

# Appendix C

## METHODOLOGY

As directed by the USAID work order, this ADR Guide was developed using information from several sources. The three primary sources of information were: existing studies on the use of ADR, field research in five developing countries, and guidance from ADR experts and USAID staff.

We began by developing an overall research strategy. As suggested by USAID, we designed the literature review to generate hypotheses about the conditions under which ADR programs are likely to meet USAID's development objectives. We then gathered available studies (both published and unpublished) on the use of ADR in developed and developing countries, and analyzed them using a standardized protocol<sup>1</sup>. We summarized our preliminary findings from the literature review and presented them to an advisory group of ADR experts<sup>2</sup> and to USAID staff. We also prepared a *Working Bibliography* of the developing country studies we reviewed.

As we completed the literature review, we began selecting the countries for our case studies. As suggested by USAID staff and the Advisory Group, our primary criteria for country and case selection were:

- Including countries at similar levels of social and economic development, but differing in their legal systems (i.e. some with civil and others with common law systems).
- Including countries at different levels of development but with similar legal systems.
- The existence of one or more USAID-supported ADR programs that had been operating for long enough to provide useful operational and impact data.
- Interest among USAID mission staff in helping our field researchers to conduct a field study.
- Representation of a variety of ADR procedures.
- Representation of a variety of disputes to which ADR procedures were being applied.
- Regional diversity (representation of countries in Africa, Asia, Latin America/Eastern Europe/New Independent States).
- Diversity in national levels of economic development and legal institutions.

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<sup>1</sup> Our literature review team included Carolyn Logan and Anthony Wanis St. John, graduate students at the Fletcher School of Law and Diplomacy at Tufts University, and Christian Duve, graduate student at Harvard's John F. Kennedy School of Government. Jane McCluskey, an independent consultant, and Alfredo Larrea of CMG assisted the team in collecting documents.

<sup>2</sup> CMG's Advisory Group includes Professors Frank Sander and David Smith of Harvard Law School, Robert Ricigliano, CMG Executive Director, Diana Chigas, CMG Regional Director, and Antonia Handler Chayes, CMG Senior Advisor. The Group was called upon to provide advice at key points in the project, as described in the text.

After identifying countries and ADR programs to research, we developed guidance for our field researchers based on our preliminary finding<sup>1</sup> We asked the field researchers to explore whether and how the background and program design factors we hypothesized as having the greatest effect on program impacts had in fact influenced the program(s) they researched. We also encouraged them to identify and explain other background and program design factors that helped explain levels of impact in the cases they studied. With assistance from USAID's Center for Democracy and Governance, our field researchers then contacted USAID mission staff with ADR program management responsibility, planning and carried out their field visits.

The field researchers spent between four and ten days in each country they studied. During their field visits, they interviewed:

- USAID mission staff with ADR program management responsibilities
- Country counterparts responsible for ADR program goal-setting, design, and management
- ADR program service providers and service users
- Informed observers of ADR program operations

The field researchers summarized their findings in the Case Studies attached as Appendix B, with guidance from the CMG management team and USAID staff.

Based on the comments we received from USAID staff and the CMG Advisory Group, and on the findings from the case studies, we revised our preliminary findings and rewrote them as the ADR Guide. We presented the guide in draft form to USAID staff and the advisory group, and revised it to reflect their comments before submitting the final draft to USAID.

As directed by USAID, we have worked to make the guide as concise and readable as possible, without glossing over important issues in the design and implementation of ADR programs in developing countries. We have included the *Working Bibliography*, a taxonomy of ADR terms, and *Case Studies* for readers who wish to probe more deeply into the range of ADR processes and the use of ADR in individual countries and programs.

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<sup>3</sup> Our field research team included Elizabeth McClintock , CMG Consultant (Bangladesh, Sri Lanka and Ukraine); and Carolyn Logan (South Africa), and Anthony Wanis St. John (Bolivia), graduate students at the Fletcher School of Law and Diplomacy at Tufts University.

## Appendix D

### WORKING BIBLIOGRAPHY

This working bibliography was generated from an extensive review of literature on ADR from developing and developed countries.<sup>1</sup> In Parts I and II below, an abstract of each document is provided. The abstracts summarize these documents' insights into the effectiveness of ADR programs in achieving the development objectives discussed in the guide (*i.e.* delay reduction, increase satisfaction of disputants, increase access to justice, reduce monetary cost, increase options for disputants, and provide laboratories for experimentation in dispute resolution).

#### **I. Summaries of Evaluative Documents from Developing Countries**

**Bingham, Gail; Wolf, Aaron; and Wohlgenant, Tim.** November 1994. *Resolving Water Disputes: Conflict and Cooperation in the United States, the Near East, and Asia*. Arlington, VA: Irrigation Support Project for Asia and the Near East (ISPAN) (sponsored by USAID) (PN-ABT-448).

**Countries:** U.S., Middle East, and countries in the Danube, Nile, Indus, Ganges, and Mekong River basins

**Years:** Varied

**Objectives:** Resolution of disputes over management, distribution, and use in water disputes

**Design:** Target governments (local and national) and other interested corporate entities using interest-based negotiation methods and varied participants and facilitators.

**Impacts:** **Most successful in** developing and allowing an exploration of more innovative/creative solutions to water disputes; allowing the participants to shape the decision, thus increasing the likelihood that it will satisfy their interests; improving likelihood of successful implementation of agreements; improving likelihood of achieving solution; due to the direct participation of parties in reaching an agreement, and their knowledge and understanding of the technical issues involved in the conflict. (The combination of a consensual negotiation process and technical or policy solution options was very effective) Also, the process is voluntary, increasing the commitment to reach a positive outcome. **It was least successful in** cases lacking certain preconditions including political commitment; willingness to permit the open interchange of views; and the transparency necessary to ensure adequate information exchange.

**Evidence:** Relatively detailed case studies of four water dispute negotiations in the US. and six international cases.

**Other aspects:** The report's final conclusions are: 1) that it would be appropriate to use negotiation-based processes and other tools for consensus-building more often in addressing water disputes, both transnationally and within different countries; 2) that the process and the outcome of efforts to resolve water conflicts can be qualitatively enhanced through the application of interest-based, dispute resolution

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<sup>1</sup> In conducting the literature review, we collected and analyzed published and unpublished literature on ADR in developed and developing countries, focusing on documents evaluating ADR programs, and drawing on the resources of universities, international organizations, bilateral donors, for-profit and non-profit firms, foundations, and other institutes and organizations in the ADR field. In collecting documents, we canvassed all geographical regions, contacted over 100 entities and conducted extensive library research.

principles and processes; and 3) that attempts at resolving water conflicts would benefit from a variety of capacity-building activities and the greater institutionalization of dispute resolution processes.

**Blair, Harry; Staples Said, Mary; Thome, Joseph; Sabatini, Christopher.** September 1994. *A Strategic Assessment of Legal Systems Development in Uruguay and Argentina*. USAID Working Paper No. 192, Center for Development Information and Evaluation. Washington, DC: USAID. (PN-ABT-455)

**Country:** Argentina

**Years:** Roughly 1992-1994

**Objectives:** 1) Achieve the successful implementation of an ADR pilot program in Argentina; 2) finance unofficial mediation for low income populations by helping to establish legal aid/mediation centers; 3) train and educate judges and allay fears about ADR; and 4) promote institutionalization of ADR in Argentine courts in order to deal with backlog and provide more timely access to justice addressing small claims, family law, business /labor and other disputes.

**Design:** Target low income people, investors, and businesses by using training, negotiation, mediation, arbitration, and conciliation methods. Also involve legal aid staff, judges, justices of the peace lawyers, and ministry of justice officials.

**Impacts: Most successful in** working with the ministry of justice and the court system to provide access to services, and in working with NGOs to build coalitions that lobby for judicial reforms such as ADR. **It was least successful in** increasing the number of users of services. It was also difficult to overcome official reluctance to publicize the ADR work This was due to the "intransigence" of lawyers and judges who are part of an authoritarian and highly politicized judicial system that is not held accountable by civil society

**Evidence:** Qualitative data about the types of national programs in existence and the AID efforts to bolster them, based on extensive interviewing, empirical observatio and review of statistics maintained by the institutions studied, as well as diagnostic studies and opinion polls.

**Other aspects:** 1) Its synchronization with overall AID and other donor-supported judicial reform projects; and 2) its strategic focus on building support where it is most likely to succeed and develop into advocacy for reform.

**Blair, Harry; Staples Said, Mary; Thome, Joseph; Sabatini, Christopher.** September 1994. *A Strategic Assessment of Legal Systems Development in Uruguay and Argentina*. USAID Working Paper No. 192, Center for Development Information and Evaluation. Washington, DC: USAID. (PN-ABT-455)

**Countries:** Uruguay

**Years:** Roughly 1992-1994

**Objectives:** Improvement of access to justice for the commercial sector; change of perception of commercial ADR among judges and lawyers; empowerment of non-judges to practice commercial negotiation, arbitration and mediation; improvement of the investment climate by providing alternative fora for resolving business disputes and locating ADR outside of the courts in small claims, business/labor and other commercial disputes.

**Design:** Target investors, businesses, and judges, by using training classes, court integration of negotiation, mediation, arbitration, and conciliation methods; also, provision of classes to judges, legal aid staff, judges, justices of the peace and lawyers, ministry of justice officials.

**Impacts: Most successful in** providing short term methods for improving legal and regulatory climate for investment due to diminishing of delay and resolution of other unspecified difficulties associated with the

courts. **It was least successful in** overcoming opposition of judges in Uruguay despite the introduction of judicial reforms

**Evidence:** Includes qualitative data about the types of national programs in existence and the AID efforts to bolster them, based on extensive interviewing and empirical observation; one or more pools of judges, justices of the peace and lawyers; interviews with business leaders and commercial sector NGOs. The evidence **is generally** persuasive.

**Other aspects:** Synchronizing ADR efforts with overall efforts at judicial reform that would obviously facilitate certain ADR techniques in court, such as the initiation of oral procedures and other reforms. AID's strategy has been to identify the source of resistance to ADR (judges) and to focus on getting ADR into the hands of non-judges.

**Blair, Harry, and Hansen, Gary.** February 1994. *Weighing in on the Scales of Justice: Strategic Approaches for Donor-Supported Rule of Law Programs*. USAID Program and Operations Assessment Report No. 7. Arlington, VA: USAID, Office of Evaluation, Center for Development Information and Evaluation (CDIE). (PN-AAX-280)

**Countries:** Argentina, Columbia, Philippines, Sri Lanka, Uruguay (Honduras is included in the report, but did not include ADR-support activities in its ROL program)

**Years:** Roughly mid-1980s to 1994

**Objectives:** ADR activities were generally seen as contributing to two of the four specific strategies identified for ROL programs -- structural reform and access creation.

**Design:** Target the public in general, and groups that historically face problems of access in particular Target those directly involved in the legal system (attorneys, judges, court staff, etc.) using a wide range of activities, including (but not limited to) support for ADR, training programs for judges, lawyers, etc. (Participants varied according to activity.) **The program was administered by** USAID, host country NGOs and governments, UNDP, The Asia Foundation (TAF).

**Impacts: Most successful in** beginning with constituency and coalition building (if they do not already exist) as the most effective strategy. Found that using a political economy approach to analysis and strategy planning was the most effective tool, due to the fact that legal system changes affect power relations.

Technical changes are ineffective when supply (elites) and demand (public) constituencies are not supportive of the changes. **It was least successful in** attempting legal system strengthening in the absence of necessary preconditions. Also, technical fixes or engineering approaches to institutional change were least effective for understanding and prescribing processes of ROL reform.

**Evidence:** The authors provide a thorough review of a variety of ROL programs (in progress and completed) in these six countries. Evidence **is generally** persuasive.

**Centro Sobre Derecho y Sociedad, CIDES.** 1993-96. "Evaluation Report" (four reports covering 1993-1996). Quito, Ecuador: CIDES.

**Country:** Ecuador

**Years:** 1993-1996

**Objectives:** Increase access to democratic participation in conflict resolution in civil disputes.

**Design:** Targets lower income urban and rural populations, using mediation training methods and capacity-building among local, pre-existing neighborhood organizations to build local centers for mediation of conflict.

**Impacts: Most successful in** establishing four permanent functioning mediation centers linked to local

organizations. It was successful in resolving neighborhood and local disputes while beginning to facilitate the acceptance of mediation. **It was least successful in** establishing its stated goal of establishing a national mediator network.

**Evidence:** Includes interviews/questionnaires

**Other aspects:** The mediators represented groups of indigenous communities who were organized into two distinct "federations". The mediators worked across federation lines. Also, the mediators used customary practices of symbolic reconciliation and punishment, among other practices drawn from the local culture.

**Chodosh, Hiram E., and Mayo, Stephen A.** Forthcoming 1998. "Indian Civil Justice System Reform: Limitation and Preservation of the Adversarial Process", *NYU Journal of International Law and Policy*, vol. 30.

**Country:** India

**Years:** 1997/ 1998 recommendations for reform

**Objectives:** To overcome huge backlog (25 million cases) and delay (up to 20 years) problems, improve accountability, discipline, and versatility of the justice system to more effectively resolve disputes in the civil justice system.

**Design:** Target the general population that uses the civil justice system, using improved court administration and case management procedures, and expanding (ADR) options to include judicial settlement, early neutral evaluation, and mediation, in addition to already existing ADR options of arbitration and conciliatory settlement in Lok Adalats.

**Impacts: Most successful in** developing a realistic set of recommendations and creating a sound, two- phase implementation plan for carrying out the reforms. Success is due to the widespread consensus among Indian legal professional; and the public that reform is desperately needed.

**Community Organization Training and Research Advocacy Institute (COTRAIN).** 1996. *Toward an Enhanced Mediation of Agrarian Disputes*. Manila: COTRAIN.

**Country:** Philippines

**Years:** 1996

**Objectives:** To reduce case backlog, speedier and more just resolution of disputes in land reform cases.

**Design:** Target landowners, tenants, and land claimants using mediation training methods for 700+ members of local mediation committees representing the Dept. of Agrarian Reform, local government and community-based NGOs.

**Impacts: Most successful in** building participants' knowledge of the mandated mediation process and their mediation skills, thanks to a skilled mediation team with high level support within the Dept. of Agrarian Reform, and the training of 20 new mediation trainers. **It was least successful in** catalyzing additional financial or institutional support for local committees, because of tight agency budget

**Evidence:** Evaluation of the current mediation system and its shortcomings (including quantitative backlog data and qualitative evaluation of problems), description of the training program (including process, description, and quantitative data on numbers trained) and evaluation of initial results (including quantitative data on number of mediations undertaken by trained committees and qualitative data on changes in mediation practices). Evidence is generally persuasive.

**Other aspects:** Strong grounding of the training in both Filipino community and interest-based mediation practices developed in the U.S.

**Development Associates, Inc. (DAI).** April 21, 1993. *Asia Democracy Program Evaluation Report*. Arlington, VA: DAI (PD ABG-648).

**Countries:** Thailand, Nepal, Sri Lanka, and the Philippines

**Years:** 1988- 1992 (Many of the projects were short-term.)

**Objectives:** Strengthening democratic institution and practices in concert with advancing economic development in political and economic decision making and administration of justice.

**Design:** Targets the entire population of these countries, using a wide variety of activities, including: public education regarding rights and the law; support for ADR mechanism and reviving traditional dispute resolution processes. **The program was administered** primarily by indigenous NGOs, sometimes via US PVOs, especially The Asia Foundation (TAF), the Asian-American Free Labor Institute (AAFLI), and Private Agencies Collaborating Together (PACT), **and supported/funded by** USAID's regional Asia Democracy Project (ADP), as well as individual country missions.

**Impacts: Most successful in** overall design and implementation of the ADP, thanks to good working relations with governments and implementing NGOs, and good support from the regional office. It was **least successful in** providing adequate basis for evaluation, because of difficulty in identifying adequate indicators, the short duration and/or early stage of many projects, and the need for better statistics and better information sharing.

**Evidence:** Interviews, review of 43 projects at various stages of implementation, visits to country offices.

**DPK Consulting.** (No publication date, approximately 1994-1996). *Proyecto BID: Colombia: Resolución de Conflictos*. San Francisco: DPK Consulting.

**Countries:** Colombia, funded by the IDB.

**Years:** Approximately 1994-1996.

**Objectives:** Low cost access to increased conflict resolution services in private sector disputes. **Design:** Targets users of the Bogota Chamber of Commerce (BCC) and users of Ministry of Justice (MOJ)-created centers using a combination of institution-building, capacity-building, training ADR 'multipliers' who were to go out and sponsor their own events on ADR, as well as providing unspecified conciliation services using locally trained personnel.

**Impacts: Most successful in** helping the BCC to become a model ADR institution for all of Latin America, thanks to having a nucleus of highly trained people, and thanks to its previous (pre-IDB funding) ADR program experience, dating to 1991. It **was least successful** in reaching middle and low-income clients through the BCC project, due to failure to define client population in the original project design and failure to conduct appropriate public relations campaign. **In general, the projects failed to** address the problem of extreme social violence and the consequent need for ADR to be an agent of social transformation, due to its failure to explicitly acknowledge this reality in the project proposal.

**Evidence:** Narrative analysis of the aspects of the IDB-financed programs.

**Other aspects:** 1) while there is some validity to the conclusion that there has been a sustained increase in the options available to disputants, only 20 of the initial 150 national centers are or were functioning; 2) MOJ centers also seem to have set out to prepare community leaders, but problems arose when community leader candidates were accused of links to guerrillas or narco-traffickers.

**DPK Consulting.** January 1996. *Evaluaci6n de! Centro de Mediación Para La Resolución de Conflictos.* San Francisco: DPK Consulting.

**Countries:** Costa Rica

**Years:** May-September 1995.

**Objectives:** Resolution of family disputes without recourse to the courts

**Design:** Targets families using mediation and a mediation center under the executive branch agency known as Patronato Nacional de la Infancia.

**Impacts:** **Most successful in** attaining high indices of successful case resolutions (60%), without attributing this success to any cause. **It was least successful in** resolving a significant number of disputes and therefore alleviating the burden on the court system due to an over-filtering of cases that were permitted into the mediation center, which the authors claim is due to the preoccupation with successful resolution of cases. The authors also were concerned with the proper handling of domestic and child abuse cases, and whether such cases should be mediated at all.

**Evidence:** A Gallup poll of the users of the mediation center and the self-generated reports that came from the Center itself **is generally** persuasive.

**Other aspects:** The seemingly national debate over whether the mediation centers should be administered by the Executive or the Judicial Branch. The authors thought this to be of great significance due to the Gallup poll's indication that public trust was placed in the judicial branch, with respect to the provision of these types of services.

**Foraker-Thompson.** 1992. "Traditional Conflict Resolution Methods Used in Black Townships in South Africa," *International Journal of Group Tensions*, vol. 22, no. 3, pp. 165-190.

**Country:** South Africa

**Years:** 1980s and early 1990s.

**Objectives:** An alternative to the violence in the townships on which media have focused. As the institutions of the state were increasingly rejected, the community sought to create community cohesion/social solidarity, build alternative structures to deal with major issues, give expression to the will of the people, and wrest the initiative from the state structures (the state responded with increased repression). The alternative institutions included systems of "people's justice" such as "people's courts" in any issues of community conflict, including cases of assault, theft, and robbery.

**Design:** Targets all of the members of a given community or township using a mix of court-style (judicial or committee judgment) and ADR methods, especially mediation with people chosen by the local community. The program was administered by community members, and supported/funded by local communities.

**Impacts:** **Most successful in** helping to control crime and violence in the townships, due to the courts being run by members of the community in ways consistent with community norms. Met a major community need, filling a gap that the government was unwilling or unable to fill. It was least successful after the government cracked down on local political organization; in 1985 (feeling that local communities were encroaching on the state's territory). Many of the organizations could no longer function, and some of the participants/leaders were even jailed. As a result, *tsotsis*, or local thieves, ran rampant in many of the townships (with police collusion), and crime and violence increased. Even at their best these alternative methods of self-government and dispute resolution were not always strong enough to maintain peace in community, due to the state being viewed as both illegitimate and ineffective as a forum for justice. Levels of social and political turmoil were very high, and the white government deliberately worked to undermine black efforts at self-government.



**Evidence:** Largely descriptive, covering the history, evolution, and political foundations of the courts. **Other aspects:** Includes discussion of traditional African social solidarity and as it relates to the dynamics in present-day neighborhoods and townships.

**Garro, Eduardo.** 1995-1996. *Informe Operativo I, Informe Operativo II*, (plus other untitled documents by this author). San Jose, Costa Rica: Centro de Mediación.

**Country:** Costa Rica

**Years:** 1995-1996

**Objectives:** Resolution of family disputes without recourse to the courts

**Design:** Targets poorer families using mediation methods and an interdisciplinary mediation contender the government agency, Patronato Nacional de la Infancia.

**Impacts:** **Most successful in** attaining high indices of successful case resolutions (60%); providing access to less advantaged sectors of society (those with low education levels, the unemployed). Attained high indices of user satisfaction, thanks to the active listening of disputing parties which took place in the elaborate "filter" stage, and the work of the mediators, who facilitated just agreements. It **was least successful in** sustaining itself as a functioning part of government services due to the refusal of relevant authorities to take fiscal and administrative responsibility for the center's operations.

**Evidence:** A Gallup poll of the users of the mediation center; intake and exit information on cases; and the self-generated reports. **The evidence is generally** persuasive.

**Other aspects:** Clear criteria concerning cases that were not to be mediated and their evaluation through an elaborate and stringent "filter " process.

**Gessner, Volkmar.** 1986. "Los Conflictos Sociales y la Administración de Justicia en Mexico" (Social Conflict and the Administration of Justice in Mexico). Mexico, DF:Universidad Autónoma de México.

This document is fundamentally a sociological dissertation on social conflict in Mexico and ADR programs.

**Country:** Mexico

**Years:** 1969-1970

**Objectives:** Resolution of labor disputes

**Design:** Targets businesses and workers using conciliation and arbitration methods with government agencies and government officials as arbitrators.

**Impacts:** **Most successful in** disposing of disputes (not necessarily resolving them) often in less than one year's time, at most in four years with appeals. It **was least successful in** informing workers of their rights, adequate enforcement, equitable procedure, provision of counsel, due process, and orderly procedure due to corruption, etc.

**Evidence:** Empirical observation, extensive surveys, quantitative summaries, as well as sociological analyses of these. Evidence is generally persuasive, although only of historical use.

**Other aspects:** At the federal level the distance required for workers from all over the country to travel to the capital in order to use the Federal Conciliation and Arbitration institutions. Also, the reimbursement of the workers' travel costs, the lack of court costs, the postponement of attorneys' fees until a favorable determination, the continuation of salary during the proceedings.

**Hanson, Gary; Said, Mary Staples; Oberst, Robert; Vavre, Jacki.** February 1994. *A Strategic Assessment of Legal Systems Development in Sri Lanka*. USAID Working Paper No. 196. Washington, DC: USAID. (PN-ABT-456)

**Country:** Sri Lanka

**Years:** 1990-93

**Objectives:** Strengthening of the country's democratic institutions, including restoring the stature of the legal system by making it more accessible and responsive. No limits on cases were identified, but those handled, in order of importance/volume, are loan cases, land disputes, minor crimes, license/tax cases, and family issues.

**Design:** Targets the general populace, but especially those of moderate or low income using mediation boards trained by local volunteers. **The program was administered by** the Government of Sri Lanka, **and supported/funded by** the Sri Lankan government with support from the Asia Foundation and USAID.

**Impacts: Most successful in** creating an effective, inexpensive, and popular alternative forum for dispute resolution, due to: 1) the ability to learn from and correct the mistakes of the failed conciliation councils (an earlier effort to provide a mediation alternative) to ensure that the boards did high quality work and did not become overly politicized or too much like courts themselves; and 2) the dedication of the volunteer mediators and the fact that they are respected community members. **It was least successful in** assuring long-term sustainability, remaining independent and not becoming either a political tool or a tool of the banks for collecting on defaulted loans (although both of these problems are just dangers at this point, not reality).

**Evidence:** Responses to interviews with board chairs, direct observation of the boards' activities, and a review of 1528 cases handled. Evidence is **generally** very persuasive.

**Other aspects:** History--the use of mediation has a long history in Sri Lanka (dating to the pre-colonial era), and conciliation councils were set up early in the post-colonial period. However, these councils were abolished in 1978 as they had become politicized and suffered from other problems that led to a decline in their effectiveness and credibility. The courts soon became over-burdened, so a second attempt was made to develop alternative systems. The mediation boards were established in 1988 (although they did not become active until 1990), but with new rules that tried to avoid the conditions that had led to the earlier failure of the conciliation councils.

**Huang, Shir-Shing.** 1996. "The Reconciliation System of the Republic of China," in Eds. Fred E. Jandt and Paul B. Pedersen, *Constructive Conflict Management: Asia-Pacific Cases*, pp. 43-50. Thousand Oaks, London and New Delhi: Sage Publications.

**Country:** Republic of China (Taiwan)

**Years:** 1955-present

**Objectives:** To provide for dispute resolution in a manner consistent with local norms and customs; prevent courts from becoming overburdened in civil and criminal cases.

**Design:** Targets the general public using mediation committees of 7 to 15 people established in each village, town, district and city ("reconciliation commission" seems to be used interchangeably with mediation committee volunteer mediators who are respected (and often personally known to disputants), have knowledge of the law, and live in the village /town/city; at least one woman per commission; chiefs, mayors and civil servants are not eligible. **The program was administered by** Ministries of Justice and Interior in conjunction with local governments, and **supported/funded by** local government, with some assistance from the national government.

**Impacts: Most successful in** resolving many cases in a manner consistent with local norms and preferences, thanks to a long history of mediation in China and the preference for peaceful/harmonious

resolution of disputes rather than litigation. Mediators are respected individuals; regular supervision and assessment of mediators' work; seminars for and training of mediators each year; government efforts to promote this mechanism for conflict resolution; system is free, open, convenient and "as effective as court decisions".

**Evidence:** The numbers of cases being handled, some other data, and one case study. Evidence is **generally** sparse, but what there is, is persuasive.

**Other aspects:** Cases are brought to the mediators by formal application if at least one party; both parties must consent in civil cases, and the victim must consent in criminal cases, before the process can begin. In general, the process is public; courts handle primarily criminal cases, they do few civil cases.

**Jandt, Fred E., and Pedersen, Paul B.** 1996. *Constructive Conflict Management: Asia-Pacific Cases*. Thousand Oaks, London and New Delhi: Sage Publications. Summary of a number of case studies on China.

This book includes several case studies on China. None of them has sufficient specific information to warrant a separate summary, but points about the various mediation systems used there are discussed: the role of village mediators; cultural roots of mediation; features of court mediation (more than 70% of civil cases handled in the People's Court are settled via mediation); over 1 million village-based People's Mediation Committees (PMC) handling more than 7 million civil disputes annually, created by the 1982 constitution with 3-11 volunteer members each.

**Jandt, Fred E., and Pedersen, Paul B.** 1996. "The Cultural Context of Mediation and Constructive Conflict Management," in eds. Fred E. Jandt and Paul B. Pedersen, *Constructive Conflict Management: Asia-Pacific Cases*, pp. 249-275. Thousand Oaks, London and New Delhi: Sage Publications.

This chapter provides an excellent overview of the title subject, drawing lessons related to ADR and, e.g., high v. low context cultures, effective third parties, neutrals, mediation in Asian-Pacific cultures.

**Jones, Christopher B.** August 1991. *Exploring Alternative Dispute Resolution Techniques in the Asia-Pacific Region*. Honolulu, HI: Hawaii Research Center for Future Studies, University of Hawaii.

Based on a review of multiple case studies of ADR programs in the countries of the Pacific Basin, in a study that was designed to examine the potential for incorporating cultural dispute resolution processes into formal legal systems, the author highlights the following dichotomies pertaining to ADR: informal/formal types of ADR; rural/urban; agricultural/industrial societies; proximity/distance between the disputants, and between mediators and the disputants; voluntary/coercive ADR; authoritarianism /participation of third parties.

**Kassebaum, Gene.** 1989. *ADR in India: The Lok Adalat as an Alternative to Court Litigation of Personal Injury and Criminal Cases in South India*. Working Paper Series 1989-5. Honolulu: University of Hawaii at Manoa, Program on Conflict Resolution (PCR).

**Country:** India

**Years:** 1974/82 - 1988 (The Lok Adalats first started in some parts of the country in 1974, but in many

states they were not established until 1982.)

**Objectives:** Reduce the caseload on courts, reduce costs and increase speed of resolution of cases; increase access to and equality of justice for ordinary people, especially for personal injury cases involving vehicles, protect the weak from unnecessary litigation in personal injury cases (especially pedestrian- vehicle), and in some criminal and civil cases.

**Design:** Usually cases are between a relatively poor pedestrian and a relatively wealthy company/vehicle owner. **The program was administered by** state Legal Aid Boards, **and supported/funded by** state Legal Aid Boards, apparently.

**Impacts: Most successful in** achieving faster and lower cost resolution of many cases (though still only about 20% of all personal injury/vehicle cases); better chances of achieving some resolution of claims (victims generally have low expectations of recovery from accidents), due to simplicity of the process, respectability and expertise of the mediators, long tradition of community-based mediation, active promotion of the program by some of the state legal aid boards. **It was least successful in** providing real benefits and better access to justice for the poor, because cases have to be filed **in** the courts first, which involves some costs. The poorest are still not likely to be assisted when they are injured; power relations can also influence outcomes; there may be too much emphasis on clearing dockets, and not enough on insuring justice for the poor.

**Evidence:** Numbers and types of cases and outcomes from Lok Adalat records; interviews and conversations with many mediators, lawyers/advocates, members of District Legal Aid Boards; direct observations of Lok Adalat proceedings. The author notes the problem with the lack of systematic data on many aspects of the program, and on comparisons with the court system, which would be costly to obtain, but is necessary to properly evaluate the effectiveness of Lok Adalats. Evidence is **generally** persuasive.

**Lytton, Timothy and Centeno Rivas, Salvador.** Upcoming 1998. "La Resolución de los Conflictos en Nicaragua." In upcoming DPK Publication (William Davis, ed.)

**Country:** Nicaragua

**Years:** 1990 to 1997

**Objectives:** Improvement of access to dispute resolution services in the absence of strong legal infrastructure and due to the social and political deterioration caused by civil war in labor, human rights, land title, property, personal, and political disputes.

**Design:** Targets civil society (educating the public and even primary/secondary school), training practitioners of ADR using education concerning a new "culture of peace", education about conflict resolution, negotiation training, arbitration, mediation training methods and "local peace and justice commissions", peasant leaders, police, lawyers and judges.

**Impacts: Most successful in** affecting the cultural environment of conflict and anarchy in Nicaragua, though no explanation is offered. **They were least successful in** actually realizing conflict resolution goals for the public because of the weakness of legal infrastructure, inadequate laws, and insufficient numbers of trained ADR practitioners.

**Evidence:** Minimal data which is primarily descriptive. It is generally persuasive. (The purpose of the article is not to evaluate these programs per se, but to offer insights into the cultural and institutional obstacles that ADR faces in Nicaragua.)

**Other aspects:** The educational aspect/cultural transformation dimensions which the author seems to imply are a necessary first step in achieving ADR gains. The article's principle contribution is to describe various ADR programs in existence in Nicaragua.

**Marques, Juan.** May 1994. *Institutionalization and Expansion of Court Connected Civil Dispute Resolution in Puerto Rico: Mediation and Other Mechanisms*. Unpublished LLM Thesis, Harvard Law School.

**Country:** The Commonwealth of Puerto Rico

**Years:** 1983-1988

**Objectives:** Lowering of costs, diminishing of delays and alleviation of congestion in the courts, and to act as a referral center for certain disputes in civil and criminal cases.

**Design:** Targets various groups of complainants using mediation methods and experimental government agency.

**Impact: Most successful in** all objectives.

**Evidence:** Review/analysis of two internal studies done by the Office of Court Administration of Puerto Rico. It is **generally** persuasive but is criticized by the author for lack of empirical bases for some findings.

**Moore, Christopher and Santosa, Mas Achmad.** 1995. "Developing Appropriate Environmental Conflict Management Procedures in Indonesia: Integrating Traditional and New Approaches," *Cultural Survival Quarterly*, Fall 1995, pp. 23-29.

**Country:** Indonesia

**Years:** 1993-1995

**Objectives:** Cultural compatibility of dispute resolution methods, achieve negotiated settlements of environmental disputes by face-to-face participation by all stakeholders, achieve increased voluntary compliance with settlements, public participation in monitoring and implementation in the area of environmental (water pollution) disputes between government/people and private sector.

**Design:** Targets local population, environmental NGOs, industrial polluter/company using mediation and mediation training methods and ministry staff as mediators.

**Impacts: Most successful in** introducing mediation as a culturally relevant alternative/complement to litigation, and in introducing the idea of institutionalizing mediation and dispute resolution systems design, due to the resolution of two prototypical pollution cases. It **was least successful in** improving relationships, increasing enforcement, overcoming perception of impartiality, and implementation/monitoring of agreements due to failure to include local government parties, cultural factors including rank and social status that frustrated mediation, government officials as mediators with interest in the outcome, failure to effect enforcement measures against non-compliant parties due to judicial system, confusion regarding the end result (appeasement v. decision making).

**Evidence:** Descriptive narrative of the process and outcomes of several cases. Evidence is **generally** persuasive.

**Other aspects:** Peripheral efforts to overcome the patterns of social stratification inherent in traditional dispute resolution "musyawarah".

**National Conciliation and Mediation Board (NCMB)**, Department of Labor and Employment, Government of The Philippines. Report, circa 1996. *AAFLI and the Voluntary Arbitration System in the Philippines*.

**Country:** Philippines

**Years:** 1989-1996

**Objectives:** Prevention and improved resolution of labor disputes to enhance political, economic and social stability in labor-management relations (initially primarily in unionized, private-sector relations). **Design:** Targets labor unions and management using voluntary arbitration methods and volunteer arbitrators (including trade unionists, academics, law practitioners, personnel managers, and industrial relations practitioners). **The program was administered by** the National Conciliation and Mediation Board (NCMB) of the Department of Labor and Employment, **and supported/funded by** USAID and AAFLI.

**Impacts: Most successful in** strengthening collective bargaining, serving as an alternative to strikes, speeding up the delivery of labor justice, and unclogging the compulsory arbitration system, thanks to: 1) active promotion of the approach by the government (with the support of AAFLI and USAID), including promotional material and workshops; and (2) the success in speeding up resolution of cases.

**Evidence:** Numbers /amount of promotional and educational material prepared, arbitrators trained, and cases handled by the system. Evidence **is generally** persuasive, though limited. More information on the total number of labor disputes, numbers of strikes, etc., would be helpful for assessment.

**Other aspects:** Activities currently under way or planned to expand this approach to non-unionized workers and public-sector workers, and there is also interest in expanding the use of voluntary arbitration beyond labor-relations issues into the domain of regular courts.

**Nina, Daniel.** Fall-Winter 1993. "Community Justice in a Volatile South Africa: Containing Community Conflict, Clermont, Natal," *Social Justice*, vol. 20., nos. 3 - 4, pp. 129 - 142.

**Countries:** Clermont, Natal, South Africa

**Years:** May- July, 1992

**Objectives:** All types of internal community disputes

**Design:** Targets all community members using mediation and many other methods and elected members of the local community. **The program was administered/supported/funded by** the local community.

**Impacts: Most successful in** (in theory) maintaining community cohesiveness and autonomy from the state, because those responsible for dispensing justice are elected by and are accountable to the community. Thus their approaches and values are consistent with and aim to preserve community norms.

**Evidence:** Compares mediation/ ADR in general, with a variety of mechanisms of popular justice. Also reflects on the author's experience with one such system of popular justice, a case committee in Clermont township. Evidence **is generally** relatively persuasive-- the author succeeds in making the case that the systems of popular justice, which are often ignored, need to be studied more carefully.

**Other aspects:** Explores the nature of organic mechanisms of community conflict resolution (also known as "popular justice" or "community justice"), and the relation between these mechanisms and the new trends toward facilitation, mediation, and negotiation (i.e., ADR).

**Othman, Wan Halim.** 1996. "Community Mediation in Malaysia: A Pilot Program for the Department of National Unity" in eds. Fred E. Jandt and Paul B. Pedersen, *Constructive Conflict Management: Asia-Pacific Cases*, pp. 29-42. Thousand Oaks, London and New Delhi: Sage Publications.

**Country:** Malaysia

**Years:** 1980-present

**Objectives:** The programs known as the Social Relations Management System (SRMS) (ADR was one part of this system) was designed to contribute to efforts to promote better ethnic relations; give the Department of National Unity (DNU) a more clear and effective role in this effort; reduce/resolve both inter-communal and intra-communal conflict and tension and introduce mediation services into the civil service in all types of conflict, but especially those with inter-ethnic aspects.

**Design:** Targets everyone using extensive training in mediation and related skills (including basic counseling, and courses on conflict prevention and post-conflict rehabilitation). **The program was administered by** the Social Relations Management System within the DNU, **and supported/funded by** the Government of Malaysia.

**Impacts: Most successful in** providing elaborate and continuous in-service training to several hundred officers (new courses are still being planned for them). No other outcomes of the program are reported, despite its relatively long history.

**Other aspects:** 1) In addition to the conflict resolution/mediation component, the SRMS also included efforts to promote inter-ethnic contact, engage in preventive activities in conflict prone areas, and involvement with the post-conflict rehabilitation of relations. 2) The author notes that a problem for conflict resolution is the very negative view of conflict in the country, which causes people to conceal and deny it. There is also pressure for individuals to conform to accepted behavior patterns and to avoid causing or bringing forth conflicts.

**Sohn, Dong-Won, and Wall, James A., Jr.** September 1993. "Community Mediation in South Korea: A City-Village Comparison," *Journal of Conflict Resolution*, vol. 37, no. 3, pp. 536 - 543.

**Country:** Korea

**Years:** The early 1990s (although mediation has been used for centuries in Korea).

**Objectives:** Application of the Confucian principles of seeking harmony in interpersonal relations, and of saving face both for oneself and for others in all types of intra- and inter-family disputes in the community.

**Design:** Targets all community members using community-based mediation methods as well as respected members of the local community or friends of the disputants who are willing to assist. **The program is administered by** local communities -- there is no government involvement in this practice.

**Impacts: Most successful in** resolving disputes.

**Evidence:** Interviews with 34 city and 19 village mediators, with examples of two cases from each. Evidence is generally persuasive.

**Other aspects:** Discussion of the historical bases for mediation in Korea. Also, this study aims to test the hypothesis of one analyst who has proposed that the traditional mode of community mediation cannot survive in communities larger than a village, since it is a process by which the whole community enforces its "standards of propriety and decency," and these standards weaken in towns and cities. The study also compares mediation in inter-family versus intra-family disputes. Korean mediators consistently rely heavily on ten main techniques, such as controlling the agenda, separating and/or meeting together with the disputants, advising the parties as to how they should think or behave in general, and arguing for specific concessions (this is a relatively aggressive mediation approach). There were few significant differences in the handling of inter- and intra-family disputes.

**Ulloa Gonzalez, Mirtha, and Vargas Pavez, Macarena.** 1997. *Mecanismos Alternativos de Resolución de Conflictos: La Experiencia Chilena*. Corporación de Promoción Universitaria Report.

**Country:** Chile

**Years:** 1990-1997

**Objectives:** Increased access to justice, legal services to the poor, quicker resolution of legal problems outside of the courts in family, labor, consumer concerns, land conflicts, children's rights and commercial disputes.

**Design:** Targets families, the poorer classes, indigenous people, businesses. and agricultural collectives using arbitration, mediation and conciliation methods. involves local volunteers, lawyers, ministry staff, psychologists, social workers and others.

**Impacts:** Most successful in meeting their objectives, although there is no significant evaluation. **Evidence:** The judgment of the authors: evidence is generally informative, but not predicated on solid data.

**Other aspects:** The sheer plurality of types of ADR programs that are government-supported, semi-official and private. The report describes existing laws that facilitate ADR and current legislative proposals that would further ADR. The organization which did this study (the CPU) dedicated itself to studying and promoting ADR in Chile and contracted with USAID in 1995 to coordinate the training of ADR professionals in Chile. The presence of this group appears to have been essential in the ongoing development of ADR options and programs in Chile. As a result of CPR's work, Chile opened two mediation centers in 1996 which have been functioning and resolving high numbers of cases as a percentage of cases brought in. CPU seems to be playing a role as national ADR coordinator, insofar as it is a driving force for the study, training, education, legislative proposals and execution of ADR in Chile. The prominent role provided to non-lawyers as providers of ADR services is also interesting to note.

**USAID.** Post-1994. *Needs Assessment for Alternative Dispute Resolution in the Philippines.* Washington DC: USAID (PN-ABX 322)

**Country:** Philippines

**Years:** 1980s - 1990s

**Objectives:** To overcome the problems associated with the formal, adjudicated legal system, especially delay; high cost; the incomprehensibility of the legal system to many people and the unsuitability of adjudication for the resolution of minor disputes, especially because they are adversarial and focus on blame and punishment, rather than on preserving or restoring long-term relationships. The authors note that ADR is especially applicable to so called "minor disputes" (e.g., family and community disputes); labor, commercial, and construction industry disputes are also discussed.

**Design:** Targets the general population, but especially those who are poorer and less educated and so have the most difficulty maneuvering through the formal legal system. In theory the program uses all types of ADR. In practice, the main methods currently available are mediation, conciliation and arbitration methods **Evidence:** The paper is primarily descriptive, not evaluative or analytical. It describes the need and the current legal framework for the use of ADR, as well as impediments to greater use.

**Whitson, Sarah Leah.** Spring 1992. "'Neither Fish, Nor Flesh, Nor Good Red Herring' Lok Adalats: An Experiment in Informal Dispute Resolution in India," *Hastings International and Comparative Law Review*, vol. 15, no. 3, pp. 391-445.

**Country:** India

**Years:** Mid-1980s to 1992.



**Objectives:** Faster, more accessible and more approachable forums for achieving justice, especially for the poor (the explicit objective), while at the same time expanding the domain of state control by replacing non-state ADR systems with state ones (the implicit objective). In theory, sought to stave off the collapse of the formal legal system in most types of conflict, though in practice family law issues and motor vehicle claims were the main cases covered.

**Design:** Targets the population at large, and poor individuals in particular using mediation and conciliation in *ad hoc Lok Adalat* courts ("people's courts", also known as LA courts).

**Impacts: Most successful in** handling a large number of cases, especially motor vehicle claims (initially), thanks to the speed of resolution, the local acceptance of the processes used to settle disputes, and dissatisfaction with the formal court system. **It was least successful in** setting up a permanent, effective ADR system and extending legal protection to the poor, due to the increasing control taken by the state; the tension between the formal norms of the court system and the informality of the LA courts; and the fact that the poor may actually fare better under a system of formal, procedural law.

**Evidence:** The rapid decline in use of LA courts after an initial boom; a brief description of LA courts in four states, and the findings of several other studies. Evidence **is generally** persuasive with respect to the effects of increasing state control on the effectiveness of the courts.

**Other aspects:** The LA courts started in 1982 as a non-state means of dispute resolution. They had a brief but intense period of popularity in the mid-1980s, but then declined very rapidly, within a year in many cases. This experience is not fully explained by the author, though the timing of the decline is closely linked to the passage of the controversial Legal Services Act in 1987, which "defeated the spirit and purpose of LA courts as informal, grass-roots courts that existed almost apart from state authority" by giving them statutory status and putting them under state control. However, the linkages/causal relationship between passage of the act and the rapid failure of the courts is not fully analyzed. The LA court experiment has essentially repeated the earlier experiment in the 1950s and 1960s with *Nyaya Panchayats* (NPs), which also failed for similar reasons.

**Worawattanamateekul, Nacha.** 1996. "Arbitration in Thailand" in eds. Fred E. Jandt and Paul B. Pedersen, *Constructive Conflict Management: Asia-Pacific Cases*, pp. 183-187. Thousand Oaks, London and New Delhi: Sage Publications. (This case study just describes a program; nothing is included about how implementation has progressed).

**Country:** Thailand

**Years:** 1987-present

**Objectives:** To establish and promote arbitration as a means of ADR. Through successful arbitration of international commercial disputes, make Thailand the regional commercial leader; reduce the backlog of cases in the legal system; resolve commercial disputes faster, in private and inexpensively.

**Design:** Targets business people using arbitration methods and 128 arbitrators, both eminent lawyers and other professionals. Parties can also nominate other qualified professionals to serve as arbitrators.

Arbitrators are categorized into 15 specialties. **The program was administered by** the Arbitration Office established within the Ministry of Justice, which is under the supervision of an advisory board composed of representatives from MOJ and other public and private sectors (the Law Society, Ministry of Commerce, the attorney general's office, Federation of Industries, chamber of commerce), **and supported/funded by** internal government funds (though in some other case studies the authors just did not mention funding sources, so it is possible that there was some unmentioned external support as well).

**Impacts: Most successful in** promoting and establishing arbitration. Increasingly gaining acceptance for this approach, thanks to the growing role of the business sector in Thai society; the increasing experience with and need for arbitration facilities; and the government's active efforts to promote this approach. It

**was least successful in** gaining acceptance during the early stages of the program (this has also been a problem with past efforts at arbitration, but steps are being taken to overcome this), due to a public that values the integrity, acceptability and enforceability of court awards. Some problems may also have arisen because different parties had competing ideas about how the national arbitration center should be established.

**Other aspects:** Facilities for international commercial arbitration have been increasing in Thailand, and business contracts have increasingly included arbitration clauses. Parties are free to choose any language for arbitration (English and Thai are most common, but Chinese is also used). Foreign lawyers are welcome as arbitrators or legal advisers. The arbitrators' decisions are independent of the arbitration office and government control. The arbitration office also runs the Centre of Promotion of Commercial Law and Alternative Dispute Resolution.

## **II. Summaries of Evaluative Documents from Developed Countries (including aboriginal communities)**

**Clarke, Stevens H.; Ellen, Elizabeth D.; McCormick, Kelly.** 1995. *Court-Ordered Civil Case Mediation in North Carolina: An Evaluation of Its Effects, Prepared for The North Carolina Administrative Office of the Courts*. Chapel Hill, NC: State Justice Institute, Institute of Government, University of North Carolina at Chapel Hill.

**Country:** Superior court civil cases in North Carolina, USA

**Years:** March 1992 to January 1993

**Objectives:** Make the operation of the superior courts more efficient, less costly, and more satisfying to the litigants by using mediated settlement conference (MSC) methods and by comparing cases assigned to either a mediation group or a control group to civil cases filed with a pre-program group.

**Impacts:** **Most successful in** increasing litigants' satisfaction with the process, thanks to the perception that the conferences were the best way to handle cases like theirs. **It was least successful in** reducing the court workload in terms of the numbers of motions processed by judges and orders issued by judges or clerks. **It was not successful in** increasing the settlement rate beyond a 41-50% and in reducing the time spent at the meetings, due to presumably too little participation of the parties and not enough case management.

**Evidence:** Data from four of 13 counties involved in the program which accounted for 72-75% of all superior court cases filed in the 13 counties in 1991-93, using control group, pre-program group and mediation group cases as well as court record data, litigant/attorney questionnaire data, the AOC civil case database and compliance questionnaire data. The evidence is **generally** persuasive.

**Other aspects:** The conclusion that the MSC Program achieved its goals of greater efficiency and satisfaction to some degree, but not as much as its proponents may have hoped. The state's earlier (1987) experiment with court arbitration was more effective, but it involved much simpler, smaller cases than did the MSC program.

**Hirano, Toshihiko,** unpublished speech, given at a conference in Tubingen, Germany, April 25, 1997. *Ober die Verhandlungskultur in Japan (About Negotiation Culture in Japan)*.

**Country:** Japan

The speaker addressed some of the fundamental reasons why negotiation and consensus-oriented dispute resolution outside the courts are more common in Japan than in other Western countries. The arguments include the scarcity of lawyers and the traditional Japanese legal culture which has basically been unfamiliar with the scheme of rights and duties, as it was imported from Europe a century ago.

**Iwai, Nobuaki.** 1991. "Alternative Dispute Resolution in Court: The Japanese Experience," *Journal on Dispute Resolution*, vol. 6, no. 2.

**Country:** Japan

**Years:** Since 1951

**Objectives:** Settlements in the court system

**Design:** Targets the parties, using persuasion to convince litigants to switch to various dispute resolution methods and drawing on judges. Two models are explained in the article. Under the first approach, *wakai* (settlement-in-court), it is the judge who decides to switch to a settlement mode and acts as a mediator. The second model, *chootei* (conciliation-in-court), bears some resemblance to elements of mediation and of evaluation. As an intermediate *model*, *benron-ken-wakai* (pleading-and-settlement), is described.

**Impacts: Most successful in** the appellate courts, due to the highly persuasive power of prominent judges and the fact-finding which had previously been done by the trial courts.

**Evidence:** Some quantitative data from the 1980s, though mainly a qualitative description. Evidence is **generally** persuasive.

**Other aspects:** It may be interesting to note that, as opposed to the common rule in American courts which prohibits the same judge from presiding over the settlement conference and the trial of a case, the Japanese judge assumes the double function of a director of the settlement procedure and of a screening officer.

**Jardine, Elizabeth J.** 1996. "Alternative Dispute Resolution in the Japanese Court System" in *Australian Dispute Resolution Journal*.

**Country:** Japan

**Years:** Since the Act of 1951

**Objectives:** Settlements in courts

**Design:** Targets litigants using three different types of ADR (*chootei* or conciliation-in-court, *wakia* or settlement in court, *benron-ken-wakai* or pleading-and-settlement) methods and the function of the judge as neutral.

**Impacts: Most successful in** *chootei* if it is voluntary and is just one of several remedies available, although an element of compulsion can be involved. However, the author notes that there are serious doubts as to the degree of voluntariness involved with *chootei* as the courts are heavily congested, expensive and incur time-consuming trials.

**Evidence:** Generally persuasive.

**Other aspects:** *Chootei* is a separate procedure from litigation, whereas *wakai* blends litigation and outside negotiation.

**Lajeunesse, Therese.** 1991. *Cross Cultural Issues in the Justice System: The Case of the Aboriginal People in Canada*. Working Paper 1991-1. Manoa, HI: Program on Conflict Resolution (PCR) at the University of Hawaii at Manoa.

**Country:** The case of Aboriginal People in Canada

**Years:** 1991

**Objectives:** Strengthening of traditional approaches to dispute resolution in Aboriginal communities and between Aboriginals and others. Lajeunesse lays out the differences in Western and Aboriginal approaches to conflict resolution.

**LeResche, Diane.** Summer 1992. "Comparison of the American Mediation Process with a Korean- American Harmony Restoration Process," in *Mediation Quarterly*, vol. 9, no. 4, pp. 323-339.

This paper describes the mediation process used by community-based mediation centers in the US with the formal process for handling conflicts used by Korean-Americans. The issue has not yet become important because many community-based mediation centers find that their services are not widely used by members of diverse ethnic populations. The study found extensive differences between the two with respects to all of the categories identified for analysis: perceptions of types of conflicts and their origins; the goals and objectives of the processes; how they are initiated; the roles and responsibilities of the people in conflict and of the third-parties; the type and extent of third party preparation; the structure of third-party meetings with the conflicting parties; the generation and selection of solutions; and how the processes are concluded. The author argues that these findings suggest that mediation centers must expand their approaches if they are to serve all ethnic groups in their communities, and rather than providing a specific alternative-mediation-for dispute resolution, they should perhaps focus on providing "optional processes" more broadly defined.

**Lowry, Kem.** 1989. *Mediation of Complex and Public Interest Cases: An Evaluation Report to the Judiciary*. PCR Working Paper Series, Department of Urban and Regional Planning and Program on Conflict Resolution, 1989-1992. Manoa, **HI**: University of Hawaii.

**Country:** Hawaii, USA

**Years:** 1986-1989

**Objectives:** Identify at least ten public or otherwise complex disputes; attempt to facilitate the entry of mediators in those cases; and assist the parties in those cases as well as the court in resolving as many issues as possible in state courts.

**Design:** Targets stakeholders in complex cases using mediation and other ADR methods.

**Impacts:** **Most successful in** reducing costs due to significantly lower number of hours charged by mediators, as compared to litigated cases.

**Evidence:** Quantitative: the evidence **is generally** persuasive.

**McGillis, Daniel.** July 1997. *Community Mediation Programs: Developments and Challenges*. Washington, DC: US Department of Justice, National Institute of Justice.

**Country:** United States

**Years:** Past twenty years

**Objectives:** Improved access to justice, to balance the reduced role of traditional informal dispute resolvers and to change perceptions regarding the appropriateness of the court process in community mediation programs.

**Design:** Targets all parts of the community using training, mediation and group dialogue methods and drawing on NGOs and volunteers.

**Impacts: Most successful in** founding neighborhood justice centers and in handling public and intergroup disputes, thanks to their knowledge of the community. **It was least successful in** achieving financial stability, due to the ebb and flow of federal and foundation funding to support innovations and the transition to local funding support.

**Evidence:** Statistics on the overall growth of community mediation (such as exhibits showing the number of programs begun per year between 1969 and 1995, or displaying the distribution of numbers of volunteer mediators or annual budgets). The report also contains abstracts of the development of particular neighborhood justice centers. Evidence **is generally** very persuasive.

**Other aspects:** A description of the increased interest in the role of community members in resolving conflicts; a general overview of developments; an account of the diversification of dispute resolution services; a presentation of the sources for program design, support, and funding; a summary of studies on the impact of programs on the quality of justice, as well as an outline of major issues confronting the community mediation field.

**Moriya, Akira.** 1997. **Out of Court ADR in Japan** (unpublished).

**Country:** Japan

**Years:** Recent years

**Objectives:** The settlement of disputes in which the government is interested.

**Design:** Targets illegal labor practices and various labor disputes between employers and employees; environmental victims; consumers using adjudication and non-binding methods central and local labor-relations commissions; and reconciliatory commissions for environmental disputes as well as consumer centers.

**Impacts: Most successful in** procedures such as reconciliation or mediation, thanks to the acceptance by the public. **It was least successful in** arbitration, due to the formality of the process.

**Evidence:** A general description. Evidence **is generally persuasive**.

**Other aspects:** This document also reviews experience with ADR in the private sector.

**Objectives:** improved access to legal knowledge in automobile accidents.

**Design:** Targets victims of such accidents by promoting negotiation methods and legal advice centers. These centers are operating mainly as a reconciliatory agent between the victims of automobile accidents and the insurance companies. They also give counsel to the injured parties and recommend a compensation amount when requested.

**Impacts: Most successful in** reconciling the parties, thanks to the informality of the process.

**Evidence:** descriptive; **generally persuasive**. The author emphasizes that, as compared to the court procedure, each ADR procedure is usually assigned more narrowly defined purposes, such as the protection of consumers' interests and the recovery of compensation for victims of car accidents.

**Mowatt, J.G.** March 1992. "Alternative Dispute Resolution: Some Points to Ponder," *The Comparative and International Law Journal of Southern Africa*, vol. 25, no. 1, pp. 44-58.

**Country:** Texas, USA

**Years:** 1987-1992

**Objectives:** Reduce cost and delays; increase satisfaction associated with dispute resolution; involve more of the community in dispute settlement in all kinds of cases, both civil and criminal.

**Design:** Targets the general population using mediation, mini-trial, moderated settlement conference, summary jury trial, and arbitration (settlements are enforceable) methods and "dispute-resolution service organizations" (or "providers"), which may be private profit or non-profit organizations, county dispute resolution centers, or other informal, impartial third parties (some training qualifications required, but they are relatively minimal).

**The program was administered by** State of Texas, and supported/funded by State of Texas.

**Impacts:** It was least successful in establishing ADR-court linkages.

**Evidence:** Is largely theoretical, based on the differences in nature and principles of ADR and court litigation, and generally has some good points and interesting questions and issues.

**Plapinger, Elizabeth and Stienstra, Donna.** 1996. *ADR and Settlement in the Federal District Courts: A Sourcebook for Judges and Lawyers*. Washington DC: Federal Judicial Center and the CPR Institute for Dispute Resolution.

**Country:** Each of the ninety-four federal district courts of the United States

**Years:** 1994 - 1996

**Objectives:** Cost and delay reductions in the nation's 94 federal courts.

**Design:** Targets the behavior of judges and parties using a wide variety of ADR methods and judicial and non-judicial neutrals.

**Evidence:** Detailed program descriptions of each of the ninety-four federal districts as well as comparative tables and overviews.

**Other aspects:** Most of the 94 federal districts have authorized or established at least one court-wide ADR program. Although this very elaborate study is probably the most encompassing sourcebook on ADR in the federal courts, it does not contain any indicators of success or failure, since it is almost impossible at this time to draw any conclusions about the effectiveness of ADR from these ADR caseload figures.

**Price, Richard T. and Dunnigan, Cynthia.** 1995. *Toward an Understanding of Aboriginal Peacemaking*. Victoria, British Columbia: University of Victoria Institute for Dispute Resolution.

**Countries:** Native American communities in Canada and the United States

**Years:** Past ten years, but starts with a detailed account of historical patterns of peaceful inter-tribal and inter-cultural relations in the Canadian and Great Lakes Region.

**Objectives:** Peaceful resolutions in inter-tribal and intra-tribal affairs.

**Design:** Targets Native Americans using peacemaking methods and respected community individuals.

**Impacts:** May be more successful in being more culturally appropriate, due to the use of respected elders as neutrals and the reference to traditional forms of dispute resolution, possible under the informal dispute resolution procedures.

**Evidence:** Both quantitative and qualitative data. Evidence is generally persuasive.

**Rosch, Joel.** 1987. "Institutionalizing Mediation: The Evolution of the Civil Liberties Bureau in Japan," *Law and Society Review*, vol. 21, no. 2, pp. 243-266.

**Countries:** Japan

**Years:** The post-WWII period

**Objectives:** Investigation of human rights violations and promotion of the individual "rights consciousness" (set up under the guidance of Americans and Japanese reformers after WWII) to counter the feared reemergence of totalitarianism in all types of cases (though not to interfere with cases being litigated in the courts or handled by other agencies).

**Design:** Targeted average Japanese citizens using mediation, and to a much lesser extent, the role of ombudsman, in a civil liberties bureau (CLB) and appointed respected citizens and a small professional staff.

**Impacts: Most successful in** providing a forum for resolution of disputes relating to social (or group) rights; offering a variety of forums for dispute resolution; and handling large numbers of cases. Success was due to the costs and difficulties of resolving disputes in the formal legal system; the high status of the commissioners and their strong national network; the strong normative sense of proper behavior the persistence of notions of group and social rights among Japanese; and a tradition of reliance on conciliation to resolve disputes (although in practice the nature of the conciliation process has changed substantially, from enforced to voluntary conciliation);

**It was least successful in** promoting the concept of individual human rights, and resolving the problems of groups that have traditionally been discriminated against, due to the still weak conception of civil liberties and individual rights among Japanese; the reliance on traditional normative systems as a basis for resolution; and the tendency to individualize cases, rather than to try and build a consistent, precedent-setting foundation for changing or advancing conceptions of rights.

**Evidence:** The large number of cases being successfully handled by the CLB. Evidence is **generally** persuasive.

**Other aspects:** First, the authors argue that the low levels of court-based litigation in Japan may not be due to the supposed non-litigious culture in Japan, but to the presence of alternative forums such as the CLB for handling complaints. It is not the number of disputes that is different, but the nature of the agencies for handling them. Second, they also comment extensively on how cultural attitudes toward dispute resolution both shape and are *shaped* by the available institutions—that is, traditional institutions and attitudes have proved both persistent and adaptable, so the CLB could build on them while at the same time changing/improving them. Third, the CLB has no formal/legal enforcement powers, but successfully relies on informal/social means to enforce its decisions. Fourth, the authors also discuss the concern that the CLB individualizes cases rather than working on the basis of consistency and setting broader precedents, and that this may inhibit the growth of law and the development of rights consciousness in the country, delegitimize conflict, and impede democracy.

**Stienstra, Donna; Johnson, Molly; Lombard, Patricia.** January 1997. *Report to the Judicial Conference Committee on Court Administration and Case Management: A Study of the Five Demonstration Programs Established Under the Civil Justice Reform Act of 1990.* Washington, D.C.: Federal Judicial Center.

**Country:** Five U.S. demonstration programs, established under the Civil Justice Reform Act of 1990

**Years:** 1993-1996.

**Objectives:** Experiment in two programs with systems of differentiated case management that provide specifically for the assignment of cases to appropriate processing tracks that operate under distinct and

explicit rules, procedures, and time-frames for the completion of discovery and for trial. The other three districts were instructed to experiment with various methods of reducing cost and delay in civil litigation, including alternative dispute resolution.

**Weiss, Stephen E.; Goldstein, Susan B.** September 1987. "Culture's Consequences in Dispute Resolution," *Dispute Resolution*. Washington, DC: National Institute for Dispute Resolution (NIDR).

**Countries:** Northern Ireland and the Texas Gulf Coast

**Years:** The last two decades

**Other aspects:** The review is brief and general. It basically stresses the significance of different perceptions. The article discusses three types of descriptive models of the negotiation process: universal models, comparisons of cultural model and multicultural models. Based on these models, questions as to the integration into community mediation practice are raised.

### **III. Other Selected Documents**

#### **A. ADR in Developing Countries**

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# Appendix E

## Dispute Resolution Institutional Problems, DR/ADR Solutions and Conditions for Success

This matrix highlights central issues relevant to dispute resolution and potential solutions. While not intended to be a "cookbook" for addressing problems in dispute resolution, the matrix identifies major factors for consideration.

Dispute resolution (DR) institutions and problems	Problems for DR institution users (AID objectives)	Solutions directed at reforming DR institution	Conditions for success of DR institution reforms	Solutions directed at creating ADR institutions	Conditions for success of ADR institutions
<b>Civil Court System</b>					
Low supply of judges/ staff	Access (A) Time (T) Cost (C) Satisfaction (S)	1. Hire additional judges/ staff (Uruguay) 2. Provide adequate salaries/ benefits / working conditions to retain judges/staff	1. Adequate political support for expanding court DR capacity (ideally through cabinet-level leadership and active participation of judges, staff, user reps. and independent experts in capacity planning) 2. Adequate supply of trained/ trainable judges/ staff exists 3. Adequate and sustainable funding available	Provide non-court neutrals through ADR programs (Argentina, Uruguay; compare McHugh (1996: 13) and RAND: ADR impact on court delays not established).	1. Adequate political support exists for institutionalizing non-court neutrals (ideally through cabinet-level leadership and active participation of judicial system DR providers, users and independent experts in ADR development) (Argentina) OR 2. Court system opposition can be reduced by using judges/court staff as ADR staff (Argentina) 3. Adequate pool of trained/ trainable neutrals and staff exists 4. Adequate, sustainable funding for neutrals and staff is available

<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
Low quality of judges/ staff (competence and/or integrity)	S, T, C	1. Retrain existing judges/staff 2. Introduce performance requirements, incentives and monitoring systems (Uruguay, Colombia, Honduras, Philippines) 3. Increase selectivity in new hire s	1. Adequate political support for retraining/performance requirements (ideally through cabinet-level leadership and active participation of judges/staff/users/experts in design of training programs and performance standards) OR 2. Staff opposition can be reduced by offering early retirement/ transfers / outplacement/ grandfathering 3. Adequate pool of trainers /independent assessors is available  4. If integrity is an issue, investigators can be protected and findings can be publicized (Philippines law student Court Watch)	Provide well-trained non-court neutrals	1-4 to left and 5. Adequate pool of skilled trainers is available to train /periodically assess ADR neutrals (Sri Lanka mediation boards)

<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
High fees	C,A	<p>1. Reduce court operating costs (e.g. by simplifying procedures, retraining judges/staff, eliminating redundant judges/staff) and /or</p> <p>2. Offer court services at reduced fees</p>	<p>1. Adequate political support for cost-cutting and fee reduction (cabinet, judge, staff, user and expert participation)</p> <p>2. Court operating costs can be reduced while maintaining /improving DR service delivery and/or</p> <p>3. Adequate and sustainable funding available to subsidize users (possibly through cross-subsidies)</p>	Offer non-court DR services at lower cost (target low-cost services to lower-income users)	<p>1. ADR program can be designed to run at lower cost (e.g. simple rules, "piggy-back" on existing buildings /programs/staff) (Philippines barangay justice) and/or</p> <p>2. Adequate and sustainable funding to subsidize user costs is available (Philippines labor arbitration) (sliding scale can be used for higher income users to cross-subsidize lower-income users)</p> <p>3. If low-cost services are restricted to lower-income users, there are simple and transparent criteria and procedures for deciding user eligibility</p>

Dispute resolution (DR) institutions and problems	Problems for DR institution users (AID objectives)	Solutions directed at reforming DR institution	Conditions for success of DR institution reforms	Solutions directed at creating ADR institutions	Conditions for success of ADR institutions
Complex procedures	T,C,A,S	1. Simplify/ expedite court procedures (Uruguay and Argentina oral procedures, Philippines continuous trials)	1. Adequate political support for simplification (cabinet, judge, staff/ advocates, users, experts) in procedural review 2. Adequate judicial/administrative expertise to simplify procedures while maintaining integrity of rules of action, standing, fact-finding, decision and appeal	Offer simple DR procedures in non-court fora, and educate users on these procedures (neighborhood ADR centers with independent/ volunteer staff in Argentina, Bolivia, Colombia, Costa Rica, Sri Lanka, Taiwan; local government - staffed ADR programs in China, Philippines , Taiwan)	1. ADR program designers can identify potential users 2. Program designers /staff can work with user reps. to assess DR needs and capacities and provide appropriate DR procedures and supporting information 3. Disputes are screened so that only those that can be resolved using simple procedures go to ADR

<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
No specialized neutrals for technically complex disputes such as specialized commercial (intellectual property) administrative (taxation, product/occupational safety), constitutional cases	S,T,C	<ol style="list-style-type: none"> <li>1. Recruit current judges/staff for technical training and/or</li> <li>2. Establish new judicial venue(s) for specific types of cases</li> </ol>	<ol style="list-style-type: none"> <li>1. Clear rationale for public role in providing specialized DR (e.g. for administrative cases, need for appeal of administrative agency decisions to independent authority)</li> <li>2. Adequate user demand /political support to justify specialized fora</li> <li>3. Adequate pool of motivated and trainable judges/staff available</li> <li>4. Adequate and sustainable funding available (possibly through surcharges on users of specialized fora)</li> </ol>	Provide non-court fora for these disputes, and provide neutrals with appropriate technical expertise (Philippines and Dom. Rep. labor arbitration; Philippines land title; Thailand commercial disputes; Uruguay commercial disputes)	<ol style="list-style-type: none"> <li>1. Adequate political support for institutionalizing non-court fora for these disputes (Blair et al. (1994) cite lack of business support in Uruguay)</li> <li>2. Adequate pool of neutrals with process expertise can be trained to deal with technical issues and/or</li> <li>3. Adequate pool of technical experts can be trained in ADR process skills</li> <li>4. When technical experts are used as neutrals, ADR neutral selection procedures can be designed to minimize potential conflicts of interest (e.g. neutrals must disclose; parties must agree on neutral)</li> </ol>

Dispute resolution (DR) institutions and problems	Problems for DR institution users (AID objectives)	Solutions directed at reforming DR institution	Conditions for success of DR institution reforms	Solutions directed at creating ADR institutions	Conditions for success of ADR institutions
Location bias (e.g. lg. cities or central locations within cities only)	A.C.T (for location-disadvantaged groups)	Site court facilities (for filing and hearings) in under-served areas	<ol style="list-style-type: none"> <li>1. Adequate political support (including current and potential users from under-served areas)</li> <li>2. Adequate and sustainable funding for siting and operating new facilities</li> <li>3. Adequate pool of judges/staff (with preference for residents of under-served areas)</li> </ol>	Provide non-court DR centers/neutrals in areas where disadvantaged groups are concentrated (US neighborhood ADR centers; Colombia casas de justicia; Philippines barangay justice; Sri Lanka mediation boards; Argentina neighborhood justice centers)	<ol style="list-style-type: none"> <li>1. Adequate political support for targeting <b>ADR</b> services to disadvantaged group(s)</li> <li>2. ADR program designers can identify disadvantaged groups, assess needs, select locations, procedures and neutrals to meet group needs</li> <li>3. Adequate pool of qualified neutrals willing to work <b>in</b> under-served locations</li> </ol>



<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
Culture bias (e.g. court uses only one language in multi-lingual society; courts refuse to recognize traditional/informal DR systems of some cultural groups)	A.C.T.S (for disadvantaged groups)	<ol style="list-style-type: none"> <li>1. Revise court procedures and materials, retrain staff and recruit new staff from under-served cultural groups (Malaysia DNU)</li> <li>2. Give legal recognition to in formal/traditional DR practices (e.g. require courts and law enforcement agencies to recognize and enforce agreements reached using traditional/informal DR procedures)</li> </ol>	<ol style="list-style-type: none"> <li>1 and 2 to left and</li> <li>3. Redesign of court procedures and material, staff selection and training actively involves representatives of under-served cultural groups</li> <li>4. Laws/ rules can be written to support traditional/ informal DR practices without "judicializing" them</li> </ol>	<ol style="list-style-type: none"> <li>1. Provide non-court fora, procedures and neutrals that meet needs of under-served cultural groups (Ecuador)</li> <li>2. Give legal recognition to these new fora and procedures (Philippines indigenous people's claims)</li> </ol>	<ol style="list-style-type: none"> <li>1 and 2 to left and</li> <li>3. ADR design phase actively involves representatives of under-served cultural groups in needs assessment, procedural design, neutral selection and training</li> <li>4. Laws/ rules can be written to support ADR fora and procedures without "judicializing" them (India lok adalats vs. Sri Lanka mediation boards)</li> <li>5. ADR users maintain right of appeal to formal system (n.b. McHugh (1996: 24) points out sharp debate on this issue)</li> </ol>

<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
<p>Social, economic and /or cultural imbalance in power of parties in class of disputes (e.g. women in domestic abuse cases, low-income debtors in collection cases, low-income tenants/squatters in eviction cases, indigenous people in land rights cases; private parties in disputes with public regulatory agencies)</p>	<p>S.A (for disadvantaged parties)</p>	<ol style="list-style-type: none"> <li>1. Change laws and procedures to increase legal rights/ protections for disadvantaged parties</li> <li>2. Provide counseling/ social services/ legal advocates to disadvantaged parties</li> </ol>	<ol style="list-style-type: none"> <li>1. Adequate political support (including mobilization and involvement of representatives /advocates for disadvantaged groups)</li> <li>2. Changes in laws/ procedures are supported by legal education/ and broader social programs to reduce underlying socio-economic and cultural disparities</li> <li>3. Adequate and sustainable funding for programs targeted at disadvantaged groups</li> </ol>	<p>Create non-court fora and procedures that require voluntary settlement and minimize ability of more powerful parties to coerce settlement (Nepal Women's legal services)</p>	<ol style="list-style-type: none"> <li>1. Adequate political support (including mobilization and involvement of disadvantaged groups' representatives/ advocates)</li> <li>2. Safeguards against coercion are adequate (very difficult to assess--questions raised by Whitson (1992) about women in India lok adalats, and by Hansen et al. (1994) about debtors in Sri Lanka mediation boards)</li> <li>3. All parties retain option to seek court judgments if unable to reach/ keep voluntary agreement (n.b. McHugh (1996: 24) points out sharp debate on this issue)</li> <li>4. Adequate counseling and support for disadvantaged parties</li> </ol>

<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
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**Civil advocates**

Low supply and/or high cost	A,C,T	<p>I. Increase supply of advocates by increasing access to legal education (e.g. establish new law schools, subsidize tuition (possible sliding scale/cross-subsidy), reduce time required to graduate), and/or reducing licensing requirements</p> <p>2. Reduce advocate costs by increasing supply, simplifying procedures (see above), requiring pro bono work, regulating fees</p>	<p>1. Adequate political support</p> <p>OR</p> <p>2. Phased introduction (e.g. first simplify procedures, then if necessary increase number of law graduates, then if necessary reduce licensing requirements, and only then regulate fees if still necessary)</p>	Reduce need for advocates through design of ADR procedures; and/or provide individual counseling in ADR forum	<p>I. Adequate political support exists to reduce demand for advocates</p> <p>OR</p> <p>2. Advocates' opposition can be reduced by using them as ADR staff</p> <p>3. ADR procedures can be designed to substantially reduce need for advocates (e.g. case screening, simple procedures, counseling for parties by ADR staff, ADR users do not waive right to seek legal advice or go to court)</p> <p>4. Adequate pool of ADR staff available to provide individual counseling</p> <p>5. ADR procedures designed to maintain parties' confidentiality (e.g. staff who counsel a party do not act as neutrals in that case)</p>
Low quality	S,T,C	Improve legal training, introduce performance requirements and monitoring systems (Philippines alternative law schools)	<p>1. Adequate political support</p> <p>2. Changes in legal training / performance requirement linked to improvement in legal procedures (simplification, codification etc.)</p>	Provide well-trained ADR counseling staff	1-3 above and adequate pool of skilled trainers to train/periodically assess ADR staff

<b>Dispute resolution (DR) institutions and problems</b>	<b>Problems for DR institution users (AID objectives)</b>	<b>Solutions directed at reforming DR institution</b>	<b>Conditions for success of DR institution reforms</b>	<b>Solutions directed at creating ADR institutions</b>	<b>Conditions for success of ADR institutions</b>
Location bias	A.C.T	Create incentives and requirements for advocates to practice in under-served areas (e.g. in exchange for tuition subsidies)	As above under civil court system location bias	Site ADR centers/staff in under-served areas	As above under civil court system location bias
Culture bias	A.C.T.S	Recruit law students from culturally under-served groups, give incentives for advocates to serve culturally under-served groups, train advocates to be aware of and responsive to culturally-specific DR norms and behaviors	As above under civil court system culture bias	Recruit ADR staff from the parties' culture and /or train them to be aware of and responsive to culturally-specific DR norms and behaviors	As above under civil court system culture bias