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Assessment of the Court-Connected Alternative Dispute Resolution (ADR) and Mediation Programme in Guyana

**Prepared for the Guyana Democratic
Consolidation and Conflict Resolution
(GDCCR) Project**

August 2005

This publication was produced for review by the United States Agency for International Development. It was prepared by RTI International and Ms. Donna Parchment, CD, JP.

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Introduction

The formal introduction of alternative dispute resolution (ADR) and mediation through the Court-Connected ADR and Mediation Programme (hereinafter called “the programme”) in Guyana has stirred great interest in many sectors of the country. The over 30 stakeholders with whom the consultant met, including the champion, Acting Chancellor (Ag.) Mr. Justice Carl Singh; attorneys-at-law; mediators; a Commercial Court consultant; members of the Ethnic Relations Committee; the Mediation Co-ordinator, Mr. Colin Chichester; and others were unanimous in their support for the concept, the potential value, and the need for effective action to improve its contribution to the courts and to Guyanese life. The programme is part of an agenda for reform and modernization of justice, including the production of new Rules of the Supreme Court which may provide for mediation, as well as moving the court toward its goals of access, expedition, and fairness while maintaining the public trust and confidence, as articulated by the Registrar, Mrs. Sita Ramlal.

It is clear that there is scope and need for substantial expansion of the mediation programme to

- enable access to mediation before litigation is initiated,
- allow the mediation roster to be expanded to include persons other than attorneys,
- create a pool of community mediators nationwide,
- allow representation on the Caribbean Community (CARICOM) Mediation Panel,
- service the Commercial Court, and
- support work related to elections and ethnic relations.

It is equally clear that such expansion should be phased, properly funded, and supported by written procedures, an appropriate institutional framework, training and sensitization of key actors, and public education to ensure an adequate caseload and service delivery to fulfil the expectations of stakeholders.

This report seeks to reflect the many suggestions, ideas, and views shared in the consultation (see itinerary attached at the end of this report). The consultant used experience from within the region, in particular Trinidad and Tobago, the Organisation of Eastern Caribbean States (OECS), Barbados, and Jamaica—the oldest and most developed system—as well as from Canada, the United Kingdom, and the United States of America, interpreting it to provide recommendations for the way forward. The design for the Guyana Court-Connected ADR and Mediation Programme cannot be lifted from any other jurisdiction, but will be a local product, tailored according to need.

1. The Existing Programme: Key Features

1.1 **Court connection** – The programme operates out of the Registry of the High Court, led by the Chancellor (Ag.) and staffed by a co-ordinator/mediator who is a member of the court staff. Office space and mediation rooms are within the court complex at Victoria Law Courts in Georgetown.

1.2 **Training of attorney-mediators** – Twenty-four attorneys received training in two workshops (28 hours and 8 hours respectively) through a project implemented jointly by USAID and the Carter Center, with trainers drawn from the United States, Canada, and Trinidad and Tobago. Attorneys with a minimum of 7 years at the Bar were selected from a pool of over 50 applicants.

1.3 **Free mediation service** – This service is provided by the attorney-mediators. A minimum of one session of 3 hours' duration is scheduled per mediation, but an additional two or three sessions (6–9 hours) may be required for completion, typically conducted during office hours at the Mediation Centre. Mediators incur travel costs and forego income-generating time to conduct the mediation.

1.4 **Scheduling of mediations and period for completion** – In the absence of Rules of Court or a Practice Direction to establish timelines, schedules are impacted solely by availability of attorneys and mediators. Long adjournments and rescheduling sometimes occur.

1.5 **The total number of referrals to voluntary mediation**¹ as of June 2005 was 241, with judge-directed mediation accounting for 189 cases, and attorney/client-directed cases for 52 after one year of operation.

1.6 **Public education/social marketing** – Education and publicity consisted of a short programme in the media at launch of project followed by ad hoc appearances by mediators and the Mediation Coordinator. Brochures were developed and circulated.

1.7 **Attorneys representing clients** at mediation and the Bar in general were inadequately sensitized on the project and their role in the implementation of ADR and mediation in Guyana.

1.8 **Mediation in the Supreme Court only** – The project does not provide mediation services to the lower courts, business community, Ethnic Relations Commission, electoral machinery, communities, towns and rural areas, or financial sector. It also does not work with Justices of the Peace or the constabulary force.

1.9 **Restorative justice** – The project does not currently use mediation within this context as it is being tested in the civil jurisdiction of the Supreme Court of Justice.

1.10 **Commercial Court** – This court reportedly will be an important management building block for the modern engagement of Guyana's economy. ADR and mediation will be a critical piece of the new proposed court, with skilled mediators and arbitrators required for "multi-door" delivery of services to local, regional, and international litigants who will be its users.

2. The Existing Programme: Capacity and Quality

2.1 **The current roster** is 20 attorney-mediators to meet the needs of the court and of Guyana. Concerns noted:

¹ Guyana Supreme Court of Jurisdiction, *CCM Report*, June 2005.

- The caseload of the Supreme (High) Court, civil jurisdiction, was over 12,000 cases for 2005.²
- There is concern about backlog in the courts and potential for backlog in the mediation programme.
- The skill set of mediators is based on legal training plus a qualifying number of years at the Bar.

2.2 **Continuing education** – Mediators rely on self-analysis and evaluation forms with feedback from attorneys and litigants through the Mediation Coordinator. There is no structured programme for information, mentorship, or joint learning for the mediators, who stakeholders see as having the potential to deliver a superior service.

2.3 **Quality** was described as mainly satisfactory and can be assessed by objective and subjective criteria such as adherence to mediation core principles, programme standards, resolution rate, user satisfaction, and other evaluation tools. The reported resolution at June 2005 is encouraging (see footnote 1).

2.4 **In summary** – Feedback from the key stakeholders—mediators, attorneys, Mediation Coordinator, Chancellor (Ag.), Commercial Court Coordinator—suggests that capacity needs to be expanded and strengthened, and that the quality of individual service delivery ranges from low to high and may be positively impacted by training and practice. At the same time, the level of use initiated by private parties could be positively impacted by direct sensitization of key groups, such as litigants and the business community, as well as by social marketing.

3. The Existing Programme: Processes and Operations

3.1 **Settlement court and judge referral** – The Chancellor (Ag.), through a special sitting, referred cases to the Mediation Centre, and other judges have also referred matters to the centre when parties have appeared before them. Judges’ referrals ranged from one matter to 52 matters each in June 2005, demonstrating substantial leadership and support for the programme from the Bench.

3.2 **Requests from attorneys are given** to a judge or to the Mediation Coordinator for matters to be sent to mediation.

3.3 **Files with a referral note** are sent to the Mediation Coordinator.

- (a) The **Mediation Coordinator sends a Notice of Referral** to mediation to all parties to litigation—along with the mediation roster, a brochure for selection of a mediator, and a date for mediation by the attorneys—by consent and return of the form.
- (b) The **Mediation Coordinator sends a Notice of Scheduled Mediation** to all parties when all requirements are met. This may require several telephone calls to all parties and take several days.

² *Annual Report of the Guyana Supreme Court of Juridicature*, p. 4.

- (c) The **Mediator conducts mediation** with litigants and their attorneys (mainly), requiring the parties to complete an **Agreement to Mediate Form** at commencement and a **Mediation Agreement Form** if the mediation session(s) concludes with agreement. Parties and attorneys are each given an **Evaluation Form for Parties & Attorneys**, which promises on the face of it to keep responses confidential and directs that it be placed in a box in the Mediation Centre.
- (d) The **Mediation Coordinator files a Notice of Outcome of Mediation** in the Registry of the Supreme Court on completion, and the file is submitted to the referring judge.
- (e) The **Referring Judge** enters the agreement as an order of the Court or re-submits the file for the next stage of judicial process where there is no agreement.
- (f) The **Mediation Coordinator** reviews any evaluation form and collects data for monthly reports (**Report of Coordinator**).

4. Gaps Identified in Carrying Out Consultancy

4.1 **Key stakeholders** – The consultant was *not* able to meet with

- The Minister with responsibility for justice, ethnic or electoral matters
- Litigants who used the service
- Magistrates
- Business leaders
- Media representatives
- Professor Britton, University of Guyana
- Youth representatives
- Educators.

4.2 **Timelines for mediation** – This issue was raised with several stakeholders, who expressed support for a mechanism or procedural framework with time standards for mediation, aligning the court-connected programme within the needs of the Supreme Court (and presumably the Commercial Court and any other courts implementing ADR and mediation). Deeper consultation would be needed to ensure an appropriate and acceptable set of rules.

5. Recommendations

5.1 **Court-supported ADR and mediation services** – Develop a national programme around the current initiative to service all courts through the Mediation Centre.

The integrity of the existing programme should be maintained within the courts' oversight and control, with a Mediation Coordinator and support staff services being extended to the Commercial Court and other courts through the Mediation Centre, rather than the Registry of the Supreme Court. This would clearly create a service department with its own funding and accountability which would see all litigation in Guyana as eligible for mediation through referral.

Referral of cases by judges would be for those categories of cases agreed by the courts and referred based on established principles.

Client or litigant referral to mediation from cases filed would be unfettered, save for the procedural rules developed to manage the progress of mediations with the Mediation Centre and the requirements of the courts.

5.2 Other mediation services – Develop a civil society organization such as a **Mediators Association** consisting of trained mediators and perhaps hosted at the Mediation Centre and other venues as appropriate.

Alternatively, a public sector/civil society organization partnership could handle disputes in which litigation has not been initiated. The Mediators Association could seek funding, offer for-fee services, have service providers donate a portion of their fees to the Association until it becomes self-sustaining.

This service would complement the court-connected programme; support a network of community, workplace, and youth mediation; and provide services to the Ethnic Relations Commission and various other commissions and organizations that require ADR and mediation.

This programme could be phased in over a period after further discussion and be supported by the potential users and related departments of government.

6. Training Needs Identified

Training needs with national coverage include the following.

6.1 Mediators

- **Basic training** of two groups of 25 persons each, including attorneys and other professionals, to enable an expansion of the pool of mediators. This would require a minimum **40-hour (6-day) interactive mediation course**.
- **Advanced mediators course** for the existing pool of mediators, to incorporate listening and facilitation skills, ways of coping with difficult litigants, valuing and integration of attorneys in the mediation process, commercial and complex disputes, court rulings in other jurisdictions, restorative justice, agreement writing. **A minimum 4-day course**.
- **Training of trainers** for 10 mediators to seed Guyana’s capacity to develop its programme over time. **A minimum 4-day course**.
- **Training materials** – Development of training and publicity vignettes, videos, and role plays based on local reality.
- **Monthly mediator meetings** which would allow for joint, continuous learning by sharing of experiences, peer review of skills (demonstrated by role playing), joint review of articles and videos, and analysis of feedback from redacted evaluation forms—possibly with rotating chairs and convened by the Mediation Coordinator. **1½ to 2 hours per month**.

6.2 Attorneys

- **“Mediation Basics for the Attorney”** – A **3-hour workshop** to facilitate effective representation of clients at mediation, increased attorney referral of cases to mediation,

mediation advocacy by attorneys, improved briefing of litigants, and preparation for mediation. Each course would accommodate 25 participants and the number admitted would enable 50% of the Bar to participate. (This would be Continuing Legal Education.)

- **Public lecture** to the legal profession at an event which would allow for significant attendance by the Bar; **1-hour presentation**.

6.3 **Magistrates – One-day workshop** to provide full briefing for all magistrates. It would include troubleshooting, core values and principles of mediation, procedures and implication of court-connected and other mediation services, facilitation of magistrates' ability to advocate and make referrals.

6.4 **Police services – One-day workshop** for the leadership cadre to introduce concepts similar to the Magistrates' Workshop.

6.5 **Judges – Three-hour workshop** to review the mediation project, identify lessons learnt, and enhance advocacy and referral information.

6.6 **Study tour** – The opportunity to visit working dispute resolution programmes in other locales would assist in the development of the programme and overall mediation services. Court-connected, community, workplace, and restorative justice programmes could be visited in the United States and Jamaica (as well as in Trinidad and Tobago, and members of the Organization of Eastern Caribbean States, such as St. Lucia). This study tour would allow participants to interact with policy makers and service providers in programmes at different stages of development and with different resources, providing insights and a network of colleagues to the programme.

The study tour would have a **duration of 5–15 days**, commencing possibly in the United States (three to four cities) and ending in Jamaica. Possible participants to include Chancellor (Ag.) Mr. Justice Carl Singh, Mediation Coordinator, mediators, attorneys, representatives of the GDCCR Project.

6.7 **Conferences, memberships, and subscriptions** – Attendance by mediators, attorneys, judges, policy makers at conferences such as the following would broaden appreciation of the potential of the programme and of mediation in Guyana:

- ACR Conference – see www.ACRnet.org
- 3rd Caribbean Conference on Dispute Resolution – see www.disputeresolutionfoundation.com
- Minority Professionals in Alternative Dispute Resolution – see www.law.capital.edu/adr

Membership in entities such as the Association of Conflict Resolution (ACR), in particular its Caribbean Chapter (now in formation), and subscriptions to online journals and other resources to provide access to materials for advocacy, training, and enhancement of service delivery, should be supported. These materials could expand the collection being developed by the Commercial Court consultant, Mr. Justice Boyd Carey, and a further list can be supplied on request.

6.8 **Arbitration workshop** – A 2-day workshop for 25 existing and new arbitrators would enable service delivery through the ADR and mediation programme in particular, as needed for the Commercial Court.

This course should include local and international arbitration rules, legal landscape and procedures, core values and competencies of the arbitrator, and the role of various parties in the arbitration. These arbitrators may be drawn from various professional fields, including construction, banking, and the law.

7. Public Education and Social Marketing

There was unanimity on the need to improve exposure of this programme and any future programmes to the public in general and key sectors that may utilize, make referrals to, or advise persons who may need such services. Many stakeholders supported the use of a variety of outlets and methods with a combination of blitzes and sustained exposure.

7.1 **Speakers bureau** – The Chancellor (Ag.), judges, and the entire mediation panel, along with other interested and knowledgeable persons, should be provided with PowerPoint and print talking points on ADR, mediation, and the Guyana programme to be utilized in speaking engagements to schools, religious organizations, service clubs, business associations, annual general meetings, and civic events. Over a period of three months, this programme would provide both broad and focused exposure and might require a public relations consultant or other personnel working with the Mediation Coordinator.

7.2 **Billboard** – A billboard on the programme could be erected near the Victoria Law Courts or other busy area or as a large sign on the sides of buses.

7.3 **Radio and television** – Guests could participate in radio and TV talk programmes. Videos could be prepared and sent to television stations/networks for airing.

7.4 **Print media** – Information about the programme such as the following could be written and published:

- A series of articles by mediators and others
- Advertisement of the mediation roster and service
- Interviews with key advocates of the service
- Features on the justice system and its modernization and access improvement through ADR and mediation.

7.5 **Parliamentarians** – Members of Parliament could mention the programme in their major speeches.

7.6 **Brochure** – The mediation brochure could be reprinted with its logo and achievements. If no logo exists, a competition could be run to create one.

7.7 **Posters** – Posters could be developed and used at trade shows, fairs, libraries, and other public events and venues.

7.8 **Pop song** – A pop song competition could be launched to select the best song, or a song could be commissioned or donated by an artist, to promote the value of the programme. It would then be used in the media and during public events.

7.9 **Public forum** – A forum could be held with full media coverage to educate the public and generate interest.

7.10 **Web site** – A Web site should be developed, advertised, and linked to other actively visited Web sites. The mediation roster, updates, articles, and photographs of mediation events could be on this site.

7.11 **Target groups** – Special short programmes—such as business breakfasts or lunches, or presentations for religious leaders—could take place at sectoral events and conferences in Guyana, supported by an effective and tailored PowerPoint presentation as further consultations and requests may suggest.

8. Compensation and Deployment of Mediators

There was unanimity on the need to pay mediators, in order to improve the delivery of service and to recognize the service as valuable and cost-saving to the justice system and the litigants, with its potential to provide high-quality outcomes reflecting the needs and the will of the litigants.

8.1 **Rates and fees** – Support coalesced around a fixed fee based on an hourly rate, but charged per three-hour session. This should be paid by litigants, by the government through the court's budget, and via project funding. Mediators should continue to provide a fixed number of hours of service free of cost each year. At present, 24 free hours are provided. However, six hours or one mediation per mediator to deal with the needs of impecunious litigants may be adequate for the future. (In the view of this consultant, Supreme Court litigants should be asked to substantially fund mediators and the government should pay for related expenses.) Attorneys representing clients at litigation should bill in the usual manner.

It was suggested that the legal aid model of an annual rate agreed with the providers, in this case mediators, to determine the fee could be used. **A fee within the range of G\$9,000–G\$18,000 (US\$50–US\$100) per session, per party** was suggested by some persons.

8.2 **Deployment of mediators** – This deployment needs to be national, with adequate numbers in rural towns and areas to service the courts (and other users). Mediators could be encouraged to make their services available privately for non-court mediation on the same terms as for the courts through a new civil society entity which complements the court. It was suggested that 50% of the roster be drawn from rural towns and areas, so recruitment of persons for training should build in a fixed number of rural participants to serve the key communities.

9. Settlement Week

The Settlement Week programme should be **repeated each quarter** with the appropriate preparation to enable timely disposition. The readiness of the attorney, the client, and the case is important. Steps to ensure this, including briefing of the attorneys (e.g., a 3-hour course), should be built in, as should dates for completion and a report to the court. **Timelines and procedures should be developed separately or by reference to the programme rules to be developed.**

10. Collaboration with the Commercial Court

10.1 **Stakeholder buy-in** – Mrs. Ruth Lee, Inter-American Development Bank (IDB) and Government of Guyana Commercial Court Project coordinator; and consultant Mr. Justice Boyd Carey commented positively on the potential synergy and value of meeting the Commercial Court’s needs through the Mediation Centre.

10.2 **Evaluative approach** – The proposed caseload would make it important for mediators to hone their skills and increase their confidence to operate in a transformative, interest-based, or evaluative system. The evaluative approach could be merged into an arbitration programme and these new mediators focus on a user-driven interest-based process which would deepen this new dimension of the justice system.

10.3 **Potential Commercial Court issues for mediation** – Issues suggested as possible subjects for mediation included:

- Bankers’ requests for foreclosure orders in relation to mortgages
- Actions for recovery of money under promissory notes
- Guarantees in the absence of security
- Borrowers’ actions in a range of claims relating to receivers’ actions
- Cases brought under the Matrimonial Property Persons Act
- Challenges to interest on debentures
- Authenticity of security documents

Technical language as well as complex and voluminous data may be features of such mediations.

10.4 **Diversity among attorney-mediators** – A diverse panel of mediators, including persons with backgrounds in finance, banking, and law, would enhance user confidence in the initial stages.

10.5 **Funding** – The Commercial Court should contribute to the funding of the Mediation Centre and mediators, but through a unified programme making the Commercial Court Library and ADR collection available to the programme.

10.6 **Sensitization** of the business community and financial sector, through means described under “Public Education,” will be vital to help them take advantage of opportunities in the CARICOM Single Market and Economy (CSME), through foreign direct investments and joint

ventures and engagement of the Guyana diaspora, within a justice system which values speed and fairness.

11. Matters Suitable for Mediation

There was general support for family matters to be included in the list of matters for potential mediation. A phased expansion of the civil caseload can be undertaken. The basis for referral in some jurisdictions is automatic as a stage that precedes (a) case management or (b) trial. Early referral potentially has the best impact on the court caseload and it may not be necessary for a judge to determine suitability for mediation if, through further consultation, there is development of an enabling procedure for the programme and Settlement Week. Most cases are suitable for mediation where no public policy or constitutional matter is at stake and no good-faith settlement has already been attempted.

12. Rules of the Supreme Court

12.1 Court reforms – The current reform and modernization effort in the courts since the mid-1990s, based on experience in Canada, the United Kingdom, parts of the United States, and the Caribbean, is supported by all stakeholders. The process may, however, be lengthy and complex, with significant drafting and consultation on policies and procedures for new Rules.

12.2 Draft Practice Direction – The ADR and mediation procedures are intended to be part of the new Rules. However, it may be beneficial to develop a Practice Direction or other rule now and allow that to lead the way in the overall reform, including the role of case management and technology.

12.3 Fine-tuning of procedures – ADR and mediation rules would document and fine-tune the existing procedures, incorporating timelines and consequences for each stage; encompassing core values, such as neutrality and confidentiality; dealing with admissibility of information from a mediation; identifying appropriate orders; determining whether mediation precedes or follows case management; setting standards; settling fees; and other related matters.

13. Sharing Outcomes of This Consultation

The proposals under “Public Education” and “Social Marketing” are applicable to this area. In addition, decisions taken could be announced through press conferences, which would allow the media to interrogate presenters about the findings and recommendations, or interface with programme leaders and funders.

Conclusion

The success of this component of Guyana’s justice modernization programme will lead the way to renewed service standards and user satisfaction in the expanded justice system, as in some other jurisdictions.

The programme is fortunate to be championed by the head of the Judiciary, Mr. Justice Carl Singh, and a supportive judiciary. The ideas of many persons which went into design and training built on the work of University of Guyana's Professor Britton, the enthusiasm of USAID and its team, the commitment of the Mediation Coordinator and mediators, and the willingness of attorneys and litigants to use the process.

This report makes recommendations which will see the deepening and broadening of appropriate services. This will require

- Continued commitment of key stakeholders
- Increased and adequate funding over the next 3–5 years
- Investment in training, procedures, staffing, and standards
- Public education and building of partnerships
- Engagement of young people and influential persons.

It is my hope that these recommendations are seen to reflect the contribution of the Guyanese citizens with whom I consulted, while benefiting from the experience of others in the region and beyond.

In Jamaica, we have had almost 20 years of building ADR and Mediation into the justice system and the national psyche. It is now bearing fruit. I strongly recommend further support for the people of Guyana in this effort and further work with partners in the region and beyond.

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Jamaica

Itinerary for June 19–27, 2005

Consultant for ADR and Mediation Component – Ms. Donna Parchment

USAID/Guyana GDCCR Project

	July 19 th	July 20 th	July 21 st	July 22 nd	July 25 th	July 26 th	July 27 th
Morning	Depart Kingston, Jamaica	<ul style="list-style-type: none"> Briefing by Deputy Chief of Party, GDCCR. Meeting with High Court Registrar, Mrs. Sita Ramlal 	<ul style="list-style-type: none"> Meeting with Mr. C. Chichester, Court Manager and Mediation Coordinator. 	Meetings with (1) Marcella Thompson and Priya Manichand, representatives of the legal profession. (2) Ethnic Relations Commission. (3) Messrs. Stephen Fraser and Teni Housty, Attorneys-at-Law.	Meeting with Prof. Harold Lutchman, mediator/attorney. Meeting with litigant.	Meeting with Acting Chancellor and Chief Justice Mr. Carl Singh	Depart Guyana
Afternoon	—	Meeting with IDB Commercial Court Project Coordinator, Mrs. Ruth Lee	Meetings with Court Manager and Mediation Coordinator, cont'd	Meeting with reps. of legal profession: Kashir Kahn, Mohamed Khan, Teni Housty, A. Wog, Emily Dodson, Joseph Harmon, A. John, and Leon Radcliffe. (3 of the attorneys are also mediators.)	Meetings with (1) IDB Consultant, Mr. Justice Boyd Carey. (2) Mediators – Deborah Backer, Jamela Ali, Randolph Kirton, Sheila A. Chapman, Kashir Khan and Mohamed Khan.	Meeting with USAID Director and staff. Exit meeting with Mrs. Gloria Richards-Johnson, Deputy Chief of Party and Mr. David Esch, Chief of Party	Arrive in Jamaica
Evening	Arrive Guyana	Reception, Chief of Party, Mr. David Esch.	—	—	—	—	—