brief

PROMOTING RESPECTFUL MATERNITY CARE
RESOURCE PACKAGE

ALTERNATIVE DISPUTE RESOLUTION: RESOLVING INCIDENTS OF DISRESPECT AND ABUSE

WHAT IS THE ALTERNATIVE DISPUTE RESOLUTION MECHANISM (ADR)?

The ADR mechanism is a process where an independent and impartial third-party facilitates the negotiation between disputing parties, in this case to resolve incidents of disrespect and abuse (D&A) in a health care setting. In Kenya this was originally used to settle land disputes and inheritance issues at the community level using existing mediation structures. The third party or mediator is not a decision maker like a judge or magistrate. It is a voluntary process and is often used to describe a wide variety of dispute resolution mechanisms that are short of, or alternative to, full-scale court processes.

The ADR mechanism brings the aggrieved parties together with an opportunity to solve problems in a locally acceptable way. ADR supports both providers' and clients' rights and obligations by ensuring each side is heard.

The RMC resource provides guidance on the sequence of steps for aggrieved parties or their relatives and the health system to follow when disputes arise or unresolved incidents of D&A occur. **To date, community-based workshops trained 153 CHWs and local leaders in RMC interventions which included how to conduct ADR. Ten known complaints of D&A were handled through ADR.**

Advantages of ADR:

- Faster than court process
- Less confrontational or adversarial
- Encourages creativity to search for solutions
- Results in more durable solutions
- Less costly and less formal
- Confidential
- Usually satisfying to all parties involved

Disadvantages of ADR:

- Non-binding unless parties consent
- Endless proceedings
- Need for goodwill
- Unsuitable in cases of unequal bargaining power e.g., a manager and supervisee
- If health manager refuses to acknowledge a problem needing resolution,this lack of acceptance blocks the process.
- Unlike in legal cases, in ADR no precedents are created that can be used to inform future cases.

This intervention is part of the respectful maternity care (RMC) Resource Package developed by the partners of the Kenya Heshima Project and focuses on policy, health system and community levels. The package includes the most effective interventions, and provides practical, low cost, and easily adaptable strategies for facilities and communities to reduce disrespectful and abusive treatment during childbirth. RMC refers to the humane and dignified treatment of a childbearing woman throughout her pregnancy, birth, and the postnatal period.

PRINCIPLES OF ADR

OPENNESS
Acknowledgement that something has gone wrong with the care, treatment or procedure offered; or simply that the client is dissatisfied with the treatment or the outcome.

OBJECTIVITY
Essential to ensure that both sides are comfortable with the mediation process.

TRUST
To alleviate mistrust between service providers and community members, mediation can bring out issues that can be resolved fairly.

EXCHANGE INFORMATION
To increase prospects of resolving the dispute without resorting to legal action.

VOLUNTARY
Neither party should be coerced into participating and are free to terminate the process at any time.

IMPARTIAL
The mediator must maintain impartiality, have ADR experience and training:

NEVER END ADR SESSIONS WITHOUT A SOLUTION OR WAY FORWARD

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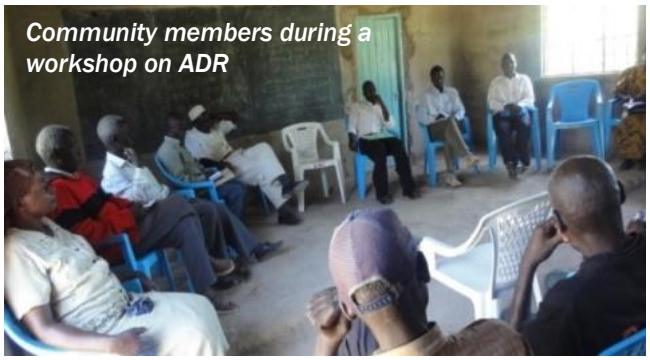
CHALLENGES OF ADR

ADR CANNOT BE USED IN CASES OF:

- Omissions or deviations from clinical practice or standard operating procedures have occurred, or for any other issue that has legal implications
- Pinching/slapping/pushing/beating, stitching, sexual assault
- Discrimination (e.g., failure to provide services to women living with HIV; denial of services due to lack of money)
- Delay in receiving care after a decision has been made (e.g., to perform cesarean section)
- Failure to provide supplies and service even if they are available
- Failure to examine clients according to the national guidelines even when the resources are available
- Neglect post-delivery
- Not discharging a mother if she is unable to pay and/or her welfare is not taken care of while her baby is sick

ADR MAY BE INEFFECTIVE WHEN:

- People are afraid to speak out against the health facility or feel they will not be taken seriously
- Participants lack trust and there is poor communication.
- Meetings are closed—this may be frowned upon by some
- Parties believe there is a better way to resolve the dispute
- Parties come with their own definition of the problem and are reluctant to listen and resolve their differences



Community members during a workshop on ADR

"One of the responsibilities we gave the community is that if they encounter disrespect and abuse, they should not keep it to themselves but come out and share with our community health workers so that it can be reported." —COMMUNITY FOCAL PERSON

FREQUENTLY ASKED QUESTIONS ABOUT ADR

What if mistrust develops among participants or disputants during the ADR process?

Suggested solutions:

- Poor communication skills and facilitation skills are the main reason for mistrust in a process that was going well. Selection of experienced and tested mediators is a major factor in successful ADR
- The mediator should terminate the meeting to avoid any confrontation by the aggrieved party
- Invite the disputants to set another date but if they cannot agree, provide referral to other mechanisms

How do you deal with a party who comes to the ADR meeting with a definition of their problem and tries to justify their action?

Suggested solutions:

- Use existing service provision policy and guidelines, professional code of ethics, civil education documents to bring the party into realisation of facts of D&A.
- Be firm, acknowledging the fact that health system failures may contribute to D&A but should not be used as an excuse

Help each party to identify his/her role in the problem and proceed with the ADR process.

For more information, please contact:

Population Council
4301 Connecticut Avenue NW, Suite 280
Washington DC 20008
USA

cwarren@popcouncil.org

Population Council
General Accident Insurance House
Ralph Bunche Road, PO Box 17643 - 00500
Nairobi, Kenya

cndwiga@popcouncil.org

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