

Ukraine: NGO Mediation of Civil and Commercial Disputes Key Points

Description: As Ukraine emerges from the Soviet system and attempts to privatize, build civil society, and move to reform its justice system, a well-functioning ADR system may help further these goals. USAID is supporting an NGO, the Ukraine Mediation Group (UMG), in its work mediating commercial disputes as well as a broad range of civil disputes, consistent with strategic objectives aimed at legal and economic reform and increased democratic participation. USAID recently began to support the UMG, which had previously secured funding through grants from other foundations and organizations.

This case profiles the UMG's mediation program, which is essentially a network of mediation organizations now in four cities: Donetsk (the first), Lugansk, Odessa, and a new office in Kiev. UMG trains mediators, offers a clearinghouse for those seeking mediation (matching mediators with clients), and consults with enterprises. Although commercial and labor disputes, as well as disputes related to privatization, will eventually be the target of UMG efforts, UMG will take any type of civil case. Mediators in the network are trained and certified by the UMG. The program is still relatively small: from January 1996 to March 1997, the three active offices accepted a total of 61 applications for mediation, and 26 were actually mediated.

Goals: UMG's stated goal is "creating conditions for peaceful work and the stable development of national industries, the essential factors in building a healthy economy." This goal is consistent with a number of USAID's SOs, with the hope that the UMG's programs will help expedite the process of privatization and help move other economic restructuring projects forward more effectively. Potential users are the businessmen and others involved in commercial disputes who are loath to use the court system, which is plagued by delays and high costs.

Design: The mediation program follows developed country mediation models. Outreach is through UMG's collateral activities, such as university-based seminars on ADR. The greatest design challenges include developing monitoring and evaluation in a society fearful of providing the necessary information, as well as financial sustainability.

Operation: The program provides extensive training of mediators, although quality control is difficult due to the problems in monitoring mentioned above. Current laws severely limiting permissible sources of NGO funding have spawned insufficient and unsustainable funding strategies, and laws must be changed to permit fee for service charges. The relationship between ADR and the court system must also be clarified through legislation.

Impact: UMG's mediation program has great potential to impact the commercial sector, as well as developing civil society, particularly as interest and enthusiasm for it grows. It must first overcome significant legal obstacles in securing sustainable funding, as well as cultural obstacles to open sharing of information and effective monitoring of mediations.

UKRAINE CASE STUDY

I. DESCRIPTION¹

A. *Program Origins and Goals*

Emerging from the oppressive Soviet system, it has been a challenge for Ukrainians to respond to the new policies of a democratic society. Generally speaking, Ukrainian citizens are notably cynical and apathetic about their ability to effect change in government- especially the political and judicial systems. These attitudes manifest themselves in many ways. People are reluctant to share information about themselves or their programs, as they are uncertain as to how that information will be used. This in turn impacts the establishment of new processes like mediation, since suspicion and ignorance prevent clients from using the system. These attitudes also impact the design of mediation systems, as mediators try to accommodate the extremely cautious response of potential clients. As a result, there are few statistics shared with strangers as to numbers and kinds of cases mediated and even less data on client satisfaction and mediator performance.

In this climate, Mr. Nikolai Borisov has started a program to introduce a means of alternative dispute resolution to the citizens of Ukraine. Mr. Borisov began his work in ADR under the Soviet government. He is trained as a psychologist and he, along with several colleagues, was asked to work with miners in the coal industry in the early 1980s to develop methods for resolving conflicts within the industry. In 1989, when social enterprises were permitted to establish themselves, Mr. Borisov and his colleagues founded an organization called the Donetsk Scientific Applied Association (the "Psychological Center").

Mr. Borisov's past experience with the mining industry led the government to seek his assistance when strikes broke out in Donetsk in 1989. These were some of the worst strikes that had ever been experienced in Ukrainian labor history. Borisov invited three US mediators from the American Arbitration Association (AAA) visiting Ukraine at the time to assist him. Together they offered three seminars to strike participants on mediation and conflict resolution skills.

Mr. Borisov was greatly influenced by this experience. Until now, the Psychology Center had been teaching people to solve their own problems. The visitors from the AAA introduced the idea of having a third party intervene in disputes. Borisov found this to be a "simple and effective" means of resolving conflict, and then began practicing mediation and attempting to build his skills.

In 1993, during a debate over a new labor law, the trade unions threatened to strike and Borisov was asked by the government to mediate. Borisov invited the AAA back to Ukraine to assist him and they successfully mediated an agreement. The idea for a network of mediation centers grew from this experience and was ultimately discussed at a seminar offered to many different parts of the government, trade unions, etc., in Kiev later in 1993. The Soros foundation gave \$2,000 to develop the project and the Ukraine Mediation Group (UMG) was born.

Since 1993, the Psychological Center has received a succession of grants (Soros, Mott, Carnegie), portions of which have been dedicated to sustaining the UMG. Search for Common Ground (SCG) is the most recent American NGO to offer support. SCG began working with UMG in 1995 and was instrumental in negotiating the grant that UMG received from USAID in August 1997.

¹ Conducted by Elizabeth McClintock, CMG Consultant, December 1997.

B. Program Design and Operation

The UMG is really an umbrella organization for a network of mediation organizations. At present there are four regional offices: Donetsk, Lugansk, Odessa, and Kiev. The first three have been in operation almost three years and the Kiev office was registered in November 1997. The UMG is involved in training mediators, offering a "clearinghouse" for those seeking mediation (matching mediators with clients), and consulting to enterprises who wish to set up systems within their organizations to deal with conflicts before they erupt. The number of staff varies at each office but in all cases, it is quite small. For example, in Donetsk there are three permanent staff (an accountant, a project assistant, and the executive director) and approximately 60 volunteers, 15 of whom are very active.

The UMG has a council consisting of representatives from each of the four regions. It meets once every six months at one of the regional offices. They discuss policy affecting all four regional groups and generally keep one another informed of developments. In addition, they are linked by e-mail. The Psychological Center is responsible for finding grants to support the UMG and for developing new project ideas.

At present, the UMG is willing to take any kind of case, including family disputes, labor disputes, commercial disputes, consumer disputes, property disputes, and landlord/tenant problems. However, the impetus for the founding of the organization and the real need in Ukraine has meant that commercial disputes, disputes resulting from privatization, and labor-management disputes will eventually be the target of the efforts of UMG. In offering funding, USAID also encouraged them to target these kinds of disputes as they most closely correspond to USAID's strategic objectives.

People learn of the UMG's services by word of mouth, through the members of the

group, through recommendations from those who have attended the trainings or who have used the group's consultation services, or through seminars held to raise awareness about mediation and the mediation group. For example, UMG might hold a workshop for staff of an enterprise that is being privatized, or for the teachers, students, and parents of a particular school. A small number of cases are referred to the UMG by "enlightened" judges who are cognizant of the mediation group and the benefits of mediation.

Each mediation group has their own intake process. This may change over time. When the seven mediation groups are established (three more regions will receive funding under this USAID grant), the UMG council hopes to work out a common set of intake guidelines. In general, however, disputants register at the regional office with the case coordinator. The coordinator gathers the data about the case and then contacts the other party (or parties) to determine if they want to engage in the mediation process. Part of the coordinator's responsibility is to explain the mediation process, fees, etc. This is done in a private caucus-if mediation is agreed to, then the final fees are often discussed jointly. If a party does not wish to participate, they are asked to put their rejection in writing and the case will be closed.

Once the coordinator has determined that they will take the case and the parties have agreed to mediation, they ask the initiating party to choose a mediator from their list. Information is included on that list such as how many cases the person has mediated, what kinds of cases, etc. A date and place is then set for the mediation. Mediations never happen in the regional offices but at some other venue (this is due in part to the fact that the office facilities are usually quite small).

Between January 1996 and March 1997, the three regional mediation groups accepted a total of 61 applications for mediation. Of these, 26 were actually mediated and 25 of those resulted in settlement. Of the remaining

applications, eight went to court; three have been continued; five were resolved during case administration; five were dropped; and in 14 cases, the second party refused mediation.

The cost of the mediation depends on the case. If the case is about money (, a dispute between a customer and an enterprise that can be valued) then the mediator will get some percentage of the settlement, between 1% and 7%. In general, mediation is free for small cases for the elderly poor (, an old woman that is having trouble with her neighbors). All the mediation groups interviewed are working towards a fee for service system and targeting commercial clients. The Psychological Center generates fundraising ideas for the regional mediation groups and also develops other project ideas. Thus far, they have received grants from \$1,000 to \$500,000 for the Ukraine Mediation Group project.

Ukrainian legislation dictates that NGOs can only get money from members of their organizations or from grants; the mediation groups are NGOs. This legislation is being reviewed and the new draft law may change the status of NGOs. It is unclear at present what will happen. The Psychological Center is a commercial center and therefore it can charge for its services. It is the mediators who get paid, not the mediation group. The mediators may offer the mediation group a "charitable donation," because it would be against the law to have a formal agreement requiring the mediators to give the mediation group a certain percentage of what they make on a particular mediation.

There is no financial support from the government for the mediation groups and political support is building slowly. Some regional mediation groups have been more aggressive at bringing the regional government on board than others. And the national government is supportive of ADR in principle, and even has an office that serves as an ombudsman for labor disputes. They also participated in a workshop that the UMG group organized in 1993. In practice, however, there still seems to be some suspicion around

independent third parties intervening in conflict - especially conflict that involves the government or trade unions.

Agreements are only recorded if the parties ask that they be written down. Mediators will help craft the agreement, if asked. The UMG council is going to come up with some guidelines for crafting such agreements for the mediators to follow based on input from each of the regional groups. It takes anywhere from three days to six months to settle a case. Divorces tend to be resolved more quickly. There are not yet any statistics regarding compliance with settlements or the satisfaction of parties. The DRMG intends to begin a 3-6 month follow-up program during which the parties will be contacted and interviewed about the success of the mediation process, their opinions about the mediator, and compliance with the agreement.

Each regional organization is responsible for distributing information about themselves to advertise, recruit members, potential mediators, etc. Potential mediators are generally recruited from a pool of members of the mediation group who have volunteered on particular projects, and individuals from the community who have participated in the seminars and lectures offered at the university. Anyone can apply to be a member of the mediation group. It is characterized as a social organization and the annual fee is ten dollars. Organizations can also become members of the UMG and their membership fee varies depending on the size of the enterprise.

All mediators in the network have gone through a training and certification process offered by the UMG. Fourteen mediators are certified in the UMG, seven of whom are in the Donetsk database. The training consists of several parts: first they participate in four workshops which account for approximately 160 hours of in-house training, followed by a two-month practicum with the supervision of a mentor. Then they conduct two mediations. Following this training process, which takes approximately one year, the candidate goes through a certification process. A panel

comprised of some of the UMG council members, the mentor, and other mediators interviews the candidate, reviews the results of the mediations he or she conducted and, if merited, issues a certificate.

The mediation group also offers a one-time consultation on approaching problems, usually if a client is unable to pay for mediation services. The mediation group does not advertise this because they are concerned that others will come seeking only consultation and not the full mediation service. This one-time consultation is distinguished from the consulting services that the mediation group is offering to enterprises, especially those going through the privatization process. In the latter, the group will act more like a management consultant and work with the client to set up an internal dispute resolution system and charge for this.

At present, there is very little data on client satisfaction with the mediation process or with mediators themselves, which makes it virtually impossible to determine the impact of the mediation program overall. In addition, very little evaluation or monitoring of agreements and/or mediators has been conducted. The implications of this for the program will be discussed in greater detail in the analysis section.

II. ANALYSIS

A. *Setting Program Goals*

USAID program officers did not design the ADR project in Ukraine that they are currently funding. It was driven by the Psychological Center with the help of Search for Common Ground. Therefore, USAID has had little impact on the stated goal of the UMG: *"Creating conditions for peaceful work and the stable development of national industries [which are] the essential factors in building [a] healthy economy. [The] Ukrainian Psychological Center contributes to [the] Ukrainian Mediation Group project, a system of training and supervising of independent practicing neutrals,*

*educated and certified for mediation, arbitration and negotiation of labor disputes."*² At the same time, the size of the USAID program in Ukraine and the extent, in particular of the Democracy and Governance program, has meant that this ADR program complements several of USAID's strategic objectives.

Of particular interest are SO 2.1-*Increased, better-informed citizens' participation in political and economic decision-making*, and SO 2.2-*Legal systems that better support democratic processes and market reforms*. Of associated interest is SO1.3- *Legal, regulatory and political environment conducive to sustainable growth*. It appears that although ADR may not fit within any one strategic objective, nonetheless as Ukraine struggles to privatize, build a civil society, and move to reform its justice system, there are many ways in which a well-functioning ADR system might help USAID reach those strategic objectives. More specifically, USAID officials indicated that they hope the mediation program will help to expedite the process of privatization and help to move other economic restructuring projects forward more effectively and efficiently.

When Nicholai Borisov and Scott Adams of Search for Common Ground made their presentation to a USAID review committee for an unsolicited grant, there was some initial uncertainty on the part of USAID officials as to whether or not this program would be a good fit.³ Of particular concern to officials was whether or not funding a mediation program might undermine legal reforms already being supported

² "Program of Intensifying Human Resource in Donbass through Support and Development of Democracy in Labor Relations". Donetsk Scientific Applied Association, ("Psychological Center"), Donetsk, Ukraine 1994.

³ The committee was composed of USAID officials from the Democracy and Governance, Privatization, Economic Restructuring units. Interview, 12 /5/97.

by USAID. These fears were quickly allayed when the presenters were able to demonstrate that the intended target audience for the mediation system was not currently using the judicial system-this would include businessmen and others involved in commercial disputes who are loath to use the court system because of the delays and the cost. Consequently, while the other members of the review panel decided against sharing the costs of the program (other than DG), they expressed considerable support for the concept of ADR-and mediation in particular-and its potential fit with their own projects.⁴

B. Relation to the Courts

The nascent mediation system is shaping up to be more of a complement to the court system rather than a substitute or a catalyst for change. Because mediation is such a new idea, it is hardly used as a substitute. At the same time, it is finding advocates in businessmen and others who find the courts too time-intensive and incredibly inefficient. If a few successful commercial mediations are concluded and publicized, the willingness of entrepreneurs to turn to mediation as a means of resolving their disputes will greatly be enhanced

Currently, there is very little legislation governing mediation in Ukraine. As a result, the relationship between the mediation system and the court system lacks clarity. While this does not currently present a problem, it will become

⁴ In particular, the privatization officials identified several areas in which they envisioned ADR skills might be used, e.g., training trade union officials involved in the restructuring of enterprises in facilitation skills or training those involved in the enterprise land sales (formerly state-owned enterprises selling off parts of their property) in process design and mediation skills. Interview, 12/4/97.

⁵ "It is understandable that an effective alternative to the court system at least in civil cases will definitely find a market in Ukraine, especially new businessmen who do not have time and wish to deal with our legislation, but are in a hurry to make money." Op cit. Kiselyova, p.3.

an issue in the future. As mediation is legislated (which it will be-it is only a matter of time according to the government officials interviewed), clients will need to have a clear understanding of what their rights are with respect to choosing mediation over litigation. At present, a major drawback in the development of a constructive and efficient relationship between the two systems is that it is illegal to negotiate or mediate settlement to a case once it has been filed in court. If the parties wish to settle outside the auspices of the court, they must withdraw the case and forfeit their filing fee. The lack of coherency in this policy may cause clients to shy away from mediation and it will certainly undermine the potential effectiveness of mediation as a means of resolving disputes that could easily be settled.

However, there is enthusiasm for the judicial and mediation systems to be more closely linked. Interviews with a judge from Donetsk indicate that the younger generation of justices is excited about the possibility of mediation and perhaps even the establishment of a court referral process for civil suits. This judge indicated that mediation had the potential for resolving many of the civil suits that come before her far more satisfactorily for the parties than do the courts. In fact, she is participating in the training offered by the Donetsk group in order to improve her skills at dealing with disputants in court. Unfortunately, older judges continue to express resistance to the idea of mediation, as they contend that mediation has no legal basis in Ukraine.

C. Political, Cultural, and Financial Factors

In addition to its relationship to the court system, there are several other factors that impact the future growth and sustainability of a mediation system in Ukraine. First, political support, which is critical for the survival of the mediation programs, is building slowly. Depending on the location of the regional office, support has been gained at various levels of government. From Kiev, for example, the UMG has the tacit support of the national government

and several government officials have participated in training programs. In Lugansk, efforts have been made to build a constituency within the oblast, or regional government circles. This government support is necessary if legislation conducive to an effective mediation program is going to be written. At the same time, Ukrainians remain distrustful of the government and too much government intervention may kill the program. This is especially true if the government were to be overly involved in the administration of a mediation program.⁶ Borisov, for example, maintains that mediation should be within the purview of independent organizations--not government. Nonetheless, without the political support to generate the momentum for legislation to operate legally, the mediation groups will not be able to expand as rapidly as they might.

Another factor that will influence the success of a mediation program in the Ukraine is the need to overcome Soviet-era norms and culture. While the use of third parties to resolve disputes is not unheard of in Ukraine--indeed, the Communist Party committees used to be charged with resolving disputes in the community--the voluntary and consensual process advocated by the UMG is very new. The acceptance of this idea requires an attitudinal shift by an individual and his or her perception of their ability to effect change in their world, which is nascent at best.⁷ In addition, there is a tension

⁶There are two government "sponsored" mediation programs learned of during the visit: one run out of the office of the President and a second run out of the Ministry of Labor. The President's initiative is not well-thought of simply because it is associated too closely with government (and hence susceptible to corruption). The MOL efforts have met with some success, partly due to a limited mandate. The MOL officials interviewed indicated that the creation of a mediation system would be a positive development in Ukraine and that the government should support the efforts of independent mediation groups. interview, 12/4/97.

⁷ "[From] the absence of belief in rule of law in people's minds emerged the disbelief in universal ground for the recruitment of quality mediators.

between the concepts of transparency and confidentiality: keeping the substantive issues in mediation confidential while sharing information about the mediation process itself. An example of this is the underdeveloped monitoring and evaluation process. The process is extremely problematic and as yet no systems are in place to gather data on the quality of either the process or the mediators. This largely results from people's attitudes towards information and how it is used. In general, they are reluctant to share details of the mediation process, to say nothing of giving an opinion of the mediator, as they have no confidence that that information might not jeopardize them at a later date. Unfortunately, without this information, the credibility of the system may ultimately be compromised.

As factors in the success of Ukraine's mediation system, human and financial resources will be somewhat less significant than those mentioned above. First of all, Ukraine has an extremely well-educated population, which will greatly affect how the concept of mediation is popularized. Indeed, there are many options available to those involved in the advertising and marketing of mediation, given the high rates of literacy and Ukraine's relatively well developed access to technology. This will be especially important in generating a client base for mediation services. With regard to generating a cadre of individuals from which mediators can be recruited, Ukraine's human resources also make this a manageable challenge. Thus far, there has been a very positive reception of the concepts of mediation at universities and law schools where courses and lectures have been offered as well as in the commercial enterprises where the DRMG has done consulting. These make for fertile

fairness and justice and consequently the disbelief in any form of fair resolution ... The main reason that mediation as well as other new democratic institutions may not work within the transitional system is that having lost faith in prior institutions, people do not understand or have confidence in new, democratic institutions." **For and Against Mediation in Ukraine**, by Tatiana Kiselyova, Donetsk State University .

Financial resources present more of a challenge. Until legislation is changed to permit NGOs like the UMG to generate income, they will depend on charitable donations (i.e. membership dues), contributions from mediators, and grants from outside organizations into the foreseeable future. The UMG seems to be spending the money they receive wisely and are accomplishing a lot for the relatively small investment made by donors. Even the USAID officials expressed that this is a "fairly cheap investment" for a relatively high return

An encouraging sign for the financial sustainability of the mediation program is the move towards a fee-for-service system. Not only does this seem inevitable, it is even expected. Certainly, this will make it possible for individual mediators to sustain themselves -at present, individuals can get permission from the government to set up as a small business but those individuals often do not have the resources to do the accompanying advertising, marketing, and educational outreach that is necessary to keep them afloat. As for the mediation groups, a change in the legislation will impact their ability to sustain themselves by charging clients and selling training and other services.

There are several program design factors which contribute to the potential success of the mediation program in Ukraine, the most important of which is probably the strength of the local partner and its commitment to the idea of making a mediation system work. While the concept of the UMG has been influenced by input from the American Arbitration Association and Search for Common Ground, it is really Borisov's commitment that will ensure the longevity of the program. This is especially true, given that the mediation program will succeed

⁸ The overall budget for Democracy and Governance programs in Ukraine is approximately \$15 million. Of this, \$500 thousand has been allocated for the Ukraine Mediation Group. The UMG is the only ADR program independent of those within the judicial reform program that is being funded by USAID in Ukraine.

almost *in spite of* a lack of cultural familiarity with this particular form of third party intervention. The UMG was developed by people who have experience in mediating labor disputes in the Soviet and post-Soviet environments and it is grounded in a cultural reality that cannot be readily replicated by outsiders.

D. Impartiality/Neutrality of Third Parties

Another program design issue confronted by the UMG is that of neutrality. In the Ukraine, it is expected that bias will play a role in any decision that is reached in a problem-solving endeavor and that the parties will not have control, certainly not full control, over the process. In addition, public perceptions of the justice system coupled with the public's reluctance to embrace new ideas make the concept of neutrality a particularly difficult one to disseminate. The UMG and its regional counterparts have taken steps to introduce the idea of neutrality into the vocabulary of their potential clients as well as to the mediator candidates. This is especially clear in the training process.⁹ The style of mediation that UMG advocates is one in which the client has complete control over the process, especially over the potential solutions that are generated in that process. The importance of neutrality is emphasized, particularly the clients' perception of that neutrality. There is also consistency in

⁹ "The answer to this point probably is inherent in the process itself. First, a mediator, being or attempting to be impartial and objective (that is the main requirement of the procedure) should have undoubted (sic) trust from both parties. Second, a mediator should have a strong public image that will attract clients, but having made a mistake once he will be refused this image probably till the end of his/her days, regardless of any formal punishments imposed by professional organizations and codes of conduct. Third, the technique of mediation itself makes no sense for bribing, since any party may reject a mediator without any explanation at any moment it suspects anything wrong. The process is completely voluntary, and the most important aspect of the process is that mediator has no power to decide anything, so it is futile to bribe mediator." Op cit. Kiselyova, p.5.

how all UMG mediators are trained, thus ensuring that different styles of mediation, and hence differing concepts of neutrality, are not being taught and implemented.

E. Outreach and Education

A critical component in the program design process has been, and will continue to be, outreach and education. This is true for both attracting clients and for recruiting mediators. The regional mediation groups are struggling against suspicious attitudes towards third party intervention, especially intervention that gives the parties control over the process. While this will be a challenge, the problem has been identified and it is being addressed in many ways. Funding of these efforts is an issue for the regional organizations and they are trying to be innovative as to what media and other educational vehicles they use to publicize mediation. In Donetsk, for example, the DRMG offers seminars, gives lectures at the local university and law school, encourages judges to participate in the training, and relies on word of mouth through its volunteers. In Lugansk, the regional mediation group is using a wider range of media to reach the population and in Kiev, the group has developed plans to target trade union and government officials with informational seminars.¹⁰

¹⁰The Lugansk Regional Mediation Group has been more innovative in its advertising and awareness raising efforts. In order to advertise their mediation services better, they have joined with other agencies to form a coordination council of social organizations in the Lugansk region. These other organizations (i.e. family planning programs, the society of psychologists, etc.) are helping to spread the word about mediation and the mediation group. In addition, the LRMG has established a relationship with several newspapers and articles have been written about the activities of the LRMG and the mediation committee at the plant. The LRMG also arranged to have the final day of a three-day seminar on mediation televised in order to publicize their work.

F. Monitoring and Evaluation

A final piece of the program design process is the monitoring and evaluation system. At the present time, there are virtually no systems in place for monitoring the performance of mediators, monitoring compliance with agreements, or judging client satisfaction. The UMG intends to develop a follow-up protocol for the purposes of gaining information about compliance and to determine client satisfaction, but that has not yet been completed. The difficulty lies in attitudes towards information sharing—according to the executive director of the UMG, many participants in the process have expressed a lack of willingness to be contacted following mediation. This largely seems to be due to confusion about what kinds of information will be collected for the evaluation. The fear seems to be that information about the substantive outcome of the case will be sought, thus making clients nervous about participating in the process. USAID and the UMG are now negotiating evaluation guidelines that seek to highlight process issues, not substantive ones.

Given that the program designers are facing a number of challenges as they implement the mediation program, the issues of monitoring and evaluation seem even more critical. Without some means of getting feedback from clients as to their impressions of the process and the quality of the mediator, it will be very difficult to maintain the credibility of the system and indeed, the entire concept of mediation. It will also be difficult to make mid-course corrections in the training in order to improve the quality of the mediators or to respond to the needs of the client populations. The UMG's ability to attract donors may also be compromised, as donors generally like to see a clear system of measuring client satisfaction in place.

At the same time, as a system is developed, the designers will have to work within the parameters of the culture. There may be other means of collecting data and disseminating information about mediators that do not overstep

cultural bounds or threaten the sustainability of the system. The test will be the success of the monitoring and evaluation system that the UMG is currently developing.

III. ASSESSMENT

The mediation program in Ukraine is relatively new and is operating in a dynamic, changing culture. As such, there are many challenges that must be overcome for the program to succeed. There are three areas which will be critical to the success of the program: the government support that mediation and other ADR programs receive; the cultural attitudes towards new ideas, especially those that involve the sharing of information; and the quality of monitoring and evaluation systems. Without government support, the mediation program will operate on the margins of newly emerging judicial and economic cultures. At present, it is incredibly difficult for the regional organizations to build capacity or infrastructure because of the lack of appropriate legislation.

A second area which will impact the success of the program are cultural attitudes. In a sense, if it is to succeed, the UMG will do so *in spite of* prevailing attitudes. There are other factors that will drive the success of the program. These include the expressed needs of entrepreneurs for some access to ADR, the needs of enterprises which are privatizing to have some internal means of conflict resolution to deal with the resulting social upheaval, and general frustration with an ineffectual justice system. USAID and other donors should look for strong local partners to ensure that these cultural attitudes are addressed via informed project designs that are rooted in the cultural realities on the ground.

Finally, the lack of a monitoring and evaluation system is an important drawback to the current system, making it very difficult to maintain the credibility of mediation as an effective means of conflict resolution. In addition, the reputation of the program may suffer because there are no readily available means to discipline mediators who behave

inappropriately, marketing and advertising will be less credible because of a lack of hard data on compliance rates, and there will be no means of feeding client evaluations back into the system. This being said, a system is being developed and it remains to be seen how successful the UMG will be in making that system operational.

Despite these drawbacks, the mediation program has a lot of potential. There are three factors which will contribute to the UMG's success: the quality of available human resources; the potential for financial sustainability; and perhaps most importantly, innovative approaches towards the kinds of cases targeted, the kinds of services offered, and marketing strategies. As mentioned before, Ukraine has a very well-educated population that will provide an excellent pool of potential mediators. A well-educated client base also means that the advertising and marketing will be made easier. Perhaps most importantly, there is a profound sense of commitment and enthusiasm on the part of the founder and those who work in the regional organizations to both the concept of third party intervention and to educating Ukrainians about ADR.

The mediation program in Ukraine is moving towards a fee-for-service model that will greatly enhance its sustainability. The interest of young, enterprising entrepreneurs in ADR, and their apparent willingness to pay for the services, bodes well for the program's financial future.

Finally, the UMG is very innovative in several key areas. First, the regional groups are attempting to meet a stated need within the commercial sector. At the same time, they are not limiting themselves to those cases initially so that they might build their skills and popularize the idea of mediation. Second, the UMG is expanding beyond simply offering mediation services to individual clients. The consulting services, seminars, and courses offered at universities and law schools are providing much needed revenue and exposure to all of the regional groups. Third, the groups are targeting some very specific audiences to market the idea of mediation. They have accessed trade unions in

Kiev as a means of disseminating information about mediation and the other services of the organization and are using the privatization process to access large, state-owned organizations. This marketing strategy will help reach a great number of the target audience.

This program could potentially have collateral impact on government processes, both in terms of legislation about ADR and in terms of influencing reform in the court system. Admittedly, that may be a long way off, but there is great impetus to find more efficient means of resolving conflict than what the courts currently offer. There also seems to be potential to influence how government operates. In Lugansk, the regional government is on board and has even asked for training for a government ombudsman. The same could be done on the national level, continuing to target officials like those in the Ministry of Labor to include in training and other seminars.

Another impact that the mediation program might have is contributing to improving conditions within Ukraine's industrial sector. It is a sector that is experiencing extensive change and the mediation groups are providing a wide range of services that could make that transition smoother. The UMG mediation program's success could also spur interest in other potential uses of ADR (especially mediation) in connection with other USAID projects, such as those linked to privatization of state-owned enterprises. Lessons from the UMG experience are especially significant as USAID thinks about the kinds of programs it wants to support and the relatively good return made, to date, on the investment in ADR.

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