



Terms of Reference (ToR)

Activity # 2.3.2

“ Engagement of person/firm for undertaking, arranging and conducting 02 workshops (of 02 days each) and consultation to establish judicial guidance on ADR”

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1: Background:

The resolution of disputes through amicable means has reached to its climax in the past two decades. These means are called ADR (Alternative Dispute Resolution). It means “a series of different modes of amicable, conclusive, and out of court resolution of dispute, almost resulting in a win-win situation”. It mainly includes Arbitration, Mediation, Conciliation and Negotiation. The Phrase ADR was first heard of in 1970’s and reached its boom in 1990’s, when Lord Woolf introduced his reforms of civil justice system of England. Having British legal legacy, first India and then Pakistan followed suit. In the last two decades, both states have introduced a number of ADR-mandating provisions to their justice systems.

The question is why the whole world is rushing towards ADR. The answer is that formal system cannot cope with the prevailing socio-economic developments, commercial, corporate and investments related disputes. The number and scale of these disputes are such that the whole legal system of a country cannot handle these disputes even if it is completely dedicated to resolving them. In addition, formal legal systems are very expensive which discourage the majority of the litigants from resorting to it. Moreover, the procedure in the formal legal system is very lengthy- and is, therefore, tiresome. It is complicated and the nature of human being is inclined to simplicity. It is dead slow in getting finality and that is inconsistent with the hasty nature of mankind. The main defects of the state-run courts are inordinate delays, complex procedural requirements, abuse of procedure, and priority of legal justice over substantial justice, unnecessary and unwanted consideration of technicalities in decision making process, preference of fairness over justness, problems of execution and above all highly belated finality. Skyrocketing fees of advocates and their professional negligence are other fatigues.

On the other hand, ADR techniques are local, simple, amicable, peace-ensuring, expeditious, conclusive and inexpensive. ADR prefers resolution over adjudication. It ignores black-robed judges, well-dressed lawyers, and fine-paneled courtrooms as against ordinary sincere mediators while resolving disputes in houses made of mud or in tents built of grass fragments. ADR is a blessing in a system where keynote is law rather than justice.

Keeping the above popularity and significance of ADR, the UNDP intends to support judiciary in the court annexed ADR, out of its SRLM project. The preferable targeted area is, therefore, districts of Malakand. The proposed activity is a practical exercise which aims capturing of the intelligentsia of the personnel of justice sector on the meaningful utilization of ADR techniques in pending cases. The activity would explore guidelines on the subject for all the personnel of justice sector in general and for the judges and advocates in particular.

2: Objective

The objective of the activity is twofold. First, it aims to the enhancing of public confidence upon judiciary by lessening the huge pendency of cases. Secondly, it aims to reduce the miseries of litigants by encouraging them make recourse to amicable settlements.

3: Beneficiaries

The direct and primary beneficiaries of the activity are disputants themselves. The personnel of the justice sector would also take the benefit, for the activity will enhance their capacities, skills and knowledge on the subject. The expected recommendations and guidelines on ADR will prove a permanent source of knowledge, research and inspiration for all members of legal fraternity

4: Scope of work

The proposed workshops would explore the mechanism for proper and meaningful function of ADR techniques in pending cases. Focus will remain on Pakistani statutes that carry ADR Provisions. Each and every mode of ADR (arbitration, conciliation, mediation and negotiation) would be discussed. Targeted area is, preferably, Malakand division.

5: Task

The selected person/firm will be required to perform the following:

- Undertake two workshops for establishing guidance on ADR
- Report writing and draft guidelines
- Facilitation and coordination
- Ensuring participation of people of quality expertise in the proposed activity

6: Duration

According to the situation and circumstances and outcomes of the workshops

7: Qualification

- (i) **Firm:** Demonstrable expertise and provable skills in amicable settlements.
- (ii) **Individual:** At least post-graduate qualification in law with research on ADR or have studied ADR as a subject in graduate /post-graduate legal studies. Certified trainers on ADR will be preferred.

8: Experience

- 1- At least five years experience in the field of ADR
- 2- Strong background of drafting and report writing
- 3- Has/have conducted at least three workshops or seminars on ADR/any mode of ADR.

9: Skills required

- 1- Command on English, Urdu and Pashto. Know-how of Arabic is also good.
- 2- Strong report writing skills.
- 3- Strong drafting skills.
- 4- Interpretation and construction skills
- 5- Strong skills in IT.
- 6- Considerable skills of amicable settlement of disputes

10: Deliverables (Quality assurance and payment)

The Consultant will be paid on the percentages of the work done and contract price set forth in the table below and upon submission of deliverables mentioned therein.

SN	Deliverable	Period	Percentage of work and payment
1	Preparation of concept note.		
2	Designing of course contents.		

3	Preparation of schedule of activities.		
4	Engaging of resource persons. Academy (or its focal person or the TWG.		
6	Compilation of the report of literature review and interviews.		
7	Obtaining of nominations (participants)		
8	Taking minutes of the proceedings		
9	Writing report and drafting of guidelines		