

## **Round table**

### **Theme: ODR in Portuguese-speaking countries**

**Moderator: Dr Ana Maria Maia Gonçalves (Founder of ICFML, trainer and certified mediator in online dispute resolution)**

Dr. Ana Maria Maia Gonçalves – Good morning and welcome to this round table on ODR (Alternative Online Dispute Resolution) in Portuguese-speaking countries. Today we have with us Dr. Cátia Marques Cebola, president of ICFML (International) and professor of Alternative Resolution at IPL (Instituto Politécnico de Leiria). Prof. Andreia Maia, founder of Mediar 360 (Dispute Resolution Platform) and vice president of CBMA (Brazilian Center for Mediation and Arbitration) and Dr Nuno Albuquerque, lawyer, arbitrator and president of ICFML (Polo Africa).

Without further delay, I will ask the 1st question and start with Cátia:

- What, in your opinion, is the importance of developing ODR for the resolution of disputes in the current world and in the future?

Dr<sup>a</sup> Cátia – Hi Ana, thank you for inviting me to participate in this debate and good morning, everyone. The development of ODRs is an inevitable consequence of the evolution of technology and its use in all aspects of our daily life. Technology is in all quarters and conflict resolution is no exception to the use of technological means. In my opinion, ODR, or online dispute resolution, constitutes today and in the future, a way to promote justice itself and the fundamental right of any citizen to have, in an accessible way, ways to resolve conflicts. Today, in a globalized world, with the promotion of international trade, the very interaction of cultures, people moving between countries, acquiring goods, all kinds of products, this will naturally encourage the increase of conflicts, with the need to create ways appropriate to resolve these conflicts. ODR is nothing more than an adjusted way of resolving conflicts in the current era, allowing citizens to dialogue with each other and find the resolution of disputes on their own.

Dr<sup>a</sup> Ana – Undoubtedly an increasingly global world, isn't it Nuno?

Dr Nuno - Yes, but first and if I may, I would like to greet the participants, who is listening to us and also thank you for the invitation addressed to

me. Directly reporting to Africa and specifically to Portuguese-speaking countries (Angola, Mozambique, Cabo Verde, Guine Bissau, S. Tomé e Príncipe), we are talking about realities in which online conflict resolution cannot be exported by itself, abstractly. It is necessary to understand that there are different realities in these countries, in terms of infrastructure capable of allowing access to tools. We have different levels of empowerment of the population, for example, between Cabo Verde and Mozambique the difference is very large in terms of population education. However, in these countries there has been a significant evolution in the last 10 years, namely in the access to new technologies, allowing people today to be able to resort to ODR. I think this is the way to go in Portuguese-speaking countries and take advantage of legislative developments. I can give an example in Angola, where the New Code of Administrative Procedure was approved last September, which designates a chapter dedicated to arbitration, although mediation and conciliation appear in the final chapter and only in two lines. However, with regard to arbitration, we are talking about public disputes, we are no longer talking only about private law and relationships between individuals, but about relationships between the state and individuals. With the help and dissemination of these dispute resolution means, it is possible to extend the practice to other places and users, which would probably not have easy access otherwise.

Dr<sup>a</sup> Ana – Certainly, technologies have changed access to justice, especially in continents such as Africa. Andreia, how important is the development of ODR for Brazil?

- Prof. Andreia – Regarding Brazil, I understand that we are facing a series of post-pandemic issues, namely in the real estate field, with inadequate contracts, the entry of new laws regarding bankruptcies, many people lost their jobs, their business. Mediation comes to help, bring solutions to these issues emerging. While we talk about the use of technology as an alternative solution, we have, for example, the case of the elderly, which involves medical issues and a lot of mediation. Anyone who knows Brazil knows that we tend to use private health plans, that there are huge gaps in the public health sector and so there were many changes in plans after the pandemic. Through ODR, in addition to finding innovative solutions, we can reach people who are unable to leave their homes, due to illness or age. I also mention the environment and the fact that there is no

movement of people into the courtroom (one of the issues discussed in Singapore). I have mentioned this a lot! In Brazil, each process involves 4 to 5 elements and when I talk about ODR there are a number of variables that are taken into account and bring benefits to the person, namely cost and time savings, as well as a lower environmental impact. More and more has been invested in Digital Justice. We have to get around some obstacles, because there are people who don't have access to the internet, but luckily today we have several applications on our cell phones, if, for example, we want to call an Uber or other types of services. This has increased a lot here in Brazil and in a way has also contributed to the increase in technology, not so much on the computer, but on the cell phone.

Dr<sup>a</sup> Ana – What we see in Brazil is access to mobile technologies and these technologies bring conflicts, which in turn are resolved online. It is increasingly a pressing issue Andreia, as you said, justice in our hands. It is Justice that comes to us, because today we have a cell phone and we are no longer the ones who go to Justice (to the court, with all the sustainability aspects you mentioned). Elderly people also benefit from mobile technologies, as they are less isolated. Another aspect you highlighted was the impact that the pandemic had on the development of ODR. Cátia, taking up this last topic, can we say that the pandemic contributed to the development of ODR in Portugal and Europe?

Dr<sup>a</sup> Cátia – Yes, we also see the same in Portugal and Europe. With the pandemic, readjustments were made. There were still conflicts, because people, even closed at home and with the appeal of technology, continued to buy and some sectors, in a way, even grew and consequently increased conflicts. In the search for ways to resolve these conflicts, ODR was the mechanism that most easily adapted to solving them, since there was no need to leave the house. Sticking to Portugal, we found that the Justices of the Peace (specific courts to resolve lawsuits up to €15,000 - the procedures are simpler, more flexible and have a previous stage of conflict resolution through mediation. Therefore, before the complaint is taken to trial it is possible to voluntarily try to get the parties to resolve the dispute amicably) started to promote both mediation sessions and the trial itself through the Zoom platform. I don't know if this can be considered a true form of ODR; it is probably a primitive way of resolving conflicts.

Today, when we talk about ODR, we think of much more developed structures and platforms, namely those that use algorithms, case selection, understanding which cases can be solved through these means. Somehow, the use of digital means, albeit very basic, gave the idea that it is possible for people to solve problems through Zoom. From now on, they will more easily accept more advanced conflict resolution platforms that are more integrated with other types of mechanisms. In fact, the pandemic forced a readjustment in the justice sector and there was a search for instruments in order to put communicating parties without being face to face. In Portugal, ODR was a very dreamy, very utopian idea and there was great resistance to its use. The pandemic kick-started its rapid rise. What could take years to implement has suddenly become unavoidable. I'm not going to say that at the moment we already have an extraordinary level of ODR in Portugal, but much of the resistance has already been overcome. The Minister of Justice himself launched RAL+ (mobile app) which is a platform that aims to integrate all conflict resolution mechanisms, mainly in the area of consumption.

Dr<sup>a</sup> Ana – A change of culture under pressure! Nuno and in Africa?  
Pandemic, online dispute resolution...

Dr Nuno – Let's go in parts. The pandemic did not exist in Africa because Western countries worried about themselves and quickly forgot the problems that existed on the continent, or at least they have forgotten what should be the principle of solidarity worldwide or between peoples. There were obviously exceptional situations, which contradict what I am saying, but in general the pandemic was forgotten in the news, namely in Europe, not to mention other parts of the world. However, it existed and the consequences are still evident and limiting today, because if Europe is already experiencing the post-pandemic, in Africa this still does not happen. I can say as an example, that to enter Angola, it was only two weeks ago that the test on arrival and another on departure was abolished. Now it's just a test at the start, but what's this to say? I travel between Portugal and Brazil and I no longer need it. I travel between Portugal and Angola and I still have half of this need. It is evident that this situation creates some difficulties. I understand that ODR and the use of online media can be an opportunity for economic development and investment support in Africa. Taking advantage of this dynamic that took place on several continents and countries, where the courts quickly

adapted and took online courses on how to be in front of television cameras, how to interrogate witnesses or opposing parties through the screen; protocols were created in arbitration centers, for example worldwide, the AICC, Asia, the main centers in Hong Kong, Korea; A set of procedures quickly appeared that helped to implement and create rules on ODR. So, I would say that more than hoping that this will be reflected in the day-to-day of justice in African countries and I refer specifically to Portuguese-speaking countries, I believe that it can be an important instrument to assist in foreign investment and we in Africa are always looking for this investment, as in other countries, but we live a lot of the degree of development that can be generated by this investment. The security that the possibility of resolving conflicts, disputes or disputes that may arise during the investment, can represent an extra comfort for investors on the African continent. I have experience with clients who come to me to diversify their investment, not only in Angola or Mozambique, but who say: "I want to set up a company that supplies to Zambia, Congo, imports goods from Mozambique to Angola, etc." What are we talking about here? In transposing a reality, a mentality that will then lead to a series of mechanisms that support the development and sustainability of populations. ODR is a factor comfort, a form of security, because there is no investment without an adequate resolution of disputes. That is why I mentioned just now the important renewal of the Angolan Administrative Procedure Code that was approved in September – Law 32/2022. This would be, I say, the post-pandemic that I find most challenging, most interesting and most important for Africa.

Dr. Ana – Incredible! We have ODR with potential for African economic development. Let's hope to hear that in a few years, because what I was thinking about here when you started talking, was the potential of ODR in the development of Justice and communities and how can we, through technology linked to Justice, develop our society of increasingly fair, more balanced and for that Andreia, in Brazil how do you use the potential of ODR for the development of Justice?

Prof. Andreia – In Brazil this subject is increasingly discussed, as a solution for people to be able to solve their problems. The processes take a long time, there are some that last more than twenty years and even those who win don't feel like a winner when it's over. If we have this broader view of Justice, where people find their own solutions, through the

necessary tools, I'm sure it will be good for everyone. Online mediation was used by the courts themselves during the pandemic. The face-to-face approach has returned, but it is very divided, because people have gotten used to doing many procedures online and we have had a high degree of decision-making, both in the 1st instance and in the 2nd. People are tired of walking 15, 20 years with a process and many times they just want to sit down and look for a solution. Here in Rio de Janeiro (I work in the business area), but this can serve for issues between families, neighbors, etc. There are many situations that end up in the Judiciary, which are fights between neighbors and there is a special characteristic of these people here: they really like the family, to be together, for example, a son marries and brings his wife to live together and then the couple has 1 child, after some time 4 and a suitable environment for the dispute is naturally created. People are also living longer and this causes a clash of generations. This is something we are learning to deal with. Another thing that we were even discussing yesterday in a debate I participated in is the innovations. Other forms of energy are being sought – clean energy, but all of this brings a lot of novelty, a lot of legislation (there are situations that are not yet regulated) and user education is necessary. In Rio de Janeiro, about 8000/10000 processes enter that need to be digitized and that drag on for years and years. So, as long as society doesn't resolve its own conflicts with other kinds of solutions, they need a push from the law. ODR delivers faster results, and people are learning to do so.

Dr. Ana – This is fantastic! If ODR manages to guide people towards other ways to resolve their disputes, we have already gained a lot in Brazil, as you just said. Cátia, what is the potential of ODR for the development of Justice?

Dr. Cátia – Tremendous! As I said when we started this conversation, I am convinced that doing justice now and in the future will undoubtedly pass through ODR. On the one hand, because associating technology with conflict resolution mechanisms can even eliminate them, in the sense that the parties often have the perception that they are in conflict and it may not be a real conflict. With technology, new tools, algorithms, screening mechanisms (it is often in this screening phase that it is verified whether or not a conflict exists), putting the parties in confrontation and verifying what is at stake in the hypothetical conflict, always with the perspective to resolve it between the parties before proceeding to court.

ODRs signify a paradigm shift, with regard to the very concept of conflict. Another important aspect that technology allows today is the dissemination of information. The disputing parties can find out about the legal and legal components, about what their rights are, and this all gives a new “clothes” to Justice. When we are truly faced with a conflict and it is necessary to introduce ODR mechanisms to reach a solution, today this is demanded by citizens: “I want to resolve my conflict”. The idea that was a hallmark of the last century, in which I transferred the solution of my problem to someone (lawyers, judge) is becoming outdated. Technological means have developed, society has adapted and these realities, when mixed, make citizens more autonomous and want to call themselves the solution to their problems. ODRs are this possibility: I say what I want, what are my interests and the opposing party does the same thing. The appropriate solution will emerge from this communion/confrontation of interests and this is synonymous with Justice in a new “dress”. Obviously we are talking about private justice, in which the parties will roll up their sleeves and use self-protection mechanisms, but there is a strengthening of citizens in the resolution of their conflicts. However, we cannot forget the fundamental principles of law. Developing ODR is not simply about growing conflict resolution mechanisms. This must be a concern of all of us (those who study, those who work, jurists, academics), to think about the development of ODR in a sustainable way and that it does not deviate into illegitimate private justice mechanisms, without principles, without ethics, without deontological values. The parties in conflict must be accompanied by their lawyers, so that they feel more protected. Without a well thought out procedure, this can result in injustices. I'm not talking about absolute control, but about having a certain pedagogy around the process, so that ODR is not synonymous with conflict resolution arena, but synonymous with more justice for all.

Dr. Ana – Admirable! We can talk about the ethical standards that are regularly released by the ICODR – International Council for Online Dispute Resolution. For those listening: [www.odr.info](http://www.odr.info)

We also have a set of ODR ethical standards that are recognized worldwide.

ODR is this: Justice in my hand – Justice tailored to me.

Nuno, any specific potential of ODR for Justice in Africa, in addition to what you have already mentioned?

Dr Nuno – We have to overcome some barriers before we get there, namely access to technologies, infrastructure and user empowerment. But knowing that Africa always runs at a different speed than the rest of the world, for better or for worse, I could say that ODR can offer accessible, legally available and delocalized processes. This seems to me to be a very important asset in Africa. They can produce efficient results and efficiency in justice is synonymous with quality and fairer justice. I also believe that by being a factor of celerity for the application of Justice, allowing that in a short period of time it can be applied, will remove some prejudices that exist in the populations and users of the Justice Forums, strengthening credibility and guaranteeing public trust in neutral representations that produce impartial results. Notice that in half a dozen words, I created the ideal world here, but I sincerely believe that ODR allows a step forward for Justice to become more fair, effective and ready to satisfy people's interests. As I mentioned before, in relation to foreign investment, it is a big step, as it represents a safeguard on investment, in countries that are normally seen as difficult to fit in when things are not going well.

Dr Ana – Fantastic! Technology, Justice, Development, Happiness. What better way to end this conversation of ours? But before leaving you, I would like to end for the listeners of CIBERIT 2022 with a word for each of your regions. Andreia, ODR and Brasil, what word comes to your mind?

Professor Andreia – BELIEVE! We can take the reins of solving our conflicts and building a better world, investing our time in it.

Dr. Ana – Thank you Andreia! Cátia, ODR for Portugal, for Europe, for the world?

Dr. Cátia – JUSTICE! Undoubtedly that is the word. It is very important that we continue to say that ODR is Justice, a contemporary way of doing justice, as Nuno mentioned. If you want an idea very connected to Portugal, the ODRs are the sun, because as was said here, we are going through a difficult time, people stopped believing in the Justice building and the ODRs can be the ray of sunshine that brings some light to the reformulation of this building, keeping the ideal unchanged.



Dr. Ana – Thank you Cátia! Nuno, in the midst of three women, I leave the final word to you: ODR and Africa?

Dr Nuno – Two words: DO NOT GIVE UP and I reinforce Cátia's word: BELIEVE. These words are the first step towards taking ODR further and accessible to a large number of people.

Dr. Ana – Thank you Nuno! And so we end our conversation about ODR in Portuguese-speaking countries. We thank all those who listened to us and we wish you a good morning, good afternoon or good night wherever you are.