Building Local Capacitors for Peace Using Mediation as a Tool Rural in Sierra Leone

Patrick Brima Kapuwa
Njala University, Sierra Leone

Introduction

Empowering communities to resolve their own conflicts, using non-formal judicial means, has been heralded to be an effective, less formal, cost effective, sustainable, participatory method for maintaining peace and stability within communities and within countries as a whole. These non-formal judicial methods otherwise known as alternative dispute resolution (ADR) mechanisms, refers to a wide range of dispute resolution mechanisms which are ‘alternative’ to litigation. They include but not limited to negotiation, conciliation, mediation and arbitration. These ADRs are gaining more recognition in the legal domain even though its main purpose is to serve as an “alternative” to courtroom process and societies rave at its ways and methods to settle disputes, reaching agreements and compromise that is almost a win-win situation. These mechanisms enhance peace in any society as it allows for flexibility, durability and speedy settlements also used by lawyers as out of court settlements which in general terms foster peace and stability for any society. In the 70s the United Kingdom (UK) and America started resolving community wide conflict without going through the formal court systems which developed overtime as different dispute resolution mechanisms used widely from UK and US to Asia and Africa.

These remedies can be broadly divided in two categories firstly disputants reaching agreements by themselves with the help of a third party as a go between (Mediation/conciliation) or without a third party (Negotiation); secondly disputants allowing a third party making decisions for them which they abide by (arbitration). The difference in terms of settlement and the agreement reached in the two categories is emphasised by the binding force which is absent in the first and eminent in the second category. The binding force comes to play with mediation/conciliation and negotiation where an agreement has been signed that can be presented in court if the terms are not adhered to. In general all processes used to settle conflict without going to the court can be included into the rubric of ADR.

Mediation as mentioned above is one of the types of ADR which is paramount in this study. The word mediation in Latin means “mediare” which means to heal. Mediation can be simply seen as a process in which two or more parties reach a resolution to a conflict by the help of a third party called a mediator who merely facilitates the mediation process but does not impose terms and conditions on either party in a conflict (Timap for Justice Paralegal Manual 2012). Mediation rest on three pillars; voluntary, confidentiality and neutrality which serves as guiding principles to ensure fairness, equality and justice for all. Voluntary aspect of the process covers the mediation process that it should be by choice; whiles confidentiality spell out clear that nothing should be repeated outside the mediation forum by all parties especially the mediator and the mediator should remain impartial and all decisions should be made by the disputing parties. The mediator purely guides the process with the principles of equity and the spirit of the law and allowing the disputants to come to an agreement/settlement by themselves whiles the arbitrator imposes fines and decisions that are binding to all disputants.

One of the recommendations made by the TRC report (chapter 2 Vol2 pg 148) was that government should consider the introduction of ADR methods especially mediation and arbitration as other

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1 Timap (NGO) that provide free legal service to grass root people in Sierra Leone
methods of resolving issues in communities. To date, through donor funding agencies and government’s permission, structures are developed and implemented both by the non-governmental organizations and government and this includes “Fambul Tok”, perpetrators asking for forgiveness (TRC forum), Timap for Justice (Timap), Lawyers Centre for Legal Assistance LAWYERS, Legal Access through Women Yearning for Equality Rights and Social Justice (LAWYERS) and Centre for Alternative Dispute Resolution (CARD). These ADRs structure implementations are geared towards promoting peace and open dialogue between disputants in an effort to promote harmony and stability in the country. The aim of these projects such as Timap funded by donors mainly is to expand on alternative remedy to formal courts which allows free access to justice and avoid the delays and complexities that are familiar with the formal court systems in the country. Especially Timap who train mediators in their own native languages which empowers them to settle conflict between and among their people.

Such projects are guided by the spirit of the constitution in the land and further express clearly in the Domestic Violence Act of 2007, Child Rights Act of 2007, Arbitration Act (cap25). Minor cases (such as family matters, marital problems, debts, witchcrafts) are mediated upon by paralegals but especially locally trained mediators who mediate such disputes in local parlance which ensures flexibility and quick access to justice which is nearly always absent in formal court settings. Methods of mediation and conflict resolution have proven to be more useful and better in resolving conflicts within communities.

Trained paralegals and village mediators have the onus to refer serious cases like rape, murder, ritual killing, wounding with intent to cause serious harm to be handled by the formal justice systems. The significance of such projects is enormous but mainly promotes peace through peaceful settlement; provide free legal service to poor and vulnerable people. It further enhances the dictate of the constitution that allows for more easy access to justice, foster relationships that can easily be broken through the normal court system (both formal and traditional) that make a decision based on law rather than fact.

The recognition of both the formal and informal (customary) justice systems as part of Sierra Leone’s unique dual legal system is symbolic. The formal system is modelled after our colonial past in the British Legal System, while the customary system represents traditional practices of indigenous Sierra Leoneans having the force of law in different communities. The formal law operates in the western area and mainly district headquarter which is widely written, easy to follow but complex process and mainly inaccessible to many. The traditional law operates in the provinces and is widely unwritten and governs more than half of the population of Sierra Leone. Its unwritten nature makes it non-systematic and decisions are based on what the traditional courts decides in any locality. This dual legal system in itself can create complexity for citizens to operate under but yet lays the foundation for mediation in the provinces that have been used to decisions based on fairness, simplicity and knowledge that relationships have to be built rather than tear down even after disputes thereby fostering peace and stable environment for development in the country.

Peace throughout this thesis will be referred to as “positive peace” (Galtung J 1964) which is the integration of human society and not merely the absence of war and conflict. Positive peace is apt for this thesis goes beyond the absence of violence and dwells more on social justice through equal

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2 Established in 2010 mainly for commercial disputes...
3 Local NGO in 2003 to provide basic justice services in the country
4 Section 20(1) A &B
5 Chapter 2 section 8.2
opportunities, a fair distribution of powers and resources, equal protection and impartial enforcement of law. In looking at a country that is coming from war, positive peace is necessary for this study as it gears towards eliminating the root causes of war, violence and injustices and makes conscious efforts to build society as a means to restore peace and stability in any community and society.

The aim for this thesis is to show the need for alternative dispute resolution with focus on mediation to help reduce the gap in the availability and effectiveness of formal justice system while demonstrating that there is an increase in popular satisfaction with dispute mechanisms in the country. This study will show whether there is need for community mediation to be used all over the country that will enhance peace and close the gap in the availability and effectiveness of the formal courts by reducing tension and corruption in these courts.

By way of objectives to this aim, our study will to ascertain how the increase in mediation programme can better create access to justice for all especially at the local level; whether such community mediation is an acceptable dispute resolution method that increases peaceful settlements in these localities and if community mediation is a complementary means that can unclog the judicial systems to promote positive peace,

By conceptual analysis, various schools of thoughts on the key alternatives to dispute resolution and mediation has been explored and critically analysed on what are known, emerging views in terms of theoretical framework, methods of investigation into works around the themes and the substantive findings.

In analysing the origin and evolution of ADR and its approaches one can deduce that ADR does not refer to a single dispute resolution method but all dispute resolutions methods made outside the formal court settings (PICOT handbook). Other writers/researchers broadened the explanation of ADR to mean the appropriate methods and not only the alternative methods to litigation as they are also suitable methods for parties to resolve specific conflicts; hence making ADR processes complement the court rather than replace or alternate it. In essence, these dispute mechanisms gives the opportunity for the right solutions to dispute to be used which not only fast track cases and give more access to justice but mainly allows an ADR that suits the legal system of a given state (Altman et al 2005). With this broadened explanation, it does not single out litigation as an alternative to ADR. Lukasz Rozdeizer, 2006 proffered they may go along side each other ADR until a settlement takes place. This speeds up settlement process either in court or outside the court which in the end avoid delay and long procedures and processes.

There are several types of alternative dispute resolution that continues to evolve/ emerge which people confuse all the time. This study will focus on arbitration, negotiation, conciliation and attempt to clearly differentiate them from mediation to avoid further confusion. It is important for the similarities also to be brought to light yet more emphasis will be placed on the qualitative differences between mediation and the other ADRs mentioned.

Rozdeizer (2006) defines mediation as a flexible, non-binding dispute resolution process in which a neutral third party (the mediator) assists two or more disputants to reach a voluntary, negotiated settlement of their differences. Series of definition put forward lay emphasis on disputing parties’ ultimate control of settlement decision and agreements. The mediation rests with the disputants to settle and the terms of resolution while the mediator uses variety of skill and techniques to help parties reach a settlement (Galtang et al 2002). In order words, the mediator has no power to make a decision and the parties remain the decision makers (Galtang et al 2002). Mediation usually focuses on future rather than past behaviour. (Liebmann, 2000) and another element always highlighted by researchers is the neutral third party to facilitate a constructive communication and de-escalate violence between and or among disputants.
Goldberg et al., (1992) express negotiation as a process in which parties to dispute discuss possible outcomes directly with each other. Exchange of proposals, demands, make augments continues until a solution is reached or an impasse declared (PICOT\(^7\)). Conciliation is a process through which two or more parties reach an agreement with the help of impartial third party (conciliator) who meets with them separately in a bid to resolve their conflict. (Zondervan 2000). It is a type of mediation process that seeks for concession and appeasement between or among parties (Shaman2003).

**Study Methodology**

By way of methodology, Qualitative research strategy was appropriate for this study since the purpose study is to understand the concept of ADR/ mediation and the objective is to explain how the extensive use of these alternative methods to court procedure can prevent chaos and enhance peace and stability in the country. For an in depth and close study purposes, this type of study was best obtained through verbal data collection as interviews; focus group discussion, and reports were used for analysis.

Also ‘case study’ research design and its applicability to this study was best suited and eminent as the focus of the study was to answer whether mediation has proven as a worthy ADR, how can mediation be spread all over the country and why the need for that and what can be done to ensure that this conflict mechanism tool is used to control chaos and promote peace. Also case study was chosen as it is not an scientific experiment that follows rigid rules and hence cannot manipulate the behaviour of those involved and will be interviewed under this study. Not forgetting covering contextual boundaries of mediation there is the need for exploration and investigation which helps you know the unit of your analysis which provides an understanding of the phenomenon under study. Qualitative case study research was chosen as it is an approach to research that allows exploration of mediation within the context and at the same time using a variety of narrative data sources and flexibility. This makes mediation within communities explored not through one view but through various outlooks to validate and authenticate the hypothesis established and understanding of it exposed, revealed and understood.

Also qualitative research case study strategy with contemporary phenomenon gave an opportunity for a chance to find explanation regarding specific events in a contemporary issue, their processes, the way they occur and why they occur the way they do in a given context (Bacho 2001:81).

This study is taking its case from communities in Kakua chiefdom in Bo district. These communities in the Kakua chiefdom are pilot areas of the community mediation programme activities carried out by Timap. These communities in the chiefdom are apt as they allow more focuses for in depth findings since this is one of the chiefdom where this initiative was first piloted by Timap for Justice.

In selecting a case, an attempt was made to narrow down to a manageable number of settlements from which selection could be done while bearing in mind the available time and resources. A decision was, therefore, made to select a single case where concrete information could be sought and analysed considering time and other resources available.

Five data collection methods were applied in conducting this research. They included literature review, consultations, stakeholders’ interview, key informant interview and lastly, focus group discussion. The conceptual framework on which the study is anchored was developed after being clear with the objectives and research questions. A case study area was then selected, using the developed selection criteria, and the reconnaissance survey conducted. This was followed by identification of the data collection methods and the data analysis technique. Finally, conclusion and recommendations were drawn. The author’s knowledge of contemporary analysis to the cases of the conflict in Sierra Leone’s decade old civil war, my involvement in the justice sector through study and practice and the common

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\(^7\) Handbook for Paralegals in Sierra Leone 2006
dissention of various grassroots population further motivated the selection of study subject and study area.

**Analysis of Results and Findings**

Findings on Community Mediation and Access to Justice indicates a significant impact as people confirm that they were able to access justice right at their door steps. A section chief mentioned that if justice can be accessed by all at their door steps then there will never be a reason for war as happened before in the country. From the perception of the chiefs, stakeholders of all works of life in the community I visited, it is believed that wide spread use of mediation can help remove bottlenecks in accessing justice by providing voluntary, free, confidential and prompt mediation services right in the communities where most people live. Interviewees affirm that using community people to mediate cases bring speedy access to justice or at least opportunity to be heard and it was a welcome idea to have an alternative to court procedure and ways. Such programmes are easily accessible to the people and neighbouring communities that are non-beneficiaries of the pilot program are always asking initiative to come to their locations to aid in peace process as they feel the traditional court does not give them fair treatment and justice enough.

The wide spread use of mediation can be enhanced if stipend are paid to these community mediators. It came out clearly during interview with the mediators that even though they were happy with their work and their contribution to the community as a whole, they will prefer regular stipend than one parcel or purse receive as token when called to Freetown for training which is about two times per year. This they think will avert the temptation asking the disputant for money in the future which will be a strong factor to minimize this increased access to justice by the vulnerable population of the communities.

*Disputes in the community and the contribution of community mediation*- The chiefs attest to the fact that the flexible nature and pillars of mediation that is followed in pilot programme encouraged them to refer certain cases to mediators for settlement. Even the chiefs informed me that they as chiefs sometimes seek redress from the community mediation programme of some of the disputes in which they are directly involved and affect. They affirmed to the strong conviction that the strategies and methods used by the programme resolves disputes in a manner that do not have the potential of leaving scars or grudges for disputants.

The effect of using community mediators will promote reconciliation that builds on relationships as people face each other with their problem and resolve such conflicts amicably and in a peaceful means provided by mediation. A study in 2010 reveals that three 300 community mediators, 15 teachers of mediation/trainers of trainers were recruited and trained. All the trained community mediators conduct mediation in their communities - Bo and Bombali districts in four (4) target areas. Through training in their dialect community mediators were able to grasps the concept of mediation and further handled disputes in their communities in local dialect. This allows for free access and understanding of the settlement process. Disputants can reach an agreement with a complete understanding of the whole process which is opposed to the formal courts. The formal courts especially the higher courts allows only English and in most cases in the district head quarter towns may need interpreters. These interpreters are not always available and in some cases the court clerk acts as interpreter which h watered down and full of inconsistencies. With the mediation done in local languages breeds cultural acceptability, quick, approachable and effective in accessing justice as enshrined in our 1991 constitution. This local language used for disputes fosters peace and tranquility in these communities. By training community members to handle disputes in their community further empowered such people to act as leaders and be a respectable citizen in that community. Empowering them through

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8 Section 8:2
training which does not require them to be formally educated which allowed for the right people to be chosen to act mediators. This helps to bridge the peace gap in communities as such trainings done by experts on mediation, given to the right people in Communities bridge the gap for peace to be sustained in a prescribed manner for the benefit of the country.

The effect of community mediation on the caseload of the formal justice systems. As aforementioned, there was increase in the number of cases resolved through the CMP (2123). This implies that this huge portion of the 2123 cases resolved through they CMP are very likely to have clogged up in the formal justice system since its approach, processes and lack of resources including human resource remain likely factors to slow the completion of litigations. Government could have spent a lot of money feeding the accused awaiting trial in prison or serving sentences. Secondly the police as well as the courts could have wasted resources on prosecuting suspects/ accused if the disputes were not being resolved through mediation in communities. There is no mechanism at the moment to ensure enforcement of Settlement Agreements; there is a feeling from some mediators that a few parties are not serious about keeping to their agreements. However, we think this means more attention is needed to ensuring that settlements meet both parties’ needs. It was strange and surprising to note that Chiefs, courts and police are supportive of community mediation programme as they attest to the fact that it reduces their workload and advised that other district and chieftdoms should benefit from such programme. They believe that the wide use of mediation programme will not only reduce their workload as other justice providers in communities but mainly this will prevent bottle neck and clogging of the judicial systems if minor cases are handled by mediators all over the country. This can prevent delay in delivering justice service which in turn is denial as justice delayed is justice denied.

Community mediation and access to justice.

The findings on the possibility of expansion of mediation use which brings access to peace and justice were paramount to this study. With Sierra Leone having 12 districts and 149 chieftdoms, each chieftdom is divided between 5 and 15 sections presided over by section chiefs. The community mediation programme has significantly helped people where the Timap project has been implemented as people confirm that they were able to access justice right at their door steps. A section chief mentioned that if justice can be accessed by all at their door steps then there will never be a reason for war as happened before in the country.

From the perception of the chiefs, stakeholders of all works of life in the community I visited, it is believed that wide spread use of mediation can help remove bottlenecks in accessing justice by providing voluntary, free, confidential and prompt mediation services right in the communities where most people live.

Interviewees affirm that using community people to mediate cases bring speedy access to justice or at least opportunity to be heard and it was a welcome idea to have an alternative to court procedure and ways. Such programme is easily accessible to the people and neighbouring communities that are non-beneficiaries of the pilot program are always asking initiative to come to their locations to aid in peace process as they feel the traditional court does not give them fair treatment and justice enough.

The wide spread use of mediation can be enhanced if stipend are paid to these community mediators. It came out clearly during interview with the mediators that even though they were happy two times per year. This they think will avert the temptation asking the disputant for money in the future which will be a strong factor to minimize this increased access to justice by the vulnerable population of the communities.

The Timap Community Mediation Programme (CMP) has been piloted only in four chieftdoms and success rate is high as 2123 mediated cases by 2013 in the target areas. It is a viable with their work
and their contribution to the community as a whole, they will prefer regular stipend than one parcel or purse receive as token when called to Freetown for training which is about instrument for peace and through their structured outreach programmes (mobile clinics, outreach meetings) have been able to inform community members about the mediation programme which has played a vital role in the increase in the reported caseload.

**The effect of community mediation on the caseload of the formal justice systems**

Evidences from this research shows an increase in the number of cases resolved through the CMP (2123). This implies that this huge portion of the 2123 cases resolved through they CMP are very likely to have clogged up in the formal justice system since its approach, processes and lack of resources including human resource remain likely factors to slow the completion of litigations. Government could have spent a lot of money feeding the accused awaiting trial in prison or serving sentences. Secondly the police as well as the courts could have wasted resources on prosecuting suspects/ accused if the disputes were not being resolved through mediation in communities. There is no mechanism at the moment to ensure enforcement of Settlement Agreements; there is a feeling from some mediators that a few parties are not serious about keeping to their agreements. However, we think this means more attention is needed to ensuring that settlements meet both parties’ needs. It was strange and surprising to note that Chiefs, courts and police are supportive of community mediation programme as they attest to the fact that it reduces their workload and advised that other district and chiefdoms should benefit from such programme. They believe that the wide use of mediation programme will not only reduce their workload as other justice providers in communities but mainly this will prevent bottle neck and clogging of the judicial systems if minor cases are handled by mediators all over the country. This can prevent delay in delivering justice service which in turn is denial as justice delayed is justice denied. One peace is denied can lead to dissatisfaction and grievance that leads to conflict.

**Summary, Recommendations and Conclusions**

The importance of community mediators in the justice system, lays foundation for peace and possible development in Sierra Leone. Findings show that the benefit to the justice system in terms of reduced cost, manageable caseloads and speedy settlement of disputes outweighs backlashes and minor inconsistencies. Also that with interventions from international donors through NGOs that demands reports and always do supervise based on indicators and outputs it is feasible that community mediation can improve lives and peaceful co-existence in the country.

**Recommendations for Action**

For mediation to be used widely used, needs the backing of government through the creation and enforcement of laws. An alternative dispute resolution act should be passed by parliament which clearly recognizes these dispute resolutions as a choice to seek redress. The binding force of law gives credence and weight to its wide use and its effort to combat conflicts. In such an act there should include a section on diversion which mandates the court, police and other formal justice institutions to divert cases for mediation and peaceful settlements. For the wide spread use of mediation which is important and urgent, justice service delivery organizations should collaborate their efforts and work together. This can be achieved through regular task force meeting, technical meetings and management meetings at directorial levels. These concerted efforts and information sharing will foster stronger network for positive push in fighting against injustices and chaos by complimenting each other and avoid duplications of projects in a particular area.

Awareness raising is a key to the success of reaching nationwide approach to mediation. For the people in communities to be aware of such alternative methods and its successes, outreach meetings
done in an unusual ways should be tried. Such as drama, documentary, social clubs in school and public lectures, human rights plays and free legal education done in community radios. Stipend for community mediators should be included in budgets prepared for submission to donors for such programmes to continue to function properly and it will also reduce chances of bribery and corruption of these community mediators.

Recommendations for Further Research

There are various types of alternative dispute resolution not forgetting different types of mediation. There is a need for research on hybrid cases of ADRs like mediation and arbitration wherein the binding force of arbitration is brought in with mediation which makes it more workable and positive effects on peaceful co-existence. It is also recommended to research on arbitration another dispute resolution and show whether the introduction into the Sierra Leone context can bring peace and highlighting personnel with calibre that will be act as arbitrators. It is thus recommended for further research to show its importance to compliment and improve justice delivery in the country.

To further confirm the conclusion about the uses of community mediation all over the country can bring peace and development in a country using local people is also paramount. It is recommended that combine study using both quantitative and qualitative study should be carried out to clearly determine if local people in all communities can be used as part of the justice delivery process can bring peace, prevent war and escalation of conflicts.