Community Mediation for Local, Familial, and Low Economic Disputes:
A Review of Existing Approaches

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Community Mediation for Local, Familial, and Low Economic Disputes: A Review of Existing Approaches
by
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DISCLAIMERS AND LIMITATIONS

This review is based on information on law and policy available in English online and/or offline and based on the research completed in December 2022. Because this review is carried out primarily based on information publicly available online, it has more than several hundred URLs and links to publicly available laws, regulations, and electronically published documents. All referenced URLs and links were checked at the time when they were inserted into the footnotes. There is no guarantee as to their future accessibility. In case of citing a published document in a footnote, the footnote may include information on an author (or an authoring institution), a year of publication, title, page range, and URL or a link where the referenced publication was uploaded.

The findings, interpretations, and conclusions expressed in this work do not necessarily reflect the views of The World Bank.

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INTRODUCTION

In communities around the world, corruption, geographic proximity, inequitable laws, instability, judicial backlog, marginalization, poverty, weak institutions, and other issues hamper access to the justice. As of 2019, an estimated 5.1 billion people faced at least one of these access to justice issues, including 1.5 billion who could not obtain justice for everyday civil, administrative, or criminal issues.[2] Given the economic and societal strain caused by COVID-19, these numbers today are likely much higher. While the pandemic has spurred some innovations within justice sectors, it has also exacerbated pre-existing access to justice issues and even created new ones.[3] Further, the pandemic has pushed an estimated 88 million people into extreme poverty[4] and has caused certain legal issues, such as domestic abuse cases, to rise dramatically in its wake. The so-called "justice gap" must be addressed to effectively reach the UN Sustainable Development Goals (SDGs), in particular, SDG 16.3, which seeks 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."[5]

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[2] *Measuring the Justice Gap: A People-Centered Assessment of Unmet Justice Needs Around the World*, WORLD JUSTICE PROJECT, 5 (2019) https://worldjusticeproject.org/sites/default/files/documents/WJP_Measuring%20the%20Justice%20Gap_final_20Jun2019_0.pdf.

[3] "Webinar Summary: Access to Justice for All and the COVID-19 Pandemic: Recommendations for Action," *World Justice Project* (n.d.), https://worldjusticeproject.org/sites/default/files/documents/a2j-webinar-summary.pdf.

[4] "COVID-19 to Add as Many as 150 Million Extreme Poor by 2021," *World Bank Group* (Oct. 7, 2020), https://www.worldbank.org/en/news/press-release/2020/10/07/covid-19-to-add-as-many-as-150-million-extreme-poor-by-2021.

[5] "SDG Indicators: Metadata Repository, Goal 16," *United Nations Statistics Division* (n.d.), https://unstats.un.org/sdgs/metadata/?Text=&Goal=16&Target=16.3.

OVERVIEW OF ADR AND COMMUNITY MEDIATION

Alternative dispute resolution (ADR), as its name suggests, incorporates techniques that serve as alternates to the formal processes and procedures of court. If employed effectively, ADR can resolve conflict in an informal, flexible, and affordable manner that legitimizes community decision making, reduces familial disputes, and allows individuals to access justice that would be cost-prohibitive in the court setting. Given their flexibility, ADR processes can be highly customized to specific settings. This makes ADR an attractive mechanism for the justice reform community to increase access to justice for a myriad of legal problems, including those that occur the most within a community, i.e., those that are low-cost, local, and domestic in nature.

To understand the possibilities of ADR, a brief overview is helpful. Traditional models of ADR include negotiation (informal party-to-party resolution), mediation (third-party facilitates parties to reach agreed-upon resolution), and arbitration (parties submit issue to third-party arbitrator/s who issue resolution). From these fundamental models, hybrid ADR processes have evolved that mix traditional ADR methods together or even incorporate more formal procedures resembling court. One of the most well-known examples of a hybrid model is mediation-arbitration (med-arb), where parties engage first in mediation and, if that fails, submit their dispute to an arbitrator to resolve. A hybrid model can also use adjudication-like procedures outside of the formal justice system (such as religious dispute resolution). A hybrid model may even employ entirely different techniques than its traditional counterparts, such as an ombudsman. ADR can assist with backlog by giving a cost-effective alternative for everyday civil matters. However, it can also be used to cut down on litigation time and expense in high profile cases as well. In February 2021, for example, the largest mediation agreement in Latin America to date was reached in Brazil between a mining company named Vale and the Brazilian authorities.[6] The $7 billion reparation agreement was reached following a mining dam that burst in 2019 in Minas Gerais that dumped 12 million cubic meters of mining waste and killed 270 people.[7] Major distinctions between ADR models are

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[6] My thanks to Adriana Costa Lira for pointing me to the Vale reparation agreement. James Attwood, "Vale reaches $7bn settlement over deadly dam collapse in Brazil," *Al Jazeera* (Feb. 4, 2021), https://www.aljazeera.com/economy/2021/2/4/vale-reaches-7bn-settlement-over-deadly-dam-collapse-in-brazil.
[7] *Id.*

"whether the process is mandatory or voluntary, whether it is binding or non-binding, or whether the first step is facilitative (like mediation) or evaluative (like arbitration)".[8]

Many societies around the world utilize ADR that is connected to the formal justice system.[9] However, while ADR mechanisms tied to the formal justice system are no doubt important avenues of justice, some communities lack access to a court system entirely. In such cases, community mediation operates entirely—or almost entirely[10]—outside of the formal justice system. This paper therefore focuses primarily on community mediation given its ability to provide justice to those facing some of the most extreme access issues.

Over the years, numerous community mediation programs have been implemented in communities across the development spectrum with varying degrees of success. Given the diverse needs of a justice system, ADR can be used in conjunction with established legal processes to provide flexible options to parties for resolution.[11] However, because of the breadth of ADR processes and their context-specific nature, proposing recommendations for improvement in a generalized manner is difficult. Nevertheless, examples of innovative and successful community mediation programs are worth highlighting. Three examples have been selected from the existing literature based on their applicability to local, low-economic, and/or familial disputes: spinsary

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[8] Colin Rule, "ODR Around the World," *Tyler Technologies* (Aug. 14, 2019), https://www.tylertech.com/resources/blog-articles/odr-around-the-world.

[9] In court-annexed mediation, for example, cases are referred to court-accredited mediators through screening processes or through referral from judges in the formal justice system. The court itself provides mediation services. In some cases, parties are allowed to choose who will mediate their dispute from a list of mediators. The evidence presented in some cases is confidential and inadmissible at court. In Kenya, the court-annexed mediation program is binding, which adds confidence in and legitimacy to the process. In the Kenya example, if the parties are unable to reach a resolution during mediation, the court resumes jurisdiction over the case. Niranjan J. Bhatt, "Legislative Initiative for Court Annexed Mediation in India," *Mediate.com* (June 2003), https://www.mediate.com/articles/bhattN.cfm#:~:text=In%20COURT%20ANNEXED%20MEDIATION%20the,the%20matter%20to%20a%20mediator.&text=The%20Judge%20would%20feel%20that,a%20mediator%20within%20the%20system; "Court Annexed Mediation Offers Alternative to Delayed Justice for Kenyans," *The World Bank* (Oct. 2017), https://www.worldbank.org/en/news/feature/2017/10/05/court-annexed-mediation-offers-alternative-to-delayed-justice-for-kenyans.

[10] Some community mediation programs still refer cases to courts in certain cases and vice versa.

[11] In Ghana, for example, many ADR avenues exist for land conflicts including "[i]nformal arbitration by 'respected persons'; [s]tate-sponsored alternative dispute resolution to encourage out-of-court settlements; [c]ourt-annexed alternative dispute resolution by judges, explicitly for land related cases; [s]pecial committees at the land administration to deal with specific types of land conflicts (Land Title Adjudication Committee/Stool Lands Boundary Settlement Committee); [i]nformal land conflict settlement by land management experts who are usually members of the Ghana Institution of Surveyors; [i]nformal land conflict settlement by state officials such as elected officials; [r]eligious (Islamic) courts where land disputes are resolved by religious leaders based on religiously sanctioned codes; [and] [s]ettlement by professional mediators and arbitrators at private mediation centres based on international standards."[11] Babette Wehrmann, "Land Conflicts: A Practical Guide to Dealing with Land Disputes," GTZ, 65 (2008), https://www.commdev.org/pdf/publications/A-practical-guide-to-dealing-with-land-disputes.pdf.

groups in Afghanistan presents a model that incorporates marginalized women in dispute resolution; land disputes in eastern Democratic Republic of the Congo (DRC) provide an example of innovative ways that technology can increase access to justice in the ADR process; and Bangladesh's Madaripur Mediation Program demonstrates a long-lasting, sustainable ADR program that has been successfully scaled to other contexts.

Inclusion of Women and Vulnerable Populations: The Afghanistan Spinsary Group Example

Exclusion of marginalized populations is a problem that manifests itself across society, including in justice systems. Such exclusion can take many forms: social stigma; discriminatory rulings; financial dependence; decision makers comprised primarily of one sex, race, or ethnicity; traditional beliefs that prevent a certain group from participating in proceedings in part or in whole; fear of retaliation (for example, a battered spouse afraid to bring her abuser to justice due to concerns for her physical safety); etc. How to secure justice for some of the world's most vulnerable—including racial and ethnic minorities, members of the LGBTQIA community, refugees, asylum seekers, internally displaced persons, those who are stateless, and women and girls—remains an ongoing question. It is therefore useful to explore a model of community mediation that has actively sought to include marginalized groups. As such, this section explores spinsary groups in Afghanistan, which has included women in the community mediation with some degree of success. Please note that the majority of this section was drafted prior to the Taliban's rapid takeover of Afghanistan in the wake of the U.S. withdrawal. While USAID's work on spinsary groups have undoubtedly halted, it is nevertheless an informative example for those grappling with how to make justice more inclusive.

Overview of Community Mediation in Afghanistan

Prior to summer 2021, weak state institutions from political upheaval[12] and low levels of trust in the court system challenge Afghanistan's legal landscape. While survey data showed that Afghans had high levels of trust in fellow citizens, only 45% of surveyed respondents had trust in

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[12] *Performance Evaluation of the Rule of Law Stabilization-Informal Component Program*, USAID (May 2014), https://pdf.usaid.gov/pdf_docs/pa00jxpm.pdf.

the courts as of 2019, the lowest levels of trust among all state institutions.[13] High rates (61%) of Afghans faced legal problems within the past two years, most of which pertain to land, housing, or family matters. Only 38% of surveyed respondents, however, reported the ability to access help to resolve their issue. Of those who received help, 57% reported that a family or friend provided help while 10% reported that a lawyer or professional advice service provided help. A mere 6% of surveyed respondents stated that a court, government body, or police helped resolve their problem.[14]

Informal dispute resolution mechanisms involving elders and religious leaders have been crucial sources of justice for most people in Afghanistan.[15] During U.S. involvement in Afghanistan, some chose informal dispute resolution due to preference for customary and religious justice mechanisms that predate the modern formal justice sector by centuries. Others simply had no option to use the formal justice system due to lack of availability.[16] Further, informal justice mechanisms have filled gaps during times of conflict when the formal justice system was compromised.[17] Given the vast diversity of influences from numerous ethnic groups,[18] the informal justice sector is not uniform; it is a blend of tribal, customary, and Islamic influences that varies across Afghanistan. One of the most dominant forms of customary law is Pashtunwali law. In a broad sense, Pashtunwali law is rooted in notions of social order, community harmony, and honor. Islamic law—another significant influence in Afghanistan—on the other hand, flows from religious texts such as the Quran and Sunnah. These bodies of law are not exclusive and even share similarities,[19] but conflict in some substantive areas such as women's rights, which is discussed

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[13] *The Rule of Law in Afghanistan: Key Findings from 2019*, THE WORLD JUSTICE PROJECT, 7 (2019), https://worldjusticeproject.org/sites/default/files/documents/Final-Afghanistan-Report-2019.pdf.

[14] *Id.* at 22.

[15] *Performance Evaluation of RLS-I* at 6.

[16] PG Jangamlung Richard, "The Complexity of Justice System and Women in the Contemporary Afghanistan," 3 INT'L J. OF ADV. RESEARCH & TECH. 11, 143 (November 2014).

[17] *Id.* at 137.

[18] "In some regions where multiethnic [groups] settled, they have similar customary law[s] and traditional practices influence[d] by [the dominant] ethnic group. The Afghanistan central regions [of] Bamyan, Orozgan, Wardak and Balkh where Hajaras are majority, and the southern and eastern region where Pushtun dominated have common customary laws. However, the Nuristan provinces [in] the eastern part of Afghanistan where tribe[s] like Kata, Kom, Kuslh, Parsoon, Ashkoon and Guar inhabit are governed by their own customs. In the case of the northern region[s] diverse ethnic tribes of Tajiks, Uzbeks, Turkmens, Arabs, Ishmailis and Pushtun have own customs but sometime[s] [they] mingle together. There are several customs and traditional practices followed by different ethnic groups." *Id.* at 138.

[19] "In Afghanistan the Sharia laws are closely link with customary laws. Customary laws are dynamic and they are mostly oral tradition which incorporated Islamic laws during interpretation and proceeding. In spite of the introduction of statutory laws there were cases where judges apply Islamic laws, mainly because of the limitation in application of

below.[20] Given their long history in Afghanistan, both customary and religious law enjoy high levels of legitimacy, particularly in rural communities where formal justice is altogether absent.[21]

One prominent informal dispute mechanism is the *Jirga*, which is associated with the Pashtun[22] ethnic group, although it resolves disputes for non-Pashtuns as well. The *Jirga* refers to traditional tribal councils comprised of respected community members who resolve disputes at the local, tribal, and national levels.[23] Disputants must select and agree upon *Jirga* members, who are typically respected male elders that have some expertise in the subject matter of the underlying case and serve on a voluntary basis.[24] The procedure of the *Jirga* is not purely a community mediation model—it is a hybrid most closely resembling a combination of mediation and arbitration. After disputants present their claims, ". . . there is time for negotiation and discussion before the [disputants] hand over the adjudicating authority, known as *Waak*, to the *Jirga* members to settle the dispute."[25] It is not uncommon for disputants to hand over surety known as *Machalga* to monetarily agree to be bound by the *Jirga*'s decision.[26] Decisions from the *Jirga* typically focus on restorative outcomes such as forgiveness and community harmony, and decisions are enforced by a voluntary policing group known as the *Arbakai*.[27] Sanctions for a disputant who refuses to follow the *Jirga*'s decision can range from forfeiting the *Machalga* to harsh punishments such as "burning the house of the party who refuses to comply . . ."[28] A disputant may appeal a decision to a second *Jirga* and has a final right of appeal to a third *Jirga*. Other informal dispute mechanisms exist, such as the *Shura*, which exists outside of the Pashtun ethnic group and is an ad hoc assembly (also primarily male in composition) that gathers to resolve disputes as needed.[29]

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modern written laws. The customary laws and Islamic laws are also applied in the formal legal system especially in the sphere of family affairs." *Id.* at 137.

[20] Hamid M. Khan, "Islamic Law, Customary Law, and Afghan Informal Justice," *U.S. Institute of Peace*, 5-6 (2015), https://www.usip.org/sites/default/files/SR363-Islamic-Law-CustomaryLaw-and-Afghan-Informal-Justice.pdf.

[21] Richard at 137.

[22] "The Pashtun *Jirga* was developed by the Pashtun people, a group consisting of more than sixty tribes in Afghanistan and Pakistan. Pashtuns represent the most dominant ethnic group (historically known as Afghans). Pashtuns are known as Pathans and Pukhtuns and speak the Pashto (or Pukhtu) language." Basharatullah Sheenwary, *Institutionalizing Customary Dispute Resolution in Afghanistan: Lessons from the Navajo Approach to Harmonizing Traditional and Formal Justice*, 32 OHIO ST. J. ON DISP. RESOL. 245, 229 (2017).

[23] Richard at 137.

[24] Sheenwary at 253.

[25] *Id.*

[26] *Id.* at 253-4.

[27] *Id.* at 252.

[28] *Id.* at 251.

[29] Richard at 143.

Beyond the issues that have faced Afghanistan's justice system in general, women have faced unique problems that hamper their ability to access justice. Women's rights were severely restricted when the Taliban was in power from 1996 to 2001, resulting in an absence of women in the workforce, the government, and in schools.[30] While progress was made during the two decades of U.S. military presence, women and girls still faced significant challenges. In the months preceding the Taliban's takeover, the Taliban and ISIS carried out targeted killings of women professionals and activists (including government officials, human rights defenders, and journalists) and schoolgirls.[31] This intimidation and violence spilled over into the justice sector where women were already underrepresented; in January 2021, for instance, two women Supreme Court judges were shot and killed on their way to work.[32] Other issues persisted. While survey data indicates that Afghan women had moderate levels of awareness of their legal rights, comparable to that of men,[33] women were nevertheless less likely to possess legal identification or have the ability to read.[34] Further, regressive attitudes about women were rife: only 54% of women surveyed believed that women should work outside of the home compared to 40% of men, and a mere 64% of women believed that a man should be prevented from hitting his wife whereas only 52% of men held this view.[35] The Taliban's return to power has left women and girls in an even more precarious state.

Unsurprisingly, women have faced exclusion from informal dispute resolution as well, where women have been marginalized through patriarchal attitudes, male-only *Jirga* members, and mandated dress codes such as requirements for women participating in *Jirga* proceedings to wear *hejab*.[36] Further, women must often rely on a male family member to bring a dispute before a *Jirga* or must seek permission from the *Jirga* to proceed on her own if she is widowed or has no

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[30] "Afghanistan: Unravelling of women and girls' rights looms as peace talks falter," *Amnesty International* (May 24, 2021), https://www.amnesty.org/en/latest/news/2021/05/afghanistan-unravelling-of-women-and-girls-rights-looms-as-peace-talks-falter/.

[31] Aleem Agha & Guy Davies, "Recent killings in Afghanistan highlight ongoing issue of violence against women," *ABC News* (Mar. 5, 2021), https://abcnews.go.com/International/recent-killings-afghanistan-highlight-ongoing-issue-violence-women/story?id=76251017; "Afghanistan: Taliban Target Journalists, Women in Media," *Human Rights Watch* (April 1, 2021), https://www.hrw.org/news/2021/04/01/afghanistan-taliban-target-journalists-women-media; Heather Barr, "Killing Schoolgirls in Afghanistan: Attackers Target Girls Leaving Kabul High School," *Human Rights Watch* (May 10, 2021), https://www.hrw.org/news/2021/05/10/killing-schoolgirls-afghanistan.

[32] "Afghanistan conflict: Female judges shot dead in Kabul," *BBC News* (January 17, 2021), https://www.bbc.com/news/world-asia-55693972.

[33] *Rule of Law in* Afghanistan at 7.

[34] *Id.*

[35] *Id.*

[36] Sheenwary at 249-50.

man to bring the dispute for her.[37] One source reports that "young, unmarried women are never given this permission."[38] Remedies based on customary practices can also violate women's basic rights, such as honor killings. Additionally, girls from a perpetrator's family can be given to a victim's family (*baad*), where they may be mistreated or subject to forced marriage or to labor.[39] Pashtunwali law—a major branch of customary law in Afghanistan—bars women from owning or inheriting property or consenting to marriage, which violates not only international norms, but also *Sharia* law and Afghanistan constitutional and statutory law.[40]

Spinsary Groups in Afghanistan

The U.S. Agency for International Development (USAID) became involved in formal justice sector reform in Afghanistan with its five-year, $44 million Afghanistan Rule of Law program (AROLP) that ran from 2004 until 2009.[41] AROLP focused primarily on the formal justice sector, although it did some research, awareness-raising, and advocacy on informal justice mechanisms.[42] By AROLP's conclusion, however, it was progressively acknowledged that "nonstate justice [was] a more productive avenue for international engagement."[43] As such, AROLP had two successor programs—one devoted to the formal justice sector (the Rule of Law Stabilization-Formal Component, or RLS-F) and one specifically devoted to the informal justice sector (the Rule of Law Stabilization-Informal Component, or RLS-I).[44]

RLS-I had three objectives: (1) to strengthen traditional dispute resolution (TDR) mechanisms, (2) to strengthen links between the formal and informal justice sectors, and (3) to develop approaches that successfully resolve long-term intractable disputes.[45] Relevant for this paper, the first objective sought to strengthen TDR by "supporting the exchange of information among TDR actors, encouraging women's participation in TDR, reducing *baad* and other traditional TDR practices that are harmful to women and other disadvantaged groups, and

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[37] *Id.*
[38] *Id.*
[39] Richard at 153.
[40] Noah Coburn & John Dempsey, "Informal Dispute Resolution in Afghanistan," *U.S. Institute of Peace*, 6 (Aug. 2010), https://www.usip.org/sites/default/files/resources/sr247_0.pdf.
[41] Geoffrey Swenson, *Why U.S. efforts to promote the rule of law in Afghanistan failed*, 42(1) INTERNATIONAL SECURITY 114, 10 (2017), *available at* https://core.ac.uk/download/pdf/96716325.pdf.
[42] *Id.* at 11.
[43] *Id.* at 15.
[44] *Id.* at 12.
[45] *Performance Evaluation of RLS-I* at 6.

promoting best practices in TDR."[46] To accomplish its objectives, a number of activities were carried out under RLS-I, including elders networks and discussion groups, legal trainings, conflict resolution commissions, and community outreach on TDR.[47] The elders network meetings and discussion groups served to build coalitions between elders, women, and local and regional leaders "to promote dissemination of knowledge and adoption of justice best practices throughout [the program's] areas of intervention . . . [and] [to] develop[] a critical mass of support for improved justice practice and social behavior generally."[48]

The primary discussions topics during the meetings involved including women in formal and informal justice sectors, obstacles women face in the *Jirga*, and finding substitutes to *baad*.[49] The elder network meetings brought together approximately 2,100 elders in 2011, 42% of whom were women.[50] The network meetings "encourage[d] male and female elders to discuss and improve local systems for alternative dispute resolution, paving the way for women elders to transition to more public dispute mediation roles in their local communities."[51]

Following the elder network meetings and discussion groups, ten women's dispute resolution groups, known as *spinsary* groups, were formed.[52] Each *spinsary* group was composed of six respected female elders from the community.[53] Male and female elders received legal training from justice advisors and respected elders to enhance their understanding and ability to make decisions in accordance with Afghan law.[54]

TDR actors were also educated on women's rights under Afghan and *Sharia* law, including being educated on how certain customary practices, such as *baad*, conflict with Afghan, international, and *Sharia* law. By December 2012, 20,000 individuals, 40% of whom were women,

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[46] *Id.* at 13.

[47] *Final Report: Rule of Law Stabilization Program – Informal Component*, CHECCHI AND COMPANY CONSULTING, INC., (Nov. 2011), https://pdf.usaid.gov/pdf_docs/pdacy401.pdf.

[48] *Afghanistan Justice Engagement Model (JEM) Practitioner's Guide*, CHECCHI AND COMPANY CONSULTING, 5 (March 2018), https://www.tloafghanistan.org/old.tloafghanistan.com/Afghanstan%D9%80Justice%D9%80Engagement%20Model%20(JEM)%D9%80Practitioner's-Guide.pdf.

[49] *Final Report: RLS-I* at 16.

[50] *Spinsary Brings Peace: Women Elders are Part of the Informal Justice System in Afghanistan*, USAID (September 26, 2011), https://2012-2017.usaid.gov/results-data/success-stories/spinsary-brings-peace.

[51] *Id.*

[52] *Id.*

[53] *USAID Afghanistan Program Highlights: April 1-April 15, 2011*, USAID (2011).

[54] *Performance Evaluation of RLS-I* at 8.

had been trained on Afghan law.[55] Spinsary groups are credited with resolving or diffusing 486 disputes over a ten-month period in 2011 and 2012.[56]

By RLS-I's conclusion in 2014, 52% of survey respondents reported that *spinsary* groups resolved conflicts in their community, including (in order from most to least prevalent): family issues, marriage and engagement-related disputes, land disputes, long-term disputes, inter-tribal and inter-community disputes, and criminal issues.[57] This indicates that, while *spinsary* groups primarily resolve family disputes,[58] they nevertheless are involved in a variety of disputes in their communities. Other notable outcomes included 85% of female direct beneficiaries reporting personally benefitting from increased knowledge and/or increased respect from male family members, approximately 50% of female direct beneficiaries reporting feeling more empowered to speak up in their families and resolve disputes, and all *spinsary* members reporting "a strong sense of personal responsibility to resolve disputes in their communities."[59]

Additionally, a correlation appeared to exist between *spinsary* groups and the reduction of violations against women: "The findings suggest that where female spinsary groups were relatively strong, harmful practices targeting women were reduced. Specifically, the existence of female TDR bodies such as *spinsaries* seem to be an effective means of decreasing social practices that are harmful to women."[60] A total of 55% of indirect beneficiaries reported a decrease in the number of violations against women's rights over the past two years.[61] The data was also disaggregated for specific violations, showed that indirect beneficiaries perceived a decrease in physical beatings (over 50%), sexual harassment (over 60%), sexual abuse/exploitation (over 60%), forced or early marriage (approximately 45%), and *baad* (just under 50%).[62] Interestingly, however, nearly 50% of indirect beneficiaries noted an increase in verbal harassment of women in the preceding two years.[63] When asked for the cause in the general reduction of violations against women, some

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[55] "Fact Sheet: Rule of Law Stabilization Program—Informal Justice Sector Component," USAID (Dec. 2012), https://www.usaid.gov/sites/default/files/documents/1871/Fact%20Sheet%20RSL-Informal%20-%20Dec%202012%20-%20FINAL.pdf.

[56] *Fact Sheet: RLS-I.*

[57] *Performance Evaluation of RLS-I* at 29.

[58] *Final Report: RLS-I* at 17.

[59] *Performance Evaluation of RLS-I* at 7.

[60] *Id.* at 28.

[61] *Id.* at 25.

[62] *Id.* at 26.

[63] *Id.*

beneficiaries gave credit to RLS-I trainings.[64] Others, however, noted that practices such as *baad*
had been declining for the past decade.[65] Despite successes, some issues impeded the program's
success, such as difficulties locating qualified female trainers for women TDR participants, women
having difficulty participating in events due to insecurity, and attitudes regarding women's ability
to effectively resolve disputes.[66] Further, the success of the program varied across districts[67]
indicating that not all areas of Afghanistan are as receptive to women's involvement in dispute
resolution.

Three iterations of RLS-I ran from 2010 to 2014.[68] After 2014, RLS-I was renamed the
Afghanistan Justice Engagement Model (JEM) under USAID's Assistance for the Development
of Afghan Legal Access and Transparency (ADALAT) project.[69] ADALAT was a $68.2 million
project that ran from April 2016 until April 2021, continuing many of the activities that began
under RLS-I.[70] *Spinsary* groups, legal trainings, and elders networks and discussion groups
continued under ADALAT, incorporating a number of gender equity measures to maximize
women's participation.[71]

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[64] *Id.* "Reported human rights abuses, such as the practice of trading young women in the resolution process (*baad*),
declined, due in part to RLS-I sponsored workshops on Islamic law. RLS-1 sponsored workshops were linked to the
denouncement of the practice as un-Islamic and as an egregious violation of universally recognized human rights.
As a result, alternatives to *baad*, such as monetary and/or land compensation, were being put into practice." *Final
Report: RLS-I* at 5.
[65] *Performance Evaluation of RLS-I* at 26.
[66] *Id.* at 7-8.
[67] *Final Report: RLS-I* at 8.
[68] *JEM Practitioner's Guide* at 5.
[69] *Id.* at 1.
[70] "Assistance for the Development of Afghan Legal Access and Transparency (ADALAT) Overview," *USAID*
(December 2018),
https://www.usaid.gov/sites/default/files/documents/1871/Assistance_for_the_Development_of_Afghan_Legal_Acc
ess_and_Transparency_ADALAT_-_December_2018.pdf.
[71] "Gender equity in access to and outcomes of TDR is a JEM priority considered in all activities. As such, JEM
includes a parallel women's program of education, networking, discussion, and support to women as justice
providers, or spinsary group members. Additionally, women's rights and gender equity in justice processes is a
central component of most male and female legal education and solutions-based activities. National and
international gender advisors review legal education materials to ensure effective approaches. To maximize
women's participation, JEM is careful to broach the often-sensitive issue of women's roles in TDR in a locally
acceptable manner. This nearly always proves effective in winning support from elders and officials for engaging
with women. Where cultural restrictions hinder women's ability to travel, JEM implements a village-based program
to reach as many women possible. Finally, female community legal awareness mentors prove highly motivated and
capable in disseminating legal information, including material on women's rights, to other women in their
communities." *JEM Practitioner's Guide* at 2.

Several positive outcomes appear to have continued under ADALAT, including efforts involving *spinsary* groups:

> Spinsary group members gain confidence in collaborating with other
> women to proactively resolve and deescalate disputes, but also
> contributing to men's efforts in resolving larger 'women-related'
> disputes. Spinsary group members, armed with JEM legal
> information, become more active in advocating for greater respect
> for the rights of women and girls in dispute resolution processes,
> preventing, for example, cases of *baad*. In addition, the women
> regularly reflect on how JEM legal information and discussion on
> dispute-related issues has enabled them to identify and reform their
> own contributions to conflict. According to some women, this
> improved respect for the rights of others has reduced the number of
> disputes requiring resolution. Some of these women volunteer to
> become community legal awareness mentors. . .[72]

Unfortunately, however, detailed information about the effectiveness of spinsary groups under ADALAT is sparse. The ADALAT mid-term review for instance did not collect data on the number of spinsary groups created or were still in operation.[73] Performance data contained in the ADALAT mid-term review, however, reported that spinsary groups resolved or diffused 120 disputes in 2017 and 291 disputes in 2018.[74]

Observations

Social change such as increasing inclusion take time, particularly when such change seeks to shift centuries of cultural practice. A community mediation program alone, no matter how successful, will not in itself change entrenched biases and power imbalances. Still, the Afghanistan *spinsary* group example is promising considering how women's dispute resolution groups were formed and successfully resolved disputes in a cultural and political setting that has historically

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[72] *Id.* at 11-12.
[73] *Midterm Performance Evaluation: Assistance for the Development of Afghan Legal Access and Transparency*, MANAGEMENT SYSTEMS INTERNATIONAL, 87-90 (June 2020), https://pdf.usaid.gov/pdf_docs/PA00WQSX.pdf.
[74] *Id.*

been so restrictive for women. This in and of itself could be considered a success. Indeed, it is encouraging that training women elders to participate in *spinsary* groups had positive spillover effects within the community—women *spinsary* members reported feeling more empowered and respected by their families and neighbors. Further, the basic functioning of *spinsary* groups challenged a widespread misperception within many communities that women are simply not equipped to resolve disputes.[75]

On the other hand, even before the Taliban's takeover, the true impact of the *spinsary* group formation was a question, as was its sustainability. Several issues impeded success, including lack of qualified female trainers[76] and insecurity.[77] Moreover, success was not uniform—it is unsurprising that *spinsary* group activities were more effective in more progressive communities. It appears that the *spinsary* groups were less of a priority in ADALAT than the former iteration of the program.[78] Of course, this may be due to the severe backlash women were facing across Afghanistan that may have made *spinsary* group activities unsafe for beneficiaries and program staff or other internal factors not apparent from publicly available documents. Nevertheless, without attention and funding from USAID or another donor, especially now that the Taliban has returned to power, it is unclear if the *spinsary* groups formed under RLS-I and ADALAT will survive, and if so, to what extent.

In terms of lessons for the broader ADR community, the Afghanistan *spinsary* example illustrates that simply forming women's dispute resolution groups is not enough to foster inclusion. Prior to the formation of *spinsary* groups, elders networks and discussion groups laid the groundwork for *spinsary* group formation by engaging community members with high levels of trust and legitimacy (i.e., respected male elders) in the conversation on how to increase inclusion of women in TDR. Additionally, the program's effectiveness was enhanced by the ability to condemn harmful practices such as *baad* embraced under customary law by another long-standing and highly legitimate form of law—*Sharia* law. This emphasizes the need to identify suitable access points and culturally appropriate mechanisms to change behavior. Finally, community mediation mechanisms may perpetuate or even aggravate biases and discrimination against

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[75] *See Performance Evaluation RLS-I* at 28.
[76] *Performance Evaluation of RLS-I* at 7.
[77] *Id.* at 10.
[78] For example, while *spinsary* groups used to be featured prominently during RLS-I, it appears less frequently in ADALAT program reports and highlights. Data collection on *spinsary* groups is also more sparse in ADALAT documents.

disadvantaged groups.[79] Nevertheless, as a USAID Practitioner's Guide notes: "[w]here . . . the ADR program design is able to address the issue of bias through recruitment of minority mediators and thorough training, justice can be improved for these disadvantaged groups."[80]

The Use of Technology to Resolve Disputes: The Eastern DRC Land Dispute Example

Harnessing technology to increase access to justice is a critical topic given its vast potential for overcoming common barriers to justice. Technology is being used in a myriad of ways to this end: from streamlining and improving practice management to make services more affordable, to technologically enhanced frontline services such as chatbots to disseminate legal information and counsel, to improving user interaction through mobile apps, and beyond.[81] The examples are as numerous as they are diverse. Online dispute resolution (ODR), for example, is a form of online ADR that the National Center for State Courts defines as "a public facing digital space in which parties can convene to resolve their dispute or case."[82] ODR is often used in an e-commerce setting,[83] although its use varies across the world[84] and there have been proposals to utilize ODR in the community mediation context as well.[85] Another example is rAInbow, an artificial intelligence (AI) bot created by experts in justice, technology, design, and domestic violence for gender-based violence (GBV) victims.[86] The rAInbow bot is called Bo, who chats with victims through a mobile app to "help[] spot the signs of abuse, assess what is healthy and unhealthy behavior, and access resources for help."[87]

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[79] "Alternative Dispute Resolution Practitioner's Guide," *Office of Democracy and Governance*, USAID, 16 (Mar. 1998), https://pdf.usaid.gov/pdf_docs/Pnacp335.pdf.

[80] *Id.*

[81] "Technology, Access to Justice and Rule of Law: Is technology the key to unlocking access to justice innovation?" *The Law Society*, 8 (June 9, 2021), *available at* https://www.srln.org/system/files/attachments/technology-access-to-justice-rule-of-law-report.pdf.

[82] "What is ODR?", *The National Center for State Courts* (n.d.), https://www.ncsc.org/odr/guidance-and-tools.

[83] *See, e.g.,* Amy J. Schmitz, "There's an 'App' for That: Developing Online Dispute Resolution to Empower Economic Development," NOTRE DAME J. OF LAW, ETHICS AND PUBLIC POLICY (Jan. 14, 2018), *available at* https://ssrn.com/abstract=3101976.

[84] *See, e.g.,* Rule, *ODR Around the World*.

[85] *See* Raini Hassan, et. al, "Setting-Up a *Sulh*-based, Community Mediation-type of Online Dispute Resolution (ODR) in Malaysia," *2013 5th International Conference on Information and Communication Technology for the Muslim World* (Mar. 2013), *available at* https://ieeexplore.ieee.org/document/6518876.

[86] "Hi! I'm rAInbow," *rAInbow* (n.d.), https://www.hirainbow.org/.

[87] Themba Mahleka, "Can Technology Be Leveraged To Improve Access To Justice?" *Human Rights Pulse* (Jan. 8, 2021), https://www.humanrightspulse.com/mastercontentblog/can-technology-be-leveraged-to-improve-access-to-justice.

Technological innovations in justice provision have gained increased traction after the COVID-19 pandemic created unprecedented access issues across justice systems, forcing technology to be used in ways it may not have been under normal circumstances. For example, when the pandemic hit, the Indian Supreme Court used videoconferencing for the first time to allow cases to continue through the justice system despite lockdowns.[88] While some courts in India had already been utilizing videoconferencing for years, it was the first time the Supreme Court had done so, an effort a former justice on the court called "quite successful" when it was first attempted in March 2020.[89] Other courts across the world have made the shift to videoconferencing to accommodate the justice needs of citizens in a safe manner throughout the pandemic, including Dubai, South Africa, and the United Kingdom.[90] To highlight one way technology can assist in community mediation, this section explores the use of geographic information system (GIS), global positioning system (GPS), and drone technologies to resolve land disputes in eastern DRC.

Overview of Community Mediation in DRC

Disputes over land are a major driver of violence in DRC.[91] Land is a particular flashpoint in part because there are strong traditional connections to the land and because it is a primary marker of wealth.[92] These tensions take place against a backdrop of chronic violence[93] that manifested catastrophically in the late 1990s and the early 2000s in the First and Second Congo

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[88] Justice Madan Lokur, "COVID-19, Technology and Access to Justice," UNODC (n.d.), https://www.unodc.org/dohadeclaration/en/news/2020/04/covid-19--technology-and-access-to-justice.html.

[89] Another example from India includes using technology to translate decisions into several languages to make judgments more accessible across India's diverse population. *Id.*

[90] Mahleka, *Can Technology be Leveraged?*

[91] "These include a considerable diversity of forms of land governance that are fostered by: the existence of overlapping legal frameworks and weaknesses in statutory land law; increased competition over land, including among elites and between autochthonous and migrant communities, sometimes resulting from large-scale displacement; and the poor performance of the administration and justice system in the settlement of land disputes." *See* Gillian Mathys & Koen Vlassenroot, "'It's not all about the land': Land disputes and conflict in the eastern DRC," *Rift Valley Institute PSRP Briefing Paper 14* (Sep. 2016), https://www.peacetraining.eu/wp-content/uploads/2018/06/Its-not-all-about-the-land-by-Gillian-Mathys-and-Koen-Vlassenroot-RVI-PSRP-Usalama-Project-Briefing-2016.pdf.

[92] Merveille Kavira Luneghe, "How Mediators in DRC Are Doing What the Courts Can't," *Global Press Journal* (July 5, 2019), https://globalpressjournal.com/africa/democratic-republic-of-congo/mediators-drc-courts-cant/.

[93] Examples of this chronic violence includes the up to 15 million who perished during Belgium's brutal colonial regime and the corrupt and abusive 32-year dictatorship under Mobutu Sese Seko. Benas Gerdziunas, "Belgium's genocidal colonial legacy haunts the country's future," *The Independent* (Oct. 17, 2017), https://www.independent.co.uk/news/long_reads/belgiums-genocidal-colonial-legacy-haunts-the-country-s-future-a7984191.html; Bill Berkeley, "Zaire: An African Horror Story," *The Atlantic* (Aug 1993), https://www.theatlantic.com/magazine/archive/1993/08/zaire-an-african-horror-story/305496/.

Wars, killing an estimated 3.5 to 5.4 million people.[94] Periodic outbreaks of fighting have been ongoing ever since, including largescale violence that displaced 5.01 million between 2017 and 2019.[95] Dislocation and dispossession are serious issues arising out of the instability in DRC.[96] While land disputes have resulted in widespread violence between entire communities, the most common land disputes are interpersonal and intra-familial, relating to "plot boundaries, inheritance, widows' rights to land, the validity of contracts, and illegal acquisition and occupation."[97]

Weak—and in some cases non-existent—state institutions, corruption, geographic remoteness, and instability reduce access to and trust in the formal justice system.[98] The legal framework governing land is also viewed as unfair and deficient.[99] The inability to access reliable information is another major issue:

> . . . [T]he lack of widespread access to clear, verifiable and precise
> information means that rumours are pervasive and conflicts often
> erupt because of hearsay and/or biased presentation of information.
> This creates an environment where conflict often mirrors the
> stereotypes and prejudices that prevail between and within groups,
> and where the positions and perceived interests of conflict parties
> may be far removed from reality.[100]

Prior to colonization, the inhabitants of eastern DRC lived under a customary system that governed land rights.[101] However, this customary system of land ownership was disrupted by the colonial regime, causing a dislocation of people from their traditional lands that continues to cause issues today as state law conflicts with customary laws.[102] Commercial, conservation, industrial projects

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[94] Armin Rosen, "The Origins of War in the DRC," The Atlantic (June 26, 2013), https://www.theatlantic.com/international/archive/2013/06/the-origins-of-war-in-the-drc/277131/.

[95] "DR Congo Emergency," *UNHCR* (last updated March 2020), https://www.unhcr.org/en-us/dr-congo-emergency.html.

[96] *Id.*

[97] Mathys & Vlassenroot at 2.

[98] Fabien Nsengimana, Eugéne van Kemenade, & Aurélien Tobie, "Strengthening Local Mediation Efforts: Lessons from Eastern DRC," *Initiative for Peacebuilding*, 9 (Nov. 2010), *available at* http://dmeforpeace.org/sites/default/files/Nsengimana_Strengthening%20Local%20Mediation%20Efforts.pdf.

[99] *Id.* at 18.

[100] *Id.* at 9.

[101] "Land rights and nature conservation in Democratic Republic of the Congo," *Land Rights and Conservation Issue Brief*, 1 (2016), https://www.iucn.org/sites/dev/files/content/documents/tger_drc_final_-english.pdf.

[102] Archip Lobo, "Sharing the Land: Using Mapping Technology to Resolve Disputes," *USAID* (Feb. 9, 2016), https://blog.usaid.gov/2016/02/sharing-the-land-using-mapping-technology-to-resolve-disputes/.

as well as resource exploitation conflicts with individual interests.[103] Regarding commercial allocation in particular, "[i]n almost all cases, commercial interests trump the rights of indigenous and local communities when it comes to land use allocation."[104] Land disputes reportedly account for 80% of courts' and tribunals' caseload,[105] illustrating the prevalence of such disputes in DRC.

Efforts have been made to increase access to justice in DRC, for example, through the deployment of mobile justice. Cordaid's 4x4 Justice program accessed remote areas of DRC by driving lawyers and judges to such areas in 4x4 jeeps.[106] Given the pervasiveness of land disputes and their contribution to ongoing instability, land is central to many access to justice programs. UN Habitat and UNHCR, for example, focused on ADR mechanisms for land disputes through creating Community Land Mediation Centers in North Kivu, launching rapid response teams of land mediators, organizing outreach and awareness raising activities, and attempting to "strengthen existing land administration through the reform of land-related legal framework and the decentralization of land administration."[107]

Long-standing local and international NGOs are involved in community mediation of land disputes as well, although approaches vary. The Réseau Haki na Amani (RHA) for example, is an Congolese NGO that operates in the Ituri province of eastern DRC.[108] It was formed in 2002-2003 to "ease tensions between communities in the region," and they "continue to build relations between ethnic groups in Ituri."[109] The RHA convenes participants across communities ranging between 100 and 400 people and focuses largely on land disputes.[110] Local peace initiatives (Initiatives Locales de Paix, or ILPs) have been created through the RHA, "which originate from the communities themselves and provide liaison and information flow between the communities and the Réseau."[111] The ILPs help identify and resolve conflicts and provides intel on the situation

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[103] *Land Rights and Nature Conservation in DRC* at 1.

[104] *Id.*

[105] Paul Schattenberg, "Sharing the Land Initiative Resolves Land Disputes in Africa," *Texas A&M Today* (Dec. 17, 2020), https://today.tamu.edu/2020/12/17/sharing-the-land-initiative-resolves-land-disputes-in-africa/.

[106] Hetty Burgman & Rob Sijstermans, "In Focus: Sharing Lessons from the Field: Access to Justice in the Democratic Republic of Congo," *Human Rights Funders Network* (Sep. 26, 2014), https://www.hrfn.org/community-voices/lessons-from-the-field-access-to-justice-in-drc/.

[107] "The Democratic Republic of Congo," *The EU-UN Partnership on Land, Natural Resources and Conflict Prevention* (n.d.), https://www.un.org/en/land-natural-resources-conflict/country/drc.shtml.

[108] Nsengimana, van Kemenade & Tobie at 12.

[109] "Reseau Haki Na Amani (RHA)," *Peace Insight* (n.d.), https://www.peaceinsight.org/en/organisations/rha/?location=dr-congo&theme.

[110] *Id.*

[111] Nsengimana van Kemenade & Tobie at 12.

in the locales it serves. If a community is unable to resolve a dispute, it can be taken to the Réseau. Further, the RHAs uses "animateurs" to raise awareness on root causes of conflict and land rights.[112] The Life and Peace Institute (LPI) is another organization involved in community mediation of land disputes.[113] LPI is a Swedish organization that operates in North and South Kivu, with over a decade of creating "knowledge partnerships" with local civil society organizations.[114] LPI utilizes a Participatory Action Research (PAR) process to identify facts and bring conflict-affected communities together "to agree on a shared analysis and identify actions to resolve local conflicts."[115] Another such organization is Cercle International pour la Défense des Droits de l'Homme, la Paix et l'Environnement (CIDDHOPE), which mediates land disputes for free, allowing locals to have affordable, proximate access to justice when barriers such as cost, distance, and corruption otherwise prevent them from doing so.[116]

The Use of GIS and GPS technologies to resolve land disputes in DRC

In 2014, DRC's Integrated Research Institute (IRI) of the Christian Bilingual University of Congo (UCBC) began studying land conflict in Beni in the eastern DRC province of North Kivu[117] in response to protests over land management mechanisms.[118] At the time, data about land boundaries was not precise or reliable, and most land records were kept on paper documents, which are vulnerable to being lost or destroyed.[119] The IRI decided to utilize GIS software to "map land parcels, creating layers to track the differences between state ownership and historical ownership," which would "help clarify the land purchasing process, while also giving the land authority a better platform for managing land ownership data."[120] To gain support for its idea, IRI applied for and

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[112] *Id.*

[113] "Our programme in Democratic Republic of Congo," *Life and Peace Institute* (n.d.), https://life-peace.org/our-work/drc/.

[114] *Id.*

[115] Nsengimana, van Kemenade & Tobie at 12.

[116] Luneghe, *How Mediators in DRC Are Doing What the Courts Can't*.

[117] Lobo, *STL: Using Mapping Technology*.

[118] "Sharing the Land," *Integrated Research Institute IRI-UCBC* (n.d.), https://iriucbc.org/current-projects/sharing-the-land/.

[119] Paul Schattenberg, "Sharing the Land initiative promoting peace in Africa," *AgriLife Today* (Dec. 14, 2020), https://agrilifetoday.tamu.edu/2020/12/14/sharing-the-land-initiative-promoting-peace-in-africa/.

[120] Lobo, *STL: Using Mapping Technology*.

won two research grants from Texas A&M AgriLife Research to begin an initiative called the Sharing the Land (STL) program in 2015.[121]

Texas A&M had previously been involved in using remote sensing to assist with range management in Afghanistan through USAID's Pastoral Engagement Adaptation and Capacity Enhancement (PEACE) project.[122] Afterwards, Texas A&M partnered with Stewart Title Company of Houston, Texas, to create community-based land registration in Ghana by using GPS technology to map farmland.[123] Texas A&M's work in Ghana served as a proof of concept that allowed it to work with USAID on further conflict and development research, which ultimately led to the creation of Texas A&M's Center for Conflict and Development (ConDev).[124] The IRI partnered with ConDev to "use research, technology, community engagement, and public sector activism to produce a sustainable, dynamic, effective, transparent land registry system to be implemented in North Kivu to prevent land conflict."[125]

STL espouses a "pro-poor, gender neutral" participatory approach by involving stakeholders and beneficiaries in identifying solutions to land disputes in local communities.[126] At the program's beginning, STL created a land mapping tool for Beni utilizing both technology and community participation. Initially, STL used unmanned aerial vehicles—commonly known as drones—to gather visual data of Beni. The program later incorporated a combination of GPS and GIS technologies. Satellite images from GPS technology provided data about the land and its boundaries. The GPS data was supplemented with survey data and government records from the community. With that data, the STL initiative began publishing a digital map using GIS technology:

> A geographic information system (GIS) is a system designed to capture, store, manipulate, analyze, manage, and present all types of geographical data. The key word to this technology is Geography – this means that some portion of the data is spatial. In other words,

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[121] Schattenberg, *STL promoting peace in Africa*.
[122] *Id.*
[123] *Id.*
[124] *Id.*
[125] "Research-to-Action Plan: Sharing the Land: A Research Program Under the Integrated Research Institute at the Université Chrétienne Bilingue du Congo," *Research Technical Assistance Center*, POPULATION REFERENCE BUREAU, 12 (Aug. 2019), *available at* https://www.condevcenter.org/Portals/0/DRC-STL_Research-to-Action-Plan_FINAL.pdf?ver=2019-09-26-135801-987.
[126] Schattenberg, *STL promoting peace in Africa*.

data that is in some way referenced to locations on the earth. . . . GIS can be used as tool in both problem solving and decision making processes, as well as for visualization of data in a spatial environment. Geospatial data can be analyzed to determine (1) the location of features and relationships to other features, (2) where the most and/or least of some feature exists, (3) the density of features in a given space, (4) what is happening inside an area of interest (AOI), (5) what is happening nearby some feature or phenomenon, and (6) and how a specific area has changed over time (and in what way).[127]

The GIS-created map used in the STL initiative included "landmarks, points of interest, rivers, administrative boundaries, road names and their current condition, along with mapping all six cells of the Masiani Quarter."[128] In addition to geographic data, the digital map included land claims and conflict data[129] and demonstrated how land ownership claims have changed over time.[130] 531 land claims were included in the digital map of Beni.[131] The use of digital mapping technology allowed the community to access reliable data stored in a more secure manner than paper documentation. As ConDev's program advisor, Dr. Leslie Ruyle explained how GPS and GIS technologies have "provide[d] a degree of precision and level of detail that could not have been imagined in the past."[132]

The STL initiative eventually partnered with UN-Habitat and the Global Land Tools Network (GLTN)[133] to improve its management and information system by using GLTN's Social

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[127] "Mapping and Geographic Information Systems (GIS): What is GIS?" *Research Guides*, UNIVERSITY OF WISCONSIN-MADISON LIBRARIES (n.d.), https://researchguides.library.wisc.edu/GIS.

[128] "DRC: Sharing the Land," *Texas A&M University Center on Conflict and Development* (Dec. 2020), https://www.condevcenter.org/DRC/Sharing-the-Land.

[129] *Id.*

[130] Schattenberg, *STL Promoting Peace in Africa.*

[131] *Id.*

[132] *Id.*

[133] "The Global Land Tool Network (GLTN) is an alliance of more than 75 global, regional and national multi-sector partners. The Network was launched in 2006 in response to gaps in land governance and administration approaches, tools and systems which hinder the delivery of land tenure security at scale. GLTN partners work together to improve tenure security for as many people as possible with a specific focus on women, youth and vulnerable groups. The core function of GLTN is the development and dissemination of inclusive land tenure approaches supported by practical, fit for purpose, gender responsive and innovative tools that promote sustainable development by leaving no-one behind and alleviating poverty." "GLTN at UN-Habitat, a world in which everyone enjoys secure land rights," *UN-Habitat* (n.d.), https://unhabitat.org/gltn.

Tenure Domain Model (STDM) in Beni's Masiani neighborhood.[134] The STDM addresses implementation issues that often follow high-tech land administration tools by using participatory, pro-poor methods.[135] The STDM surveys local communities to gain awareness of their needs. It then customizes its STDM tool based on the communities varying needs—for example, its desktop application can track a household's tenure relationships with its house (i.e., tenancy, sublease, ownership, etc.) or its farm (i.e., share cropping, individual ownership, commercial ownership, etc.).[136] The STDM's data management is also able to be used in environments with and without access to internet.[137] Supporting documents can also be stored in the STDM system such as photos, scanned copies of bills, and hand-written tenancy agreements.[138] Software developers can modify and extend STDM capabilities depending on project needs.[139] During implementation, STDM engages leaders and members of local communities through consultations, identifying areas in which STDM can be used, mobilization, and sensitization.[140] Participatory data collection is also a major component of STDM:

> The data requirements of the project are identified and customised in the STDM to fit the local context. This is an iterative process which is considered final once all the stakeholders have reached agreement on the data attribution to be captured, using either digital or paper-based surveys. Data collection involves conducting interviews and plot or structure mapping, and the enumeration teams are usually accompanied by local leaders and local government officials. The mapping can be done using handheld GPS receivers

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[134] Schattenberg, *STL Promoting Peace in Africa*.

[135] Oumar Sylla, Danilo Antonio & John Gitau, "The Power of the Social Tenure Domain Model: A Flexible, Low-cost Solution for Recording Land Rights," *GIM International* (May 9, 2018), https://www.gim-international.com/content/article/the-social-tenure-domain-model-2.

[136] "By default, every tenure relation between a party and spatial unit includes a percentage share of the right as well as information on start and end dates representing the duration for which the relation is valid. In addition, custom tenure-specific attributes, such as the identification number of tenure supporting documents, can be defined depending on the tenure context." *Id.*

[137] "All the spatial and attribute information in the STDM is stored in a PostgreSQL/PostGIS database, with the user interface hosted as a QGIS extension, also known as a plug-in. The use of PostgreSQL and PostGIS software components enables the STDM to be deployed as a stand-alone installation or in a client-server environment. The former is mostly applicable in those areas where internet infrastructure does not exist or might be too costly to set up for the given program[], such as in urban informal settlements or rural areas." *Id.*

[138] *Id.*

[139] "The STDM is written in Python programming language and the developer community can participate in the open-source project on GitHub." *Id.*

[140] *Id.*

and/or high-resolution satellite images depending on the context. All the collected data, documents and photographs are entered into the STDM tool. In some instances, the initial digital maps are also updated at this stage. The enumerators are also trained to analyse the data and produce reports using the tool.[141]

Once data is collected, it is then verified by community members before it is included in the STDM database to increase its credibility. Community members determine how the database will be updated and sustained with support from GLTN. Further, "[m]anuals, guidelines[,] and process documents are produced, and translated if applicable, as part of standard outputs from these interventions."[142]

The STL initiative continues to be run primarily by students at the IRI.[143] Since the initial map of Beni was created, the program has expanded to other areas such as the Les Volcans neighborhood in Goma, North Kivu .[144] The STL initiative has also broadened to other locations in South Kivu and Ituri in DRC[145] and has been used in peri-urban, urban, rural, and post-conflict settings.[146] It is advertised as "cost-effective" with the "potential for increasing revenue stream by addressing land conflicts effectively,"[147] although the numbers on cost and potential revenues do not appear to be publicly available. STL has sparked interest in areas far beyond the border, such as Senegal,[148] which is approximately 2,800 miles from DRC. As of 2020, the program had reportedly reached over 1,000,000 beneficiaries.[149]

As discussed above, many NGOs are involved in community mediation in DRC by addressing root causes of conflict in their programs by including the community in identifying and resolving disputes. The STL initiative utilizes technology to take it a step further. The STL initiative not only addresses root causes of conflict in DRC—namely, poor land administration—but also compiles credible data used to mediate land disputes.[150] Given the vulnerability to

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[141] *Id.*
[142] *Id.*
[143] Schattenberg, *STL Promoting Peace in Africa*.
[144] *DRC: Sharing the Land*.
[145] Schattenberg, *STL Promoting Peace in Africa.*
[146] *Research-to-Action Plan* at 33.
[147] *Id.*
[148] Schattenberg, *STL Promoting Peace in Africa.*
[149] *DRC: Sharing the Land*.
[150] "Sharing the Land," *YouTube*, Conflict and Development at Texas A&M (Dec. 14, 2015), https://www.youtube.com/watch?v=7PBL_Ds4NDw&t=121s.

misinformation and rumor, access to objective, verified information increases access to justice for those the program has benefitted. Further, if community mediation efforts are grounded in quality, reliable information, it is likely community trust will increase in the mediation process as well. However, data on how often the digital land maps have been used in community mediation does not appear to exist. Given the prevalence of land disputes in eastern DRC and other countries around the world, this would be useful information to gather in future studies.

Despite the STL initiative's promise, the use of technology in ADR can be difficult even in highly developed nations. For example, a recent report focusing on England and Wales identified several barriers in successfully utilizing technology and innovation in ADR, including "widespread confusion, variation[,] and fragmentation; access to common data and lack of trust; inequality of resources in providers and limited offer of products available for non-commercial purposes; duplication and repetition; time, capacity[,] and skills; capabilities, digital literacy[,] and legal literacy; funding; [and] regulatory concerns . . ."[151] That same report noted that "[t]echnology alone is not the silver bullet [to making the justice and legal system more accessible]. Barriers can be overcome with an innovation strategy, coupled with better data management, information sharing and coordination in the sector."[152] As the Legal Services Corporation noted, "[w]e need to avoid the temptation to focus *only* on technology because process reform is just too daunting and too long."[153] Technology can increase access to justice, but to be most effective, it must be accompanied by other efforts to address justice barriers. The STL initiative takes steps in this direction by focusing on root causes of conflict and participatory approaches to land reform; utilizing both high-tech and low-tech methodologies; and partnering with groups such as GLTN that has capabilities, through its STDM tool, to operate in environments without internet. Those seeking to utilize technology to facilitate access to justice through community mediation should do so with an understanding of the limits of technology to create a robust program that is effective regardless.

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[151] *Technology, Access to Justice and Rule of Law* at 4.
[152] *Id.* at 19.
[153] "Five Requirements for Realizing Technology's Potential to Improve Access to Justice," *Legal Services Corporation* (Jan. 16, 2020), https://www.lsc.gov/spotlight-blog/five-requirements-realizing-technologys-potential-improve-access-justice.

Sustainable, Long-Lasting, Scalable ADR: The Bangladesh Madaripur Mediation Example

Efforts to improve community mediation abound as do questions regarding their sustainability. How does a community mediation program ensure that it can last when political, social, and economic climates change and donor interest wanes? The question of funding and resources are of course central considerations, but there are other factors that also impact whether a community mediation program can exist sustainably, such as community participation and political will. The sustainability question has been touched on indirectly in previous sections, but given its importance, particularly to the achievement of the aptly named Sustainable Development Goals, it will be explored in depth below. As such, Bangladesh's Madaripur Model of Mediation is analyzed as an example of a long-lasting community mediation program that has been successfully scaled to other contexts both within the country and beyond.

Overview of Community Mediation in Bangladesh

Since Bangladesh became an independent state in 1971, its legal system has been inaccessible to much of its population. Whereas the majority of its population lives in rural areas,[154] formal courts are primarily located in urban centers—creating travel costs, time, and logistical barriers for rural justice seekers.[155] Bangladesh's historically high rates of illiteracy[156] only complicates its complex and confusing legal system.[157] USAID's ADR Practitioner's Guide notes that "access [to justice] is effectively denied because the formal system requires a level of literacy that many in the country do not have. In these countries, the formal legal processes are especially intimidating for large numbers of illiterate citizens."[158] Literacy rates have improved in the past decade in particular; nevertheless, disadvantaged populations such as women and the elderly continue to have high rates of illiteracy.[159] Lawyers providing representation in a formal court can

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[154] *See* "Rural population (% of total population) – Bangladesh," *The World Bank* (n.d.), https://data.worldbank.org/indicator/SP.RUR.TOTL.ZS?locations=BD.

[155] Md. Abdul Alim & Tariq Omar Ali, "NGO-*shalish* and Justice-seeking behviour in rural Bangladesh," *Research and Evaluation Division*, BRAC CENTRE, 3 (Nov. 2007), https://bigd.bracu.ac.bd/wp-content/uploads/2020/03/NGO-shalish-and-Justice-seeking-Behaviour-in-Rural-Bangladesh.pdf.

[156] *See* "Bangladesh – Adult (15+) literacy rate," *World Data Atlas*, Knoema (n.d.), https://knoema.com/atlas/Bangladesh/topics/Education/Literacy/Adult-literacy-rate.

[157] *See* Alim & Ali at 3.

[158] *ADR Practitioner's Guide* at 15.

[159] *See Bangladesh – Adult (15+) literacy rate*.

also be intimidating given caste and class differences.[160] Further, many in Bangladesh live below the poverty line, making the "[e]xhorbitant costs" of the formal justice system prohibitively expensive.[161] Although poverty rates have dropped significantly from 44% in 1991 to 15% in 2015, the COVID-19 pandemic has caused major economic setbacks.[162] Expense will remain a barrier for many, particularly the most vulnerable. Discrimination against women and other disadvantaged groups, judicial backlog, unawareness, lack of resources, social taboos, lack of translators, corruption, and low opinions of the judiciary further undermine access to justice in Bangladesh.[163] One assessment showed that women and the poor were most likely to feel the formal justice system was biased and inaccessible.[164]

Given the barriers in the justice system, a community-based mediation system known as *shalish* is an important conduit for justice for many in Bangladesh.[165] USAID-Bangladesh conducted a validation assessment, which concluded that "[b]y far and away the most accessible, most commonly used, and relatively trusted agency is that of the local *shalish*."[166] As of 2009, 60-70% of rural disputes were taken to the *shalish* for resolution.[167] *Shalish* is a long-established form of traditional community dispute resolution in which village elders and elites mediate local disputes.[168] The members of the *shalish* are known as a *shalishkars*, although the name varies in different areas of the country.[169] While *shalishkars* generally do not have professional legal training, they nevertheless have a deep understanding of their community's social dynamics, which formal courts lack.[170] The *shalish* resolves disputes with the overall goal of preserving relationships and reestablishing community harmony.[171]

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[160] *ADR Practitioner's Guide* at 15.
[161] Alim & Ali at 3.
[162] "The World Bank in Bangladesh—Overview," *The World Bank* (*last updated* Mar. 30, 2021), https://www.worldbank.org/en/country/bangladesh/overview.
[163] Alim & Ali at 3.
[164] *ADR Practitioner's Guide* at 38.
[165] *See,* Alim & Ali, generally.
[166] *ADR Practitioner's Guide* at 34.
[167] Muhammad Rafiqul Hoque & Muhammad Mustaqim Mohd Zarf, *Traditional Shalish system for rural dispute resolution in Bangladesh*, 16 IIUC STUDIES 35, 35 (Dec. 2019).
[168] Alim & Ali at 5.
[169] Hoque & Zarf at 37.
[170] *Id.* at 45.
[171] *Id.*

The applicant, or party who brings the dispute to the *shalish*, is known as the *badi*.[172] The respondent is known as the *bibadi*.[173] A case typically begins when the *badi* brings the dispute to the *shalish* for resolution.[174] Once the case is brought, both the *badi* and *bibadi* must consent to mediation from the *shalish* and agree to accept its ruling. In some cases, money is collected from the parties to ensure their compliance with the *shalish*'s ruling.[175] Sometimes the *shalish* will observe a particularly contentious community dispute, such as a criminal matter, and reach out to the parties to attempt to reach a peaceful resolution.[176] Even in such cases, parties must consent to mediation by the *shalish*.[177] To show their consent, the parties sign and date a piece of paper with the title of the *shalish* written on it.[178] If a peaceful resolution is reached, the piece of paper is often ceremonially shredded.[179]

The proceedings before the *shalish* are divided into several stages—at the end of any given stage, proceedings may end if it is enough to reach a resolution.[180] The overall process is similar to med-arb, in that the *shalish* first acts to mediate the dispute to help the parties reach a compromise, or *somojuta*.[181] If that fails, the parties must then consent to *bichar*, i.e., the *shalish* arbitrating the dispute and handing down a decision.[182] The first stage is an oral hearing from both the *badi* and the *bibadi*.[183] The next stage is akin to cross-examination in which the *shalishkars* will ask the parties clarifying questions.[184] If the parties are unwilling to compromise after the hearing and cross-examination alone, then more formal, arbitration-like proceedings (*bichar*) will commence.[185] In this stage, the *shalish* will consult evidence and check documents.[186] With land disputes, the *shalish* may consult outside experts or surveyors.[187] A *shalish* board, or jury, is then formed, composed of the chairperson of the *shalish* or members of the audience.[188] The parties are

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[172] *Id.*
[173] *Id.*
[174] Hoque & Zarf at 47.
[175] *Id.*
[176] *Id.* at 48-49.
[177] *Id.* at 49.
[178] *Id.*
[179] Hoque & Zarf at 49.
[180] *Id.* at 49-51.
[181] *Id.* at 50-51.
[182] *Id.*
[183] *Id.* at 49-50.
[184] Hoque & Zarf at 50.
[185] *Id.* at 51.
[186] *Id.* at 50.
[187] *Id.*
[188] *Id.* at 50-51.

sometimes allowed to choose members to go on the *shalish* board.[189] The *shalish* board reviews the statements and the evidence and comes to a decision based on the majority.[190] The *shalish* starts at the clan level; if the matter is not resolved, then it goes to the village panchayat level and beyond that the parishad or Thana level.[191] Decisions reached by the *shalish* are publicly announced in the community; typically parties comply with the decision since it is considered dishonorable not to do so.[192] The *shalish* may also establish interventions to help ensure decisions are implemented.[193]

Despite the popularity of traditional *shalish*, many problems impact its ability to function in a fair and accessible manner. Since *shalish* is an intensely local proceedings, it is subject to intra-village conflict and its decision-making can also be swayed by rich and powerful local elites.[194] Other community dynamics, such as "fear of local terrorists[] and the domination of orthodox religious views," can also influence the *shalish* in ways that may not be fair to all parties involved.[195] Corruption is another major issue. For example, in some cases the security money collected from the parties to ensure compliance with the *shalish* is misused by the *shalishkars* instead of returned.[196] As one source described:

> Originally, Shalish was an effective means of resolving local
> disputes in an amicable, cost-effective manner whereby fractured
> relationships were restored. However, gradually the shalish system
> was subject to exploitation at the hands of the powerful elite who
> used their positions to enforce discriminatory practices to maintain
> the status quo and local patronage system. Shalish mediators or
> shalishkars imposed decisions rather than negotiated agreements
> between disputants and local communities lost confidence in the
> shalish system and declined to take their grievance to the body.

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[189] Hoque & Zarf at 50.
[190] *Id.* at 41.
[191] *Id.* at 48.
[192] *Id.* at 51-52.
[193] For example, as one *shalishkar* noted, "Suppose for a criminal offence a man has to seek forgiveness from a woman. In this case, we request any local *murobbi* (elderly person) to be with the man when he meets the woman for asking forgiveness. He is to report back accordingly to the *Shalish* committee. If the case is about a land dispute, we make someone responsible to supervise it and help us giving report about its implementation." *Id.* at 52.
[194] Alim & Ali at 3.
[195] *Id.*
[196] Hoque & Zarf at 49.

People were subsequently left with two options - using the expensive and time-consuming courts or to putting up with their grievances.[197]

Additionally, the *shalish* sometimes hands down decisions that violate the rights of women, including *fatwas*.[198] In fact, survey data shows that most respondents, particularly women, felt that the *shalish* was biased and ill-informed.[199]

Beyond the traditional model of *shalish* described above, there is also government-facilitated *shalish* and NGO-facilitated *shalish*.[200] Local elected government officials (the Union Parishad or UP) participate in government-facilitated *shalish*.[201] Government-facilitated *shalish* regulates punishments, yet it has many of the same issues regarding disadvantaged groups as traditional *shalish*.[202] NGO-facilitated *shalish*, however, seeks to address many of the issues involving corruption and discrimination against disadvantaged groups.[203] Many organizations are involved in NGO-facilitated *shalish*, including the Bangladesh Legal Aid and Services Trust (BLAST), Ain-o-Salish Kendra (ASK), and Nagorik Uddayog (NU).[204] Perhaps the most prominent example of NGO-facilitated *shalish*[205] is discussed in depth below.

The Madaripur Legal Aid Association's Model of Mediation

In 1978, volunteers from Madaripur in central Bangladesh created the Madaripur Legal Aid Association (MLAA) to assist the poor and illiterate with legal representation.[206] However, it became apparent that legal aid alone was not a sustainable or affordable mechanism to address the needs of the most vulnerable justice seekers.[207] As such, in 1988, the MLAA decided to revitalize

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[197] Alim & Ali at 5.
[198] *Id.* at 3.
[199] ADR Practitioner's Guide at 34.
[200] "Bangladesh – Shalish," *The International Security Sector Advisory Team (ISSAT)*, GENEVA CENTRE FOR SECURITY SECTOR GOVERNANCE (n.d.), https://issat.dcaf.ch/Learn/Resource-Library/Case-Studies/Bangladesh-Shalish.
[201] *Id.*
[202] *Id.*
[203] *Id.*
[204] Tahsin Kamal Tonima, "Inaccessibility to the Formal Justice System of Bangladesh and A Flexible Approach towards the Process of Mediation," *Bangladesh Law Digest* (Aug. 3, 2018), https://bdlawdigest.org/adr-and-mediation-in-bangladesh.html#_ftn3.
[205] *Bangladesh – Shalish.*
[206] Alim & Ali at 7.
[207] *Id.* at 6.

and improve upon traditional *shalish* in what became known as the Madaripur Model of Mediation (MMM), which remains in existence to today.[208] One of the MLAA's first tasks was to build trust in the MMM.[209] To do so, it targeted three districts—Madaripur, Shariatpur, and Gopalganj—to spread information on mediation as a helpful alternate to MMM and to form locally-based mediation committees.[210]

In terms of operation, the MMM functions much like the traditional *shalish* but is "based on the principles of fairness, equality[,] and non-discrimination in accordance with international human rights standards . . ."[211] Members of the mediation committees are given training on the law and human rights.[212] Further, women were targeted for selection on mediation committees to reduce discriminatory and harmful practices against women.[213] This was especially important given that the majority of MMM participants were women; from 1988 to June 2002, 61% of MMM disputants were women according to a report produced by Penal Reform International.[214] As of 2003, over a quarter of mediation committees were comprised of women.[215] The active participation of women remains a sustainable component of the program—in MLAA's 2019-2020 Annual Report, for example, women reportedly presided over 44.56% of mediation sessions.[216] MLAA also prioritizes gender mainstreaming into its programs and activities.[217] Further, MMM incorporates a supervisory hierarchy to promote transparency and accountability: mediation workers report to thana-level supervisors, who report to a Mediation Coordinator, who reports to a Chief Coordinator.[218] If the Chief Coordinator has concerns with the functioning of a mediation committee, he or she requests an assessment or a follow up from a Monitoring and Evaluation Cell.[219] Like traditional *shalish*, MMM mediators perform on a voluntary basis. The MLAA also

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[208] *Id.* at 7.
[209] *Id.*
[210] *Id.*
[211] Alim & Ali at 7.
[212] *Id.*
[213] *Id.* at 9.
[214] *Id.* at 9.
[215] *Id.* at 9.
[216] "2019-2020 Activity Report: Access to Justice and Human Rights (Phase-iii)," *Madaripur Legal Aid Association*, 9 (2020), https://mlaabd.org/wp-content/uploads/2021/06/Annual-Reports-2019-2020.pdf.
[217] *See, e.g.,* "2015-2016 Activity Report," *Madaripur Legal Aid Association*, 12 (2016), https://mlaabd.org/wp-content/uploads/2016/10/Annul-Reports-2015-2016.pdf.
[218] Alim & Ali at 10.
[219] *Id.*

utilizes donor funding and non-financial resources to train mediators and operate.[220] Given its successes, it has attracted attention from other NGOs and the government as well.[221]

From MMM's inception to 2003, 50,000 disputes were reportedly resolved through mediation in Madaripur, Shariatpur, and Gopalganj.[222] The high volume of cases resolved through the MMM combined with the program's longevity—three decades and counting—are admirable. Indeed, these successes have caused other NGOs both within and outside of Bangladesh to adopt similar models.[223] For example, a village mediation program in Malawi cites the MMM as the inspiration for its own mediation model.[224] It has also likely bolstered MLAA's other programs to provide access to justice, including programs involving the free legal aid through formal courts and local, village courts. Nevertheless, a shift appears to be occurring. The MLAA has published annual reports on its website every year since 2003 except 2018-2019.[225] The 2009-2010 is posted online, but the link is broken. From this data, a significant decline in the number of cases resolved through MMM is apparent:

Cases resolved through the MLAA's mediation program	
2003-2004	4,470
2004-2005	6,318
2005-2006	7,986
2006-2007	8,480
2007-2008	6,596
2008-2009	8,013
2009-2010	[unavailable-link broken]
2010-2011	5,631
2011-2012	7,910
2012-2013	7,431

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[220] *Id.* at 2.

[221] *Id.*

[222] *Id.* at 6.

[223] Alim & Ali at 5.

[224] *Village Mediation Programme*, PASI, 1 (Oct. 2009).

[225] *See* "Annual Reports," *Madaripur Legal Aid Association (MLAA)* (n.d.), https://mlaabd.org/annual-reports/.

2013-2014	4,697
2014-2015	3,461
2015-2016	3,040
2016-2017	2,576
2017-2018	835
2018-2019	[not reported]
2019-2020	356

As the numbers show, since 2003, cases resolved through mediation peaked at 8,480 in 2006-2007. Between 2012-2013 and 2013-2014, there was a steep decline from 7,431 to 4,697 cases resolved through mediation. There was another sharp decline from 2,576 to 835 from 2016-2017 to 2017-2018. During the last reporting period in 2019-2020, only 356 cases were resolved through mediation. Publicly available data does not indicate why this decline is occurring.

Observations

Bangladesh is a rapidly changing country. Although most of its population live in rural areas, this number has decreased significantly throughout the years.[226] Bangladesh in general is more urban, more literate, and more economically well-off than almost ever before.[227] Despite the access to justice challenges Bangladesh has faced and the changes it has undergone in recent decades, the MLAA has by and large successfully fomented a sustainable, trustworthy community mediation program. There appear to be several reasons for its success. First, it was begun by a local NGO that evolved from a purely legal aid organization to meet the needs of its target audience by developing the MMM. Perhaps community mediation will not always be the method most suitable to a population's needs as Bangladesh increasingly modernizes, but from a sustainability standpoint, responsiveness is crucial. Second, the MLAA did not import a brand-new system, but instead sought to improve upon the long-standing *shalish* mediation model. Its cultural appropriateness is undoubtedly a reason it was able to receive buy-in from locals that has largely

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[226] As of 2020, 61.8% of the population lived in rural areas versus 92% in 1991. *Rural population – Bangladesh*.
[227] COVID-19 has caused some setbacks to the gains made in recent years.

stood the test of time. Third, the MLAA has been able to keep costs low by relying on volunteer mediators while still relying on donor organizations for training and funding. Given the MLAA's success—namely the tens of thousands of disputes resolved through MMM—it has continued to attract the attention of the government and donors. Finally, the MMM model targeted specific issues that caused the public to lose trust in *shalish* in the first place. These issues include corruption (i.e., through cycles of oversight and accountability); bias and discrimination towards vulnerable groups, particularly women (i.e., by educating mediators on human rights and targeting women for selection on mediation committees); and poor-quality decisions (i.e., by training mediators in the law).

The MLAA's MMM is a model that has been replicated in many settings and has survived for over thirty years. Nevertheless, as the table above demonstrates, in recent years there has been a sharp decline in the number of cases resolved by the MMM. It is difficult to make observations about this decline without knowing its cause. Nevertheless, it illustrates that even highly successful, well-established programs go through peaks and troughs. No matter how established and reputable a program may be, it is still vulnerable to changes that can affect its impact and sustainability. One such vulnerability, for example, is a tendency for some disputants to leave NGO-facilitated *shalish*, such as the MMM, for the traditional *shalish* model. One study that analyzed this trend found that major causes of this retention issue were impatience and societal and familial pressure.[228] Additionally, there has been pushback to mediation over fears that it will reduce the number of lawyers.[229] Finally, it goes without saying that what is successful in one context may not work in another. A study published in 1998 reported that high numbers of the Bangladeshi population showed a preference for mediation over formal legal mechanisms.[230] However, in other countries, however, the opposite may be true limiting the effectiveness and sustainability of other community mediation programs.

CONCLUSION

Access to justice issues are as numerous as they are diverse. As the case studies show, gaining justice for the most common disputes can be out of reach for many around the world for a variety

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[228] Alim & Ali at 13-16.
[229] Tonima, *Inaccessibility to the Formal Justice System of Bangladesh*.
[230] ADR Practitioner's Guide at 14.

of reasons, such as poverty, exclusion, misinformation, and corruption. This report does not advocate for one mode of community mediation over another because each situation is unique and there is no one-size-fits-all solution to such complex justice issues. No one model is perfect and many may not be suitable for replication in certain contexts. Nevertheless, the purpose of this report is simply to highlight some existing models to foster discussion on how to move the ball forward to make community mediation as inclusive, innovative, and sustainable as possible. Only in the exchanging of ideas and sharing of information can the international community truly move towards the ideal of SDG 16.3: access to justice for all.