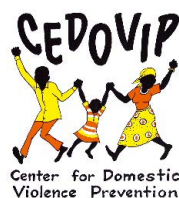


# Whose Justice, Whose Alternative?

Locating Women's Voice and Agency  
in Alternative Dispute Resolution Responses  
to Intimate Partner Violence





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# Whose Justice, Whose Alternative?

## Locating Women's Voice and Agency in Alternative Dispute Resolution Responses to Intimate Partner Violence

Intimate partner violence against women is a complex, enormously prevalent crime with devastating effects on women's safety, health, and well being. With one out of three women worldwide experiencing this violence, its magnitude presents complex challenges to justice systems when survivors of violence seek to formally prosecute perpetrators.<sup>1</sup> Further exacerbating this challenge are the varying individual, family, and community ideas about whether and how such violence – considered a private family matter in many cultural and social contexts – should be made public at all, let alone prosecuted.

Feminist activists, researchers, and programmers have made significant steps in recent decades to increase international attention to the breadth and severity of this violence, and in response dozens of countries have newly passed specific laws to criminalize various forms of violence against women, including intimate partner violence.<sup>2</sup> Simultaneously, awareness-raising campaigns and community mobilization initiatives, from the grassroots level up to the national and international levels, have sought to dismantle widespread tolerance of this violence, with evidence of slow but encouraging progress.<sup>3</sup> Despite these notable successes in legislative changes and efforts to address the norms that promote violence, a central question essential to ending violence against women remains unanswered: **What are the most suitable options for women seeking justice after experiencing violence at the hands of their intimate partners?**

Feminist activists insist on a core ethical standard that women survivors of intimate partner violence *determine their own course of action* in response to violence.<sup>4</sup> But significant obstacles exist in every direction survivors of intimate partner violence may turn. Any step a survivor takes to bring public attention to the situation, for instance, may prompt retaliatory violence by her partner. Formal justice system responses at her disposal, even those with specific legislation against intimate partner violence, are notoriously slow, costly, difficult to access, and (in certain locations) rife with corruption. A survivor's peers and family members can offer valuable financial and emotional support, but may also uphold common attitudes that accept violence as a normal part of relationships, blame women for the violence they face, and/or insist that women keep their families together at all costs. And multiple risks – stigma and shame from family and community members and the risk of economic insecurity for herself and/or her children, among

many other personal considerations – often dissuade survivors from seeking support, filing police reports, or leaving violent relationships.<sup>5</sup>

Both anecdotal and empirical evidence suggests that, in the face of these obstacles, a significant proportion of women survivors of intimate partner violence choose community-based alternative dispute resolution (ADR) mechanisms to help address the violence they are facing. Research finds that as many as 80% of disputes made public in the Global South are addressed through the informal justice system.<sup>6</sup> These approaches appear to present survivors of intimate partner violence with certain advantages over the formal system: primarily, they tend to be more affordable, accessible, and aligned with the prevailing community/cultural traditions of their locality. But, given the proportion of these survivors who interact with informal justice mechanisms, there is a surprising lack of attention in the international literature as to how exactly these mechanisms function. Furthermore, there has been particularly little analysis of the extent to which these ADR mechanisms effectively bring an end to intimate partner violence or meet the aforementioned ethical standard of prioritizing women survivors' ability to speak for themselves and determine their own course of action.

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While this study does not seek to definitively fill this gap in international literature or to solve the issue of how to increase the influence of women survivors' own preferences and decisions within informal justice mechanisms, we do hope it *initiates and informs a deeper conversation* among donors, researchers, activists, and programmers working to end intimate partner violence around the world related to the following three questions:

1. What do ADR responses to intimate partner violence look like, particularly in the Global South?
2. To what extent do these approaches prioritize the voice and agency of women survivors of intimate partner violence?
3. What examples exist of ADR approaches that better prioritize the voice and agency of women survivors of intimate partner violence?

By synthesizing major themes from the international literature on ADR responses to intimate partner violence in the Global South, and by conducting key informant interviews with experts and practitioners from around the world, we aim to clarify the comparative merits and shortcomings of these approaches within the international movement to end violence and protect women's rights.

The study proceeds as follows: Section 1 establishes definitions of key terms, while Section II describes the study methodology. Section III presents the results of the study organized under the three main research questions (see list above). Section IV proposes a set of recommendations, based on the study results, and Section V offers a summative conclusion.

## What's in a name?

Alternative dispute resolution responses to intimate partner violence around the world go by many names, even as their core components often look similar. In addition to numerous names in vernacular languages, our literature review and conversations made reference to practices called:

- Mediation
- Reconciliation
- Village Courts
- Sentencing Circles
- Women's Courts
- Customary Courts
- Community Committees
- Paralegal Groups
- Gender-based Violence Watch Groups
- Family Courts

## I. Definition of Key Terms

**Intimate partner violence:** Recent evidence suggests that, at a global scale, some 30% of ever-partnered women experience physical or sexual intimate partner violence at least once in their lifetimes.<sup>7</sup> The present study uses the World Health Organization definition of intimate partner violence: "behavior by an intimate partner or ex-partner that causes physical, sexual, or psychological harm, including physical aggression, sexual coercion, psychological abuse, and controlling behaviors."<sup>8</sup> The study focuses specifically on intimate partner violence to the exclusion of other forms of violence against women and girls for the sake of precision, and also to allow deeper examination into the particular challenges and dynamics of dispute resolution between intimate partners.

**Alternative dispute resolution (ADR):** The term alternative dispute resolution refers to "dispute resolution processes [that] are alternatives to having a court (state or federal judge or jury) decide the dispute in a trial... [these] dispute resolution processes can be used to resolve any type of dispute including family, neighborhood, employment, business, housing, personal injury, consumer, and environmental disputes."<sup>9</sup>

While ADR processes vary widely and reflect the diversity of societies and settings where they take place, this study focuses on two common forms of ADR: mediation and arbitration. Both mediation and arbitration involve an impartial third party (which can be either an individual or a group) facilitating a discussion between the parties to a dispute with the end goal of producing an agreement, individual to the particular case, which dictates the terms of the dispute's resolution. There is a subtle but important difference between the two practices: In the case of mediation, the impartial third party mediator is tasked with helping the disputing parties find grounds for agreement and concession, but with the final decision coming, by definition, from the disputing parties themselves. By contrast, in arbitration, all parties to the dispute grant the authority to the impartial third party arbitrator to determine a final conclusion/solution, although the final decision of an arbitration process will tend to draw upon the testimonies and preferences of the disputing parties.

The distinction between these two forms of ADR is subtle, but important to note, since the locus of authority for decision-making is centrally important to this study. Furthermore, as this report will show, many processes described in the literature and by study informants as mediation processes may actually more closely resemble arbitration from a technical perspective.

**Women's voice and agency:** The study uses the term “voice and agency” as a barometer for the extent to which the rights and autonomy of women survivors of intimate partner violence are being respected in ADR mechanisms. While intimate partner violence is undeniably a violation of women's rights, the term “rights” tends to invoke formal international law as codified in the Universal Declaration of Human Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, and other such international instruments. The responsibility to protect these rights, in terms of international law, belongs to the national government signatories to these conventions. Thus, to avoid confusion, we have chosen not to use the yardstick of women's rights to assess the actions of what are often non-governmental actors.

As such, to sidestep this confusion without ignoring women's human rights, this study uses the specific indicators of “women's voice and agency” to stand in for the broader category. **In line with a recent landmark World Bank publication, the study defines voice as “a woman's ability to speak up and be heard, and to shape and share in discussions, discourse, and decisions” and agency as “a woman's ability to make decisions about one's own life and act on them to achieve a desired outcome, free of violence, retribution, or fear.”<sup>10</sup>**

Within this framing, the study will also direct particular focus on the extent to which women are still facing intimate partner violence after interacting with various ADR mechanisms. Ending intimate partner violence is considered a fundamental component of protecting, promoting, and prioritizing women's voice and agency.



## II. Methodology

This study used two data collection strategies: a literature review and key informant interviews.

**Literature review:** The literature review systematically identified, organized, and analyzed documents related to three nested themes: **(1)** understanding ADR as a whole, in its historical context; **(2)** documenting the range of ADR responses to intimate partner violence around the world; and **(3)** identifying ADR responses to intimate partner violence practiced in the Global South in particular.

Under theme one, literature documenting the relevant sociological, legal, and historical context for and roots of ADR practices were identified. As this cast a wide net, databases and journals that specialized in meta-analyses and literature reviews were the focus of the search. Search terms included alternative dispute resolution, mediation, reconciliation, village court(s), customary court(s), and restorative justice.

Under theme two, primary and secondary sources documenting ADR approaches for responding to cases of intimate partner violence in any geographical context were identified. Under theme three, primary and secondary sources related to ADR processes for cases of Intimate partner violence practiced in the Global South were identified. For both themes two and three, primary sources included program manuals, training guides, written procedural guides, presentations, websites, and other sources that constitute direct elements of such processes. Secondary sources included evaluations, academic journal articles, meta-evaluations, sociological studies, legal studies, and other sources that comment on or otherwise scrutinize/investigate ADR processes, including whether or not they are human rights-based, for cases of intimate partner violence. The databases and journals used were PubMed, POPLINE, JSTOR, ScienceDirect, Eldis Communities, and Google Scholar. Search terms included alternative dispute resolution, mediation, reconciliation, village court(s), customary court(s), and restorative justice in combination with intimate partner violence, violence against women, and gender-based violence. In addition to scans of popular databases and journals, this investigation was supplemented with sources identified through the key informant interviews.

**Key informant interviews:** Authors BH and NPG conducted key informant interviews with practitioners and experts from the global community of practice in preventing and responding to intimate partner violence. In an effort to ensure geographical diversity of information and opinions, the selected sample included informants with particular expertise in the Caribbean, Central America, the Middle East, North America, the Pacific, South America, South Asia, Southeast Asia, and Sub-Saharan



Africa. Time and resource limitations demanded that the total list of interviewees remain small. Our final sample of 16 key informants provides a snapshot of the global diversity of ADR practices and opinions. The authors hope that this study and its initial data collection efforts will prompt significant additional investment in formative and evaluation research into the ethics and effectiveness of ADR practices to address intimate partner violence in the future.

The authors hope that this study, which aims to be exploratory, will have the effect of prompting significant additional investment in formative and evaluation research into the ethics and effectiveness of ADR practices to address intimate partner violence in the future. Such efforts need to prioritize direct data collection with practitioners of ADR mechanisms, as well as women survivors of intimate partner violence who have interacted with such mechanisms, which we were unable to do due to resource limitations. The authors acknowledge that any study drawing attention to the voice and agency of women survivors of intimate partner violence is necessarily incomplete without including those voices itself.

The key informant interview guide and other methodological details are available by request. The guide included modules of questions asking respondents for their insights on: **(a)** common ADR mechanisms in their location; **(b)** community acceptability of these mechanisms; **(c)** ADR linkages to formal justice systems; **(d)** considerations of women survivors' voice and agency throughout the steps of the ADR mechanism; **(e)** examples of feminist or women-led ADR mechanisms; and other topics.

**Data analysis:** Interviews were audio recorded and typed notes were used to capture recurring themes in the individual interviews. One researcher (BH) listened to the recordings, transcribed the informants' responses verbatim, and reviewed notes from all interviews at the conclusion of the data collection process. Transcripts were then coded and organized in alignment with a priori themes (related to the three main research questions and lines of inquiry referenced above), as well as emergent themes across multiple interviews.

The results of this methodological approach are presented in the following section.



### III. Results

The term “alternative dispute resolution” refers to practices that are simultaneously very old and very new. Examples of mediation and arbitration appear in historical evidence from as early as 1800 BC, in the practices of the Mari Kingdom (in modern Syria). India’s panchayat system of grassroots governance had coalesced by 500 BC, and King Solomon’s famous decision to “split the baby” to resolve a dispute of parentage is one of several examples of arbitration in Biblical times. Aristotle also spoke in favor of arbitration as opposed to formal courts in ancient Greece.<sup>11</sup>

**Legal scholars have traced a consistent history of negotiation, mediation, and arbitration practices from these ancient times up to the present day, pointing to an enduring human need for flexible, accessible, just mechanisms of dispute resolution.**

Scholarship in this area underscores this need from the family level up to the level of international diplomatic and business relations.<sup>12</sup>

At the same time, the effort to better document and codify these practices has gained momentum only recently. In the United States, inherent challenges of litigating the Civil Rights Act of 1964 – which for the first time criminalized discrimination on the basis of race, sex, religion, color, or national origin – prompted a noted rise in such alternative justice approaches, for instance.<sup>13</sup> And despite its ancient roots, the term “alternative dispute resolution” itself only starts appearing consistently in the English-language literature in the 1980s.<sup>14</sup>

In the Global South, the ways in which ADR practices interact with formal justice systems are incredibly diverse, with post-colonial settings demonstrating significant influence by their particular colonial legal legacy. As can be expected, the forms of ADR systems currently functioning vary by region, country, and at times even by district or locality within a country. Some of the currently operating systems uncovered in our literature review are more than 400 years old, while others have formed much more recently.<sup>15</sup>

The convergence of old and new that ADR represents – where ancient human practices are meeting a present-day movement to increase access to justice around the world – presents a fascinating subject for inquiry and analysis. But, as one key informant in the study observed in relation to applying these practices to cases of intimate partner violence, it is important not to proceed with naiveté or excessive enthusiasm:

"You have people in the ADR community and [restorative justice] community who are wildly excited about the power of these practices... and these are powerful practices... [but] they then become true believers and think you can just point this anywhere and do anything."

– International ADR and Legal Scholar, USA

Set within this historical context, the results presented hereafter will highlight collected insights on whether these practices – historical and powerful though they may be – are able to prioritize women's voice and agency when seeking to address cases of intimate partner violence and, indeed, whether they are able to stop violence in the lives of women who seek redress/justice through ADR. Results from the study's literature review and key informant interviews aim to answer three main research questions: **(1)** What do ADR responses to intimate partner violence look like, particularly in the Global South?; **(2)** To what extent do these approaches prioritize the voice and agency of women survivors of intimate partner violence?; and **(3)** What examples exist of ADR approaches that better prioritize the voice and agency of women survivors of intimate partner violence?

## 1. What do ADR responses to intimate partner violence look like, particularly in the Global South?

"There's a difference between urban and rural, difference between tribal and non-tribal, different implications and different effects, different meanings... You cannot generalize."

– Legal Scholar focused on the Middle East and North Africa

As the above quote emphasizes, ADR practices that address cases of intimate partner violence around the world take diverse forms, reflecting the particular convergence of community norms, rule of law, colonial legal legacy, and many other factors in any given location. It is beyond the scope of this study to accurately catalog all of the nuanced manifestations of such practices, but our literature review and key informant interviews did point to **three primary distinctions** that prove influential for our analysis of such practices' ability to prioritize women's voice and agency in addressing intimate partner violence cases.

### The first key distinction is: Is the practice specifically designed to deal with intimate partner violence cases?

Most ADR practices examined by our study function more or less the same way they have for hundreds of years. These practices are the mechanisms by which a tribe, clan, village, or faith community (for instance) has tended to

resolve a broad range of family and community disputes, including those involving land, property, inheritance, business issues, and any other variety of cases, without involving the formal justice system. These ADR practices were not specifically designed to deal with intimate partner violence cases, despite widespread agreement that responses to intimate partner violence require approaches responsive to the broader context of gender inequality in which violence is perpetrated and their direct and often ongoing threat to survivors' safety and well being. But as the most legitimate informal legal authority for a certain location or community, they become a common destination when survivors of intimate partner violence seek justice. Examples abound:

- Lisan systems, the name for the multitude of local ADR systems in Timor Leste, have existed since before the start of Portuguese colonial rule in 1556.<sup>16</sup> These highly localized systems vary in their practices but share features including that they are predominately oral and that they prioritize community and collective rights over individual rights. Only very recently have Lisan systems begun to take intimate partner violence cases regularly.<sup>17</sup>
- One informant from Uganda spoke of the historical tendency for the king of every tribe (in this region) to appoint chiefs to supervise certain smaller regions or localities, and for the chiefs to oversee dispute resolution "forums" in public spaces to address various community disputes. While Uganda's local council courts are meant to replace these chiefly forums as a more formal dispute resolution option, covering all variety of cases, in practice the tribes maintain a hierarchy of "clan leaders" and matriarchs/patriarchs in each lineage who still often resolve family and community disputes in informal ways, including intimate partner violence cases.

The vast majority of ADR approaches uncovered in our study fall under this category. They are historical dispute resolution mechanisms intended to preserve hyper-local community order, with no particular attention to or aptitude for addressing intimate partner violence as part of their foundation and functioning.

A meaningful minority of mechanisms was specifically created to address intimate partner violence cases, however, and this distinction is important. These are much more likely to be the result of civil society and non-governmental organization funding and effort, and much more likely to involve specific training for mediators on women's rights and the particular dynamics of intimate partner violence. In Nepal, for instance, the United Nations Children's Fund began training upwards of a thousand "paralegal groups" of women in the 1990s, with the explicit objective of resolving cases of intimate partner violence and promoting survivors' access to the formal justice system throughout the country. More recently, according to one key informant, the government of Nepal has sought to formalize these groups to mixed effect.

"There are about one thousand paralegal groups that were formed... They've mediated cases and provided counseling and legal support and legal aid... These groups were quite well known all across the country but then because the government wasn't too happy with the paralegal concept, they have turned [them] into 'GBV Watch Groups.' Now that they've transitioned to the GBV Watch Groups, it is part of a bigger decentralization mechanism. Although the paralegal groups are recognized as a successful mediation initiative, there are still a lot of controversies as well. They don't really have the ability to judge cases where someone with bigger political influences is involved or is accused."

– Researcher and Activist, Nepal

This distinction is not absolute. Many efforts exist to meaningfully adapt or adjust older, more traditional ADR mechanisms to be more suitable for addressing intimate partner violence cases. The shalishi system in Bengal (an ethno-linguistic region currently spanning parts of East and Northeast India as well as Bangladesh), which has existed since the 1500s, is such an example.<sup>18</sup> During a shalishi, parties to a dispute tell shalishidaars (a set of people considered unbiased and powerful) about the dispute and the shalishidaars issue a verdict. The Shramajibee Mahila Samity (SMS), a non-party mass organization of working women formally established in 1990 in rural West Bengal, has adopted and adapted the shalishi, with an explicit organizational goal of generating a movement against gender-based violence. As such, the SMS's effort is an example of adapting traditional ADR mechanisms to better promote women's voice and agency.

### **The second key distinction is: Who leads the process, and what particular training/skills/perspective do they offer?**

A second crucial distinction among ADR practices relates to which entity or authority leads the process, and the particular knowledge, attitudes, skills, and philosophies they bring to bear on cases of intimate partner violence. The identity and skills of the supervising authority of an ADR process can have important implications on how well that process prioritizes the voice and agency of women survivors of intimate partner violence. ADR processes are often led by diverse agents, including: clergy, political leaders, tribal elders, elected local committees, women's groups, non-governmental organizations, and mediators/arbitrators/judges directly linked to the formal justice system, each of whom offers a different array of skills and attitudes. This section will share some insights on this distinction, drawing from our conversations with key informants around the world.

It is perhaps most common that community members look to an influential local leader for dispute resolution. This person can be a clergy member, local political leader, tribal elder, or another figurehead. These leaders, as many informants clarified, tend to be elder men of the community's ethnic and/or socio-economic majority. These leaders, chiefs, imams, priests, or others are expected to hear the case and determine results. Often, this leader will have individual authority to determine or deliver a punishment based on their preference, scripture, religious law, or customary law.

"When both sides have been listened to and they've argued their cases out and hopefully not fought in that very meeting ... the priest will say 'So-and-so, you are wrong in this and that; so-and-so, you are wrong in this and that; you the man have to do ABC; you the woman have to do ABC'... If you have a really conservative pastor you might get Ephesians Chapter 5."<sup>19</sup>

– Violence Prevention Network Coordinator, Uganda

Such leaders have wide leeway to interpret the case/scripture/law according to their own personal preferences. Similarly, because customary law is rarely documented, its application in cases of intimate partner violence is therefore based on the political leader's interpretation of community norms, values and customs. Maintaining community harmony, as defined by the relevant power brokers, is often a paramount norm, and our informants almost universally agreed that this norm leads political or religious leaders to insist that the couple stay together at all costs, regardless of the survivor's preference (though, as mentioned above, many survivors also aim to keep the relationship together).

In other cases, the relevant ADR authority is a group of such local elders or leaders. In Juba, South Sudan, as one example among many, ADR systems take the form of customary courts. A panel of tribal chiefs will hear each case in a public setting where community members are free to attend. Both parties to the case narrate their version of the events, and the chiefs listen and determine the outcome and/or punishment. Chiefs often reference customary law and at times even statutory law, when citing the court's decision.<sup>20</sup> Traditional dispute resolution mechanisms among caste groups in South Asia can look similar, but with one member of such a panel exerting particular influence on the outcome, as one informant from India reported:



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“There is usually a head man or leader of the forum who would not ordain but rather suggest a solution which then the others would discuss and agree [upon]. It’s not unanimous. There is an underlying power dynamic that is not explicitly stated where largely the person who is the leader of the forum is the one who in his considered opinion and understanding of the situation would come up with a solution.”

– Violence Against Women Scholar and Legal Expert, India

In many countries, local women’s groups have begun to lead or adapt ADR processes to respond to cases of intimate partner violence. These groups are more likely than local elders/leaders to have an established set of procedures that they use to administer cases, and some informants spoke of examples where these procedures do promote women’s decision-making autonomy and rights. Multiple informants stressed that women-led ADR approaches are fundamentally more likely to deliver appropriate solutions for survivors than approaches led by (normally male) political, religious, or ethnic leaders.

“If they are not designed with [intimate partner violence] in mind, they are not going to work. ... Feminist hybrid projects are the only [ADR approaches] I have any type of respect for when it comes to these types of crimes.”

– International ADR and Legal Scholar, USA

“This is the one thing I say when I speak all the time on violence: I believe that these women-led community responses actually can be quite effective and they should not be conflated with traditional mechanisms. Because if they are women-initiated then their starting point is slightly different from the traditional dispute resolution mechanisms that are part of the culture across the Global South. ... [In places] where ‘community’ is still a viable notion, these mechanisms are very effective and they become even more effective when they are informed by a feminist perspective. I think that’s the nuance that needs to be drawn out.”

– Violence Against Women Scholar and Legal Expert, India

While informants often stressed the comparative advantages of women-led approaches as compared to approaches led by local (usually male) elders, it is important to acknowledge that the ADR facilitators’ identities aren’t as important as their skills and perspectives. While one religious leader may invoke a scripture passage with the intent to tell women to submit to their husbands (like the Bible’s Ephesians Chapter 5), another may use scripture and techniques to include women’s voices, to prioritize a survivor-led approach, and to include community support. At the same time, an approach led by women with insufficient training or skills may blame a victim for the violence she has experienced, or strive to keep the family together

despite the survivor’s preferences. The distinction is not absolute, but – in line with the predominant themes from the key informant interviews – they are instructive at a global level. Examples of women-led approaches that have successfully prioritized the voice and agency of survivors of intimate partner violence will be presented under research question three. The recommendations section will address this important nuance as well.

### **The third key distinction is: Does the ADR approach expand or restrict the options available to survivors of intimate partner violence?**

As informants’ testimony will show, one of the main perceived advantages of ADR processes is that they expand the options available – to women survivors of intimate partner violence and arbitrators/mediators alike – in response to violence and other disputes. But many informants also spoke about ADR processes led by mediators or arbitrators directly linked to the formal justice system. As informants shared, citizens in certain countries are legally required to take many kinds of cases, including cases of intimate partner violence, to ADR systems before bringing them to the formal courts.<sup>21</sup>

In these countries, ADR systems have been developed – or existing systems have been sanctioned – by governments. This development can come about in response to a backlog of cases in formal courts and/or as an effort to more effectively and efficiently resolve disputes, but it may have the effect of making ADR not an “alternative” at all, but rather a mandatory first step of pursuing formal legal charges.

“The problem is that for domestic violence, the first response is mediation actually. So, mediation is not a quote-unquote ‘alternative’ – in fact it is the first step of the formal response for domestic violence.”

– Researcher and Activist, Nepal

As one example, the Sri Lankan Department of Justice issued an act leading to the formation of government-sanctioned mediation boards in 1988.<sup>22</sup> The department then released mediation guidelines, codifying mediation practices that had been in existence for centuries. An initial twenty-five family court counselors were trained, and these counselors went on to train additional mediators; there were 7,000 formally trained mediators across Sri Lanka as of December 2013.<sup>23</sup> It is now mandatory that these mediation boards hear several categories of disputes before a more formal court hearing can proceed in Sri Lanka. Similarly, one study informant with a background in providing legal assistance to survivors of violence in Honduras described that country’s new domestic violence legislation as essentially “a mediation law.”<sup>24</sup> As the informant recalled:



"It depends on the type and level of violence. If there is an injury then [the case] will be litigated as a crime. ... If it's domestic violence, if it's psychological violence, if it's physical violence without injury... these go to this law, the 'mediation law.' It's more like creating a precedent that an issue of violence exists, and giving the perpetrator a chance to go to some community program."

– Lawyer and Violence Prevention Programmer, Honduras

The aforementioned formalization of Nepal's paralegal groups has led to a similar situation in that country, where law now mandates a hearing before such a group as a first step for domestic violence cases not involving severe injuries. This dynamic was observed in other countries as well. Wherever ADR mechanisms are established as a mandatory first step in the formal legal process, this has the effect of leaving women survivors with only one path for formal justice, and no real recourse if this path doesn't meet their needs.

**In summary, ADR processes that address intimate partner violence cases in the Global South are extremely diverse.** For the purposes of this study, we have noted an important distinction between **(1)** whether the process was *specifically designed* to address the issue of intimate partner violence; **(2)** which individual, authority, or organization leads the process, and with what skills; and **(3)** whether the process *expands* or *restricts* the options available to women survivors of intimate partner violence.

Unfortunately, primary source materials for ADR practices in the Global South are extremely rare in the literature, suggesting that the majority of such practices are administered in an ad hoc, customary (rather than controlled and codified) manner. Very few examples of training guides or instructions for mediators/arbitrators exist, least of all in accessible digital formats. This lack of formal guidelines aligns with these practices' intention to produce flexible, individualized resolutions to disputes. But – in addition to presenting a major challenge for a study like the present one – this lack of codified guidelines also more than likely tends to prioritize existing community norms, which are often patriarchal and do not respect women's own voice and agency. The following section will more directly explore the extent to which all of the aforementioned forms of ADR processes fundamentally prioritize women's voice and agency.

## 2. To what extent do these approaches prioritize the voice and agency of women survivors of intimate partner violence?

"If tribal justice mechanisms protected women's rights, then we wouldn't be where we are today. I don't think you need to be a rocket scientist to see that. If, after so many centuries of tribal dispute resolution, women are still in this same situation, then we should advocate something more modern, and that might be civil society."

– Legal Scholar focused on the Middle East and North Africa

Depending on the country and setting, the availability of any of the above variations of ADR responses to intimate partner violence will vary greatly. The nature of prevailing family, community, religious, legal, and other societal norms will dictate who is most likely to lead any such response, as well as whether intimate partner violence-focused ADR practices exist at all.

**But, whatever the form, history, and leadership, evidence suggests that women are drastically more likely to pursue ADR responses to their experiences of intimate partner violence than formal justice system responses.** In a 2008 study conducted in South Sudan, for instance, 61 out of 64 interviewees stated that they preferred to bring gender-based violence cases to customary courts over statutory courts.<sup>25</sup> This finding aligns with widespread evidence that ADR processes and the informal justice system combine to handle the vast majority of the global caseload of family disputes.<sup>26</sup>

"I think women survivors choose this to a big extent. Women choose this – they go there, they say I have this problem, this is happening to me. Mostly it is women reaching out to these services first."

– Violence Prevention Network Coordinator, Uganda

"Women consider it to be effective. In fact they say, 'The only way we'll resolve this is to take it to the community.' You may think I'm lying. But we believe these women. They actually feel it's very effective."

– Victim/Survivor Advocate, Uganda

As such, a first step toward locating women's voice and agency in such practices is to investigate why women so often turn to informal/ADR responses to violence. We cannot conclude that women's decisions to pursue ADR mechanisms confirm their full agency in such processes, of course, but the study's literature review and interviews do point to certain characteristics of these responses that undeniably lead many women survivors of intimate partner violence to recognize them as among the best options available to them:



## Step-by-step view

Many informants shared details of the step-by-step process by which their prevailing local ADR mechanisms take place. While there are meaningful differences in the nature of these processes, in line with the three key distinctions described previously, most cases will follow something resembling the following four-step trajectory. To help frame the coming analysis of these processes' prioritization of women's voice and agency, then, this box presents a "common denominator" set of ADR steps. The initial descriptions that follow also include indications of how women's voice and agency can be included or ignored at all four steps.

### Step 1: Initial Report and Information-Gathering

To initiate an ADR response to intimate partner violence, the relevant authority must come to know of the case of violence.

- **If women's voice and agency are a priority:** Any report of intimate partner violence would be followed immediately by an in-depth, private information-gathering session with the woman herself, to establish her testimony and priorities for pursuing the case before involving any other actors or moving forward at all.
- **If women's voice and agency are not a priority:** The authority may choose to pursue a case brought to them by someone other than the woman survivor of violence, ignoring her preference or judgment of her safety related to such a proceeding. Information-gathering would wait for the hearing itself.

### Step 2: The Summons and Hearing

If the authority chooses to accept the case and pursue a resolution, they will set a date for the hearing and summon the involved parties. The hearing will involve testimony of various forms by the parties involved.

- **If women's voice and agency are a priority:** The hearing will be structured such that the survivor of violence speaks for herself, expresses her experiences and preferences without interruption, and is treated with trust and respect by the presiding authority.
- **If women's voice and agency are not a priority:** The process may stall or be cancelled if the accused parties refuse their summons. In the hearing itself, among other situations, the survivor of violence may be interrupted, scolded, or not be allowed to speak for herself (but rather be represented by her father or another male figure). The hearing will prioritize witness accounts or physical evidence above all other testimony or information.

### Step 3: Decision/Punishment

The hearing will aim to conclude with a mediated, arbitrated, or otherwise agreed-upon decision, potentially involving punishment or an order for reparations/restitution.

- **If women's voice and agency are a priority:** The woman survivor would never be blamed, even in part, for her victimization. The nature and extent of available punishments for the perpetrator would have been decided with the woman survivor's guiding input, and would firmly seek to end the violence.
- **If women's voice and agency are not a priority:** The decision would assign some amount of blame and punishment to the survivor of violence. The authority may insist upon a "reconciliation" outcome to keep the family together, which would not consider the survivor's preferences, the likelihood of violence continuing, nor the nature of the cycle of violence (which includes an apology phase).

### Step 4: Enforcement

Potentially, the decision/punishment would also establish a method of guaranteeing that its terms are followed. In the weeks and months following the decision, the outcome would be somehow enforced by the ADR authority or community.

- **If women's voice and agency are a priority:** The ADR authority, perhaps with the assistance of community members as "watchdogs," would strictly enforce the terms of the decision, in line with the survivor's preferences, with a primary goal of preventing – and punishing firmly – additional violence.
- **If women's voice and agency are not a priority:** The ADR authority would consider the matter closed upon reaching a reconciliation agreement or other decision, and not put in place any enforcement mechanisms or follow-up measures.

## 1. ADR responses to intimate partner violence can be drastically more accessible, affordable, and prompt than formal justice system remedies.

By virtue of being offered at a very local level, facilitated by people known to survivors of violence, and often having little to no cost, a great many ADR responses to intimate partner violence provide a comparably comfortable, accessible option for many women.

"The biggest challenge women face is that every step they take costs money as well. They have to pay to get a summons, they have to pay court fees. Then if the defendant doesn't turn up to the court, she has to get a village court order to try to get the perpetrator arrested, and so on. It costs money all the way. And that's why women cannot properly access the justice they deserve."

– Victim/Survivor Advocate, Papua New Guinea

"Because they are accessible, it adds a psychological benefit, 'I have somewhere to speak, somewhere to say what is going on... At least I have somewhere where I can talk about it... somewhere where I can run to.' It can provide some sort of relief."

– Violence Prevention Network Coordinator, Uganda

## 2. Informants reported that women view ADR mechanisms as "less serious" or "less complex," an easier step as compared to the process of interacting with the formal justice system.

Particularly for a first report of intimate partner violence, many (though not all) informants suggested that women will tend to seek the least disruptive option available. A survivor's justice-seeking may in fact follow a sequence of progressively more "serious" steps, depending on the outcomes of initial attempts.

"In this context you wouldn't really go to the police and express all your feelings or pour your heart out. You wouldn't go to the district court. So that's again why these community mediation groups or these informal justice mechanisms are important, because then women feel they have somewhere safe, they feel they can be heard. Nepal police, no matter how much they are trained in being gender sensitive in listening to these problems, they still have this power. They still represent the state. So these things do make a difference.

– Researcher and Activist, Nepal

"It gives a first, soft approach for women to interact with legal systems, they're finding some solutions without getting into a more complex process. ...

Women are less afraid because they're looking for justice of course, but they're not in a more complex, serious legal setting... for that it's very useful."

– Lawyer and Violence Prevention Programmer, Honduras

While the evidence is incomplete, there is a strong indication that many women seeking ADR responses to their cases of intimate partner violence do so with the specific expectation that their family would stay intact. In a survey in West Bengal, for instance, some 82% of women who brought their intimate partner violence cases to an ADR authority said that they expected that their family life would be restored.<sup>27</sup> While later testimony in this section will show that informants were conflicted about this finding, certain informants did echo this advantage of ADR processes:

"Normally, the reason they stay away from the police is that they don't see this as a police matter. They know that [reporting to] police will lead to arrest, and they don't want arrest. They want the beating to stop, but they want their spouses to stay. It took me a long time as a practitioner, as a young lawyer, to understand that. ... When a woman walks in and is seeking advice, talking about issues and everything, you start to stray away from your textbook understanding. 'I don't want this person to be arrested but I want the beating to stop – so how can you help me?'"

– Lawyer, Activist, and Research Specialist, Uganda

"Normally in our experience what you're finding is that when women experience violence they don't first go to the village court. First they go to family or they seek a pastor or minister or they seek relatives to make peace. Only if he continues to become violent after all of those efforts will she go to the village court."

– Victim/Survivor Advocate, Papua New Guinea





**3. ADR responses tend to have widespread community support; in fact they often require widespread community support in order to function.**

Many ADR processes take place in a public setting, or actively enlist fellow community members to help enforce or oversee the resolution to a particular dispute. Although these community norms themselves may be very tolerant of intimate partner violence (as will be discussed later), this does tend to lend particular legitimacy – and acceptability – to the outcomes of the session that even a court-litigated verdict may not.

“Local, informal, relationship-based solutions are easier for the rest of the community to accept, meaning there is less risk of ostracism from needed social and economic connections for the woman and her children. You take someone’s male cousin to the police, and it’s war. Take them to the religious leader, and it’s acceptable.”

– International Violence Prevention Specialist, USA

“So, if you resolve a case in favor of the woman, the community remains as a sort of watchdog. ... A [memorandum of understanding] is reached, the community is watching, and hearing, and signing. So the next time the man does it the community says, ‘You had committed not to do it, why are you again doing it? We are not going to continue like this.’ This is one of the most effective ways – we have realized – of resolving these conflicts.”

– Victim/Survivor Advocate, Uganda

**4. Community-sanctioned informal justice mechanisms may in fact be the only dispute resolution options available to women in places where formal, state-run mechanisms are entirely absent or untrustworthy.**

It is common in settings with relatively weak states that relationship- or community-based sanctions and justice mechanisms are in fact more legitimate and trustworthy than the state-run, so-called “formal” systems. This is not true for every setting, but in certain places the comparison between informal and formal justice options is false in its very nature: there simply is no formal justice option. Although one informant spoke of this situation in the extreme in Afghanistan, it is likely that women survivors of intimate partner violence hold higher trust and regard for locally-administered options as opposed to state-run mechanisms even in places with comparably more stable states:

“An effective judicial system needs to be legitimate. So, often times, it’s these informal systems that might have more legitimacy with the people than the formal structure. Look at Afghanistan. [The state] has basically been [only] Kabul, for only fifteen years. There has been no presence outside of Kabul – that’s just starting to happen. So the fact that they have this quote-unquote ‘rule of law’ is a complete fallacy. There is absolutely no legitimacy and no buy-in.”

– International Human Rights Lawyer, USA

**5. These approaches are able to offer more case-specific resolutions to particular situations, as opposed to the comparably more rigid formal justice system.**

Where a judge is limited, by rule of law, in her/his ability to craft punishments or resolutions to match the particular nuance of any one dispute, facilitators of ADR processes can claim to craft individualized, one-of-a-kind solutions. This flexibility may present particular benefits to women survivors of intimate partner violence. Theoretically, the scope of a survivor's "agency" in an ADR process is potentially wider than it could be in a formal justice system, where specific punishments are meted out according to precise sentencing guidelines for certain convictions. As one informant shared through a colorful analogy, ADR authorities have "more or finer paintbrushes" to use in helping violent men change their behaviors:

"Fundamentally, women want justice and they want an end to the violence. They don't necessarily want their partners or husbands to be labeled as criminals in jail. ... There are some pathologically extreme men who are so violent that they literally do need another type of help. But there are men who are violent because that's what they have learned is the way you resolve conflicts, and those men don't gain anything by being punished. Feminists argue that there should be no impunity, every man should be accountable, but being accountable doesn't necessarily mean being sentenced. All the different forms of violence practiced – are they all equal? Are there different ways in which men can transform? We have become used to one single paintbrush... The alternative conflict resolution mechanisms try to distinguish between men who can change and men who may not be able to change. They have more or finer paintbrushes to paint with."

– Violence Against Women Scholar and Legal Expert, India

As such, it starts to become very clear why a great proportion of women survivors of intimate partner violence seek assistance from local ADR mechanisms as opposed to seeking formal justice options. ADR options tend to be accessible, affordable, and prompt. They are comparably less "serious" than the formal justice system, and simultaneously less likely to label their husbands criminals and put them in jail, which may not be the survivor's preference (for reasons of economic security tied to their husbands' income or otherwise). They are bolstered by community-level support and legitimacy. And they have the flexibility to craft case-specific resolutions that may theoretically more closely resemble the survivors' preferences.

**But even as these approaches may offer certain advantages over the formal justice system, they rarely prioritize women's voice and agency. This is especially – though not universally – true for traditional mechanisms, and for those not led by women's organizations.**

It may be that most women survivors of intimate partner violence seeking justice do exercise an initial amount of agency by choosing an ADR option. But once survivors choose to seek help from an ADR process, what sort of assistance do they receive? Are considerations of women's voice and agency part and parcel of the proceedings? Do women receive the support and outcomes they hoped to receive from these services?

And most importantly, do these processes achieve an end to the violence they face? Again acknowledging the diversity of these practices around the globe, the available evidence highlights multiple shortcomings of these approaches in prioritizing women's voice and agency. This is despite, but not in ignorance of, women's widespread likelihood to choose these options prior to formal justice system options.

"A lot of women actually ask for mediation, but it's because they misunderstand what it's going to get them. They just want the police to come around and tell the husband to stop doing it. To intimidate him, to threaten him with the law so that he'll stop bashing her. And actually I do know of a few cases where this has been effective. But they think that the mediators are going to do the same thing – call the husband in, give him a good talking-to, make him promise to behave better next time. But that doesn't help. If she has humiliated him in front of other people, he's just going to take it out on her more harshly when they get home."

– Violence and HIV Specialist, Pacific Islands

Taken as a whole, as the above informant suggests, these shortcomings call into question whether ADR approaches, as most commonly practiced, can actually curtail or end intimate partner violence. Commonly referenced shortcomings of ADR responses to intimate partner violence include:

**1. The majority of ADR processes do not account for any power imbalance or systematic discrimination against women in households experiencing violence.**

As informants shared, ADR processes commonly err by their tendency to treat the survivor and the accused perpetrator as equal in their possession and use of power. By contrast, the intimate partner violence literature insists that the person using violence holds power over the person experiencing violence, and uses that violence as a means to reinforce his power and control over the relationship.<sup>28</sup>



“The other complaint we heard is that [mediation] doesn’t properly take into account the power imbalance between the intimate partners. You’re treating the two as if they’re coming to you on an even playing field when that’s not true.”

– International Human Rights Lawyer, USA

“First, the emphasis is on keeping the family together. The end goal was keeping the two together. Then trying to identify what the challenge is that is leading to the intimate partner violence... and in identifying the challenge, often women were blamed. They tried to be quote-unquote ‘fair’ and listen to both sides, but in zooming down to what was the challenge, it’s narrowed down to what the woman could have done to keep the violence from happening.”

– Violence Prevention Network Coordinator, Uganda

In their ignorance of these dynamics, as the last informant shared, ADR processes can commonly blame victims of intimate partner violence for their own victimization. In the worst circumstances, someone who uses violence can further control his or her partner with hidden signals or threats during the mediation or ADR process itself. In this case, where victims will likely be unable to freely express their needs in mediation, a fair agreement is very difficult to achieve.<sup>29</sup>

**2. Evidence suggests that the community-level legitimacy of these processes will naturally tend to favor existing social power imbalances and inequalities, rather than supplanting them to prioritize women’s safety from violence.**

The community-level legitimacy of these responses is among their hallmarks, but what influence does this have on the outcomes of women’s cases when the very community legitimizing the process holds women in a subordinate position to men? While community-level support can increase the legitimacy of these processes – and even help hold perpetrators accountable – it also means that community norms hold sway in the decisions passed down.

Evidence shows that community norms worldwide still often tolerate violence against women and/or place the blame for violence on women survivors themselves.<sup>30</sup> Very few ADR processes have reckoned with this issue, though many study informants discussed this at length:

“This is the more tricky part because it really depends on the survivor’s social status as well because if she is somebody who can really speak up and is from higher castes or a higher ethnic group family in the social structure, then it’s easier for the victim. ... The reason I say this is tricky is because even at the very local level, a lot of times there is political influence.”

– Researcher and Activist, Nepal

“[It’s] all about power between the man’s family and the woman’s family... If her family is more powerful it ends in divorce, if his is more powerful then it ends with her going back to him.”

– Legal Scholar focused on the Middle East and North Africa

This shortcoming was well summarized in a 2005 World Bank report, as follows: “Customary and informal systems are frequently dominated by the most powerful groups in a community and their interests: most often men, majority ethnic and religious groups, and educated or socio-economically privileged classes. In many settings, it is almost inconceivable that judicial proceedings, whether formal or informal, should be conducted in an unbiased manner. Instead, persons involved with mediation or adjudication of disputes are often understood (even expected) to make their decisions based on kinship, friendship, common regional or academic backgrounds, or even because of mutual acquaintances as opposed to the basis of clearly articulated legal principles or analysis.”<sup>31</sup>

**3. More precisely, many informants explained that ADR authorities seem primarily motivated to minimize community inconvenience, and to take pains to “keep the family together” at all costs, regardless of the survivor’s preference.**

Though in many cases survivors of intimate partner violence could also wish for this outcome (see earlier in this section), informants most commonly felt that the insistence on keeping the family together necessarily contradicts women survivors’ voice, agency, and safety from violence. The urge to “keep the family together” was one of the most consistently repeated refrains in the key informant interviews, as evidenced by the globe-spanning comments below:

“Here in Uganda, most people who handle these cases of violence are worried about being guilty for breaking up relationships. This kind of perception makes them think that an effective response is reconciliation at whatever cost.”

– Violence Prevention Activist and Program Director, Uganda

## Common Assumptions of More Traditional Mediation Practices

Training materials for Center for Domestic Violence Prevention's (CEDOVIP's) "Responsibility Meetings" draw participants' attention to the way that mediation in the case of intimate partner violence, especially if facilitated by someone with no background or training on the root causes of violence against women, can be fundamentally inadequate to end this violence. Portions of one such handout read:

- **Mediation assumes joint responsibility for violence.** Violence is always the responsibility and choice of the person who uses it – not the one who experiences it.
- **Mediation assumes that both partners have equal power.** In cases of domestic violence the person using violence holds power over the person experiencing violence. During mediation someone who uses violence can further control his or her partner with hidden signals or threats, making mediation difficult to do safely. Since the victim will likely be unable to freely express his or her needs in mediation, a fair agreement is very difficult to achieve.
- **Mediation may put the victim or his or her family in danger.** What a victim says in mediation may put him or her, the children or the family at increased risk during or after the session. The suspect may blame her for putting "bedroom matters" in public and want to punish her for it.
- **Mediation assumes that both partners want a violence-free relationship.** Many people who use violence against their partners believe it to be necessary and acceptable. Mediation alone is unlikely to change this—they need support to change.

"Very, very often, women don't have much choice. They're kind of stuck in these rotten situations and then maybe mediation can help a little bit. But it totally depends on what's involved and who's doing it and what the purpose is. And almost always, the purpose is to keep the family together. ...What hope have women when the male leaders say that nothing is more important than keeping the couple together regardless?"

– Violence and HIV Specialist, Pacific Islands

"It's still the practice that when [women] seek counsel from religious leaders, the approach is always one of keeping the family together. Reconciliation. That's the kind of support that the woman gets. The central argument of the church is reconciliation."

– GBV Regional Program Director, Caribbean

"First, the emphasis is on keeping the family together. The end goal was keeping the two together. Then trying to identify what the challenge is that is leading to the [violence]... and in identifying the challenge, often women were blamed."

– Violence Prevention Network Coordinator, Uganda



"It takes a lot of courage for women to come out and admit 'I've been abused,' and when they do come out it's not like they want some sort of marriage counseling, they want some real solutions. They want divorce or they want some protection or maybe they want the husband to be taken to jail. But then [the paralegal/ADR group] is just trying to mediate and the whole concept is that this is a domestic issue and the family shouldn't break. ...The emphasis on mediation comes from the whole idea of keeping the family intact and not giving the woman her rights."

– Researcher and Activist, Nepal

This drive to preserve a narrowly defined version of community harmony, in service of the aforementioned existing power structures, serves to further curtail survivors' agency and relative level of empowerment in deciding their own steps to become safe from violence. Specifically, informants acknowledged that the supposed "watchdog" function of community members could actually work against a woman survivor of intimate partner violence in places where community norms uphold the belief that women are responsible for violence they face, or that women should tolerate violence to keep their homes together.

"In my opinion, unless a woman has strong support, the traditional practices usually just reinforce the male-dominant status quo. Because that's where the power lies. ... Then everybody is putting pressure on her to do that and stay quiet and just put up with it because nobody wants to deal with the thoughts and bother of a family breaking up, and people having to help with the kids, and redivide the family land or whatever – they don't want to deal with the hassle."

– Violence and HIV Specialist, Pacific Islands



**4. Based on our findings, only the most rare of ADR mechanisms are imbued with considerations of women's voice and agency; rather, many processes systematically silence and disempower the very women seeking their assistance in living free from violence.**

From initial information-gathering through to punishment and enforcement, it is highly unlikely that the step-by-step proceedings of an ADR process will have incorporated the necessary steps and considerations to allow for women's voice and agency to play a meaningful role.

In the step of information-gathering: Priority is often placed on producing physical evidence and third-party witness testimony, neither of which are particularly relevant for violent occurrences between intimate partners in their own home. This can transform the information-gathering session into an interrogation of the survivor, rather than an empowering platform for her to tell her story and be believed.

"She would be asked to speak about what the problem is, she would speak. If she's lucky her partner would be quiet throughout her speech. If she's not lucky she'll be interrupted. It's likely that she'll get emotional and be dismissed for, 'You see this is the kind of thing,' or, 'Yeah, women are like that.' ... She might get emotional, which will be used against her, her husband might interrupt her... Women will not keep receipts, they will not keep facts or evidence, and then the man will come with other facts and she finds it hard to disprove.

– Violence Prevention Network Coordinator, Uganda

"There is this whole practice of finding evidence or producing evidence. So, calling the two disputants in front of the informal hearing where both present their side of the story. So, no, in that traditional hearing there is no space given to allow the woman's voice to come forward. There will be questioning of the woman rather than the woman narrating what it is that has happened to her. And there is no kind of preparation or support given to the woman to be able to stand in front of the entire informal hearing and articulate what it is that she's going through. The traditional practice is much more focused on families and between heads of families."

– Violence Against Women Scholar and Legal Expert, India

In the step of determining a resolution for the case and/or punishment for the perpetrator: In a significant number of key informant interviews, the resolution element of the "alternative dispute resolution" equation was identified as being almost an afterthought in ADR sessions. In some informants' perspectives, women survivors of intimate partner violence may believe that simply holding a public ADR session (and thereby drawing attention to her situation and – in theory – some amount of shame upon the perpetrator) is tantamount to a punishment itself. There was less recognition of the risk of retaliatory violence after this shaming experience, nor of how this potential immediate sense of satisfaction does or doesn't support the woman survivor's voice and agency.

"The woman has no say in the punishment – this is the sense I get. She's content that someone has listened, that the mediator has sat between them, that she has been heard, that some sense of shame or embarrassment has been brought upon this individual for his actions, but at the end of the day their home is still together."

– Lawyer, Activist, and Research Specialist, Uganda

This impression stops short of several considerations, however, including the risk that public attention and shame may lead to retaliatory violence once the couple returns to their home, and the possibility that this survivor would have welcomed any number of more significant punishments if the ADR process presented them to her more capably. Instead, as most informants clarified, women survivors' preferences almost never dictate the punishments resulting from ADR mechanisms; despite their promise, these processes rarely made good on the aforementioned diversity of "paintbrushes" which could have allowed for more creative punishments. The few punishments mentioned involved some combination of compensation to the survivor and/or public reconciliation terms.

"There are two common punishments. One is that compensation must be paid to make peace. The next is that they issue a village court order. The order is such that you must not break this order, you must honor this order. The compensation can come in the form of pigs or in the form of cash, and they will give him either a week or a month and then he must come back to show that he has paid. He will pay a court fine as well. The court order will usually be addressed to both sides. It will tell the man that you are not to beat her again, but it will also tell the woman not to say certain things that provoke him to beat her."

– Survivor Advocate, Papua New Guinea

“That’s so common with the traditional systems too... Whenever you see something come up in local newspapers or newsletters where ‘in such-and-such a place, and the parties agree to reconcile,’ well I know very well what that means is that the woman found that no one was paying any attention to her and she was being told to go back to the husband. And she had no choice but to go. That’s what it means.”

– HIV and Violence Specialist, Pacific Islands

In the step of enforcement: Enforcement of any resolution or punishment emerging from an ADR process is particularly challenging, as informants reported. Some ADR processes, in line with the insight above that the hearing itself is the main outcome the woman may hope to achieve, seem to have no enforcement mechanisms.

“There is nothing we do to ensure enforcement. We don’t have any mechanisms to check on this. We keep the MOU and imagine that he will respect it. We don’t have a mechanism to check that he has done it.”

– Victim/Survivor Advocate, Uganda

Informants suggested that if a survivor repeatedly brings her case to the ADR authority, after previous resolutions failed to stop the violence, then the involved authority will be more likely to assist the survivor in pursuing a more formal justice system response. And in these cases, in certain locations, the existence of a prior record of unsuccessful mediation/ADR hearings can serve a valuable function as evidence toward a formal prosecution.

“They normally negotiate for a peace settlement that the man has to pay some compensation. Sometimes they report, and the community will come and sit down, and the relatives of the wife will come and sit down. And they will say that if it happens the next time then she will go to the court, and things like that. When she goes to the court, then there will be people who will say, ‘This has been going on, we have negotiated, we have mediated at the family level, but this has still been going on.’”

– Victim/Survivor Advocate, Papua New Guinea

Speaking specifically of the aforementioned women-led shalishi example in Bengal, one informant added:

“Then the other aspect of the alternative mechanisms is this [step of] having some sort of signed something that is written down. Which has some power because it is written down. It’s not just an oral judgment. And then the other thing is that many of these processes are very conscious and have been advocating to have the testimony and narrative and evidence that is gathered in these informal dispute resolution mechanisms be recorded. And then at some point at a later date it could be included as evidence in a formal hearing. And that is something that we noticed was happening was that if a woman had participated in the shalishi and then her case went to court, this evidence could be introduced in court.”

– Violence Against Women Scholar and Legal Expert, India

#### **5. By primarily focusing on “incidents” and family reconciliation, ADR responses may tend to reinforce – rather than break – the cycle of intimate partner violence.**

The flexibility to deliver case-specific solutions is a supposed hallmark of ADR responses. But a major inherent risk of this seeming advantage in dealing with intimate partner violence is that the solution will only focus on the event that triggered one particular instance of violence, not the entire cycle of violence. Violent relationships often follow a cyclical pattern that includes a tension-building phase, a crisis or violence phase, and a honeymoon phase. In the honeymoon phase, the perpetrator may issue apologies and express regret, but the underlying patterns of power and control continue. Thus, the couple may often find themselves in the tension-building phase, which re-starts the cycle of violence. There is a serious risk that the ADR process will become a component of the honeymoon phase of the cycle of intimate partner violence, leaving the root cause of fundamental power imbalance at the household level uncontested. A suspect of intimate partner violence may say “sorry” to the victim and to the community during an ADR session, and the community may believe him/her. If the ADR process facilitator is not properly trained to recognize this apology as a step in the cycle of violence, they may fail to see this and unknowingly place the survivor once again at risk of experiencing violence.<sup>32</sup>

**On balance, then, ADR processes provide certain significant benefits to women survivors of intimate partner violence, even as they rarely prioritize these women’s voice and agency.** The full picture is a nuanced one. ADR processes present enough benefits to women survivors of intimate partner violence that these survivors choose to seek them out far more often than they seek out formal legal

options. But, once they do so, unless they are lucky enough to live in a location where a rights-based, survivor-centered ADR approach exists, they are likely to find their voice and agency significantly curtailed in these processes, for all the reasons articulated above. Informants recognized that this research question does not have a black-and-white answer, and articulated the overall picture well:

"It's a port of first call. It is a site of first response. For any kind of conflict, you would obviously still turn to non-formal institutions, because a big part of the problem of why these forums still continue to have some hold is because the formal institutions are so distant and inaccessible and overloaded and take so long. ... For all those reasons, an informal justice system is still a viable and feasible and accessible source of support. So I think of it as a site of first response. If it could be resolved at that level then it is much better. If it is not able to be resolved at that level then you have very costly litigation that goes through the formal justice system. ... This is what I would say: They don't resolve everything, but they are the foundation. And the struggle that we have is linking the formal and the informal. I think within the Global South, formal justice in and of itself is not enough. As it is it can be made more accessible to people."

– Violence Against Women Scholar and Legal Expert, India

"So to what extent has that local council court protected that woman's voice and agency? That's the million-dollar question. What I'm torn between is that the approach in itself is more suited to the whole question of intimate partner violence as a private matter but also to the situation of women who are not interested in jailing these people. But we want the violence to stop. That, compared to a formal justice system, which takes time and will end in incarceration, which will not necessarily address her concerns. So I think at the end of the day, perhaps neither of the processes really give women voice and agency. These ones go far enough in terms of allowing her to speak and be heard... I think it goes as far as voice. Agency? More needs to be done to affect agency."

– Lawyer, Activist, and Research Specialist, Uganda

Before translating the above insights and findings into final recommendations and conclusions, the report next turns to highlight three examples of ADR processes that have specifically sought to better prioritize women's voice and agency.

### 3. What examples exist of ADR approaches that better prioritize the voice and agency of women survivors of intimate partner violence?

In addition to all of the insights gathered above, this study also uncovered evidence of pioneering organizations seeking to transform ADR processes in their localities to better prioritize the voice and agency of women survivors of intimate partner violence. These examples can potentially provide valuable insights from practice to inform activists, programmers, judges, donors and others who are motivated to improve ADR processes in their localities. The chosen examples come from Vanuatu (in the Pacific Islands), India, and Uganda.

#### Vanuatu: Committees Against Violence Against Women (CAVAWs)

**The CAVAW model presents an example of a “minimally invasive” approach to adjust the functioning of ADR processes in relation to intimate partner violence cases. The traditional chief-led “kastom court” operates more or less as it does for other disputes, but with the powerful addition of a committee of women’s advocates in an influential role for any case related to intimate partner violence or women’s rights.**

The CAVAW initiative of the Vanuatu Women's Centre is an excellent example of a women-led initiative to influence and improve – rather than eliminate or replace – existing community-based ADR processes (in this case, arbitration hearings called “kastom courts”). Each CAVAW comprises five or six volunteer women who undertake community education and survivor support functions across rural Vanuatu. According to the most recent evaluation reports, there are nearly fifty CAVAWs presently operating across this island nation.<sup>33</sup>

CAVAW members receive training in legal literacy and counseling skills, and thereafter make traveling public presentations to ensure that women are aware of their rights and available services. Each committee also tends to have a private meeting location where it is safe for women survivors of intimate partner violence to discuss their situations confidentially. Women survivors of intimate partner violence who choose to seek some assistance, then, often report to CAVAW members prior to seeking assistance from male chiefs and/or police officers. Depending on each survivor's priorities and situation, CAVAW members are able to: refer survivors to necessary health or support services, accompany survivors to make formal charges at a police station, or, commonly, assist a survivor in seeking a customary dispute resolution hearing in her village.



Because most CAVAWs have established close working relationships with their local chiefs, the members are granted an influential role in dispute resolution hearings related to intimate partner violence in their localities. CAVAW members are seated at the front of the hearing, next to the chief. Members are encouraged to advocate for the woman in such hearings, and may also speak up to ensure that the survivor herself is allowed to present her testimony and preferences without interruption or interrogation. These committees are likely the first formal leadership positions available to women in their communities, which subtly transforms the gender power structure (even if chiefly or other more powerful community roles are still outside women's reach). In the same way, it is a subtly transformative experience for women in CAVAWs' neighboring villages to attend community education sessions led by women.

## India: Women's Courts in Gujarat (Nari Adalat/Mahila Panch)

**The Nari Adalat and Mahila Panch are excellent examples of women-led ADR processes that specifically seek to supplant traditional methods with an option based fundamentally on feminist principles. Self-identifying as “for women, by women, and of women,” these courts offer arbitration for cases of violence under the authority of a large group of highly trained women, and have established legitimacy in their community over three decades of persistence.**

Both run by the women's organization Mahila Samakhya in different locations in the Indian state of Gujarat, the Nari Adalat (in Baroda) and Mahila Panch (in Rajkot) have been functioning since the mid-1990s. These comparably large groups of women (comprising upwards of 60 volunteer members each) undertake thorough training prior to presiding over regular dispute resolution hearings. The training is “guided by a strong feminist critique of the legal system to inform women of what should be involved in an alternate system of justice.”<sup>34</sup>

The steps of any Nari Adalat or Mahila Panch (NA/MP) process more or less mirror those in the box on page 11, but with feminist principles and prioritization of women's rights imbued throughout. An ICRW evaluation<sup>35</sup> of these processes highlighted six “non-negotiables” of ADR processes facilitated by these women's courts for cases of intimate partner violence:

- That the woman is able to get what she wants (which might not be what she came with initially, but is what she desires when it comes time for judgment);
- In the event that the woman disagrees with the NA/MP, ultimately, the deciding factor is what she wants;
- The woman's sense of dignity and respect is preserved; she is not made to feel that it is her fault;
- The NA/MP has an environment where the woman does not feel threatened and is able to speak without fear;

- The environment is such that the man feels he is also able to present his point of view; and
- The NA/MP will stand and speak up against injustice of any kind and will try and change community thinking on this.

The same ICRW evaluation found that the majority of women who had brought cases in front of the NA/MP reported: decreased violence at home, increased confidence, improved understanding of violence, and improved household relations overall. The study also highlighted meaningful outcomes for the women who comprise the NA/MP itself as well. While these women's courts were not welcomed by the patriarchal, caste-based hierarchy in their first several years of existence, their persistence has resulted in a shifting landscape of community norms whereby lower-caste women are recognized for their leadership potential and intimate partner violence is increasingly rejected and reported.

## Uganda: SASA! and Responsibility Meetings

**The Responsibility Meetings approach emerges from a high-intensity, local activist-led initiative to shift community norms and attitudes related to violence against women. Only after this community mobilization initiative has reached certain significant benchmarks do organizers then introduce a thorough revision of traditional ADR practices to uphold the new community norms rejecting violence. This approach differs from the above – and most – examples by letting community mobilization processes lead to dispute resolution changes.**

As established in a groundbreaking recent evaluation study, the SASA! initiative – created by Raising Voices and implemented in Kampala by the Center for Domestic Violence Prevention (CEDOVIP), among a growing set of implementers elsewhere in Uganda and around the world – is a community mobilization initiative proven to shift community attitudes, norms, and behaviors related to domestic violence and HIV. According to the 2014 evaluation report, the central focus of SASA! is “to promote a critical analysis and discussion of power and power inequalities – not only of the ways in which men and women may misuse power and the consequences of this for their intimate relationships and communities, but also on how people can use their power positively to affect and sustain change at an individual and community level.”<sup>36</sup>

SASA! moves communities through four phases, driven primarily by the consistent efforts of volunteer community activists. The Start phase focuses on training the activists and establishing relevant local connections and referrals. The Awareness phase involves informal activities and presentations to encourage critical thinking in the community related to negative, unequal power relationships. The Support phase promotes community collaborations of all kinds to advance positive change related to domestic



violence and HIV, and the Action phase supports individual behavior changes. Moving through all four phases can take upwards of three to five years.

CEDOVIP staff and activists noticed that ADR processes that curtailed women's voice, agency, and safety were commonly practiced in SASA! communities in Kampala, and thus set out to reframe such approaches in line with those communities' progress through the stages of SASA!. The result is the Responsibility Meetings philosophy and training manual, which has to date only been implemented in a small number of communities in Kampala which have reached at least the Support phase of SASA!. Responsibility Meetings are, according to their draft manual, "intended to be an alternative to traditional mediation for domestic violence cases, building in additional, needed components to ensure the safety of the survivor, facilitator and support persons and closely monitoring follow up."<sup>37</sup>

The approach depends on a very highly trained facilitator coming from a setting that has achieved significant SASA! benchmarks. Prior to any first responsibility meeting, the facilitator would work through a stage-by-stage training covering topics such as: **(1)** the types, causes, consequences, and dynamics of domestic violence; **(2)** active listening skills; **(3)** risk assessment and safety planning for domestic violence; **(4)** determining the "dominant aggressor" of domestic violence; **(5)** presenting survivors with options; and **(6)** monitoring the process and results of such meetings.

While the approach has not yet been widely implemented or tested, it represents a unique, high-intensity attempt to make ADR processes safe and empowering for women survivors of domestic violence, and that too only in places where community norms have also begun to fully support women's right to live free of violence and determine their own course of action in pursuing justice.

Moving from the least intense to the most intense, the CAVAW, NA/MP, and Responsibility Meetings examples show the diversity of ways in which committed activists have sought to build upon the benefits of ADR approaches while boosting their prioritization of women's voice and agency. The following section will draw upon these examples as well as all the earlier evidence to set forth recommendations for those seeking to do the same.

## IV. Recommendations

"I'm torn. We're talking about state responsibility and state accountability for women's safety and security even in their homes. The way the state is responding is by saying, 'Here, is law and order, here is police, here are the courts.' But the lived experience is that the procedures and outcomes of that process seem antithetical to the way the home functions. And so where is the meeting point? The idea is not for the state to stop, not to say, 'Don't protect, don't get involved.' But at the same time, we can see the dangers of leaving things to take their own course, for people to resolve things the way they feel best. ... Also recognizing what the evidence is saying. Interventions involving women's desks, women's police units, and all these things, the evidence is not compelling. And yet we know for a fact that a lot goes on in the alternative dispute resolution process. It's the most utilized but the least recognized. So if we can recognize it, how can we bring it to a higher level and quality that can deliver on the voice and agency?"

– Lawyer, Activist, and Research Specialist, Uganda

The above quote from an informant in Uganda summarizes the predicament well. Among global efforts to help survivors of intimate partner violence, the various ADR mechanisms covered in this report are perhaps the "most utilized but the least recognized." This report is an initial effort to bring more recognition to the particular ethical complexities presented by these approaches. But evidence and informant testimony also point to compelling recommendations related to these approaches which, if followed, would help lead to a future where survivors of intimate partner violence are better able to exercise their voice and agency in pursuing an end to the violence they face.

## Recommendations for Donors, Legislators, and Government Ministries

### 1. First and foremost, establish strong laws criminalizing all forms of violence against women, and dedicate adequate funding, human resources, and training to ensure high-quality implementation.

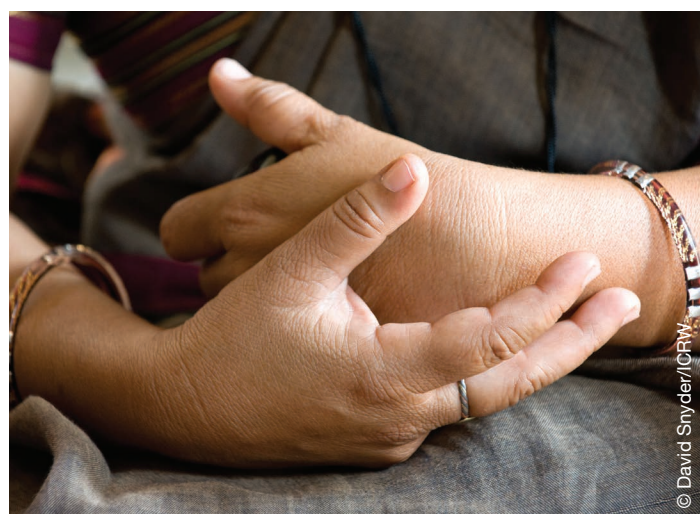
The fundamental failure of governments to protect women's human right to live free from violence is undeniable. While many countries around the world are taking steps to better address this ubiquitous violence, their shortcomings are apparent in the persistent need for ADR mechanisms. Regardless of the faults or merits of ADR mechanisms, states must better realize their commitments to protect women's human rights under international law, and more adequately criminalize and prosecute this violence as part of the formal justice system.

"I would argue that women in [the Middle East and North Africa] would be better off with good laws that defend them and good institutions that implement those laws. They would be much better off [in that case] than with alternative dispute resolution. Maybe something with the [non-governmental organizations] is an intermediate measure, but ultimately without legal recourse it's going to be very difficult."

– Legal Scholar focused on the Middle East and North Africa

### 2. Increase funding to grassroots feminist organizations working to prevent and respond to intimate partner violence: those that oversee rights-based ADR processes, those that support women survivors of intimate partner violence, and those that work to educate and mobilize communities against violence.

Informants spoke convincingly of the central role of feminist, social justice-oriented, women-led organizations in providing grassroots support for survivors of intimate partner violence around the world.



"I think funding to support women's organizations, actually, because that's where the support is going to come from. Really, women without supporters are unable to hold their own against the male establishment. And their most likely supporters are going to be women from an organization that's been trained to understand inequality. ... And then, simultaneously, the males also need training – the males who are in power. But even when they've had the training, they need the women's organizations to keep them actually on the ball. Women's organizations tend to stick with their agenda, once their eyes have been opened and they understand the injustices, even the poorest and least-resourced women seem to maintain their motivation, whereas men have a lot to gain by letting things fall back to how they always used to be."

– Violence and HIV Specialist, Pacific Islands

"Women's organizations have a very important role, to bring it out of the family context and begin to show that being beaten has nothing to do with sully the honor of the family. For the Middle East, I honestly believe that the more women's organizations are active in this area, the better. ... The more you have of these, and the more awareness-raising by women's organizations and the more women feel empowered through women's organizations, the more pressure will be placed on government for better laws and better implementation. ... What you need is the pressure group."

– Legal Scholar focused on the Middle East and North Africa

### 3. Invest in research and evaluations to better understand the nature, scope, ethics, and effectiveness of ADR responses to intimate partner violence taking place around the world.

Without such research, this "most utilized but least recognized" form of grassroots justice will continue to affect the lives of countless numbers of women while somehow escaping widespread attention. This research should seek out the voices of women survivors of intimate partner violence from around the world and investigate why they have or haven't pursued ADR responses to their cases of violence, as well as what legal changes they'd like to see. This research can point to the salient differences in ADR responses practiced in different parts of the world and under the leadership of different actors. It can attempt to uncover any evidence that such practices do – or don't – lead to a meaningful reduction in the likelihood that a survivor will continue to experience violence. Most importantly, it can grant women survivors of intimate partner violence who have interacted with these systems the chance to speak for themselves and share their vision for how best they would like to be supported in living lives free of violence.



## New guidelines and frameworks for justice system responses to violence against women

Against the backdrop of the aforementioned shortcomings of formal justice systems' response to intimate partner violence against women, various high-profile agencies and influencers have attempted to improve these systems by establishing guidelines and frameworks. The following are two notable recent examples.

### The Due Diligence Project

The Due Diligence Project, according to its Due Diligence Framework for enhancing state accountability for eliminating violence against women, “aims to enhance and add content to the understanding of a State’s ‘due diligence’ obligation to prevent, protect, prosecute, punish and provide redress for violence against women; to assess the status of compliance and State action and inaction; and to develop a Due Diligence Framework with a set of guidelines for compliance.” The framework, which is available for free download online, elaborates on these five interlinked P’s:

- making **protection** of victims/survivors a priority
- effectively **prosecuting** perpetrators to remove impunity,
- ensuring **punishment** is commensurate with the offence and capable of preventing recidivism and deterring others,
- **providing adequate reparations** to victims/survivors to enable them to rebuild their lives away from the perpetrator, if required, and
- addressing women’s fears effectively in **prevention** campaigns.

 **Learn more at: [www.duediligenceproject.org](http://www.duediligenceproject.org)**

### United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence

Similar guidelines have more recently been introduced by the United Nations Joint Global Programme on Essential Services for Women and Girls Subject to Violence. These guidelines dictate standard elements of a justice system in responding to cases of violence against women at all stages, as below.

#### Initial contact includes:

- Reporting to police, documentation of the report, registration of a criminal case, advisory services provided by lawyers, civil cases registered, or administrative applications made to state compensation schemes, and applications made for separation, custody, and/or urgent/emergency protection measures through criminal, civil, or family courts, or administrative bodies/mechanisms

#### Investigation includes:

- Assessment of the case and investigation, generally conducted in the criminal justice systems. It includes scene management; investigation planning; survivor and witness interviewing; evidence gathering, processing, and analysis; medico-legal examinations; suspect identification, interviewing, arrest, and processing; and documentation of findings and actions taken.

#### Pre-trial/pre-hearing processes in criminal justice matters include:

- Bail hearings, committal hearings, selection of charges, decision to prosecute, and preparation for criminal trial. In civil and family matters they include interim child custody/support orders, discovery procedures in civil cases, and preparation for trial or hearing. In administrative law matters, such as criminal injuries compensation schemes, it is recognized that this can be pursued in the absence of or in addition to criminal and/or civil cases and include providing supporting documentation for applications.

#### Trial/hearing processes include:

- Presentation of evidence and verdict or civil judgment, as well as submission of evidence to administrative board and the board’s final decision.

#### Perpetrator accountability and reparations include:

- Sentencing hearings in criminal justice systems and reparations, such as restitution orders and compensation in either system. It can also include an assessment for civil damages award or a decision by an administrative tribunal such as a criminal injuries compensation board.

#### Post trial processes include:

- Corrections as it relates to protection of the survivor, minimizing the risk of re-offending by the offender, and the rehabilitation of the offender. It also covers prevention and response services for women who are detained in correctional facilities, and for women in detention who have suffered violence against women.

#### Protection, support, communication, and coordination include:

- Cross-cutting services that must be continually and consistently considered and applied throughout the justice process. Failure to do so can lead to catastrophic results. Systematic, timely, clear, and effective communication, coordination of services, referral networks, and mechanisms between justice and other service providers are key to maintaining survivor safety and protection, and ensuring the survivor receives the services and supports she deserves.

 **Learn more about the United Nations’ work on violence against women at: [www.endvawnow.org](http://www.endvawnow.org)**

## Recommendations for Activists and Organizations Well Positioned to Lead or Influence ADR Mechanisms

**1. Engage! Don't ignore or attempt to abolish traditional ADR approaches; rather, engage them to better hold them accountable for protecting the rights and safety of all citizens, and prioritizing the voice and agency of women survivors of intimate partner violence.**

In light of the shortcomings of ADR approaches outlined above, it is perhaps tempting for certain activists or members of the international community working to end violence to dedicate energy to abolishing these practices altogether. But many informants, particularly those from the Global South, advocated strongly for engaging with such mechanisms and working to improve them, rather than circumventing them because they do not yet meet the criteria of being survivor-centered.

"Certainly we should be working to adjust them, not to throw them out, because the formal system has big challenges as well. [Throwing them out] would be naïve, would be lying to ourselves. If they adopt a rights-based focus, and a woman's right to live free of violence. Most of the time they say they want to keep the relationship together, so to better recognize when a relationship is really toxic could be helpful. You don't always have to put people back together. Help people recognize double standards, patriarchy, blaming the victim. These are such common social norms. If we can create knowledge and skills around women's status, women's equal worth and value..."

– Violence Prevention Network Coordinator, Uganda

"For the most part if the system is functioning and running and it has the buy-in of the people and it's being accessed by the people and the formal legal structure is not, then I think it does bear engaging and holding them accountable. Because if you don't engage, you don't hold them accountable. So I do believe a certain form of engagement should happen. ... As long as it exists and it's being used and accessed then denying it and ignoring it is not helping the women."

– International Human Rights Lawyer, USA

**2. Strengthen and document your own programs! If your organization leads ADR processes, or interacts closely with those who do, draw upon the lessons and insights of this study to fundamentally increase the extent to which such practices prioritize the voice and agency of women survivors of intimate partner violence at all steps of the process.**

Drawing upon the good practice of the CAVAWs, women's courts, and Responsibility Meetings, as well as the many other helpful insights from informants, you can make concrete changes to ADR processes to better prioritize women's voice and agency:

- Ensure that those overseeing ADR hearings are well trained in the dynamics of intimate partner violence and are aware of survivor-centered response.
- Allow women survivors a private audience with the ADR authority prior to any summons or public hearing, to allow the authority to fundamentally understand the survivor's situation, wishes, and self-determined safety considerations.
- Structure ADR sessions such that women speak for themselves, or if necessary with assistance from their own chosen supporters.
- Strictly forbid the interruption or interrogation of women survivors' testimony during ADR sessions; replace this approach with attentive listening and trust.
- Learn to recognize, forestall, and punish the ways that perpetrators of violence may seek to exert power, control, and threats of violence even during ADR sessions themselves.
- Establish strong, though not mandatory, links with police, prosecutors, and judges, and assist survivors for whom ADR is not their choice – or for whom ADR has not proven successful – in accessing formal justice mechanisms.
- Follow up with survivors after the process to determine whether an ADR process has functioned as intended, to provide additional support, and to promote accountability to any punishment handed down.

**3. Shift community norms! Grassroots justice mechanisms will have a much better chance of upholding women's rights and leading to violence-free families if the wider community is simultaneously shifting toward fundamental rejection of intimate partner violence.**

Following in the example of the Responsibility Meetings, seek to engage the community itself and not just individual cases of violence. Only when intimate partner violence is fully understood and rejected at the community level – with all members of the community recognizing their role in preventing violence and holding perpetrators accountable – will a grassroots justice mechanism in that community be able to truly protect and promote survivors' rights, voice, and agency. This was one of the most convincingly stated recommendations echoed by multiple informants:

"I actually feel most strongly now that the kind of engagement that, for example, SASA! does with communities, or any intervention that involves community engagement, provides a good backdrop for conversations around mediation or conflict resolution for intimate partner violence to happen. You really need to have a community that is walking that journey of zero-tolerance, and therefore engaging with the issues and the power dynamics within communities, because then the participants in these conversations, the individuals that are impacted, those that are perpetrating, will all at least have a sense that they are dealing with a situation that is not upheld, it's not accepted."

– Lawyer, Activist, and Research Specialist, Uganda

"These kinds of responses can be made much more effective if there is that constant interweaving of consciousness-raising and formalistic processes. You have to weave into the whole hearing some messages that are part and parcel of raising awareness. So it shouldn't be reduced to, 'We are resolving this case and this woman and this man.' There are broader lessons, broader messages. That's when they become really effective. So that it doesn't become then just dismissed as, 'It's that personal case.' ... So even these community dispute resolution mechanisms are not as effective if they descend into becoming resolutions between families isolated from the community."

– Violence Against Women Scholar and Legal Expert, India

#### **4. Connect resources and services! Help ensure that ADR authorities/mechanisms are well connected with other relevant health, legal, and support services for survivors of intimate partner violence, and establish clearer linkages with formal justice systems.**

Informed, compassionate ADR authorities could become powerful advocates for survivors of intimate partner violence if they become better able to connect survivors with any/all existing support services related to their experience of intimate partner violence. These authorities can help broaden the scope of women's agency by making them aware of legal aid programs, counseling programs, health services, women's groups, shelters, livelihood programs, or other relevant options. Relatedly, with the right support, some women may choose to pursue formal charges against their perpetrators. ADR authorities can be trained to connect women reporting intimate partner violence with an organization that provides court accompaniment and support.

"Another thing it might be linked to which has been successful in the legal sector is court accompaniment, where a woman never has to deal with the whole thing on her own. There are trained workers or volunteers who go with her to everything to do with her case, even if it takes two years to move through the system."

– Violence and HIV Specialist, Pacific Islands





**5. Keep learning, teaching, and building skills! Work with community and ADR process leaders to enhance their understanding of intimate partner violence, their commitment to prioritizing women's rights, and their creativity in crafting solutions.**

In some sense, the ubiquity of these practices presents a tremendous opportunity for women's rights organizations and activists. With the appropriate training, oversight, and community mobilization, it is possible that such practices could provide the flexible-but-powerful grassroots justice that women survivors of intimate partner violence seek. But this will take significant effort, including direct training and assistance to community leaders and ADR authorities in the position to better prioritize women's voice and agency. If these leaders come to understand the dynamics and root causes of violence, and if they commit to being champions for survivors' rights, then they can have tremendous influence. Informants pointed to the ability of a particularly creative, rights-based mediator to craft solutions that are simultaneously palatable to the disputing parties and able to fundamentally undermine and break the cycle of violence in the home. For example:

"I remember a situation we encountered in Papua New Guinea. This woman raised her hand and told us about something she had done which I thought, 'Wow.' It really affected me. When these parties came to her, the man had been beating his wife because he would come home and she was still at the well, the food is not ready, and this and that, and he's all upset, you know. And his way of showing her what she should do is to beat her up. So, she reported the matter to the village court and they were invited for a hearing and this lady said when she started to mediate the case between them, at the end of the day she decided to make a decision to say, 'Here's something I want the two of you to go away and do. I want you to shift roles in your home for one week. Mister, I want you to take on and do everything that this lady has been doing, and let her take your role of what you've been doing, or probably not doing.' And she said, 'I would like you to come back here in one week and tell me how it has gone.' At the end of one week, the guy went back and all he could do was shake his head and say, 'Okay, I just can't understand how this woman was even getting around to do any of these things.' We all laughed, but I thought it was very simplistic, very appropriate to the context. She found a couple who could accept the decision she made, and she used her discretion. Really, at the end of the day, there's a lot of potential in that gray area called discretion."

– Lawyer, Activist, and Research Specialist, Uganda

**6. Focus on the details! To the extent that any ADR processes involve paperwork, or are codified in any way, there may be small adjustments to such processes that can build women's voice and agency considerations into the standard procedures.**

If the presiding ADR authority has any kind of report or paper record to complete upon hearing a new case, it would be relatively simple to adjust the report template for a case of intimate partner violence such that the mandatory initial questions include, "What are the survivor's preferences for how the hearing will proceed?," "What are the survivor's current safety risks?," "What type of punishment, resolution, and/or referral is the survivor seeking?," "What risks to the survivor's safety could come during and after the [ADR session]?", and so on. This practice has become standard procedure among Nepal's paralegal groups:

"The way that they do counseling is similar. ... They really emphasize the woman's side of the story. The woman gets to tell her story first. Even the forms they fill out when they come in to register a case, they explicitly mention 'What is it that you want?', 'What are you looking for?', 'What are your preferences?.'

– Activist and Researcher, Nepal

## V. Conclusion

Given the proportion of women survivors of intimate partner violence who interact with ADR processes, there is a surprising lack of attention in the international literature to how exactly these mechanisms function around the world, and whether they are able to prioritize these women's safety, voice, and agency. This study has drawn upon both a literature review and key informants' insights to invigorate that conversation, focusing on: **(1)** the diversity of such ADR processes practiced around the world, **(2)** the most influential benefits and shortcomings of these approaches in terms of their ability to prioritize the voice and agency of women survivors of intimate partner violence, and **(3)** the most compelling examples of ADR processes that have sought to be more survivor-centered.

We hope that efforts to expand and improve the options available to women survivors of intimate partner violence will continue to build momentum and urgency. A world free from this violence offers tremendous benefits to everyone, among them improved health, well being, and cooperation. But such a world is impossible without the voice and agency of women survivors of intimate partner violence in a central place of influence.



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