

**EVALUATION OF SEARCH FOR COMMON  
GROUND'S SUPPORT TO THE FORMATIVE STAGES  
OF MEDIATION IN MOROCCO**

**ADR 1**

**November 2005**

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## APPENDICES

*Appendices are presented in a separate document*

- Appendix 1: Terms of Reference (TOR)
- Appendix 2: ADR Programme Logframe
- Appendix 3: Example of an Interview protocol

## ABBREVIATIONS & ACRONYMS

ADR	Alternative Dispute Resolution
CSO	Civil Society Organisation
DFID	Department for International Development (UK)
FAR	Forces Armées Royales (Morocco)
KABP	Knowledge, Attitude, Behaviour and Practice
MoJ	Ministry of Justice (Morocco)
MoJ-R	Ministry of Justice Representatives (Morocco)
NGO	Non Governmental Organisation
SFCG	Search for Common Ground
SFCG-M	Search for Common Ground-Morocco
TOR	Terms of Reference
CEDR	Centre for Effective Dispute Resolution (UK)

## ACKNOWLEDGMENTS

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## EVALUATION TEAM

Alice Rowley and Amine Ghouli undertook this evaluation during October and November 2005. There is a short biography of each evaluation team member below:

**Alice Rowley** is an experienced British evaluator who has undertaken evaluations and impact assessments in several countries and for a range of international organisations. Alice was awarded an MSc in Anthropology, Development and Complex Emergencies from the London School of Economics (LSE) and has several years experience in managing and undertaking evaluation for international NGOs and the European Commission (in HIV/AIDS, humanitarian aid, reproductive health as well as European policy sectors). She has extensive experience of supporting internal monitoring and evaluation processes; providing training and coaching to NGOs on Design, Monitoring and Evaluation (DME), and in designing M&E tools, systems and strategies. Alice is DME Specialist for SFCG headquarters in Washington DC.

**Amine Ghouli** is an SFCG-M Intern holding a B.B.A. from the International Institute for Higher Education in Morocco (IIHEM). He has volunteered for several NGOs locally and internationally, and has taken part in several international exchange programmes, the last of which was the AIESEC Salaam Programme in the US. He is also among the initiators of a series of international projects that promote peace and understanding among nations undergoing conflict. He is currently the President of a newly established NGO called P.L.E.A.D. (Promoting Leadership and Exchange, and Advocating Development).

## EXECUTIVE SUMMARY

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This Executive Summary is an overview of the evaluation of Search for Common Ground-Morocco's support to the formative stages of mediation in Morocco. It briefly describes the background, the evaluation, and key findings, the conclusions and recommendations are presented in full detail.

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### Background

The Moroccan Ministry of Justice (MoJ) is currently working on a Mediation Project of Law to formalise mediation in Morocco and to bring it within the legal statutes. Therefore, without the legal basis for institutionalised mediation in Morocco, the Search for Common Ground-Morocco (SFCG-M) ADR programme is supporting the formative stages of Alternative Dispute Resolution (ADR) in Morocco.

### ADR1

The ADR programme follows SFCG-M's past efforts in the country and responds to a pressing need for the modernisation of the Moroccan legal system. The overall goal of the ADR programme is to improve justice administration on Morocco, and the first (ADR1) and third phases (ADR3) of the programme aim to build the capacity and sharpen the knowledge of Moroccan judges in ADR and mediation. The second phase (ADR2) is oriented towards civil society and lawyers and will provide training in mediation and ADR techniques and mechanisms to these groups. Another overall objective of the ADR programme is to promote dialogue and communication among the different stakeholders: the Civil Society Organisations (CSOs), the lawyers, the judges, and the MoJ.

Four different groups of stakeholders took part in the 1<sup>st</sup> phase of the ADR programme, although the focus was on the first two and the lawyers and CSOs were only minimally involved in ADR1:

- Judges
- A Working Group (consisting of the MoJ representatives (MoJ-R) and judges, counsellors, presidents and vice presidents of court)
- Lawyers
- CSOs

The first four activities of ADR1 consisted of trainings and workshops that addressed the theoretical and practical needs of judges and MoJ experts in mediation procedures. The final activity brought the four stakeholder groups together to discuss mediation for the first time.

### The Evaluation

The evaluation examines the first phase of the programme – ADR1.

The purpose of the evaluation was three-fold:

1. To assess the implementation of the first phase of the programme
  - to learn about the effectiveness of implementation and to inform future programming
2. To identify and analyse any outcomes achieved to date
  - to learn about what the results were and how they were achieved
3. To reassess the context of mediation in Morocco
  - to enable recommendations for future phases of the ADR programme and to support their potential to bring about the desired outcomes

Based on the evaluation questions (see **Appendix 1: Terms of Reference**) and stakeholder analysis, four separate interview protocols were developed. A mixture of closed and open questions were used to allow for comparison and generalisation, as well as depth of

information. The fieldwork for the evaluation was undertaken in Morocco in October 2005 and a total of 36 key stakeholders were interviewed.

### Constraints to the Evaluation

The fieldwork for the evaluation was scheduled for 5 days during the festive period of Ramadan; this significantly reduced the accessibility of stakeholders for the evaluation.

### Overview of Findings

- In general the stakeholders were very positive about ADR1 activities. Factors which influenced the feedback on activities included timing and order; organisation; relevance to the stakeholders; facilitation, and the engagement of stakeholders with the issue.
- The design and progression of activities from the basic and general to the specific was highly appreciated by stakeholders.
- The Working Group and judges had acquired a solid understanding of the theory of mediation and an awareness of the benefits that mediation could bring to Morocco.
- The high levels of awareness among the judges of the different approaches and skills required to be effective mediators is a strong indication of progress towards the objective of creating changes in attitude and knowledge within the group. However, it is evident that the Working Group and the judges need more training on the practical side of mediation.
- Both CSOs and lawyers have generally positive attitudes towards mediation, although there are apprehensions on both sides relating to the institutionalisation of mediation.
- Judges consider themselves to be the most equipped to act as mediators, the other stakeholder groups have different perspectives.
- CSOs generally consider themselves to be the most experienced mediators. They currently feel isolated from the Law Project and would like more information about it. However, many judges do not consider that there is a role for CSOs in the development of institutionalised mediation, although they do consider that trained lawyers could operate as mediators.
- Lawyers do have a certain level of resistance to the Mediation Law Project, which is perceived to be a threat to their own situation (professional and financial), and all stakeholders are aware of this situation.
- The Ministry of Justice (MoJ) clearly holds the work of SFCG-M in high regard and would like to see a continuation of the close collaboration.

## Conclusions & Recommendations

### Conclusions and Recommendations relating to ADR1 Implementation

#### Delivery of Outputs:

- The order and timing of activities for ADR1 was effective. They were well conceived and progressed logically. Overall, the organisation of the activities worked very well.
- SFCG-M's facilitation of events was strong although the need for expert facilitation was evident.
  - **SFCG-M should continue to ensure that facilitators have the right level of expertise for events.**
- The visibility of SFCG-M could be improved
  - **The visibility of SFCG-M should be improved. At each event SFCG needs to communicate who they are and what their role is. Consideration should be given to producing SFCG documentation on mediation and the role of SFCG.**

Programme Management:

- There has been little monitoring of progress, meaning there is no early warning system or systematised information for programme management or accountability to funder. There is also demand for better communication from the funder on programme results.
  - **SFCG-M should systematically collect and analyse feedback from participants at the end of individual activities; monitoring at the outcome level should also be considered. This data would need to be collected periodically (every three or six months) and the information should be aggregated, analysed and disseminated to SFCG and the donor.**
- The fast changing context of judicial reform in Morocco may necessitate revisions to the logframe again in the future.

**Conclusions and Recommendations relating to the Outcomes of ADR1**

Consensus Building to date:

- The Working Group remained engaged through the whole process and found the process to be relevant and effective. There is a clear need for a stronger focus on the practical side of mediation in the future.
  - **SFCG-M should ensure that participants have a good understanding of the practical mechanisms of ADR and consider the use of media to provide this demonstration.**
- ADR1 achieved a strong position of trust and collaboration with the Ministry of Justice.
- The tensions surrounding the Outreach Conference as a transitional activity bringing together diverse stakeholders were to some degree inevitable, although SFCG-M should have made more efforts to communicate the purpose of the Conference to stakeholders.
  - **Given the complexity and changing nature of the situation due to reforms underway in Morocco, SFCG-M needs to pay careful attention to ensuring that when stakeholders are brought together, the results are positive. For example, stakeholders should be made aware well before an event of what the event is and who the participants are.**
- The varying levels of involvement of different stakeholders in the programme, as well as in the Mediation Law Project, facilitated positive attitudes toward institutionalised mediation in some stakeholders and resistance in others.
  - **Since there has been a certain level of resistance from the lawyers, more work should be done with the ones who have a favourable opinion about mediation and its law. If approached appropriately, they can voice the benefits of the implementation of mediation and help initiate dialogue with the lawyers who are resisting the institutionalisation of mediation.**
- The programme needs to go beyond working with small groups of stakeholders and achieve a stronger awareness of mediation within the general public. This will help to remove any resistance emerging from lack of awareness.
  - **SFCG-M could consider the use of mass media to raise awareness. Television could be a good (though expensive) option – producing a Moroccan example of mediation in action for example. This could be used during training activities and could also be aired generally.**

Changes in Knowledge and Attitude:

- Strong results were achieved in terms of changes in the awareness and attitudes in the Working Group and judges stakeholder groups. These changes are largely related to the design of the programme that considered the rollout of events carefully.
- The changes in awareness and attitudes in other stakeholder groups were negligible, although that was not a key objective of ADR1. However, the final activity, the

Conference, stimulated the different participants' engagement and they were enthusiastic to learn more about mediation and to collaborate.

### Conclusions and Recommendations relating to the Future of ADR

#### Consensus Building in the future:

- SFCG-M needs to maintain the goodwill from judges and the Ministry of Justice whilst incorporating other stakeholders into the programme. The CSOs, in particular, present a potentially delicate situation.
  - **SFCG-M needs to ensure that judges remain within the process and do not feel 'excluded' from ADR by CSO/lawyers. To achieve this balance, SFCG should communicate more directly with stakeholders about its role in the process and its consensus approach.**
  - **The extent of the implications of the Mediation Law for CSOs needs to be clarified with them as soon as the information is available to SFCG.**
  - **A similar amount of cooperation and communication should be maintained between SFCG-M and the MoJ and closely monitored during the future ADR phases. However, how this relates to ADR2 and the increased focus on CSO and lawyer stakeholders needs to be very carefully considered.**
- Lawyers have demonstrated a certain level of resistance to the institutionalisation of mediation:
  - **The future ADR phases will have to carefully deal with the apprehensions of lawyers; ADR2 needs to create an environment for discussion and dialogue between the legislators and the lawyers.**
  - **Steps should be taken to include lawyers in the mediation process or/and to grant them the opportunity to act as Mediators as well.**
  - **Further explanation concerning the financial implications of the institutionalisation of mediation for lawyers should be provided.**

In summary, Phase 1 of the ADR programme succeeded in addressing the needs of the MoJ and judges, in terms of providing training as planned. Outcomes identified during the evaluation include substantial changes in the knowledge and attitudes of key stakeholders.

A key outcome that ADR1 made progress towards achieving was the creation of a general atmosphere of discussion and exchange between the different national stakeholders. In doing this, SFCG-M had to secure good working relationships with the MoJ and the judges, whilst at the same time seeking mechanisms to bring other actors in the process. These efforts were made tangible at the Outreach Conference that brought government representatives, judges, lawyers and CSO representatives together to discuss the Mediation Law Project. Yet, some CSOs and lawyers felt that the MoJ representatives did not take their opinions into consideration and that the conference failed to address their apprehensions concerning the institutionalisation of mediation. Engaging different stakeholders into an open debate will be a critical step and at the same time a key challenge for SFCG-M's ADR programme in the future.

It is clear that Morocco is a fertile ground for mediation, but until the law is developed, many CSOs fear it, and how it will impact upon the already widespread use of informal mediation. SFCG-M should continue to seek opportunities for deepening the changes in knowledge and attitudes achieved through ADR1, something that is planned for in ADR3. At the same time it needs to also play a role, during ADR2, in continuing the facilitation of dialogue between CSOs/lawyers and the MoJ.

As a main actor of the ADR programme, SFCG-M needs to have more visibility during the different ADR events in order to increase awareness about its role, particularly on the consensus building side. There is no clear understanding (particularly from civil society) about the alignment of SFCG.

CSOs and lawyers will be the focus of the second phase of the programme in an attempt to create a favourable atmosphere for the future institutionalisation of mediation. SFCG-M, as a Non-Governmental Organisation (NGO), is at a great advantage when dealing with Moroccan CSOs; CSO stakeholders who were not previously aware of SFCG-M's NGO status perceive SFCG to be natural collaborators. There are great opportunities for SFCG-M in ADR2 to extend the buy-in for institutionalised mediation, as well as the practical skills base, and to stimulate dialogue and consensus along the way.

## 1. INTRODUCTION

The mission of Search for Common Ground (SFCG) is to transform the way the world deals with conflict: away from adversarial approaches, toward cooperative solutions. Search for Common Ground began in 1982 at the height of the Cold War and focussed on building bridges between the East and West. As global conflict has become more diffuse, so has Search for Common Ground. SFCG currently works in Africa, Europe, the Middle East, Asia, and the United States, and has a staff of almost 400 people. In addition, thousands of people directly participate in SFCG programmes, and millions more are reached through media projects.

SFCG has developed significant expertise in the field of ADR institutionalisation. In Palestine for instance, SFCG launched a five-year Legal Exchange Programme with the Palestinian Ministry of Justice in Ramallah, the West Bank in 1996. Through an integrated approach of exchange trips, skill-building workshops, and institutionalisation activities, the programme laid the foundation for the creation of two court-annexed ADR centres in the West Bank and Gaza.

In Ukraine, SFCG has established court-based alternative dispute resolution services within the Donetsk and Odessa regional courts. Jointly with the Academy of Judges of Ukraine, SFCG also conducts ADR workshops for newly appointed judges. Morocco is currently drawing on both experiences to further lay the foundations of ADR (in Morocco) through a process of cross-fertilisation and practitioners' consultation and contribution.

At this stage of the development of the legal constitutions for mediation in Morocco, the SFCG Alternative Dispute Resolution (ADR) programme in Morocco is at the 'formative' stage of creating the necessary conditions for ADR in Morocco. The focus of this programme has therefore been on relationship building, awareness and knowledge raising, and changing attitudes.

### Country Background

In the course of its democratisation, Morocco is in a transitory period characterised by fast-paced reforms, including those aimed at strengthening transparency, good governance, and rule of law. To achieve these objectives, the government is attempting to increase the effectiveness of the different public sectors and institutions by curbing their expenditure and promoting a culture of initiative, responsibility, and accountability. At the same time, Morocco is experiencing the typical symptoms of tension that accompany similar processes of democratisation, and sharp social inequalities feed tensions and adversarial modes of interaction – from family disputes to wider conflicts between consumers and producers.

Particular attention is being paid to the judicial branch of the government as one independent and empowered arm of justice. According to the Ministry of Justice (MoJ), a large number of cases of dispute could be resolved through alternative mechanisms outside the court, which would assuage the technical and financial burden on the kingdom's judicial organ. The Ministry of Justice is currently working on a Mediation Project of Law, to formalise mediation in Morocco and bring it within the legal statutes. The achievement of the judicial reform may not be accomplished without the involvement of Civil Society Organisations (CSOs) who often have access to, are seen as representing, and are usually well equipped to communicate with the general population.

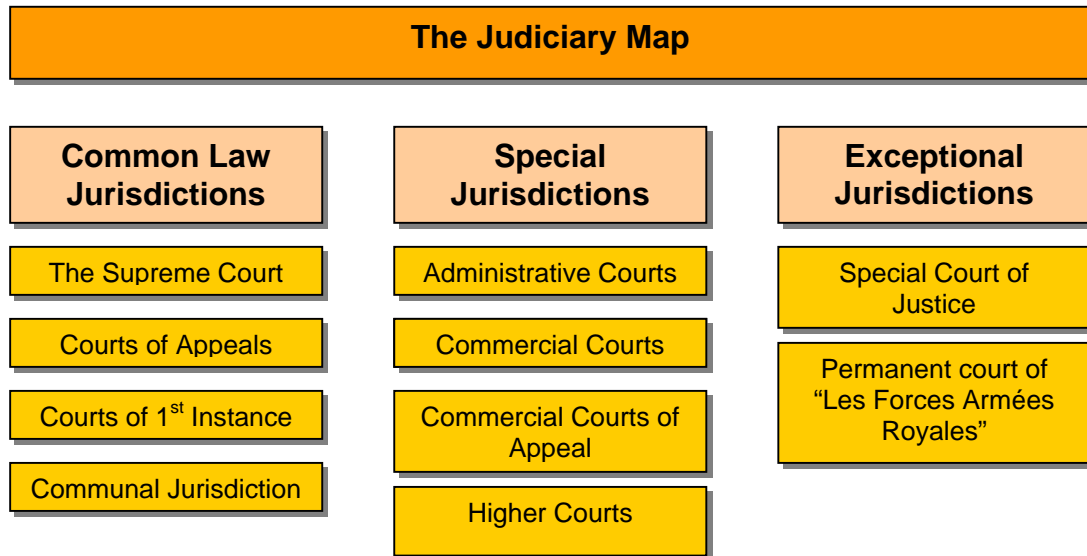
Within this context, Search for Common Ground in Morocco (SFCG-M) initiated, in partnership with the MoJ and the British Embassy in Rabat, a phased project called the ADR programme. This programme aims to help strengthen the legal Moroccan system and

enhance the rule of law through supporting the institutionalisation mechanisms for mediation in Morocco.

## Morocco's Legal System

The Moroccan Legal System combines Islamic law and the French legal structures. The constitution highlights the separation of the judicial authority from the legislative and the executive ones, while any judicial review of legislative acts is performed at The Supreme Court level.

Figure 1: Moroccan Judiciary Organisation



The Moroccan Judiciary structure comprises all the tribunals and courts of the Kingdom. It is composed of three jurisdictions:

1. The Common Law Jurisdiction which includes the Supreme Court, the Courts of Appeals, the Courts of First Instance, and the Communal Jurisdictions
2. The Specialized Jurisdiction, which includes the Administrative Courts and the Commercial Courts.
3. The Exceptional Jurisdiction with its Special Court of Justice and the Permanent court of "Les Forces Armées Royales (FAR)"<sup>1</sup>

## Mediation in Morocco

Mediation is no stranger to Moroccans, although traditional means of dealing with conflict operated more through reconciliation approaches than our concepts of ADR and mediation today. Reconciliation is an ancient informal practice, deep-rooted in the Moroccan culture and local customs, performed on different scales and in different ways. Traditionally, many community-based problems in Morocco were resolved through the process of mediation. On a tribal level, the tribe leader (Sharif in Arabic) used to perform a mediator's role and is usually considered to be the oldest and wisest. The "ruling" was not legally binding but had to be applied out of respect to the tribal general organisation.

Informal mediation is still very apparent in many practices today. Family and neighbour conflicts are usually resolved through a third party. For example, when there's a marital

<sup>1</sup> [www.justice.gov.ma](http://www.justice.gov.ma)

problem, representatives of both the husband and wife's families meet to reconcile the couple or/and match both perspectives. Many family and children-oriented CSOs offer mediation services to couples involved in conflicts. Their role is to bring both parties together to discuss their problem in a neutral setting with the supervision of a neutral party, which is usually an affiliated lawyer.

The reforms concerning the Moudawana (the family code) have introduced the practice of conciliation and reconciliation as a first step. A judge is already assigned an intermediary's role and is expected to promote dialogue and seek reconciliation between a couple in dispute. The recent years have witnessed the establishment of other CSOs specialising in commercial mediation. They usually provide both mediation and arbitration services to companies and individual businessmen involved in conflicts. An example of these organisations is the "Centre International de Médiation et de l'Arbitrage" in Rabat established in the city's Chamber of Commerce and specialised in consumer and commercial conflicts.

Finally a project of Mediation Law has been elaborated in the Ministry of Justice and is currently in the process of being approved and adopted by the different ministerial departments and the legislative apparatus. A Ministry working group, acting as the nucleus for developing the ADR programme, drafting the Mediation Law, and building MoJ's capacity in ADR, has been formed at the start of the ADR1 project.

### **SFCG and Mediation in Morocco**

In July 2001, SFCG opened a field office in Morocco and launched a variety of projects to build local capacity in sound conflict management and collaborative planning. With generous funding from the British government, SFCG-M launched training and skill-building workshops in mediation for representatives of labour unions, the government and private sector representatives<sup>2</sup>. It also organised a study trip abroad for Moroccan unionists. SFCG's intervention has spread to include developing community building programmes in shantytowns and strengthening the capacities of Moroccan associations through a series of trainings in mediation techniques, as well as in conflict resolution and interpersonal communication.

The ADR programme follows SFCG-M's past efforts in the country and responds to a pressing need for the modernisation of the Moroccan Legal System through the establishment of ADR mechanisms. Furthermore, the programme aims to support ADR in order to reduce litigation and, more generally, as an "alternative" to violence. The ADR programme was initiated with the contribution of both the MoJ and The British Embassy in Rabat, and capitalised on the cultural and social background of the practice of mediation in Morocco. Through the phased programme described below, SFCG-M is focusing on boosting the government's efforts in the institutionalisation of mediation by providing the necessary trainings while establishing mechanisms and channels that favour dialogue and opinion exchange between the directly concerned actors.

The first phase of the ADR programme (ADR1), a two-year project, has aimed at strengthening the Moroccan judiciary system and introducing mediation in Morocco with a focus on MoJ officials and judges. The ADR1 project has been designed to secure buy-in from key decision-makers in the Ministry of Justice, sensitise the judges on the advantages

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<sup>2</sup> ADR generally is categorised into 3 mechanisms: negotiation, mediation, and arbitration although when SFCG refers to the 'ADR programme' it is referring only to mediation.

of court-annexed mediation, work with them on the institutionalisation of ADR, and start raising public awareness of ADR.

The first (ADR1) and third (ADR3) phases of the programme are meant to build the capacity and sharpen the knowledge of Moroccan judges in ADR and mediation through the organisation of several workshops and conferences, as well as professional study trips. The second phase (ADR2) is oriented towards civil society and will provide training in mediation and ADR techniques and mechanisms to representatives of CSOs and Lawyers. The ADR programme is also meant to promote dialogue and communication among the different stakeholders: the CSOs, the lawyers, the judges, and the MoJ.

The second phase (ADR2) of the programme, a 15-month project, is oriented towards civil society and is meant to raise awareness and provide training in mediation and ADR techniques and mechanisms to representatives of Civil Society Organisations (CSOs) and lawyers. The ADR2 project also aims to promote dialogue and communication among the different stakeholders (the CSOs, the lawyers, the judges, and the MoJ) by bringing all parties together to discuss issues of common interest and set the ground for a more fruitful and constructive future collaboration.

SFCG-M is currently discussing the opportunity of launching the third phase of the ADR programme (ADR3). ADR3 would seek to strengthen the capacity of a pool of mediators (and trainers of mediators) as well as design a training programme (training manual and pedagogical video) that would be made available and accessible at the MoJ headquarters and in regional courts<sup>3</sup>.

### **Constraints to the Evaluation**

The evaluation was scheduled for the festive period of Ramadan and this impacted upon the accessibility of stakeholders to the evaluation, largely because of the reduced working day. The stakeholders for this evaluation are very busy professionals and this also may have reduced the numbers of participants in the evaluation. In addition, the stakeholders are located across the whole of Morocco and this geographical diversity could not be fully addressed in the limited time available for fieldwork (7 days in total).

### **Structure of the Report**

The report starts with an Executive Summary and an Introduction to the country and programme context. The main body of evaluation results and analyses are presented in the Findings Section, which is divided into 3 key parts:

- A: The Implementation of ADR1
- B: The Outcomes of ADR1
- C: Future Needs, Challenges and Opportunities for the ADR Programme

The section on conclusions and recommendations is the final section and follows the structure of the findings section to identify corresponding conclusions and recommendations.

Appendices to the report are presented in a separate document:

- Appendix 1: Terms of Reference
- Appendix 2: ADR Programme Logframe
- Appendix 3: Example Interview Protocol

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<sup>3</sup> See ADR3 narrative proposal

## 2. EVALUATION METHODOLOGY

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This evaluation was commissioned by Search for Common Ground Morocco (SFCG-M) in order to assess the first phase of the SFCG Alternative Dispute Resolution (ADR) programme in Morocco. This section outlines the intended audience of the evaluation, its scope, objectives, approach, and evaluation objectives. The final section describes the key steps and tasks, as well as the tools developed.

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### **Intended Audience**

The evaluation has been undertaken primarily to meet the needs of the SFCG programme team in Morocco; to provide information for reflecting on the progress of SFCG support to mediation in Morocco, and to provide information and analysis to be used in the design of future phases in the ADR programme. The report will also be of use to other stakeholders within Morocco, as the process of introducing institutionalised mediation in Morocco is as yet in its formative stages and very little research on this topic has been undertaken to date. The potential audience for this report includes international donors (the British Embassy in Rabat in particular, who funds SFCG work on mediation in Morocco), the Moroccan Ministry of Justice (who is currently implementing institutionalised mediation) and other stakeholders, including Civil Society Organisations (CSO), and legal professionals (judges and lawyers).

### **Scope**

The project under evaluation is the first phase of the SFCG ADR programme in Morocco (known as ADR1), and not the whole ADR programme. The key objective of the evaluation was to measure the outcomes of the initial phase. This evaluation was planned during the design phase of the ADR programme and its planned evaluation objectives included an assessment of the effects of implemented mediation in Morocco. However, these objectives were revised in light of the reality that institutionalised mediation is not yet being practised in Morocco due to the complex process of the development of a law on mediation. The ADR programme (including the Mediation Project of Law being steered by the Ministry of Justice) is still in a formative stage.

The first phase of the ADR programme in Morocco aimed to generate changes in the knowledge, attitude, and behaviour of key stakeholders, including judges and officials at the Ministry of Justice (MoJ), and the evaluation focussed on these stakeholders. Since the next phase of the programme (ADR2) will focus on different stakeholders from the first phase, and in order to develop sound recommendations, the evaluation has also collected and analysed information on the attitudes, knowledge, and behaviour of these other groups (lawyers and Civil Society Organisations).

### **Evaluation Objectives**

The purpose of the evaluation was three-fold:

1. To assess the implementation of the first phase of the programme
  - to learn about the effectiveness of implementation and to inform future programming
2. To identify and analyse any outcomes achieved to date
  - to learn about what the results were and how they were achieved
3. To reassess the context of mediation in Morocco
  - to enable recommendations for future phases of the ADR programme and to support their potential to bring about the desired outcomes

Additionally, a cross-cutting objective of the evaluation was to assess the programme design phase of ADR.

## Evaluation Questions

At an early stage of the evaluation process, the evaluation team, in partnership with SFCG-M, developed evaluation questions. Due to the multi-purpose approach of the evaluation, subsets of these questions were used with different stakeholder groups. The full set of evaluation questions can be found in the Terms of Reference (see **Appendix 1: TOR**).

Questions relating to the implementation of the first phase included:

- *How effective was the implementation of ADR1?*
- *How well has Phase 1 of the ADR programme met the needs of different stakeholder groups in Morocco?*

Questions relating to the outcomes of ADR1 included:

- *To what extent have different stakeholders in the project changed their knowledge and attitudes towards mediation, and to what degree was that change a result of ADR1?*
- *What aspects of ADR1 have led to change?*
- *Have there been any negative effects as a result of ADR1?*

Questions relating to the future needs of the programme (i.e. ADR2 and 3) included:

- *What are the knowledge and attitudes of different stakeholder groups and how should the future phases address these requirements?*
- *What are the other needs, challenges, and opportunities that SFCG-M should address to reach the overall objectives?*

Cross-cutting questions relating to the design of the first phase of the programme included:

- *How well has the phased approach worked to date?*
- *How relevant was the design of ADR1 to the context of Morocco?*

## Approach

The approach of the evaluation was to work with SFCG-M and stakeholders to identify the types of changes that have resulted from the first phase of the programme, and to explain how and why these changes have occurred. It also sought to gather feedback from participants in the programme, since this type of information has not been systematically gathered. The approach to data collection and analysis was essentially to gather quantitative and qualitative data from diverse sources and to triangulate the analyses.

As support to what has remained a formative process, the key outcomes sought by this stage of the project and outlined in the revised logframe (see **Appendix 2: ADR Programme Logframe**) were therefore in the areas of attitude, behaviour, knowledge, and social change. As such, the results are inherently intangible and therefore well-known guidelines on evaluating the implementation of ADR - utilising indicators such as the time cases take and levels of satisfaction with mediation - were not entirely relevant<sup>4</sup>. Additionally, (and due in part to the lack of baseline data on key indicators), the evaluation design had to adapt to the lack of baseline data and an experimental design was rejected. It was not considered to be an appropriate approach given the intangible outcomes and the limited evaluation budget. Instead, the evaluation borrowed from the Theory of Change approach and other more standard methodologies.

## Evaluation Tasks & Tools

The evaluation had eight key tasks, which are detailed below:

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<sup>4</sup> For example, the well known US Federal Government's 'Interagency ADR Working Group ADR Program Evaluation Recommendations' 2000 do not cover formative ADR stages.

### 1. Revised Programme Logframe

A first key task of the evaluation was to develop, in collaboration with SFCG-M, a revised logframe. The main purpose for this was to clarify the intended outcomes of the overall programme in Morocco. The goal and 'overall outcomes' are sought from the whole process of support to judicial reform in Morocco (ADR1, ADR2 and ADR3) and will be measured following the implementation of the latter phases (see Appendix 2: ADR Programme Logframe).

Additionally, and in order to properly conceptualise and assess the results of the different phases of the programme, 'intermediate outcomes' reflecting the desired outcomes from each phase were elaborated. These were linked to indicators against which performance can be evaluated in the future. The fast changing context in judicial reforms in Morocco may necessitate revisions to the logframe again in the future. The logframe also outlines indicators that both measure progress during ADR1 and set a baseline for ADR2 and 3. A follow up survey will occur in 15 months time at the end of ADR2 and again at the end of ADR3.

### 2. Stakeholder Analysis

Following this first stage of elaborating the theory and logic of the programme, the stakeholder analysis (described above) identified the total populations of individuals for the evaluation.

During ADR1, two key stakeholders were heavily involved. One was a Working Group, comprised of officials at the Ministry of Justice and selected judges. The second key group were judges who are not part of the Working Group but who have participated in one or more activities during ADR1. The third stakeholder group mentioned earlier, Civil Society Organisations (CSOs), has not been engaged throughout ADR1 but participated in the final activity – an Outreach Conference in Rabat in September 2005. In addition to these three stakeholder groups, and in order to meet the third evaluation objective (providing contextual analysis that would be of use to later phases of the programme), an additional two stakeholder groups were added to the participant list for the evaluation - these were lawyers and CSOs who had not participated in the Outreach Conference.

The British Embassy in Rabat, the donor for SFCG work in Morocco on ADR, was the final stakeholder group who participated in the evaluation - although this discussion was not structured and no interview protocol was specifically developed.

**Figure 2: Stakeholders who participated in the Evaluation**

Populations:		Total Number of Stakeholders (Morocco)	Total – face to face	Total – telephone
A Representative sample of participant judges	<i>They are geographically diverse and a representative sample was selected based on the following categories: Rural / Urban, North / South, Male / Female, Sector of law (i.e. Commercial, employment)</i>	27	6	X
B Representative sample of participant Civil Society Organisations	<i>20 attended the ADR outreach day, representative sample based on the following criteria (6 consumers associations; 7 family associations; and 7 feminist associations)</i>	20	11	X
C Simple random sample of non-participant Civil Society	<i>Random sample selected from official list of registered CSOs working on consumer/family/feminist issues There are 62 in total of which 20 attended</i>	42	X	5

<b>Organisations</b>	<b><i>the outreach conference</i></b>			
<b>D Simple random sample of lawyers</b>	<b><i>Random sample from official list of qualified lawyers</i></b>	<b>7000</b>	<b>X</b>	<b>10</b>
<b>E Working Group at the Ministry of Justice</b>	<b><i>Sample selected by the MoJ</i></b>	<b>8</b>	<b>2</b>	<b>X</b>
<b>F British Embassy in Rabat</b>			<b>2</b>	<b>X</b>
<b>TOTAL</b>			<b>21</b>	<b>15</b>

### 3. Evaluation Framework

Once stakeholders had been identified, an evaluation framework was developed to link the evaluation questions and indicators to stakeholders and required data collection tools. For stakeholder groups A, B, and E face-to-face, in-depth, semi-structured interviews were selected as the most appropriate method. Structured telephone interviews were used for stakeholders C and D due to their lack of involvement in the project to date.

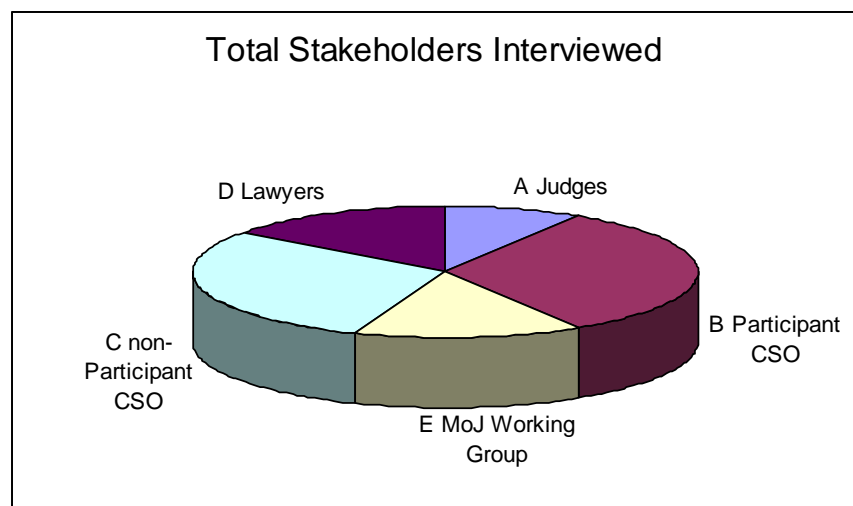
### 4. Interview Protocols

The interview protocols included information on participants' attributes, their feedback on activities, and questions on their knowledge, attitude, beliefs and practice. An example of the interview protocol for Stakeholder Group B (CSO) is in **Appendix 3: Example of Interview Protocol**. A system of mixing open questions with ranking was chosen. This was to allow for comparison between different activities and stakeholder groups and the open questions were to provide answers to the 'how' and 'why' questions. The most generally relevant of the closed questions were asked to all respondents to allow for a comparison between stakeholder groups. Some filter questions were also used. At the end of the questionnaire, all stakeholders were invited to provide any other information or to ask questions to the evaluation team.

### 5. Randomised / Representative Selection

A process of random and/or representative selection was used to select the participants from the total population. Representative selection was used for stakeholders who participated in ADR1, and random selection was used for the larger populations, who are potential participants of ADR2.

**Figure 3: Interviewed Stakeholders by Category**



### 6. Field Work

The field work carried out over a period of 7 days included visits to stakeholders in Casablanca, Besliman, Kenitra, Rabat and Settat. A total of 36 people were informants for the evaluation, including 21 stakeholders who were interviewed in person and a further 15 people who were interviewed by telephone.

### **7. Interviews**

All interviews began with an overview of the evaluation process. The evaluation team was introduced and the interview procedure explained. The interviewers explained that the purpose of the evaluation was to learn about the outcomes of the first phase of the ADR project and stakeholders' perspectives on ADR generally. The participants were assured that the information they provided would be treated confidentially, i.e. the sources of specific information would not be attributed to a specific individual.

### **8. Feedback and future design**

The end of the evaluation fieldwork period in Morocco coincided with a design session for the third phase of the ADR programme (ADR3), and preliminary findings, conclusions, and recommendations were discussed and incorporated into this design.

### 3. FINDINGS

This section of the report is structured into **three key sections**.

- The first analyses the process of implementation;
- The second examines the outcomes identified during the evaluation;
- The third section considers the needs, opportunities and challenges for the future stages of the ADR programme.

A cross-cutting theme throughout this Findings section is an examination of the original project design (from a conflict analysis perspective).

#### Findings Part A: The Implementation of ADR1

This section mixes the descriptive findings with analyses; the analyses are presented in bulleted boxes at the end of each sub-section. Direct quotes from unnamed respondents are inserted in coloured boxes.

The analysis centres on the implementation of the activities in terms of how well planned and organised they were. An important component of this section is an analysis of how well received different activities were by different stakeholder groups – what their feedback was and how relevant to them the activities were perceived to be. This includes a final analysis of the collaborations between SFCG-M and the Ministry of Justice (MoJ) and the British Embassy in Rabat.

#### Stakeholders

Four different groups of stakeholders took part in the 1<sup>st</sup> phase of the ADR programme: the judges, the MoJ representatives (MoJ-R), the Lawyers, and the CSOs. Some of the judges and MoJ-R formed a Working Group with members ranging from judges, counsellors, presidents and vice presidents of courts. The introduction of the Mediation Law and the need for trained mediators were major motivations for the Working Group to participate to the ADR activities. The other two groups of stakeholders (Lawyers and CSOs) were only minimally involved in ADR1.

#### Activities

The table below details the five interrelated ADR1 activities with the main stakeholders of the programme, four of which focussed on the Working Group and judges and one that introduced CSOs and lawyers to the process.

Activity	Date	Participants				Total # of participants
		Lawyers	CSOs	Judges	Working Group	
Basic Mediation – Til Melil	May 2004			X	X	35
London Study Trip - London	July 2004				X	8
Advanced Mediation - Rabat	October 2004			X	X	35

Strategic Planning Rabat -	January 2005				X	6
Outreach Conference Rabat -	September 2005	X	X	X	X	200*

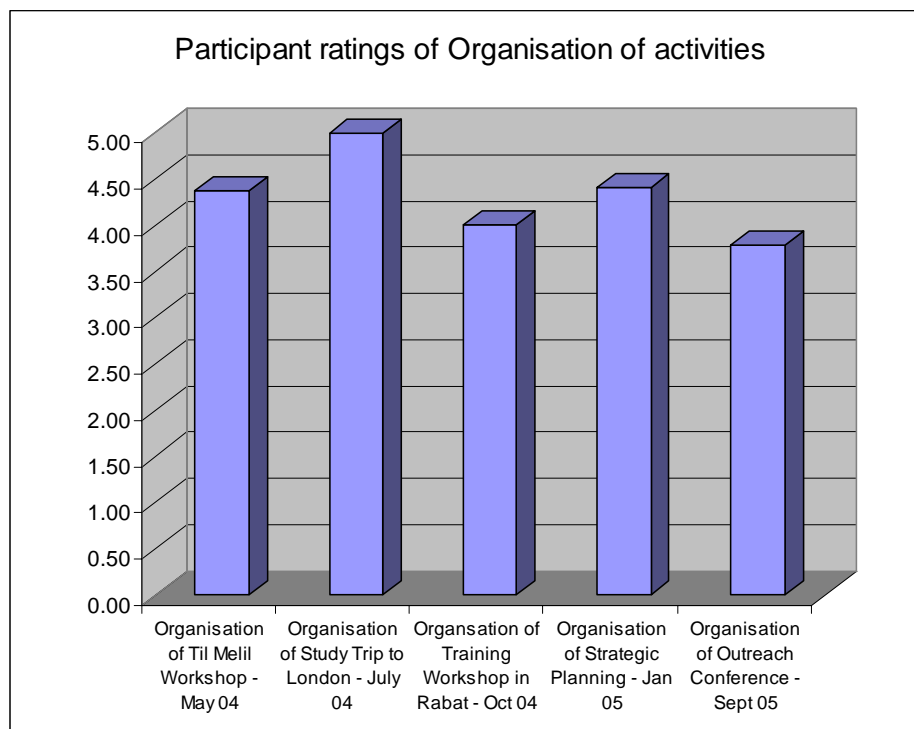
\*Journalists, SFCG staff, and other guests included.

- The first two training workshops on the Techniques of Basic and Advanced Mediation were organised in Tit Melil and in Rabat respectively, in May 2004 and October 2004. Thirty-five participants, most of whom were judges, attended these workshops. The training sessions offered participants the opportunity to learn about the techniques of ADR and to explore and analyse the required tools and strategies for mediation.
- The third activity, a London study trip organized for eight participants, occurred in July 2004. The Moroccan delegation studied the general concepts of ADR and various British and International models. They also participated in workshops and training sessions on the process of adjudication, arbitration, mediation, conciliation and negotiation.
- A Strategic Planning Training that was held in Rabat in January 2005 followed these three activities. The aim of the workshop was to rethink required actions and areas of attention to implement a successful ADR programme in Morocco. Participants were the same group of participants who had attended the London Study Trip.
- The final activity was the Outreach Conference, which was held in Rabat on September 7<sup>th</sup> 2005.

### Stakeholders' Perceptions

The questions relating to stakeholder feedback on activities provided a great deal of insight into the performance of ADR1. The following analysis identifies areas for improvement in the effectiveness and organisation of the programme.

Whilst the evaluation found high scores generally from participants for the organisation of activities, when looking at the mean scores in the table below, differences are discernable:



**Figure 4:**  
Participant Ratings  
of the Organisation  
of Activities

A similar degree of divergence of opinion was also found when participants were asked to rate the effectiveness of the activities. For example, the London Study Trip received a mean score of 5 and the training workshop in Rabat 3.8, out of 5. The evaluation has therefore shown a variation in the reception of the different ADR1 activities from stakeholders. During the data analysis stage several internal and external factors that have influenced the reception of these activities were identified. They are:

- **Timing and order**
- **Organisation**
- **Relevance**
- **Facilitation**
- **Engagement**

**The timing and order** of the phased activities proved to be important to stakeholders' perceptions and there was a very strong appreciation for the logical progression from general to specific skills. For example, when asked to rank the activities in terms of their effectiveness, most of the judges and Working Group thought this was a false exercise, and indicated that they considered each activity to be equally valuable and progressive. The Basic Mediation workshop scored highly since it provided a general understanding of ADR theories with a focus on mediation. According to most stakeholders the London Study Trip built coherently upon the concepts developed at that first workshop.

Although the stakeholders appreciated the overall approach of ADR1, about half found specific aspects of the project to be not as useful or had suggestions for improvements. Three judges thought that the second Training Workshop on Advanced Mediation did not advance concepts as far as it could have – and this related particularly to the application of mediation and a general impression that the theoretical side of mediation had already been covered in the Basic Mediation workshop.

**General comments on ADR1 progress:**

- *"The London Study Trip was tremendous, we learnt about how the British Government deal with difficulties surrounding mediation."* Working Group
- *"The level of the training and the subjects selected were right."* Judge
- *"We work on mediation daily, between men and women, and it is a core activity of our Centre, therefore, I cannot say that after the one day Conference I learnt a great deal"* CSO

The Outreach Conference particularly was a sensitive session for many participants as it brought together stakeholder groups (lawyers and CSOs) who had not previously been involved in any discussions or activities in ADR1. It scored the lowest for both organisation and effectiveness of all the activities. Some judges thought that it was not the right time to bring new stakeholders to the discussion.

The time in between activities was also an area where several stakeholders would have liked to see improvement. However, this was a minority opinion, and many others thought the progression of ADR1 activities worked very well.

**In Summary:**

- Overall, the order and timing of activities can be considered to be effective, from the participants' perspectives. The spacing between activities meant that the Working Group remained engaged throughout the process and the progression from theory to practical application and public discussion was well planned.

- A negative aspect of the order of ADR1 activities, from the participants' perspective, was the final Outreach activity – however this issues will be explored in more detail below.

The **logistical organisation** of each activity was another important factor. Respondents were asked to score on 1-5 scale the overall organisation of each of the five events. As shown in figure 4 above, most activities were positively scored while the London Study Trip received a full 5 score by the totality of the respondents. According to participants in the Study Trip, in addition to the effectiveness of the training, the logistical side of the trip had few if any flaws.

Another aspect that was widely appreciated was the format of many of the sessions – using a round table approach. This format was seen to be in line with the topic of mediation, since it gave participants equal opportunity to speak and engage.

**Comments on the Outreach Conference:**

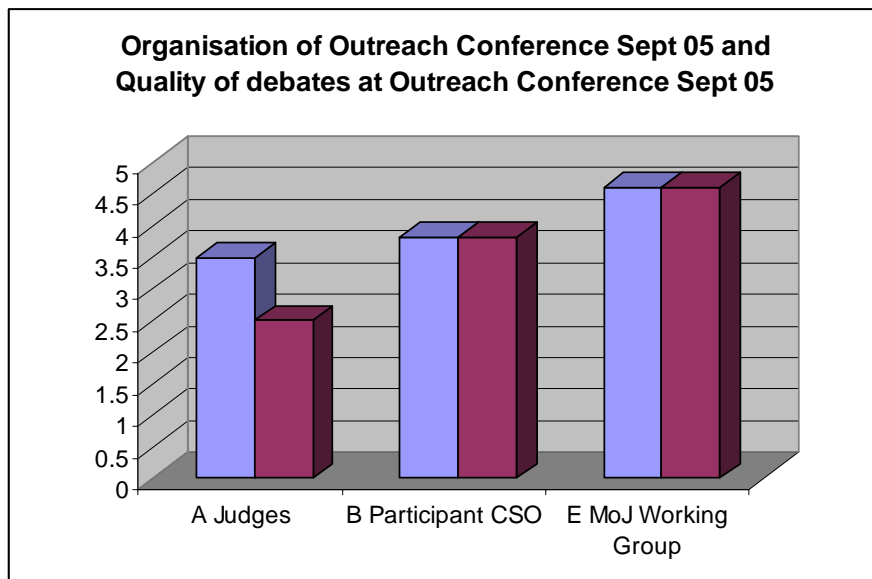
- *“The discussion is important, to provide value to the ideas. People at the Conference had just a minute to speak.. It was more like a question and answer session than a seminar”* Judge
- *“The organisation was good but we would have liked to be part of the panel for the discussions”* CSO
- *“We only received notification of the Conference a few days before”* CSO
- *“The Conference was good, the only problem was that one day was not enough. We liked to mix with the CSOs and hear their different perspectives”* Working Group

One area for improvement that many respondents noted was that the duration of most activities was not enough to achieve the programme's objectives. They said that a one or two-day workshop or a four-day study trip did not allow them to fully benefit from the training.

Many participants highlighted logistical flaws at the Outreach Conference as reasons for its lack of effectiveness. A lack of documentation (about mediation, the Mediation Law Project, and SFCG-M), as well as pre-conference communication problems were apparent. SFCG-M had expected and planned for a total of 100 people at the conference. Finally 200 people attended the day and some problems occurred due to a lack of brochures and information on mediation.

**Figure 5:  
Stakeholder  
Perceptions of the  
organisation and  
quality of debate at  
the Outreach  
Conference**

Several CSO representatives said that they were not informed about the conference until a few days in advance, while the communication itself



lacked information about the objective of the conference, the invitees, and the reasons for their participation.

Judges also rated the organisation of the Outreach Conference as the lowest, citing the fact they had not been made aware that CSOs would be present, or that the format would not be a roundtable, or that they felt the CSOs were not knowledgeable enough to participate as reasons. Two judges thought that the CSOs present should have been better informed about the Mediation Law Project, because then they would not have considered it as a threat – a *privatisation of the legal system*. One judge said that “*at the Outreach Conference, people ignored what mediation is and how it could benefit Morocco, and this created a gap in understanding*”.

**In Summary:**

- Inherent difficulties were inevitable for the organisation of the Outreach Conference, given some degree of tension surrounding the dialogue between CSOs and the Moroccan authorities.
- However, SFCG-M could have reduced these tensions to some degree by being better prepared, and by providing participants with more notice of the Conference, its subject and invitees.
- On the other hand, the Conference did bring CSO representatives and lawyers to the debate and participants appreciated this.
- Despite the logistical problems concerning the Outreach Conference, the overall organisation of the 5 activities can be considered to have been good. The respondents' overall impression was positive, but further efforts should be put into ensuring an appropriate communication of the future events for the different stakeholders.

**The relevance** of the activities was also a major factor influencing the reception of activities by stakeholders. In general, the analysis found that the more relevant the activity's content was to participants, the better it was received, and that the stakeholder groups who were involved from the beginning (judges and the Working Group) found the activities to be more relevant. The programme's logical progress played a major role in increasing its perceived relevance. The judges and members of the Working Group were very pleased by the quality of the workshops and many of them considered the trainings to be very relevant to their area of work.

One improvement that a majority (over 75%) of the participants did suggest, was that they would have preferred the activities to focus more on the practical side of mediation. They said that putting into practice the learned mediation theories would make them more comfortable dealing with mediation issues in the future.

Many individuals from the CSOs who came into the process near the end of ADR1, considered the Outreach Conference to be irrelevant to them as they did not take part in either the mediation training or any earlier discussion about the institutionalisation of mediation. It is possible that they were not provided with enough notice of the Conference, or about its content. Generally, they expressed a feeling of isolation during the Conference, saying they were not fully integrated in debates. One CSO perceived that the only role of the lawyers and CSOs in the Conference was to 'rubber stamp' the MoJ Mediation Law Project.

**In Summary:**

- The stakeholders who were involved from the beginning (the Working Group and the Judges) found a high degree of relevance in the SFCG-M first phase.

- Stakeholders who were involved at the end of phase 1, did not rate this activity highly for its relevance.
- This Conference was a key 'transitional activity' between the initial phase of the ADR programme, which focussed mainly on the Ministry of Justice and judges, and the second phase of working with CSOs and lawyers to stimulate broader comprehension and awareness of ADR.
- Had the CSO and lawyer stakeholders been made aware that ADR2 would focus on working with them, the perception of being excluded from the SFCG-M ADR programme, as well, possibly, as the wider judicial reform currently underway, may not have arisen. Ideally, SFCG-M should have welcomed these new stakeholder groups to the Conference and made explicit the goals of the next phase on the programme. However, the final decision to fund the ADR2 project hadn't been made yet, so the following phases could not be discussed at the Conference<sup>5</sup>.

**The quality of the facilitators** played an important role in determining the reception of activities. The facilitators were highly praised by the majority of the stakeholders for their professionalism and communication skills. Respondents commented that the trainers' participatory style created a pleasant environment for debates and discussion that put the participants at ease and facilitated the learning process. The Strategic Planning Session was praised widely and scored above average for both organisation and effectiveness, largely due to the expert facilitation provided. Expertise was considered to be an important factor because, in the words of one participant "*at that meeting, there were exchanges of ideas and debate which is most needed.. This gave a vision to mediation in Morocco*".

**In Summary:**

- Generally the facilitation provided by SFCG-M was appreciated.
- During the roll out of ADR1 activities, the need for expert facilitation became more apparent.

**The Engagement** of the participating stakeholders was different for different groups and influenced responses. Each group had varying levels of interest and involvement in ADR1 and previous experiences of mediation and its institutionalisation.

- For example, the Working Group and judges' engagement in the ADR activities was relatively high because they will have the responsibility to monitor the establishment of the mediation mechanisms in the country's legal system. Also, with the appropriate training and mastering of the mediation procedures and techniques, they may be assigned the mediators' role when the appropriate structure is in place.
- Lawyers, on the other hand, have sometimes expressed their apprehension towards the mediation issue as many consider it to be potential competition that would influence their activities and curb their earnings. They have demonstrated a resistance to change while at the same time expressing their interest in taking part in the complete

**General comments on ADR1 Effectiveness:**

- "*I think the spirit and the importance of mediation was clear from the trainings*" Judge
- "*There were many very good things about the SFCG-M activities (including the expert facilitators and the presence of high-level officials at activities, the only real problem was time. Mediation is important and it's a shame we didn't have more time*" Judge

<sup>5</sup> The decision was taken on October 6 2005.

process and also being considered potentially as mediators or actors within the mediation process.

- CSOs would like to be more engaged and to receive more information about the Mediation Law Project as many of them are already engaged in informal mediation practices.
- The comments in the box above highlight some of the less positive aspects; although it is worth noting that these were not directly attributed by stakeholders to SFCG-M.

**In Summary:**

- The varying interest and involvement of the different groups in the overall programme facilitated the acceptance by some (Working Group) and caused a resistance by others (Lawyers and CSOs) to the ADR1 activities. SFCG-M has to address the apprehensions behind this resistance in the coming ADR phases.

### Effectiveness of ADR1 Collaborations

ADR1 responded to a pressing need of the MoJ to lay out the foundations for the institutionalisation of mediation in an attempt to support the country's overall democratisation and modernisation efforts. ADR1 was meant to build up the judges' skills in ADR methods with a focus on mediation as well as to support the thinking of the working group at the MoJ.

ADR1 was initiated in collaboration with the Ministry of Justice and the British Embassy. Its design addressed the concerns of the major stakeholders. Within that context, a Memorandum of Understanding (MOU) was signed between the MoJ and SFCG-M specifying each party's obligations in the project execution and follow up.

SFCG-M engaged in the supervision and implementation of the programme. SFCG-M also had responsibility for smooth and efficient communication with the collaborating parties in addition to the participation in the decision making related to the same programme. The MoJ provided solid support to the programme and facilitated the administrative procedures and requirements.

When asked to score the effectiveness of the ADR1 implementation, the stakeholders from the MoJ provided high scores, ranging from 4 to 5 on a 1 to 5 scale. This demonstrates a high level of satisfaction with SFCG-M's work.

The British Embassy's representatives said they were not involved much in the ADR1 execution and implementation and would want to be kept better informed in the future. Yet, they expressed their satisfaction of the ADR1 project.

**In Summary:**

- The collaborative aspects of the implementation of Phase 1 of the ADR programme were positive. Each party honoured their responsibilities.
- ADR1 has ensured the buy-in of the MoJ's high officials (including the Minister) and has strengthened their initial planning of institutionalising mediation in Morocco.
- Communication between the partners will need to be improved in order to ensure a smoother collaboration in the future.

## Findings Part B: The Outcomes of ADR1

This section identifies what the outcomes of ADR1 were, and how and why they resulted. As the Working Group and judges were the targets of ADR1, the emphasis is on examining changes relating to their knowledge, attitudes, and behaviours. The final section does examine these aspects for other stakeholder groups, although this information serves better as a baseline for future efforts than as an assessment of the results of ADR1.

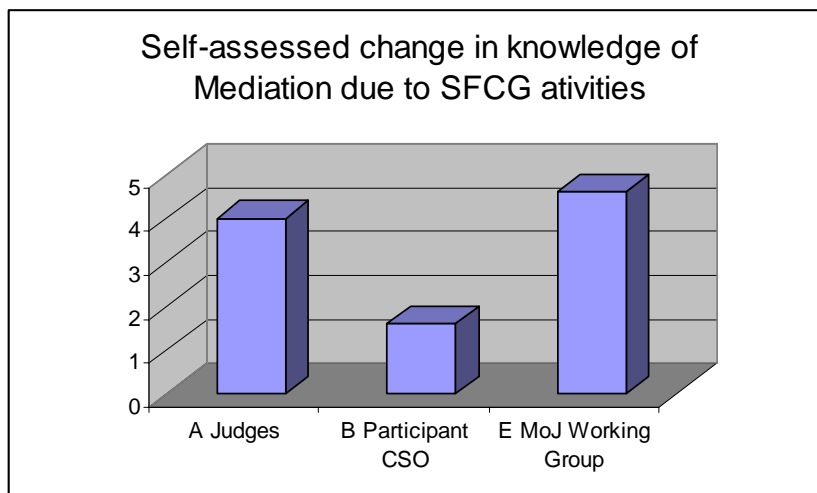
As the first phase of the formative ADR programme consisted of a series of trainings and workshops aimed at enhancing the stakeholders' mediation knowledge, it was very important to measure the degree to which it was successful in achieving that. In that regard, a number of questions were asked to assess the participants' comprehension of mediation theory and changes in knowledge related to ADR1. Through these assessment questions the evaluation team tried to identify what it called "the dimensions" of the knowledge-change (type, degree/depth, and criteria for change) for every stakeholder group.

It should be noted that had a knowledge assessment been performed before the ADR1, the measurement of knowledge-change would have been more rigorous. Additionally, following the piloting of the questionnaires, it was clear that particular types of stakeholders in the evaluation would not have reacted well to their knowledge being 'tested'. Therefore, stakeholders were asked to score their own levels of knowledge against defined criteria, and this was 'triangulated' by questions, which were formulated in such a way that the contribution of the ADR trainings to the stakeholders' knowledge could be identified.

### Progress towards objectives

A key objective of the ADR Programme is to train mediators and to build the capacity of a group of judges in mediation techniques. The evaluation team considered that it was important to assess the degree of confidence of the judges and the level to which ADR1 contributed in increasing that confidence if indeed it was increased.

### Judges and the Working Group:



**Figure 6: Changes in Knowledge of Mediation**

When asked about the degree of change in their comprehension of the mediation theory after attending the ADR trainings, most stakeholders said that it represented substantive change providing an average score of 4.5 over 5.

One respondent said that it *"helped me to see the whole picture and removed my apprehensions"*. Many claimed that the trainings' design was adapted to their level of comprehension of the mediation theory and that learning from the British experience through the London Study Trip was a major contributor to their increased levels of knowledge. Three of the six judges mentioned the enhanced perspective they had acquired after learning about the international context of ADR and different case studies. All judges feel that they have acquired a solid understanding of the theory of mediation and an awareness of the benefits that mediation could bring to Morocco. See box on the right for some of the specific ideas:

**Judges ideas about the potential uses and benefits of mediation in Morocco:**

- *Negotiations between workers and employers*
- *It can help integrate individuals into society*
- *It can be used in schools*
- *It respects privacy and dignity*
- *It removes the problems of execution, because both parties are satisfied with the result*
- *It will remove bureaucracy –time and paperwork*
- *Mediation will resolve issues before they become conflicts*

However, over 75% of respondents agreed that they need more training on the

practical side of the mediation practice, adding that it would be very helpful if they could analyse real life mediation cases and the procedures the case goes through. Several participants asked SFCG to produce media tools to demonstrate a 'real' example of mediation in practise.

All of the judges expressed their willingness to operate as mediators when the necessary structure is in place. Many said that as judges they have an important legal background that

**Comments from judges on the skills required for mediators:**

- *"I am very interested, when the mediation starts the judges will adapt. Mediation is thought of as a new structure"*
- *"Professionally, I don't yet know how to communicate as a mediator: I may have the skills but I'm not sure"*
- *"There is a bit of apprehension in making the shift from judge to mediator, we judges need to change our mentality for it to work"*
- *"The mediator needs to be a listener and to be neutral, judges need to understand this new system"*

they consider crucial for every mediator. Others highlighted the fact that during their careers as judges they have gained experience in dealing with people who are in conflict and an expertise in problem identification and resolution.

This positive attitude towards taking on the role of the mediator is

balanced by high levels of awareness that new skills and behaviours are required. For example, one respondent said, *"being a judge can not always be considered as a positive thing, because judges are used to make rulings, have an authority, and base these rulings on rights"*. He added - *"Mediation is based on interest, and on the search for a common ground, and where judges have less if no authority, which would make it hard for them to put on the mediator's shoes"*. See the text box above for more of these comments.

The high levels of awareness of the different approaches and skills required by mediators among judges involved in the evaluation is perhaps the best indicator of progress towards the objective of creating changes in attitude and knowledge.

Yet, a complete change and a strong willingness to serve as mediators do not certainly mean readiness; when respondents were asked to score their readiness to start operating as mediators, an average score of just 2.7 was provided. This result might seem contradictory, however, it can be very logical. If most judges had little or no knowledge about mediation

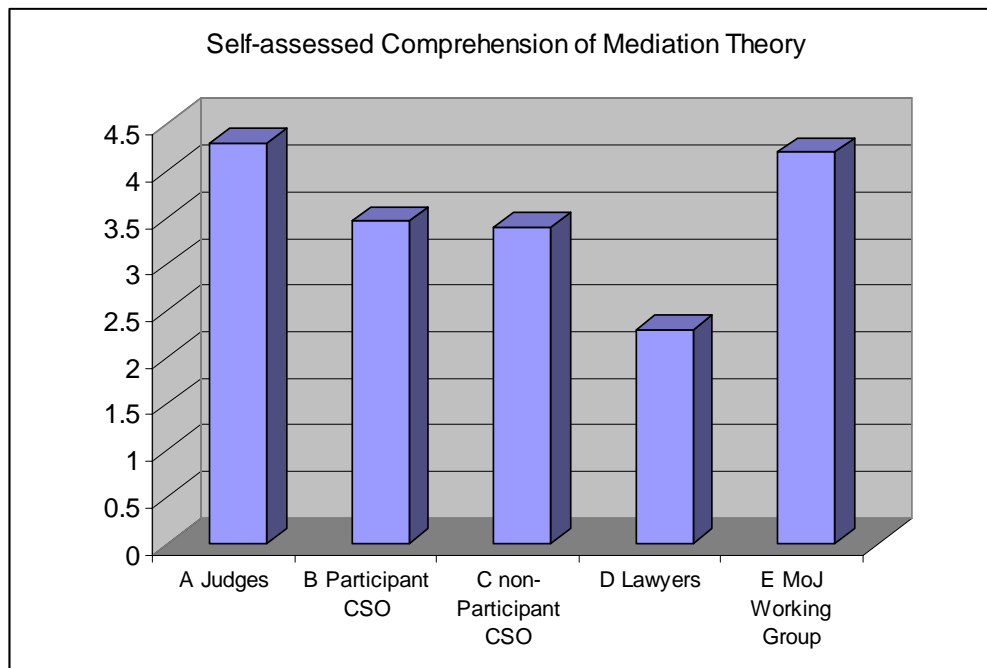
theory before attending the ADR1 trainings, any information in that regard would seem critical and be qualified as major mediation knowledge change. When asked to justify that score, most respondents claimed that theory is good but not enough and that they would not feel completely confident until they receive further training on the practical side of mediation.

**In Summary:**

- The fact that 5 of the 6 judges who were interviewed demonstrated strong levels of awareness that serving as mediators requires a different mindset demonstrates the strong results achieved in terms of awareness and attitudes among the group of judges who were the focus of ADR1.
- This result is supported by the judges' own self-assessed change in knowledge about mediation and ADR – a mean score of 4.5 out of 5 among this group.
- The members of the Working Group and other judges who were heavily involved in ADR1 demonstrate good understanding of the limitations of the first phase of the programme (ADR1). More training and practical experience is certainly needed on the application of mediation, for the judges and the Working Group.

**Other Stakeholder Groups:**

While ADR1 did not aim to increase the knowledge of ADR and mediation among the other stakeholder groups, these questions were also asked of lawyers and CSOs, in order to obtain an idea of their current levels of knowledge. As can be seen in figure 7 below, there is a significant difference between CSOs' self-assessed levels of knowledge, and that of the lawyers (this will be discussed further in the third part of the Findings section below).



**Figure 7:**  
Stakeholders  
self-assessed  
Comprehension  
of Mediation  
Theory

The participant CSOs were asked to score the degree to which their participation in the Outreach Conference had increased their knowledge and, unsurprisingly given the aims of the Conference (to debate the Mediation Law Project, and not to provide 'training'), they scored less than two out of five. This is also related to their concerns about the logistical organisation of the Conference and more generally about their perceived lack of 'voice' in the Mediation Law Project's development. Nevertheless, these stakeholders did make some positive statements about the Conference; see text box to the below:

In addition to the positive comments below, both CSOs and lawyers generally have positive attitudes towards mediation, although there are apprehensions in both groups relating to the institutionalisation of mediation (see section below on Future Opportunities and Challenges for more detail). 100% of all CSO and lawyer respondents said yes to the question 'do you think widespread mediation would be beneficial to Morocco'. It is important, when analysing stakeholder attitudes, that mediation and its institutionalisation (specifically the Mediation Law Project) are distinguished.

**Comments from CSO and lawyer stakeholders on the Outreach Conference:**

- *"We were happy to discuss mediation and interested to hear about the experiences from America and Canada. I think we brought some useful comments to the debate"* CSO
- *"It was a useful topic and I think mediation will alleviate the pressures on the judicial system"* Lawyer
- *"Even though we were not well enough prepared for the Conference, it was very useful to learn about the development of the law on mediation"* CSO

Finally, 100% of these stakeholders said they would like to be involved in SFCG-M activities in the future, which indicates that, notwithstanding some criticisms surrounding the Outreach Conference, they have generally a positive impression of SFCG-M and its work.

**In Summary:**

- The knowledge of three stakeholder groups, CSO-participants, CSO-non-participants and lawyers, was unaffected by ADR1, and this is in line with ADR1 objectives which focussed on other stakeholders.
- CSOs consider their knowledge of mediation to be relatively high, although this could indicate a different understanding of what 'mediation' is.
- The self-assessment of knowledge of mediation is the lowest among lawyers and ADR2 will need to address this gap.
- These stakeholder groups generally are very positive about mediation and its potential for Morocco.

## Findings Part C: Future Needs, Challenges and Opportunities for the ADR Programme

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This section presents the analysis of different stakeholder groups' attitudes toward the future of mediation in Morocco. It should serve as contextual analysis for future phases of the SFCG ADR programme in Morocco.

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Through the ADR Programme, SFCG-M aims at facilitating improved judicial structures as a means to reducing conflict. The institutional context in Morocco is on the course of reform and the Mediation Law Project may well be passed in 2006. At this formative stage of ADR in Morocco, the attitudes, knowledge, behaviour, and practice of key stakeholder groups will largely determine how successful the implementation of institutionalised ADR in Morocco will be.

The evaluation identified two distinctive group attitudes towards mediation and its institutionalisation: There are those who are in support of the introduction of the Mediation Law, and those who have some apprehension and who want their questions to be answered before the institutionalisation of mediation. However, all respondents to the evaluation were positive about mediation and its potential. In view of improving stakeholders' attitudes and addressing their concerns, and indeed to assist a more effective implementation of ADR in Morocco, the following issues will need to be addressed in the programme's future phases.

### Judges and the Working Group:

- Judges consider themselves to be the most logically qualified to carry out the mediator's responsibilities. They also believe that their experience as judges is a valuable asset that would further support them in their mediation roles.
- This confidence has made the judges fervent supporters of the introduction of the Mediation Law in Morocco.
- More training on the practical side of mediation needs to be provided for judges, this would make them feel more confident to act as mediators.
- Real case practices and simulations were requested by judges as key tools for the next phase.

### Lawyers:

- Lawyers have demonstrated a certain level of resistance to the incorporation of such a law on mediation. For over half of the lawyers interviewed, the introduction of institutionalised mediation is seen as a "threat" to their core activities. They believe that mediation, being an alternative to the "normal" litigation procedure, would reduce the number of suits brought to court and consequently affect their earnings. More generally there is a perception that not being part of the process would negatively affect their activities and income.
- The majority believe that they can be effective mediators as well and that the mediation role should not be monopolised by the judges. Most lawyers are organised under an entity called "Association marocaine des Barreaux d'avocats" that has significant power, thus not addressing their apprehensions would definitely generate more resistance, which could consequently create an environment that would affect the passing of the Mediation Law and the implementation of the future ADR phases.

### Civil Society Organisations

- Similarly, the majority of CSOs expressed concerns about the implementation of the Mediation Law and asked for more communication and transparency from the legislator's part.

- A minority of them demanded that their recommendations and inputs should be considered in the Mediation Law's development.
- Others wanted more clarification concerning the impact of the institutionalisation of mediation on their activities. This lack of clear information on the Mediation Law Project has generally put the CSOs on the defensive, creating more tension and stimulating more resistance.

### **The Ministry of Justice**

- From the Ministry of Justice perspective, the most pressing issue is to educate the lawyers, since they have learnt during the London Study Trip from experiences in the United States and the United Kingdom that raising the awareness of the lawyers can reduce their resistance.
- The next and most critical steps envisaged by the Working Group members is to communicate to the general public what mediation is and to finalise the legal basis for mediation.
- The MoJ clearly holds the work of SFCG-M in high regard and has requested that the close collaboration continue.
- Specifically, the reputation of SFCG in producing media products is known and there is a strong desire to use these tools in generating broad awareness of ADR.

### **Challenges for the Future:**

The **role of judges in mediation** is an issue where opinions diverge between the stakeholder groups. 100% of judges interviewed said they would like to work as mediators in the future, and as discussed above (Findings section B – Outcomes) it is apparent that the judges are highly aware of the different skills set and approach required for effective mediation. Additionally, more than 75% of the interviewed judges and Working Group members thought that other professionals (including lawyers) could also be good mediators. The main criteria for acting as a mediator, in the eyes of the judges, is to have been trained as a mediator. However, other stakeholder groups expressed concerns that judges would not be the most effective mediators. As one CSO-participant stated *"It is certain that people would be intimidated by a judge. They might not even tell the truth in front of a judge"*. Another comment on this issue was *"judges are trained to have authority, this is a very different skills set from the mediator's, who needs to listen and be a very good communicator"*.

Another issue that CSO respondents cited was their fear of the prevalence of corruption because of the private nature of the mediation procedure. According to one interviewee, *"the Moroccan government is still struggling to eliminate such malpractices through the recent reforms, thus appropriate mechanisms have to be developed to ensure transparency to regain people's trust in the judicial institutions"*.

In relation to **lawyers and their acceptance of ADR**, many other stakeholders are aware of the issues – negative articles written about ADR by lawyers and published in newspapers were cited several times during the interviews. However, judges and the Working Group believe that once lawyers have recognised the different roles the mediator plays, resistance to ADR will be reduced.

Some **tensions surrounding the role of Civil Society Organisations** were noted. CSOs themselves would like more "transparency" and communication about the Mediation Law Project. They requested more information about the law and wanted their recommendations to be taken into account. Some CSOs who are already performing types of mediation, particularly in family matters, fear that the new law would influence their activities by

regulating the practice of mediation. Other stakeholders, particularly some judges, do not perceive that a role for CSOs as 'official mediators' exists, or that they should be involved in the debate on the law. However, this opinion also emerges from a sense that communication with CSOs would be a positive development, whilst r, the realities of implementing collaborative discussions were noted following the Outreach Conference in Rabat.

## 4. CONCLUSIONS AND RECOMMENDATIONS

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Conclusions have been drawn from the analysis of the findings and they follow the structure of the findings section so that the evidence is easy to track. Recommendations are in bold.

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### Conclusions and Recommendations relating to ADR1 Implementation

#### Delivery of Outputs:

- The order and timing of activities for ADR1 was effective. They were well conceived and logically progressed. Overall, the organisation of the activities worked very well.
- SFCG-M's facilitation of events was strong although the need for expert facilitation was evident.
  - **SFCG-M should continue to ensure that facilitators have the right level of expertise for events.**
- The visibility of SFCG-M could be improved
  - **The visibility of SFCG-M should be improved. At each event SFCG needs to communicate who they are and what their role is. Consideration should be given to producing SFCG documentation on mediation and the role of SFCG.**

#### Programme Management:

- There has been little monitoring of progress, meaning there is no early warning system or systematised information for programme management or accountability to funder. There is also demand for better communication from the funder on programme results.
  - **SFCG-M should systematically collect and analyse feedback from participants at the end of individual activities; monitoring at the outcome level should also be considered. This data would need to be collected periodically (every three or six months) and the information should be aggregated, analysed and disseminated to SFCG and the donor.**
- The fast changing context of judicial reform in Morocco may necessitate revisions to the logframe again in the future.

### Conclusions and Recommendations relating to the Outcomes of ADR1

#### Consensus Building:

- The Working Group remained engaged through the whole process and found the process to be relevant and effective. There is a clear need for a stronger focus on the practical side of mediation in the future.
  - **SFCG-M should ensure that participants have a good understanding of the practical mechanisms of ADR and consider the use of media to provide this demonstration.**
- ADR1 achieved a strong position of trust and collaboration with the Ministry of Justice.
- The tensions surrounding the Outreach Conference as a transitional activity bringing together diverse stakeholders were to some degree inevitable, although SFCG-M should have made more efforts to communicate the purpose of the Conference to stakeholders.
  - **Given the complexity and changing nature of the situation due to reforms underway in Morocco, SFCG-M needs to pay careful attention to**

**ensuring that when stakeholders are brought together, the results are positive. For example, stakeholders should be made aware well before an event of what the event is and who the participants are.**

- The varying levels of involvement of different stakeholders in the programme, as well as in the Mediation Law Project, facilitated positive attitudes toward institutionalised mediation in some stakeholders and resistance in others.
  - **Since there has been a certain level of resistance from the lawyers, more work should be done with the ones who have a favourable opinion about mediation and its law. If approached appropriately, they can voice the benefits of the implementation of mediation and help initiate dialogue with the lawyers who are resisting the institutionalisation of mediation.**
- The programme needs to go beyond working with small groups of stakeholders and achieve a stronger awareness of mediation within the general public. This will help to remove any resistance emerging from lack of awareness.
  - **SFCG-M could consider the use of mass media to raise awareness. Television could be a good (though expensive) option – producing a Moroccan example of mediation in action for example. This could be used during training activities and could also be aired generally.**

#### Changes in Knowledge and Attitude:

- Strong results were achieved in terms of changes in the awareness and attitudes in the Working Group and judges stakeholder groups. These changes are largely related to the design of the programme that considered the rollout of events carefully.
- The changes in awareness and attitudes in other stakeholder groups were negligible, although that was not a key objective of ADR1. However, the final activity, the Conference, stimulated the different participants engagements and they were enthusiastic to learn more about mediation and to collaborate.

## **Conclusions and Recommendations relating to the Future of ADR**

#### Consensus Building:

- SFCG-M needs to maintain the goodwill from judges and the Ministry of Justice whilst incorporating other stakeholders into the programme. The CSOs, in particular, present a potentially delicate situation.
  - **SFCG-M needs to ensure that judges remain within the process and do not feel 'excluded' from ADR by CSO/lawyers. To achieve this balance, SFCG should communicate more directly with stakeholders about its role in the process and its consensus approach.**
  - **The extent of the implications of the Mediation Law for CSOs needs to be clarified with them as soon as the information is available to SFCG.**
  - **A similar amount of cooperation and communication should be maintained between SFCG-M and the MoJ and closely monitored during the future ADR phases. However, how this relates to ADR2 and the increased focus on CSO and lawyer stakeholders needs to be very carefully considered.**
- Lawyers have demonstrated a certain level of resistance to the institutionalisation of mediation:
  - **The future ADR phases will have to carefully deal with the apprehensions of lawyers; ADR2 needs to create an environment for discussion and dialogue between the legislators and the lawyers.**
  - **Steps should be taken to include lawyers in the mediation process or/and to grant them the opportunity to act as mediators as well.**

- **Further explanation concerning the financial implications of the institutionalisation of mediation for lawyers should be provided.**

In summary, Phase 1 of the ADR programme succeeded in addressing the needs of the MoJ and judges, in terms of providing training as planned. Outcomes identified during the evaluation include substantial changes in the knowledge and attitudes of key stakeholders.

A key outcome that ADR1 made progress towards achieving was the creation of a general atmosphere of discussion and exchange between the different national stakeholders. In doing this, SFCG-M had to secure good working relationships with the MoJ and the judges, whilst at the same time seeking mechanisms to bring other actors in the process. These efforts were made tangible at the Outreach Conference that brought government representatives, judges, lawyers and CSO representatives together to discuss the Mediation Law Project. Yet, some CSOs and lawyers felt that the MoJ representatives did not take their opinions into consideration and that the conference failed to address their apprehensions concerning the institutionalisation of mediation. Engaging different stakeholders into an open debate will be a critical step and at the same time a key challenge for SFCG-M's ADR programme in the future.

It is clear that Morocco is a fertile ground for mediation, but until the law is developed, many CSOs fear it, and how it will impact upon the already widespread use of informal mediation. SFCG-M should continue to seek opportunities for deepening the changes in knowledge and attitudes achieved through ADR1, something that is planned for in ADR3. At the same time it needs to also play a role, during ADR2, in continuing the facilitation of dialogue between CSOs/lawyers and the MoJ.

As a main actor of the ADR programme, SFCG-M needs to have more visibility during the different ADR events in order to increase awareness about its role, particularly on the consensus building side. There is no clear understanding (particularly from civil society) about the alignment of SFCG.

CSOs and lawyers will be the focus of the second phase of the programme in an attempt to create a favourable atmosphere for the future institutionalisation of mediation. SFCG-M, as a Non-Governmental Organisation (NGO), is at a great advantage when dealing with Moroccan CSOs; CSO stakeholders who were not previously aware of SFCG-M's NGO status perceive SFCG to be a natural collaborator. There are great opportunities for SFCG-M in ADR2 to extend the buy-in for institutionalised mediation, as well as the practical skills base, and to stimulate dialogue and consensus along the way.