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by M. França Gouveia and A. Coimbra Trigo

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Mediation in Lusophone Africa: an Opportunity to Amplify Access to Justice

Mariana França Gouveia[1], Ana Coimbra Trigo[2]

Summary

A purely rights-based approach limits the number of possible solutions in a dispute, whereas mediation broadens the scope of the conflict and increases its conceivable outcomes. Mediation has gained some momentum in Lusophone African countries, since there is evidence of significant mediation practice. This article will examine the broader realm of mediation in access to justice, including its characteristics and examples of state policy for mediation worldwide, the legal framework of mediation in Angola and Mozambique, and state-led initiatives to promote mediation in these countries. This will lead to the conclusion that a state push has already triggered the change to promote the incorporation of mediation in these jurisdictions.

I. Introduction

States, companies and citizens save time and money by allowing mediation to thrive. There are many different ways of promoting mediation. While more states are exploring and encouraging, or even obliging, mediation in their jurisdictions, this form of alternative dispute resolution has not yet gained footing everywhere in the world. Specifically, mediation has not yet gained momentum in Lusophone African countries, although there is evidence of some significant mediation practice. For this reason, this article will examine the extent to which mediation has been incorporated in the Angolan and Mozambican litigation traditions and argue that a state push may further promote the incorporation of mediation in these jurisdictions and a cultural change in how people face the disputes they are involved in.

The article is structured as follows. Firstly, the broader realm of mediation in access to justice will be explored, with a focus on the characteristics and advantages of mediation, and through examples of state policies for mediation worldwide (Part II). Secondly, the legal framework of mediation in Angola and Mozambique will be described (Part III). Thirdly, state initiatives to promote mediation in Angola and Mozambique are outlined, specifically looking at the CREL in Angola, and the CACM, COMAL and court-annexed programmes in Mozambique (Part IV). Fourthly, data on mediation in Angola and Mozambique is presented and discussed (Part V). Lastly, a conclusion will be drawn (Part VI).

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II. The Broader Realm of Mediation in Access to Justice

2.1 Characteristics and Advantages

Mediation focuses on interests, rather than positions or rights.[3] One interest can be manifested in several different positions.[4] The classical example is that of an orange. Two parties dispute the orange, claiming, that is, taking the position, that it belonged to each of them. These positions are incompatible. The orange either belongs to one party or to the other. However, one party wanted the orange for its juice, and the other for its peel. Their interests could be satisfied in full and the dispute would be solved by giving each party exactly what they want.[5]

Therefore, mediation broadens the scope of the conflict, and increases the number of possible outcomes, as opposed to "classical" or typical court litigation. Differently put, "*A purely rights based approach, i.e. a court proceeding based on company and commercial law, limits the number of possible solutions*."[6]

Parties to a dispute are more empowered when resorting to mediation, as they are allowed to be in control of their dispute. They voluntarily agree to show up and attempt to reach an agreement with the assistance of a third party, assuming a stance of cooperation (even if in some stages of the mediation process a competitive approach is employed), leaving aside formalistic procedures and legalistic terms. And they can also agree to end the process at any time.[7]

This empowerment is a fundamental characteristic of mediation and it promotes self-determination regarding the achieved outcome.[8] Indeed, parties feel heard and will more willingly accept this outcome.[9] This is in stark contrast with litigation because:

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[3] R. Fisher, W. Ury and B. Patton, *Getting to Yes: Negotiating Agreement Without Giving In*, 2nd ed., 2003, p. 7. M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, Almedina, 2019, p. 44, p. 51; E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", Resumo de Segurança de África, Centro de Estudos Estratégicos de África, no. 16, November 2011, p. 3.

[4] R. Fisher, W. Ury and B. Patton, *Getting to Yes*, cit., p. 7; M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 44.

[5] R. Fisher, W. Ury and B. Patton, *Getting to Yes,* cit., p. 31; M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 44; J. Macieira, "Mediação de Conflitos", in Mediação e Conciliação nos Conflitos Civis e Comerciais, CEJ, May 2019, p. 136, available at: http://www.cej.mj.pt/cej/recursos/ebooks/civil/eb_Mediacao2019.pdf.

[6] F. Steffek LLM (Cambridge), June 2012, Mediation in the European Union: An Introduction. P. 6. Available at: at: https://www.law.cam.ac.uk/sites/www.law.cam.ac.uk/files/images/www.law.cam.ac.uk/documents/felix_steffek_publications_and_editorial_board_memberships_june_2020.pdf

[7] D. Quek, "Facilitative and Evaluative Mediation: Is There Necessarily a Dichotomy?", Asian Journal on Mediation, 2013, pp. 66-75, p. 69; M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 46, 50.

[8] D. Quek, "Facilitative and Evaluative Mediation: Is There Necessarily a Dichotomy?", cit., p. 69; M. França Gouveia, *Curso de* Resolução *Alternativa de Litígios*, cit., p. 48; J. Morais Carvalho, "A Consagração Legal da Mediação em Portugal", Julgar, no. 15, 2011, p. 278.

[9] D. Quek, "Facilitative and Evaluative Mediation: Is There Necessarily a Dichotomy?", cit., p. 69; E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", cit., p. 3.

"litigation is based on competition; distributive (win–lose) agreements limited to monetary issues and a purely legal analysis of the case. The process generally accelerates the negative conflict spiral between parties and usually disempowers and alienates the parties".[10]

Another important pillar of mediation arises from this quote: "the aim of mediation is social pacification, to re-establish peace amongst the parties in dispute, irrespective of the legal issues in discussion."[11] A mediated settlement agreement allows for the possibility of a win-win situation.

From the above, several advantages of mediation can be immediately identified: lack of formalities and its voluntary nature, but also flexibility in the procedure, and a more comprehensive and satisfactory resolution for the parties.

It is important to mention the United Nations Sustainable Development Goals (UN SDG) in this regard. UN SDG 16 on peace, justice and strong institutions sets out to "*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels*". Target 16.3 specifically presents the goal of promoting the rule of law at the national and international levels and of ensuring equal access to justice for all. The goal itself does not mention mediation to facilitate access to justice. However, literature has recognized this (facilitative) connection. The Organisation for Economic Co-operation and Development (OECD), in Chapter 6 of its book "Governance as an SDG Accelerator" includes mediation in its listed range of legal services that "*can improve access to justice and allow citizens to find legal services that are better tailored to their needs and capacity to pay*".[12]

This is all the more relevant in post-conflict countries, where social tensions are naturally high and their judicial systems are taking their first steps, and in places where the courts lack modern technology and management and are overwhelmed.[13] The importance of mediation from a general standpoint and at different levels has been documented. One example is the relevance of effective mediation in conflicts ravaging African states and their collective effort in cooperation to promote economic growth, peaceful existence, stability, development and prosperity, leading to an interdependence and interconnectedness between them, and therefore peace.[14] Another example is that of an inclusive approach that recognizes the role of African women leaders in the prevention, management and resolution of conflict at the highest level.[15]

In these contexts, access to justice must be available to prevent citizens and companies from taking justice into their own hands. This places mediation in the broader scope of alternative

[10] L. Ervo, A. Nylund, *The Future of Civil Litigation: Access to Courts and Court-annexed Mediation in the Nordic Countries*, Springer, 2014, p. 328, available at: https://tinyurl.com/mhm9js25

[11] M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 51; see also D. Quek, "Facilitative and Evaluative Mediation: Is There Necessarily a Dichotomy?", cit., p. 72, raising this issue when comparing evaluative and facilitative mediation.

[12] OECD, Chapter 6. 'Governance frameworks to ensure equal access to justice and citizen's legal empowerment'. In: *Governance as an SDG Accelerator: Country Experiences and Tools*, OECD Publishing, Paris, 2019.

[13] E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", Resumo de Segurança de África, Centro de Estudos Estratégicos de África, no. 16, November 2011, pp. 1-2.

[14] T. Ubelejit Nte (PhD), "Conflict Resolution Mechanisms and The Traits of Effective Mediation In Africa", International Journal of Peace and Conflict Studies, Vol. 5, No. 2, December 2018, pp. 133-134.

[15] I. Limo, "What do Networks of Women Mediators Mean for Mediation Support in Africa?", Conflict Trends, Issue 1, Accord, 2018, p. 42.

dispute resolution methods that can be an instrument to foster the consolidation of private peace and reconciliation in this regard, but also, of nation-building and stabilization.[16]

2.2 Examples of State Policy for Mediation Worldwide

As stated in the introduction, the inclusion of mediation into litigation traditions has been emerging progressively across the globe. This section will provide some examples of how such inclusion has been shaped and which countries could potentially influence or inspire Angola and Mozambique, and the broader Lusophone world, to include mediation in their legal tradition.

The inception of modern mediation in the **European Union** stems from Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters. It defines mediation as:

"a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator. This process may be initiated by the parties or suggested or ordered by a court or prescribed by the law of a Member State.".[17]

This Directive recognized the cost-effective and quick nature of mediation, along with compliance rates and the maintenance of an amicable and sustainable relationship between the parties to a dispute.[18] Moreover, the Directive provided that "*The objective of securing better access to justice, as part of the policy of the European Union to establish an area of freedom, security and justice, should encompass access to judicial as well as extrajudicial dispute resolution methods*."[19]

In **Portugal**, the Mediation Law[20] incorporated the above Directive into national law. It enshrined a facilitative mediation, whereby the mediator must abstain from imposing any settlement on the parties in mediation.[21] The law regulates the effects of the Mediation Directive, and the suspension of limitation and expiration periods. In addition, this law regulates both public and private systems of mediation.

The enactment of this law, together with the Arbitration Law[22], was the fourth and final step in the development of alternative dispute resolution methods in Portugal. It was followed by the creation of arbitration centres, the creation and development of "Julgados de Paz" or Justices of the Peace, and the development of mediation systems.[23]

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[16] E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", cit., p. 5.
[17] Art. 3(a) of the Directive.
[18] Recital 6 of the Directive.
[19] Recital 5 of the Directive.
[20] Lei 29/2013, de 19 de Abril.
[21] Art. 26(b) of the Mediation Law. This article does not refer the expression facilitative mediation; however it is the authors position that the law intended only to regulate and allow facilitative mediation, excluding any evaluative powers from the mediator's role – see M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 49.
[22] Law no. 63/2011, of 14 December.
[23] M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 34.

Focusing on the second development mentioned, Justices of the Peace are institutions created in 2001 where disputes may be solved by mediation, conciliation or court adjudication.[24] This system is inspired by Frank Sander's multi-door court idea from the 70s.[25] They host disputes valued at up to EUR 15,000 relating to various civil and commercial issues[26], where parties may or may not be assisted by a lawyer. The court fees are also very low.

Mediation services are offered in two parallel manners before the Justices of the Peace. Mediation, of facilitative nature, will be conducted after the parties submit their application and defence, provided that they do not reject this possibility.[27] The parties may at any point cease the mediation procedure.[28] If the parties reach a settlement, their agreement will be ratified by a judge of the Justices of the Peace and will have the same effect as an arbitral award. If no settlement is reached, there will be a court conciliation. If this is also not successful, a court adjudication procedure will ensue and, after a hearing, a decision will be rendered.[29] In parallel, mediation services are offered in these institutions for all and any issues, without regard to the jurisdictional rules of the Justices of the Peace.[30]

Statistics show that, out of the total finalized cases concluded in Justices of Peace, in the last 5 years 14% were successfully concluded in mediations in the total of finalized cases[31]:

Portugal - Justices of Peace	2020	2019	2018	2017	2016
Total of finalized cases	5848	8243	8593	7667	8462
Total of finalized cases by mediation	650	1089	1226	1133	1241
Percentage of finalized cases by mediation	11%	13%	14%	15%	15%

[24] Law no. 78/2001, of 13 July. See also Mariana França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 25.

[25] M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 25. See F. Sander and M. Hernandez Crespo, "A Dialogue Between Professors Frank Sander and Mariana Hernandez Crespo the Evolution of the Multi-Door Courthouse", 5 U. St. Thomas L.J. (2008), p. 667.

[26] These include, under Art. 9 of the LJP: (a) actions to enforce compliance with obligations, except for those that relate to the fulfilment of a pecuniary obligation and relate to a preformulated standard contract; b) Actions for the delivery of movable things; c) Actions resulting from the rights and duties of home owners, where the respective meeting has not decided on the obligation of an arbitration agreement to resolve disputes between home owners or between them and the condominium administrator; d) Dispute settlement actions between building owners relating to momentary forced passage, natural water runoff, defensive water works, common ownership of land; opening of windows, doors, balconies and similar works; water dropping, planting of trees and shrubs, walls and dividing walls; e) Actions of claim, possession, usucapion (acquisitive prescription), accession and division of common thing; f) Actions that respect the right of use and administration of property, the surface, enjoyment, use and housing and the in rem right to periodic housing; (g) actions concerning urban leasing, except eviction actions; (h) actions which relate to contractual and non-contractual civil liability; i) Actions regarding contractual non-compliance, except action under employment contracts and rural leases; (j) actions that comply with the general guarantee of obligations. 2 - Justices of the peace also have jurisdiction to assess claims for civil damages, when no criminal complaint has been submitted or no complaint has been submitted, arising from: a) Simple bodily offences; b) Offences against to physical integrity by negligence; c) Defamation; d) Injury; e) Simple theft; (f) Simple damage; g) Changing of landmarks; h) Fraud to obtain food, beverages or services.

[27] Arts. 49 and 50 of the LJP.

[28] Art. 55 of the LJP.

[29] Art. 56 of the LJP.

[30] Art. 5 of the LJP.

[31] See data available at: https://estatisticas.justica.gov.pt/sites/siej/pt-pt/Paginas/JulgadosPaz.aspx. Data available categorizes finalized cases as cases finalized in mediation, in litigation, or by other reasons (out of court negotiation, withdrawal of claims, denial of jurisdiction, impossibility or inutility, referral to state court, other reasons).

Unlike other systems described below, Portugal has no system of mandatory mediation.

Besides the data provided here, our experience is that there is an increasing interest on the part of businessmen and in-house lawyers to consider mediation in Portugal for civil and commercial disputes of greater value involving Portuguese and/or Lusophone African parties.

Turning our focus to other state policies to promote mediation, in 2011 the Policy Department for Citizen's Rights and Constitutional Affairs of the Directorate-General for Internal Policies of the European Parliament, undertook an analysis of the advantages regarding costs that mediation can bring. It came to the conclusion that training and promotion were insufficient to implement mediation.[32] Therefore, this analysis addressed four additional strategies that states could consider.

Relevant for this article is the first strategy or incentive, namely the adoption of a "Mandatory Law Approach" or "Two-Step Approach", in which certain disputes must be submitted to mediation before going to court litigation.[33] Making mediation compulsory in certain instances may allow parties and states to enjoy more efficient results in dispute management, as the results to a Survey Data Report undertaken in June 2010 shows:

> *"There is typically around a 70% success rate when mediation is used in "mandatory mediation" instances where a judge or court system orders the parties to attempt mediation, and there is up to an 80% success rate for "voluntary" mediation programs".*[34]

Such an approach was followed by Italy, which in 2010 adopted legislation[35] that made mediation mandatory for certain civil disputes before they are heard in courts.[36]

However, there is legal debate as to the constitutional admissibility of compulsory mediation with regard to access to justice.[37] The Italian Constitutional Court concluded in a judgment with

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[32] "Quantifying the cost of not using mediation – a data analysis", Policy Department for Citizen's Rights and Constitutional Affairs, Directorate-General for Internal Policies of the European Parliament, 2011, available at: https://www.europarl.europa.eu/document/activities/cont/201105/20110518ATT19592/20110518ATT19592EN.pdf

[33] "Quantifying the cost of not using mediation – a data analysis", cit., p. 18

[34] "Quantifying the cost of not using mediation – a data analysis", cit., p. 10, note 2. This is survey is titled "The cost of non ADR- Survey Data Report", and was a study implemented by ADR Center, in collaboration with the European Company Lawyers Association (ECLA) and the European Association of Craft, Small and Medium-Sized Enterprises (UEAPME), in the context of the EC-funded project "The Cost of Non ADR – Surveying and Showing the Actual Costs of Intra-Community Commercial Litigation.".

[35] Legislative Decree No. 28 of 4 March 2010. On this see G. De Palo and L. Keller, "Mediation in Italy: Alternative Dispute Resolution for All", *Mediation: Principles and Regulation in Comparative Perspective*, Oxford University Press, 2012, p. 669.

[36] Under Art. 5 of Legislative Decree No. 28, this includes neighbour disputes ("condominio"), property rights, division of goods ("divisione"), trusts and estates, family-owned businesses, landlord/tenant disputes, loans, leasing of companies ("affitto di aziende"), disputes arising out of car and boat accidents, medical malpractice, libel, insurance, banking, and financial contracts. See also M. Vetis Zaganelli & J. Campos dos Santos Junior, "A Mediação em Matéria Civil e Comercial como Método Alternativo de Solução de Litígios no Ordenamento Italiano", cit., p.

[37] Referring to Germany, see M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., pp. 65-66, where the Supreme Court of Germany, without concluding whether mandatory mediation was unconstitutional, decided that the requirement to conduct mediation cannot be waived once court proceedings are started; and to

effect on 12 December 2012 that the requirement that mandatory mediation be a condition of access to court proceedings in the cases mentioned was unconstitutional.[38] Following this, however, new legislation was enacted in August 2013 to relaunch the economy[39] and introduced a number of modifications to the previous legislation. Among other amendments, it reintroduced, for a trial period of four years, mandatory mediation as a condition to begin essentially the same type of civil and commercial court proceedings as initially provided for. This time limitation was eventually eliminated.[40]

Data from 2016 shows that mediations were successful in 22% of all settlement attempts, despite the rate of absentees in the first mediation meeting being 52%.[41]

Moreover, Italy adopted a second incentive, also highlighted in this study, namely that of tax incentives.[42] Under the applicable rules, if the mediation is successful, the Italian government can give a tax credit (up to EUR 500) to every party in dispute who has paid the mediation registration cost. If the mediation fails, the tax credit is reduced by half.[43]

A third incentive proposed is the reimbursement of dispute fees, where the court or mediation fees are reimbursed to the parties upon the successful completion of mediation or other ADR methods. There are several countries in the European Union - Bulgaria, Romania, Poland, Hungary - where the court's legal fees are reimbursed to the parties upon reaching a settlement in the pending court case.[44]

A fourth and last incentive considered relates to the importance of "*strongly encouraging judges' participation in promoting mediation through their roles and relationships with lawyers, and the larger legal community.*".[45] The role of judges cannot be understated, and the active promotion of mediation by judges is an incentive adopted in other countries outside the EU.

In **Brazil**, for instance, two laws were enacted in 2015, creating the "intra-judicial mediation" system[46], whereby a mandatory mediation hearing will be scheduled with at least 30-day notice by the court after the claimant files its statement of claim, unless both parties oppose this or the dispute cannot be subject to mediation.[47]

Italy, see M. Vetis Zaganelli & J. Campos dos Santos Junior, "A Mediação em Matéria Civil e Comercial como Método Alternativo de Solução de Litígios no Ordenamento Italiano", Rev. Fac. Direito UFMG, Belo Horizonte, no. 70, pp. 461 - 485, January-June 2017, p. 480, citing authorities that take the position that mandatory mediation only delays access to justice, but does not impede it.

[38] Official Gazette, Special Series of 12. Dec. 2012 no. 49, Judgment no. 272 of 6 December 2012.

[39] Law no. 98, of 9 august 2013, Official Gazette of the Republic of Italy no. 194 of 20 Aug. 2013, converting into law, with amendments the Government's Decree Law no. 69 of 21 Jun. 2013.

[40] See current language of Art. 5 of Legislative Decree No. 28.

[41] M. Vetis Zaganelli & J. Campos dos Santos Junior, "A Mediação em Matéria Civil e Comercial como Método Alternativo de Solução de Litígios no Ordenamento Italiano", cit., p. 477.

[42] "Quantifying the cost of not using mediation – a data analysis", cit., p. 19.

[43] Art. 20 of Decreto legislativo no. 28.

[44] "Quantifying the cost of not using mediation – a data analysis", cit., p. 19.

[45] "Quantifying the cost of not using mediation – a data analysis", cit., p. 20.

[46] Law no. 13.140, of 26 June 2015, regulation mediation, and Law no. 13.105, of 16 March 2015, new Code of Civil Procedure.

[47] Art. 334 and §§1 and 4 of Law no. 13.105.

This provision effectively incorporates mediation as a step in the judicial proceedings: the judge has a duty to schedule the mediation hearing.[48] Proof of this is that the above laws also establish court centres for consensual dispute resolution, which are responsible for holding these mediation hearings.[49] In contrast, even though the Portuguese system also provides for an intra-judicial mechanism, judges will only refer the parties to mediation if they consider it convenient and appropriate, unless any of the parties expressly objects.[50]

This mediation will be undertaken by mediators, and may take place using electronic means, and parties must be accompanied by counsel.[51] If any of the parties fail to appear at the mediation hearing without a justification, they may be subject to a fine for committing an act against the justice system, of up to 2% of the amount in dispute.[52]

Likewise, in **China** "judicial mediation" may be undertaken by a judge, who is the same judge that will ultimately adjudicate the dispute if the mediation is not successful. This, in the opinion of some authors, rather resembles conciliation.[53] Although the parties need to consent to mediate, Chinese courts must give priority to mediation at all stages of the litigation process.[54] The court may invite the parties, including experts, to assist them in the mediation.[55] Since 2016, it may also refer the parties to a mediator inside or outside the court.[56] People's mediation, relating to minor private disputes and sponsored by people's mediation committees, also takes place in China, under the Mediation Law in effect since 2011.[57] Other forms of mediation, including industry mediation, mediation conducted by institutions of the legal profession, commercial mediations and administrative mediation have also been encouraged.[58] A high case load, combined with a cultural aptitude to mitigate conflict and promote long-term relationships, make mediation a natural means of dispute resolution in China.

In addition, the China International Commercial Court ("CICC"), created in the summer of 2018 to hear transnational disputes arising from the "Belt and Road Initiative", also procedurally emphasizes mediation. The case management team will propose that parties

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[48] N. Antonio Daiha Filho, "Mediação e conciliação intra-judiciais: Um diálogo entre os direitos inglês, brasileiro e português", Direito Unifacts, no. 235, 2020, pp. 12, 22-24.
[49] Art. 24 of Law no. 13.140.
[50] Art. 273 of the Portuguese Code of Civil Procedure.
[51] Art. 334, §§7 and 9 of Law no. 13.105.
[52] Art. 334, § 8 of Law no. 13.105. Despite this paragraph not mentioning mediation, this is understood as an error by the legislature - N. Antonio Daiha Filho, "Mediação e conciliação intra-judiciais: Um diálogo entre os direitos inglês, brasileiro e português", cit., p. 24.
[53] K. B. Pissler "Mediation in China: Threat to the Rule of Law", *Mediation: Principles and Regulation in Comparative Perspective*, Oxford University Press, 2012, p. 970.
[54] See Chapter VII of the PRC Civil Procedure Law, and the 2010 "Notice of the Supreme People's Court on Issuing Several Opinions on Further Implementing the Work Principle of "Giving Priority to Mediation and Combining Mediation with Judgment"". See also See also the 2018 "Provisions of the Supreme People's Court on Several Issues Concerning the Implementation of Reconciliation". SPC guidance is binding on Chinese lower courts – on this issue see M. Tai, and D. McDonald, "Judicial mediation in mainland China explained", HSF ADR Notes, 30.07.2012.
[55] Chapter VII of the PRC Civil Procedure Law. Scholars highlight that Chinese courts adopt an evaluative approach to mediation – see W. Can and A. Godwin, "Challenges and Opportunities for the China International Commercial Court", in International and Comparative Law Quarterly, vol 68, October 2019, p. 895.
[56] G. Du and M. Yu, "Mediation in China: Past and Present", China Justice Observer, 11 August 2019, available at: https://www.chinajusticeobserver.com/a/mediation-in-china-past-and-present.
[57] The People's Mediation Law of the People's Republic of China, Order of the President of the People's Republic of China (No. 34), 28 August 2010. It came into force in 1 January 2011.
[58] G. Du and M. Yu, "Mediation in China: Past and Present", cit..

attempt to mediate their disputes before the trial, either before one to three experts of the CICC Expert Committee or before one of the international commercial mediation institutions announced by the Supreme People's Court.[59] The idea is to have a one-stop-shop, an interconnected platform to provide efficient, convenient and economic dispute resolution that includes, besides arbitration centres, mediation centres as well.[60]

Some countries in **Africa**, such as **Ghana** and **Nigeria**, have also taken other interesting approaches to promote mediation. Ghana has held "mediation weeks" since 2003, in an attempt to reduce the judicial caseload. Pending cases in court were therefore sent to this alternative dispute resolution method. Ninety percent of the parties in mediation in 2003 that were surveyed manifested their satisfaction with the process, and in 2008, of the over 2,500 cases that were mediated, over 50% reached a complete settlement.[61] In 2010, Ghana approved the ADR Act 798, whereby a mediation agreement was equated to a court decision, and thus considered binding and enforceable just like a court judgment.[62]

Nigeria set up the Lagos Multi-Door Courthouse ("LMDC") in 2002. This was also inspired by Frank Sanders' concept, and following it, other multi-door courts were opened in other locations in Nigeria, where parties have the option to choose from different alternative methods to resolve their disputes, including mediation.[63] Mediated cases may be submitted voluntarily, by court referral or suggestion of the LMDC director.[64] The "Settlement Week" initiative has also been followed here since 2009 and parties can submit their disputes to mediation without incurring any cost.[65] Results in 2009 showed that nearly 60% of the mediations resulted in settlement.[66]

Interesting issues that arise from the statistics just mentioned include both the data on citizen satisfaction and the potential to promote long-lasting business relationships between parties, based on trust, while lowering costs of access to justice (when compared to arbitration and litigation).

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[59] Chapter 4, dedicated to pre-trial mediation in the "Procedural Rules for the China International Commercial Court of the Supreme People's Court (For Trial Implementation)", in force since 5 December 2018, available at: http://cicc.court.gov.cn/html/1/219/208/210/1183.html. See also A. Coimbra Trigo, "Tribunais Comerciais Internacionais E Arbitragem: "The Chinese Approach"", PLMJ Arbitration Review, 2020, pp. 111-128; W. Can and A. Godwin, "Challenges and Opportunities …", cit., pp. 894-896.

[60] 2018 "Notice by the General Office of the SPC of Determining the First Group of International Commercial Arbitration and Mediation Institutions Included in the "One-Stop" Diversified Settlement Mechanism for International Commercial Disputes", dated 13.11.2018 in force since 05.12.2018, available at: http://cicc.court.gov.cn/html/1/219/208/210/1144.html.

[61] E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", cit., p. 4; M. Collen Johnson, "The Efficacy Of Alternative Dispute Resolution In Resolving Disputes, A Case Study Of South Sudan", 2016, p. 17, available at: https://ir.kiu.ac.ug/bitstream/20.500.12306/11793/1/Musinguzi%20Collen%20Johnson.pdf

[62] E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", cit., p. 4; M. Collen Johnson, "The Efficacy Of Alternative Dispute Resolution In Resolving Disputes", cit., p. 18.

[63] E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", cit., p. 4; M. Collen Johnson, "The Efficacy Of Alternative Dispute Resolution In Resolving Disputes", cit., p. 18.

[64] Lagos Multi-Door Courthouse, Available at https://lagosmultidoor.org/adr-2/.

[65] M. Collen Johnson, "The Efficacy of Alternative Dispute Resolution in Resolving Disputes", cit., p. 18.

[66] E. E. Uwazie, "Resolução Alternativa de Litígios em África: Prevenir o Conflito e Reforçar a Estabilidade", cit., p. 5; M. Collen Johnson, "The Efficacy Of Alternative Dispute Resolution In Resolving Disputes", cit., p. 18.

Finally, we note that the most important legally binding international instrument on mediation is the United Nations Convention on International Settlement Agreements Resulting from Mediations, otherwise known as the Singapore Convention. The Singapore Convention facilitates international trade and promotes the use of mediation in dispute settlement, by establishing a harmonized legal framework.[67] It is worth noting that the Singapore Convention is expected to contribute to the UN SDG alluded to above, as it is expected to bring certainty and stability to the international framework on mediation.[68] Therefore, becoming a signatory to the convention can also be considered a policy to promote mediation. Brazil, Ghana and Nigeria are signatories to the Singapore Convention.

Based on the above, we can see a very active and diverse movement relating to state initiatives on mediation.

III. The Legal Framework of Mediation in Angola and Mozambique

The previous chapters have portrayed the general idea of mediation in theory and showcased how it has been incorporated into different legal systems across the globe, including in several African countries. However, mediation is not yet part of the overall Lusophone Africa litigation tradition. One important step – that of providing a predictable legal framework for mediation – has already been implemented in Angola and Mozambique. The most significant elements of these legal frameworks will be highlighted in this chapter.

3.1 Angola

The starting point is Article 174(4) of the Constitution of the Republic of Angola, which provides for the legal creation and implementation of the means and forms of out of court conflict resolution. This includes arbitration, mediation, conciliation and negotiation. In addition, mediation and conciliation specifically are governed by Law no. 12/16 of 12 August ("Mediation Law"). This law regulates the mediation agreement, the mediation procedure, as well as the mediators' rights and duties and mediation centres. Important elements of the Law will be considered below.

Mediation is defined by the Mediation Law, in Article 2(g), as an alternative dispute resolution method undertaken by public and private entities, through which two or more people in dispute seek to voluntarily reach an agreement with the assistance of a mediator, without the latter proposing an agreement. Under Article 3 of the Mediation Law, disputes in civil, commercial, employment, family and criminal matters can be submitted to mediation, provided they regard disposable rights.

The mediation procedure is legally subject to certain fundamental principles, such as voluntariness, equality and impartiality, lawfulness, confidentiality, independence, competence and liability, and enforceability.[69]

[67] "United Nations Convention on International Settlement Agreements Resulting from Mediation (New York, 2018) (the "Singapore Convention on Mediation")", available at: https://uncitral.un.org/en/texts/mediation/conventions/international_settlement_agreements.
[68] Idem.
[69] See Arts. 6 to 12 of the Mediation Law.

Regarding confidentiality, the Mediation Law states that the mediation process is confidential, amongst the parties and in relation to third parties, except if the disclosure is authorized.[70] The mediator must not relay to a party the information it was entrusted with in confidence by the other party. The law sets out that the content of the mediation sessions is inadmissible as evidence and forbids the intervention of the mediator in subsequent stages of the dispute, notably as a witness. The only exceptions are when this is necessary to safeguard the protection of a superior public interest, or in case of enforcement of an agreement obtained through mediation.

The Mediation Law also provides for rules that govern the mediation agreement[71] and the mediation process.[72] Under Article 18, the mediation starts when a party or parties request a pre-mediation session. In it the mediator will explain how mediation works. Mediation may also start when the General Inspectorate of Labour (IGT), a court, the Public Attorney's Office, the Civil Registry or other justice institutions provided for in the Constitution make a request for that purpose. The procedure will be defined by the mediation centre and the parties must draft a mediation clause.

A mediator will be jointly appointed by the parties in the mediation, under Article 19 of the Mediation Law. If they do not reach a consensus, the coordinator of the mediation centre will appoint the mediator. The Mediation Law provides that all those who meet the following requirements can perform the role of mediator: a) be over 26 years of age; b) have the appropriate degree or relevant professional experience; c) be a person of suitable character; d) be in full possession of their civil and political rights; and e) be professionally qualified or possess a mediation certificate recognized by the Public Administration body responsible for the Extrajudicial Resolution of Disputes.[73]

Both the rights and duties of mediators, as well as duties of the parties are enshrined in this Mediation Law.[74] Moreover, under Article 21 of the same law, parties may, but are not required to, appear in the mediation proceedings accompanied by a lawyer, public attorney or trainee lawyer.

The mediation process should be expeditious: if the parties do not stipulate otherwise, 10 sessions will be conducted, six joint sessions and four private sessions, two with each party, as expressly provided in Article 23 of the Mediation Law. Even though the aim of this provision seems clear – the achievement of efficiency – this is a questionable solution because of its rigidity. It curtails the flexibility desired in the mediation process and typically afforded to the parties of defining their own process. It prevents the mediator from exercising the powers of conducting the mediation sessions as he or she considers appropriate if the parties do not reach an agreement on this issue.

Furthermore, the time limit to complete a mediation is set at four months, save if the parties agree otherwise, according to the same provision.

[70] See Art. 9 of the Mediation Law.
[71] See Arts 14 to 17 of the Mediation Law.
[72] See Arts 17 to 28 of the Mediation Law.
[73] See Art. 30 of the Mediation Law.
[74] See Arts. 33, 34 and 36 of the Mediation Law.

In terms of costs, there is no financial incentive for parties to attempt mediation or conciliation, yet mediation is significantly cheaper than litigation in court or arbitration.

Article 12 of the Mediation Law provides that agreements reached through mediation are directly enforceable, as long as the legal requirements for that have been complied with.

Mediation is also available to the parties while judicial proceedings are pending, and this is expressly regulated by the Mediation Law.[75] It is a voluntary process whereby the parties will suspend their judicial proceedings to conduct mediation. All limitation and expiration periods are suspended until the judicial proceedings are resumed in the event the mediation process is not successful.

Lastly, Angolan court decisions are not publicly available, so mediation-related decisions, if they exist, are not easily accessible.

3.2 Mozambique

The Mozambican Constitution, as amended in 2004, expressly provides, in its Article 223(2), for the possibility to resort to arbitral tribunals as a means to adjudicate disputes. However, mediation is not mentioned.

The primary domestic source of law relating to arbitration and mediation in Mozambique is the Law on Arbitration, Conciliation and Mediation (the "LACM"), Law no. 11/99, dated 8 July 1999. Under Article 62 of the LACM, *"failing prior stipulation by the parties or contrary legal provision, the provisions in this Law for arbitration are applicable complementarily to conciliation and mediation, with the necessary adaptations."*.[76]

Under Article 60(2) of the LACM, mediation is defined as the procedure in which a third independent and impartial person is appointed to find a solution satisfactory to both parties. The distinction between mediation and conciliation in the LACM differs from those included in other countries, and it is said that here they have a similar nature but different intensity.[77] The LACM clarifies that mediators are expected to propose solutions for the parties' conflict, whereas a conciliator is expected to facilitate the communication and the relationship of the parties to allow them to reach a settlement.[78]

The general rule under the LACM is that parties are free to submit their disputes to arbitration, and therefore also to mediation, save for disputes falling within the scope of state courts' exclusive jurisdiction and disputes relating to non-disposable rights or rights that cannot be settled by the parties.

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[75] See Arts. 55 to 57 of the Mediation Law.

[76] See also M. Cancela de Abreu, F. Lobo D'Avila, A. Mané e C. Moreira Campos, A Arbitragem Voluntária e a Mediação de Conflitos, Almedina, 2008, pp. 207-208.

[77] D. Moura Vicente, "Arbitragem E Outros Meios De Resolução Extrajudicial De Litígios No Direito Moçambicano", 2006, p. 3, available at https://www.fd.ulisboa.pt/wp-content/uploads/2014/12/Vicente-Dario-ARBITRAGEM-E-OUTROS-MEIOS-DE-RESOLUCAO-EXTRAJUDICIAL-DE-LITIGIOS-NO-DIREITO-MOCAMBICANO.pdf.

[78] See Art. 60(2) and (3) of the LACM, and D. Moura Vicente, "Arbitragem E Outros Meios De Resolução Extrajudicial De Litígios No Direito Moçambicano", cit., p. 3.

The mediation procedure is legally subject to certain fundamental principles[79], including party autonomy, flexibility, privacy, good repute of the neutrals, expeditiousness, procedural equality, oral hearing and adversarial nature. Specifically, Article 61(3) of the LACM provides that conciliation and mediation may take place orally without any written record, save for the final signed minutes, unless the rules of the institution chosen provide otherwise. Articles 64 to 66 of the LACM regulate the functioning of mediation. Regarding privacy and confidentiality, the LACM provides that the acts, procedures, statements and information relating to conciliation and mediation are of a reserved and confidential character, are subject to the rules of professional privilege and are devoid of evidentiary value in courts. Noteworthy is the fact that parties may not use as arguments or evidence in arbitration or litigation any of the facts, statements or suggestions made by the other party in mediation, the proposals made by the parties or mediator, nor the fact that any of the parties was willing to accept a settlement.[80]

Under Article 61(2) of the LACM, parties may, but are not required to, appear in the mediation proceedings accompanied by a lawyer or other representatives.

A mediator will be jointly appointed by the parties in the mediation or by the mediation institution chosen. Article 64(1) of the LACM further requires that mediators be physical persons, of age and be in full possession of their civil and political rights.

Parties may begin mediation jointly or separately, by filing a mediation request with a mediator or mediation centre. The mediator appointed must immediately notify the parties to meet for a first hearing. In this hearing, all procedural acts and issues in dispute will be recalled, in order to find a solution satisfactory to both parties. The mediator may host as many meetings as necessary to facilitate communication between the parties and may, if necessary, and with impartiality and confidentiality, meet privately and separately with each party, after informing the other party or parties. All this is enshrined in Article 64 of the LACM.

The deposited minutes of the conciliation or mediation containing the agreements reached through mediation will have the same legal effect as an arbitral award. Therefore, they will produce the same effects as a judgment made by the Mozambican courts between the parties and their successors, and they will constitute an enforcement title.[81]

As for costs, there is no financial incentive for parties to attempt mediation or conciliation, yet mediation is a significantly more cost-effective approach than litigation in court or arbitration. Mediation costs should be calculated in accordance with Article 24 of the LACM, *ex vi* Article 62, and will include the mediators' fees, determined on the basis of the amounts in dispute, as well as the other mediator's expenses, administrative fees and costs relating to production of evidence, determined by their actual cost.

Under Article 35 of the same law, *ex vi* Article 62, the time limit to complete a mediation is 6 months, unless otherwise stipulated in the mediation agreement.

[79] See Art. 2 of the LACM.
[80] See Arts. 61(1) and (4) of the LACM.
[81] See Arts. 66 and 43 of the LACM.

Lastly, Mozambican court decisions are not publicly available. As in Angola, mediation-related decisions are not easily accessible in Mozambique.

IV. State Initiatives to Promote Mediation in Angola and Mozambique

Having laid out the legal framework of mediation in both countries, this section will examine the other state-based initiatives that have already been taken to promote a mediation culture in Angola and Mozambique, respectively.

4.1 Angola

State Established or Sponsored Mediation Centres

The Angolan Mediation Law provides for private and public mediation centres, as follows from its Article 2. The private mediation centres are privately funded but have authorization by the public authorities to administer mediation and conciliation, whereas the public mediation centres are publicly funded. Some public and private mediation centres will be presented in brief below.

The first noteworthy example is *Centro de Resolução de Litígios* – CREL (Centre for Mediation and Arbitration). Established in 2014, CREL is a public centre that is part of the Ministry of Justice and Human Rights.[82] It has generic jurisdiction by reason of the subject matter of the dispute. In terms of dispute resolution procedures and access to justice, CREL offers information and legal consultation, negotiation, mediation, conciliation and arbitration. Recently, with the creation of its Studies and Training Service, it advertises that it will start to provide training and capacity building courses on a regular basis in partnership with other Angolan and foreign entities. The fees for mediation, conciliation, arbitration and legal consultation services of CREL are regulated by Joint Executive Decree no. 259/16 of 17 June.

Besides CREL, there are several noteworthy private institutions in Angola, the creation of which the Mediation Law allows following administrative authorization for that purpose under Articles 38 to 45. The first private centre to be mentioned is the *Centro Angolano de Mediação e Arbitragem Laboral* (CAMAL) (Angolan Centre for Labour Mediation and Arbitration). CAMAL is currently a private platform for communication and dissemination of ADR methods in Angola, as well as all public and private initiatives on labour law studies. It is expected that it will provide mediation services in the future. Another example is the *Arbitral Iuris - Arbitragem e Mediação de Angola, S.A.,* created in 2007. It is a private company whose mission is to create arbitration, conciliation and mediation centres, to study and promote ADR methods and to provide training. Lastly, *Harmonia Centro Integrado de Estudos e Resolução de Conflitos* (Harmonia Integrated Centre for Studies and Conflict Resolution), was created in June 2021 and intends to provide negotiation, mediation and arbitration services in the areas of

[82] See also M. Cancela de Abreu, F. Lobo D'Avila, A. Mané e C. Moreira Campos, A Arbitragem Voluntária e a Mediação de Conflitos, Almedina, 2008, p. 34, where the authors already noted the Angolan government's intention of creating a mediation centre.

insurance, property and investments, oil and natural resources, construction works, real estate and tax law.[83]

4.2 Mozambique

State Established or Sponsored Mediation Centres

In Mozambique too, the state has promoted mediation through mediation centres. The first notable example in Mozambique is the *Comissão de Mediação e Arbitragem Laboral* (COMAL) (Labour Mediation and Arbitration Commission). COMAL is a public institution established in 2009 that offers services such as the management and prevention of labour disputes, technical support, promoting dialogue between employers and workers and the dissemination of normative instruments. COMAL has centres in all the provinces of Mozambique.

Additionally, the *Centro de Arbitragem, Conciliação e Mediação* (CACM) (Centre for Arbitration, Conciliation and Mediation of Disputes) is a non-governmental, non-profit organization established in 2002 to offer alternative and appropriate mechanisms to prevent and resolve disputes of a commercial nature, and to encourage their use in other areas of activity. CACM is affiliated to the Confederation of Business Associations of Mozambique (CTA). Besides administering commercial mediation and arbitration, CACM also provides training for mediators and arbitrators, law practice activities, and activities to promote and disseminate alternative dispute resolution methods.

Noteworthy is also the fact that the Mozambican Labour Law provides for mandatory labour mediation prior to litigation or arbitration.[84] In 2010 this rule was considered unconstitutional in a specific case by the Mozambican Constitutional Council.[85] The decision was grounded on the administrative nature of the institution responsible and the cost-based nature of mediation, which would entail the duplication of costs for the parties. In the opinion of the Council, this limited the right of access to courts in an unacceptable manner.[86] A similar decision was issued in 2021.[87] These decisions, however, only produce effects between the parties to the specific labour relationship[88] at issue and did not strike down this provision from the legal system; therefore, this rule is still in force.

Court-annexed Programmes in Mozambique

The LACM mentions state court conciliation. However, Article 60(4) of the LACM clarifies that this state court mediation has its own rules and is not regulated by the LACM. In parallel to this, court-annexed mediation is regulated by Resolution of the Judicial Council no.

[83] "Inaugurado em Luanda Centro de Resolução de Conflitos", Agência Angola Press, 04.06.2021, available at: https://www.angop.ao/noticias/politica/inaugurado-em-luanda-centro-de-resolucao-de-conflitos/.
[84] Law 23/2007, of 1 August.
[85] Decision of the Constitutional Counsel no. 3/CC/2011 de 7 October, published no Official Publication of the Republic of Mozambique (4th Supplement), 18 October 2011.
[86] M. França Gouveia, *Curso de Resolução Alternativa de Litígios*, cit., p. 68.
[87] This has not yet been published, but media has reported this in https://www.noticiasaominuto.com/mundo/1867012/mocambique-inconstitucional-a-obrigatoriedade-de-mediacao-laboral.
[88] Law 6/2006, 2 August, Article 73.

1/CJ/2017 ("Resolution"), and by the LACM. This Resolution determined that the provincial courts establish Mediation Services, which will administer court-annexed mediation.

Parties may submit to mediation, voluntarily or following the suggestion of state courts, any disputes, so long as they relate to disposable rights, under Articles 3(1) and 9(3) of this Resolution.

Mediators are jointly appointed by the parties or by the Mediation Services[89], created to coordinate this court-annexed mediation programme. Only mediators who are accredited and listed in the provincial courts' lists may act as mediators.[90] These services are provided free of charge, save for any court fees due.[91]

The mediation procedure lapses after 60 days from the request for mediation, *ex vi* Article 12(2) of the Resolution. The settlement agreement reached by the parties constitutes an enforcement title under the Mozambican Code of Civil Procedure and must be ratified by the state court if the mediation was started at the suggestion of the state court, under Article 12(4) and (5) of the Resolution.

V. The data available on mediation in Angola and Mozambique

We were part of the efforts to include mediation centres in Lusophone Africa in a research initiative of the Africa Mediation Network. This network aims to gather data about mediation in Africa to facilitate access of users to quality mediation services and disseminate unavailable information about mediation practices and promote the optimal development of mediation in Africa.[92] The first part of this research initiative entailed reaching out to mediation centres in African countries and compiling information about their services, the applicable mediation rules and available case statistics. These findings were reported in the 7th SOAS Arbitration in Africa Conference in Casablanca, Morocco in 2021.

A brief summary of the results of these efforts is presented in this chapter, which are further developed in the Angolan and Mozambican reports on this research initiative of the Africa Mediation Network.

5.1 Angola

The following data were gathered from responses to a questionnaire submitted to CREL. These responses point to a demand for mediation by users who have previously used the services, but also by lawyers, the police, by relatives and friends, departments from the IGT and consumer protection services, courts and by digital platforms that market the centre's services.

Despite there not being full statistics clarifying the stage of the dispute at which the mediation is brought to CREL, the experience reported is that in commercial cases, mediation is sought sometime after the beginning of the dispute. As for labour disputes, they are pursuant to law

[89] Article 10(1) of the Resolution.
[90] Article 17 of the Resolution.
[91] Article 15 of the Resolution.
[92] Statement of Purpose of the Research Initiative on Mediation Centres in Africa.

mandatorily preceded by out of court dispute resolution and, therefore, parties attempt mediation at the beginning of the conflict.[93]

Tellingly, with the pandemic and the greater delay in the issuance of judgments associated with it, there have been cases of requests for mediations while court proceedings are pending, and to reach an agreement that can be used as a basis for enforcement.

The facilitative and evaluative style of mediation, and, exceptionally, co-mediation were reported as being used in Angola. Moreover, 80% of the reported mediations in Angola are said to be accompanied by lawyers, when they are not themselves acting as in-house representatives of the parties.[94]

The services in CREL are ensured by mediators employed by the Ministry of Justice, who are specifically trained and qualified for this purpose. CREL also requires the candidate mediator to attend courses and seminars on mediation regularly, and to have experience or training in the use of the mediation tools and appropriate academic knowledge.

Mediation records are kept in writing in digital form, but audio or video recording may start happening with the carrying out of online mediations.

The most common type of cases referred to mediation in Angola, as reported, are civil law and obligations disputes, followed by family law and labour law disputes. Successions and other civil law disputes are also common.

In the three-year period from 2018 to 2020, the responding institution reported a total of 1,507 cases (502 per year on average) referred to mediation.[95]

Of the 1,507 mediated cases, settlements were reached in a total of 425 (142 per year on average).[96] This translates into a settlement rate of 28.2%, which is below the pan-African average of 54.8%.[97]

5.2 Mozambique

The following data was gathered from responses to questionnaires submitted to CACM and to COMAL. In the submitted responses, mediation cases are referred to the mediation centres by the parties voluntarily. All institutions reported that they use a facilitative style of mediation. The evaluative style and other styles, such as co-mediation are not used.

In regard to the mediators employed, the mediation centres consulted make reference to selecting candidates with additional mediation training, administered by the institution in question or otherwise. They welcome both domestic and foreign professionals, as long as they have the additional training in mediation.

[93] Law no. 7/2015, 15 June, Article 273.
[94] See the Angolan Report of the Research Initiative on Mediation Centres in Africa.
[95] See the Angolan Report of the Research Initiative on Mediation Centres in Africa.
[96] See the Angolan Report of the Research Initiative on Mediation Centres in Africa.
[97] See the data provided in the Mediation Report for Angola, in comparison with the other countries surveyed.

Furthermore, the most common type of cases referred to mediation in Mozambique are commercial law, followed by labour cases (individual and collective disputes).

In the four-year period from 2016 to 2019, COMAL reported a total of 29,180 cases (7,295 per year on average) referred to mediation.[98] Of those, the mediation process was completed in 27,779 cases (6,945 per year on average).[99]

Of the 27,779 mediated cases, settlements were reached in a total of 23,518 (5,880 per year on average).[100] This translates into a settlement rate of 84.66%, which is substantially above the pan-African average of 54.8%.[101]

VI. Conclusion

This article has shown that mediation is gaining momentum in different domestic jurisdictions and in the international field, including in Angola and Mozambique, where there is evidence of an interesting caseload of mediation in the institutions surveyed.

Some of the above state initiatives to introduce and promote mediation as an alternative dispute resolution mechanism have had some admirable effects – in particular, the establishment of a legal framework, the creation of professional mediation institutions and the existence of court-annexed mediation – as shown by the data available. Parties already choose to mediate in some instances and the rate of settlement is impressive. In comparison with Portugal and its experience with Justices of the Peace, for example, the rate of settlement in mediation in Angola, as reported, is roughly the same per capita. Portugal had a rate of settlement of 14% on average between 2016-2020 for a population of 10.3 million, while Angola had a rate of settlement of 28.2% in 2016-2019 for a population of 32.8 million. The rate achieved in Mozambique, of 84.66% between 2018-2020 is clearly higher.

Studies like these will surely provide the decision makers with more data upon which to make strategic decisions, including whether to adopt incentives such as mandatory mediation, waiver of fees or adopting the Singapore Convention. The training of mediators on how to conduct mediation and of lawyers on how to act as counsel in mediation is a step that can also be further explored. All stakeholders must be aware of the advantages of mediation as a means of dispute avoidance and mitigation. A state push can and will trigger the necessary change and further implement and accelerate the use of mediation in Lusophone Africa. Additionally, it will be interesting to see how private initiatives, even if bolstered by state-led action, will promote the development of a mediation culture in these countries.

[98] See the Mozambican Report of the Research Initiative on Mediation Centres in Africa.
[99] See the Mozambican Report of the Research Initiative on Mediation Centres in Africa.
[100] See the Mozambican Report of the Research Initiative on Mediation Centres in Africa.
[101] See the data provided in the Mediation Report for Mozambique, in comparison with the other countries surveyed.