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COURTS AND ADR:
MANY WAYS, ONE DESTINATION AND AN IMPERATIVE TO WORK TOGETHER

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Introduction

1. For many decades if not centuries, the formal judicial system has been revered and accepted as the preferred and acceptable process for resolution of disputes. In recent times, alternative forms of dispute resolutions (ADR), in particular mediation,[1] has taken the world by storm. This might be causing some fear amongst judges, magistrates and lawyers and those who are associated with the formal court systems that, their positions and their work might be taken away from them and render them irrelevant in society. Given such fears some judges, magistrates and lawyers may be opposed to mediation. This may be the reason why some compulsory mediation or form of ADR annexed to the formal court system are not as successful as they should be. This paper seeks to demonstrate that there is no need for such fear and show that those who hold such fear or have any doubts, could make better use of ADR and in so doing better discharge their duties and responsibilities in a cost and time effective manner with quality outputs. The paper tries to do that by drawing from the ADR developments and application in Papua New Guinea (PNG) since 2001 to the present.

Mediation World Trends

2. On 23rd May 2012, Secretary General of the United Nations, Ban Ki-moon issued a circular asking member states to embrace and use mediation as a preferred form of conflict resolution.[2] Earlier, on 13th June 2008, the European Union issued a directive in similar terms.[3] Following the EU directive, Italy enacted legislation for compulsory mediation before litigation. Canada allows filing before mediation but requires mediation before trial.[4] Recently, in 2011,

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1 A process this paper will mainly talk about.

2 "*Saying an 'An Ounce of Prevention is Worth a Pound of Remedy', Secretary General"* UN General Assembly GA/11242 (found at http:www.un.org/News/Press/docs/2012/ga11242.doc.htm

3 EU Directive 2008/52/EC on certain aspects on civil and administrative matters (reference in http:www.kennedys-law.com/article/mediationineurope.

4 '"Mandatory' Mediation: LC Paper No. CB(2)1574/01-02(01).

Australia past its *Civil Procedure Act 2011*, requiring litigants to attempt to resolve their disputes through mediation first before litigation. I understand there is a very active ADR practice with some emphasis on mediation here in New Zealand. For PNG between 2008 and 2010, through a combination of amendments to her *National Court Act* and *Rules Relating to the Accreditation, Regulation, and Conduct of Mediators*, promulgated under the amended *National Court Act*, empowered the Judges to order mediation at any stage of the proceedings, with or without the consent of the parties and allow for a serious consideration in favour of mediation before proceeding with the litigation process. Nearly all of the South Pacific Island countries have embraced ADR[5] and in particular mediation, with some form of mediation skills training and awareness workshops, which have been mainly sponsored by the World Bank through its business arm the International Finance Corporation (IFC) and the Pacific Judicial Development Program funded by the Australian and New Zealand Governments.

The Results

3. The results of these trends speak overwhelmingly for mediation. In PNG for example, since its formal adoption and use of Court Annexed ADR with focus on mediation in 2010, a number of cases have been and continue to be referred to mediation. In respect of the cases thus referred to mediation, the ADR Committee has been running a system of monitoring and evaluation through a web based survey feeding in feedbacks from parties and lawyers following mediation. A sample analysis of 23 mediated cases revealed following:[6]

(1) 60% stated that mediation increased their trust and confidence in the court system while the balance stated their level of trust and confidence remained unchanged;
(2) 92% stated that the Courts should support and use mediation more;
(3) 100% stated going to mediation was safe, comfortable, user friendly and more secure;
(4) 91% of survey respondents stated that if they were involved in another dispute they would refer the matter to mediation;
(5) 96% stated they would recommend mediation to a colleague, friend or a relative as a good way to resolving their conflicts;
(6) 87% thought the mediation process assisted in identifying the real issues in dispute between parties.
(7) 91 % thought that the mediation process assisted them to understand the other party's views;

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5 Graham Hassall "*Alternative Dispute Resolution in Pacific Islands Countries"* located at http://www.paclii.org/journals/fJSPL/vol09no2/4.shtml

6 I understand similar surveys and analysis in New Zealand has produced similar results

(8) 87% thought that the mediation process gave them opportunities to develop options for settlement;

(9) 71% stated that they resolved all of the issues in dispute while 19% stated that they had resolved none of the issues in dispute. The remaining 10% stated that they had resolved some of the matters in dispute; and

(10) Parties and lawyers surveyed estimated that settling the case through mediation resulted in an average estimated saving per party of 80,000 Kina (USD 39,000) and over K1 million (USD450,000) and a similar amount in funds or business opportunities locked up in litigation.

4. Additionally, a research report from a Fulbright scholar[7] showed that out of three major agriculture project cases that went to mediation removed at least six additional cases on the court's list. The process also provided the parties with a forum to discuss and generate mutually agreeable solutions built around present and future risks. The research than noted that the value added by successful mediations could not be underestimated in that:

(1) **Presence matters.** Every party stated that this was the first face-to-face conversation held between the parties and each party stated they learned new and critical information about the dispute from the conversation;

(2) **The negotiations dispelled disinformation or misinformation.** Each corporate party found that the negotiations provided them with an opportunity to correct disinformation and or misinformation and make known their own interests and problems to the landowners;

(3) **The mediation improved the "social license" between landowners and companies.** Each company stated that the informal agreement with landowners, allowed and significantly enabled them to peacefully carry out business and reduce delay, cost, and risks and improve relationships;

(4) **The mediation forum gives landowners a sense of ownership over the dispute and its resolution.** Nearly every landowner interviewed expressed that they were able to express themselves and be a part of solving the problem, and expressed a vested sense of responsibility in implementing the solution agreed upon; and

(5) **The mediations are teaching participants methods for resolving future disputes.** Two of the three company representatives, and all of the lawyers and parties involved, stated that they would try to

7 Michael Murphury: *Cross Pollinating Conflict Resolution: The Accredited Local Mediator's Role Within PNG's Hybrid Dispute Resolution Forums: A report to the Papua New Guinea Supreme and National Court Alternative Dispute Resolution Committee*, 9th August 2013

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resolve future disputes through face-to-face conversations before going to court.

New Definition for ADR

4. The trend and results briefly mentioned above has elevated mediation,[8] as the primary or preferred form of dispute resolution. Hence, it is now incorrect to continue to think or treat such forms of dispute resolution as an alternative to the formal court process. Instead it is a primary or preferred form of dispute resolution that is and should readily be available on a menu, listing a number of forms of dispute resolution process open and available for the parties, our clients, to choose from going by that which meets their needs. It thus necessitates a relook at the definition of ADR. When we do that, mediation and the other forms of dispute resolution, other than the Courts, become one of "Appropriate" , or "Active", or "Assisted" Dispute Resolution, which is something the PNG ADR Committee is now promoting. This author notes that similar definitions have been adopted in New Zealand and Australia.

Drivers of ADR

5. Earlier on in human history, when they were fewer in number and resources were in abundance, there were fewer conflicts which, when occurred, got resolved through more informal and flexible forms of conflict resolution. Those process of conflict resolution involved direct negotiations between the parties or negotiations facilitated by a third party. Failing resolution through those process, people in some cases, resorted to self helps resulting in bloodshed and destruction to lives and properties in some cases if not all. Later, as the human society advanced and became sophisticated with drastic increases in population placing serious strain on limited resources worldwide, conflicts increased in both complexity and the kind of processes and procedures put in place to resolve them. Court case lists become too long with lengthy delays in disposition. These and related challenges gave rise to the prominence of mediation and other forms of ADR.

6. The rise and prominence of ADR is driven by a desire to arrive at a final and lasting resolution of conflicts in ways that are less time consuming, less costly and through processes that a free and easily accessible for many in conflicts. Litigation is by far the most expensive, time consuming and most stressful process of conflict or dispute resolution with a forced or false sense of finality. On the other hand, some forms of ADR, such as mediation, early neutral evaluation and expert case appraisals deliver expedited, less costly, less stressful and most definitely lasting outcomes which the disputing parties can live with. Accessibility of the processes by the disputing parties, meaningfully and directly participating in and taking ownership of the outcome are other

8 And other forms of dispute resolution, other than arbitration, which is in effect a court distinguished only by parties paying for and appointing their own judge and dictating a time frame within which a decision must be delivered.

serious and important factors. Whilst the formal processes and those behind it speak for and consider these processes accessible, only those who have the money and or who know their way around have and can have real access. Even in those cases, only lawyers, judges and magistrates do most of the talking and determine the final outcome. Parties hardly play any significant role in that except only to instruct lawyers and give evidence when called upon. On the other hand, mediation and some other forms of ADR recognize that the parties own the dispute and they have the necessary power and authority to talk about the dispute, consider all settlement options open to them and arrive at an outcome that meets their needs. The process allows for even a person without the ability to afford expensive legal fees to have access to ADR and have their disputes resolved.

Matters in Common

7. Both the formal court process and the mediation process have certain fundamental features in Common. One of the most important features is the element or the requirement for impartiality which features very firmly in both cases. Impartiality is required as a matter of necessity and as an integral part of both processes. It is this which gives people choosing to use the processes the confidence and an assurance that, the outcome will be based on merit and not by virtue of the facilitator's interest in the matter or his or her relationship or connection with either of the parties.

8. Another important feature includes the requirement for fairness. That element of course is an inseparable twin to the principle of impartiality. Both processes endeavour to be fair to all parties.[9] Wells J.'s decision in the South Australia case of *Donaldson v. Harris*,[10] who took the opportunity to trace briefly the origins of the development of procedural rules on discovery from the old common law emphasis on 'the system of litigation by antagonists' is a good illustration of the element of fairness. His Honour said:

> "Thus, one of the essential features of discovery, deriving as it does from the equitable rules of the former Court of Chancery, is fairness. Its function is to ensure, not only that so far as possible there should be no surprises at the trial, but also that, before the trial, each party should be informed or be capable of becoming informed of all the relevant material evidence, whether in the possession of the opposite party or not, so that he can make an intelligent appraisal of the strength or weakness of the

9 An example is the requirement to put in cross-examination one's case to the other going by the centuries old authority of *Browne v. Dunn* (1893) 6 R 67 HL. Another example is the principles built around the principles of natural justice, which essentially requires a person to be heard in his or her defence before judgement

10 (1973) 4 SASR 299.

respective cases of the parties either for the purpose of the trial or for the purpose of arriving at a fair or favourable settlement or compromise."[11]

9. Both the formal courts and mediation try to achieve fairness through rules, practices and procedures that apply equally to all the parties. A good example is the right of address in Court as well as in mediation. Also both processes work hard to ensure that each of the parties that go before them have equal time and opportunity to present their cases. This highlights another important factor which is equality. Both processes endeavour to grant equal opportunity to those who have conflicts or disputes to have equal access to their processes and participate equally to ultimately arrive at an outcome that takes into account all of their (parties) positions, arguments or interests. Additionally, both process, try to bring about prompt resolution of the disputes brought before them and in so doing minimize the time and costs it takes for the parties and those involved in the processes. Finally, both processes try to ensure that the decisions or the outcome arrived at finally resolves all matters in dispute between the parties.

10. However, when one closely examines each of the above factors, mediation stands out way ahead of the formal courts when it comes to prompt resolution of conflicts, less costs, equal access to justice and equal participation and finality in the outcome. Of course this requires further clarification. In PNG, we have had histories of litigation running over 10 to 17 years with deaths on either side in some cases. When court annexed mediation was finally introduced, those cases resolved within a matter of hours to just a few days depending on the nature of the cases and the number of parties involved.[12] Parties had spend over millions of Kina in legal and other fees and charges and took a very long time without even getting close to a final and lasting outcome. On the other hand, mediation costs were far less and took a lot less time and resulted in clear, certain and lasting outcomes. In those mediations as is the case with all other mediations, the people who stood to be affected, from the adults including females to younger adults and children who could otherwise have been suppressed or prevented were involved and did participate in the mediations through a process that allowed for their views to be aired and considered. As a result, outcomes that accommodated most of the parties concerns and interests were reached. This was possible with the processes taking place in their own locality and or setting and safe avenues provided by the mediation process.

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11 Cited in *Public Officers Superannuation Fund Board v. Sailas Imanakuan* (2001) SC677

12 These are based on mediations this author has successfully conducted and resolved the matters in dispute. In one matter an individual was up against a provincial government and its business arm. The case had its rounds before the National and Supreme Courts and then back to the National court spreading over a period of 15 years. Mediation took only 3 hours to arrive at a final resolution. The other cases was more involved, which involved thousands of landowners in mining and petroleum areas where involved in litigation for over 17 years. These got resolved within 4 days of mediation.

11. What happened in those mediations and other mediations makes the mediation process completely different from the courts. In the Courts, a person with a dispute goes to a lawyer if he can afford one and the lawyer then determines how the client's case is to be pleaded and run in Court from start to finish. The lawyer does all of the talking and the process is concluded by a judge or magistrate making a final decision. The client or the parties in dispute hardly have a direct say in the final outcome in their cases. Even the lawyer is restricted in what he can do and put before a court on behalf of his client because for instance, he has to work within the technical requires of say the law of evidence or the law and practice on pleadings and so on.

12. The most important feature that sets mediation or ADR apart as a better form of dispute resolution compared to the court in all cases, except for a few clearly identifiable cases, is its ability to bring about finality in the outcome. Mediation enables the parties in dispute to explore all possible options for an efficient and effective resolution of their dispute and settle upon one that best meets both of their needs and interests and one they can live with. Hence a majority of mediated outcomes last longer and do not return to the courts. On the other hand the court process will usually have expressed legislative provisions that prevent appeals or reviews once a final court of appeal or reviewed has considered the matter and has come to a decision.[13] If it is not in the written law, well accepted legal principles like *res judiciata* or *issue estoppel* ensures there is no further litigation.[14] If it were not for these principles or kinds of legislative provisions, there would be endless appeals upon appeals or reviews upon reviews given that people usually do not readily accept a defeat. Hence finally is reached only as a matter of procedure rather than as final outcome on the merits.

Cases not suitable for mediation

13. Research and experience around the world and this authors own limited experience demonstrate that, nearly all kinds of cases are suitable for mediation. Accepting and moving from that position, most of the discussions worldwide is around the kind of factors that render a matter not suitable for mediation and the list is relatively very short. The statement below by the UK *Civil Court Mediation Manuel* is a very good summary of that position:

> "Most mediation providers suggest that nearly all cases are suitable for

13 For a decision of the Supreme Court that discusses the relevant statutory provisions and the cases law develop around that in terms of further appeals or review by the Supreme Court in PNG *see Review pursuant to Constitution Section 155(2) (B) and Section 155(4) Application by Joseph Kintau, Acting Director, Civil Aviation Authority of Papua New Guinea* (2011) SC1125

14 For a discussion of these principles see the PNG Supreme Court decision in *Telikom PNG Limited v. Independent Consumer and Competition Commission and Digicel (PNG) Limited* (2008) SC906

mediation. However, as a general rule, the following cases are generally regarded as inappropriate for mediation and should therefore not be considered for mediation at allocation stage:
• where a legal precedent is needed to clarify the law or inform policy;
• where settlement would not be in the public interest;
• where protective proceedings are required, such as injunctions; or
• where summary judgment is appropriate."[15]

14. The Hong Kong Judiciary's website covering amongst others ADR reiterates that position and adds to the list of cases presenting the following kinds of challenges:

- there is a genuine dispute requiring the court to give a declaratory relief; and
- in family disputes involving child abuse, domestic violence, etc, to avoid undue influence or where the parties are in a severely disturbed emotional or psychological state, such that they cannot represent themselves or focus on the needs of their children.[16]

15. To the above list I would add cases in which there is a need or a requirement for:

- an interpretation of a Constitutional or other statutory provision; or
- a resolution of a genuine dispute over the meaning and application of a particular provision in a contract or an instrument; or
- a determination of preliminary issues such as questions on jurisdiction, condition precedents,[17] statutory time bar and validity of a claim; and or
- a public sanction as in a criminal cases is needed for public health and safety.

16. In some cases, and more so after a determination of preliminary issues such as the ones presented in second last item in the above list, the substantive matters could still be referred to mediation. This includes even after the determination of an application for injunctive relief unless such reliefs are permanent in nature. This author has in at least three cases granted interim injunctive orders and directed the parties to resolve their disputes through

15 at p.7 and can be located at: *www.judiciary.gov.uk/.../civil_court_mediation_service_manual_v3_ma...;* For similar statements see also *www.fedcourt.gov.au/case-management-services/ADR/mediation* for the Australia Federal Court position and for an Indian Courts and others' position go to http://highcourtofuttarakhand.gov.in/pages/display/212-concept-of-mediation; http://keralamediation.gov.in/Mediation%20Proceedings.html; http://www.mediationforresults.org/content/view/13/38/#notsuitable.

16 Found at http://mediation.judiciary.gov.hk/en/mediation_faq.html#05

17 This could include question for instance over the compliance or non compliance of provisions like s.54(6) of the *Motor Vehicle (Third Party Insurance) Act* or s.5 of the *Claims by and Against the State Act in PNG*

mediation. This they did successfully resulting in a final disposal of the cases within two months of filing.

17. Paula Young in what could be taken as detailed look at this aspect in her article "*The 'What' of Mediation: When Is Mediation the Right Process Choice?*" concludes and this author agrees that:

> "As mediators, lawyers, and their clients gain more experience with mediation, fewer and fewer types of disputes will seem less amenable to the process. Even if mediation only succeeds in improving the parties' communication, in identifying their underlying interests, in narrowing the issues in conflict, or in helping them more carefully evaluate their litigation option, it can move the dispute towards a quicker, more cost effective resolution."[18]

Imperative for Cooperation

18. People all over the world like to have no disputes with anybody and like to pursue fun and happiness and that which is good. Unfortunately, it is part of human nature to have disputes which are brought upon humanity by many factors, such as claims of interest and rights over land, basic human needs, rights and freedoms and many more. Once caught up in a dispute many prefer an early, if not, an immediate resolution of their disputes, if that were possible at little or no costs so they can move on in life, their employment, business and other enjoyable pursuits. The formal courts, as already noted, demonstrate a clear slowness in delivering on that wish or aspiration of our people. It is this author's submission that, this has been the case not because the formal system is incapable of delivering on that objective. Instead the main contributing factor has been inundation of the formal courts' lists with matters that should not have entered the court system at the first place. Clear examples of these are for instance, simple debt claims and all other claims that require the people involved telling the truth or a better understanding of the reasons for the conflict and resolving them through direct or assisted negotiations. Hence, there is an inevitable imperative for each of the processes to work collaboratively and cooperatively. A good start in that regard, should be a deliberate decision and action directing and ensuring only those matters not suitable for mediation and or a form of ADR to progress to Court while all the rest to be progressed and resolved through mediation and or a form of ADR.

19. Judges and hence the Courts role in that respect would be most critical and important. It is accepted the world over that Judges and Courts are important gate keepers.[19] For it is the Judges and the Courts that can choose to

18 October 2006, http://www.mediate.com/articles/young18.cfm.

19 Others include professionals like lawyers, accountants, psychologist, doctors and others to whom people turn to with their problem those may in turn refer their client to go to mediation or a form of ADR. For more information on how lawyers are gatekeepers and how they have discharged that role see:

allow the unnecessary overloading problem and its consequences to continue or welcome and embrace the intervention of mediation and ADR and use them to their advantage and bring the backlog problem under control and proceed onto delivering on our people's objective of prompt resolution of their disputes at less costs and within shorter timeframes. This writer notes that, earlier on, many judges were opposed to mediation and there was a serious debate on the question of whether Judges should support mediation and other forms of ADR. It is now no longer an issue.[20] The challenge now is more of how can the Courts make effective use of mediation and other forms of ADR.

20. Experience in PNG gives us a good idea about what mediation and ADR can do for the Courts. The Chief Justice, Sir Salamo Injia Kt., introduced a case docketing system a little over a year ago from today. That saw Judges being allocated cases for each of them to manage from beginning to final dispositions. Most judges were not able to go past 200 cases last year except for two judges who disposed of more than 800 cases each. Of the two, one of them used mediation and ADR processes and skills to bring about final outcomes without long drawn out trials. The other's large number of disposition was on account of summary determinations of cases on the basis of want of prosecution. Most of these did not result in any appeal or reviews. That meant a substantial reduction in the number of cases that would have entered the Supreme Court's appeals list. The imperative to work collaboratively and cooperatively is necessitated by the fact that the formal courts and the various forms of ADR and more so mediation have only one destination to arrive at and that destination is called, justice. That destination can easily be reached because the formal courts and the various ADR processes all have the following set of indispensable principles and objectives like a set of traffic rules, which, if followed, can enable people to reach their ultimate destinations safely:

(1) Impartiality in the process and one facilitating or presiding;
(2) Fairness in the processes and administration of them and the eventual outcomes;
(3) Equality in both access to justice and participation in the process by those affected by the dispute and having a meaningful say in its resolution;
(4) Promptness with little or no delays in delivering the final outcome;
(5) Less costly from filing to final disposition; and
(6) Real finality in the resolution of the problem.

21. As already noted, greater encouragement and use of mediation and ADR has been able to and has the ability to deliver to our clients as well as the courts the following:

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http://www.ncl.ac.uk/cflat/news/documents/gatekeepers.pdfe;
http://www.law.stanford.edu/sites/default/files/biblio/108/138070/doc/slspublic/AyeletSela-tft2009.pdf

20 See Ambeng Kandakasi, *Developing A System Of Court Annexed ADR In AN Ever Increasing Litigious Society: (Paper delivered at the Asia Pacific Mediation Conference in Suva Fiji June 2006 and published in the Malayan Law Journal)*

(1) speedy resolution of disputes;
(2) No unnecessary delays;
(3) No backlogs;
(4) Less costs to resolve and arrive at final and lasting outcomes;
(5) Less harm and less damage to personal and business interests;
(6) An opportunity to choose either one or a combination of a number dispute resolutions process that best meets the parties needs;
(7) Having a say and choice in the outcomes that would better meet the parties needs which a formal court might not be able to grant;
(8) Allows for equal access to justice and eventual outcomes; and
(9) In most cases, finality in the resolution.

22. Undoubtedly, this kinds of results thus achieved has freed up time and costs and other investment decisions unnecessarily held up or locked up in litigation. Parties have thus been enabled to apply their time and money to generate more income and increased productivity in business and other important and beneficial pursuits. These developments have consequently led stakeholders and the courts clients to have increased confidence and trust in the judicial system. This is not surprising because, the combined efforts of the courts and mediation and other forms of ADR have delivered on the parties wish to have their disputes resolved promptly and at less cost with outcomes that last. More importantly, these developments are fast bringing to the fore the broader role of our judicial systems. That broader role is one of promoting peace and nation building.

Broader role of the Judiciary

23. Traditionally, the formal court process has always locked the parties in their respective positions and keep them in a repeated cycle of conflict by deciding who is right and wrong. The losing party would often go away unsatisfied even if he or she is wrong which causes him or her to find a way to be victorious against the winner in one way or form in the same matter or in other matters in future. The great display of leadership through a clear demonstration of forgiveness and a willingness to work together with his former aggressors and violators by the late Nelson Mandela, is a living testimony of how a process that is not necessarily focused on finding fault and being vindictive can do a lot for our people, their hurts and wishes and aspirations which informs design and arrive at an outcome that is future focused. It is well accepted that the formal courts exist for the peaceful resolution of disputes in society. The developments brought to bear upon the judicial systems by the developments in the mediation and ADR areas provides the judicial system with the necessary keys and or tools to truly become peace builders in our respective, communities, nations and ultimately the world.

Current use of Mediation

24. Notwithstanding the benefits of using mediation and ADR, not all courts or judges and magistrates are using this useful tool. This may be due to:

(1) a lack of education, knowledge and information about the existence and use of this tool; or

(2) a lack of court rules and or other positive legislation compelling or requiring the use of these processes; or

(3) a lack of knowledge and skill necessarily required to appropriately use the mediation and ADR process; and

(4) a deliberate decision not to use mediation and ADR.

25. These are problems that can be easily overcome through:

(1) appropriately packaged and delivered information and training around the existence and use of mediation and other forms of ADR and the kinds of skills and techniques required for their effective use;

(2) Enactment of appropriate legislation and court rules requiring and encouraging the use of mediation and other forms of ADR for the resolution of the disputes or conflicts that do not feature in the list of cases not suitable for mediation; and

(3) Finally, for those who make a deliberate decision not to use mediation and a form of ADR, they could be encouraged to try these processes out and allow themselves to be guided by the results of their trials.

PNG's ADR Program

26. As the PNG experience may demonstrate, the full potential of mediation and other forms of ADR can be realized through a properly development and use of this tool by the judiciary. This requires good leadership and commitment from the Chief Justices and all judges. The judiciary in PNG is encouraged by the good results that are coming through its court annexed ADR program. The program has the necessary legislative foundation and framework and is led by its Chief Justice Sir Salamo Injia Kt., with the working support of the ADR Committee.[21]

21 The Committee comprises of Judges, magistrate, the private and public lawyers, the academia with room for ordinary members of the public to participate.

27. With some support from IFC, over 8 basic mediation skills trainings have been packaged and delivered to all judges, magistrates, some lawyers and other professionals. It has a total of 105 mediators who are accredited both in PNG and Australia. Out of that, 22 are fully accredited and 83 are provisionally accredited. Programs are now well in place to help get the 83 provisionally accredited mediators fully accredited through a process of co-mediation with experienced mediators in real cases. The 22 fully accredited mediators have been able to dispose of more 300 cases by mediation with more than 80% success rate. Some of these actual mediations have provided the avenue for practical hands on training for some of the provisionally accredited mediators with some of them progressing to full accreditation. The Chief Justice has just directed the ADR Committee to focus more on this program with a view to getting the remaining 83 provisionally accredited mediators to full accreditation by or before the end of the year. This has come about after the Judges have resolved to have 60% of the cases pending on the court's list disposed of by mediation. The ADR Committee is already taking steps to give effect to this important decisions, which includes advanced planes to have more than 150 to 200 cases resolved by mediation next month through the co-mediation program. Mostly importantly, for the first time in PNG, the Chief Justice has been able to secure sufficient funding for this and other projects in addition to the judiciary's normal operational expenditure for the year. The Committee is working on having a mediators hand book ready in time for the many co-mediations for the assistance of the mediators. At the same time, the Committee is working on a Judges Mediation Handbook to assist Judges with their task of referring matters to mediation.

28. The ADR Project has already packaged and delivered over 8 ADR awareness workshops throughout the country. That has attracted interest in using mediation and expression of interests from both the private and the public sectors for assistance in designing and implementing their own internal conflict resolution process featuring mainly mediation. Once the full accreditation of the provisionally accredited mediators is achieved, the focus will turn to picking up on the interests and deliver on those wishes. It is envisaged that the end result of all of this will be an increased used of ADR and mediation resulting in more and more final resolution of conflicts which will enable the formal courts to discharge their duties and responsibilities with increase competence, quality and in ways that are less time consuming and very cost effective. Ultimately this will enable the judiciary to stay on top of its list from around a 2 years delay period to hopefully disposal of cases within the same year of filing.

Conclusion

29. For a long time, the formal Court system has been the main process for resolving disputes and has been overburdened. Now mediation with other forms of ADR are fast becoming accepted worldwide as preferred forms of dispute

resolution. All these have one destination to reach and that is, deliver justice to our people. That being the case, there is an imperative for collaboration and cooperative function between the formal Courts and mediation and other forms of ADR to better deliver justice. Mediation and other forms of ADR are very useful tools that are can produce outcomes that can speak well of the judicial system provided it is properly developed and applied correctly with good and strong judicial leadership. There is enough experience and knowledge in this room to draw from and make better use of mediation and other forms of ADR. This will in turn enable the courts to discharge their broader role of promoting peace and nation building in addition to staying on top of their case lists. A failure to appreciate the goodness of mediation and other forms of ADR either by inadvertence or by deliberate choice is a choice to remain with the problems of backlog and its related consequences. PNG stands ready to share its experience with anyone who might be interested in following her footsteps and wishes you all well in you ADR and mediation programs.