a specific timetable for the coops to determine when they can apply ADR in their cooperative?
- If Mediation training is a qualification for membership to the Con-Med Committee, how will individuals qualify and the Committees formed given that training for ADR has not yet even begun?
- Is there an inventory of coops that have existing ADR mechanisms which can aid in prioritizing which coops shall be trained in ADR?

The participants were then informed of the moratorium to be enforced by the CDA to allow the training of the implementers and the establishment of the infrastructure which will ensure the effective implementation of the Guidelines.

Also emphasized to the sector were the following initiatives to facilitate the establishment of ADR in the Coop Sector:

- CDA to Issue memorandum circular to encourage coops to amend affected provisions of the Coop By-laws, particularly Section 37 (definition and functions of Conciliation Committee)
- Coops to establish ADR clause in their by-laws and register amendments to CDA (subject to very minimal fees or its possible waiver)

A noted limitation of the Guidelines was the absence of sanctions or penalties should the cooperative refuse or fail to comply with the CDA order to adopt the Guidelines.

COOPERATIVE DEVELOPMENT AUTHORITY
MEMORANDUM CIRCULAR
Series of 2007

Subject: ***GUIDELINES FOR THE IMPLEMENTATION OF CONCILIATION-MEDIATION OF COOPERATIVE DISPUTES BY THE PRIMARY COOPERATIVES***

These Guidelines are developed pursuant to Section 14, Article XII of the 1987 Constitution: R.A. 6939 created the Cooperative Development Authority (CDA) as a centralized agency mandated to promote the viability and growth of cooperatives; towards this objective, Section 3 authorized CDA to provide, among other things, technical assistance to cooperatives and in the implementation of cooperative laws; pursuant further to Republic Act No. 6938, otherwise known as the Cooperative Code, directing that disputes between and among cooperative members, officers, directors and committee members and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the union/federation and in applicable laws, congruent with State recognition of the principle of subsidiarity.

Section 1. Declaration of Principles – *The Conciliation-Mediation Process shall be conducted in accordance with the following principles:*

1. Subsidiarity in that all disputes shall be resolved amicably at the Primary Cooperative Level;
2. Confidentiality in that no transcript of the proceedings shall be taken during the conciliation-mediation process and that all notes and admissions of the parties shall be inadmissible in any other proceedings; (and appropriate sanctions shall be meted for any violation thereof;)
3. Speedy inexpensive conciliation-mediation process in that no technical rules of evidence shall be applicable hereunder;
4. Flexibility in that the Conciliation-Mediation Committee, Con-Med Coordinator and any other party involved in the process shall be vested with ample discretion to conduct the same and to pursue whatever Conciliation-Mediation options are agreed upon by the parties;
5. Liberal Construction in that these guidelines shall be liberally construed in favor of attaining the paramount objective of amicably settling disputes at the lowest levels;
6. Independence and Autonomy in that the members of the Con-Med Committee, the Con-Med Coordinators and Conciliators-Mediators shall be insulated from all types of external influences and pressures;
7. Accessibility in that the process is open to all disputants desirous of solving their disputes and/or problems amicably as the CDA recognizes the need to make justice accessible as widely as possible to all members of the cooperative;;
8. Voluntariness in that submission to the conciliation-mediation process shall be completely voluntary.

Section 2. Scope – These Guidelines shall govern the administration and operation of the conciliation-mediation process, provided that nothing in these Guidelines shall preclude the parties from seeking other modes of amicably settling the dispute, and provided further that Conciliation-Mediation shall not prevent the cooperative from implementing sanctions and penalties against violations of its rules and regulations.

Section 3. Construction - These Guidelines shall be liberally construed in order to promote just, speedy and inexpensive amicable settlement of disputes.

Section 4. Coverage – All cooperative disputes and issues including disputes between and among cooperative members, officers, directors, employees, clients and/or beneficiaries of the cooperative.

Section 5. Definition of Terms.

- 1) *Conciliation* – A process whereby a conciliator-mediator takes a vigorous and active role in assisting disputants formulate solutions in order to reach an amicable settlement
- 2) *Mediation* - A process whereby the conciliator-mediator facilitates the negotiation between disputing parties to reach a voluntary, mutually satisfactory outcome
- 3) *Conciliator-Mediator* – A qualified individual who provides conciliation-mediation services.
- 4) *Conciliation-Mediation Committee Coordinator* – A member of the management staff designated by the General Manager serving as liaison to the Committee and the disputants.
- 5) *Pool of Conciliator-Mediators* – A group of Conciliator-Mediators recognized by the CDA.
- 6) *Mediatable Disputes* – All disputes specified in Section 4.
- 7) *Conflict Coaching* – A stage in the conciliation-mediation process, the objective of which is to clarify the issues and interests of each party.
- 8) *Certificate of Non-Settlement* – A document issued by the Conciliation-Mediation Committee in case of failed or refused Conciliation-Mediation.
- 9) *Failed Conciliation-Mediation* – A situation where no settlement is reached by the disputants after signing the Agreement to Conciliate-Mediate.
- 10) *Refused Conciliation-Mediation* – A situation when one or both parties refuse to enter Conciliation-Mediation or fail to appear despite notice.
- 11) *Conciliation-Mediation Agreement* – A document embodying the agreement of the parties amicably settling their dispute.

Section 6. The Conciliation-Mediation Committee Composition, Qualifications, Terms of Service and Functions

- a) *Composition.* The Committee shall be composed of at least three (3) members elected by the General Assembly or appointed by the Board of Directors in accordance with the cooperative by-laws. The committee shall elect from among themselves, the chairman, vice-chairman and secretary.
- b) *Qualifications.* The Committee members shall have completed the CDA prescribed Mediation Training and the Recognition requirements to the Pool of Conciliator-Mediators, provided that they are not Officers of the Cooperative.

- c) *Terms of Service.* Members of the Committee may serve for two (2) years, or as may be provided by the cooperative by-laws. In case of vacancy in the Conciliation-Mediation committee, the Board may either cause an election to fill the vacancy or appoint a qualified member to fill the vacant position as may be provided by the cooperative by-laws.
- d) *Functions.* The Committee shall have the following functions:
 - i. Create, oversee and ensure that the Conciliation-Mediation process is properly implemented
 - ii. Monitor Conciliation-Mediation operations (entry of new cases, status of pending cases, performance of Conciliator-Mediators)
 - iii. Submit quarterly reports to the CDA within fifteen days after the end of every quarter
 - iv. Accept and File Evaluation Reports
 - v. Submit recommendations for improvements to the BOD
 - vi. May recommend to the Board any member of the cooperative for Mediation Training
- e) *Termination of members of the Committee.* Members of the Committee may be terminated for violation of the Code of Ethical Standards, breach of the provision on confidentiality, manifest partiality, and other conduct undermining the integrity of the Conciliation-Mediation process

Section 7. Conciliation-Mediation Committee Coordinator – Designation and Functions

- a) The Board of Directors through the General Manager, shall designate a qualified person from the management staff to act as Conciliation-Mediation Coordinator.
- b) The Conciliation-Mediation Coordinator shall have the following functions:
 - i. Receive complaints, and assist the disputing parties in reducing their complaints in writing
 - ii. Confirm parties' request to participate in Conciliation-Mediation
 - iii. Assist parties in the selection of a Conciliator-Mediator
 - iv. monitor and report on the outcome of Conciliation-Mediation conducted by non-pool Conciliator-Mediators
 - v. Receive AND FILE the Conciliator-Mediator's evaluation form
 - vi. Submit to the Committee THE monthly report summarizing status of all cases PROCESSED and the results of THE evaluation of the Conciliation-Mediation Process
 - vii. Facilitate the issuance of the Certificate of Non-Settlement from any failed or refused Conciliation-Mediation.
 - viii. Monitor and fill-out the documents on the Conciliation-Mediation process
 - ix. Send communication to the disputants

Section 8. Filing of the Complaint - Any member/s of the cooperative who has a complaint, constituting a mediatable dispute, against a member, officer, member of the Board, any of the Committees or against an employee of the same cooperative, shall file said complaint before the Coordinator.

A non-member may file a complaint before the Coordinator against a coop member, whether an officer, member of the board, any of the committees or an employee, provided it is determined by the Conciliation-Mediation Committee that the dispute, if unresolved, will directly affect the operations of the cooperative.

Provided that the complaint filed is against any member of the Conciliation-Mediation Committee, the Board of Directors may act as the Conciliation-Mediation Committee for that purpose.

Section 9. Contents of the Complaint. – The written complaint shall contain the name, status position, and address of the parties including a brief statement of the issues.

Section 10. Selection of the Conciliator-Mediator.

- a) The Conciliator-Mediator shall be mutually selected by the disputants from the Pool of Recognized Mediators, preferably from the cooperative and within the area.
- b) A Conciliator-Mediator who is not among the pool of certified Conciliator-Mediators may provide Conciliation-Mediation service, provided he/she is chosen with the mutual consent of the parties.
- c) The parties have the option to request replacement of the Conciliator-Mediator at any time during the Conciliation-Mediation proceedings, due to loss of confidence and partiality.
- d) Members of the Committee may provide Conciliation-Mediation services during and after their term, provided they are selected by both parties for such service.

Section 11. Qualification of Individuals to the Pool of Conciliator-Mediators – Any individual may apply to be a Recognized Conciliator-Mediator, through a process that may be prescribed by the CDA. The Recognition Process shall include compliance with training requirements, and successful completion of evaluation instruments and standards.

Section 12. Training and Education of Conciliators-Mediators - The CDA shall develop a training and education program for Conciliators-Mediators, set criteria for recognition and certification of Conciliators-Mediators, which training, standards and criteria shall serve as basis for cooperatives in the development of their own selection and training programs of their own Conciliators-Mediators. For the purpose of these guidelines, the cooperative shall create the Conciliation-Mediation Committee, develop their own selection requirements and training in accordance with criteria set by CDA. All qualified conciliators-mediators shall be recommended by the cooperative with the CDA as members of the Pool of Conciliators-Mediators.

Section 13. The Preliminary Conference – The primary purpose of the preliminary conference is to confirm the parties' interest to enter into Conciliation-Mediation. A Notice of Conference is issued in writing and signed by the Secretary of the committee. The Notice shall indicate the conference venue, time and date which shall be within 7 calendar days from signing of the notice.

If one or all parties do not appear in the scheduled conference, the coordinator shall send another written notice within the same day for the parties to appear on the 7th day from the previously scheduled conference. Failure to appear without valid cause shall be construed as Refused Conciliation-Mediation.

Section 14. Order of Conciliation-Mediation Proceedings

- a) *Filing of Complaint.* The Complainant/s shall file the complaint with the Conciliation-Mediation Coordinator.
- b) *Issuance of Notice of Preliminary Conference.* The Coordinator shall issue a Notice of Preliminary Conference to the parties within seven (7) days from receipt of complaint and copy furnish the Conciliation-Mediation Committee.
- c) *Conduct of Preliminary Conference by the Coordinator.* During the preliminary conference, the Coordinator shall encourage the parties to conciliate-mediate. If both agree, the Coordinator shall furnish them with a list of CDA Recognized Coop Conciliator-Mediators from which they shall select Conciliator-Mediators. The name common to their list shall be the Conciliator-

Mediator. Upon selection, the Coordinator shall immediately endorse the complaint to the Conciliator-Mediator.

- d) *Contacting the Parties for Conciliation-Mediation.* The Conciliator-Mediator shall contact the parties to schedule the Conciliation-Mediation Conference. The Conciliation-Mediation proceedings shall immediately commence with a Conflict Coaching session, unless the parties agree to reset the Conciliation-Mediation, within a reasonable period for a valid reason.
- e) *Conduct of the Conflict Coaching Session.* The Conciliator-Mediator may initially meet with the disputants separately in a conflict coaching session, with the aim of clarifying their respective issues and interests. The Conciliator-Mediator then proceeds to clarify the issues, helps them generate options, and agree on the options that best meet their needs and interests.
- f) *Signing of the Conciliation-Mediation Agreement.* Should the Conciliation-Mediation be successful in generating an agreement, the Conciliator-Mediator shall prepare a written agreement for the parties' approval and signature. Each shall be provided a copy of the agreement.
- g) *Accomplishment of the Evaluation Forms.* To complete the process, the Conciliator-Mediator shall require the parties to fill-out an Evaluation Form for feedback on the effectiveness and quality of the Conciliation-Mediation Process. The accomplished forms shall be forwarded to the Conciliation-Mediation Coordinator for filing and monitoring.
- h) *Submission of the Signed Agreement.* The signed written agreement shall:
 - 1. Be submitted to the CDA for recording.
 - 2. Be deposited at the option of the parties with the Regional Trial Court where one of the parties resides.
- i) *Issuance of Certificate of Non-Settlement.* If the Conciliation-Mediation is not successful, the Conciliation-Mediation Committee shall issue a Certificate of Non-Settlement, within 5 calendar days from termination of conference or notice of parties' non-interest in Conciliation-Mediation. The Certificate of Non-Settlement is necessary for the dispute to be referred to the Conciliation-Mediation Committee at:
 - 1. The Federation or Union level; or
 - 2. The Cooperative Development Council; or
 - 3. Other ADR providers for arbitration, private Conciliation-Mediation, counseling, social services, etc, at the parties' option.

The Conciliation-Mediation Committee that received the Certificate of Non-Settlement and the copy of the complaint shall process the filed complaint within 5 calendar days.

Section 16. Nature of Proceedings. The Conciliation-Mediation proceedings shall be conducted in an informal and private setting. The Rules of Evidence shall not apply to the proceedings.

Section 17. Duration of Conciliation-Mediation – The Conciliation-Mediation proceedings must be completed within 30 days from the date of signing of the Agreement to Mediate by both parties. With valid reason, the proceedings may be extended but not beyond 45 days.

Section 18. Failure of Conciliation-Mediation – The Conciliation-Mediation shall be declared as failed:

- a) when no Conciliation-Mediation occurs within 30 days from the signing of the agreement to mediate.
- b) when no settlement is reached by the parties after 30 calendar days from the signing of the agreement to mediate.
- c) when the Conciliator-Mediator decides to terminate the proceedings if, in his/her judgement, further efforts at Conciliation-Mediation are unlikely to lead to a resolution of the dispute.

Upon declaration of failure, a Certificate of Non-Settlement shall be issued to the parties immediately.

Section 19. Confidentiality of Information – To encourage spontaneity and candor, the proceedings, from the filing of the complaint and all incidents thereto shall be kept strictly confidential, unless otherwise specifically provided by law. All admissions or statements made therein shall be inadmissible for any purpose in any proceeding, nor divulged to any other third person.

Any communication made by one disputant to the Conciliator-Mediator, either during conflict coaching or at anytime during the Conciliation-Mediation proceedings, which are not intended to be known by the other party or by anyone shall not be divulged. Documents, reports, position papers and affidavits submitted by one disputant must not be shown to the other without the consent of the former.

Both parties undertake not to rely or introduce as evidence in any other proceeding, the following:

- a) Views expressed or suggestions made by the other disputant in respect of a possible settlement of the dispute;
- b) Admissions made by either disputant in the course of the proceedings;
- c) Proposals made by the Conciliator-Mediator;
- d) The fact that the other disputant had indicated his willingness to accept a proposal for settlement by the disputants to the Conciliator-Mediator.

No transcript, minutes or otherwise any record of the Conciliation-Mediation proceedings shall be taken. Any personal notes taken by the Conciliator-Mediator on the proceedings shall be destroyed after the termination of the proceedings. Such transcript, minutes or notes shall be inadmissible as evidence in other proceedings.

Section 20. Monitoring - All cooperatives shall submit a quarterly written report to CDA on the status of Conciliation-Mediation within fifteen days after the end of every quarter, covering the quarter just passed. Following a prescribed CDA format, this report shall cover information regarding common issues of disputes, monthly account of complaints received, average number of mediated cases, report of outcomes and referrals and an assessment of client satisfaction with the process.

Section 21. Evaluation - All cooperatives shall submit to the Conciliation-Mediation Unit of the CDA a recommendations, based on their experience on how to improve the ADR Program and its operative system. Submission shall be every July 15th and January 15th.

Section 22. Ethical Standards - The CDA shall promulgate Code of Ethical Standards of Practice to guide the Conciliation-Mediation Committee, Conciliation-Mediation Coordinator and Conciliator-

Conciliator-Mediators in order to professionalize the conciliation-meditation process within one (1) year from the date of effectivity of these Guidelines.

Section 23. Training and Education for the General Membership - The Cooperative shall implement a CDA-approved continuing education program for Conciliation-Mediation.

Section 24. Advocacy - The Cooperative shall include:

- a) A report on the status of the Conciliation-Mediation Program in its General Assembly meetings .
- b) An article or articles on the availability, benefits, status and advantages of Conciliation-Mediation in its newsletters and other modes of communication to the general membership.

Section 25. Transitory Provisions

The Cooperative shall sustain the operations of its existing Grievance/Arbitration Committee in accordance with its by-laws, provided that within three (3) years from the effectivity of these guidelines, its by-laws shall have been amended and it shall constitute its Conciliation-Mediation Committees either by election during their General Assembly or by appointment of the Board of Directors. Provided further that within the same period, it shall endorse and train its Conciliators-Mediators in accordance with the CDA prescribed education and training program for conciliators-mediators.

The cooperative shall implement the Code of Ethical Standards of Practice promulgated by the CDA to guide the Conciliation-Mediation Committee, Conciliation-Mediation Coordinator and Conciliator-Mediators in order to professionalize the conciliation-meditation process.

Provided finally, that within the same period they shall implement the education and training program developed by the CDA for Conciliators-Mediators as prescribed by Section 12.

Section 26. Separability Clause — If for any reason or reasons, any portion or provision of these Guidelines shall be held unconstitutional or invalid, all other parts or provisions not affected shall remain in full force and effect.

Section 27. Effectivity — These Guidelines shall take effect after their approval by the Cooperative Development Authority Board of Administrators and fifteen (15) days after the completion of their publication in the official gazette or at least two (2) national newspapers of general circulation.

APPROVED: FEBRUARY 28, 2007

Appendix H

COOPERATIVE DEVELOPMENT AUTHORITY

MEMORANDUM CIRCULAR
Series of 2007

Subject: ***GUIDELINES FOR THE IMPLEMENTATION OF CONCILIATION-MEDIATION OF COOPERATIVE DISPUTES BY THE UNION/FEDERATIONS***

These Guidelines are developed pursuant to Section 14, Article XII of the 1987 Constitution: R.A. 6939 created the Cooperative Development Authority (CDA) as a centralized agency mandated to promote the viability and growth of cooperatives; towards this objective, Section 3 authorized CDA to provide, among other things, technical assistance to cooperatives and in the implementation of cooperative laws; pursuant further to Republic Act No. 6938, otherwise known as the Cooperative Code, directing that disputes between and among cooperative members, officers, directors and committee members and intra/inter-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the union/federation and in applicable laws, congruent with State recognition of the principle of subsidiarity.

Section 1. Declaration of Principles. The Conciliation-Mediation Process shall be conducted in accordance with the following principles:

1. Subsidiarity in that all disputes shall be resolved amicably at the Union/Federation Level;
2. Confidentiality in that no transcript of the proceedings shall be taken during the conciliation-mediation process and that all notes and admissions of the parties shall be inadmissible in any other proceedings;
3. Speedy inexpensive conciliation-mediation process in that no technical rules of evidence shall be applicable hereunder;
4. Flexibility in that the Conciliation-Mediation Committee, Conciliation-Mediation Coordinator and any other party involved in the process shall be vested with ample discretion to conduct the same and to pursue whatever Conciliation-Mediation options are agreed upon by the parties;
5. Liberal Construction in that these guidelines shall be liberally construed in favor of attaining the paramount objective of amicably settling disputes at the lowest levels;
6. Independence and Autonomy in that the members of the Con-Med Committee, the Con-Med Coordinators and Conciliators-Mediators shall be insulated from all types of external influences and pressures;
7. Accessibility in that the process is open to all disputants desirous of solving their disputes and/or problems amicably as the CDA recognizes the need to make justice accessible as widely as possible to all members of the cooperative;;
8. Voluntariness in that submission to the conciliation-mediation process shall be completely voluntary.

Section 2. Scope – These Guidelines shall govern the administration and operation of the conciliation-mediation process, provided that nothing in these Guidelines shall preclude the parties from seeking other modes of amicably settling the dispute, and provided further that Conciliation-Mediation shall not prevent the cooperative from implementing sanctions and penalties against violations of its rules and regulations.

Section 3. Coverage – All cooperative disputes and issues unresolved at the primary level, and disputes between and among member-cooperatives, officers, directors, committee members, employees, clients and/or beneficiaries of the union/federation.

Section 4. Definition of Terms.

- 1) *Conciliation* – A process whereby a conciliator-mediator takes a vigorous and active role in assisting disputants formulate solutions in order to reach an amicable settlement
- 2) *Mediation* - A process whereby the conciliator-mediator facilitates the negotiation between disputing parties to reach a voluntary, mutually satisfactory outcome
- 3) *Conciliator-Mediator* – A qualified individual who provides conciliation-mediation services.
- 4) *Conciliation-Mediation Committee Coordinator* – A member of the management staff designated by the General Manager serving as liaison to the Committee and the disputants.
- 5) *Pool of Conciliator-Mediators* – A group of Conciliator-Mediators recognized by the CDA.
- 6) *Mediatable Disputes* – All disputes specified in Section 4.
- 7) *Conflict Coaching* – A stage in the conciliation-mediation process, the objective of which is to clarify the issues and interests of each party.
- 8) *Certificate of Non-Settlement* – A document issued by the Conciliation-Mediation Committee in case of failed or refused Conciliation-Mediation.
- 9) *Failed Conciliation-Mediation* – A situation where no settlement is reached by the disputants after signing the Agreement to Conciliate-Mediate.
- 10) *Refused Conciliation-Mediation* – A situation when one or both parties refuse to enter Conciliation-Mediation or fail to appear despite notice.
- 11) *Conciliation-Mediation Agreement* – A document embodying the agreement of the parties amicably settling their dispute.

Section 5. The Conciliation-Mediation Committee. Composition, Qualifications, Terms of Service and Functions

- a) *Composition.* The Committee shall be composed of at least three (3) members elected by the General Assembly or appointed by the Board of Directors in accordance with the cooperative by-laws. The committee shall elect from among themselves, the chairman, vice-chairman and secretary.
- b) *Qualifications.* The Committee members shall have completed the CDA prescribed Mediation Training and the Recognition requirements to the Pool of Conciliator-Mediators, provided that they are not Officers of the Union/Federation.

- c) *Terms of Service.* Members of the Committee may serve for two (2) years, or as may be provided by the union/federation by-laws. In case of vacancy in the Conciliation-Mediation committee, the Board may either cause an election to fill the vacancy or appoint a qualified member to fill the vacant position as may be provided by the union/federation by-laws.
- d) *Functions.* The Committee shall have the following functions:
 - i. Create, oversee and ensure that the Conciliation-Mediation process is properly implemented
 - ii. Monitor Conciliation-Mediation operations (entry of new cases, status of pending cases, performance of Conciliator-Mediators)
 - iii. Submit quarterly reports to the CDA fifteen days after the end of every quarter
 - iv. Accept and File Evaluation Reports
 - v. Submit recommendations for improvements to the BOD
 - vi. May recommend to the Board any representative of member-cooperatives for Mediation Training
- e) *Termination of members of the Committee.* Members of the Committee may be terminated for violation of the Code of Ethical Standards, breach of the provision on confidentiality, manifest partiality, and other conduct undermining the integrity of the Conciliation-Mediation process

Section 6. Conciliation-Mediation Committee Coordinator – Designation and Functions

- a) The Board of Directors through the General Manager, shall designate a qualified person from the management staff to act as Conciliation-Mediation Coordinator.
- b) The Coordinator shall have the following functions:
 - i. Receive complaints, and assist the disputants in reducing their complaints in writing
 - ii. Confirm parties' request to participate in Conciliation-Mediation
 - iii. Assist parties in the selection of a Conciliator-Mediator
 - iv. Monitor and report on the outcome of Conciliation-Mediation conducted by non-pool recognized Conciliator-Mediators
 - v. Receive and file the Conciliator-Mediator's evaluation form
 - vi. Submit to the Committee the monthly report summarizing status of all cases processed and the results of the evaluation of the Conciliation-Mediation Process
 - vii. Facilitate the issuance of the Certificate of Non-Settlement from any failed or refused Conciliation-Mediation.
 - viii. Monitor and fill-out documents on the Conciliation-Mediation process
 - ix. Send and receive communication to and from the disputants

Section 7. Filing of the Complaint. Any member-cooperative of the union/federation that has a complaint, constituting a mediatable dispute, against a member-cooperative, officer, member of the Board, any of the Committees or against an employee of the same cooperative, shall file said complaint before the Conciliation-Mediation Coordinator.

A non-member cooperative or person/organization may file a complaint before the Coordinator against a union/federation member, whether an officer, member of the board, any of the committees or an employee, provided it is determined by the Conciliation-Mediation Committee that the dispute, if unresolved, will directly affect the operations of the union/federation or cooperative.

Provided that if the complaint filed is against any member of the Conciliation-Mediation Committee, the Board of Directors may act as the Conciliation-Mediation Committee for that purpose.

Section 8. Contents of Complaint – The written complaint shall contain the name, status position, and address of the parties including a brief statement of the issues.

Section 9. Selection of the Conciliator-Mediator:

- a) The Conciliator-Mediator shall be mutually selected by the disputants from the Pool of Recognized Conciliator-Mediators, preferably from the cooperative or union/federation and within the area.
- b) A Conciliator-Mediator who is not among the Pool of Recognized Conciliator-Mediators may provide Conciliation-Mediation service, provided he/she is chosen with the mutual consent of the parties.
- c) The parties have the option to request replacement of the Conciliator-Mediator at any time during the Mediation proceedings, due to loss of confidence and partiality.
- d) Members of the Committee may provide mediation services during and after their term, provided they are selected by both parties for such service.

Section 10. Qualification of Individuals to the Pool of Conciliator-Mediators – Any individual may apply to be a recognized Conciliator-Mediator, through a process that may be prescribed by the CDA. The Recognition Process shall include compliance with training requirements, and successful completion of evaluation instruments and standards.

Section 11. Training and Education of Conciliators-Mediators - The Conciliator-Mediators shall undergo a training and education program and conform to set criteria for recognition prescribed by the CDA. The program, standards and criteria shall serve as basis for union/federations in the development of their own selection and training.

For the purpose of these guidelines, the union/federation through the Conciliation-Mediation Committee shall develop their own selection requirements and training in accordance with criteria set by CDA. All qualified conciliators-mediators shall be recommended to the Pool of Conciliators-Mediators by the primary cooperatives or union/federations.

Section 12. The Preliminary Conference – The primary purpose of the preliminary conference is to confirm the parties' interest to enter into Conciliation-Mediation. A Notice of Conference is issued in writing and signed by the Secretary of the Committee. The Notice shall indicate the conference venue, time and date which shall be within 7 calendar days from signing of the notice.

If one or all parties do not appear in the scheduled conference, the Coordinator shall send another written notice within the same day for the parties to appear on the 7th day from the previously scheduled conference. Failure to appear without valid cause shall be construed as Refused Conciliation-Mediation.

Section 13. Order of Conciliation-Mediation Proceedings

- a) *Filing of Complaint.* The Complainant/s shall file the complaint with the Conciliation-Mediation Coordinator.
- b) *Issuance of Notice of Preliminary Conference.* The Coordinator shall issue a Notice of Preliminary Conference to the parties within seven (7) days from receipt of complaint and copy furnish the Conciliation-Mediation Committee.
- c) *Conduct of Preliminary Conference by the Coordinator.* During the conference, the Coordinator shall encourage the parties to mediate. If both agree, the Coordinator shall furnish them with a list of CDA Recognized Coop Conciliator-Mediators from which they shall select Conciliator-Mediators. The name common to their list shall be the Conciliator-Mediator. Upon selection, the Coordinator shall immediately endorse the complaint to the Conciliator-Mediator.
- d) *Contacting the Parties for Conciliation-Mediation.* The Conciliator-Mediator shall contact the parties to schedule the Conciliation-Mediation Conference. The Conciliation-Mediation proceedings shall immediately commence with a Conflict Coaching session, unless the parties agree to reset the Conciliation-Mediation, within a reasonable period for a valid reason.
- e) *Conduct of the Conflict Coaching Session.* The Conciliator-Mediator may initially meet with the disputants separately in a conflict coaching session, with the aim of clarifying their respective issues and interests. The Conciliator-Mediator then proceeds to clarify the issues, facilitates to generate options and agree on the options that best meet their needs and interests.
- f) *Signing of the Conciliation-Mediation Agreement.* When the conciliation-mediation is successful in generating an agreement, the Conciliator-Mediator shall prepare a written agreement for the parties' approval and signature. Each shall be provided a copy of the agreement.
- g) *Accomplishment of the Evaluation Form.* To complete the process, the Conciliator-Mediator shall require the parties to fill-out an Evaluation Form for feedback on the effectiveness and quality of the Conciliation-Mediation Process. The accomplished forms shall be forwarded to the Conciliation-Mediation Coordinator for filing and monitoring.
- h) *Submission of the Agreement.* The signed written agreement shall:
 - 1. Be submitted to the CDA for recording.
 - 2. Be deposited at the option of the parties with the Regional Trial Court where one of the parties resides.
- i) *Issuance of the Certificate of Non-Settlement.* If the Conciliation-Mediation is not successful, the Conciliation-Mediation Committee shall issue a Certificate of Non-Settlement within 5 calendar days from termination of conference or notice of parties' non-interest in Conciliation-Mediation. The Certificate of Non-Settlement is necessary for the dispute to be referred to the Conciliation-Mediation Committee at:
 - 1. The Cooperative Development Authority; or

2. Other ADR providers for arbitration, private mediation, counseling, social services, etc, or litigation, at the parties' option.

If the Certificate of Non-Settlement is submitted to the CDA, the Guidelines of the CDA shall apply.

Section 14. Nature of Proceedings. The conciliation-mediation proceedings shall be conducted in an informal and private setting. The Rules of Evidence shall not apply to the proceedings.

Section 15. Duration of Conciliation-Mediation – The conciliation-mediation proceedings must be completed within 30 days from the date of signing of the Agreement to Conciliate-Mediate by both parties. With valid reason, the proceedings may be extended but not beyond 45 days.

Section 16. Failure of Conciliation-Mediation – The Conciliation-Mediation shall be declared as failed:

- a) when no Conciliation-Mediation occurs within 30 days from the signing of the Agreement to Conciliate-Mediate; or
- b) when no settlement is reached by the parties after 30 calendar days from the signing of the Agreement to Conciliate-Mediate; or
- c) when the Conciliator-Mediator decides to terminate the proceedings if, in his/her judgment, further efforts at Conciliation-Mediation are unlikely to lead to a resolution of the dispute.

Upon declaration of failure, a Certificate of Non-Settlement shall be issued to the parties immediately.

Section 17. Confidentiality of Information – To encourage spontaneity and candor, the proceedings, from the filing of the complaint and all incidents thereto shall be kept strictly confidential, unless otherwise specifically provided by law. All admissions or statements made therein shall be inadmissible for any purpose in any proceeding, nor divulged to any other third person.

Any communication made by one disputant to the Conciliator-Mediator, either during conflict coaching or at anytime during the Conciliation-Mediation proceedings, which are not intended to be known by the other party or by anyone shall not be divulged. Documents, reports, position papers and affidavits submitted by one disputant must not be shown to the other without the consent of the former.

Both parties undertake not to rely or introduce as evidence in any other proceeding, the following:

- a) Views expressed or suggestions made by the other disputant in respect of a possible settlement of the dispute;
- b) Admissions made by either disputant in the course of the proceedings;
- c) Proposals made by the Conciliator-Mediator;
- d) The fact that the other disputant had indicated his willingness to accept a proposal for settlement by the disputants to the Conciliator-Mediator.

No transcript, minutes or otherwise any record of the Conciliation-Mediation proceedings shall be taken. Any personal notes taken by the Conciliator-Mediator on the proceedings shall be destroyed after the termination of the proceedings. Such transcript, minutes or notes shall be inadmissible as evidence in other proceedings.

Section 18 Monitoring. All union/federations are required to submit a quarterly written report to CDA on the status of Conciliation-Mediation within fifteen days after the end of every quarter. Following a prescribed CDA format, this report shall cover information regarding common issues of disputes, monthly account of complaints received, average number of mediated cases, report of outcomes and referrals and an assessment of client satisfaction with the process.

Section 19. Evaluation. All union/federations shall submit to the Conciliation-Mediation Unit of the CDA recommendations, based on their experience on how to improve the ADR Program and its operative system. Submission shall be every July 15th and January 15th.

Section 20. Training and Education for the General Membership. The union/federation shall implement a CDA-approved continuing education program for conciliation-mediation.

Section 21. Advocacy. The Union/Federation shall include:

- a) A report on the status of the Conciliation-Mediation Program in its General Assembly meetings .
- b) An article or articles on the availability, benefits, status and advantages of Conciliation-Mediation in its newsletters and other modes of communication to the general membership.

Section 22. Transitory Provisions

The Union/Federation shall sustain the operations of its existing Grievance/Arbitration Committee in accordance with its by-laws, provided that within three (3) years from the effectivity of these guidelines, its by-laws shall have been amended and it shall constitute its Conciliation-Mediation Committees either by election during their General Assembly or by appointment of the Board of Directors. Provided further that within the same period, it shall endorse and train its Conciliators-Conciliator-Mediators in accordance with the CDA prescribed education and training program for conciliators-mediators.

The cooperative shall implement the Code of Ethical Standards of Practice promulgated by the CDA to guide the Conciliation-Mediation Committee, Conciliation-Mediation Coordinator and Conciliator-Mediators in order to professionalize the conciliation-mediation process.

Provided finally, that within the same period they shall implement the education and training program developed by the CDA for Conciliators-Mediators as prescribed by Section 12.

Section 23. Separability Clause — If for any reason or reasons, any portion or provision of these Guidelines shall be held unconstitutional or invalid, all other parts or provisions not affected shall remain in full force and effect.

Section 24. Effectivity — These Guidelines shall take effect after the approval by the Cooperative Development Authority Board of Administrators and fifteen (15) days after the completion of their publication in the official gazette or at least two (2) national newspapers of general circulation.

APPROVED: FEBRUARY 28, 2007

COOPERATIVE DEVELOPMENT AUTHORITY

MEMORANDUM CIRCULAR No. ____
Series of 2007

Subject: ***GUIDELINES FOR THE IMPLEMENTATION OF CONCILIATION-MEDIATION FOR COOPERATIVE DISPUTES***

These Guidelines are developed pursuant to Section 14, Article XII of the 1987 Constitution: Section 3 mandating the CDA to provide, among other things, technical assistance to cooperatives and in the implementation of cooperative laws, and pursuant further to Section 8, stating that upon request of both parties, the CDA shall mediate and conciliate disputes within and between cooperatives, of Republic Act 6939, respectively, and Article 121 of Republic Act 6938, otherwise known as the Cooperative Code, directing that disputes between and among cooperative members, officers, directors and committee members and intra-cooperative disputes shall, as far as practicable, be settled amicably in accordance with the conciliation or mediation mechanisms embodied in the by-laws of the cooperative and in applicable laws, congruent with State recognition of the principle of subsidiarity and R.A. 9285, otherwise known Alternative Dispute Resolution Act of 2004.

Section 1. Declaration of Principles The Conciliation-Mediation Process shall be conducted in accordance with the following principles:

1. Subsidiarity in that all disputes shall be resolved amicably at the lowest possible level;
2. Confidentiality in that no transcript of the proceedings shall be taken during the conciliation-mediation process and that all notes and admissions of the parties shall be inadmissible in any other proceedings; and appropriate sanctions shall be meted for any violation thereof;
3. Speedy inexpensive conciliation-mediation process in that no technical rules of evidence shall be applicable hereunder;
4. Flexibility in that the Conciliation-Mediation Section/Unit and any other party involved in the process shall be vested with ample discretion to conduct the same; and to pursue whatever Conciliation-Mediation options are agreed upon by the parties;
5. Liberal Construction in that these guidelines shall be liberally construed in favor of attaining the paramount objective of amicably settling disputes at the lowest levels;
6. Independence and Autonomy in that the members of the Con-Med Section/Unit and Conciliators-Mediators shall be insulated from all types of external influences and pressures;
7. Accessibility in that the process is open to all disputants desirous of solving their disputes and/or problems amicably as the CDA recognizes the need to make justice accessible as widely as possible to all members of the cooperative;
8. Voluntariness in that submission to the conciliation-mediation process shall be completely voluntary.

Section 2. Scope – These Guidelines shall govern the administration and operation of the Cooperative Conciliation-Mediation Section/Unit (the “Con-Med Section/Unit”) of the CDA as well as the procedure in settling inter- and intra-cooperative disputes which Conciliation-Mediation had failed at the primary and secondary levels or those disputes which have been classified as requiring the immediate and direct intervention of the CDA as the latter may determine, such as:

- a. dissipation of cooperative funds;

Section 3. Definition of Terms.

- 1) *Conciliation* – A process whereby a conciliator-mediator takes a vigorous and active role in assisting disputants formulate solutions in order to reach an amicable settlement
- 2) *Mediation* - A process whereby the conciliator-mediator facilitates the negotiation between disputing parties to reach a voluntary, mutually satisfactory outcome
- 3) *Conciliator-Mediator* – A qualified individual who provides conciliation-mediation services.
- 4) *Conciliation-Mediation Coordinator* – A member of the Legal Section/Division management staff designated as liaison to the Committee and the disputants.
- 5) *Pool of Conciliator-Mediators* – A group of Conciliator-Mediators recognized by the CDA.
- 6) *Mediatable Disputes* – All disputes specified in Section 4.
- 7) *Conflict Coaching* – A stage in the conciliation-mediation process, the objective of which is to clarify the issues and interests of each party.
- 8) *Certificate of Non-Settlement* – A document issued by the Primary Cooperative or Union/Federation Conciliation-Mediation Committee in case of failed or refused Conciliation-Mediation.
- 9) *Certificate of Non-Resolution* – A document issued by the CDA Conciliation-Mediation Section/Unit in case of failed or refused Conciliation-Mediation.
- 10) *Failed Conciliation-Mediation* – A situation where no settlement is reached by the disputants after signing the Agreement to Conciliate-Mediate.
- 11) *Refused Conciliation-Mediation* – A situation when one or both parties refuse to enter Conciliation-Mediation or fail to appear despite notice.
- 12) *Conciliation-Mediation Agreement* – A document embodying the agreement of the parties amicably settling their dispute.

Section 4. Conciliation-Mediation Section/Unit - Every regional extension office of the CDA shall establish a Con-Med Unit whereas the Central Office shall establish a Con-Med Section. The Con-Med Units/Section shall function independently of the Legal Sections/Division of the CDA.

Section 5. Filing of Complaint - Any member of the cooperative who has a complaint, constituting a mediatable dispute, against another member, whether an officer or member of the Board, or against an employee of the same cooperative, shall file said complaint before the Conciliation-Mediation Unit or Section. An oral complaint shall be reduced in writing, with the assistance of the Conciliation-Mediation Coordinator. Such complaints shall be accompanied by a Certificate of Non-Settlement issued by the Con-Med Committee which previously held jurisdiction over the dispute. However, cases which require the immediate and direct intervention of the CDA need not be accompanied by a Certificate of Non-Settlement.

Section 6. Contents of Complaint – The written complaint, or the oral complaint reduced in writing, shall contain the name of the coop complainant and its authorized representative, the responding party and authorized representative; the parties' contact details and a brief description of the complaint. If the dispute involves individual members of a cooperative, The written complaint shall contain the name of the complainant, the respondent and his/her membership status in the cooperative or position held in the cooperative, and a brief description of the complaint.

Section 7. Selection of Conciliator-Mediator – The Conciliation-Mediation Coordinator shall assist the disputants select a mutually acceptable Conciliator-Mediator from the Pool of Conciliator-Mediators. If the disputants cannot agree on a Conciliator-Mediator, the Con-Med Section or Unit shall assign a Conciliator-Mediator from the Pool of Conciliator-Mediators.

Upon selection or assignment of Conciliator-Mediator, a conflict coaching session shall commence, unless the disputants agree to reset the conciliation-mediation within the next three (3) days without need of further notice.

Section 8. Order of Conciliation-Mediation Proceedings

- a) *Filing of Complaint.* The Complainant/s shall file the complaint with the designated coordinator of the Conciliation-Mediation Section/Unit.
- b) *Issuance of Notice of Preliminary Conference.* The Coordinator shall issue a Notice of Preliminary Conference to the parties within seven (7) days from receipt of complaint and copy furnish the Conciliation-Mediation Section/Unit.
- c) *Conduct of Preliminary Conference by the Coordinator.* During the conference, the Coordinator shall encourage the parties to mediate. If both agree, the Coordinator shall furnish them with a list of CDA Recognized Coop Conciliator-Mediators from which they shall select Conciliator-Mediators. The name common to their list shall be the Conciliator-Mediator. Upon selection, the Coordinator shall immediately endorse the complaint to the Conciliator-Mediator.
- d) *Contacting the Parties for Conciliation-Mediation.* The Conciliator-Mediator shall contact the parties to schedule the Conciliation-Mediation Conference. The Conciliation-Mediation proceedings shall immediately commence with a Conflict Coaching session, unless the parties agree to reset the Conciliation-Mediation, within a reasonable period for a valid reason.
- e) *Conduct of the Conflict Coaching Session.* The Conciliation-Mediator may initially meet with the disputants separately in a conflict coaching session, with the aim of clarifying their respective issues and interests. The Conciliator-Mediator then proceeds to clarify the issues, facilitates to generate options and agree on the options that best meet their needs and interests.
- f) *Signing of the Conciliation-Mediation Agreement.* When the conciliation-mediation is successful in generating an agreement, the Conciliator-Mediator shall prepare a written agreement for the parties' approval and signature. Each shall be provided a copy of the agreement.
- g) *Accomplishment of the Evaluation Form.* To complete the process, the Conciliator-Mediator shall require the parties to fill-out an Evaluation Form for feedback on the effectiveness and quality of the Conciliation-Mediation Process. The accomplished forms shall be forwarded to the Conciliation-Mediation Coordinator for filing and monitoring.
- h) *Submission of the Agreement.* The signed written agreement shall:
 - 1. Be filed with the Conciliation-Mediation Section/Unit .
 - 2. Be deposited at the option of the parties with the Regional Trial Court where one of the parties resides.
- i) If the Conciliation-Mediation is not successful, the Conciliation-Mediation Section/Unit shall issue a Certificate of Non-Resolution, within 5 calendar days from termination of conference. The Certificate of Non-Resolution is necessary if the dispute will be referred to the court.

Section 9. Training and Certification of Qualified Members to the Pool of Conciliator-Mediators.

- a) *Training.* The CDA shall:
1. Determine an appropriate program to train mediators/conciliators and trainers according to international standards (including classroom and practical training).
 2. Provide technical assistance on trainings to develop the skills for Conciliation-Mediation
 3. Provide opportunities for continuous learning of the pool of Conciliator-Mediators.
 4. Identify efficient means of providing training nationwide for the immediate availability of the conciliation-Conciliation-Mediation service
- b) *Certification.* The CDA Board of Administrators shall have the sole authority to certify Conciliator-Mediators for all levels.

Section 10. Qualifications of Conciliator-Mediators

- a) Proficiency in Coop and CDA policies and procedures
- b) Possession of a mature disposition and of good moral character
- c) Commitment to service and Conciliation-Mediation practice
- d) Completion of a training program conducted by CDA or its duly authorized service provider, complying with internationally-accepted training standards
- e) Successful accomplishment of written and practical assessment administered by CDA or its duly authorized service provider

Section 11. Function of the Conciliation-Mediation Unit/Section

- 1) Conciliation-Mediation UNIT
 - a. Receive and process complaints elevated from the primary cooperatives or union/federation
 - b. Maintain a database of Recognized Conciliator-Mediators
 - c. Monitor the performance of Con-Med Committees of Coop Primaries, Federations or Unions within its jurisdiction
 - d. Submit to the Conciliation-Mediation Section a consolidated quarterly report stating the accomplishments of the con-med program
 - e. Submit to the Conciliation-Mediation Section semi-annual recommendations on improving the system
 - f. Develop and manage a consolidated database of cases
 - g. Facilitate registration of Conciliation-Mediation Agreements with the proper courts
- 2) Conciliation-Mediation SECTION
 - a. Create a certification system for Conciliator-Mediators servicing the Cooperative Sector
 - b. Recommend to the Board a list of Conciliator-Mediators for its certification
 - c. Maintain a database of certified Conciliator-Mediators
 - d. Monitor the performance of Con-Med Committees of Cooperative Primaries, Federations or Unions within their jurisdiction
 - e. Submit to BOA and publish a consolidated semi-annual report stating the accomplishments of the con-med program

- f. Develop and manage a consolidated database of cases handled by the coop primaries and federation-unions and CDA
- g. Facilitate registration of Conciliation-Mediation agreements with the proper courts
- h. Recommend appropriate fees for conciliation-mediation, if necessary

Section 12. Nature of Proceedings - The conciliation-mediation proceedings shall be conducted in an informal but private setting.

Section 13. Confidentiality of Information – To encourage the spontaneity and candor that are conducive to successful conciliation-mediation, the proceedings and all incidents thereto shall be kept strictly confidential, unless otherwise specifically provided by law, and all admissions or statements made therein shall be inadmissible for any purpose in any proceeding.

Any communication made by one disputant to the Conciliator-Mediator, either during conflict coaching session or at anytime during the proceedings, which are not intended to be known by the other disputant or by anyone shall not be divulged. Documents, reports, position papers and affidavits submitted by one disputant shall not be shown to the other without the consent of the former.

Both disputants undertake not to rely or introduce as evidence in any other proceedings the following:

- a) Views expressed or suggestions made by the other disputant in respect of a possible settlement of the dispute;
- b) Admissions made by either disputant in the course of the proceedings;
- c) Proposals made by the Conciliator-Mediator;
- d) The fact that the other disputant had indicated his willingness to accept a proposal for settlement by the disputants to the Conciliator-Mediator.

No transcript, minutes or otherwise any record of the conciliation-mediation proceedings shall be taken. Any personal notes taken by the Conciliator-Mediator on the proceedings shall be destroyed after the termination of the proceedings. Such transcript, minutes or notes shall be inadmissible as evidence in other proceedings.

Section 14. Monitoring - The Con-Med Unit of the CDA Regional extension offices shall ensure that all coops under their jurisdiction shall submit to Con-Med SECTION a QUARTERLY written report on the status of cases. This report shall cover information regarding common issues of disputes, MONTHLY ACCOUNT of complaints received, number of mediated cases per month, report of outcomes and referrals, and an assessment of client satisfaction with the process. This information shall be consolidated by the Con-Med Unit for submission to the Con-Med Section at CDA Central .

Section 15. Evaluation - The CDA shall report and publish a semi-annual assessment of its conciliation-mediation program and recommend, if necessary, any changes needed to improve the program.

Section 16. Education – The CDA shall:

- a) Provide a program for continuing education of coop members for the appreciation and use of conciliation-mediation.
- b) Encourage and support initiatives at the primary and secondary levels for the education of their members.

Section 17. Advocacy – The CDA shall:

- a) Create a continuous program to encourage the use of Conciliation-Mediation.
- b) Ensure that coops comply with the requirement to provide a report or discussion on the benefits and advantages of conciliation-mediation in all general assemblies.
- c) Develop and utilize newsletters, circulars, memos and other modes of communication to the coops to highlight the benefits and advantages of conciliation-mediation.

Section 18 Transitory Provisions - The CDA shall develop its education and training program for Conciliators-Mediators and shall likewise establish its criteria for certification and/or recognition of trained conciliators-mediators to the Pool of Conciliators-Mediators.

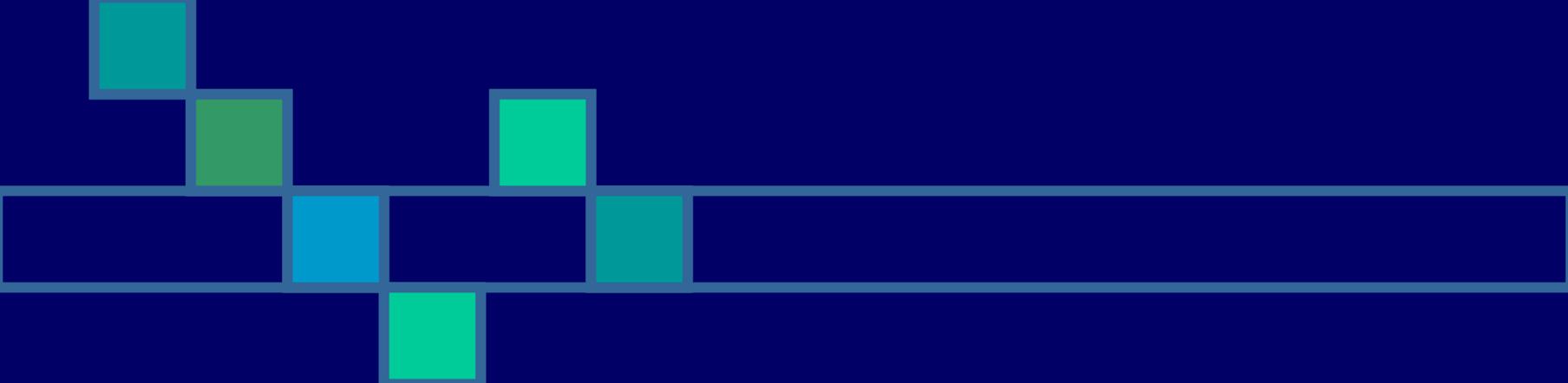
Section 19 Ethical Standards - The CDA shall promulgate a Code of Ethical Standards of Practice to guide the Conciliation-Mediation Committee, Conciliation-Mediation Coordinator and Conciliator-Mediators in all levels in order to professionalize the conciliation-mediation process.

Section 20. Separability Clause — If for any reason or reasons, any portion or provision of these Guidelines shall be held unconstitutional or invalid, all other parts or provisions not affected shall remain in full force and effect.

Section 21. Effectivity — These Guidelines shall take effect after the approval by the Board of Administrators and fifteen (15) days after the completion of their publication in the official gazette or at least two (2) national newspapers of general circulation.

APPROVED: FEBRUARY 28, 2007

CDA Level



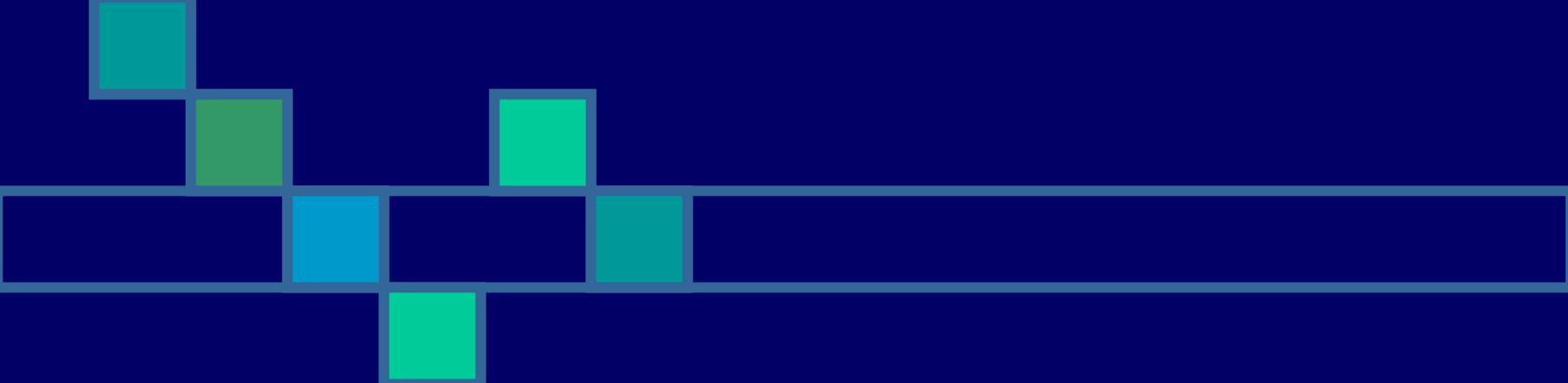
CONSULTATION ON THE ADR GUIDELINES FOR THE COOP SECTOR



PRESENTATION OF THE PROPOSED ADR GUIDELINES FOR THE COOPERATIVE SECTOR

AGENDA

- I. Summary of the First Regional Consultation Results
- II. Inter-Level Con-Med Process in the Coop Sector
- III. Summary of features of the Primary, Union/Fed/Council and CDA Draft Guidelines
- IV. Benefits and Challenges of the Proposed ADR Guidelines
- V. Discussion



SUMMARY OF THE RESULTS OF THE FIRST REGIONAL CONSULTATIONS



Part I

PRESENTATION OF THE PROPOSED ADR GUIDELINES FOR THE COOPERATIVE SECTOR

- **Coops recognize the benefits in bringing disputes to the primary and union/fed levels.**

BENEFITS & ADVANTAGES identified:

- Less expensive
- Faster
- Impartiality is maintained
- There is confidentiality
- Prevents the problem from worsening or being blown out of proportion
- Less people will be affected by the dispute
- Will foster harmony
- Strengthens the coops as a self-governing institution
- Will encourage primaries to be members of federations
- Provides an opportunity to assess capability of federations to assist member coop
- Will de-clog courts

Conclusion 3

- There is a need to redefine **CONCILIATION-MEDIATION** as understood and practiced by the coop sector.

FINDINGS:

- **Pro-Forma COOP BY-LAW, Section 37** defines the function of the Con-Med Committee as:
 1. *To conciliate, **hear and decide** all intra-cooperative disputes* between and/or among members, officers, directors and the community.
- When asked "what is the manner of resolving disputes in the CDA", **52% of coops responded that the CDA puts emphasis on EVIDENCE and RIGHTS of disputants**

There is a need to improve the coop sector's capacity for Conciliation-Mediation.

FINDINGS:

- Coop Level: Only **7%** of coops have received training on alternative dispute resolution (ADR)
- Coop respondents identify the TOP 3 SKILLS that coop dispute resolvers should further develop:
 - 1) Identifying problems& issues
 - 2) Handling emotions
 - 3) Listening
- CDA Level: Only 20% claimed to have been satisfied with the outcome of CDA's assistance on disputes filed for resolution in the past 3 years

- **There is a tendency for cooperatives to rely on CDA to render decisions on disputes.**

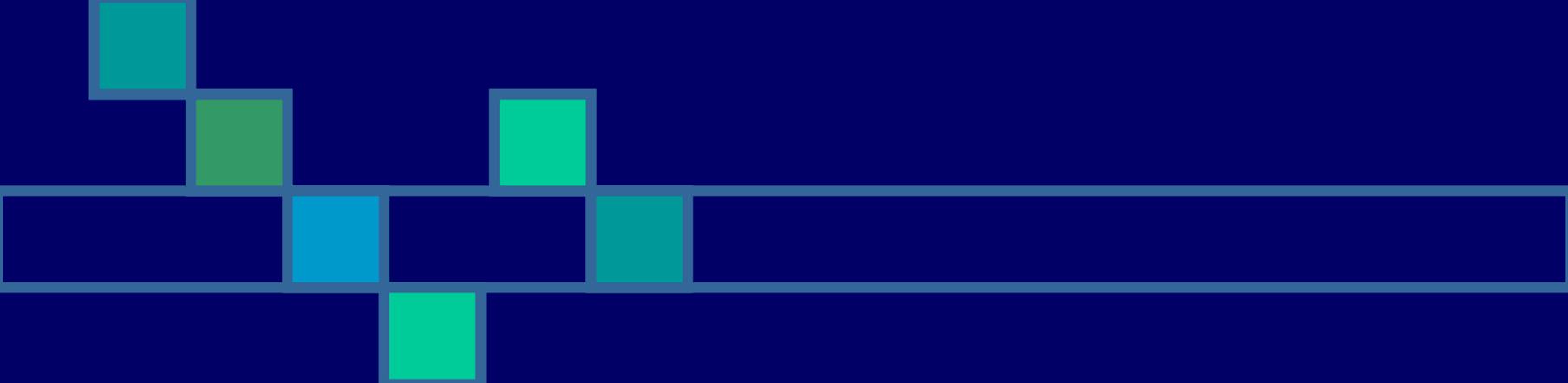
FINDINGS:

- Coops were asked during the workshop whether or not the law should be changed to enable CDA to act like a court and render decisions on cases

BEFORE: 76% said YES

AFTER: 60% said YES

- The Coop Survey reveals that **72%** of the coops will recommend the CDA's dispute resolution services to their members
- **REASONS TO RECOMMEND THE SERVICES OF CDA:**
 - CDA is the highest authority and serves as a respectable arbitrator/regulator of dispute
 - CDA should intervene if dispute cannot be resolved at the primary level
 - CDA can inform and influence compliance to the agreement
 - CDA can keep the harmony among coops and its members
 - CDA more knowledgeable in coop laws and policies
 - Impartial decisions at less cost



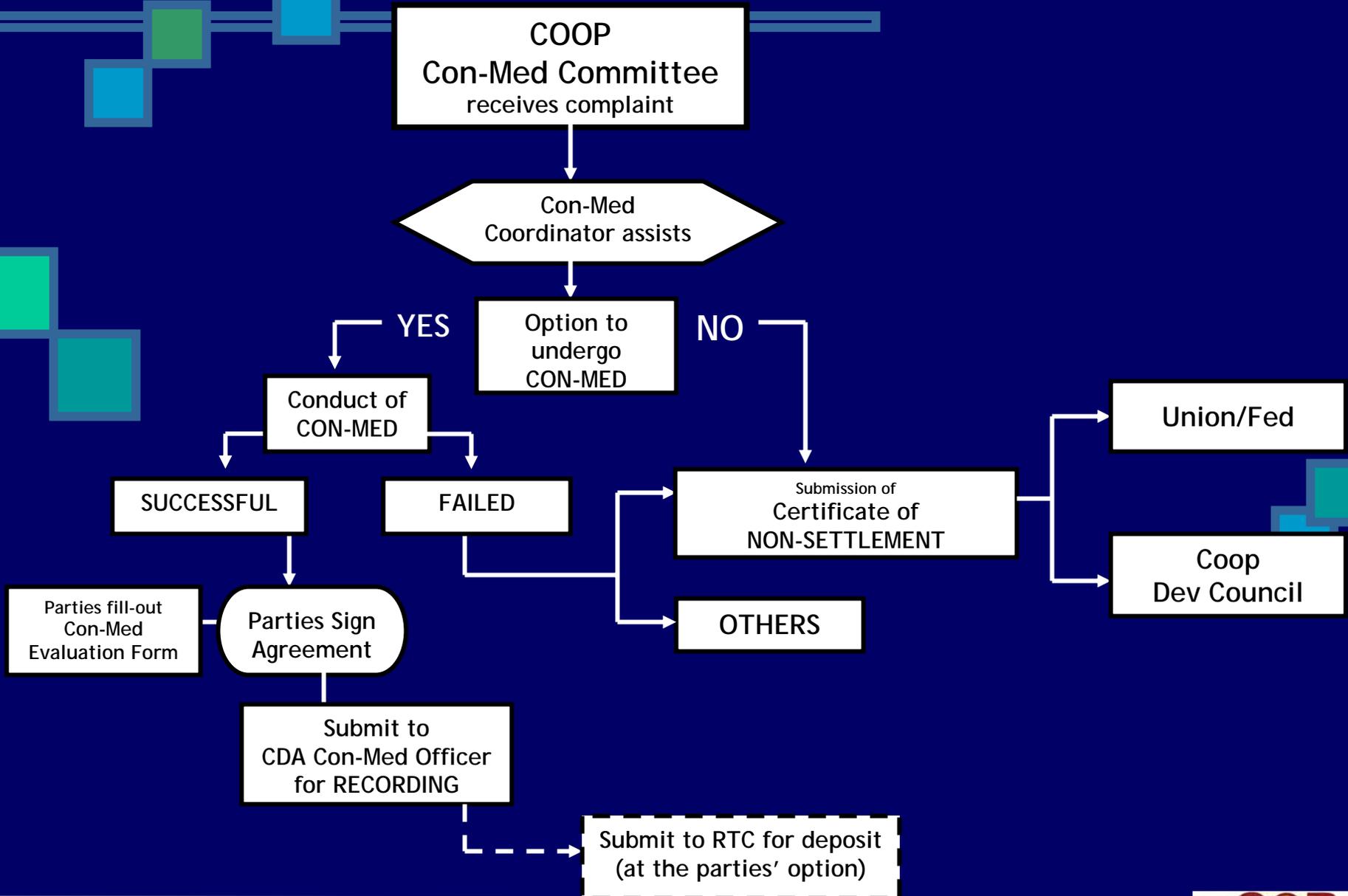
INTER-LEVEL PROCESS FLOW



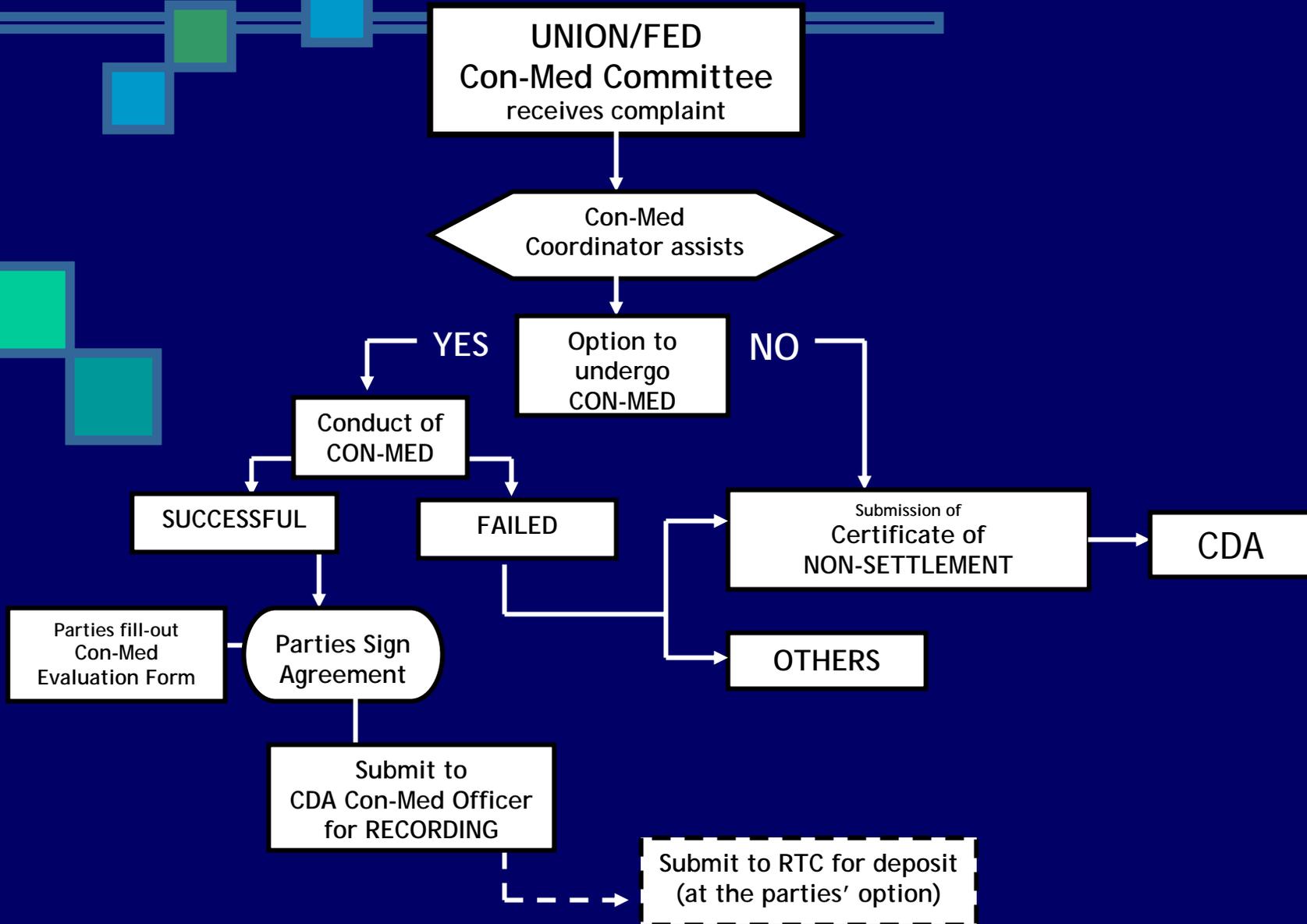
Part II

PRESENTATION OF THE PROPOSED ADR GUIDELINES FOR THE COOPERATIVE SECTOR

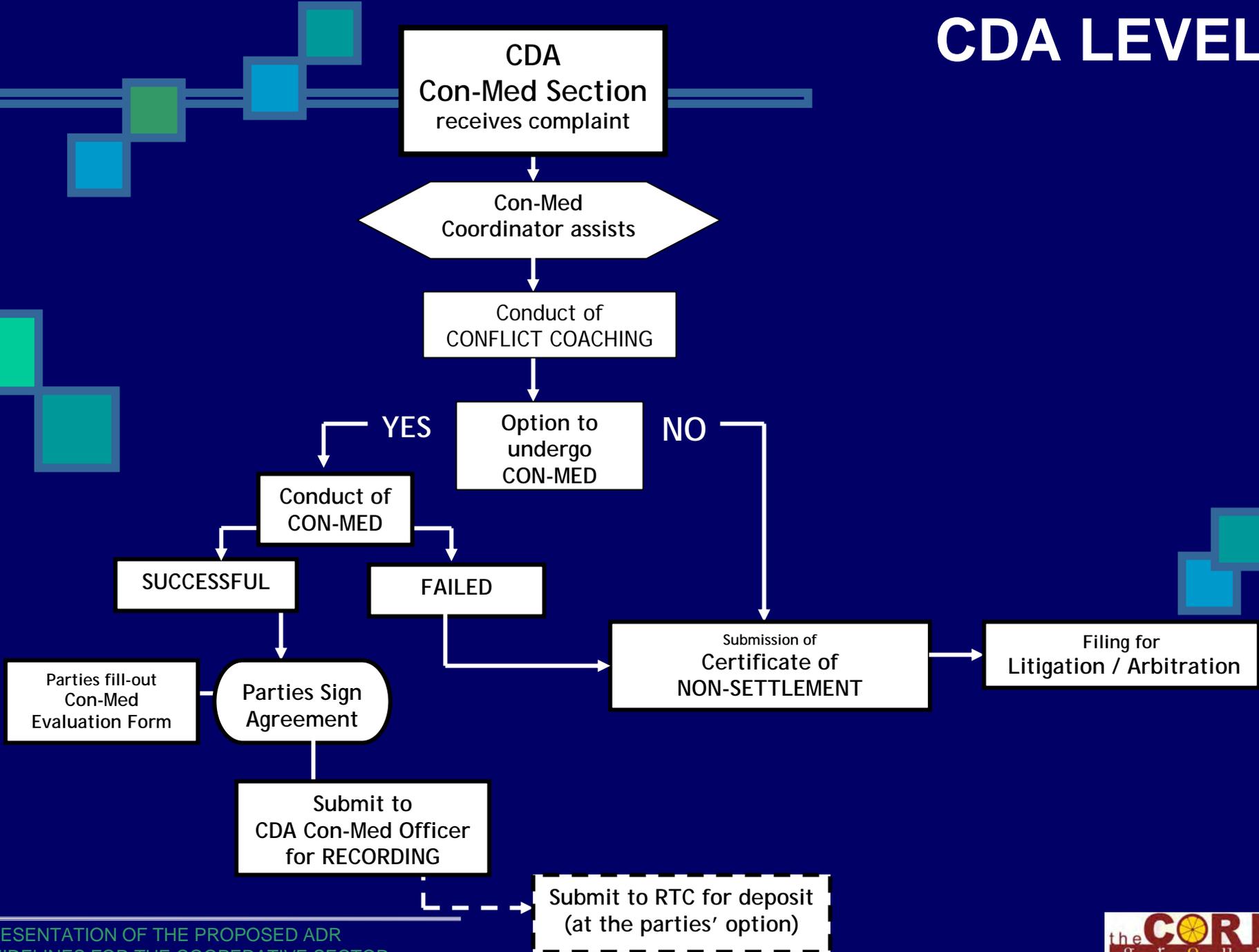
PRIMARY LEVEL



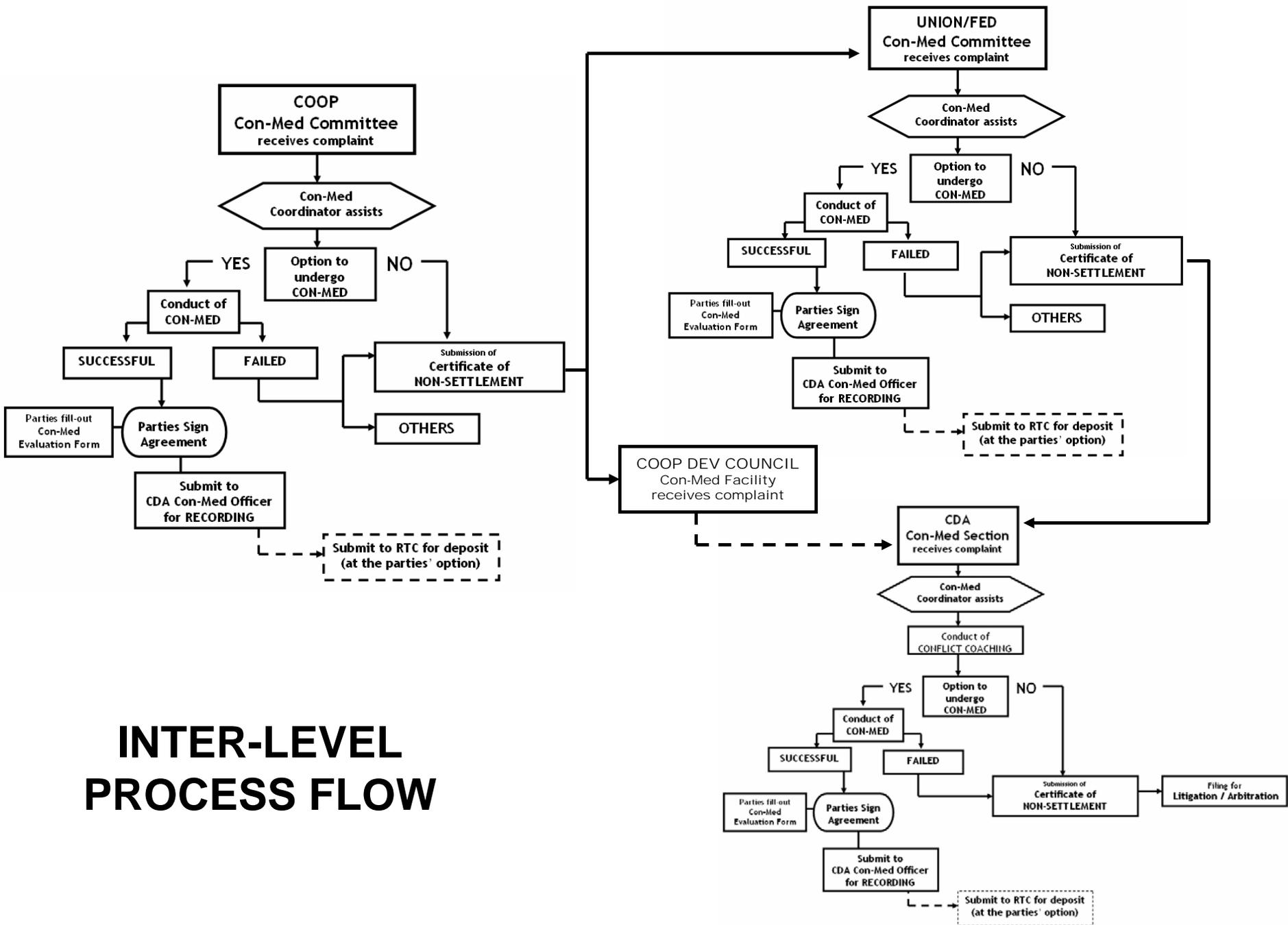
UNION/FED LEVEL

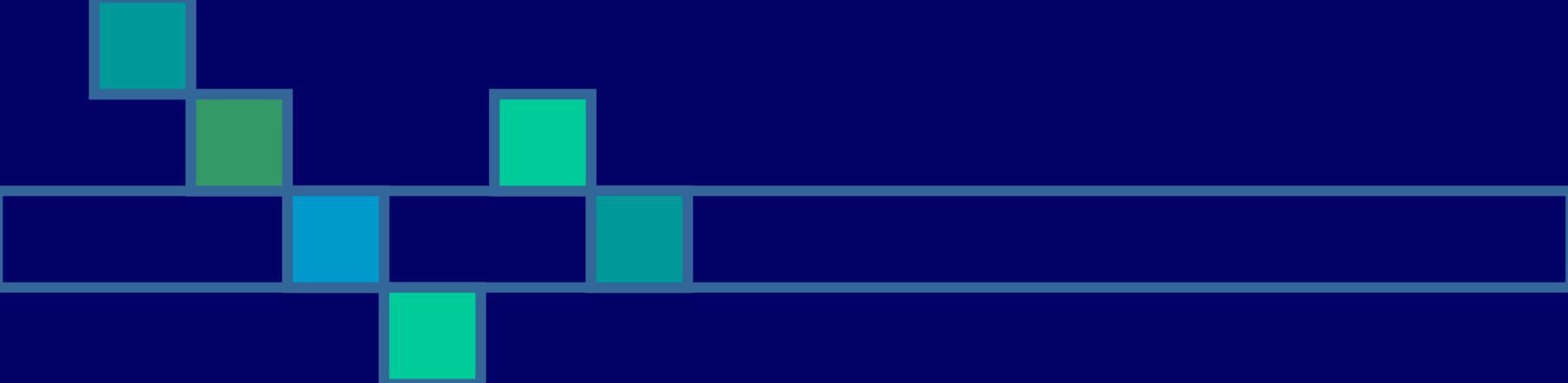


CDA LEVEL



INTER-LEVEL PROCESS FLOW





FEATURES OF THE DRAFT ADR GUIDELINES (A Summary Presentation)



Part III

PRESENTATION OF THE PROPOSED ADR GUIDELINES FOR THE COOPERATIVE SECTOR

Salient Features PER LEVEL

	PRIMARY	UNION/ FED/CDC	CDA
LEGAL BASIS	<p>RA 9285, ADR Law 2004</p> <p>Coop Code RA 6938, Article 121</p>	<p>RA 9285, ADR Law</p> <p>Coop Code RA 6938, Article 121</p> <p>EO 95 & 96</p>	<p>ADR Law</p> <p>EO 523</p> <p>CDA Charter RA 6939, Sec. 3</p> <p>CDA-DARBC Supreme Court decision</p>
COVERAGE / TYPE OF DISPUTE	<p>INTRA – Coop</p>	<p>INTER – coop + Intra-coop Disputes unresolved at the primary level</p>	<p>All coop-related disputes not resolved at the primary and secondary levels</p>

STRUCTURE	PRIMARY	UNION/ FED/CDC	CDA
Implementing Unit	<p>Conciliation-Mediation Committee</p> <p>Function: Administrative, Reporting to CDA, Management of Pool of CMs, Advocacy</p>	<p>Conciliation-Mediation Committee</p> <p>Function: Administrative, Reporting to CDA, Management of Pool of CMs, Advocacy</p>	<p>Conciliation-Mediation Section / Unit</p> <p>Function: Administrative, Info Mgmt, Management of Pool of CMs, Advocacy</p>
Composition of IU	<p>Members of Committee are either: (1) officers elected by GA (2) appointed by the BOD</p> <p>Prerogative of the primary; Accdg to by-laws</p>	<p>Members of Committee are either: (1) officers elected by GA (2) appointed by the BOD</p> <p>Prerogative of the union/fed; Accdg to by-laws</p>	<p>Staff appointed to the Section/Unit</p>
Conditions for membership in IU	<p>Trained and certified in Con-Med before elected / appointed to committee;</p> <p>MIGS throughout tenure</p>	<p>Trained and certified in Con-Med before elected / appointed to committee;</p> <p>MIGS throughout tenure</p>	<p>Regular employee of the CDA</p> <p>At least Basic Level Training in Con-Med</p>
Person In-charge of Secretariat	Con-Med Coordinator	Con-Med Coordinator	Con-Med Officer

CONCILIATOR-MEDIATORS

	PRIMARY	UNION/FED/CDC	CDA
Qualification of the CONCILIATOR-MEDIATOR	<ul style="list-style-type: none"> ✓MIGS ✓Trained and certified by CDA-accredited trainer ✓Non-coop/private CMs may also be members of the Pool 	<ul style="list-style-type: none"> ✓MIGS ✓Trained and certified by CDA-accredited trainer ✓Non-coop/private CMs may also be members of the Pool 	<p>CMs not necessarily staff of CDA</p> <p>Non-coop/private CMs may also be members of the Pool</p>
Training	Training provided by group/institution accredited by CDA	Training provided by group/institution accredited by CDA	Training provided by group/institution accredited by CDA
Certification	By Coop Con-Med Committee endorsement & by CDA accredited training institute	By Union/Fed Con-Med Committee endorsement & by CDA accredited training institute	By CDA accredited training institution
Selection of CM for Con-Med	From Pool of CMs at the primary level or from certified CMs from other levels	From Pool of CMs at the union/fed/council levels or from certified CMs from other levels	From CDA certified CMs or certified CMs from other levels or private certified CMs

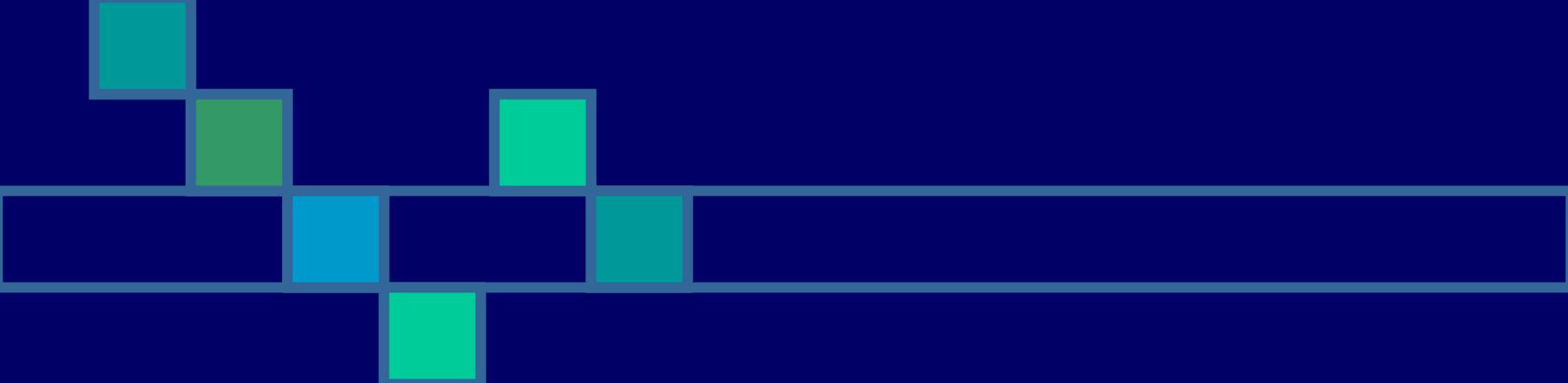
PROCESS

	PRIMARY	UNION/FED/CDC	CDA
Purpose of Conflict Coaching	To clarify issues and interests (stage WITHIN the Con-Med proceedings)	To clarify issues and interests (stage WITHIN the Con-Med proceedings)	The parties are met separately, to consider con-med (stage before con-med)
Proceedings in case of FAILED Con-Med	Certificate of Non-SETTLEMENT is issued then dispute is referred to Union/Fed or private ADR or CDA	Certificate of Non-SETTLEMENT is issued then dispute is referred to CDA	Certificate of Non-RESOLUTION is issued before dispute is filed for litigation or arbitration
Proceedings in case of SUCCESSFUL Con-Med	Signed Agreement is: 1. submitted to CDA for recording, and/or 2. deposited to RTC for enforcement	Signed Agreement is: 1. submitted to CDA for recording, and/or 2. deposited to RTC for enforcement	Signed Agreement is: 1. submitted to CDA Con-Med Section for recording, and/or 2. deposited to RTC for enforcement

REPORTING

PRIMARY	UNION/FED/CDC	CDA
<p>Quarterly reports submitted to CDA (every April 15th, July 15th, October 15th and January 15th)</p> <p>SEMI-ANNUAL consolidation of recommendations on improving the ADR system (every July 15th and January 15th)</p>	<p>Quarterly reports submitted to CDA (every April 15th, July 15th, October 15th and January 15th)</p> <p>SEMI-ANNUAL consolidation of recommendations on improving the ADR system (every July 15th and January 15th)</p>	<p>Status report on con-med program released QUARTERLY (every May 15th, August 15th, November 15th, Feb 15th)</p> <p>SEMI-ANNUAL consolidation of recommendations on improving the ADR system (every August 15th and February 15th)</p>

PRIMARY	UNION/FED/CDC	CDA
<p>All GA meetings to include in the agenda a discussion on the status and benefits of con-med in the cooperative</p> <p>Articles on availability and benefits of Con-Med inserted in newsletters and other modes of communication circulated to the general membership</p>	<p>All GA meetings to include in the agenda a discussion on the status and benefits of con-med in the cooperative</p> <p>Articles on availability and benefits of Con-Med inserted in newsletters and other modes of communication circulated to the general membership</p>	<p>Implementation of a continuous program to encourage use of con-med</p> <p>Development and utilization of newsletters, circulars, memos and other modes of communication to the coops to highlight the benefits and advantages of conciliation-mediation.</p>



BENEFITS AND CHALLENGES OF THE PROPOSED GUIDELINES



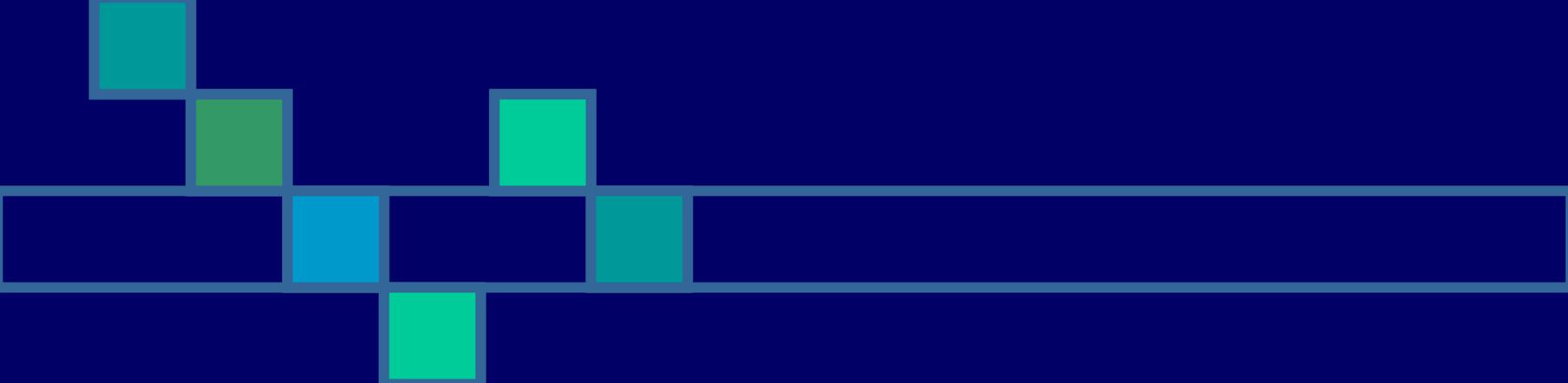
PRESENTATION OF THE PROPOSED ADR GUIDELINES FOR THE COOPERATIVE SECTOR

BENEFITS

- Encourages empowerment and self-regulation among cooperatives
- Strongly conforms to the *Principle of Subsidiarity* – all efforts will be exhausted at the primary and secondary levels before disputes are elevated to the CDA
- ADR allows the expansion of coop services
- Encourages membership to coop unions and federations
- Develops partnership and cooperation with the local government thru the involvement of the Coop Development Council

CHALLENGES

- Falls short of the expectations of some people who want CDA to take control of some disputes
- Creating a cost-efficient and speedy means to train conciliator-mediators in over 60,000 coops nationwide
- Creating for CDA the capacity to certify trained and competent conciliator-mediator
- Educating coop members to the new ADR system
- Encouraging coop members to use the system



PLENARY DISCUSSION



Part V

PRESENTATION OF THE PROPOSED ADR GUIDELINES FOR THE COOPERATIVE SECTOR

GUIDE QUESTIONS

- Do you think your coop will be able to adopt and implement these guidelines?
- What concerns about the ADR guidelines (as presented) would you like CDA to reconsider before finalization?