

Bangladesh: NGO-Supported Community Mediation Key Points

Description: Bangladesh's court system is unresponsive to the needs of the poor, and its traditional village dispute resolution institutions are biased against the interests of women. Based on a 1995 national customer needs survey, USAID-Bangladesh defined local participation and increased access to justice (especially for women) as a strategic objective, and improved ADR as an intermediate result (IR).

The case profiles a community mediation program developed to meet USAID's ADR IR. The program is managed by the Maduripur Legal Aid Association (MLAA), a Bangladeshi NGO. The MLAA community mediation program uses a multi-tier structure of village mediation committees supported by MLAA field workers to deliver ADR services. Local mediators are selected, trained and supervised by MLAA field workers in consultation with local officials, religious, and social leaders. The local committees meet twice a month to mediate village disputes, free of charge. Most disputes involve property or marital problems. Agreements are voluntary and are not enforceable in court. The MLAA program currently mediates roughly 5000 disputes annually and resolves roughly two-thirds of them. Satisfaction with the program is high. Most users prefer the program both to the traditional village dispute resolution system and to the courts.

Goals: Reform of the court system is considered politically and institutionally unattainable for the foreseeable future. The ADR program seeks to improve access to justice by providing a substitute for the courts and for traditional dispute resolution systems which are biased against women. Program goals and design were driven by a needs survey that focused directly on potential user groups.

Design: The program design builds on the traditional (*shalish*) system of community dispute resolution, which has much greater legitimacy than the court system. The MLAA program reduces the *shalish* system's cultural bias against women through legal education for local mediators and disputants, and through the selection of women as mediators.

Operation: To ensure the quality of dispute resolution services, the program provides training and ongoing oversight for mediators and field workers. To minimize costs, the program uses a word-of-mouth outreach strategy, volunteer mediators, and simple procedures with a minimum of written documentation. Although it is highly cost-effective compared to the courts, the program is not financially self-sustaining. To ensure sustainability, it must continue to secure grants, begin charging user fees, or both.

Impact: MLAA's community mediation program has demonstrated the potential for community mediation to increase access to justice for disadvantaged rural groups, especially women. Its impact is limited primarily by the small scale of the program relative to national needs. Scaling-up to the national level would require substantial additional financial and human resources.

BANGLADESH CASE STUDY

I. DESCRIPTION¹

A. Program Origins and Goals

Five Bangladeshi NGOs have been sub-contracted by the Democracy Partnership (which includes USAID, the Asia Foundation, and BRAC-Bangladesh's largest NGO) to deliver on Intermediate Result 5 within USAID's strategic objective "broadened participation in local decision making and more equitable justice, especially for women." IRS states that the "quality of alternative dispute resolution [in Bangladesh be] improved." Each of the organizations has designed their delivery vehicle slightly different. Of these five, two NGO programs were observed and one of them will be described in detail here - the Madaripur Legal Aid Association (MLAA).

MLAA was established in 1978 as a legal aid foundation. In 1981, MLAA began filing cases in court on behalf of their clients. The founder, however, was not satisfied with either the treatment or the results that the poor received in court. Therefore, in 1988, MLAA began to focus on mediation as a means of addressing client needs. In responding to the Democracy Partnership's RFP, MLAA was seeking the resources to continue this mediation work. According to the MLAA staff, the law is not a sufficient means of redress for the poor, predominantly due to the fact that the poor do not have the resources to effectively manipulate the court system. In addition, corruption is rampant (adding to the financial burden of anyone seeking redress through the courts) and the poor do not perceive that they are treated fairly by the system.

The procedures used by MLAA are based on a long tradition of mediation in Bangladesh, an indigenous method called "*shalish*". The MLAA has constructed a program which builds on the existing indigenous

¹ Conducted by Elizabeth McClintock, CMG Consultant, September, 1997.

system and in a sense, "remodels" it. The MLAA program is especially sensitive to issues of religion and tradition, while being careful to operate within the law.

MLAA has recently expanded their program beyond providing legal aid and mediation services directly to rural populations. In 1996, they began to offer training to other NGOs who are interested in incorporating mediation into their projects. In 1996 MLAA identified 21 organizations as partners in 17 districts throughout Bangladesh.

The budget for 1996-97 was \$70,000 and the budget for 1997-98 is \$94,315. Sixty percent of MLAA's total budget comes from the Ford Foundation, with just under 33% coming from The Asia Foundation (TAF) and USAID. As the Ford Foundation has indicated it will soon terminate its activities in Bangladesh, it is uncertain as to how the MLAA will cover this funding gap in the future.

B. Program Design

-Structure and Staffing

The organizational structure of the MLAA is an elaborate multi-tier structure: the head office is located in New Town, Madaripur; there are three district offices, Shariatpur, Gopalganj and Madaripur (the Madaripur District Office is subsumed into the head office); and within each district there are "thana" offices to oversee activities at the "union" level (collections of 10-15 villages). The district offices have small staffs of 3-5 people. Thana level offices are staffed by 2-3 people who are the direct supervisors of the mediation workers. These supervisors are required to spend 16 days in the field every month, both attending to administrative duties as well as sitting in on mediations. The MLAA desires to have their program replicate many traditional characteristics of *shalish*; therefore there is no office at either the union level or the village level. There are 140 total staff members at MLAA, 25-

30 of whom are located at the head office. This does not include the volunteers - of which all mediation committees are made up.

The MLAA has formed central mediation committees in each union comprised of 10-12 members selected from the MLAA village committees. The central mediation committee members receive a three-day training in mediation and legal awareness at the MLAA head office. This year, the MLAA held a three-day training for all the women in the union Parishads (local governmental municipal bodies) to raise their awareness about their legal rights, increase their understanding of mediation, increase the number of women implicated in the public education process about mediation, and to prepare them to be potential mediators in the future.

Each union has one mediation worker assigned to it. Candidates for the position of mediation worker are required to be from the union that they will serve in and have at least an 11th grade education. An application is submitted to the MLAA and the five-member sub-committee of the governing board (which includes influential citizens like prominent Bangladeshi social activists, lawyers, etc.) then hires the staff person. The mediation workers receive approximately ten days of training from the head office prior to taking up their positions. The MLAA also tries to send some staff overseas to receive additional training. For example, two women were sent to a training in India last year.

The mediation worker is required to travel throughout the union 15 days per month. The exception to this is in the Shariatpur District, where a lack of resources prevents the Mediation Workers from traveling as frequently. The responsibilities of the Mediation Worker include investigating potential cases, which might come to mediation, encouraging participation in the program, and sharing information about laws, regulations, etc. at the village level. The Mediation Worker must be present at all mediations because s/he maintains all records and the "calendar" of all mediations within the union

Within each village in the union an MLAA mediation committee of 8-10 people is

established. The mediation committee members are chosen in consultation with the elites of a given village (socially influential people, teachers, elected officials, social workers, the imam, or religious leader). MLAA focuses on recruiting women and people from a number of religions, especially if the village is a mixed one. The MLAA village mediation committee members receive a one-day training in mediation for approximately 50 people, with additional refresher courses. Not all committee members are generally present at each mediation (although they can be if they wish) due to work and family obligations.

-Mediation Process

The intake process for mediations is quite straightforward. A poor person will seek out the Mediation Worker or a member of the mediation committee in his/her village, who assists the disputant in filling out the necessary forms. MLAA specifically targets the poor and disadvantaged for its services (and this corresponds to the objectives set out by USAID), and so the forms include information regarding education and income. The mediation worker then posts a letter to the other party and sets a date for mediation.

Once a mediation begins, the mediation worker will explain the process to the parties and inform them of their right to pursue their case in court. The mediation worker will sometimes act as the chairperson, although this honor is often given to the most respected "elder" on the committee. Clients have some say as to who is on their committee and can request that someone be excluded. Clients are also permitted to bring anyone they choose to the mediation. (In four of the six mediations observed, the women clients brought along a male relative for support and credibility.) A major focus of the mediation process is allowing the clients to share their stories.²

²This was especially true in the Banchte Shekha mediation committees. The women interviewed indicated that the mediation committees sponsored by BS were considered to be "safe spaces" where the women could tell their stories without fear of redress. In this and the MLAA project, women clients seemed to respond much more actively when there were a number of women on the mediation committee.

The mediation committee members do a lot of inquiry and generally police the disputants as they struggle for time to express their views. During the mediations observed, clients were never cut short because time might be running out. Instead, the mediation was simply extended to a next meeting. It generally takes at least 3 months to resolve a land dispute and approximately one month to resolve a family problem.³

While complete data is not available for the entire MLAA program relating to the kinds and number of cases, figures are available on the Shariatpur District. (According to the MLAA staff, these findings can be generalized to the overall program.) Between July 1996 and June 1997, new and pending applications for mediation totaled 1737. Of these, 944 were resolved through mediation, 202 disputes were referred to court, 222 were dropped due to an absence of necessary papers or the non-appearance of a party, and 396 have been carried over to next reporting year.

An overwhelming number of cases brought to the MLAA village mediation committees are disputes involving property or family matters (and sometimes the land disputes involve members of the same family). Approximately 59% of the disputes involved family matters and over half of these dealt with dowry payments. Thirteen percent of the total

³ Although, the district coordinator in Shariatpur indicated that it took approximately 5 sittings (2 months) to resolve a family matter and approximately 12 sittings (6 months) to resolve a land dispute. Land disputes take at least one year to resolve in court and the costs to the client are much higher than those they incur by using the shalish system.

⁴ The MLAA mediated a total of 5,050 cases last year and referred 727 to the courts. The MLAA staff indicated that they mediate approximately 5,000 cases every year.

⁵ *Yearly Activities Report, July 1996 - June 1997*, p. 17. Madaripur Legal Aid Association.

dealt with property/land and 28% had to do with miscellaneous matters (conflicts between neighbors).

Agreements are signed by the parties but are never submitted to the court unless the district judge issues a subpoena. Clients put much importance on documentation and sign the agreements in front of a crowd. This puts pressure on parties to abide by the agreement. (The documentation is a difference from traditional mediation where no documentation exists.) No data is available on how many disputants return to mediation if the settlement is not respected. Anecdotal evidence indicates that a large majority of the settlements are respected because of the fact that they are reached in the full view of the community. The mediation worker is responsible for overseeing the implementation of the agreements. The final paperwork is not done (i.e. the case closed) until the agreement has been respected. In the case of non-settlement, the mediators will make several efforts to try to resolve the problem before referring it to the next level or to court.

If a mediation cannot be resolved at the village level, it is referred to the central union committee (also trained by MLAA), then to the thana level, to the district level and finally to the head office. A case will be referred to district court (the lowest level of courts) if it has gone through mediation and failed, if it is a criminal offense, or if it ends up being a complex land dispute that requires extensive legal knowledge. If a case has gone through the MLAA referral system and the MLAA staff decide to refer it to court, the MLAA will pick up the court costs for the disputant. The case is then referred to MLAA's legal aid division. It costs between 200-250 tka to file a case and then costs mount from there. On average, it takes 2-4 years to reach a resolution for almost any kind of case in the courts.

Surveys indicate that user satisfaction with the MLAA mediation system is quite high. Two hundred villagers in five thanas (in two districts) were interviewed about the social impact of the MLAA mediation system. As compared to traditional shalish, the villagers felt

that the training of mediators impacted on the lawfulness of the resolutions reached in the MLAA mediation system. In addition, respondents said that the MLAA mediation system provides them with more "accurate resolutions"-especially since disputes are resolved by consensus.

II. ANALYSIS

A. USAID-B's Approach to Project Design

In examining the USAID-funded ADR program in Bangladesh, it is important to understand the context in which it was developed. USAID Bangladesh has enthusiastically embraced USAID Washington's "re-engineering goals," including customer focus, managing for results, teamwork, empowerment, and diversity. A second important factor is the principle goal of the mission: reduction of poverty. The ADR-related relevant strategic objective for reaching this overall goal is: "Broadened participation in local decision making and more equitable justice, especially for women."

USAID-Bangladesh's approach to project design is to be more involved in project design, monitoring, and evaluation and rely less on outside consultants and sub-grantees. The first step USAID-B took to develop the JRs for the relevant SO was to conduct a rapid appraisal of the needs of the target population. In this appraisal, respondents were asked to define what democracy meant for them in their daily lives. USAID-B deliberately avoided involving academics or others traditionally recognized as experts in the survey. The concern was that these "experts" might identify needs that did not resonate with those USAID-B hopes to serve. Following the rapid appraisal in April 1995, USAID-B developed several results targets or JRs. The JRs and the project design process were then used to develop a Request for Application (RFA) to solicit partners in achieving the stated JRs.

⁶ *Evaluation on Social Impact of Mediation*, p.11. A report prepared by the monitoring and evaluation cell of the Madaripur Legal Aid Association. (1995- 96.)

The Asia Foundation (TAF) and BRAC responded with a joint application which was accepted by USAID-B; together, the three organizations formed the Democracy Partnership. In August 1995 the Democracy Partnership conducted another survey to determine if the JRs were still accurate. Having further refined the JRs, the Partnership then began choosing NGOs to provide the services. The selection process included using the Association of Development Agencies of Bangladesh (ADAB) as a forum for describing the proposed JRs and what the Partnership wanted to accomplish. TAF subsequently hosted follow-up meetings to explain the results framework developed by the Partnership and to choose the NGOs to deliver the JRs. The Asia Foundation is responsible for entering into and documenting subgrant relationships with all the NGOs selected.

In Bangladesh, government involvement in the development of the program was quite limited. The Division of External Resource Development of the Ministry of Finance (ERD) was consulted when the RFA was initially developed and USAID-B proposed that they join the partnership. However, there is no specific government agency assigned to oversee work in democracy and governance (as it is a non-traditional area of donor assistance), so ERD gave the go ahead to the program but declined to get involved. The government felt that they did not have the resources or the experience to get involved in DG projects and recommended that USAID-B use NGOs as service providers. The Partnership continues to consult and inform government officials who are involved in the election commission and the locally elected bodies (LEBs) of the progress of the program and has shared the USAID results framework with them.

The preceding discussion provides an important context for understanding how program goals were set in Bangladesh. They are very much driven by USAID goals and objectives and informed by the rapid appraisals conducted by the Democracy Partnership. The mediation programs observed were established under Intermediate Result 5, which states that "the quality of

alternative dispute resolution be improved" by the end of the grant period. Very broadly, activities under this IR help make dispute resolution through the village mediation committees more accessible, equitable, and effective. Attention is also given to improving the quality of dispute resolution conducted through union parishads.

More specifically, the goals of the program could be categorized under the following three headings: reform of the legal system; addressing more pressing social problems; and improving the quality of the dispute resolution process. The goals of the program with respect to each of these categories are described below.

Reform of the courts: The ADR programs implemented by Bangladeshi NGOs serve as a substitute to an ineffectual justice system, especially for women and the poor. In Bangladesh, the poor have no confidence in the allegedly corrupt formal legal system, nor do they have the resources to take advantage of it. Knowledgeable observers comment that ultimately, the reformed community mediation system may have some impact on reform in the formal system but that realistically, reform will only happen with overall government reform, which is a long way off. Indeed, in Bangladesh the link between institutionalizing some form of ADR and addressing pressing social problems is far stronger. The explicit way in which the ADR programs are coupled with other social services provided by NGOs clearly demonstrates this.

It is interesting to consider whether or not improving the *shalish* committees serves to create a "second class" justice system or prompt the disadvantaged to give up their right to pursue cases that might have larger social or political implications for themselves or their communities. The IRs articulated by the Democracy Partnership and the way in which the two programs observed were structured are attempts to promote the available to ALL classes of disputants. Program designers face an important tradeoff: increasing availability of unbiased, quality ADR programs, immediate access to a system, which provides tangible relief in the daily lives of users, versus championing the rights of the poor, especially

women, in the larger forum of the national court system. Interviews with both users and NGO staff implementing the programs indicated that the population feels they need to be informed about their rights before advocating for those rights. The reformed mediation committees have provided them with an opportunity to initiate this education process.⁷

Address social problems: The primary social goal is increased access to justice for the poor, as well as more equitable and effective justice for them. The additional reasons given by the NGOs surveyed for setting up ADR programs included ensuring the more effective implementation of their own programs, such as better access to and use of family planning, or the improvement of conditions for women. ADR is just one of a number of services offered by these NGOs to fulfil) their overall program goals.

Improve process of dispute resolution: Certainly, the directors of the programs examined indicated a desire to improve the dispute resolution process itself - e.g., make it cheaper for users, increase fairness and equitable outcomes and therefore satisfaction of the users. This goal achieves importance, however, in so much as it is related to the issue of access to justice for the poor. A collateral benefit is that the mediation committee process tends to take far less time than court.

B. Insights from Field Work and Setting Program Goals

The field work to determine the "needs of USAID/Bangladesh's customers" and then to test resulting IRs provided key information used in

⁷ The MLAA and BS programs both incorporate a significant amount of legal aid and education about rights. BS actually has a team which documents all cases, especially of abuse, which they are called upon to investigate and provide legal counsel. Both organizations are especially concerned about creating precedents, either through court cases or by institutionalizing a *reformed shalish* system, which promote and affirm the rights of the poor.

goal-setting and project design. The needs assessment was conducted by men and women fluent in Bangla. The teams interviewed the sample group of hundreds of people in pairs and were sensitive to gender issues: men interviewed men and women interviewed women. The interviews revealed a number of important insights affecting any ADR program:

-- Associations contribute greatly to an improved quality of life for women and by extension for the very poor by giving members a greater voice and ability to participate in community affairs, as well as often providing tangible economic benefits.

Access to justice for both men and women follows a fairly predictable pattern: it is sought first at the local level through the traditional "*shalish*" system. If the problem is not resolved, the parties then seek out local government leaders, and finally seek redress through the courts if the issue is not resolved at the lower levels. An overwhelming number of disputes are solved by traditional "*shalish*" as the poor feel that they are handicapped when seeking justice at the other two levels-both in terms of access and impartiality.

Interviewees, and women in particular, expressed an interest in continuing to seek redress for their problems at the local level, if the local, informal dispute resolution systems were strengthened.

Regarding women's concerns, most respondents (and women were in general more critical than men) felt that the "*shalish*" committee was usually biased, as well as ill informed as to the law and to procedures. Education about legal rights, especially in marriage and divorce and specific assistance in resolving problems of dowry payments were of greatest concern.

Several suggestions were made for encouraging the participation of women on local monitoring of *shalish* judgments.⁸ Stakeholders committees, for training of *shalish*, local elders and union parishad members, and for better

believed that the five IRs currently articulated met their needs and that it was unnecessary, and perhaps even counter-productive, to formulate an IR focusing on women that was not connected to the other goals (such as greater participation of women in locally elected bodies, voter education, an improved *shalish* system, etc.).

-- Finally, government is uniformly considered to be corrupt and because of this, the poor are doubly disadvantaged in terms of access to justice; services or resources intended for them are absconded by officials and a lack of funds implies an inability to buy influence

USAID then used these insights to develop the intermediate results framework. ADR programs designed by local NGOs have corresponded to the intermediate results framework and seem to be delivering on the needs identified by the ultimate users.

C. Other Factors in Goal-Setting

The decision to initiate ADR programs in Bangladesh was driven by two factors: first, USAID-B has determined that the funding of ADR programs is one way in which their overall objective of reducing poverty in Bangladesh can be achieved. In this case, ADR is simply a means of addressing larger social issues, especially access to justice for the poor and the empowerment of women. Second, the local and international NGO community in Bangladesh has recognized the value-added that ADR programs bring to their other programming activities.

Perhaps the single most important background factor considered in the goal-setting process was the program's fit with cultural and institutional norms. The *shalish* corresponds to the traditions of all religions represented in Bangladesh. In addition, access to the *shalish* does not require a high degree of literacy (in fact, most of those who use the system are illiterate) and, given the tight communities in which most

⁸Validation Synopsis Report submitted by the Democracy Partnership, August 1995.

⁹USAID "D" Team Report. May, 1995 (pp. 1-4).

Bangladesh citizens live, the *shalish* process conforms to a basic need to involve the community in any reconciliation process. Despite the distrust of the justice system, building a constituency for ADR, while challenging, has been relatively easy when both traditional and elected local leaders are captured by the education process.

Rough parity in the power of classes of disputants is another background factor which contributes to the success of the system in Bangladesh. The system does not really provide for the equalization of power with respect to class—the middle and upper classes are not currently users of the mediation committee system but neither are they the target population—but an important goal is to provide disputants with an opportunity for redress before a dispute festers and escalates. According to many of the mediation committee members interviewed, this is a significant improvement over the *shalish* system.

More importantly, according to the women who participate as disputants, the mediation committees provide a means of equalizing power imbalances caused by gender. Most of the women interviewed felt that the mediation committee system provides them with a fair and relatively unbiased forum in which their grievances can be addressed—a forum that has not existed in the past.

The goal-setting process undertaken by USAID-B initially and ultimately with the members of the Democracy Partnership greatly contributed to the buy-in of program goals by most stakeholders. Ongoing consultation with end users and the government supported the program goals. Another step was taken to build a constituency at the local level for the implementation of the ADR programs. Traditional and elected local leaders were sought out for their opinions and suggestions, and in the design process, an education component was developed. Traditional leaders are also targeted as potential participants in the mediation committees and in many of the programs, the Union Parishads also receive training in mediation skills, as well as Bangladeshi law and the rights of citizens

D. Design Issues

There are four program design issues which impact the effectiveness of the ADR programs in Bangladesh: relation to the court system; outreach and education; ensuring that third parties are neutral; and monitoring and evaluation. The design and implementation of outreach programs and the selection of third party neutrals are design factors that are within the purview of the implementing agencies. The monitoring and evaluation aspects of these programs are driven by requirements from the Democracy Partnership, but the evaluation itself is left to the NGO.

-Relation to the Court System

There is no formal relationship between mediation committee; and the official justice system. Therefore, this was not an issue the NGOs had to address when designing their projects. It may be said that the very success of the mediation system is a result of a failed justice system (especially in the eyes of those serving the very poor in Bangladesh).

The relationship between the two systems is governed by two things: 1) whether a disputant chooses to pay for court when mediation fails or when they feel that the court is a more appropriate form of redress; and 2) whether the NGO providing mediation services and legal aid will cover the costs of taking a client's case to court. The NGOs which provide mediation services (including training) to the poor all explicitly state that they operate within the law. Indeed, a large part of the training of mediators in the programs observed includes informing the candidates about the general laws within which they are expected to operate, the legal rights of the clients who come to them, and the process that should be followed should a client decide that they do not want to pursue mediation. In addition, all clients are informed of their right to pursue their case in court and their court case is not prejudiced should they have chosen to go to mediation first.¹⁰

Another issue for design is sequencing of the ADR processes vis-a-vis the court process, which is left completely up to the user. Once a court proceeding has been initiated, the case may go to the mediation forum only with the written consent of both parties in the presence of the judge. A judge does have the right to subpoena documents that have been presented as evidence in a mediation, although this happens very rarely.

The absence of a formal link between the justice system and the mediation committee, while not currently an issue, may become problematic in the future. The tenuous link makes it more difficult to ensure that clients have a means of seeking redress if agreements are not abided by. In addition, it means that wealthier people are able to take advantage of the poor by taking a case to court that they know will not be resolved in a timely manner, thus potentially tying up the resources and disputed property of the poorer client for years.¹¹ At the same time, until the court system is reformed to provide more consistent (and real) justice for the poor, there is not much incentive for NGOs and others providing mediation services to push for a more formal link. They are meeting the immediate needs of their client irrespective of the problems of the court system. That seems to be the first priority of all the organizations interviewed.

Mediation of a Land Dispute

Sufia had gone to court to recover land that had been rented by her family to a tenant farmer and his sons. At the time she went to reclaim the rights to her land, her husband had died and so

¹⁰ *The Training on Legal Awareness* observed in New Town, Madaripur, offered by the MLAA included topics such as family law, Muslim law, implementation of human rights through shalish, the significance of women participation in shalish committees, and strategies and techniques to manage the mediation session. Training offered 9/16 - 9/18 1997. Thirteen men and seven women participated.

¹¹ Interview with Sufia. 9/16/97, Shariatpur, Bangladesh. (See sidebar.)

she had to pursue the case on her own. After six years in the judicial system, her case was finally resolved and she was granted the rights to her land. Unfortunately, the man and his sons refused to vacate so Sufia had to return to court to get an eviction notice to give to the police. This often takes 10 or more years.

Soon after Sufia had submitted her eviction request to the courts, she decided to go to the MLAA *shalish*, to see if the matter could be resolved more quickly. Upon hearing that Sufia had sought redress, the sons came and tortured her. She has terrible scars on her arms (they used a scythe) as a result of their abuse. She spent many days in the hospital and the cost to her was 10,000 tka. When the man found out what his sons had done, he contributed 2000 tka to her hospital bills and agreed to come to mediation.

At the conclusion of the mediation, (which lasted 11 months, with either 8 or 9 sittings- she doesn't recall the exact number) Sufia was paid 120,000 tka for her land. This amount is far below the value of the land. The payment was framed as a lease-because in mediation, Sufia did not give up her rights to the land and the eviction notice is still pending in court. Sufia feels that she received some measure of justice from the MLAA *shalish* that she did not receive in court and the results of the *shalish* are tangible. Before, she would have received nothing, especially as she has no male relative to help her pursue her case.

However, as ADR programs are becoming more successful in the rural areas, there is a move on the part of government and justice officials to institutionalize dispute resolution at the village level-creating something called the "grameen" or local court. This would create a formal link between the mediation services currently delivered by NGOs and/or people they train and the official justice system. Informed observers in Dhaka feel that it is premature to create these Grameen courts as they would only create another layer of bureaucracy and would only serve to deny justice to those very people who need it (and who are currently benefiting from the mediation systems

provided by the NGOs). Because the system has not yet been reformed, nor is there sufficient impetus for reform at the national level, there is no means of ensuring that the Grameen courts do not fall prey to the same corrupt influences affecting the other parts of the justice system.

-Strategies for Outreach and Education

There are two important issues with regards to outreach and education. On the one hand, excellent structures exist for the promotion of ADR efforts. On the other hand, suspicion of the traditional *shalish* system, to say nothing of the formal court system, remains a challenge that NGOs must overcome when offering mediation services. Without a doubt, the high rate of illiteracy, poverty, and the distance of a portion of the target population from village centers would prevent users from taking advantage of the mediation system if there were not active outreach programs.

The MLAA and indeed most if not all of the other implementing agencies are building on legal aid and other social programs and therefore have more or less "built in" outreach programs. The packaging of ADR with other services is essential to success here when trying to reach the very poor. Because these programs are built on the existing *shalish* system, there is less of a need to overcome cultural suspicion of ADR; education campaigns are focused on changing the attitudes of users with regard to the perceived biases of these traditional systems (especially against women). Other outreach activities include awareness raising workshops for local elites and union parishad chairmen, encouraging users to share their experiences with the uninitiated, the more traditional posters and leaflets, as well as training of other NGOs in mediation skills-whether for their use internally or so that they are then able to train others. In the MLAA program, part of the mediation workers' responsibilities include outreach as they travel around the union. Other NGOs delivering on IRS offer training to local bar associations and invite district judges to participate in portions of these trainings. This serves to broaden understanding of mediation and potential.

-Impartiality of Third Parties

In Bangladesh, the choice of mediators is very much culturally driven. *Traditional shalish* is conducted by elders and respected members of come to consensus- often framed as "what is good for the community." Mediation is traditionally done by committee but these committee members rarely have education in legal issues or women's rights. There is not a human resource pool of experts in family law or land regulation issues which can be drawn upon in rural areas. Indeed, the respect that a person commands from his or her community is a far more important qualification than substantive expertise. In addition, due to cultural norms, women have very little voice in the community and therefore do not feel comfortable advocating for themselves in traditional *shalish*. Many of the women interviewed indicated that it is biased against them.

In developing the village mediation system, NGOs providing training and mediation services are trying to work within this traditional system. In addition, the qualifications and training required of mediators under the mediation committee system contribute to the perception of impartiality of mediators. For example, MLAA mediation workers must have an eleventh-grade education and must be from the union where they intend to work.¹² mediation

¹² "One of the cardinal principles of [the Madaripur Mediation Model - MMM] for engagement of mediators is the **local affiliation** of the personnel. In other words, the mediators are chosen from amongst the local people. Mediators live and work amongst the people whose disputes they are called upon to mediate. Unlike judicial pronouncements or third (sic) party arbitration, a mediation worker must be familiar with the local/societal roots and belongings of the parties, as well as their specific traditions, customs, and values. By being locals, the MMM mediators ensure that they are familiar with all the nuances of local lives, both of the parties directly involved and others who

workers are given 7-10 days of training and receive regular refresher courses. They are also monitored regularly to ensure that they are fulfilling their duties and any complaints are dealt with. The role of the mediation worker is one of an administrator, and mediations are conducted under their supervision by the village or union mediation committees. The committee structure helps ensure impartiality. According to the staff at MLAA, a committee is viewed as more fair and democratic than a single person. This contributes to the credibility of the process as the committee structure reflects a relevant social norm with regards to how problems are resolved within a community.

The MLAA has also improved the effectiveness of the mediation committees by reducing the perception of bias at the village level. The selection and training of mediators at both the village and union level also helps to ensure a more neutral, unbiased process (in addition to contributing to community buy-in of the reformed system). This is accomplished by ensuring that village mediators receive at least one day of mediation training and that the union mediators receive a three-day course.

This last point is especially important, as women are a large portion of the target population and have experienced the most discrimination at the hands of the traditional *shalish*. In order to increase female participation as mediation committee members, MLAA has trained the selected (as opposed to elected) female members of the union parishad committees in the three districts in which they work. The objective of these three-day trainings is to offer legal education, to raise their awareness about mediation, and to encourage more women to participate in the new community mediation process.

Initially, Banchte Shekha (the other program observed in detail) followed the MLAA model and established mediation committees at the village level with no special consideration of

may be indirectly concerned with the outcome of the resolution process." *Mediation: Concept, Techniques and Structures*. MLAA, p. 10.

women. This proved to be ineffective precisely because of the reasons mentioned above: women feel that the traditional system is biased against them. So, creating a system that essentially replicates the previous one did little to encourage their participation. In order to increase women's participation, the program was redesigned. The new design served not only to empower women, both as participants and as mediators, it has contributed greatly to the sustainability of the program as it is now more directly linked to Banchte Shekha's other activities.

Some disputes continue to be mediated outside the reformed system in the three districts. The small amount of data available indicates that availability of the traditional *shalish* coupled with the lack of information about the MLAA is probably the biggest reason some disputants still seek out the traditional *shalish*.

-Monitoring and Evaluation

In general, monitoring and evaluation targets for the Bangladesh ADR programs are set by USAID. At the same time, each NGO is free to operationalize methods for achieving these targets. While improvements are necessary in the MLAA monitoring system (specifically increasing the number of staff available to conduct evaluations and monitor the quality of the services provided by the mediation workers), they have established a fairly effective evaluation mechanism.

There is a monitoring cell as part of the MLAA program, with a staff of four and a target of 550 visits per year. The staff is required to monitor not only the mediation program but all the other programs that MLAA offers. They observe mediations as part of the monitoring process and ensure that data on the mediation process is collected correctly. For example, the mediation worker collects all the applications for the potential mediation of a dispute and also keeps all records regarding which have been accepted and which have been referred to court, the duration of each mediation, and the results of the mediations. This information is provided to the coordinator at the head office on a monthly basis. Open format, monthly coordination

meetings are also held at the head office and one representative from each thana attends.

Mediation workers can be terminated. This is generally client driven. Once the supervisor receives a complaint, the monitoring cell comes for a visit and interviews people to determine what the problems with mediation worker might be. There is then a review of the mediation worker's performance and depending on the problem, a grace period established so that the Mediation Worker has an opportunity to correct the problem. Should the problem persist, the final decision is taken at the headquarter level. In 1997, five MLAA staff were terminated, and two have left to take new jobs.

Dealing with the mediation committee members is more problematic because they are volunteers. The mediation committee members cannot be terminated, but if the mediation worker receives complaints or witnesses inappropriate behavior or simply poor mediation skills, then that committee member is sidelined. This happens by discouraging them from participating and by not inviting them to sit on the committee for mediations.

III. ASSESSMENT

As set out in USAID's strategic objectives and as enumerated in Intermediate Result 5, a cornerstone of USAID's work in Bangladesh is ensuring that the poor and disadvantaged have access to justice. In conceiving of the framework for the ADR program, the Democracy Partnership has developed an innovative way for that goal to be achieved. As with any program of this size and certainly given the obstacles faced in Bangladesh, there is room for improvement. The question of

resources poses the greatest challenge to the success of the ADR program. In particular, there are three categories of issues that must be addressed if the ADR program administered by NGOs is to be sustained: structural design, funding, and availability of qualified human resources.

At present, the provision of ADR services is linked to the other activities that NGOs offer to poor communities. This is imperative if the program is to survive. The challenge lies in creating a clear link between ADR and the other programmatic activities and in ensuring that the other activities explicitly support and sustain that ADR program. For example, the MLAA community mediation program is built on a legal aid and human rights education program. The MLAA continues to offer those services but ADR has become the centerpiece of their efforts. While this is admirable, it is unclear as yet as to whether or not this will be sustainable, especially given that the other programs do not generate income to support the activities of the MLAA.

On the other hand, in two programs observed, Banchte Shekha and PSF ("Rural Children and Mothers"), mediation skills and training are used as a means of improving the quality of other services. At Banchte Shekha, for example, the reformed shalish system (based on the MLAA model) helps to empower women by offering them a prestigious role in their communities and a means of dealing with disputes effectively so that their other work might continue. At PSF, the family planning professionals use the ADR skills to spread information about family planning more effectively and also use them when dealing with disputes within families about this same issue.³

A second major challenge to the survival of ADR programs in Bangladesh, especially

³ Both the head of PSF and the staff at Banchte Shekha emphasized in their interviews how the ADR program, and in particular the MLAA model, would enhance the quality of their other programs as opposed to highlighting the benefits of ADR as a stand-alone project.

those that serve the poor, is funding. Currently, the MLAA budget is entirely supported by external funds (i.e. the Democracy Partnership, the Ford Foundation, and NORAD). Admittedly, the target population in Bangladesh is too poor to warrant instituting a user fee system-anything initiated at this time would probably kill the program. At the same time, NGOs must get creative as to how they will survive should their sources of external funding be eliminated. As mentioned earlier, it is unclear how MLAA will sustain itself once the Ford Foundation leaves. A better model for financing may be the one that Banchte Shekha has developed, using the income-generating projects in each community to help sustain their programs.¹⁴ Not all NGOs will be able to link their projects to income generating endeavors, but coupling the ADR programs with other, popular issues (family planning) may help to ensure their longevity.

Finally, the low levels of literacy and the lack of understanding of ADR, human rights, and legal issues make it difficult to ensure that high quality staff will always be available to deliver the programs. The credibility of the program is impacted by the reputation of the mediators and the mediation workers-- adequate training in both ADR techniques as well as the law is essential to maintaining that reputation. Also, women are by far the most disadvantaged population (economically, socially, and educationally) which poses a significant barrier to recruiting women mediators. (According to the MLAA district coordinator in Shariatpur, the number of women using the reformed shalish system is increasing rapidly as they become more confident in the results obtained there.) Perhaps the biggest challenge to the ADR program is that it is too expensive to reach all parts of Bangladesh both in terms of funding and available human resources to implement projects. At present, only 15% of Bangladesh's population is served by NGOs and only 0.5% are covered by ADR programs. Replicating the MLAA model across Bangladesh will be an uphill battle.

The news in Bangladesh, however, is encouraging. In general, the efforts of NGOs to provide ADR services to the poor have been quite successful. The MLAA model is a workable one and more and more NGOs are requesting training in ADR skills. Due to the paucity of resources in Bangladesh, perhaps the most important contributors to the success of the ADR program are the clearly articulated goals set out by USAID and the Democracy Partnership--most importantly providing the poor and disadvantaged with access to justice.

In choosing to fund efforts that improve upon an indigenous system, the partnership is directly addressing a potentially crippling barrier--public education about mediation. Literacy rates are so low and the poor's access to other media so limited that introducing a whole new system of ADR would be problematic at best. Instead, the delivery agencies are able to build on an existing concept, with the challenge of proving that reformed shalish is an effective way for the rural poor to deal with their problems. Since entire communities are often present at the mediation sessions, this can be done effectively by ensuring a high quality of staff and consequently a credible shalish system, along with public education.

In addition, the partnership implemented a program design process that successfully incorporated the views of the users. This meant that ultimately the focus of the programs has remained on the most needy, consistent with USAID's overall goals. More and more women are using the reformed shalish system and as ADR programs are coupled with projects like Banchte Shekha's, more women will become involved as mediators as well. Given the challenges faced by any aid agency implementing ADR programs in a country like Bangladesh, the mediation committee system is a successful step towards achieving greater access to justice.

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¹⁴ Approximately 40% of their total budget is supported by income generating projects. (Interview, 9/17/97)