

Jordan Leads the Way in Mediation in the Arab Middle East

Jordan is a progressive country, with many Rule of Law programs completed or in progress. Under the Constitutional Monarchy of King Abdullah and his wife, Rania, a Palestinian native, the country is also economically sound and regularly positions itself as a neutral in the all-too-frequent imbroglios of the Middle East. As part of his progressive agenda, the King supported establishing the Jordanian Mediation Law which was passed in June 2006. The law provides for three types of mediators as a voluntary option to litigation: judges, “special mediators” appointed by the Minister of Justice and confirmed by the Supreme Court’s Chief Judge, and private mediators approved by the court. The American Bar Association, anticipating passage of this law in 2006, trained more than 40 judges and attorneys with a 40-hour mediation course. Two judges began mediating in a pilot program in June 2006 in a newly constructed, USAID-funded Mediation Center in the Amman Palace of Justice.

Jordan’s court-related mediation program is more extensive than that in Egypt, which also has mediation law and conducts mediations in its Family Law program. Jordan’s program appears poised to reduce congestion in the Kingdom’s court system. During the pilot’s first 21 days, the parties in 25 cases in Jordan’s Court of First Instance voluntarily consented to mediation. The first five mediated cases settled, which is something of an international record. In fact, the mediation surveys show an astounding over 80% settlement rate in the first year. For those cases not settling, most often the parties report that the mediation process was particularly helpful and rewarding and that they would use it again.

Jordan has drawn upon its ancient tribal tradition of *wassata*, use of a tribal elder to bring parties together in resolving a dispute, to make this first step toward court-related mediation happen. This is partly apparent in the use of Special Mediators, who are likely to be former elder statesmen or high-ranking judges held in high societal esteem. As it was centuries ago in Jordan, the core of the mediation process is to resolve disputes without violence. Jordan’s mediation program is the model for mediation in the Middle East and its expansion can only benefit peaceful goals in the region.

The Mediation Pilot’s success has prompted the Ministry of Justice to expand the program. Nancy Fashho, one of our members in ACR’s Middle East Network, recently spoke with Judge Mohammad Al-Nasser, one of the two initial mediation judges in the Pilot Program. She reports that the Ministry of Justice has established a mediation division to monitor and supervise the program’s implementation and expansion. This division collaborates with the chief judges and provides training to judges, court staff and lawyers. The Ministry also expects to establish an Alternative Dispute Resolution and Case Management Support Division under the Ministry’s Legal Affairs and International Relations Department.

The Ministry of Justice decided to expand the mediation program to four courts: North Amman, South Amman, East Amman and Zarqa. The courts established Mediation Departments in early November 2007 and all but one now have the facilities needed to mediate cases. Additional mediation programs are expected in mid-December.

In collaboration with non-governmental organizations, the Ministry provided mediation skills training to judges and lawyers in the four courts. The Ministry plans more training for staff, including clerks and typists. Chief Judges will receive additional training to develop their awareness and understanding of mediation. For any International Section members who are interested in training in the region, contact Lynn Cole to discuss options and receive additional information.

While Jordan leads the region in mediation, Lebanon stands out for its use of arbitration. Several Lebanese entities, such as the Arbitration Center at the Beirut Chamber of Commerce and Industry, have been at the forefront of Middle Eastern arbitration. Lebanon may now be fertile ground for a mediation program similar to the one in Jordan.

During Lebanon's latest civil war, communal mediation was used as an alternative to the Lebanese judicial system due to its unavailability or perceived impartiality amid sectarian strife. Today, the international community is supporting mediation as a means to bridge differences between clashing pro-Syrian and pro-west parliamentary blocks, which are unable to reach middle ground on vital issues such as Lebanon's position in international conflicts and the election of a president. However, these mediation efforts remain limited in scope and constrained to the political arena and have not transgressed into the commercial world.

Another challenge for mediation in Lebanon is the intricacy of its judicial system, especially when it comes to family matters. Lebanese family courts are sectarian and administered by the clergy of each of the eighteen officially recognized Lebanese religious sects. A family law mediation program would have to take into account the religiously diverse Lebanese population, and any training programs would be constrained because of the diversity of the population. Additionally, due to power sharing schemes between the factions, if the mediation program were officially endorsed by the Lebanese government, it would have to follow the strictly delineated power sharing quotas between Christians and Muslims in hiring any potential mediators.

A commercial mediation program in Lebanon would prove successful because of the unique characteristics of the Lebanese population. The abundance of linguistically skilled persons in Lebanon and the country's close relations with the Western Hemisphere and the Arab World could lead to a Lebanese mediation system that would leave its mark on both the domestic and the international arenas.

Author: Lynn Cole

Certified Mediator and Mediation Specialist in Amman, Jordan, 2006, ADR Professor, Stetson University College of Law. Contact her at www.lynncole.com.

Assisted by: Nancy Fashho

Attorney and Legal Consultant, Law Degree, University of Jordan and LL.M., International Business Law, University of London.

And assisted by: Ahmad M. Yakzan,

Third year law student, Stetson University College of Law.