

JSRP Paper 10

*Theories in Practice series*

# **Women's Experiences of Local Justice: community mediation in Sri Lanka**

**Ramani Jayasundere and Craig Valters**

**January 2014**

**© Ramani Jayasundere and Craig Valters, 2014**

Although every effort is made to ensure the accuracy and reliability of material published in this paper, the Justice and Security Research Programme and the LSE accept no responsibility for the veracity of claims or accuracy of information provided by contributors.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any form or by any means without the prior permission of the publisher, nor be issued to the public or circulated in any form other than that in which it is published.

Requests for permission to reproduce any part of this paper should be sent to:

The Editor, Justice and Security Research Programme, International Development Department, LSE, Houghton Street, London WC2A 2AE

Or by email to: [Intdev.jsrp@lse.ac.uk](mailto:Intdev.jsrp@lse.ac.uk)

# **Women's experiences of local justice: community mediation in Sri Lanka**

Ramani Jayasundere (The Asia Foundation)  
Craig Valters (Justice and Security Research Programme)

## **Background note**

In 2012, the Justice and Security Research Programme (JSRP) and the Asia Foundation entered into a research collaboration to analyse the content and use of 'Theories of Change' in international development policy and programming. It is increasingly common that non-governmental organisations in international development are making explicit their 'Theories of Change' for the work they do. It has been argued that many organisations employ a range of 'implicit' and 'partially formed' Theories of Change; this recent endeavour represents an attempt to make them more comprehensive and explicit, often encouraged by donors.

One research output of this collaboration was the paper 'Community Mediation and Social Harmony in Sri Lanka', which explored the conceptual and empirical underpinnings of the Asia Foundation's use of Theories of Change for their long-running support for mediation boards in Sri Lanka. One of the key findings of that paper was that 'further research on how different forms of social injustice affect mediation boards would be an important conceptual and practical step'. This research publication represents that next step. There is a clear need to assess the effect of different forms of social injustice on the process of mediation. This is necessary because the mediation boards are rooted in the social, ethnic, gender, and class structures of their environments. The current research focuses on one particular form of injustice: discrimination against women.

**Acknowledgements:** The authors would like to thank Priyanthi Fernando (Secure Livelihoods Research Consortium), Katie Mckenna (JSRP), Christopher Moore (CDR Associates), Sohela Nazneen (ESID Research Centre), Holly Porter (JSRP), and Danielle Stein (Effective Development Group) for their useful comments on draft versions of this paper. All responsibility for the paper remains with the authors.

## **Acronyms**

### **ADR**

Alternative Dispute Resolution

### **CBO**

Community Based Organisation

### **DSD**

Divisional Secretariat Division

### **JSRP**

Justice and Security Research Programme

### **LTTE**

Liberation Tigers of Tamil Eelam

### **MoJ**

Ministry of Justice

### **NGO**

Non-governmental organisation

### **WDO**

Women Development Officers

## **Executive Summary**

### **Scope and purpose**

- The main analytical focus of this paper is the nature of justice experienced by women within mediation boards, given the character, context and function of this dispute resolution system in Sri Lanka.
- This study examines the ways in which the perceptions and attitudes of mediators shape women's experience of the mediation boards in our research locations.
- This study provides broader reflections on the extent to which technical reforms to the boards could result in improved outcomes from the perspective of women's equality.

### **Methodology**

- The study is based primarily on interviews and focus group discussions across seven Divisional Secretariat Divisions in Sri Lanka. The study took place in four provinces of Sri Lanka - Northern, Eastern, Southern and Uva - comprising urban and rural locations where people of different ethnic and religious groups live.
- 80 questionnaires were completed by female disputants who participated in mediation spread across the research locations.
- Additional primary research involved interviews with stakeholders in the justice sector, policy makers, and service providers at national and study location levels.
- The study draws on, and analyses, literature on informal justice systems, mediation theory and literature specific to mediation in Sri Lanka.

### **Key findings**

- Often women will face considerable social barriers to bringing disputes to mediation, particularly where the dispute relates to sensitive issues of violence.
- Mediators in our research locations often aim to maintain a neutral relationship and impartial views, behaviours and actions irrespective of disputants' gender, but these goals appear difficult when it comes to the treatment of women in mediation.
- Power asymmetries between male and female disputants linked to broader social attitudes and gender insensitive structures inevitably influence women's treatment in mediation, as well as their own perceptions of what is a fair outcome.
- Mediators' desire to 'settle' cases means they may impose their own interpretation of gender equality and of the position of women in society. Some of these interpretations have practical benefits to some women, but may also discriminate against others.

### **Implications for further research/policy implications**

- Technical reforms (such as training, quotas and gender sensitisation) can have positive effects, but given that Mediation Boards are embedded in local norms and practices, these effects are likely to be modest. Therefore, any reforms that are made should address wider issues that would lead to structural changes that foster and further women's equality.
- Further research – particularly if a quota system is undertaken – needs to assess the extent to which female mediators are able to facilitate more equitable outcomes for women.

## Table of Contents

1	Introduction.....	1
1.1	‘Informal’ justice, the mediation boards and women’s equality .....	1
1.2	Structure .....	3
1.3	Methods.....	4
1.4	Limitations.....	5
2	The Mediation Boards in Context.....	6
2.1	The Sri Lankan justice system.....	6
2.2	The Ministry of Justice’s approach to mediation boards and gender equality .....	7
2.3	Women’s disputes at the mediation boards .....	8
2.4	Do many women take their disputes to mediation boards?.....	9
3	Women’s Experience of the Mediation Boards .....	12
3.1	Power and gender in the mediation process .....	12
3.2	Mediator neutrality, impartiality and creating the space to speak.....	13
3.3	Culture and the goal of settling .....	16
4	Conclusion.....	20
4.1	Revisiting ‘informal’ justice assumptions.....	20
4.2	Mediator power and gender equality in the mediation boards .....	20
4.3	Pursuing change for women’s equality.....	21
4.4	Recommendations.....	22
4.5	Further research .....	23
	Bibliography.....	24

# 1 Introduction

## 1.1 ‘Informal’ justice, the mediation boards and women’s equality

In recent years, there has been a marked interest by many involved in justice reform in understanding the role that hybrid or informal justice systems play for those in developing or conflict-affected countries. This has come from overlapping disciplines and approaches, including human rights and informal justice, legal pluralism, legal empowerment, transitional justice, alternative dispute resolution and gender equality. This has drawn attention to the empirical reality of such mechanisms, the huge extent to which they are used (particularly in poor or conflict-affected regions of the world), their potential strengths and weaknesses from a range of perspectives, and different strategies to make them more effective, particularly for women. Yet terms such as ‘informal’ or ‘hybrid’ often encapsulate a huge variety of systems, ranging from various forms of ‘customary’ justice, village courts, alternative dispute resolution (ADR), hybrid courts, paralegal services and more. While valuable lessons can and have been drawn from some similarities between these systems, there is a danger that assumptions are made about how these systems are structured, the nature of the justice they provide and in particular how they treat women.<sup>1</sup>

For example, it is routinely argued that informal justice mechanisms fail to protect women’s rights.<sup>2</sup> The community leaders involved in informal dispute resolution in various countries are overwhelmingly elder males, which has led to the criticism that “social hierarchies and inequalities are often reflected and reinforced” in dispute resolution systems.<sup>3</sup> This is particularly problematic if there is an emphasis on compromise and agreement which results in pressure on weaker parties (in this case vulnerable women) to accept settlements that do not truly serve their best interests or that may prevent them from obtaining their full legal rights.<sup>4</sup> While a growing number of studies demonstrate this often to be the case, it is important to understand the specifics of how different systems function in different contexts – particularly for those considering whether to support various kinds of reforms that aim to benefit the most vulnerable. This is also the case since a chief characteristic of these ‘informal’

---

<sup>1</sup> For a useful article on the analytical usefulness of the term ‘hybrid’, see Goodfellow, T. (2013). ‘Hybrid’ governance and Africa: examining a development buzzword. African Arguments Blog. 4 April 2013. Available at <http://africanarguments.org/2013/04/04/%E2%80%98hybrid%E2%80%99-governance-and-africa-examining-a-development-buzzword-%E2%80%93-by-tom-goodfellow/>.

<sup>2</sup> For example see Quast, S. (2008). ‘Justice Reform and Gender’, in *Gender & Security Sector Reform: Toolkit*, DCAF, OSCE Office for Democratic Institutions and Human Rights (ODIHR), UN-INSTRAW, 2008, Tool 4, 13; Wojkowska, Ewa. (2006). *Doing Justice: How Informal Justice Systems Can Contribute*, Oslo: UNDP Oslo Governance Centre, p. 21; Douglas, S. (2007). ‘Gender Equality and Justice Programming: Equitable Access to Justice for Women’, UNDP, *Primers in Gender and Democratic Government*, pp. 14-15.

<sup>3</sup> Wojkowska, Ewa. (2006), p. 21.

<sup>4</sup> Crook, R.C, Asante, K, and Brobbey V. (2011). ‘Popular Concepts of Justice and Fairness in Ghana: Testing the Legitimacy of New or Hybrid Forms of State Justice’, in *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform*. IDLO and DIIS, p. 138.

and ‘hybrid’ mechanisms tends to be “their degree of adaptation to their socio-economic, political and cultural contexts.”<sup>5</sup>

This paper takes the specific case of mediation boards in Sri Lanka, a dispute resolution system established by the State and conducted by local citizens.<sup>6</sup> As of December 2013, there are 324 mediation boards in Sri Lanka and over 7,000 mediators. The main contextual factor for the emergence and continued existence of the mediation boards is the inaccessibility of Sri Lanka’s court system for many; court cases in Sri Lanka can take many years and are often very expensive, considerably limiting access to the courts, especially for poor or socially excluded groups. Based on the Mediation Boards Act of 1988<sup>7</sup> and subsequent amendments to it,<sup>8</sup> women and men are legally obliged to take a wide range of civil and criminal disputes to these mechanisms, such as assault, family disputes (including domestic violence – primarily physical violence and sometimes sexual violence), land and property disputes and disputes arising from commercial transactions, and to attempt voluntary settlements before the cases can be taken before a formal court of law. According to the interest-based mediation process followed by mediation boards, mediators aim to get to the ‘root cause’ of the dispute and try to facilitate a mutually agreeable settlement that respects the interests of all disputing parties. This method is in contrast to rights, needs or power-based approaches to dispute resolution, and strives to be non-adversarial and based on collaborative negotiations.<sup>9</sup>

This model has some similarities to a range of other ‘informal’ justice systems. For example, mediators are drawn from the population of their local areas and generally already hold a respected or high position in society; the principles of mediation are based on negotiation, interests and compromise; community or family harmony is commonly emphasised as a reason for settlement; there is no professional legal representation; the mediators are volunteers; and the settlements reached in the mediation board are not legally binding and cannot be enforced in a court of law.

This paper analyses women’s access to, and experience of, mediation boards as disputants and the potential for reforms to them that might improve the quality of outcomes for women. As Lockett notes, while women are not a homogenous group and their experiences differ widely across geographical and temporal locations, they face similarities in their experiences based on broad conceptualisations of gender and its perceived implications.<sup>10</sup> In Sri Lanka, there are very few laws that directly

---

<sup>5</sup> Danish Institute for Human Rights. (2012). *Informal Justice Systems: Charting a Course for Human Rights-based Engagement*. Study completed for UNICEF, UN WOMEN and UNDP, p. 6.

<sup>6</sup> Moore, C. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. San Francisco: Jossey-Bass (4<sup>th</sup> edition, forthcoming).

<sup>7</sup> Mediation Boards Act, No. 72 of 1988.

<sup>8</sup> Mediation Boards (Amendment) Act, No. 15 1997; Mediation Boards (Amendment) Act, Mediation (Special Categories of Disputes) Act, No. 21 of 2003; Mediation Boards (Amendment) Act, No. 7 2011.

<sup>9</sup> Maiese, Michelle. "Interests, Rights, Power and Needs Frames." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: September 2004. Available at <http://www.beyondintractability.org/essay/interests-rights-power-needs-frames>.

<sup>10</sup> Lockett, Kathryn. (2008). The Mechanisms of Exclusion: Women in Conflict. *Feminist Legal Studies*. December 2008, Volume 16, Issue 3, p. 370. There are clear problems with attempting to homogenise the experiences of women. Gender relations are dynamic, influenced not only by relations between men and women but also by change due to relations within each group of women depending on age, education, religion, ethnicity and place.



discriminate against women. However, in some customary laws and in many practices that apply to distinct ethnic or religious groups, or to groups from a specific geographical location in the country, covering the areas of marriage, divorce, inheritance and ownership of property, discrimination against women is more deeply entrenched.<sup>11</sup> Furthermore, the implementation of laws is sometimes discriminatory largely due to the gender-stereotyped attitudes pervasive in Sri Lankan society that discriminate against women in general and in particular against those facing vulnerabilities like poverty, as single heads of households, or victims of violence.<sup>12</sup>

Clearly, women from all parts of the country may have been affected by the decades-long war between the Sri Lanka government and the Liberation Tigers of Tamil Eelam (LTTE), which ended in 2009. Numerous issues were mentioned during our research: for example, there has been a substantial increase in female headed households in Jaffna which has fed into specific gender-based and State-related issues linked to personal security, land ownership and access to resources. Equally, in Batticaloa, some women speak of prolonged land ownership issues over private as well as State land, stemming from movement and displacement during the years of war. These issues are important but beyond the scope of this paper: by their legal mandate mediation boards cannot deal with disputes where the State is a disputing party, which rules out a substantial component of post-war justice needs of women.

Our aim is to explore women's different experiences of the mediation process. We present the disputes that women bring to mediation boards and how they are treated in the locations where we conducted our research. While similar issues are faced by men and women in the study locations due to the vulnerabilities defined by ethnicity, religion, cultural practices and experiences of war, civil unrest and poverty, it is clear that there are a multitude of issues that affect women differently than they do to men.<sup>13</sup> In relation to mediation boards, many of the needs for justice that were articulated by women and men were related to their gender-specific roles, responsibilities, needs and expectations as part of the family institution; linked to their relationships with other family members, their children, income generation for the family and personal security.

## 1.2 Structure

After outlining our methods and limitations, we place the mediation boards in context, looking at the Sri Lankan justice system, the Ministry of Justice's (MoJ) gender

---

<sup>11</sup> USAID. (2013). *Gender Analysis of the North and East of Sri Lanka*. Completed by The Applied Research Unit (ARU) of the United Nations Office for Project Services. Unpublished document. Cited with permission by authors; CARE International. (2013). *Broadening Gender: Why Masculinities Matter. Attitudes, practices and gender-based violence in four districts in Sri Lanka*. Colombo, Sri Lanka.

<sup>12</sup> See Kottegoda, S. (2010). 'Gender, Power and Politics', In *Power and Politics in the shadow of Sri Lanka armed conflict*. SIDA Studies, No. 25; Human Rights Watch. (2013). "We will teach you a lesson": *Sexual Violence Against Tamils by Sri Lankan Security Forces*. February 2013. Jayasundere, R. (2009). *Understanding Gendered Violence against Women in Sri Lanka: A Background Paper*. Colombo: Women Defining Peace; Jayasundere, R. (2012) *Voices of Survivors: Case Stories of Domestic Violence Victims* (Colombo: Women In Need). Ruwanpura, Kanchana N & Humphries, Jane. (2004). 'Mundane heroines: Conflict, Ethnicity, Gender, and Female Headship in Eastern Sri Lanka', *Feminist Economics*, 10:2, 173-205.

<sup>13</sup> These were articulated in detail by a range of local focus groups and by those representing women's rights such as civil society organisations, government service providers and INGOs.

equality approach to the boards, and the kinds of disputes women bring, as well as questioning the extent to which women will bring disputes at all. We then explore the complexities of achieving a gender-equitable process and a gender-equal outcome from the boards, placing the perspectives of male and female mediators and female disputants who were interviewed at the forefront of this investigation. We analyse these perspectives through concepts familiar to mediation theorists and practitioners: neutrality and impartiality, and effect of culture. These lenses are useful in exploring some distinct and some overlapping implications for thinking about power imbalances and women's equality in the context of local justice. In the final part of our paper, we question whether changing the structure and process of mediation can increase gender-equitable processes and outcomes, given the way in which broader processes of political, social and economic power shape women's position in society.

### 1.3 Methods

The findings of this paper are primarily based upon fieldwork conducted in seven Divisional Secretariat Divisions (DSDs) within four districts across Sri Lanka, in 2012 and 2013. The districts are Batticaloa in the Eastern Province, Jaffna in the Northern Province, Moneragala in the Uva Province and Galle in the Southern Province. At a broad level, this took into account areas differently affected by war,<sup>14</sup> but at the local level we identified some (non-exhaustive) key situations and perspectives we wanted to take into account which would affect women's status. In Batticaloa we differentiated between Muslim (Kattankudy) and Tamil majority areas (Manmunai Pattu); in Jaffna between town (Nallur) and island (Velanai); in Moneragala between urban (Moneragala town) and rural (Siyambandulwa); and one semi-urban location in Galle (Hikkaduwa). This paper does not have the space to fully analyse the nuances of each location (and how they affect women) but wherever possible important distinctions are made.

Our fieldwork consisted of observation of mediation boards conducting mediation; interviews with mediators, mediator trainers and disputants; civil society organisations, including women's organisations and women in the locality; and government officials such as Women Development Officers, Divisional Secretaries (DS) and Grama Niladharis (the lowest administrative body of the State at the village level). Additional key informant interviews were conducted island-wide with The Asia Foundation's programme staff,<sup>15</sup> State policy makers, legal service providers,

---

<sup>14</sup> The Sri Lankan government's military victory over the Liberation Tigers of Tamil Eelam (LTTE) in May 2009 marked the end of twenty-six years of brutal internal armed conflict. Much of the fighting took place in the North and East of the country, where Tamils were disproportionately affected by the violence and the ensuing underdevelopment. See Valters, C. (2013). *Community Mediation and Social Harmony in Sri Lanka: A Theories in Practice Paper*. Justice and Security Research Programme and the Asia Foundation. London, p. 9. Jaffna and Batticaloa have been directly affected by war the decades-long war between the Sri Lanka government and the Liberation Tigers of Tamil Eelam (LTTE). The military conflict ended in Batticaloa a few years before it ended in 2009 in Jaffna; Moneragala is commonly identified as a 'southern' district although affected by periodic LTTE attacks, and heavily affected by Sri Lanka's southern insurrection in the late nineteen eighties. Galle in the heart of Sri Lanka's south is an area little affected by the direct impact of the war but a place where a large number of government soldiers have their homes and families.

<sup>15</sup> The Asia Foundation has supported the mediation boards through partnership with the Ministry of Justice since their inception in 1990. For more information on the Foundation's role see Valters, C. (2013) and Gunawardana, M. (2012) *A Just Alternative: Providing Access to Justice through Two*

non-governmental organisations including women's organisations, and academics. The fieldwork was supplemented by 80 questionnaires administered by Research Assistants from the study locations who were specially trained for the field work. These Research Assistants interviewed former mediation board disputants and provided information that helped us understand the experiences of participants in the process. For the selection of disputants, we requested that the interviewee be female and the overall sample to be a mix of dispute types (which may make the sample non-representative of wider trends). Due to the spread of research sites, there were 40 questionnaires in Sinhala and 40 in Tamil. This paper also draws on primary data from previous research by both authors where relevant.<sup>16</sup>

## 1.4 Limitations

First, there are 324 mediation boards in Sri Lanka and this study looked at only seven of them. This limitation was also challenged to some extent by drawing on existing research by the authors and taking into account the broad perspectives of other respondents on the boards.

Second, a maximum of two DSDs were selected for study, which means the findings do not reflect the views of the whole district. All information was triangulated wherever possible with actors working across whole districts and with the available literature.

Third, it is often difficult to find disputants who were former participants in the boards' mediation process and largely inappropriate to interview them immediately after a dispute, for fear of affecting the outcome. The questionnaires conducted with former disputants by the local researchers ameliorate this problem to some extent but the paper would have benefited from further in-depth interviews with the disputants.

Fourth, having open discussions with local people on justice issues has, at times, the potential to create fear among interviewees that they would be singled out and questioned by the state or other forces and this at times limited the depth of discussion we could have with different groups. Going through official channels such as local state offices was a useful way of gaining access to, for example, rural development groups, but has its own limitations since it is difficult to know how representative the perspectives are of the broader locality.

<b>Table 1: Breakdown of Respondents Across All Research Locations</b>				
<i>Cohort</i>	<i>Hours</i>	<i>People</i>	<i>Male</i>	<i>Female</i>
Mediators	8.25	67	48	19
State officials	13	28	10	18

---

*Decades of Community Mediation Boards in Sri Lanka.* Colombo: Ministry of Justice, The Asia Foundation and British High Commission.

<sup>16</sup> Valters, C. (2013); Jayasundere, R. (2013). *Mediating Domestic Violence Disputes in the Community Mediation Board in Sri Lanka: Issues of Women's Equality and Equity.* PhD Thesis. University of Colombo. Unpublished.

Community organisations	10.75	41	4	37
Local people	6.5	42	4	38
Civil Society	9.3	29	22	7
Disputants (non-questionnaire)	7	11	1	10
Disputants (questionnaire)	60	80	0	80
INGOs	1.5	2	1	1
Other	2.5	11	8	3
Observation of Mediation	12.5	-	-	-
Total	131.3	311	98	213

## 2 The Mediation Boards in Context

### 2.1 The Sri Lankan justice system

It is clear that women seeking a justice remedy in all our research locations are likely to be navigating “complex legally plural landscapes”.<sup>17</sup> Aside from the formal system, which includes services by law enforcement authorities and the courts of law, dispute resolution may be undertaken by local family members, kinship networks, religious leaders, community based organisations (CBOs), NGOs and counselling services.<sup>18</sup> Other possibilities may include local state actors such as the Grama Niladharis, different actors within the office of the Divisional Secretariat (DS), the police and the mediation boards.<sup>19</sup> There are also mechanisms that, when functioning, explicitly focus on women’s issues and needs, such as the Women’s Development Officers at the DSD level, and women’s NGOs such as Women in Need. In this respect, mediation by boards is just one of many different avenues for dispute resolution at the local level, albeit an obligatory one for certain issues.

Although there are a variety of avenues through which women can seek redress for grievances, in practice their choices are somewhat limited.<sup>20</sup> Women, in common with many men, often face challenges in accessing justice – such as physical distance from justice service providers, poor infrastructure that inhibits travel, a low level of awareness of their rights or procedural options, and high costs, both in terms of legal transactional costs and expenditures for travel, food and accommodations to engage in a formal judicial process. Women often face additional barriers such as restrictions on

<sup>17</sup> Chopra, Tanja and Isser, Deborah. (2012). ‘Access to Justice and Legal Pluralism in Fragile States: The Case of Women’s Rights’, *Hague Journal on the Rule of Law*, 4, p. 352; IDLO. (2012). *Accessing Justice: Models Strategies and Best Practices of Women’s Empowerment*, p. 12.

<sup>18</sup> Valters, C. (2013); Centre For Policy Alternatives (2003). *Informal Dispute Resolution Mechanisms in the North East and Puttalam*. Colombo.

<sup>19</sup> There are 14,022 GN divisions which are within 331 DSDs.

<sup>20</sup> Common barriers for women accessing justice are listed in a huge range of literature. See Quast, S. (2008); Wojkowska, Ewa. (2006); Douglas, S. (2007).

their physical mobility, less access to information than men, and social and cultural issues such as the stigma of raising a dispute publicly or engaging in a public process, which prevent them from seeking redress for grievances. This is especially the case for those issues that have specific impacts on women such as domestic violence. Furthermore, the existence of different kinds of mechanisms tells us little about their value to people: for example, as one representative of an NGO in Batticaloa argued when discussing where women take domestic violence disputes, “it’s a bad choice and a worse choice”.<sup>21</sup> Finally, it is important to recognise that these mechanisms may not exist at all in certain areas: our research indicates differences in local areas, for example, between town and island areas of Jaffna.<sup>22</sup>

## **2.2 The Ministry of Justice’s approach to mediation boards and gender equality**

From the inception of mediation boards in 1988, the Sri Lankan MoJ’s original intentions were unambiguous: to clear the court backlog by providing an alternative to expensive and time consuming litigation,<sup>23</sup> and to do so with an alternative that should be quick, cheap, community-led and free from politicisation.<sup>24</sup> “Today”, said Justice Secretary Kamalini de Silva, “the core principles are still the same”.<sup>25</sup>

The Mediation Boards Act and government policy as well as the original intentions articulated by policy makers do not include any gender-specific references or provisions. However, there appears to be an implicit assumption that the approach is gender-neutral and that it would create an equal space for men’s and women’s participation as mediators and as disputants, as well as the space for both women and men to enjoy equal benefits of the process. This view has also been reflected in the initial training of mediation board trainers<sup>26</sup> and in subsequent training presented by them for nominees to boards, which did not contain any explicit gender equality components or focus on integrating gender in an active way.

In 2003, the MoJ (in collaboration with donor agencies) introduced the first comprehensive ‘mediation skills’ manual codifying techniques and systems that had been widely used but not previously documented. This manual provided guidance for the presentation of the five day introductory mediation training course presented to prospective mediators. The purpose of the training was to transfer core principles and the practice of interest-based mediation to both the trainers and mediators, most importantly by encouraging the need “to empower disputants to make their own decisions”.<sup>27</sup> This training also included a “gender lens”, a limited add-on – normally conducted during a half day of the of the five-day training – which emphasised the need to understand gender roles and areas of gender discrimination from a gender equality as well as a women’s equality perspective.

---

<sup>21</sup> Interview with Surya Women’s Organisation, Batticaloa, 13/03/2013.

<sup>22</sup> Interview with Ministry of Justice Programme Assistant, Jaffna, 04/05/2013.

<sup>23</sup> Zoysa, N. (2006). ‘Community Mediation: Law and Its Implementation in Sri Lanka’. *Forum of International Development Studies*, 32 (December), p. 223

<sup>24</sup> Interview with Kamalini de Silva, Justice Secretary, Ministry of Justice. Colombo. 26/10/2012.

<sup>25</sup> Interview with Kamalini de Silva, Justice Secretary, Ministry of Justice.

<sup>26</sup> Mediator Trainers are MoJ staff who carry out training of mediators and monitoring of the function of mediation boards.

<sup>27</sup> Ministry of Justice. (2003). *Training Manual: Community Mediation Programme*. Unpublished document. Used with permission.

A consultant's report at the time noted that despite some successes, the existing low level of gender sensitivity (among those on mediation boards) and the limited extent of the training may have restricted this initiative's impact.<sup>28</sup> Since 2009, although not a part of the usual introductory mediation skills curriculum for mediator trainers or trainees, the vast majority of mediators have received an additional two-day 'advanced' programme on gender issues and on strategies to address them.

### 2.3 Women's disputes at the mediation boards

Women make up 51 per cent of the population in Sri Lanka. An evaluation of mediation boards conducted by the MoJ and The Asia Foundation in 2011 shows women's rates of accessing and using the services of Boards fell below national population averages, with only 35% of disputants surveyed involving women.<sup>29</sup> According to the non-sex disaggregated information provided in the 2011 evaluation, assault was the most common type of dispute mediated, followed by disputes over land, unpaid loans and family disputes. According to our questionnaire responses and to observations of mediation in the study locations, the disputes for which women most frequently access boards for assistance is similar to the data in the MoJ/Asia Foundation evaluation.

<b>Table 2: Breakdown of Type of Disputes and Settlement Rate in Questionnaires</b>							
<i>Location</i>	<i>Assault</i>	<i>Commercial</i>	<i>Family</i>	<i>Land</i>	<i>Other</i>	<i>Total</i>	<i>Settled?</i>
Hikkaduwa	7	8	0	2	3	20	11
Kattankudy	4	3	1	2	0	10	5
Manmunai Pattu	4	5	0	1	0	10	7
Moneragala	10	3	1	1	0	15	9
Nallur	0	5	0	4	0	9	5
Siyambalanduwa	2	3	0	0	0	5	5
Velanai	1	5	2	3	0	11	8
Total	28	32	4	13	3	80	50

Through our observations and analysis of the questionnaires, it is clear that these categorisations (which are also used by mediators for reporting) are far more fluid than they appear; for example, family, assault and land cases, while ostensibly about a different issue of contention such as ownership, inheritance or a sudden fight, may mask issues of gender-based violence. Equally, it is very common for many of these disputes to be within families (close or extended) or between neighbours and not

<sup>28</sup> Jayasundere, R. (2003). Report on Community Mediation Boards. Unpublished document. Used with permission.

<sup>29</sup> Siriwardhana, C. (2011). *Evaluation of the Community Mediation Boards in Sri Lanka*. Ministry of Justice and The Asia Foundation. January 2011, p. 11.

between acquaintances and strangers.<sup>30</sup> The lack of sex-disaggregated data does not give an idea of the types of disputes women bring to mediation. The ambiguity in classification makes this identification more difficult.

Land-related disputes in the study locations to which women were party along with men were largely disputes over contested boundaries, disputes between two parties claiming ownership of a single piece of land, encroachments into neighbouring land and claims of illegal occupation by one party of another's land. Commercial disputes in which women were involved included non-repayment of loans, disagreements over purchase payments and financial transactions between individuals, banking institutions, leasing companies, small scale credit groups and civil society organisations providing loans to the poor (specifically targeting women). Other disputes included issues where women had borrowed valuables (mostly jewellery) from others (largely family members) and sold them to raise money without the consent of the owner.

Our research revealed that the geographical location of disputants and the history of people in the area influence the kinds of disputes that come to, and are more prevalent in, mediation boards. For example, in Nallur and Velanai in Jaffna District, where the majority of land is privately owned, there are considerable land ownership issues coming to boards where women either own land or are party to a dispute over land. This is most likely due to the war and the resultant displacement and resettlement.<sup>31</sup> In Moneragala and Siyambalanduwa in the Moneragala District, where much of the land is State-owned and granted leasehold rights under the law that governs State land, our research indicated that there are fewer land disputes coming to boards.<sup>32</sup>

In all locations except Kattankudy in the Batticaloa District - where religious law dictates that formal loans should not be taken<sup>33</sup> - there was a considerable number of disputes between women and lending institutions. Assault cases and family disputes were prevalent in all areas of study, although how often they come to mediation depends on a wide range of complex factors.

## **2.4 Do many women take their disputes to mediation boards?**

Alongside the general issues outlined in section 2.1, from field research we have identified four potential barriers to women bringing their disputes to the mediation boards: social stigma, a low level of female mediators, the semi-private nature of mediation and established authority structures.

First, in all field locations, despite their many differences, there appeared to be considerable social barriers to women bringing their issues to mediation boards, particularly when it was a family matter involving domestic violence. Some mediators acknowledged there were inhibiting factors but argued that if the problem was

---

<sup>30</sup> According to the 2011 evaluation, 72 per cent of disputes were between those already close in their communities, such as neighbours (37 per cent), relatives (22 per cent) and immediate family members (13 per cent). See Siriwardhana, C. (2011), p.11 .

<sup>31</sup> Fonseka, B and Raheem, M. (2011). 'Land Issues in the Northern Province: Post-War Politics, Policy and Practice'. *Centre for Policy Alternatives*. Colombo. December 2011.

<sup>32</sup> By law the mediation boards cannot deal with disputes where the state is a party.

<sup>33</sup> Observation of Kattankudy Mediation Board, Batticaloa, 12/05/2013.

‘serious enough’ women would come to the board for assistance. For example, as one mediator in Velanai argued, “The ladies who are concerned about respect, honour, or esteem...they are hesitant and reluctant to come to the mediation boards...But if the problem is persisting for a long time and she is affected (for example an alcoholic beating his wife and she cannot resolve it on her own or with the assistance of other family members) then finally she will come to the Mediation Board and complain”.<sup>34</sup> Cultural restrictions were often explained through the notion of women’s gendered role within the household and not because of lack of mobility or attitudes that prevent women from seeking outside help for problems they face. As another mediator from Velanai stated “Ladies take up most the household chores and responsibilities. They have medical clinics, school duties etc...still...if they have a problem and have no other way of solving them then they will come.”<sup>35</sup>

Our discussions with other mediators, NGOs, CBOs and focus groups with women from the communities in the study areas shows a more in-depth understanding among respondents about why women might not choose to go to mediation boards. The mediators’ perspectives above underestimates the extent to which women choose not to make public their specific justice needs. One mediator in a mixed ethnicity area of Batticaloa said, “to a certain extent women tolerate violence due to fear of making things public...it would create a social stigma due to the traditional customs of such things, people would call women bitches.”<sup>36</sup> In Moneragala, one member of an all-female focus group explained that women themselves are reluctant to take family disputes out of the home because “they have to continue to live in that home”.<sup>37</sup> In Batticaloa one Muslim mediator made clear the scale of cultural barriers to women even travelling in a public space: “Even riding a push bike brings social stigma here. In Colombo they can drive cars...it’s a reflection of the regional cultural and social barriers”.<sup>38</sup> In terms of violence against women, this underreporting is overwhelmingly confirmed in Sri Lankan literature.<sup>39</sup>

Second, a factor that likely prevents women from going to mediation boards of their own accord could also be the very low level of female mediators. Roughly 12% of mediators in nation-wide mediation boards are women.<sup>40</sup> In the mediation boards we studied, 19.7% (29 out of 147) were women.<sup>41</sup> Throughout our fieldwork, many male and female mediators believed the involvement of female mediators helps to create a positive comfort zone for female disputants because women with problems (especially personal, intimate, or sexual ones) reportedly feel it is easier to speak with women than men. For example, in Hikkaduwa a female mediator argued that “if women mediators are here, then women will speak freely. If things are hidden, then

---

<sup>34</sup> Focus Group with Velanai mediators, Jaffna, 05/05/2013.

<sup>35</sup> Focus Group with Velanai mediators, Jaffna 05/05/2013.

<sup>36</sup> Interview with Mosque Trustee, Manmunai Pattu, Batticaloa. 30/09/2012.

<sup>37</sup> Focus Group with local people in Siyambalanduwa, Moneragala, 17/05/2013.

<sup>38</sup> Interview with Mosque Trustee, Manmunai Pattu, Batticaloa. 30/09/2012.

<sup>39</sup> Jayasundere, R. (2009); Jayasundere, R. (2012).

<sup>40</sup> Siriwardhana, C. (2011).

<sup>41</sup> This raises the question of what the constraints are which create such a strong gender disparity in participation which are outside the scope of this study.



women can bring them out.”<sup>42</sup> In Batticaloa, a male mediator stated that “women are very reluctant to talk about these issues unless other women are there.”<sup>43</sup>

Others were not convinced: one female mediator argued that even though there are female mediators in her board, “families prevent women [disputants] from engaging in public forums”, even if female mediators are available and involved.<sup>44</sup> Equally, a male mediator in Nallur, Jaffna, argued that “we don’t think that increasing the participation of women as mediators on this board will change whether women come here; cultural and social barriers prevent women from bringing social issues into the public forum.”<sup>45</sup> Furthermore, while full analysis of this issue is outside the scope of this study, it should not be assumed that if gender-sensitive disputes are brought to the boards, female board members will necessarily be gender sensitive, or willing or capable of representing ‘women’s’ interests in general or female disputant’s interests specifically.

Third, mediation boards may be unable to offer the level of privacy that a female disputant requires, particularly if it is a sensitive issue with considerable social stigma attached. Most mediation sessions are conducted in public places like schools and religious institutions; mediation sessions are often attended and observed by members of the parties’ extended family or members of their community; and the mediators themselves are members of the local community.<sup>46</sup> Other service providers such as the police, counselling centres and women’s crisis centres may provide more privacy for handling these kinds of disputes.

Fourth, established power structures within families where men have an authoritative role over women in the family may encourage silence. For example, as detailed during one focus group with Muslim women in Kattankudy, women may only be able to seek redress for an issue if they have the public support of male family members.<sup>47</sup> In this respect, too strong an emphasis on simply whether a specific mechanism provides a specific kind of justice can overlook the fact that women often live and survive only by keeping quiet. In this way, the idea that modifying a particular institution’s approach (such as the mediation boards) can tackle the deeper reasons why women choose to stay silent on violence is likely to be misleading.<sup>48</sup>

Mediation boards are rarely the first place any disputants will go to resolve their dispute. Women’s first point of seeking relief is far more likely to be family members, police, a government official like the Grama Niladhari, a Women’s Development Officer, or a women’s NGO. Most commonly, disputants arrive at mediation by

---

<sup>42</sup> Focus Group with female mediators, Hikkaduwa, Galle, 02/03/2013.

<sup>43</sup> Focus Group with Manmunai Pattu mediators, Batticaloa. 30/09/2012.

<sup>44</sup> Female mediator during focus group with Manmunai Pattu mediators, Batticaloa, 30/09/2012.

<sup>45</sup> Male mediator during focus group with Nallur mediators, Jaffna, 05/10/2012.

<sup>46</sup> A Women’s Development Officer in Nallur to whom many women take their grievances argued “women do not reveal private matters to community members. Interview with Women’s Development Officer, Nallur, Jaffna. 04/10/2012.

<sup>47</sup> Focus group with Islamic Women’s Association for Research and Empowerment, Kattankudy, Batticaloa, 13/03/2013.

<sup>48</sup> In this respect, it is important to analyse power relationships through the silence they create, as well as the more obvious vocal embodiments available through interviews and observations of a specific justice mechanism. See Jackson, C. (2012). ‘Speech, Gender and Power: Beyond Testimony’. *Development and Change*, 43: 999–1023.

police referral, since many disputes brought to them are mandatorily required by law to go to mediation. This mandatory clause may have two differing effects: it could push disputes back into the private sphere if women are unable to take their disputes to mediation; or it could encourage disputants to use the mediation boards as a route to either resolving the dispute or eventually going to court. Either way, the above barriers inform access (and perceptions of access) to the mediation boards for women.

### **3 Women's Experience of the Mediation Boards**

To understand women's experience of using the mediation services of boards, we have applied the principals and theoretical framework that guides their functioning and the application of interest-based methods for dispute resolution. As such, we analyse our research findings through three conceptual lenses in mediation theory: power between parties, neutrality and impartiality in the mediation process and the effect of 'culture' on mediation. These three concepts are useful frameworks for exploring the use and exercise of power in relation to women's equality in the mediation process.

#### **3.1 Power and gender in the mediation process**

Power can be conceptualised in many different ways giving rise to different kinds of debates.<sup>49</sup> Power is central to the mediation discourse, playing a major role in both theoretical texts and practical training guides.<sup>50</sup> For example, Moore, examining practical strategies for resolving conflict through mediation, quotes a succinct definition: "power is not a characteristic of a person but is an attribute of a relationship. A party's power is directly related to an opponent's power and can be symmetrical (equal) or asymmetrical (unequal)".<sup>51</sup> Power in mediation, according to Moore, is "the capability of a person to modify the outcome of a situation".<sup>52</sup> Griffiths makes clear how seeing mediation processes through the lens of power is essential, arguing that mediators should pay particular attention to the specific social, cultural and economic structures in which disputing parties are embedded to better facilitate empowerment and equal participation.<sup>53</sup>

Power is also intrinsic to gender inequality. Power imbalances between men and women in relationship contexts are one main reason for disputes and conflicts and these power imbalances are created by gender differences themselves. Relational gender power imbalances often place women in more vulnerable situations. Socialisation processes play a critical function in creating 'acceptable' norms of behaviour and rights for women and for men. These processes often give more power to men over women and demarcate lines of conduct where women and men have

---

<sup>49</sup> Mosse, D. (2005). 'Power Relations and Poverty Reduction', in R. Alsop (ed.), *Power, Rights and Poverty: Concepts and Connections*, Washington DC and London: World Bank / DFID, 51–67. It can be argued that one's conception of power is itself affected by power relations; at least, it is likely that whichever standpoint is taken is likely to reflect particular disciplinary objectives.

<sup>50</sup> Coleman, P.T. (2000). 'Power and Conflict', in *The Handbook of Conflict Resolution Theory and Practice*. Morton Deutsch and Peter T. Coleman(eds). Jossey-Bass Inc. USA.

<sup>51</sup> Moore, C.W. (2003). *The Mediation Process Practical Strategies for Resolving Conflict*. Jossey-Bass. USA.

<sup>52</sup> Moore, C.W. (2003).

<sup>53</sup> Griffiths, A. (1998). 'Mediation, Gender and Justice in Botswana'. *Mediation Quarterly*, 15(4), p. 341.

different and often unequal access to and control over resources, whether it is in terms of food, healthcare, skills training, credit, property, income or, in the arena of decision-making. Lack of access to such resources can also result in those with less 'power' being subjected to violence and intimidation, which could take the form of acts of verbal, physical and sexual violations, whether in the privacy of their own homes or in the public sphere.<sup>54</sup>

As we shall show through the concepts of neutrality, impartiality and culture, in the mediation process relative power fluctuates not only based on the issue and the course of the interaction but due to preconceived gender-stereotyped views and beliefs, often linked to the preservation of the institutions of marriage and family.

### **3.2 Mediator neutrality, impartiality and creating the space to speak**

Interest-based negotiation and mediation theory in general (and as applied in the work of the mediation boards) emphasises the importance of neutrality and impartiality of mediators.<sup>55</sup> Neutrality refers to the relationship between the parties and the mediator that is a relationship that would not lead to them favouring one or another. Impartiality refers to an unbiased view toward the issues in question or the potential outcomes.<sup>56</sup> In the first training manual used in Sri Lanka in 2003 it is noted that "in reality, there is no-one with any amount of life experience and learning who is neutral." However, the manual also proposes that mediators can still play the 'role of a neutral' in their relationship to the parties (and also be impartial) and assist others to deal with their conflict in a constructive manner. This begins to show how in practice neutrality and impartiality may not come easily to mediators despite mediation skills training.

In mediation discourse it is clear that strict adherence to neutrality and impartiality may on occasion create oppressive situations for disputants. A number of authors agree that if mediators are dogmatic about being neutral and impartial and do not practice affirmative bias, especially where there are serious power imbalances between disputants, they may unwittingly contribute to unfair agreements.<sup>57</sup> Previous research by Jayasundere indicates that mediators often confidently articulate their ability to balance power.<sup>58</sup> However mediator interventions that are partial in order to balance power may well translate into diverse practical interpretations of neutrality, impartiality and gender equality.<sup>59</sup> Depending on the type of mediator interventions, they may be perceived by one or more parties to be biased, either in favour of, or against female disputants.

---

<sup>54</sup> Jayasundere, R. (2009).

<sup>55</sup> Cobb, Sara and Rifkin, Janet. (1991). 'Practice and Paradox : Deconstructing Neutrality in Mediation'. *Law & Social Inquiry*. 16(16):35-62. Blackwell Publishing, USA; Astor, Hillary. (2007). 'Mediator Neutrality: Making Sense of Theory and Practice'. *Social & Legal Studies*, 16(2), pp. 221–239.

<sup>56</sup> Moore, C. (2014, forthcoming).

<sup>57</sup> For example see Adler, Robert S. & Silverstein, Elliot M. (2000). *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 Harv. Negot. L. Rev. 1.

<sup>58</sup> Jayasundere, R. (2013).

<sup>59</sup> Different treatment could involve either behaviour or actions that discriminate against a party (based on his or her sex and gender identity) and prevent his or her interests from being raised, recognised, addressed and met; presenting, promoting or favouring their views over those of another party; or recognising the need for and providing additional help to a party because they are perceived to be a weaker or in need of assistance.

In the questionnaires administered as part of our study, disputants from diverse locations rarely said that the mediators with whom they worked were biased. They commonly stated that the mediators “talked peacefully”, “they talked calmly without bias”, “they treated both parties equally” and “they talked to both parties similarly”.<sup>60</sup> Those disputants who did feel some form of bias did not say it was because they were women: respondents stated it in terms such as “mediators behave authoritatively,”<sup>61</sup> “mediators did not allow me to speak”<sup>62</sup> and “my view was not allowed”.<sup>63</sup> In one case, a female disputant claimed that mediators were biased in favour of her brother (who assaulted her) as he was connected to people in high political office.<sup>64</sup> In another, mediators were perceived as biased in their efforts to be partial to the less powerful as “they took the side of the tenant” in a dispute over non-payment of house rent, “as the tenant was poor”.<sup>65</sup>

### *Creating the space to speak*

An important aspect of a mediator’s ability to perform neutrally and to impartially balance power is creating space for disputants to speak and be heard. Practically speaking – in line with the interest-based method – this means striving to give parties approximately an equal opportunity and time to speak and trying to build their confidence to express themselves during the mediation process. This principle and practice is often expanded to allow all parties, women and men, the chance to speak in private with the mediators.

Many female disputants were clear about the positive effect of ‘space to speak’. In a case involving assaults between multiple family members in Moneragala, one young female disputant said that mediators “gave enough time to tell the story”, and “they acted kindly” which helped them “settle the dispute before it went any further”.<sup>66</sup> At a dispute in Velanai mediation board in Jaffna, where a woman was assaulted by her brother-in-law, the female disputant said “they gave me an opportunity to tell all my problems...they listened to me carefully....they talked very calmly and inquired patiently.”<sup>67</sup> Across all locations, there were further similar examples of such responses, often taking the form of statements such as ‘sufficient time was given to me’ and ‘I told all of my problems’.<sup>68</sup>

It is those who often have not had firsthand experience with the mediation boards – commonly other service providers who have met and talked with former disputants – who were not satisfied with the process. They appear to have a more disparaging view on whether women have a fair opportunity to speak and share their views. A legal aid

---

<sup>60</sup> For example Tamil disputant questionnaires #5 loan #6 land #7 commercial #8 dowry #11 loan #12 land #13 loan, Sinhala disputant questionnaires #1 assault #2 loan #3 assault #4 assault #5 loan #12 assault #13 land #14 assault #19 assault.

<sup>61</sup> Tamil disputant questionnaire #25 land.

<sup>62</sup> Tamil disputant questionnaire #16 dowry/land.

<sup>63</sup> Tamil disputant questionnaire #36 loan.

<sup>64</sup> Tamil disputant questionnaire #33 abandonment.

<sup>65</sup> Sinhala disputant questionnaire #10 land.

<sup>66</sup> Sinhala disputant questionnaire #1 assault.

<sup>67</sup> Tamil disputant questionnaire #10 family.

<sup>68</sup> This was repeated frequently in different forms in response to a question regarding mediator behaviour.

service provider argued that “male mediators do not create a space for women to speak”,<sup>69</sup> while a provider of village-level mediation stated that “when women try to be open at mediation boards, they see the reactions of male mediators and back down”.<sup>70</sup> Representatives of local government and civil society groups also argued that it is unclear whether “women with real issues do even come to mediation boards and have an opportunity to communicate their views”<sup>71</sup> given that more generally “women are hampered from using mediation boards because social issues prevent them from coming”.<sup>72</sup>

What can we hypothesise based on these contrasting views of disputants and outsiders to the process? Firstly, it is possible these views are disparaging out of preference for their own form of dispute resolution. Secondly, many of these providers may have personally dealt with those who have had a negative experience with the mediation boards (as the next step in resolving the dispute) and therefore are unlikely to hear positive stories. This does not devalue these accounts, but makes them one-sided. Thirdly, however, these providers (such as legal aid providers and women’s NGOs) are more likely to view issues through a gender lens than disputants, dependent on their own training and experience. This relates to a fourth issue: the views of female disputants have to be weighed against the disputants themselves internalising gender norms and stereotypes. While interviews with female disputants did not explore their levels of gender socialisation, it is reasonable to assume that their perspective of being treated equally in mediation does not necessarily equate with broader understandings of gender equality.

### *Do women get treated differently?*

Generally speaking, where mediators treated women differently in our study locations, it was often linked to a sympathetic and protective attitude. Local NGOs in Moneragala and Velanai respectively stated that “mediators are sympathetic to women – the mediation board is a place where sad stories can be told”<sup>73</sup> and that “mediators are more humane and protective towards women than police. Mediators are not necessarily gender sensitive but they are more humane”.<sup>74</sup> One male mediator in Kattankudy specifically mentioned that “according to our culture, women need help from men.”<sup>75</sup> Disputants also spoke of this protective attitude among mediators in a positive manner, seeing such attitudes as favourable to women disputants, claiming, for example, “they treated me like a daughter”, “they advised me kindly to listen to my husband” and “they were kind which was good for a victimised person like me”.<sup>76</sup> It is clear that these attitudes of mediators are rarely considered to be creating unequal environments for women disputants.

---

<sup>69</sup> Interview with Legal Officer, Legal Aid Commission, Jaffna Court Complex, Jaffna. 08/05/2013.

<sup>70</sup> Interview with Shevon Gunaratne, Sarvodaya Legal Services Movement, 27/02/2013.

<sup>71</sup> Interview with Women Development Officer, Nallur, Jaffna. 04/10/2012.

<sup>72</sup> Interview with Shevon Gunaratne, Sarvodaya Legal Services Movement, 27/02/2013

<sup>73</sup> Focus group with female members of ‘Access to Justice Network’, Moneragala, 13/05/2013.

<sup>74</sup> Focus group with ‘Vehilihini’, an NGO in Moneragala, 13/05/2013

<sup>75</sup> Focus group with Kattankudy mediators, Batticaloa, 16/03/2013.

<sup>76</sup> Tamil questionnaire #40 loan and assault, Tamil questionnaire #1 loan, Sinhala questionnaire #1 assault.

Many mediators we observed tried to present and maintain their neutrality, impartiality and equal treatment of both men and women – often doing so in order to secure outcomes they perceived as positive for women – by referencing that parties are equal before the law. Mediators we interviewed made statements such as “women have equal status in Sri Lanka and should be treated so” and “female disputants must be treated equally because they make the same contribution to society as men do”.<sup>77</sup> Some mediators specifically focused on violence against women with statements like “there are laws that protect women from violence and people must be aware of that. You can no longer be violent towards women”.<sup>78</sup> At a mediation of a dispute relating to an assault between a brother and sister, mediators clearly informed the brother that “violence against women is a serious offence. You can be punished by a court of law for that”.<sup>79</sup> A similar stance was observed at a dispute between a woman and a man in her neighbourhood, where she complained that the man entered her house forcibly and harassed her.<sup>80</sup> While these perspectives were not universally applied (see section 3.3), this shows how knowledge of gender-sensitive laws plays a role in the manner in which women’s position of power and interests are negotiated in mediation.

However, the law can also be used to maintain power imbalances. For example, during commercial disputes the power imbalance is often extreme, with disputants who are commonly very poor going up against an institution with vast resources, legal backing and legal understanding. One female labourer from Moneragala expressed the view that loans had unclear terms and conditions and that the loans were going to “swallow us all”.<sup>81</sup> Yet our interviews with mediators predominantly indicated an unwillingness to recognise the difficult situation many women were in. For example, from discussions with mediators in different locations it is clear they know that many women may take loans at the behest of their husbands; yet in the guise of maintaining neutrality, they commonly argued that women should be treated as mere defaulters.

### *Conclusion*

The performance of neutrality and impartiality provides a form of space for different female disputants to feel they can articulate their interests. This is formally achieved through the creation of the ‘space to speak’. Yet how mediators facilitate this and the extent to which it favours women’s interests will fluctuate depending on the issue at hand, particularly taking into account their legal knowledge. Clearly, however, how the law is used by mediators in gender-specific disputes is informed by cultural norms; it is to that we now turn.

## **3.3 Culture and the goal of settling**

While ‘culture’ is not a factor considered in the structural, policy and legislative construct of the mediation boards, mediators are obviously influenced by their own

---

<sup>77</sup> Focus group with Hikkaduwa mediators, Galle, 02/03/2013.

<sup>78</sup> Focus group with Hikkaduwa mediators, Galle, 02/03/2013.

<sup>79</sup> Observation of a mediation session (name of mediation board withheld to maintain privacy).

<sup>80</sup> Observation of a mediation session (name of mediation board withheld to maintain privacy).

<sup>81</sup> Moneragala Focus Group with community members, 13/05/2013. There is a considerable debate in the literature on microcredit. David Hume, noting the more negative side of microcredit, has argued “microcredit is microdebt.” See DAC Network on Gender Equality. (2011). Women’s Economic Empowerment. Issues paper. April 2011.

interpretations of what is culturally acceptable.<sup>82</sup> By the phrase “*it is a part of our culture*” mediators convey many views, attitudes and beliefs that impact on women’s equality.<sup>83</sup> Culture is used to define religious beliefs and practices, the institutions of marriage and family as well as values and attitudes on women’s equality, all of which come with stereotypical patriarchal values.

One NGO worker in Jaffna argued that,

They [mediators] will have some cultural stigma in their mind. For example, women cannot come out, children should not argue. If they have prejudice in their mind in will automatically come out in their approach...for example, if there is a family issue between husband and wife, this can be a problem.<sup>84</sup>

Mediator perspectives have a strong impact on what Griffiths explains as “popular concepts in mediation - empowerment, individual’s control, autonomy, own agenda - which conform to the reality of the world people inhabit”.<sup>85</sup> Often, these interpretations reflect and reinforce power asymmetries, particularly against women, about whom interpretations of culture often create unequal conditions and situations.

#### *The goal of ‘settling’*

Mediators commonly articulate that their overall goal in mediation is to settle disputes. In line with the interest-based mediation method, mediators are aware (and often verbally repeat) that they are not judges, that the mediation boards do not function like a court of law; and that mediators have no power to make decisions for disputants.<sup>86</sup> However, field research commonly demonstrated that mediators aim to get disputes to a settlement of some kind, regardless of the nature of the dispute that they are dealing with, and that settlements are considered successes, and a service to the community by mediators. The push for settlements can lead to complicated and often negative results from the perspective of equality for women.

This rests on a range of issues interpreted as ‘culturally appropriate mechanisms’ for pushing for a settlement and culturally appropriate outcomes. For example, mediators in Velanai highlighted that,

When we have a case we explore into the matter and work out the best approach. Sometimes we can settle the case by emphasising the relationships, social values, social respect, sometimes we explain how difficult it would be if they go to the court.<sup>87</sup>

---

<sup>82</sup> While much of the literature on mediation and culture looks at broad behavioural patterns across countries, this discussion is confined to mediator interpretations of culturally defined behaviour, roles and the wide functioning of communities. See Wall Jr., J.A., Stark, J.B., and Standifer, R.L. (2001). ‘Mediation: A Current Review and Theory Development’. *Journal of Conflict Resolution*, 45(3), pp. 370–391.

<sup>83</sup> Jayasundere. (2013).

<sup>84</sup> Interview with representative of Jaffna Social Action Centre, Jaffna, 04/05/2013.

<sup>85</sup> Griffiths, A. (1998).

<sup>86</sup> This was commonly stated by mediators at the start of mediation sessions and individual dispute proceedings.

<sup>87</sup> Focus group with Velanai mediators, Jaffna, 05/05/2013.

At the start of mediation sessions in majority-Buddhist areas like Siyambalanduwa or Moneragala, and majority-Muslim areas like Kattankudy in Batticaloa, mediation sessions start with Buddhist and Islamic prayers respectively. The values that mediators associate with these different religions clearly play a major role in the kind of settlements that are facilitated. In Kattankudy, one male mediator stated that:

There are Quranic verses about mediation or settlement - we follow that - one of our members is a theologian. We'll give some religion orientated advice with the help of him. After his advice people may feel relaxed. Sometimes they be adamant – after this kind of religious advice they may change their mind<sup>88</sup>

For female disputants these cultural and religious interpretations may have a specific effect due to the way in which they frame women's roles, identities and status in society. As highlighted previously, this tends to revolve around ideas of protection or sympathy. One male mediator in Kattankudy stated “we give advice based on religion as it impacts on women...when we advise them based on religion, they change their minds”,<sup>89</sup> while another in Hikkaduwa argued that, “according to religion, men have to protect women”.<sup>90</sup>

Some mediators tried to use the social stigma of violence against women to generate outcomes they perceived as favourable to female disputants. For example, during one dispute in Kattankudy where a brother had hit his sister, a mediator tried to get the brother to pay compensation by stating, “I'll give you one week's time. Think. She is your sister. If you go to court he will cause big cultural problems for you. Afterwards, you will not be able to face her.”<sup>91</sup> In a similar case in Kattankudy, where a man assaulted his sister and damaged her property, a male mediator said: “As a woman, according to our culture, she needs your help. You need to be helping her, but you are against her.”<sup>92</sup>

Domestic violence is an area where cultural norms may come into play in mediators' attitudes, behaviours or actions and may significantly affect female disputants. Mediators often condemned violence during our observations, sometimes even using knowledge of the Prevention of Domestic Violence Act to point out the criminality and immorality of the violence.

Yet, overwhelmingly, mediators used this act to push for reconciliation rather than to advise the female disputants of their rights and how they might best be able to pursue them. As one mediator in Moneragala stated, “when it comes to disputes in the family, our aim always is to keep the family together.”<sup>93</sup> Another in Velanai said that “we try again and again to bring the husband and wife together”.<sup>94</sup> This aligns with a point made in a recent study on masculinities in Sri Lanka, which indicates how often, when the family unit comes into the equation, the “cultural and ideological value

---

<sup>88</sup> Focus group with Kattankudy mediators, Batticaloa, 16/03/2013.

<sup>89</sup> Focus group with Kattankudy mediators, Batticaloa, 16/03/2013.

<sup>90</sup> Focus group with Hikkaduwa mediators, Galle, 02/03/2013.

<sup>91</sup> Observation of Kattankudy mediation board (date withheld to protect privacy).

<sup>92</sup> Observation of Kattankudy mediation board (date withheld to protect privacy).

<sup>92</sup> Observation of Kattankudy mediation boards (date withheld to protect privacy).

<sup>93</sup> Focus group with Moneragala mediators, Moneragala, 18/05/2013.

<sup>94</sup> Focus group with Velanai mediators, Jaffna, 05/05/2013.



placed on the cohesion of the family excuses violence and thereby absolves men for violence against women.”<sup>95</sup>

Moore makes clear how giving equal weight to the different values in such a case is certain to be damaging from the perspective of women’s equality:

A wife’s need and value for safety should always outweigh an abusive husband’s belief and value that his wife is his personal property and that he should be able to treat her in any way he pleases. In this type of case, it is important that one value – safety – prevails over the other – the personal freedom of doing what one wants.<sup>96</sup>

There is considerable debate on the issue of domestic violence in mediation literature. Whereas proponents argue that mediation offers a dispute resolution process that is not as formal (and therefore as forbidding) as the formal courts of law,<sup>97</sup> opponents of this stance argue that mediation does not offer equal access to justice to disputants, since the nature of domestic violence places them in unequal positions of power and disadvantage.<sup>98</sup> Much of this comes down to whether issues of violence against women in the home are an issue of ‘interests’ or ‘rights’ and the discourse around whether such issues can (or should) be negotiated.

Our field notes from an observation of Hikkaduwa mediation board show the complexity of negotiating issues of violence in the home:

The woman says that the man (her brother in law) hits her and her family. Mediators try to say what if they can stop him doing that? She says that he’ll never stop. He has carried on after previous settlements. Mediators say they understand that she is alone and vulnerable but that things could get worse if it goes to court.<sup>99</sup>

There is a difficult balancing act between respecting women’s own wishes and what mediators may perceive as morally or practically right. In this same case, we noted that:

Mediators try to get them to talk. She says let it go to court. Mediators suggest putting it off for a week. The male says he wants to settle...mediators frequently emphasise the importance of family to them all [to try and get them to settle] but it won’t work.<sup>100</sup>

Clearly, concerns about pushing for settlements should not be divorced from the reality women face. The social stigma attached to leaving your husband in Sri Lanka is certainly very real and damaging, as is the economic weight a woman would potentially have to bear as the head of the household. What position women are in if

---

<sup>95</sup> CARE International Sri Lanka. (2013), p. 24

<sup>96</sup> Moore, C. (2003), p. 406.

<sup>97</sup> Fineman and Mykytiuk. (1994). *The Public Nature of Private Violence*. Routledge; Cobb, S. (1997). The domestication of violence in mediation. *Law & Society Review*, 31, 3 397-440.

<sup>98</sup> Stamato, Linda. (1992). ‘Voice, Place and Process: Research on Gender, Negotiation and Conflict Resolution’. *Mediation Quarterly*. 9(4); Tishler, et al. (2004). *Is Domestic Violence Relevant? An Exploratory Analysis of Couples Referred for Mediation in Family Court*. *Journal of Interpersonal Violence*. 19(9):1042-1062; Grillo, Trina. (1991). ‘The Mediation Alternative: Process Dangers for Women’. *Yale Law Journal*. 100(6): 1545-1610.

<sup>99</sup> Observation of Hikkaduwa mediation board (date withheld to protect privacy).

<sup>100</sup> Observation of Hikkaduwa mediation board (date withheld to protect privacy).

the family relationship breaks down will play a key role in disputes around domestic violence, since a weak fallback position will dictate the limits of what women may voice as a problem when they raise the issue and subsequently what they want out of the mediation session.

Yet recognition of a mediator's pragmatism should not be conflated with a dismissal of women's rights or safety. For example, one mediator from Hikkaduwa argued that "when we talk too much about women's rights, we destroy our culture and it hampers the social roles that women play in our societies".<sup>101</sup> In Hikkaduwa, a male mediator stated that "domestic violence disputes are often trivial"<sup>102</sup> while another claimed "women are going astray in these modern days due to the influence of the media. Look at the clothes they wear, they are unsuitable."<sup>103</sup> During an observation of Kattankudy mediation board, one mediator pronounced "you can hit only your wife".<sup>104</sup>

### *Conclusion*

Mediators often push for a settlement during mediation out of a desire to provide a social service, yet that push is often underpinned by ideas about the role of women in society that can go against those women's interests. While this was far from true of all disputes observed, we found enough examples of mediator attitudes towards violence against women to raise considerable moral and safety concerns about the appropriateness of mediation for cases involving violence against women.

## **4 Conclusion**

### **4.1 Revisiting 'informal' justice assumptions**

The mediation boards hold many similarities with alternative dispute resolution systems all over the world (often labelled 'hybrid' or 'informal' systems). Yet this paper has sought to provide some nuance to a common generalisation: that such a system necessarily discriminates against women. In our research locations, certainly, we observed a range of mediator attitudes and behaviour which did not promote women's equality. Yet we also often saw a genuine desire to facilitate outcomes which were perceived as beneficial for women in difficult situations. This in part seems driven by the nature of the system itself, such as the promotion (however unattainable) of neutrality and impartiality and is linked to a basic legal understanding of gender equality. This paper therefore shows that those working on justice reform need to take note of the nuances of different systems and contexts.

### **4.2 Mediator power and gender equality in the mediation boards**

Power relations pervade the mediation process. While broader political and social processes set the limits of those relations, the mediator plays a crucial role in how the process unfolds. Since mediation is about negotiation and agreement between parties, the mediator has the power to frame agreements in certain ways. Moore argues that

---

<sup>101</sup> Focus Group with Hikkaduwa mediators, Galle, 02/03/2013.

<sup>102</sup> Focus Group with Hikkaduwa mediators, Galle, 02/03/2013.

<sup>103</sup> Focus Group with Hikkaduwa mediators, Galle, 02/03/2013.

<sup>104</sup> Observation of Kattankudy mediation board (date withheld to protect privacy).

the mediator's primary task is to manage the power relationship of the disputants and that in unequal power relationships the mediator may attempt to balance power. To strike the balance, the mediator provides the necessary power underpinnings to the weaker negotiator - information, advice, friendship - or reduces those of the stronger.<sup>105</sup>

Yet, problematically, at the mediation boards we observed mediators acted with strong moral authority on a number of issues. To some extent this is expected of them, since they commonly hold positions of respect through their age and community service. Yet the power balance maintained by the mediator in this way may ultimately maintain a social ordering that reflects their own beliefs about what is appropriate in gender relations. This is exacerbated when mediators push for a settlement which is tied to unequal perspectives on women's position in society. Importantly, this issue of power imbalance is far from exclusive to the different kinds of women who bring disputes; others, both male and female, will come to mediation in a fundamentally unequal position, by virtue of class, caste, ethnicity and gender.

### **4.3 Pursuing change for women's equality**

Is the answer, then, to try and change the mediation boards' system of mediation by introducing further substantive and technical reforms?<sup>106</sup> Two obvious reforms are to increase the representation of women as mediators and to increase the length and regularity of gender sensitivity training for both men and women. It is important to note, of course, that not all women automatically bring strong gender analysis skills with them as mediators or will, by their nature, represent and advocate for women's rights. This is why both "gender balancing exercises and gender mainstreaming activities must be two sides of the same coin".<sup>107</sup> The former works to make the mediation boards more representative and (therefore ideally) better able to respond effectively to a wider variety of disputes; the latter focuses on raising awareness of the differences in men's and women's experiences and on identifying and implementing practices that allow mediators to better respond to women's and men's different justice needs.

Yet the limitations of this 'technical' approach are obvious. Any approach to improving the outcomes for women in terms of promoting women's equality in the mediation boards also needs to consider the underlying causes of the socio-cultural stereotypes that inform male and female mediator's positions. The problem, as identified by Chopra and Bendana, is that gender inequality is less a reflection of technical procedures than of an underlying distribution of political, social and economic power.<sup>108</sup> While of course it is possible for both male and female mediators to attempt to transcend such power in the mediation process – which can be encouraged through training, sensitisation and diversity – the underlying imbalance will ultimately remain.

---

<sup>105</sup> Moore, C.W. (2003).

<sup>106</sup> Literature on women's access to justice highlights that often the approach to such justice providers is to "fix" them, whereby reforms are introduced, often as part of an attempt to bring them in line with international human rights norms. See Chopra and Isser. (2012).

<sup>107</sup> Salahub, Jennifer Erin. (2011). *African Women on the Thin Blue Line: Gender-Sensitive Police Reform in Liberia and Southern Sudan*. The North-South Institute, p 4.

<sup>108</sup> Bendaña, Alejandro and Chopra, Tanja (2013). 'Women's Rights, State Centric Rule of Law, and Legal Pluralism in Somaliland'. *Hague Journal on the Rule of Law*, 5.

For Li-on, this is because of community mediation's common focus on disputes as problems of interpersonal communication, rather than as social conflicts, along with its stress on 'neutrality' and 'individualism'.<sup>109</sup> As Felstiner and Williams hypothesise, in relation to domestic violence disputes, mediation confronts the underlying causes of violence only if they lie close to the surface.<sup>110</sup> For those seeking to influence change, perhaps this means the best approach is to work both within and outside the mediation boards' structure, aiming to encourage modest change in attitudes and values over women's equality in each specific context. As Chopra and Isser argue, "for positive change to be sustained in favor of women's equality and rights, it needs to be socially embedded."<sup>111</sup> Work of this kind would aim to bridge the gap between "laws and institutions, on the one hand, and social dynamics and realities, on the other."<sup>112</sup> This may mean the MoJ and development actors working with local partners fighting for women's rights, to strengthen the role they can play in their local area.<sup>113</sup>

#### 4.4 Recommendations

While this broader approach could certainly have its benefits, it involves a more fundamental rethink in how women's equality is approached, and we are aware this is not a simple transformation. Here, we offer two practical recommendations for the MoJ and their partners to consider. These reforms, obviously, are not a panacea for eliminating discrimination against women in the mediation process, but they can represent modest yet important changes for the many vulnerable women who use mediation.

First, there needs to be a re-consideration of the types of cases going to mediation and how they should be handled. The two examples we have are different but both have serious ramifications. Domestic violence regularly goes to mediation, commonly under the guise of assault but also under the amorphous title of a 'family dispute'. Mediators need to recognise when they are dealing with such disputes and understand where and when it would be appropriate to mediate such a case. This requires basic legal training and an awareness of other places in the justice chain to which women may be able to take their case. The desire to settle cases should not override the fundamental rights of a victim of domestic violence to legal recourse, should that be their desire. Disputes over the issue of commercial loans appear less contentious but they can and do have the considerable negative effect of placing women in vulnerable positions both economically and socially. Commercial mediation training in Sri Lanka does not currently have a gender analysis dimension; this is an essential next step.

Second, a more coherent and targeted gender strategy needs to be implemented. While technical reforms have their limitations, they can be an important first step in

---

<sup>109</sup> Li-on, L. (2009). 'The Politics of Community Mediation: A Study of Community Mediation in Israel'. *Conflict Resolution Quarterly*, 26(4), p. 456.

<sup>110</sup> This draws out what may be a useful distinction between disputes and conflicts. Disputes can often be seen as a narrower subset of actual human, social, political, and economic conflicts. The above dynamic is the case in Sri Lanka where there are long running individual land disputes, insecurity and threats of violence which are expressions of wider social tensions and conflicts in both war and less war-affected areas.

<sup>111</sup> Chopra and Isser. (2012), p. 348.

<sup>112</sup> Chopra and Isser. (2012), p. 348.

<sup>113</sup> IDLO. (2012), p. 22.

recognising and challenging discrimination. Currently the MoJ has an informal commitment to 30% of women becoming mediators and works towards increasing the nomination of women to be considered for appointment at mediators. It may be useful for this commitment to become formalised through a quota system. In terms of training and sensitisation, it seems to be mainly a question of resources; this may mean the Sri Lankan government directing higher levels of funding to the mediation boards, which is justifiable given the huge number of people using the service.

#### 4.5 Further research

Future research could be organised around four key areas:

- **Analysis of the effect of future gender balancing and mainstreaming initiatives on women's experiences of mediation.** If there are more female mediators and higher levels of gender sensitisation, does it lead to more equitable outcomes? Positive outcomes should not be assumed.
- **Planning, monitoring and evaluation of broader social work to challenge discriminatory gender norms at the local level.** It is easy to say that development programmes should be focusing on society rather than specific systems, but what that looks like and how to monitor and evaluate such work in a specific context is much more difficult.
- **Mapping and analysis of the wider justice sector at the dispute resolution level.** Understanding and analysing the 'justice chains' will be important in recognising the options for women in vulnerable situations and how they may be improved. This research could help ensure mediation is effectively and practically mainstreamed into the formal and informal justice system.
- **Research on 'alternative', 'informal' or 'hybrid' systems needs to take the specificities of each system and context seriously.** Alternative dispute resolution itself comes in many different forms; development organisations undertaking research and programming on such systems need to fully understand them, making recommendations based on evidence rather than purely normative goals.

## Bibliography

- Adler, Robert S. & Silverstein, Elliot M. (2000). *When David Meets Goliath: Dealing with Power Differentials in Negotiations*, 5 Harv. Negot. L. Rev. 1.
- Albrecht, P and Kyed, H. M. (2011). 'Introduction: Non-state and Customary Actors in Development Programs', in *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform*. IDLO and DIIS.
- Allen, T and Macdonald, A. (2013). 'Post-Conflict Traditional Justice: a critical overview'. *JSRP Paper 3*. Justice and Security Research Programme. London.
- Astor, Hillary. (2007). 'Mediator Neutrality: Making Sense of Theory and Practice', *Social & Legal Studies*, 16(2), pp. 221–239.
- Ayuko, Bonita and Chopra, Tanja. (2008). *The Illusion of Inclusion: Women's Access to Rights in Northern Kenya*. Research Report for World Bank Justice for the Poor and Legal Resources Foundation Trust.
- Bagshaw, Dale. (2001). 'Culture and Disclosure of Domestic Violence in Family Disputes'. Paper presented at the *Asia Pacific Forum: Conversations Beyond Cultural Boundaries*, University of South Australia, Adelaide.
- Bendaña, Alejandro and Chopra, Tanja (2013). 'Women's Rights, State Centric Rule of Law, and Legal Pluralism in Somaliland'. *Hague Journal on the Rule of Law*, 5.
- CARE International. (2013). *Broadening Gender: Why Masculinities Matter. Attitudes, practices and gender-based violence in four districts in Sri Lanka*. Colombo, Sri Lanka.
- Centre For Policy Alternatives (2003). *Informal Dispute Resolution Mechanisms in the North East and Puttalam*. Colombo.
- Chopra, Tanja and Isser, Deborah. (2012). 'Access to Justice and Legal Pluralism in Fragile States: The Case of Women's Rights', *Hague Journal on the Rule of Law*, 4, 337-358.
- Cobb, S., and Rifkin, J. (1991). 'Practice and Paradox: Deconstructing Neutrality in Mediation', *Law & Social Inquiry*, 16(16), pp. 35–62.
- Cobb, S. (1997). 'The domestication of violence in mediation'. *Law & Society Review*, 31, 3 397-440.
- Coleman, P.T. (2000). 'Power and Conflict', in *The Handbook of Conflict Resolution Theory and Practice*. Morton Deutsch and Peter T. Coleman(eds). Jossey-Bass Inc. USA.
- Crook, R.C, Asante, K, and Brobbey V. (2011). 'Popular Concepts of Justice and Fairness in Ghana: Testing the Legitimacy of New or Hybrid Forms of State Justice', in *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform*. IDLO and DIIS.

- DAC Network on Gender Equality. (2011). Women's Economic Empowerment. Issues paper. April 2011.
- Danish Institute for Human Rights. (2012). *Informal Justice Systems: Charting a Course for Human Rights-based Engagement*. Study completed for UNICEF, UN WOMEN and UNDP.
- Douglas, S. (2007). 'Gender Equality and Justice Programming: Equitable Access to Justice for Women', UNDP, *Primers in Gender and Democratic Government*.
- Fineman and Mykytiuk. (1994). *The Public Nature of Private Violence*. Routledge. UK.
- Fonseka, B and Raheem, M. (2011). 'Land Issues in the Northern Province: Post-War Politics, Policy and Practice'. *Centre for Policy Alternatives*. Colombo. December 2011.
- Golub, Stephen. (2003). 'Beyond the Rule of Law Orthodoxy: The Legal Empowerment Alternative', *Carnegie Endowment for International Peace Democracy and Rule of Law Series*, Number 41 (October 2003).
- Goodfellow, T. (2013). 'Hybrid' governance and Africa: examining a development buzzword. African Arguments Blog. 4 April 2013. Available at <http://africanarguments.org/2013/04/04/%E2%80%98hybrid%E2%80%99-governance-and-africa-examining-a-development-buzzword-%E2%80%93-by-tom-goodfellow/>
- Griffiths, A. (1998). 'Mediation, Gender and Justice in Botswana'. *Mediation Quarterly*, 15(4), pp. 335–342.
- Grillo, Trina. 1991. 'The Mediation Alternative: Process Dangers for Women'. *Yale Law Journal*. 100(6): 1545-1610.
- Gunawardana, M. (2012) *A Just Alternative: Providing Access to Justice through Two Decades of Community Mediation Boards in Sri Lanka*. Colombo: Ministry of Justice, The Asia Foundation and British High Commission.
- Herath, S. Sharma, K. Dissanayake, M. Senanayake, S and Nonis, R. (2012). *Survey Report on Gender Based Violence in the Conflict Affected Areas in the East of Sri Lanka*. Oxfam GB. Sri Lanka
- Honeyman, Christopher and Nita Yawanarajah. "Mediation." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: September 2003 <<http://www.beyondintractability.org/bi-essay/mediation>>.
- Human Rights Watch. (2013). *"We will teach you a lesson": Sexual Violence Against Tamils by Sri Lankan Security Forces*. February 2013.

- International Development Law Organisation (IDLO). (2012). *Accessing Justice: Models Strategies and Best Practices of Women's Empowerment*.
- Isser, D. H., Lubkemann, S. C., and N'Tow, S. (2009). *Looking for Justice: Liberian Experiences with and Perceptions of Local Justice Options*. United States Institute of Peace, Washington, DC
- Jackson, C. (2012). 'Speech, Gender and Power: Beyond Testimony', *Development and Change*, 43, pp. 999–1023.
- Jayasundere, R. (2003). *Report on Community Mediation Boards*. Unpublished document. Used with permission.
- Jayasundere, R. (2007). *Access to Justice Assessments in the Asia Pacific: A Review of Experiences and Tools from the Region*. UNDP.
- Jayasundere, R. (2009). *Understanding Gendered Violence against Women in Sri Lanka: A Background Paper*. Colombo: Women Defining Peace.
- Jayasundere, R. (2012) *Voices of Survivors: Case Stories of Domestic Violence Victims*. Colombo: Women In Need.
- Jayasundere, R. (2013). *Mediating Domestic Violence Disputes in the Community Mediation Board in Sri Lanka: Issues of Women's Equality and Equity*. PhD Thesis. University of Colombo. Unpublished.
- Kelly, Joan B. (1995). 'Power Imbalances in Divorce and Interpersonal Mediation: Assessment and Intervention'. *Mediation Quarterly*, 13(2), pp. 85–98.
- Kottegoda, S. (2010). 'Gender, Power and Politics', In *Power and Politics in the shadow of Sri Lanka armed conflict*. SIDA Studies, No. 25.
- Kovar, Anna. (2011). *Customary Law and Domestic Violence in Timor-Leste: Approaches to Domestic Violence against Women in Timor-Leste: A Review and Critique*. UNDP Timor-Leste. January 2011.
- Li-on, L. (2009). 'The Politics of Community Mediation: A Study of Community Mediation in Israel'. *Conflict Resolution Quarterly*, 26(4).
- Lockett, Kathryn. (2008). The Mechanisms of Exclusion: Women in Conflict. *Feminist Legal Studies*. December 2008, Volume 16, Issue 3.
- Lukes, S. (2005). *Power: A Radical View*, 2nd expanded edition. London: Macmillan.
- MacKinnon, C.A. (1987). 'Difference and Dominance: On Sex Discrimination' in: D. Kelly Weisberg (ed.), *Feminist Legal Theory Foundations* (Temple University Press).
- Maiese, Michelle. "Interests, Rights, Power and Needs Frames." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of



Colorado, Boulder. Posted: September 2004. Available at  
<http://www.beyondintractability.org/essay/interests-rights-power-needs-frames>.

Mason, J. (2002). *Qualitative Researching* (London: Sage Publications).

Mette Lindorf Nielsen. (2011). 'From Practice to Policy and Back: Emerging Lessons from Working with Community-Based Justice Mechanisms in Helmand, Afghanistan', in *Perspectives on Involving Non-State and Customary Actors in Justice and Security Reform*. IDLO and DIIS.

Ministry of Justice. (2003). *Training Manual: Community Mediation Programme*. Unpublished document. Used with permission.

Moore, C.W. (2003). *The Mediation Process Practical Strategies for Resolving Conflict* (San Francisco: Jossey-Bass)

Moore, C. W. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. San Francisco: Jossey-Bass (4<sup>th</sup> edition, forthcoming).

Moore, C. W. Jayasundere, R and Thirunavukarasu, M. (2011). *The Mediation Process, Community Mediation Programme*. Ministry of Justice.

Moore, Christopher W. (2005). *Situation Assessment on the Feasibility of Enhancing Existing or Designing New Land and Property Dispute Resolution Systems or Mechanisms in Sri Lanka*. The Asia Foundation

Moser, C.O.N. (1989). 'Gender Planning in the Third World: Meeting Practical and Strategic Gender Needs'. *World Development*, 17(11), pp. 1799–1825.

Mosse, D. (2005). 'Power Relations and Poverty Reduction', in R. Alsop (ed.), *Power, Rights and Poverty: Concepts and Connections*, Washington DC and London: World Bank / DFID, 51–67.

Quast, S. (2008). 'Justice Reform and Gender', in *Gender & Security Sector Reform: Toolkit*, DCAF, OSCE Office for Democratic Institutions and Human Rights (ODIHR), UN-INSTRAW, 2008, Tool 4, 13.

Ruwanpura, Kanchana N & Humphries, Jane. (2004). 'Mundane heroines: Conflict, Ethnicity, Gender, and Female Headship in Eastern Sri Lanka', *Feminist Economics*, 10:2, 173-205.

Sage, C., Menzies, N., & Woolcock, M. J. (2009). *Taking the Rules of the Game Seriously: Mainstreaming Justice in Development: the World Bank's Justice for the Poor Program*. Justice Reform Practice Group, The Legal Vice Presidency, The Work Bank.

Salahub, Jennifer Erin. (2011). *African Women on the Thin Blue Line: Gender-Sensitive Police Reform in Liberia and Southern Sudan*. The North-South Institute.

- Semple, N. (2012). Mandatory Family Mediation and the Settlement Mission: A Feminist Critique. *Canadian Journal of Women and the Law*, 24, 2, pp. 309–322.
- Siriwardhana, C. (2011). *Evaluation of the Community Mediation Boards in Sri Lanka*. Ministry of Justice and The Asia Foundation. January 2011.
- Smart, C. (1986) Feminism and Law: Some Problems of Analysis and Strategy. *International Journal of the Sociology of Law*, 14(2), pp. 109–23.
- Stamato, Linda. (1992). ‘Voice, Place and Process: Research on Gender, Negotiation and Conflict Resolution’. *Mediation Quarterly*. 9(4).
- Storie, F. (2002) Report: Review of the Community Mediation Program in Sri Lanka. Governance and Institutional Strengthening Project. Unpublished.
- The Asia Foundation. (2012). *TAF Sri Lanka PPA Year 1 Annual Component Report. PPA Component 4: Local-level justice in Northern and Eastern Sri Lanka*. Unpublished document.
- Tishler, Carl L. Bartholomae, Suzanne. Katz, Bonnie L. Landry-Meyer, Laura. (2004). ‘Is Domestic Violence Relevant? An Exploratory Analysis of Couples Referred for Mediation in Family Court’, *Journal of Interpersonal Violence*. 19(9): 1042-1062. Sage Publications. UK.
- UN Women. (2011). *Progress of the World’s Women 2011-2012: In Pursuit of Justice*.
- USAID. (2013). *Gender Analysis of the North and East of Sri Lanka*. Completed by The Applied Research Unit (ARU) of the United Nations Office for Project Services. Unpublished document. Cited with permission by authors.
- Valters, C. (2013). ‘Community Mediation and Social Harmony in Sri Lanka: A Theories in Practice Paper’, *JSRP Paper 4 (May 2013)*, Justice and Security Research Programme, London.
- Waldman, E. (2005). ‘The concept of justice in mediation: a psychobiography’. *Cardozo Journal of Conflict Resolution*, 6, 247.
- Wall Jr., J.A., Stark, J.B., and Standifer, R.L. (2001). ‘Mediation: A Current Review and Theory Development’. *Journal of Conflict Resolution*, 45(3), pp. 370–391.
- Wickramasinghe, M. (2010). *Feminist Research Methodology Making meanings of meaning-making*. Routledge. UK.
- Wijayatilake, K and Wickramasinghe, M. (2000). *Women’s Access to Legal Aid in Sri Lanka*. Centre for Women’s Research.
- Wojkowska, Ewa. (2006). *Doing Justice: How Informal Justice Systems Can Contribute*, Oslo: UNDP Oslo Governance Centre.

Woolford, A. and Ratner, R. S. (2008). *Informal Reckonings. Conflict Resolution in Mediation, Restorative Justice and Reparations*. Routledge: Oxon

Zoysa, N. (2006). 'Community Mediation: Law and Its Implementation in Sri Lanka'. *Forum of International Development Studies*, 32 (December).

### **Legal documents**

Mediation Boards Act, No. 72 of 1988

Mediation Boards (Amendment) Act, No. 15 1997

Mediation Boards (Amendment) Act, Mediation (Special Categories of Disputes) Act, No. 21 of 2003

Mediation Boards (Amendment) Act, No. 7 2011



This publication is an output of a research programme funded by UK aid from the UK Government. However, the views expressed do not necessarily reflect the UK Government's official policies



THE LONDON SCHOOL  
OF ECONOMICS AND  
POLITICAL SCIENCE ■

The Justice and Security Research Programme is an international consortium of research partners, undertaking work on end-user experiences of justice and security in conflict-affected areas. The London School of Economics and Political Science is the lead organisation and is working in partnership with:

African Security Sector Network (Ethiopia)  
Conflict Research Group, University of Gent (Belgium)  
Social Science Research Council (USA)  
South East European Research Network (Macedonia)  
Video Journalism Movement (Netherlands)  
World Peace Foundation, Tufts University (USA)

**Contact details:**

**email:** [Intdev.jsrp@lse.ac.uk](mailto:Intdev.jsrp@lse.ac.uk)

**Web:** [lse.ac.uk/internationalDevelopment/research/JSRP/jsrp.aspx](http://lse.ac.uk/internationalDevelopment/research/JSRP/jsrp.aspx)

**Tel:** +44 (0)20 7849 4631