

EC Muller

Lecturer, Department of
Public Law, University of
the Free State

CL Nel

English as Additional
Language facilitator.
Undergraduate LLB
student, Faculty of Law,
University of the Free
State

DOI: <https://dx.doi.org/10.18820/24150517/JJS46.i2>

ISSN 0258-252X (Print)
ISSN 2415-0517 (Online)

Journal for
Juridical Science
2021:46(2):26-55

Date Published:
30 November 2021

A CRITICAL ANALYSIS OF THE INEFFICACY OF COURT- ANNEXED MEDIATION (CAM) IN SOUTH AFRICA – LESSONS FROM NIGERIA

SUMMARY

As a result of defects in the South African civil justice system, the Department of Justice and Constitutional Development introduced voluntary court-annexed mediation (CAM) in the magistrates' courts in 2014. CAM was chosen under the broader need for greater access to justice because it has the potential to make dispute resolution efficient, amicable, and affordable. It can, therefore, contribute to access to justice for all members of society. Since the amendment of the Magistrates' Court Rules to provide for CAM, the uptake of mediation in terms of the CAM system has unfortunately been inadequate. The aim of this article is to identify reasons for the inefficacy of CAM since its implementation. We use normative research to critically analyse existing court rules and authority. We conclude that there are several reasons for CAM's inefficacy which are elucidated in the main text. It is important to understand these reasons, as the legislature presents CAM as a mechanism to improve access to justice. From this platform, we evaluate the mechanisms for court-connected alternative dispute resolutions provided by the Nigerian Multi-Door Courthouse (MDC) system. This reveals policies and practices that could potentially improve the efficacy of CAM in South Africa, as these relate to the factors identified as impediments to the optimal functioning of CAM in our civil justice system. As such, we identify valuable lessons that can be learned from this comparison. Building hereon, and on the conclusions reached elsewhere in the article, we postulate that the mediation scheme, as contemplated by Rule 41A of the Uniform Rules of Court (as applied in the superior courts), should also be implemented in the magistrates' courts. The article concludes that improving CAM in South Africa is of critical importance to advancing access to justice and departing from a culture of conventional adversarial dispute resolution.

1. INTRODUCTION

In this article, we identify and discuss the main reasons why court-annexed mediation (hereafter CAM) has not been as successful as the government had envisaged when it embarked on the CAM project in 2014. In the first part, we elaborate on the CAM project in South



Published by the UFS
<http://journals.ufs.ac.za/index.php/jjs>

© Creative Commons With Attribution
(CC-BY)



Africa and highlight its challenges and shortcomings, thus permitting us to make suggestions for its improvement. In the second part, we bolster these suggestions by drawing on lessons that can be learned from the Lagos State model of the Multi-Door Courthouse (hereafter MDC) in Nigeria.

2. THE COURT-ANNEXED MEDIATION SYSTEM IN SOUTH AFRICA

2.1 Civil justice system

Pervasive defects in South Africa's civil justice system necessitate reform. It is trite that civil litigation is costly, protracted, complex and adversarial in nature.¹ To remedy this situation, the Department of Justice and Constitutional Development introduced voluntary CAM in certain lower courts as part of a project to transform the civil justice system.²

South Africa's law of civil procedure derives from English law and deals with the enforcement of rights, obligations and remedies in the civil justice system.³ Litigation is the primary method of civil dispute resolution in many jurisdictions around the world, including South Africa.⁴ Unfortunately, it is also the reason for the numerous defects in the civil justice system.⁵ For the purposes of this contribution, we have omitted a discussion of the formal process of pre-litigation, pleadings, trial preparation, and trial in South Africa, as its complexity, adversity, expense, and length are well known to South African lawyers.⁶

2.2 Access to justice

The fundamental right of access to justice is protected in sec. 34 of the *Constitution of the Republic of South Africa*, 1996 (hereafter the *Constitution*):

Everyone has the right to have any dispute that can be resolved by the application of law decided in a fair public hearing before a court or, where appropriate, another independent and impartial tribunal or forum.⁷

1 Maclons 2014:43; Ngcobo "Enhancing access to justice: The search for better justice", 15-16, <https://constitutionallyspeaking.co.za/wp-content/uploads/2011/07/Speech-of-the-Chief-Justice-2011.pdf> (accessed on 27 August 2020).

2 *Government Gazette* 2014:183(37448); Department of Justice and Constitutional Development 2012:20.

3 Van Loggerenberg 2016:126.

4 Vosloo 2017:6.

5 Maclons 2014:44; Olivier 2018:3; Van Loggerenberg 2016:134.

6 Law graduates and legal practitioners, specifically, would be familiar with the complexities of civil litigation from their own experience. A cursory investigation of textbooks on the topic will confirm this. See, for example, Peté *et al* 2016:i-727; Marnewick 2007:v-498.

7 *Constitution of the Republic of South Africa*, 1996.

According to Mabusela, “access to justice” comprises physical access, economic affordability, reliable outcomes, efficiency and expediency, non-discrimination, and consideration of the diversity of those seeking justice.⁸ Justice is beyond reach when litigation is unaffordable, and the nature of civil proceedings affects outcomes, efficiency, and expediency. This inaccessibility of justice can create a negative mindset towards the rule of law.⁹

Olivier explains that there is a narrow and broad approach to determine what access to justice entails.¹⁰ The narrow approach focuses on resolving disputes in a manner that is cost-efficient, speedy, and fair. She submits, however, that access to justice is not limited to an efficient and accessible litigation process. She, therefore, supports a broad approach to civil justice that includes access to alternative dispute-resolution (hereafter ADR) processes. Olivier recognises that there should be both formal and alternative mechanisms of civil justice.¹¹ The mechanism we discuss in this article is mediation, specifically mediation that takes place under the auspices of a court, in which case it is referred to as “court-connected or court-annexed mediation”.¹²

2.3 Introduction of voluntary court-annexed mediation in South Africa

Voluntary CAM was introduced in 2014 through promulgation of the Amended Magistrates’ Court Rules.¹³ It started as a pilot project in nine Gauteng magistrates’ courts and three North-West magistrates’ courts.¹⁴ In 2018, CAM was extended to the regional divisions of the magistrates’ courts in Gauteng, Limpopo, Mpumalanga, and North-West.¹⁵ From 2019, CAM has been introduced in all provinces, with the designation of further courts to apply the mediation rules in the regional divisions of the magistrates’ courts in the Eastern Cape, Free State, KwaZulu-Natal, Northern Cape, and Western Cape.¹⁶ The expectation was that parties would be able to resolve disputes faster and more cost-effectively.¹⁷ Despite the apparent potential and advantages of CAM, the uptake was unfortunately not as expected.¹⁸ We will elucidate on the reasons for this regrettable state of affairs below. Essentially, budgetary constraints on the side of government, the prevailing adversarial

8 Mabusela 2019:29.

9 Mowatt 1988:727; Hurter 2011:414; Heywood & Hassim 2008:279.

10 Olivier 2018:7.

11 Olivier 2018:10. ADR methods include, for example, negotiation, mediation, arbitration, and ombudsman. Mediation, in essence, is non-adjudicative, third-party facilitated negotiations. See Wiese 2016:5-6.

12 Vosloo 2017:34.

13 GK 183/2014.

14 Department of Justice and Constitutional Development Annual Report 2015/2016:31.

15 GK 150/2018.

16 GK 508/2019.

17 Department of Justice and Constitutional Development Annual Report 2017/2018:19.

18 South African Law Reform Commission 2018:15-16.

culture in the legal profession, and substantive concerns about the enacting legislation contributed, in our view, to the inadequate uptake of CAM.

2.4 Court-annexed mediation rules

The voluntary CAM rules were inserted as Chapter 2 in an amendment to the rules regulating the conduct of proceedings of the magistrates' courts of South Africa. These rules were drafted by the Rules Board for Courts of Law and approved by the Minister of Justice and Constitutional Development in terms of the *Rules Board for Courts of Law Act 107 of 1985*.¹⁹ The rules set out the procedure to follow when parties elect to voluntarily submit their civil dispute to mediation.²⁰

The rules apply to disputes referred for mediation prior to or after the commencement of litigation.²¹ When a dispute is referred for mediation after the commencement of litigation, it can be done either before trial starts or before judgement is given at the trial.²² The court can also ask the parties whether they would be willing to refer the dispute for mediation before or during trial, but before judgement.²³ Clerks of the court in district courts and registrars in the regional courts fulfil important functions and duties during the mediation process. They must explain the purpose, meaning, objectives, costs, and savings of mediation to parties; that the parties themselves are liable for a mediator's fees, and that they may be assisted by legal representatives.²⁴ In addition, they must assist parties to conclude a written agreement to mediate.²⁵

Rule 80 sets out the role and functions of the mediator. In essence, the mediator has a facilitative role as an impartial third party who assists the disputants in resolving their dispute.²⁶ If the parties reach a settlement, the mediator must assist them in concluding a settlement agreement.²⁷ This agreement is a binding and enforceable contract.²⁸ It can also be made an order of court.²⁹ If no settlement was reached, the parties have a right to pursue litigation to resolve their dispute.³⁰

19 Department of Justice and Constitutional Development "Court-Annexed Mediation Rules Booklet", 4, <http://www.themediationcentre.co.za/images/Mediation-Rules-Booklet.pdf> (accessed on 22 October 2020).

20 *Amended Magistrates' Court Rules*: Rule 72. For a discussion on access to justice and the advantages of CAM that coincide with the objectives stated in Rule 71 of the *Amended Magistrates' Court Rules*, see paras. 2.2 and 2.5 above.

21 Rule 74 of the *Amended Magistrates' Court Rules*.

22 Rule 78 of the *Amended Magistrates' Court Rules*.

23 Rule 70 of the *Amended Magistrates' Court Rules*.

24 Rule 76 of the *Amended Magistrates' Court Rules*.

25 Rule 76 of the *Amended Magistrates' Court Rules*.

26 Rule 80 of the *Amended Magistrates' Court Rules*.

27 Rule 80(1)(h) of the *Amended Magistrates' Court Rules*.

28 Wolter *et al* 2016:595.

29 Rule 80(4) of the *Amended Magistrates' Court Rules*.

30 Vosloo 2017:35.

2.5 Advantages of court-annexed mediation

The Department of Justice and Constitutional Development launched the Civil Justice Reform Programme in 2010, with the aim to focus initiatives to reform the civil justice system by aligning it with constitutional values. Another aim was to simplify and harmonise the rules, so that poor and vulnerable members of society can access justice easily and equally. Importantly, this programme proposed CAM as part of civil justice reform.³¹

The importance of mediation as an alternative way of resolving civil disputes and the legislature's support of mediation is further illustrated by the recent amendment of The Uniform Rules of Court that relate to the superior courts.³² Rule 41A requires litigants to serve a notice on one another to indicate whether they agree or oppose the referral of the dispute to mediation before trial.³³ It further requires the litigants to concisely explain why they consider mediation appropriate or not.³⁴ The rule, therefore, compels parties to consider mediation at the outset of legal proceedings. Importantly, this amendment does not extend CAM, as envisioned in the Magistrates' Court Rules, to the superior courts. The significant difference between Rule 41A and the rules related to CAM is that the former obliges litigants to consider mediation at the outset of litigation. Importantly, this would not be court-connected mediation as is the case with CAM. Disputants would have to mediate the matter privately. With CAM, it remains the voluntary prerogative of disputants to pursue mediation, of which they might not even be aware as a path for dispute resolution, since there is no legal obligation on legal representatives to inform them of the option. This is in contrast to Rule 41A, which obliges disputants and their legal representatives to consider mediation.

Rule 41A provides a clear indication that the legislator considers mediation as an important strategy to provide access to justice. Chief Justice Mogoeng Mogoeng views this amendment as a clear move "towards the speedy delivery of quality justice to all".³⁵ Clearly, to augment the goal of increased access to justice, South African legal and public culture will need to transform their approach towards resolving civil disputes to alternatives other than through formal litigation.

Another aim of CAM is cost-efficiency.³⁶ Mediation has the potential to save time and minimise legal costs, at least compared to litigation.³⁷ This, in

31 Department of Justice and Constitutional Development 2012:20. CAM is currently rolled out across all nine provinces. It is directed at all civil proceedings in the Magistrates' Court system already instituted or about to be instituted. Participants elect to have a matter referred to mediation.

32 GK 107 2020:656(43000).

33 Rule 41A(2)(a) and (b) of the *Uniform Rules of Court*.

34 Rule 41A(2)(c) of the *Uniform Rules of Court*.

35 The Judiciary Republic of South Africa 2018/2019:8.

36 Department of Justice and Constitutional Development Annual Report 2017/2018:19.

37 South African Law Reform Commission 2020, "Investigation into legal fees project 142 Issue Paper 36", 168, <https://www.justice.gov.za/salrc/ipapers/ip36-prj142-LegalFees.pdf> (accessed on 28 August 2020).

turn, helps foster trust in the civil justice system.³⁸ The cost-saving potential of mediation is acknowledged by the state's proposed mediation policy. This policy is an initiative that aims to transform state legal services. To save on the costs of civil litigation, it requires state attorneys and state agencies to consider mediation when first attempting to resolve a dispute.³⁹ The Department of Justice and Constitutional Development expects that this policy will increase the "percentage of litigation cases settled through mediation from 24 [per cent] in 2017/2018 to 50 [per cent] in 2020/2021".⁴⁰

CAM is non-adversarial in nature and allows parties to maintain good relationships with each other.⁴¹ Mediation outcomes are not limited to existing legal remedies.⁴² It enables parties to tailor outcomes that meet both sides' specific needs and interests. In addition, it is more informal than litigation and is not bound by complex procedural rules and requirements.⁴³ It is also flexible enough to adapt to many kinds of civil justice disputes such as, for example, commercial, community, and family disputes.⁴⁴ The decision of Brassey AJ in *MB v NB*⁴⁵ has lent judicial support for mediation. In this divorce matter, the court held that mediation could provide a practical and fair alternative to protracted litigation, and that it saves time and money compared to the long and drawn-out process of litigation. This increases access to justice to the broader public.⁴⁶

Despite its numerous advantages, CAM has not been as successful as was hoped.⁴⁷ The reasons for CAM's challenges are discussed below. Understanding these reasons is critical, since CAM is promoted as a mechanism to improve access to justice.⁴⁸

38 Mabusela 2019:15.

39 Department of Justice and Constitutional Development Annual Report 2017/2018:61. The Department of Justice and Constitutional Development mention in their 2018/2019 Annual Report that the proposed policy is to be submitted to cabinet/parliament for discussion and approval. No mention of this is made in the 2019/2020 Annual Report or elsewhere. Department of Justice and Constitutional Development Annual Report 2018/2019:12, 61.

40 Department of Justice and Constitutional Development Annual Performance Plan 2018/2019:20.

41 Olivier 2018:18.

42 Feinberg 1989:6.

43 Alexander 2003:11.

44 Feinberg 1989:9.

45 *MB v NB* 2010 (3) SA 220 GSJ; paras. 50-58. See also *PE Municipality v Various Occupiers* 2005 (1) SA 217 (CC); paras. 239-242; *FS v JJ & Another* 2011 (3) SA 126 (SCA); *TS v TS* 2018 (3) SA 572 (GJ); par. 85.

46 South African Law Reform Commission 2020. "Investigation into legal fees project 142 Issue Paper 36", 168, <https://www.justice.gov.za/salrc/ipapers/ip36-prj142-LegalFees.pdf> (accessed on 28 August 2020).

47 South African Law Reform Commission 2018:15-16; The Judiciary Republic of South Africa 2017/2018:9. See also 2.6 below.

48 Patelia "Implementing mediation in the formal legal system: A South African perspective", 20, <http://documents.pub/document/implementing-mediation-in-the-formal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020).

2.6 Efficacy (or otherwise) of court-annexed mediation in South Africa

Currently, no comprehensive empirical study that investigates the successes and failures of the CAM pilot project is available,⁴⁹ because it is difficult to study the costs and benefits of CAM, compared to litigation.⁵⁰ The difficulty further lies in the confidential nature of mediation, which is an obstacle to research. This leads the vast majority of studies relying on settlement rates and participant surveys to measure the success of mediation in the formal justice system.

Moreover, empirical data on the success rate of mediation in South Africa is non-existent. This may be due to the confidential nature of the process and no statutory duty to report on concluded mediation cases. Although mediators are required to file reports of the outcome of the mediation with the clerk of the court in CAM matters,⁵¹ statistics on the success rate are not available.⁵² Consequently, it is uncertain whether the theoretical advantages of CAM would materialise in practice, and what their impact might be.⁵³ An equally important factor is that CAM is a relatively new addition to the South African civil justice system. Moreover, the Department of Justice and Constitutional Development has failed to properly report on the CAM project. It is, however, apparent that, in its Annual Report of 2019/2020, the Department of Justice and Constitutional Development states that it had planned to refer 65 per cent of civil cases for mediation, but that this target was not met, as no civil cases were referred for mediation. The Department does not elaborate on the reasons for this deviation from its planned target.⁵⁴ According to the 2017/2018 Annual Report, the target was also not met, and the Department merely states that "there was no data available for the proclaimed courts due to the high turnover of critical staff". Nothing further is stated on this issue.⁵⁵ In the 2018/2019 Annual Report, it is also mentioned again that the planned target was not met. The Department identifies the need for draft regulations to address the issue of litigants paying for both mediation and legal costs. It

49 Mabusela 2019:49.

50 Eisenberg 2016:245. It is, however, accepted in the literature that a major advantage of mediation is that it saves time and money. See, for example, South African Law Reform Commission 2020, "Investigation into legal fees project 142 Issue Paper 36", 168, <https://www.justice.gov.za/salrc/ipapers/ip36-prj142-LegalFees.pdf> (accessed on 28 August 2020); Maclons 2014:43; Ngcobo "Enhancing access to justice: The search for better justice", 15-16, <https://constitutionallyspeaking.co.za/wp-content/uploads/2011/07/Speech-of-the-Chief-Justice-2011.pdf> (accessed on 27 August 2020).

51 Rule 80(2) of the *Magistrates' Court Rules*.

52 None could be obtained from the website of the Department of Justice & Correctional Services or elsewhere.

53 Eisenberg 2016:246.

54 Department of Justice and Constitutional Development Annual Report 2018/2019:66.

55 Department of Justice and Constitutional Development Annual Report 2017/2018:53.

does, however, not explain or elaborate on this statement.⁵⁶ Given this state of affairs, it is safe to assume that the intended success of the CAM project is yet to materialise.

The following analysis draws on the limited research available in this field. After analysing government reports, literature, and investigations into the efficacy of the voluntary CAM rules, certain key factors have emerged as challenges to its success. A discussion of these challenges follows.

2.6.1 Cost of mediation

Despite the low-cost benefit of mediation compared to litigation, the reality is that many South Africans cannot afford even this lower cost, in order to resolve their dispute.⁵⁷ The issue of cost was identified as a barrier to using CAM one year after the implementation of the programme.⁵⁸ In its 2018/2019 Annual Report, the Department of Justice and Constitutional Development identified the issue of cost again when it deviated completely from its planned target of successfully mediating 60 per cent of civil cases.⁵⁹

According to the Portfolio Committee on Justice and Correctional Services, it is crucial to consider “the high cost of mediation services”.⁶⁰ Currently, level 1 and level 2 mediator fees are R225 and R300 per half an hour of mediation with a maximum daily fee of R4500 and R6000, respectively.⁶¹ For this reason, the Department of Justice and Constitutional Development has deemed it necessary to draft regulations to address the issue of costs.⁶² These regulations will entail the provision of free mediation services to the public in certain circumstances. The intention is to refer disputes to community advice offices. In addition, it will refer disputes to attorneys who must conduct

56 Department of Justice and Constitutional Development Annual Report 2018/2019:76.

57 Patelia 2016 “Implementing mediation in the formal legal system: A South African perspective”, 19, <http://documents.pub/document/implementing-mediation-in-the-formal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020). The maximum statutorily prescribed fee for CAM mediators is R600 per hour, meaning a cost implication of R300 per hour per party. The minimum fee per hour, according to the Magistrates’ Court Rules, is R722.00 per hour. This represents what a losing party would be liable to pay the winning party and excludes the fee for their own attorney charges.

58 Brand “A critique of the South African court-annexed mediation rules”, 10, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

59 Department of Justice and Constitutional Development Annual Report 2018/2019:76.

60 Portfolio Committee on Justice and Correctional Services 2018:192.

61 GK 854 *Government Gazette* 2014:592(38163). This excludes fees allowed for perusal, preparation of reports and travelling. A level 1 mediator must have a NQF level 4 competence and basic computer literacy skills. A level 2 mediator must have a NQF level 7 competency with 5 years’ mediation experience. See par. 4 of the accreditation standards for mediators.

62 Department of Justice and Constitutional Development Annual Report 2018/2019:76.

community service in accordance with the requirements of the *Legal Practice Act*.⁶³ At the time of writing this article, the Department has not yet implemented the proposed regulations. In our view, doing so must be prioritised as a matter of urgency.

The South African Law Reform Commission has urged the Legal Practice Council to encourage its members to deliver free mediation services.⁶⁴ Moreover, not only does Patelia propose that legal aid for mediation be given, but the South African Law Reform Commission also supports free mediation services for the indigent.⁶⁵ The Commission proposes a means test based on a sliding scale of income to determine eligibility for state-funded mediation.⁶⁶ We are of the opinion that such a means test and the attendant provision of state-funded and/or free mediation services provided by legal practitioners in accordance with their responsibilities imposed by the *Legal Practice Act* will do much to enhance the role of CAM in South Africa.

2.6.2 Budgetary constraints

A lack of financial support is among the root causes of the inefficacy of CAM in the lower courts. Slow economic growth resulted in budgetary constraints within the Department of Justice and Constitutional Development. This created an obstacle for the roll-out of CAM.⁶⁷ In both its 2016/2017 and 2017/2018 annual reports, the Department of Justice and Constitutional Development indicated that, due to the reprioritisation of funds, it was unable to implement the CAM initiative as anticipated.⁶⁸ As will be noted, significant capital input is necessary for CAM to succeed.

2.6.3 Public awareness

Patelia refers to the large-scale public communication process that was launched when CAM was initiated. He gives no example of what this process entailed, except to say that the aim was to inform the public about the new

63 Department of Justice and Constitutional Development Annual Report 2018/2019:76.

64 South African Law Reform Commission 2020:187.

65 South African Law Reform Commission 2020:191; Patelia "Implementing mediation in the formal legal system: A South African perspective", 21, <http://documents.pub/document/implementing-mediation-in-the-formal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020).

66 South African Law Reform Commission 2020:192.

67 Department of Justice and Constitutional Development Annual Report 2017/2018:27.

68 Department of Justice and Constitutional Development Annual Report 2016/2017:32 and 2017/2018:27. These reports unfortunately do not reflect specific amounts allocated to court-annexed mediation. Based on the content of the report, it is assumed that the financial resources available for the project were used.

avenue of dispute resolution within the civil justice system.⁶⁹ Apart from outlining CAM on its website, it is unclear to what extent the Department of Justice and Constitutional Development has pursued a public awareness campaign or what it would have involved.⁷⁰ It is, however, important that a large-scale and well-directed public awareness campaign be launched, if the government wants CAM to succeed.

Mabusela's study (2019) shows that public awareness is key to ensuring CAM's success.⁷¹ For this reason, he recommends educating the public and conducting awareness campaigns about the benefits of mediation over litigation.⁷² Significant capital input is, therefore, necessary to create public awareness about mediation. The following discussion elucidates the authors' substantive concerns with the voluntary CAM rules. We propose certain amendments to the CAM rules and practices so as to increase their efficacy.

2.7 Issues to consider in the potential amendment of court-annexed mediation rules and practices

The effectiveness and viability of the current voluntary CAM rules are subject to much debate.⁷³ Only key aspects of the rules are discussed below, as we hold the view that they have an immediate impact on the success of the CAM programme.

2.7.1 Voluntary versus mandatory mediation

In terms of the current CAM rules, mediation is voluntary. This means that parties have a choice to resolve their dispute through either mediation or litigation. Conversely, a system of mandatory CAM compels parties to first mediate and only if they fail to reach an agreement through mediation, to pursue the matter through litigation.⁷⁴ Whether mandatory CAM should be embraced in South Africa is a question that must still be answered.⁷⁵

69 Patelia "Implementing mediation in the formal legal system: A South African perspective", 20, <http://documents.pub/document/implementing-mediation-in-the-formal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020).

70 Department of Justice and Constitutional Development 2021, <https://www.justice.gov.za/mediation/mediation.html> (accessed on 2 June 2020). The Annual Report of 2014/2015 simply mentions that the project was launched, without referring to any public awareness campaign.

71 Mabusela 2019:92.

72 Mabusela 2019:202.

73 Patelia "Implementing mediation in the formal legal system: A South African perspective", 19, <http://documents.pub/document/implementing-mediation-in-the-formal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020).

74 Maclons 2014:119.

75 Mabusela 2019:147.

Much of this debate turns on the impact of mandatory mediation on sec. 34 of the *Constitution*.⁷⁶ Brand argues that, legally, there can be no constitutional objection to mandatory CAM, since parties are not barred from approaching the court if they cannot reach an agreement through mediation. This does not impede upon the constitutional right to access courts (or other fora) in terms of sec. 34.⁷⁷

Mabusela argues that legislative support for mandatory CAM in the civil justice system has been laid by existing legislation that mandates mediation.⁷⁸ Among legal professionals surveyed, he found that 81.6 per cent agreed that, as a matter of procedure, parties should be directed to mediate before they litigate.⁷⁹ It is beyond the scope of this article to enter into the debate on whether mediation should be mandatory or not. Nevertheless, we take the view that this debate would largely become irrelevant if our suggestions below – to the effect that Rule 41A of the Uniform Rules of Court should apply in the lower courts – were to be adopted.

2.7.2 Accreditation of mediators and training standards

The Qualification and Standards for Accreditation of Mediators were published in October 2014 in accordance with Rule 86 of the Magistrates' Court Rules. To become accredited mediators, applicants must complete 40 hours of contact training consisting of both theoretical and practical components.⁸⁰ This 40-hour minimum is in line with international minimum standards for mediator accreditation.⁸¹

According to Mabusela, theoretical aspects of the training such as studying principles of civil procedure require more time.⁸² We do not agree with this assertion, because mediation within the CAM framework requires only a basic overview of the civil process.⁸³ Both nationally and internationally, the

76 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 12, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

77 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 12-13, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

78 Mabusela 2019:84.

79 Mabusela 2019:182. Mabusela (2019:159; 165-166; 169) used phenomenological research and expert sampling. He sent out a questionnaire to "[t]hirty-two (32) members of the legal professions in the different capacities including lawyers [attorneys and advocates], [academics], judges [and magistrates], and dispute resolution mediators".

80 GK 854/2014.

81 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 17, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

82 Mabusela 2019:153.

83 *Government Gazette* 2014:592 (38163). The prescribed course content in para. 1.1 (a)(i) refers to "basic civil procedure" as one of 13 theoretical aspects, excluding practical training, that must be covered in a 40-hour course.

standard for training is 40 hours that spans over five days.⁸⁴ Voluntary CAM practitioners suggest that training should be continuous.⁸⁵ Since mediation is mostly a practical skill, Brand suggests that the practical component of mediation training is inadequate and should be changed to include more practical exercises to strengthen the mediators' skills.⁸⁶

More importantly, the quality of mediator training is problematic, because mediation courses and training institutions are currently not required to be accredited.⁸⁷ Therefore, the CAM rules should include some form of accreditation standards for mediator-training institutions.⁸⁸ This would ensure that, when mediators apply to be voluntary CAM practitioners, the credentials that they present to the Minister are credible.⁸⁹ According to Mabusela, the quality of training is crucial for the successful roll-out of CAM.⁹⁰

Britz proposes that mediator qualification be carried out by the Dispute Settlement Accreditation Council (DiSAC).⁹¹ This institution aims to provide a uniform system for the accreditation of dispute-resolution practitioners. Moreover, it provides certification of good standing and qualification that is supported by the industry. Currently, the accreditation of mediators is voluntary since there is no obligation on them to be accredited. According to Britz, knowing that a mediator meets the minimum industry standards for practice, through their accreditation from DiSAC, will provide the public with peace of mind.⁹²

Mabusela argues that the training of mediators should proceed with the support and oversight of the Office of the Chief Justice as part of the Judicial Accountability programme.⁹³ This is because of the formal nature of CAM as a dispute-resolution method within the civil justice system. He contends that mediator training and accreditation should not be left to voluntary and private institutions such as DiSAC.⁹⁴ A final point of concern is that the

84 The authors consulted the websites of the Dispute Settlement Accreditation Council, Centre for Effective Dispute Resolution for confirmation, and the International Mediation Institute.

85 Ali 2018:23.

86 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 19, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

87 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 18, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

88 Mabusela 2019:205.

89 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 1, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

90 Mabusela 2019:215.

91 According to their website, "DiSAC is a voluntary association of the mediation and arbitration industry in South Africa. DiSAC was established in 2010 through a consultative process facilitated by the Africa Centre for Dispute Settlement.", http://disac.co.za/?page_id=3377 (accessed on 7 August 2021).

92 Britz 2018:45.

93 Mabusela 2019:215.

94 Mabusela 2019:216.

current standards provide exemption from mediator training.⁹⁵ Brand suggests removing the Minister's discretion to exempt mediators from training and to appoint existing accredited mediators instead.⁹⁶ The Department of Justice and Constitutional Development does not indicate what the requirements are for exemption. We, therefore, agree with Brand's proposal.

2.7.3 Functions and duties of clerks and registrars

Allen raises concerns about using clerks and registrars in the way that the CAM rules require. These concerns are mainly related to their experience, training, and the importance of keeping mediations confidential. Furthermore, managing the mediation process is part of a wide set of administrative court duties to be performed by clerks and registrars. As a result, they may be too busy to perform their mediation duties efficiently and effectively.⁹⁷ Brand endorses Allen's suggestion to outsource CAM administration to an expert, independent mediation provider. This would eliminate concerns about clerks and registrars, because the provider would administer CAM professionally, efficiently, and cost-effectively.⁹⁸

If, however, clerks and registrars are to continue to perform duties under the mediation rules, it is important for the success of CAM that they be trained and remunerated adequately.⁹⁹ This would require significant capital investment, which, due to budgetary constraints, presents a challenge to the successful implementation of CAM.

2.7.4 Role of legal practitioners

The unwillingness of legal practitioners to propose mediation to their clients is another key obstacle to CAM's success.¹⁰⁰ This unwillingness stems from both the adversarial nature of the legal profession and the perception of weakness of proposing settlement instead of litigation.¹⁰¹ Legal practitioners also view mediation as a disruption to their profession with decreased income potential.¹⁰² To ensure the success of CAM, it is critical to disengage legal

95 GK 854/2014.

96 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 23-24, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

97 Allen "A discussion of the new mediation provisions in the South African Magistrates Courts Rules", 4-5, <http://conflictdynamics.co.za/Papers/AndPresentations> (accessed on 2 June 2020).

98 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 30, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

99 Allen "A discussion of the new mediation provisions in the South African Magistrates Courts Rules", 5, <http://conflictdynamics.co.za/Papers/AndPresentations> (accessed on 2 June 2020).

100 Feinberg 1989:20.

101 Feinberg 1989:21.

102 Mabusela 2019:209

practitioners from the adversarial norm.¹⁰³ They must reorient themselves on the issue of income and find new ways to advise and represent clients.¹⁰⁴

Mabusela suggests using codes of conduct, regulations, and laws to impose a duty on the profession to consider mediation before litigation.¹⁰⁵ This approach is expressly provided for in Uniform High Court Rule 41A.¹⁰⁶ However, legal practitioners' unwillingness to propose mediation to their clients is underscored by the Directive of the Limpopo Division of the High Court, which states that, due to legal practitioners not complying with Rule 41A after a year of it coming into effect, it will decline to hear matters where the rule has not been complied with.¹⁰⁷ In our view, a similar rule, and even directives, should be implemented in magistrates' courts to encourage the use of mediation by legal practitioners. An alternative suggestion is to include an obligation or recommendation to consider mediation before litigation in the Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and Juristic Entities as published in terms of sec. 97 of the *Legal Practice Act*.¹⁰⁸

2.7.5 Sanctions

Encouraging party participation is a challenge for the voluntary CAM initiative.¹⁰⁹ This is especially true when one party is willing to mediate but the other is not, or if a magistrate suggests mediation and the disputants refuse to mediate. The rules do not encourage or prescribe a sanction to compel an unreasonable or unwilling party to mediate.¹¹⁰ Brand suggests changing the rules to include punitive cost orders against disputants who behave unreasonably by refusing to mediate.¹¹¹ The recently amended Uniform High Court Rule 41A compels disputants to consider mediation at the outset of the legal proceedings. If they decide not to mediate, they must substantiate their reasoning. Importantly, the Rule expressly provides that the court may consider the disputants' reasons for not mediating when considering an order for costs.¹¹²

In our view, the implementation of mediation within the formal justice system should be done uniformly. Therefore, a rule similar to Rule 41A should be introduced in the voluntary CAM rules to encourage party participation. Conversely, magistrates who preside over proceedings, where parties

103 Mabusela 2019:92.

104 Van der Berg 2015:26.

105 Mabusela 2019:92.

106 GK 107/2020.

107 Unnumbered practice directive dated 20/07/2021. On file with the authors.

108 Mabusela 2019:209.

109 Ali 2018:21.

110 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 14, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

111 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 15, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

112 Rule 41A(9)(b) of the *Uniform Rules of Court*.

unreasonably refuse to mediate, can rely on legal precedent to effect adverse cost orders. This would encourage disputants and their legal representatives to mediate.¹¹³

2.7.6 Confidentiality

Confidentiality and privacy are core reasons why disputants resort to alternative forms of dispute resolution.¹¹⁴ Confidentiality is both an incentive to participate in mediation and a critical factor in its success. Therefore, any uncertainty about the confidentiality of mediation proceedings is an impediment to the uptake of CAM.¹¹⁵ Form 15 attached to the CAM rules requires the mediator to state why mediation was unsuccessful. According to Brand, this is inappropriate, because it affects the perceived confidentiality of the mediation process. We agree with Brand's suggestion that this requirement should be removed, and that the mediator should simply state whether the dispute was resolved or not.¹¹⁶ The intended purpose of reporting the outcomes of mediated matters should provide valuable statistics to measure, among others, the success rate of the project. Sadly, this information that could potentially serve to promote the use of CAM is not available. Private mediators who have no duty to report on the matter conduct the mediation, where parties decide to mediate their dispute following a Rule 41A notice.

2.8 Ancillary issues

There are ancillary reasons for CAM not achieving its full potential. First, to achieve success, CAM needs to be monitored and evaluated on an ongoing basis.¹¹⁷ Monitoring, data collection, and evaluation would allow the Department of Justice and Constitutional Development to improve the programme,¹¹⁸ and to consider the viability of mandatory CAM.¹¹⁹

Secondly, the curriculum for the conventional Bachelor of Law (LLB) does little to propagate non-adversarial dispute-resolution methods such as mediation.¹²⁰ The introduction of mediation or CAM into the LLB curriculum is, therefore, an essential step to change the adversarial culture and mindset of the legal profession.¹²¹ Such a change is now especially crucial with the introduction of Uniform High Court Rule 41A. Consequently, knowledge and

113 *MB v NB* 2010 3 SA 220 GSJ. See also Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 15, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

114 Mabusela 2019:199.

115 Feinberg 1989:28.

116 Brand "A critique of the South African court annexed mediation rules: What are the successes of the rules and what could we do better in the future?", 34, <http://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

117 Ali 2018:27.

118 Ali 2018:27.

119 Maclons 2014:126.

120 Feinberg 1989:20; Quinot 2012:418; Fourie 2016:17.

121 Mabusela 2019:218.

understanding of the mediation process is essential. Mabusela opines that, if law faculties and societies do basic CAM training, it could stimulate the use and consequent uptake of CAM.¹²²

Thirdly, the magistrates' courts and magistrates, in particular, have an essential role to ensure the successful uptake of CAM. They must continuously refer disputes, with the potential for amicable settlement, to mediation.¹²³ As a result, it is important for the success of CAM that presiding officers be trained.¹²⁴ In 2018, judicial officers were trained on the benefits and practical implementation of CAM as part of a broader strategy of case-flow management.¹²⁵ According to Chief Justice Mogoeng Mogoeng, this training was embarked upon, "because court-annexed mediation has not been successfully introduced by the Ministry in the Magistrates' Court".¹²⁶

Fourthly, it is widely known that corruption, mismanagement, and incompetence are rife within South Africa's government departments.¹²⁷ Moreover, the misappropriation of funds and a lack of meritocratic appointments have an adverse impact on the implementation of programmes that are meant to benefit the poor and the marginalised. President Ramaphosa recently stated that corruption robs the poor of services, since those employed to deliver them are not up to the task. The President made this statement following public outrage amidst allegations of corruption related to the COVID-19 pandemic.¹²⁸ Within the context of CAM, mention has repeatedly been made of the significant capital outlay required, in order to ensure its optimality. It is, therefore, important and necessary to investigate what impact these issues may have on the implementation and efficacy of CAM, since the right of access to justice is at stake.

3. LESSONS FROM NIGERIA: THE LAGOS MULTI-DOOR COURTHOUSE

In African societies, ADR is described as the "modern version of an ancient practice"; mediation is one of the traditional mechanisms of dispute resolution in many African communities, including Nigeria.¹²⁹ It was one of the main processes used to resolve disputes before the British colonised Nigeria

122 Mabusela 2019:218.

123 Mabusela 2019:92.

124 Mabusela 2019:215.

125 The Judiciary Republic of South Africa 2018/2019:25.

126 The Judiciary Republic of South Africa 2017/2018:9.

127 See, for example, Ncala 2020, "Analysis of corruption trends (Act) 2020", https://www.corruptionwatch.org.za/wp-content/uploads/2020/09/7570J_CW_Report_A4_FINAL.pdf (accessed on 2 November 2020).

128 Felix 2020 "We dip our heads in shame", <https://www.news24.com/news24/southafrica/news/we-dip-our-heads-in-shame-ramaphosa-reads-anc-members-the-riot-act-over-corruption-20200823> (accessed on 26 August 2020).

129 Akerdolu 2015:106. Price (2018:397) mentions that Namibia, Chad, Ghana, Malawi, and Algeria, among others, implemented mandatory mediation in their civil justice systems.

and introduced the adversarial system of litigation.¹³⁰ Similarly, the South African precolonial or traditional dispute-resolution method is enshrined in the customary law concept of *Ubuntu*. In *Afriforum v Malema*, the court held that the *Ubuntu* concept dictates a shift from (legal) confrontation to conciliation and mediation.¹³¹ Traditional dispute resolution in both South Africa and Nigeria is, therefore, concerned with preserving relationships.¹³²

The Nigerian and South African civil justice systems face similar problems. The vulnerable and poor members of the Nigerian society, much like South Africa's indigent population, find it difficult to use the formal legal system to access justice.¹³³ In response to these problems, Kehinde Aina founded the Lagos MDC in 2002.¹³⁴ An MDC is an innovative institution that directs participants to the most appropriate "door" or ADR mechanism to resolve their disputes.¹³⁵ As the first court-connected ADR centre in Africa, the Lagos MDC offers a range of dispute-resolution options, including litigation, mediation, and arbitration.¹³⁶ Although parties have a choice between the various dispute-resolution processes available, mediation is actively promoted and encouraged by the Lagos MDC.¹³⁷ As a result, mediation is the most frequently used ADR mechanism in Lagos.¹³⁸

3.1 Overview of the Lagos Multi-Door Courthouse

The Lagos MDC is part of the Lagos State judiciary as a court-connected ADR centre.¹³⁹ It handles various disputes in fields as diverse as banking, construction, commerce, employment, and civil rights.¹⁴⁰ It is mostly annexed to high courts, but matters may also be referred from magistrates' courts.¹⁴¹ This is in contrast to South Africa, where mediation is solely annexed to magistrates'

130 Lukman 2014:20.

131 *Afriforum v Malema* 2011 6 SA 240 (EqC):18.

132 Mabusela 2019:128.

133 Doma-Kutigi "Evaluating the Multi-Door Courthouse System in Nigeria – Issues, Challenges, and Prospects", https://www.researchgate.net/publication/341219541_Evaluating_the_multidoor_courthouse_system_in_Nigeria-Issues_challenges_and_prospects (accessed 15 August 2021).

134 Onyema 2013:1.

135 Sander & Crespo 2008:666.

136 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa session (Nigeria)", 5, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

137 Onyema 2013:2.

138 Oke & Lawal 2013:14.

139 See <https://lagosmultidoor.org/> (accessed on 16 July 2021).

140 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa session (Nigeria)", 6, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

141 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa session (Nigeria)", 7 <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

courts in the formal civil litigation milieu. Where parties elect to mediate in the High Court in South Africa, Rule 41A does not regulate the process. Parties are responsible to initiate and manage the process themselves.

The Lagos Multi-Door Courthouse Law (Lagos MDC Law) of 2007 created a legal framework, in which the Lagos MDC could operate. As a court-connected ADR centre, the objectives of the Lagos MDC are consonant with the key features and goals of mediation that have been set out so far.¹⁴² Matters are most frequently referred to the Lagos MDC through “walk-ins”, when parties themselves walk into the centre to resolve their dispute.¹⁴³ Referring disputes to the Lagos MDC is usually voluntary. Mandatory court referrals are, however, also possible.¹⁴⁴ The overriding objective of the High Court of Lagos State (Civil Procedure) Rules of 2019 specifically states that the court may mandate parties to use ADR mechanisms where it is appropriate to do so.¹⁴⁵

The 2019 High Court of Lagos State (Civil Procedure) Rules provide that all actions that are instituted at court will be screened, and if they are found to be appropriate to be resolved through ADR mechanisms, they will be referred to the Lagos MDC.¹⁴⁶ These Rules furthermore require a claimant to include a pre-action protocol form, which must be complied with before an action may be instituted at court.¹⁴⁷ The purpose of this protocol is to show that a claimant “has attempted to settle the dispute by ADR methods”.¹⁴⁸ Any action filed at court that does not comply with the pre-action protocol requirement will be a nullity.¹⁴⁹ Moreover, the rules provide for case management conferences. The conference takes place after the close of pleadings but before trial starts. During the conference, parties meet with the High Court judge to determine which issues can be amicably settled and which, if any, should proceed to trial. The aim is to prevent delays in court proceedings by dispensing with trivial issues or issues that can be settled through ADR methods.¹⁵⁰

If a settlement is reached during mediation at the Lagos MDC, it can become an order of court. If a settlement is not reached, the matter may

142 Law Nigeria 2019 “Lagos Multi-Door Courthouse Law”, <https://lawnigeria.com/2019/10/lagos-multi-door-courthouse-law/> (accessed on 13 August 2020).

143 Oke & Lawal 2013:14.

144 “The Lagos multi-door courthouse – Lagos Settlement Week”, <https://lagosmultidoor.org/lmdc-process/> (accessed on 12 August 2020).

145 Order 2 Rule 1(c)(i) of the High Court of Lagos State (Civil Procedure) Rules 2019.

146 Order 5 Rule 8 of the High Court of Lagos State (Civil Procedure) Rules 2019.

147 Order 5 Rule 2(e) of the High Court of Lagos State (Civil Procedure) Rules 2019.

148 “The Legal 500 Country Comparative Guides Nigeria Litigation”, 3, <https://www.legal500.com/guides/chapter/nigeria-litigation/?export-pdf> (accessed 14 August 2021).

149 Order 7 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2019.

150 Order 27 Rule 1 of the High Court of Lagos State (Civil Procedure) Rules 2019.

proceed to litigation.¹⁵¹ The settlement agreement, therefore, becomes enforceable through formal court mechanisms.¹⁵²

3.2 Success of the Lagos Multi-Door Courthouse

Nigeria's judiciary underwent a collective paradigm shift when it embraced ADR. According to Aina, the Lagos MDC "changed the effectiveness of the Lagos judicial landscape", by improving its timeliness and expedition, reducing its case backlog, and garnering public confidence and trust.¹⁵³

Recent studies confirmed that the settlement rate for concluded matters at the Lagos MDC remains high, with an average of 65 per cent in 2014 and 2015. Sixty-nine per cent of the respondents indicated that they are very satisfied or satisfied with the process, and 86 per cent mentioned that they would recommend the scheme.¹⁵⁴ A recent evaluation of the MDC system found that the oversight and involvement of the judiciary makes ADR services more acceptable. The decongested court dockets allow judicial officers to handle other cases effectively, as they have more time. This increases productivity and improves access to justice.¹⁵⁵

4. Lessons for South Africa

The ADR practices of the Lagos MDC reveal several lessons for South Africa, including possible solutions to the challenges South Africa faces with implementing CAM effectively.

4.1 Cost of mediation

For the purpose of this analysis, the most important feature about fees at the Lagos MDC is that it provides *pro bono* services. In deserving cases, a party

151 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa session (Nigeria)", 10, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

152 Order 28 Rule 4 of the High Court of Lagos State (Civil Procedure) Rules 2019.

153 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa session (Nigeria)", 13, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

154 Doma-Kutigi "Evaluating the Multi-Door Courthouse System in Nigeria - Issues, Challenges, and Prospects", https://www.researchgate.net/publication/341219541_Evaluating_the_multidoor_Courthouse_System_in_Nigeria_Issues_Challenges_and_Prospects (accessed 15 August 2021).

155 Doma-Kutigi "Evaluating the Multi-Door Courthouse System in Nigeria - Issues, Challenges, and Prospects", https://www.researchgate.net/publication/341219541_Evaluating_the_multidoor_Courthouse_System_in_Nigeria_Issues_Challenges_and_Prospects (accessed 15 August 2021).

can apply to the Fee Review and Pro-Bono Committee to review the fees payable to the Lagos MDC. This is in line with its policy of justice for all.¹⁵⁶

The fee reduction and fee waiver policies of the Lagos MDC, therefore, mitigate the impact on indigent citizens of having to pay for ADR.¹⁵⁷ This feature of the Lagos MDC aligns with Patelia's suggestion to have legal aid for mediation.¹⁵⁸ It also aligns with the South African Law Reform Commission's submission to have a means test, in terms of which parties pay for mediation services on a sliding scale according to their income. As a result, the poor will receive free *pro bono* services.¹⁵⁹ As alluded to earlier,¹⁶⁰ we recommend that these cost-reduction strategies should also be pursued in South Africa.

4.2 Budgetary constraints

An important aspect of the Lagos MDC is that it is a public-private partnership. This allows it to generate funds not only from the government, but also from private institutions and individuals. The Lagos MDC Law provides that the centre can accept funds by way of gifts, testamentary dispositions, aid, and contributions or endowments by organisations or persons. The conditions attached to these sums must be consistent with the functions and objectives of the Lagos MDC. Furthermore, the Lagos MDC may collect fees for the use of its facilities or for services rendered. It can also borrow by way of overdraft facilities or otherwise.¹⁶¹

In South Africa, a public-private partnership between the Department of Justice and Constitutional Development and an independent, reputable mediation provider would enable the generation of funds from sources other than government. As a result, the implementation of CAM can be improved. South Africa's failure to prioritise CAM is regrettable when considering that ADR supports economic development by reducing the cost of dispute resolution and increasing investment certainty.¹⁶² Resolving commercial disputes amicably preserves business relationships and commercial transactions and thereby encourages foreign direct investment.¹⁶³ An effective and efficient civil justice

156 "The Lagos Multi-Door Courthouse", <https://lagosmultidoor.org/lmdc-process/> (accessed on 17 August 2020).

157 Onyema 2013:24.

158 Patelia "Implementing mediation in the formal legal system: A South African perspective", 21, <http://documents.pub/document/implementing-mediation-in-the-formal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020).

159 South African Law Reform Commission 2020:192.

160 See 2.6.1 above.

161 Law Nigeria 2019 "Lagos Multi-Door Courthouse Law", <https://lawnigeria.com/2019/10/lagos-multi-door-courthouse-law/> (accessed on 13 August 2020).

162 Chinyere 2014:31-56.

163 Anagor-Ewuzie "LMDC recovers over N2.2bn claims during December settlement week", <https://businessday.ng/uncategorized/article/lmdc-recovers-over-n2-2bn-claims-during-december-settlement-week/> (accessed 26 August 2019).

system, therefore, has the potential to improve economic growth by attracting investment.¹⁶⁴

4.3 Public awareness

A distinctive feature of Nigeria's approach to create public awareness about ADR is the Lagos Settlement Week, during which disputants can have their cases mediated by the Lagos MDC for free.¹⁶⁵ The objectives of the Lagos Settlement Week include encouraging the use of ADR mechanisms and creating awareness about the effectiveness and benefits of mediation specifically.¹⁶⁶ Importantly, the impact of the Lagos Settlement Week shows the efficacy of mediation as a court-connected ADR mechanism.¹⁶⁷ In South Africa, the Department of Justice and Constitutional Development, in collaboration with the Legal Practice Council, should investigate the possibility of setting aside one week during the year where appropriate cases can be referred for mediation on a *pro bono* basis.

Other ways in which the Lagos MDC strives to create awareness is by printing and distributing pamphlets free of charge. These pamphlets explain the objectives and rationale of ADR, how the process works, and the suitability of ADR to different subject areas.¹⁶⁸ Other measures that improve public awareness are, first, that the Lagos MDC's advertisements are in the dominant languages spoken in specific locations.¹⁶⁹ Secondly, the Lagos MDC is strategically situated in the court building. When people walk in, they see it and inquire about it.¹⁷⁰ These are important strategies that the Department of Justice and Constitutional Development, along with the judiciary, can employ to improve public awareness about CAM in South Africa.

4.4 Accreditation of mediators

To be listed as a mediator at the Lagos MDC, a person must be certified and accredited by a recognised and reputable organisation.¹⁷¹ Article 7 of the

164 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa session (Nigeria)", 13, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

165 "The Lagos Multi-Door Courthouse" <https://lagosmultidoor.org/lagos-settlement-week/> (accessed on 14 August 2020).

166 Chinyere 2014:17.

167 Aina "Court annexed mediation: Successes, challenges, and possibilities. Lessons from Africa Session (Nigeria)", 11, <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 20 August 2020).

168 Akerdolu 2015:115.

169 Onyema 2013:11.

170 Onyema 2013:11.

171 Akerdolu 2015:117.

Lagos State Multidoor Court Practice Directions on Mediation specifically lists these organisations.¹⁷²

In South Africa, the CAM Accreditation Standards for Mediators simply state that, to be a CAM mediator, an applicant must receive training from a mediator-training institution approved by the Minister.¹⁷³ However, no list of accredited mediator-training providers is given. It is our view that such a list should have been included in the Court Annexed Mediation Rules when they were published, and an updated list should be kept on the Department of Justice and Constitutional Development's website. We re-iterate our view that only properly trained and accredited mediators should mediate CAM matters. It is worth noting that much of the task delegated to clerks of the court relate to pre-mediation preparation. In our view, an astute and accredited mediator is better equipped to perform these functions and it leads to unnecessary duplication of work.

4.5 The role of legal practitioners

Nigeria uses regulations, codes of conduct, and laws to impose a duty on the legal profession to consider mediation before litigation. Mabusela suggests that this should be done in South Africa.¹⁷⁴ Sec. 17 of the Lagos MDC Law, for example, obliges legal representatives to propose the use of mediation if it is the more appropriate mechanism to resolve a dispute.¹⁷⁵

Rule 15 of the Rules of Professional Conduct for Legal Practitioners obliges lawyers to inform clients of the option of using an ADR mechanism such as mediation before continuing or resorting to litigation.¹⁷⁶ Finally, the 2019 High Court of Lagos State Civil Procedure Rules mainstream ADR, by requiring that council provide a sworn pre-action protocol before matters are

172 Nigeria Legal Information Institute 2008 "Lagos State multidoor court practice directions on mediation", <https://nigerialii.org/content/lagos-state-multidoor-court-practice-directions-mediation> (accessed on 17 August 2020). These reputable and recognised organisations include the Negotiation and Conflict Management Group, the Society of Professionals in Dispute Resolution, the Centre for Effective Dispute Resolution, and the African Mediation Association.

173 GK 854/2014.

174 Mabusela 2019:92.

175 Akerdolu 2015:118. At the LMDC, the appropriateness of mediation is determined during the Intake Screening stage. After parties submit a Statement of Issue and a Statement of Response, a Dispute Resolution Officer will determine the appropriate ADR door, depending on the statements, underlying interests, and the nature of the claim. For more information on the process, see the LMDC's website <https://lagosmultidoor.org/>.

176 Doma-Kutigi "Evaluating the Multi-Door Courthouse System in Nigeria - Issues, Challenges, and Prospects", https://www.researchgate.net/publication/341219541_Evaluating_the_multidoor_Courthouse_System_in_Nigeria-Issues_Challenges_and_Prospects (accessed 15 August 2021).

accepted for filing. This protocol should indicate and provide evidence of their attempts to settle a dispute through ADR mechanisms.¹⁷⁷

South Africa should adopt the approach of Lagos State, which mandates that legal professionals actively promote and consider mediation for cases in magistrates' courts. The pre-action protocol is similar to, but more stringent than the Uniform High Court Rule 41A, which requires legal practitioners to advise their clients to mediate before pursuing a matter through litigation. As mentioned earlier,¹⁷⁸ we are of the opinion that a rule similar to Rule 41A should also be implemented in the magistrates' courts. The Code of Conduct for Legal Practitioners, Candidate Legal Practitioners and Juristic Entities should also mandate legal practitioners to inform their clients of the option to mediate a matter where it is appropriate to do so.¹⁷⁹ As recommended earlier,¹⁸⁰ legal practitioners should be alerted to the possibility of adverse costs orders in the event of an unreasonable refusal to mediate.

To counter opposition from the legal profession, the Lagos MDC creates awareness, by holding workshops and seminars on the benefits, suitability, procedure, and practice of ADR for the legal community.¹⁸¹ In this way, both judges and lawyers know what to expect from ADR mechanisms such as mediation.¹⁸² Similarly, the South African judiciary, Legal Practice Council, and the Department of Justice and Constitutional Development should embark on public awareness campaigns and conduct training sessions on the process and benefits of mediation.

4.6 The role of the judiciary

In Lagos State, the judiciary's role is key in supporting ADR in the following aspects: case referrals, execution and planning, case filtering and selection, review and approval of agreements, discipline, and professional development of mediators. It is, therefore, critical that judges refer unresolved cases that are appropriate for ADR to the Lagos MDC.¹⁸³ To enable judges to better understand the process and benefits of ADR, the Lagos MDC has a Case

177 Order 5 Rule 2(e) of the High Court of Lagos State (Civil Procedure) Rules 2019; Akindele "The approach of lawyers and litigants to exploring alternative dispute resolution – The Lagos multi-door courthouse as a study", 3, https://www.academia.edu/33425542/The_approach_of_lawyers_and_litigants_To_exploring_alternative_dispute_resolution_the_Lagos_muti_door_courthouse_as_a_study (accessed on 20 August 2020).

178 See 2.7.4.

179 GK 198 *Government Gazette* 2019:682(42364).

180 See 2.7.5.

181 Akerdolu 2015:118.

182 Akerdolu 2015:115.

183 Doma-Kutigi "Evaluating the Multi-Door Courthouse System in Nigeria - Issues, Challenges, and Prospects", https://www.researchgate.net/publication/341219541_Evaluating_the_multidoor_Courthouse_system_in_Nigeria-_Issues_challenges_and_prospects (accessed 15 August 2021).

Management Workshops for Judges programme, during which judges review guidelines for referring cases to mediation at the Lagos MDC.¹⁸⁴

South Africa's judiciary is already on the right track in this regard, by having held training sessions for judicial officers in 2018 that focused on case-flow management.¹⁸⁵ The South African judiciary should, however, be given more opportunities to attend workshops and seminars on CAM. The judiciary's support of mediation in cases such as *MB v NB* and *Port Elizabeth Municipality v Various Occupiers* shows that it is ready to embrace mediation as an alternative to litigation.¹⁸⁶ As mentioned in the preceding paragraph, the possibility of an adverse costs order as a sanction for unreasonable refusal to participate in mediation is to be encouraged.

The evolution of ADR in Nigeria from pre- to postcolonial processes finally manifested in the creation of the Lagos MDC. As the first MDC scheme in Africa, it has been successful in addressing the challenges faced by the civil justice system. Many of these processes could apply equally well in South Africa.

5. CONCLUSION

Prevalent defects in South Africa's civil justice system result in a lack of access to justice for the vast majority of South Africans. The need for reform resulted in the introduction of CAM in the magistrates' courts in 2014. With this came the potential for efficient, affordable, and speedy dispute resolution. Despite the numerous advantages of CAM, these have not (yet) materialised in practice. One of the main reasons for this is the inadequate funding from government, without which none of these ideals are achievable. Moreover, the government should urgently implement proposed regulations that would address the impact of costs related to mediation on the indigent population.

The above critical analysis of the implementation of CAM reveals key reasons for its unsatisfactory uptake. Several recommendations were made to address these impediments to CAM's success. The discussion then turned to Lagos State in Nigeria, where court-connected ADR mechanisms introduced through the Lagos MDC were shown to be successful. The aim was to identify mechanisms that South Africa could use to improve its implementation of the CAM programme. These mechanisms are interrelated to the factors identified as impediments to the optimal functioning of CAM in South Africa's civil justice system, and as such provide a number of valuable lessons.

One of our key recommendations was that a rule similar to Rule 41A of the Uniform Rules of Court should be included in the rules of the magistrates' courts. Doing so would achieve uniformity in the way in which the civil justice system approaches mediation in civil disputes. The inclusion of such a rule would create not only awareness about CAM, but also the possibility of

184 Chinyere 2014:21.

185 The Judiciary Republic of South Africa 2018/2019:25.

186 *MB v NB* 2010 3 SA 220 (GSJ); *Port Elizabeth Municipality v Various Occupiers* 2004 12 BCLR 1268 (CC). See also *TS v TS* 2018 3 SA 572 (GJ).

mediation as an ADR mechanism, in general. It is important to reiterate that such a rule would not amount to mandatory CAM. The rule would merely put a legal duty on reluctant legal practitioners to advise their clients of the option to mediate, including the potential risk of an adverse cost order where they refuse out of hand to consider the option. Moreover, the rule enables judges to enquire if parties are willing to consider voluntary mediation and, in this way, play an active role in promoting ADR mechanisms. An important and final point on the introduction of such a rule is that it would be aligned with the State's mediation policy, as the rule would oblige state attorneys to consider mediation prior to litigation. In this regard, state agencies should consider including a mediation clause in all agreements to the effect that, should a dispute arise, it will be referred to mediation before the parties consider litigation.

In our view, the improvement of CAM in South Africa in the manners suggested in this article is vital not only in contributing to a move away from conventional adversarial-based dispute resolution, but more importantly – as in the case of Nigeria – in ensuring greater access to justice.

BIBLIOGRAPHY

AINA K

2016. Court annexed mediation: Successes, challenges and possibilities. Lessons from Africa session (Nigeria). <https://conflictdynamics.co.za/DBFile/Files/B8CA4844-4DE1-4018-96F5-DDFC5365FEB3/download> (accessed on 9 October 2019).

AKERDOLU A

2015. Institutionalising alternative dispute resolution in the public dispute resolution spectra in Nigeria through law: The Lagos Multi-Door Courthouse approach. *US-China Law Review* 12(1):104-120.

AKINDELE OE

2017. The approach of lawyers and litigants to exploring alternative dispute resolution – The Lagos Multi-Door Courthouse as a study. https://www.academia.edu/33425542/The_approach_of_lawyers_and_litigants_to_exploring_alternative_dispute_resolution_the_Lagos_muti_door_courthouse_as_a_study (accessed on 20 Augustus 2020).

ALEXANDER N

2003. Global trends in mediation: Riding the third wave. *Global trends in mediation*, 1-32. Research Collection School of Law. Germany: Centrale für Mediation.

ALI SF

2018. Practitioners' perception of court-connected mediation in five regions: An empirical study. *Vanderbilt Journal of Transnational Law* 51(4):1-28. https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3473587# (accessed on 12 October 2020).

ALLEN T

2014. A discussion of the new mediation provisions in the South African Magistrates Courts Rules. <http://conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

ANAGOR-EWUZIE A

2018. LMDC recovers over N2.2bn claims during December Settlement week. *Business Day* 18 December.

BRAND J

2016. A critique of the South African court-annexed mediation rules – What are the successes of the rules and what could we do better in the future? WITS Mediation Conference, 20 July, Conflict Dynamics. <https://www.conflictdynamics.co.za/DBFile/Files/133964E8-B8C2-421E-BCD1-BEA3D435E5F7/downloadhttp://www.conflictdynamics.co.za/PapersAndPresentations> (accessed on 2 June 2020).

BRITZ S

2018. *Mandatory mediation as a dispute resolution mechanism in the civil justice system*. Masters dissertation. University of the Free State, Bloemfontein. <http://hdl.handle.net/11660/9266>

CHINYERE AC

2014. Alternative dispute resolution (ADR) in Nigeria: A study of the Lagos Multi-Door Courthouse (LMDC). In Uwazie (ed.) 2014:31-56.

COTTON J. (ED)

2016. *The dispute resolution review*. 8th edition. London: Law Business Research.

DEPARTMENT OF JUSTICE AND CONSTITUTIONAL DEVELOPMENT

2012. *Discussion document on the transformation of the judicial system and the role of the judiciary in the developmental South African State*. Pretoria: Government Press.

2014. Court-annexed mediation rules booklet. <http://www.themediationcentre.co.za/images/Mediation-Rules-Booklet.pdf> (accessed on 22 October 2020).

2014/2015. *Annual Report*. Pretoria: Government Press.

2015/2016. *Annual Report*. Pretoria: Government Press.

2016/2017. *Annual Report*. Pretoria: Government Press.

2017/2018. *Annual Report*. Pretoria: Government Press.

2018/2019. *Annual Report*. Pretoria: Government Press.

2019/2020. *Annual Report*. Pretoria: Government Press.

2018/2019. *Annual Performance Plan*. Pretoria: Government Press.

2021. *Court-annexed mediation*. <https://www.justice.gov.za/mediation/mediation.html> (accessed on 2 June 2020).

DOMA-KUTIGI H

2019. Evaluating the multi-door courthouse system in Nigeria: Issues, challenges, and prospects presented at the Law and Society in Africa Conference 2019, organised by the Law and Society Research Unit at the American University in Cairo, 1-3 April 2019 at the American University in Cairo, Egypt. https://www.researchgate.net/publication/341219541_Evaluating_the_multidoor_courthouse_system_in_Nigeria_Issues_challenges_and_prospects (accessed 15 August 2021).

EISENBERG DT

2016. What we know and need to know about court-annexed dispute resolution. *South Carolina Law Review* 67(2):245-266.

FEINBERG KR

1989. Mediation – A preferred method of dispute resolution. *Pepperdine Law Review* 16(5):5-42.

FELIX J

2020. "We dip our heads in shame." Ramaphosa reads ANC members the riot act over corruption. *News24*, 23 August. <https://www.news24.com/news24/southafrica/news/we-dip-our-heads-in-shame-ramaphosa-reads-anc-members-the-riot-act-over-corruption-20200823> (accessed on 26 August 2020)

FOURIE E

2016. Constitutional values, therapeutic jurisprudence, and legal education in South Africa: Shaping our legal order. *Potchefstroom Electronic Law Journal* 19:1-26.

HEYWOOD M & HASSIM A

2008. Remediating the maladies of 'lesser men or women': The personal, political and constitutional imperatives for improved access to justice. *South African Journal on Human Rights* 24(2):263-280.

HURTER E

2011. Access to justice: To dream the impossible dream. *Comparative and International Law Journal of Southern Africa* 44(3):408-428.

LAGOS MULTI-DOOR COURTHOUSE

2021. <https://lagosmultidoor.org/> (accessed 20 August 2021).

LAW NIGERIA

2019. *Lagos Multi-Door Courthouse law*. <https://lawnigeria.com/2019/10/lagos-multi-door-courthouse-law/> (accessed on 13 August 2020).

LUKMAN AA

2014. Enhancing sustainable development by entrenching mediation culture in Nigeria. *Journal of Law, Policy and Globalization* 21:19-27.

MABUSELA TL

2019. Complementarity of civil litigation and court-annexed mediation in South Africa: Empirical investigation of implications and challenges. Doctoral dissertation, University of South Africa, Pretoria.

MACLONS W

2014. Mandatory court-based mediation as an alternative dispute resolution process in the South African civil justice system. Masters dissertation. University of the Western Cape, Cape Town.

MARNEVICK C

2007 *Litigation skills for South African lawyers*. 2nd edition. Durban: Lexis Nexis.

MOWATT JG

1988. Some thoughts on mediation. *South African Law Journal* 105(4):727-739.

NCALA M

2020. *Analysis of corruption trends (Act) 2020*. *Corruption Watch*. https://www.corruptionwatch.org.za/wp-content/uploads/2020/09/7570J_CW_Report_A4_FINAL.pdf (accessed on 2 November 2020).

NGCOBO S

2011. *Enhancing access to justice: The search for better justice*. Access to Justice Conference: Towards delivering accessible quality justice for all, 7-10 July 2011, Hilton Hotel, Sandton, Johannesburg. <https://constitutionallyspeaking.co.za/wp-content/uploads/2011/07/Speech-of-the-Chief-Justice-2011.pdf> (accessed on 27 August 2020).

NIGERIA LEGAL INFORMATION INSTITUTE

2008. *Lagos State multidoor court practice directions on mediation*. <https://nigeria.ii.org/content/lagos-state-multidoor-court-practice-directions-mediation> (accessed on 17 August 2020).

OKE AE & LAWAL HO

2013. Resolution of construction disputes by Lagos State Multi-Door Courthouse (LMDC). *NICMAR – Journal of Construction Management* xxviii(ii):5-16. <https://www.nicmar.ac.in/pdf/2013/02April-June-2013.pdf> (accessed on 20 August 2020).

OLIVIER M

2018. The role of court-annexed mediation in providing access to justice in the resolution of commercial disputes. Masters dissertation. North-West University, Potchefstroom.

ONYEMA E

2013. The Multi-Door Courthouse (MDC) scheme in Nigeria: A case study of the Lagos MDC. *Apogee Journal of Business, Property & Constitutional Law* 2(7):96-130. <https://eprints.soas.ac.uk/14521/> (accessed on 20 August 2020).

PATELIA E

2016. *Implementing mediation in the formal legal system: A South African perspective*. International Mediation Symposium, 29 April 2016, Istanbul, Turkey. <https://documents.pub/document/implementing-mediation-in-the-formal-legal-legal-system-a-south-african-perspective.html> (accessed on 2 June 2020).

PETÉ S, HULME D, DU PLESSIS M, PALMER R, SIBANDA O & PALMER T

2016 *Civil procedure: A practical guide*. 3rd edition. Cape Town: Oxford University Press.

PORTFOLIO COMMITTEE ON JUSTICE AND CORRECTIONAL SERVICES

2018. The Budgetary Review and Recommendation Report of the Portfolio Committee on Justice and Correctional Services. <https://pmg.org.za/tailed-committee-report/3549/> (accessed on 22 October 2020).

PRICE C

2018. Alternative Dispute Resolution in Africa: Is ADR the Bridge Between Traditional and Modern Dispute Resolution? *Pepperdine Dispute Resolution Law Journal* 18(3):393-418.

QUINOT G

2012. Transformative legal education. *The South African Law Journal* 129:411-433.

SANDER F & CRESPO MH

2008. A dialogue between professors Frank Sander and Mariana Hernandez Crespo: Exploring the evolution of the multi-door courthouse. *University of St. Thomas Law Journal* 5(3):665-674.

SOUTH AFRICAN LAW REFORM COMMISSION

2018. *Report of the International Conference on Access to Justice, Legal Costs and Other Interventions*. Pretoria: Government Press.

2020. *Investigation into legal fees. Including access to justice and other interventions*. Project 142 Issue Paper 36. <https://www.justice.gov.za/salrc/ipapers/ip36-prj142-LegalFees.pdf> (accessed on 28 August 2020).

2020. *Investigation into legal fees: Including access to justice and other interventions. Project 142 Discussion Paper 150*. Pretoria: Government Press.

THE JUDICIARY REPUBLIC OF SOUTH AFRICA

2017/2018. *Judiciary Annual Report*. Pretoria: Government Press.

2018/2019. *Judiciary Annual Report*. Pretoria: Government Press.

THE LAGOS MULTI-DOOR COURTHOUSE

2020. *The Lagos Multi-Door Courthouse – Lagos Settlement Week*. <https://lagosmultidoor.org/lagos-settlement-week/> (accessed on 14 August 2020).

THE LEGAL 500

2021. *Country comparative guides – Nigeria litigation*. <https://www.legal500.com/guides/chapter/nigeria-litigation/?export-pdf> (accessed on 14 August 2021).

UWAZIE E (ED.)

2014. *Alternative dispute resolution and peace-building in Africa*. Newcastle upon Tyne: Cambridge Scholars Publishing.

VAN DER BERG BC

2015. Court-annexed mediation: Should it be embraced by the legal profession? *De Rebus* 2015(551):24-26.

VAN LOGGERENBERG D

2016. Civil justice in South Africa. *BRICS Law Journal* 3(4):125-147.

VOSLOO PH

2017. The use of the ICC mediation rules in resolving South African commercial disputes. Masters dissertation. North-West University, Potchefstroom.

WIESE T

2016. *Alternative dispute resolution in South Africa: Negotiation, mediation, arbitration and ombudsman*. Cape Town: Juta & Co. Ltd.

WOLTER G, MARAIS J, MOLVER A & NIENABER R

2016. South Africa. In *Cotton* 2016:578-598.