
Title registration for a systematic review: Effectiveness of alternative dispute resolutions in improving case disposal in the judicial system in low- and middle-income countries

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Title of the review

Effectiveness of alternative dispute resolutions in improving case disposal in the judicial system in low- and middle-income countries: a systematic review

Background

The problem

Policy makers, legal practitioners and numerous stakeholders are concerned about slow case disposal and high rates of case backlog in the judicial systems in developing countries. The increasing case backlog in developing countries for example Uganda is attributed to weaknesses in judicial systems, ineffective laws and procedures as well as inadequate infrastructure (Judiciary Case backlog report – Uganda, 2017). In sub Saharan Africa, formal courts offer a type of justice which in some cases may be inappropriate for the resolution of disputes for those living in rural villages or urban settlements; and state justice systems in Africa operate with a limited infrastructure and inadequate resources to sufficiently deal with minor disputes (Penal Reform International, 2000).

The ineffectiveness in the delivery of judicial services and processes has resulted into several unresolved cases at every level of the judicial structures in developing countries. According to William E. Gladstone, justice delayed is justice denied; inherently the delayed administration of justice has resulted in high numbers of pre-trial detainees even for petty offenders, and caused loss of trust and hope in the judicial system as a means of redress of injustice in developing countries. In Uganda for example, the proportion of pre-trial detainees was at 55% meaning that 45% of the prisoners in prisons accessed justice process and they received judgment (Justice Law and Order sector -Uganda, 2016).

To respond to this situation, various players engaged in justice, law and order have advocated for fast tracking of interventions for alternative case management or conflict resolution to address the increasing proportion of pre-trial detainees in prisons. Studies have shown that the Alternative Dispute Resolution (ADR¹) interventions have varying impacts depending on the type of intervention for example, Court annexed ADR and ADR delivered by paralegals. Justin Sandefur and Bilal Siddiqi (2013) show strong impacts associated with taking a case to the paralegals compared to lawyers. Studies suggest mass education and empowerment as

¹ ADR is a structured negotiation process under which the parties to a dispute negotiate their own settlement with the help of an intermediary who is a neutral person and trained in the techniques of ADR. The various strategies involved in ADR include negotiation, conciliation, mediation, mini-trial/early neutral evaluation, court annexed ADR and arbitration (Anthony Conrad K. Kakooza, 2010)

enablers for use of ADR especially in communities where village courts and informal systems are appreciated (Christopher Gibson and Michael Woolcock, 2005; Christopher Blattman et al, 2014). Studies on ADR in commercial sectors suggest that the use of mediation has grown in recent years, generating perceptions that it offers significant potential benefits to businesses (Stipanowich T J., 2004).

In addition, Development Partners in Justice and Governance sectors have strongly supported Alternative Dispute Resolution interventions in order to strengthen access to justice for the poor and vulnerable persons, and promotion of human rights.

Several countries have therefore embraced Alternative Dispute Resolution as a mechanism as shortcut to the lengthy process of litigation by among others creating Centres for Conflict and Dispute Resolution to spearhead and promote ADR for example: Uganda Centre for Arbitration and Dispute Resolution (CADER), established in 2000 and the Dispute Resolution Centre Kenya, established in 1997. The assumptions are that ADR mechanisms will effectively work where information is adequately available, knowledgeable experts in the ADR are accessible, disputants prefer ADR, and where enabling legal and institutional frameworks are in place and functional.

Whereas there are claims that ADR is a good alternative to long litigation processes, we did not find a systematic review to provide evidence from several countries on where it has worked and how it worked.

Policy relevance

There is need for a systematic review to gather credible research evidence on the effectiveness of ADR in addressing the long wait for justice as a means of improving case disposal and reducing case backlog. Findings from the review will provide evidence on what ADR interventions work best, how and why, and this evidence will be vital to the stakeholders in the administration of justice. It is assumed that ADR empowers stakeholders to amicably resolve matters, increases disposal rate of cases, reduces the high rates of pre-trial detention and brings back satisfaction and trust in the judicial system. In Uganda, there is high demand for ADR; the proportion of referred cases resolved through Alternative Dispute Resolution improved from 22% in FY2011/12 to 55% (1289 out of the referred 2321 cases) in FY2016/17 (Justice, Law and Order Sector, 2017). The proposed review will provide more evidence to inform redesign and design of appropriate ADR interventions.

Objectives

This review will synthesize the existing published and non-published empirical evidence on use of alternative dispute resolution in improving case disposal and addressing case backlog in developing countries. The review will answer the following questions:

- a. To what extent does ADR improve access to justice and disposal of cases?
- b. What component(s) of ADR is/are more effective in facilitating access to justice?

Existing reviews

There are ongoing reviews on Restorative Justice Conferencing (RJC) Using Face-to-Face Meetings of Offenders and Victims (Campbell collaboration) and review on non-state justice systems in South Asia (EPPI-Centre). However, the reviews do not look at several forms of ADR and their effectiveness. Hence, no exact existing review on this exact topic has been identified.

Intervention

The review will focus on alternative dispute resolutions in improving access to justice and increasing disposal of cases.

Alternative Dispute Resolution is categorised as follows; mediation, arbitration, negotiation, conciliation, early neutral evaluation as well as the traditional/cultural ADR mechanisms (use of village chiefs and elders).

Definitions

Alternative Dispute Resolution refers to any means of settling disputes outside of the courtroom.

Mediation is a dynamic, structured, interactive process where a neutral third party assists disputing parties in resolving conflict through the use of specialized communication and negotiation techniques.

Arbitration is the use of an arbitrator to settle a dispute.

Negotiation is when parties meet in good faith to discuss their dispute with the goal of coming to a mutually agreeable resolution.

Early Neutral Evaluation (ENE) is when disputing parties submit their case to a neutral evaluator through a confidential "evaluation session".

Some of the categories are overseen by trained legal experts or paralegals. Mediation was the most preferred procedure (Shestowsky, Donna 2004), and arbitration for resolving commercial disputes (Sophie Pouget, 2013; David L. Dickinson, 2001).

- The comparison will be the usual (legacy) litigation court processes.

Population

The review will focus on the conflicting parties (disputants) i.e. the complainants and the accused in low- and middle-income countries. This is because justice systems in most developing countries are characterised slow dispute resolution processes, weak institutional frameworks, low levels of trust in judicial systems and high cost of accessing justice. Developing countries are however adopting renewed approaches, effort and innovations in judicial systems including the use of ADR.

Outcomes

The primary outcome of the review is: case disposal rate and associated measures of pre-trial detention and case backlog.

The secondary outcomes are increased access to quality justice (reduced time and cost), satisfaction in the judicial processes (improved public trust and confidence in the judicial system) and reduced violence and conflict.

Study designs

We will include randomised controlled studies and non-randomised controlled studies.

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Roles and responsibilities

The team will work closely with Africa Centre for Systematic Reviews and Knowledge Translation at Makerere University. We will also utilise the expertise from the methods group of Campbell collaborations. Below is the proposed team distribution.

- **Content:**

Benjamin Kachero and Josephine Watera will work closely with legal experts.

- **Systematic review methods:**

Dr. Ekwaro Ebuku, Roland Taremwa and Benjamin Kachero

- **Statistical analysis:**

Rashid Nguma, Dr. Ekwaro Ebuku and Benjamin Kachero

- **Information retrieval:**

Josephine Watera, Roland Bless Taremwa and Rashid Nguma

Funding

We have not yet received any financial support. We hope to apply for funding through Campbell Collaboration.

Potential conflicts of interest

There are no conflicts of interest related to the use of alternative dispute resolution mechanisms or the studies that will be included in the proposed review.

Preliminary timeframe

We intend to submit the final draft protocol in one month after acceptance of the title.

The first draft review will be submitted in 12 months after approval of the protocol.