

## **PART TEN: COURT-ANNEXED MEDIATION IN LESOTHO**

### **Mediation – in Retrospect**

The Court-Annexed Mediation (CAM) Programme is one of the new initiatives that has been introduced in the High Court of Lesotho under the Civil Legal Reform Project (CLRP), with the support of the Millennium Challenge Account – Lesotho (MCA-Lesotho) and the International Law Institute – African Centre for Legal Excellence (ILI-ACLE).

CAM was introduced in Lesotho's judicial system through the Mediation Rules of May 2011. It was officially launched in June 2011; and became operational in August 2011. Over this transitional period of three months, practical steps were being taken to put in place the requisite processes and appropriate foundations necessary to support the new reform structure. Chief among these were the necessary professional training for the designated Mediators. The training was intensive and extensive – methodically carried out by the ILI-ACLE over four substantive sessions lasting a total of four weeks.

Out of the 50 original trainees, a select group of nine competent and skilled Mediators have been designated, and empowered to mediate the disputes filed in both the High Court and the Commercial Court. Secondly, the transitional period was used for a hefty sensitization campaign and healthy outreach effort – with the objective of reaching all the stakeholders of this mediation reform – namely the potential Litigants, the Lawyers (in both private and public practice), the Court personnel, the witnesses, and members of the general public of Lesotho. For a concentrated period of several months, the radio, TV, print media, written articles, pamphlets and flyers, among other things, were used, to reach the target groups within and beyond Maseru.

The Outreach was aimed at achieving a number of objectives: First and foremost, to inform, to sensitise, to educate, to avail the needed knowledge, awareness and understanding about the mediation reform. Second, but no less important, the intensive Outreach effort, aimed to change a deep-seated mind-set. Critical in this effort was the need to change the traditional urge of the ordinary Mosotho to fight to the bitter end, without giving any appearance of caving in to a fight or buckling under a personal challenge. Unfortunately, mediation – which involves fraternal and friendly negotiations with one's adversary, is generally misapprehended as a form of giving into concessions. The truth of the matter though is that, in reality, mediation is a high form of empowerment of the individual disputant to argue, settle, determine and judge the terms of his or her own case on a mutual basis with the opposite disputant, and to do so expeditiously, inexpensively, and confidently and confidentially without the public glare of litigation.

In similar vein, the Outreach effort aimed to change the mind-set, especially, of the practicing lawyer. The traditional lawyer is a full-fledged warrior, trained to fight intellectual battles in the ego-bloated drama of the Courtroom; and to expect a

handsome, if not hefty, fee for his professional duels in court. These are duels and drama which are fought wholly at the expense of the client – the real casualty of the courtroom battlefield. Little wonder then that a few unscrupulous lawyers of the traditional mind-set, perceive of mediation as both unworthy and unrewarding. This is a total misconception. The facts, in every jurisprudence where mediation is practiced, prove exactly the opposite. Indeed, in this very jurisdiction of Lesotho, the nascent statistics of the last four months only, have started to tell the true tale. Over 100 cases have been referred to Mediation; with some 30 or so completed – out of which, a respectable 25% have been settled successfully. This is a small, but impressive, pointer to the potential for mediation – achieved in spite of the many teething obstacles that have beset the new reform.

There is still work to do: more training, more outreach, more resources, better logistics. The workload is bound to pick up – given that sooner or later all cases in the High Court will be referred to Mediation. At that point the present stock of Mediators could be overwhelmed by the quantity and complexity of work – giving rise to the necessity for taking a policy decision as to whether or not to expand the lawyers' role to include acting as Mediators. This would enhance and enrich the quality of the reform process – as the Lawyers are the critical link in the social chain of dispute resolution in any and every community. As the Mediation reform rolls into the New Year, we can all look forward to a hectic and promising take off!

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