

**Rural Centers for Alternative Dispute Resolution and Peace Making for Resolving Conflicts
in the Pacific Rim: The cases of Arizona and Indonesia**

By
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While cities are the focus of most economic activity, rural areas play an important role for most people in the Pacific Rim. Disputes over land, grazing rights, homes, credit issues and financial resources can be a serious impediment to peaceful co-existence and social progress. In Arizona and Indonesia, this has caused large dollar value disputes, riots and even death. Both jurisdictions have large rural areas, native peoples, many languages, religions and a history of violent conflict. In both rural and agricultural based Arizona and Indonesia, this presentation highlights methodology and courses being developed to solve some of these conflicts.

Mediation, alternative dispute resolution, peace making and arbitration are techniques that can help solve both commercial and civil disputes. This is particularly true where the “rule of law” or courts cannot or will not be able to solve issues quickly, economically and efficiently. In fact, rural alternative dispute resolution grew out of farmers’ disputes, which could not be resolved by the existing institutions or courts in the 1980’s in the U.S.. In the United States of America over 70% of disputes referred to mediation are solved to the satisfaction of all parties. Today, around the world, mediation and similar techniques are used in trade matters, cross border issues, land issues, health determinations, divorce and a wide variety of other issues before the courts, government agencies, and other organizations.

Indonesia has more than 300 ethnic groups, which have distinct cultures, business, civil and commercial practices. As an emerging market, it faces a number of problems in multicultural and commercial practices. These problems are challenging the ability of rural community development. An article in the International Herald Tribune entitled “Indonesia faces a breakdown....” stated that “Many fail to realize that restructuring the financial sector (and many others) without restructuring the judiciary will end in failure”² The need to have an alternative dispute resolution continues to grow, as well as the need to empower the people.

Indonesia, as a relatively young country, can learn a lot from America’s Southwest long history of disputes and resolution. Similarly across the Pacific America’s Southwest can learn from Indonesia. Arizona has over 27 Native American nations, a large Asian and Hispanic community, gender issues,

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² International Herald Tribune January 14, 2000, page 7

economic disparity, and five major religions that must work together to solve disputes, mediate crises and build communities in rural areas. The techniques and institutions that grew out of the U.S. farm credit crisis and America's southwest cultural and ethnic diversity could provide a number of ideas, techniques, and educational tools that are useful in alternative dispute and crises resolution.

In Indonesia, conflicts have caused riots and even death. In both rural and agriculturally based Arizona and Indonesia, this paper highlights methodology and courses being developed to solve some of these conflicts. Over fifteen rural based agricultural oriented universities and colleges have used mediation, alternative conflict resolution and peace studies to help the global transformation of agriculture, support faculty and students, and also raise money for universities. Collectively the universities have raised over \$45 million dollars over the past fifteen years to help fund badly needed education and dispute resolution due to the challenging economic and financial conditions in Agriculture and rural areas. Furthermore, this program has saved over \$200 million dollars for the U.S., regional governments, farmers, ranchers and rural citizens over the past 15 years.

The funding comes from both regional and national institutions—a national and local partnership. The universities in the U.S. include Arizona State University, University of California, Boise University (Idaho), Southern Illinois University, University of Minnesota, Kansas State University, New Mexico State University, Southern Louisiana University, University of Florida and Oklahoma State University. Internationally, there are also six universities setting up mediation centers to assist with the decentralization and market changes. These are on three islands and six regions in Indonesia. The Indonesian universities include the Agricultural Academies in Bogor and Yogyakarta (IPB), Satya Wacana Christian University in Salatiga, and Iain Walisongo Semarang (State Institute for Islamic Studies) in Semarang. These efforts grew out of the farm and farm credit crisis of the 1980's. The American Association for Higher Education in their service learning series highlighted the educational value by stating that these studies and programs could help “educators interested in reconnecting higher education not only with their communities but with the tradition of education for service”. The American association for higher education has been very supportive of these programs.³

Mediation, alternative dispute resolution, peace making and arbitration are techniques that can help solve both commercial and civil disputes. This is particularly true where the “rule of law” or courts cannot or will not be able to solve issues quickly, economically, and efficiently. In fact, rural alternative dispute resolution grew out of farmers' disputes, which could not be resolved by the existing institutions. In the U.S., over 70% of disputes referred to mediation

³ Teaching for Justice: Concepts and Models for Service-Learning in Peace Studies, Kathleen Mass Weigert and Robin Crews editors, 1999, page v

are solved to the satisfaction of all parties. Today around the world, mediation and similar techniques are used in trade matters, cross border issues, land issues, health determinations, divorce, and a wide variety of other issues before the courts, government agencies, and health organizations.

In the transformation of resource-based economies to market-based ones, disputes over land, economic systems, and financial resources can be a serious impediment to growth. In Indonesia, this has caused riots and even death. In both rural and agriculturally based Arizona and Indonesia, this paper highlights methodology and courses being developed to solve some of these conflicts. Recent deadly rural conflicts in the U.S., Jakarta and Bali highlight the need for seeking regional solutions to these disputes. The article reviews the progress in rural alternative dispute resolution.

Mediation, alternative dispute resolution, peace making and arbitration are techniques that can help solve both commercial and civil disputes. This is particularly true where the “rule of law” or courts cannot or will not be able to solve issues quickly, economically, and efficiently. In fact, rural alternative dispute resolution grew out of farmers’ disputes, which could not be resolved by the existing financial and legal institutions quickly and effectively. In the U.S., over 70% of disputes referred to mediation are solved to the satisfaction of all rural parties. Today around the world, rural mediation and similar techniques are used in trade matters, cross border issues, land issues, health determinations, divorce, and a wide variety of other issues before the courts, government agencies, and health organizations.

In other parts of Asia and Europe, there are also conflicts and major disputers. Where there are different ethnic groups, there historically exist conflicts. For example there are over 126 ethnic groups in former Soviet Union—including Ukraine⁴. As a result, there have been major population migrations throughout the region. Similarly, Indonesia has more than 300 ethnic groups, which have distinct cultures, business practices, and civil and commercial practices. Similarly in Arizona, over 50 different ethnic groups exist. There are over 27 Native American nations, one third of the population speaks Spanish as a first language and there are six or seven different active religions. As an emerging market, it faces a number of problems in multicultural and commercial practices. These problems are challenging the ability of rural community development. An article in the International Herald Tribune entitled “Indonesia faces a breakdown....” stated that “Many fail to realize that restructuring the financial sector (and many others) without restructuring the judiciary will end in failure”⁵ The need to have an alternative dispute resolution continues to grow, as well as the need to empower the people.

The CIS and parts of the Central Europe are young countries and can learn from America’s Southwest long history of disputes and resolution. For example,

⁴ Ms. Galina Starovoytova, State Duma, Russian Federation, 1998, Berlin Germany, Speech

⁵ International Herald Tribune January 14, 2000, page 7

Arizona today has over 27 Native American nations, a large Asian and Hispanic community gender issues and five major religions that must work together to solve disputes, mediate crises, and build communities in rural areas. The techniques and institutions that grew out of the U.S. farm credit crisis and America's southwest cultural and ethnic diversity could provide a number of ideas, techniques, and educational tools that are useful in alternative dispute and crises resolution.

For the past five years, in the U.S. and Indonesia, over 45 institutions related to agriculture and the rural areas have been developing new ideas and institutions to assist alternative dispute resolution in Indonesia. This includes the establishment of Indonesia Rural Alternative Dispute Resolution and Agribusiness courses in Indonesian universities. These institutions focus on developing joint techniques, courses, and certified individuals that will assist rural civic and commercial dispute settlements.

The strategy of Ag mediation centers are to promote courses and training, which focus on civic and mediation centers from the rural areas and to teach courses leading to mediation certificate and dispute resolution programs. The purpose is that the various parties can assist each other to focus on the techniques and alternative dispute resolution process in Indonesia and Southeast Asian emerging markets.

In many parts of the four billion person emerging markets, dispute resolution and Peace Making are very important if commercial business is to be done. For trading efforts like WTO to work they must have a way to resolve disputes across cultures, borders and industries. In areas where there are no traditional "western" legal forms, regional areas need an alternative. These areas and countries do not have strict legal "uniform commercial codes", understanding of international conventions nor "rules of law" to solve disputes in agribusiness, food and rural transactions. Thus, in many cases, integrity in transactions is a major challenge.

Today the two key emerging agribusiness markets where this can be a challenge are Indonesia, Ukraine and other CIS countries and the Newly Independent States including countries such as Moldova. Each is different. In Indonesia, there are over 300 different ethnic groups in over 6000 islands. With over 200 million people, it is considered a major emerging market of the United States. Another example is Ukraine and other CIS countries, an emerging CIS country where agribusiness makes up over 30% of the transactions. Close to 200 million people in Ukraine and other CIS countries and the CEE endure disputes, which cannot be solved under a "rule of law" system. China, South Africa, Brazil and other emerging markets are an important part of the future. In Australia, also they have helped develop the Integrity of transactions, which face serious difficulties in many transactions.

Arizona is a unique place to forge new ideas in Integrity due to its history and diversity. Arizona is a unique state due to its culture and ethnic diversity. For the past five hundred years, the Spanish territory, Mexican territory, U.S. territory, has faced disputes in the rural areas. While Hollywood movies have focused on the "Wild West" for the regions lore, the realities are quite different in regards to settling disputes and trade issues. The Early Spanish explorers such as Cabeza de Vaca (1536), Marcos de Niza (1539), and Francisco Vásquez de Coronado (1540), and several Spanish missions were founded in the late 17th century. They helped establish trade and other links with the many tribes and Native American nations. Disputes were settled by force during this period. The region came under Mexican control after 1821, and lands north of the Gila R. passed to the U.S. territory of New Mexico at the end of the Mexican war (1846-48). Lands between the Gila R. and today's southern boundary were added through the Gadsden Purchase (1853). Arizona became a separate territory in 1863, and settlement accelerated after the surrender (1866) of Geronimo ended 25 years of Apache wars. Rapid development of irrigated agriculture, spurred by construction of the Roosevelt dam (1911), and industrial and urban expansion beginning during World War II strained limited water resources. Unfortunately in many areas violence remains as a way to settle commercial and rural disputes. The rural areas show this diversity as most of northern and eastern Arizona lies within the arid Colorado plateau region, and most of the south and west in the flat desert basins (many now irrigated) and jagged mountain ranges of the Basin and Range region. Major rivers are the Colorado, Gila, and Salt. A total of 20,036,000 acres (8,108,000 hectares), or 38% of all U.S. Native American tribal lands, are in Arizona; the largest are the Navaho, Hopi, Apache, Fort Apache and Papago (TOHONO O'ODHAM) farming operations and reservations. In 1990 Arizona was 81% white, 19% Native American and others.

Like Arizona, Emerging Markets such as Ukraine and other CIS countries and Indonesia have challenges settling disputes. Thus, many commercial agribusiness transactions, trades, and disputes do not have traditional ways of settling disputes. In some extreme cases violence and death has been the result of these disputes. After twenty years of American Rural Mediation to assist rural commercial businesspersons and farmers, there are a number of key developments in these areas. This paper highlights for IAMA and others interested in commercial mediation, peacemaking and dispute resolution a number of possible options. This paper outlines the background, law, and efforts by U.S. states and federal government to focus on mediation as a way of settling disputes. As of FY2001 there have been close to 39,000 cases in the U.S. submitted to formal state and local mediation units. Estimates suggest that 70 percent or over 27,000 have been successful in solving the dispute⁶. Finally the paper will enumerate the lessons mediation and peacemaking organizations have learned.

⁶ Successful conclusion means no legal suit or dispute follows mediation.

Background

In the transformation and commercialization of agribusiness and resource-based projects and transactions, disputes over land, economic systems, environmental resources and financial fortune can be a serious impediment to growth and societal progress. In the rural areas, the rule of law is not always an accepted way of settling all disputes. In Arizona, less than 100 years ago, the “six” gun was used to settle disputes. In Arizona and twenty-five other states Rural Mediation centers currently are operating successfully. In Indonesia, one of the world’s major emerging markets and democracy, rural disputes has even caused riots, and even death. In both rural and agriculturally based Arizona and Indonesia, this paper highlights methodology and courses being developed to help solve some of these conflicts. Mediation, alternative dispute resolution, peace making and arbitration are techniques that can help solve both commercial and civil disputes. This is particularly true where the “rule of law” or courts cannot or will not be able to solve issues quickly, economically, and efficiently for all participants. Historically, rural alternative dispute resolution grew out of farmers’ and ranchers’ disputes, which could not be resolved by the existing institutions. In the U.S., over 70% of disputes referred to mediation are solved to the satisfaction of all parties. No party wins all but on the other hand, no party loses all either. This has significantly slowed appeals and litigation in certain important areas. Today around the world, mediation and similar techniques are used in trade matters, cross border issues, land issues, health determinations, divorce, and a wide variety of other issues before the courts, government agencies, and health organizations.

In the past five years, the Academy of Agriculture in Indonesia, Bogor Agricultural the Indonesian Agricultural Extension Academy, the Bogor Agribusiness Center and Arizona State University will continue to develop new ideas and institutions to assist alternative dispute resolution in emerging markets. Assisting this group, the Arizona Foundation of Law Related Education and the Santa Cruz Institute will help set up valued training and courses for all in these areas. This includes the creation of the Indonesia Rural Alternative Dispute Resolution and Agribusiness program. They will focus on developing joint techniques, courses, and certified individuals that will assist rural civic and commercial dispute settlements.

The strategies of these institutions is to promote courses and training, which focus on civic and mediation centers from the rural areas and to teach courses leading to mediation certificate and dispute resolution programs. The purpose is that the various parties can assist each other to focus on the techniques and alternative dispute resolution process in Indonesia and Southeast Asian emerging markets. Just south of Tucson these techniques are being developed also to assist in disputes over FTAA and NAFTA disputes related to trade and related issues. This will undoubtedly be part of the changes in WTO: The Doha Round, which is in large part focusing on Agriculture.

In the U.S. there is a similar Federal State Partnership. Section 502 of the Agricultural Credit Act of 1987 (P.L. 100-233) authorized the Secretary of Agriculture to help States develop the Department of Agriculture's (USDA) Certified State Mediation Programs and participate in those programs. The Farm Service Agency (USDA) through its Executive Director for State Operations (EDSO) administers the program.

State mediation programs assist agricultural producers, their creditors, and other persons directly affected by the actions of the USDA to resolve disputes, thereby reducing participants' costs associated with administrative appeals, litigation, and bankruptcy. The USDA Mediation Program gives farmers and ranchers a confidential way to work out distressed or delinquent loans.

Agricultural mediation is a way of settling disputes within a producer's own means. The program provides a neutral mediator who can sit down with the parties or work on the phone to resolve very problematic issues. Instead of years it can take for a case to filter through the courts, mediation generally takes only a few meetings to complete.

A critical feature of mediation is confidentiality in working out differences concerning farmers and ranchers' business operations. Mediation documents are not to be used for any other legal action. This is one of the key requirements for State mediation certification. Confidentiality is the key to making mediation work.

Historical Development and the Law

The Agricultural Credit Act of 1987 authorized federal efforts as a result of the problems throughout the rural areas in America. It was based on a number of state programs principally in the Mid-West. It set up a series of matching grants for state formulated programs. Today there are 30 different programs in 30 states. Each state is different. The Food, Agriculture, Conservation and Trade Act of 1990 (P.L. 101-624) extended this authority through FY 1995. The Federal Crop Insurance Reform and Department of Agriculture Reorganization Act of 1994 (P.L. 103-354) further refined the program. The Agriculture Credit Improvement Act of 1992 (P.L. 102-554) also redefined the roles of states and federal agencies in this partnership. Section 282 of the 1994 Reorganization Act expanded the program to include wetland determinations, conservation compliance, agricultural credit, and rural water loan programs, grazing on national forest system lands, pesticides, and other issues the Secretary of Agriculture deems appropriate. Today Congress is strongly supportive of this system and has increased financial support as a way of assisting rural areas in the financial challenges of the new millennium. The BLM has participated in many of these mediations as an agency, which is directly affected by the challenges of farmers and ranchers in rural areas. Today for all adverse decisions, Section 275 of the Act required that if a USDA Certified State

Mediation Program is available as part of the informal hearing process, and the appeal participant would be offered mediation.

What is Rural Mediation?

Mediation is a process in which a trained, highly respected and impartial person--a mediator--helps people look at their mutual problems, identify and consider options, and determine if they can agree on a solution. A mediator has no decision-making authority. Unlike a judge or an arbitrator, a mediator cannot decide what is right or "make" anyone do anything. Successful mediation is almost always based on the voluntary cooperation and participation of all the parties.

USDA enters mediation to explore all available options to help agricultural producers, their creditors, and other persons directly affected by the actions of USDA to resolve disputes and reduce costs associated with administrative appeals, litigation, and bankruptcy. USDA representatives try to set a positive, constructive tone and encourage others to do the same in order to provide a positive atmosphere for good settlements.

How Does Mediation Work?

Any affected party can request mediation at any time, but it usually takes place after a government official advises the customer that mediation is available before or after receipt of formal adverse actions. The customer may request mediation or waive the opportunity to use the service.

If mediation is requested, State mediation officials contact the requesting party to get a complete list of potential participants and their addresses and suggest steps the participants should take to prepare for mediation. The mediation service then assigns one or more mediators to the case.

Participants may select or eliminate the mediators offered by the mediation service. Once a mediator is selected, all potential participants are advised that a mediation process is underway. If a meeting is scheduled, the parties are informed of the time, place, and nature of the mediation process. Ground rules are set to ensure that the conference is productive.

Once an agreement is reached, the mediator makes sure that it is in writing, is signed, and made available to all participants. If an agreement is not reached, the case is closed, all parties are advised of the outcome, and all remain free to pursue other legal courses. Mediation does not favor one side or the other, but helps both consider their situation. The main idea is to provide a low-cost alternative to expensive, lengthy litigation or bankruptcy.

Certification of State Mediation Programs

The U.S. government has a special procedure to help States develop mediation services. Under Federal Regulation 7 CFR 1946, USDA officials determine whether a State program meets the following requirements:

By August 1 of each year, the Governor or designated State agency head must notify the USDA of its interest in being certified and eligible to receive matching Federal support funds for the State mediation program.

Mediation services must be provided to agricultural producers, creditors, and other persons directly affected by USDA actions to help them reach mutually agreeable settlement of their disputes.

The program must be authorized or administered by an agency of the State government or by the Governor.

Training and certification must be provided for mediators. Neutrality and familiarity with the problems are a must.

Confidentiality of the mediation process must be assured.

All lenders and borrowers of agricultural loans and, in cases of other issues covered by the mediation program, persons directly affected by USDA actions must be ensured of adequate notification of the mediation services available.

Each of these represents a lesson learned and are key to the high success rate of the program

State Supplemental Mediation Agreements

Each state can refine the process. Once a State's agricultural mediation program is certified, the USDA and state director jointly develops an agreement with the Governor's State mediation officials and other USDA participating agencies. The agreement will describe how the affected agencies will participate in the program. The USDA SED confers with the State Attorney General's office, all affected USDA agencies, farm and ranch organizations that are interested in development of the State's certified mediation program, and affected departments of State governments, to ensure that all interested parties have an opportunity to participate.

The agreement will contain the essentials of the State mediation structure, procedural guidelines, and forms to be used in the mediation process. Then the Regional Office of the General Counsel reviews it. See Appendix 1 for a state-by-state list.

National Performance

The USDA Agricultural Mediation Program was cited for efficiency and effectiveness in the Vice President's Report of the National Performance Review, Creating a Government that Works better and Costs Less. The program was singled out as an example of activity, which other Federal agencies could use as a model.

The National Association of State Departments of Agriculture (NASDA) passed a resolution supporting the expansion of agricultural mediation. NASDA further urged the expansion of mediation to include other Federal agencies, which play a role in land and resource management, including the Department of Interior and Army Corps of Engineers.

What is the Lessons Learned?

There are several key lessons learned during the past two decades of this program. They include:

1. In the U.S. Federal-State Partnerships work. Adapting to local areas each state has a slightly different approach but it works. Before 1987, states were party to over 20,000 litigations against USDA agencies. This program has meant the states and Federal government agencies work together with the difficult restructuring and bankruptcy cases. The taxpayer does not have to pay twice.
2. Rural Peoples, Farmers and Producers have an important option. In 80% of the cases, no appeal has been files nor litigation started. With each litigated case costing around \$80,000 according to government estimates. This suggests around \$14,000,000 for each party that has been saved by the government and participant. Subtracting out the current costs for state and federal appropriations, participants and their counsel it suggests savings from all parties of a range of between \$16. Million and \$14. Million per year. See Discussion of Savings and Costs in Appendix II.
3. Both Federal and State Governments can participate and adapt the process to each state's needs. The Attorney General, Agricultural and Environment agencies can refine the process. This means Senators and Congresspersons find this an important part of the program.
4. Training and certification must be provided for mediators. Neutrality and familiarity with the problems are a must for the mediators. Each participant and party can "pick" a neutral party from a roster maintained by both the Federal and State organization.
5. Confidentiality of the mediation process must be assured. This means that the findings by the parties are not part of the legal process. This is a voluntary process and not part of the legally defined process.
6. All lenders and borrowers of agricultural loans and, in cases of other issues covered by the mediation program, persons directly affected by USDA actions must be ensured of adequate notification of the mediation services available. This means banks, other federal and state agencies, have a right to seek a solution.

The success of mediation is expanding to both the public and private sector. Use of trained mediators, is effective in many incidences as an important tool for dispute resolution both in the U.S. and globally. Recent major mediations in the high technology area, Middle East peace process and emerging markets are key to reaching solutions to important issue.

Appendix 1: Certified State Mediation Program Contacts
State Mediation Program Contacts

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Appendix II: Costs and Savings by Mediation

This is a brand new analysis done by NAD and OIG offices

Assumptions:

In USDA mediation, the range of cost per case estimated by the Office of Inspector General (OIG) Report No. 03801-23 TE) to be from a low figure of approximately \$537 to a high figure of \$9,400. Using OIG's study figures, the average cost per mediation case to USDA is approximately \$2,600.

The National Appeals Division of USDA published in its FY 2000 and 2001 Annual Performance Plan that its FY 2001 budget was estimated at \$13,450,000 to administer its typical 3,500 cases. Using these figures as a baseline, those figures suggest that, NAD's cost per case is approximately \$3,840. Of the 3,500 NAD determinations each year, 2,500 are hearing officer determinations, 800 are Director reviews of agency determinations that are not appealable to NAD.

Using these figures, a \$5.5 million appropriation in fiscal year 2005 has a potential net savings of about \$2.6 million (\$5.5 million multiplied by \$0.47).

A dispute solved quickly outside the appeal process saves staff time, emotional energy and effort. The agency has a strong interest in resolving disputes as quickly as possible. The FSA Florida Appeals Coordinator reported recently that mediation cases of equal complexity can be mediated in about 50% of the time required to handle the same case before NAD. The Florida Appeals Coordinator states that the average expense for the agency on a NAD case is about \$1,500.

The majority of disputes mediated involve FSA customers and/or their lenders. The certified state mediation programs also handle disputes involving conservation issues of NRCS, grazing on Forest Service System land, and rural housing, rural business, rural water loans of RD, crop insurance of RMA, and other issues the Secretary considers appropriate.

The costs above are similar to that reported in a 1995 report to Congress by the Administrative Conference of the United States (ACUS), which at that time coordinated the ADR work of federal agencies. An example cited, the statewide Land Use Board of Appeals (LUBA) in Oregon determined costs for a typical contested case in 1998 averaged about \$4,000. LUBA cases that did not go through the formal hearing process and utilized a mediator instead cost between \$900 and \$2,500, a savings of up to \$3,100 per case. This was stated in a 1/27/99 letter from Rebecca A. Sweetland, Oregon Dispute Resolution Commission), Cost Savings Generated by Public ADR, Jerry Neugarten, March, 1999.

This analysis was done by the CAMP (Coalition of Agricultural Mediation Programs) and includes the cost of the attorneys

3000 Cases from USDA Estimates and State Annual Reports
x 80% Success Rate

2400 Cases reach successful conclusion of no appeal

2400 Mediation Cases

\$80,000 per USDA per IG Inspector Estimates.

\$19,200,000 for the U.S. Government

A Similar Savings for State, Participant and other Institutions \$19.2 Million

Cost of Programs

\$2.-3 Million U.S. Appropriation plus overhead

State Costs including Cost Share \$750,000

Participant Costs equal \$1000 per case or \$2.4 Million

Thus, \$14. Million to 15 Million in savings annually.