# Mediation from the palm of your hand: Forging the next generation ODR systems

Sanjana Hattotuwa

## Introduction

Discussions on Online Dispute Resolution (ODR) most often concentrate on its use in e-commerce applications, domain name dispute resolution mechanisms or as the virtual / online evolution of alternative dispute resolution (ADR) systems. ODR's traditional emphasis on dispute resolution, as opposed to the examination of the underlying structural causes of conflict, has been a foundation upon which many e-commerce disputes have been resolved through services such as Squaretrade[1]. ODR has been developed in and championed by countries, organizations and individuals in the Global North, countries which have benefited from sophisticated and pervasive internet services and infrastructure, low cost of access, the ubiquity of PC's and legal frameworks which have evolved over time to give rise to the increasing prevalence of ODR applications to resolve disputes. Authors like Ethan Katsh and Janet Rifkin (2001) identify several generations of ODR, underscoring its maturity and eschewing the notion that it is an underdeveloped technology and services framework that is ill suited to bear the burden of tasks many of its proponents actively argue it can grapple with. From simple email based systems to the increasing sophistication of websites that offer a range of ODR services, from static web pages which give information on ADR and traditional justice mechanisms for redress to portals and dynamic websites that offer the user a range of service tailored for the individual disputes, the technology used by ODR has seen a massive growth in recent years, with a consonant increase in its use by participants familiar with ADR and those who have bypassed ADR and have leapfrogged into ODR.

Contrary however to the technological determinism that has swept the Global North, and recent pronouncements of the 'flatness' of the world by authors such as Thomas Friedman[2] – the understanding that the internet helped has erase all socio-political differences between States with the advent of global knowledge markets – the author notes that the development of ODR in the Global South shows different trends and is informed by different dynamics to that of the Global North. While by no means an issue that is irrelevant in the West, the digital divide – the inequitable distribution of technology to social elites and on the other hand, the gap between these elites and their use of technology and the realities of the many millions who do not have access to such knowledge and by extension, power – underpins the context of ODR in developing countries. Such countries, amidst a litany of other issues coterminous with under-development, have skewed IT frameworks, ill-thought e-government initiatives, have high cost of access, vast regions with no electricity and by extension, unable to run and maintain PC's and have little or no human resources to under-gird sophisticated ODR mechanisms.

---

[1] https://www.squaretrade.com/cnt/jsp/odr/overview_odr.jsp;jsessionid=xsbuep5uu1?vhostid=tomcat4&stmp=squaretrade&disid=jukx8vam55&cntid=xsbuep5uu1

[2] See http://yaleglobal.yale.edu/display.article?id=5581

As such, the 'benefit' of ODR is not a given in such contexts, where protracted ethno-political conflict, corruption, disease and humanitarian emergencies, inept governance and a myriad of other social ills prevent society from the enjoying the good life and opportunities for societal advancement taken for granted in the Global North. In this essay, I will attempt to draw the contours for a new generation of ODR technologies and frameworks that will go beyond the traditional confines of ODR theories and their application. In doing so, I will argue that ODR not only has great value for countries in the Global South, but any application for processes that go beyond commercial dispute resolution and into, for instance, complex single text agreements that under gird peace processes, will require that ODR theory expands its horizons and reaches into theories that are relevant to peacebuilding. The emphasis here is on a transition from conflict resolution to conflict transformation, from an understanding of ODR that excludes structural issues to an appreciation that any ODR mechanism is an inextricable part of the social fabric of the context in which it is applied. From the management of conflict to the transformation of the hearts and minds of disputants, this new generation of ODR will power systems and frameworks that will take ODR from the realm of PC's to technologies which are almost ubiquitous in the Global South – mobile phones and radios. It will be argued that hybrid solutions that use and leverage the existing strengths in grassroots communities and augment local capacities with culturally appropriate cutting edge technologies will drive ODR from a fringe activity for geeks to a process that becomes second nature for the transformation of issues that fuel violent communal conflict.

It is not possible in this paper to map out the detailed ways in which such a framework can be designed, nor pit it against the rigour of academic analysis, especially since the present endeavour has no historical precedent. The corpus of ODR literature does not deal with conflict transformation or its possible use in peacebuilding, peace processes, virtual single text agreements *et al*. As such, this paper will concentrate on the socio-political *tableau* of Sri Lanka which the author is most familiar with. Writ against a socio-political fabric similar to that of many other countries in the Global South, the frameworks envisaged here constitute a radical revision of current ODR practices, norms, technologies and thinking.

In sum, this paper will submit that for the pervasive use of ODR in the Global South (as opposed to its increasingly entrenched acceptance in the Global North) a radical overhaul of its theories, conceptual underpinning and technologies needs to be undertaken. This paper will also develop ideas first discussed during discussions on ODR for an ADR course conducted by

University of Massachusetts in March 2005 and further developed during Cyberweek 2005[3] in April 2005, in which the author was invited to present ideas of expanding the use of ODR through existing mobile telephony and radio (including internet radio) networks in the Global South. Certain ideas in this paper also stem from a presentation on ODR and conflict transformation given at the UN ODR Conference in July 2004. The author's involvement in the on-going work of Info Share[4] in Sri Lanka, an organisation that uses technology for peacebuilding, single text negotiations and the design of other conflict transformation processes, also under-gird the assumptions and arguments in this paper.

## Sri Lanka – Brief history of conflict

Sri Lanka has endured a brutal conflict for over 25 years. With millions of IDPs and refugees, hundreds of thousands of people dead, the violence of State, non-State and paramilitary actors have traumatised every sinew of Sri Lanka's social fabric. Even though the brunt of the loss, both economical and human, has been borne by the lower rungs of society, few in Sri Lanka, irrespective of their ethnicity or identity group, can claim to have escaped unscathed by the war. Two decades of war, ethnic riots, insurgencies, and extra judicial killings, have all contributed to a society awash with trauma (Hattotuwa 2002, Philipson 1999).

The beginnings of terrorism and ethnic violence in Sri Lanka are inextricably entwined with the activities of the State. In the 30 years from the mid-1940s, successive governments took measures to reduce the number of Tamils in the professions and the public sector. These measures interacted in diverse and complex ways with a potent Sinhala Buddhist exclusivism which gradually became the animating ideology of the Sri Lankan state. Particularly amongst the arriviste, lower caste Sinhalese, the spread of anti-Tamil chauvinism was soon perceived as a promising means of increasing economic opportunity. As time passed, the electoral promise of pandering to this chauvinism tempted even the most cosmopolitan of Sinhalese politicians (Loganathan 1996, Wijesinha 1995).

The bloody terrorism that has ravaged Sri Lanka since 1983 is fuelled by the refusal of many Tamils to operate within a state system which denies them political power, employment and educational opportunities whilst engendering socio-economic disparity (Philipson 1999, Edrisinha 1999). Distinction, however, has to be made between the terrorism of the LTTE and

[3] http://www.odr.info/Cyberweek2005/

[4] By providing mechanisms and ICT based applications for public and private/confidential and secure shared working spaces, Info Share hopes to enhance the capacity of people and organizations to work collectively on conflict and peacebuilding (regional, national, local or sectoral). Info Share allows stakeholders to develop and implement best practices and appropriate peacebuilding and transformation initiatives - including traditional, culturally specific methods - drawn from resources local and international. See www.info-share.org

the aspirations of the Tamil people. The desire of the majority of Tamil people is to live with dignity and equality within a united Sri Lanka. The LTTE on the other hand believe a state of Eelam will best guarantee the equality and dignity of Tamils in the North-East. While the terrorism of the LTTE against the state is symptomatic of the chutzpah of the Sri Lankan state, which for decades ignored or undermined the aspirations of the Tamil people, it cannot be equated with the aspirations of the Tamil peoples, who whilst recognising the primacy of the LTTE in the North-East, do not support its *modus operandi* by rote (Hattotuwa 2002, Loganathan 1996).

The transition from war to peace is a path strewn with grave difficulties, since successful conflict transformation requires that Sri Lanka addresses the structural underpinnings (otherwise known as root causes) that gave rise to the conflict – ranging from gender inequality to the marginalisation of select identity groups through discrimination. Transformation also requires Sri Lanka to go beyond the usual victim / aggressor duality and win-win outcomes to frameworks that recognise that such roles and functions are often interchanged in protracted ethno-political conflict. Steps in this direction were taken with the signing of the ceasefire agreement between the Government and the LTTE in February 2002. The suspension of peace talks in April 2003 and the current stasis in the peace process are challenges that confront all concerned with the challenges of protracted peacemaking. At a different level, they are incidents that strike at the heart of the matter, i.e. at the challenge of working through issues and reaching consensus between and among individuals and collectives who carry respective histories of antagonism, hostility and mistrust towards the 'other'.

The use of ODR for peacebuilding and conflict transformation and especially, its ability to support nascent peace processes through virtual single-text / one-text negotiations, is an area that has only recently gained currency. Promoting the use of ODR in such contexts has been the work of organisations such as Info Share in Sri Lanka, which have married traditional ODR frameworks to mature conflict transformation and peacebuilding principles to create several iterations of ODR systems that demonstrate what can be achieved by the creative use of existing technologies. Much obviously remains to be done, not least revising the corpus of ODR theory that at present does not address systems that can engage with the complex processes of mediating value based ethnic conflicts within culturally accepted frameworks.

## ADR in Sri Lanka

Sri Lanka's community mediation programme is regarded as one of the most successful in the Global South. Though up-to-date information of the programme is scant, a comprehensive study conducted by USAID in March 1998, identified the following salient characteristics:

- It includes 218 mediation boards, with 5,400 trained mediators, and has handled about half a million cases since 1990.
- The program is based on a comprehensive Mediation Boards Act of 1988 (amended in 1997), and operates within a clear legal framework.
- The mediation boards are appointed and operate at the community level, with immediate oversight by commissioners and general oversight by the National Mediation Boards Commission.
- Cases appropriate for mediation include civil disputes and minor criminal offences; certain kinds of cases in fact need certificates of non-settlement from the mediation boards before they may be heard in court.
- Mediations are free to users; program costs are covered by the Sri Lankan government, with some funding from foundations.
- The mediation boards meet about once a week for approximately four to eight hours, using public buildings. Each mediation board is comprised of a chair and 12-30 mediators; individual panels for cases have three mediators.

The Mediation Boards Act of 1988 (amended in 1997) provides for the legal framework necessary for institutionalising Mediation Boards, which are empowered to resolve, by the process of mediation, all disputes referred to it by disputing parties as well as in certain instances, by Courts.[5] Fully recognised within the Ministry of Justice and Judicial Reforms of Sri Lanka[6], the Mediation (Special Categories of Disputes) Bill, passed by Parliament in 2003 provides for the establishment of Mediation Boards for the settlement through mediation of such categories of disputes as will be identified by the Minister. In specifying such categories the minister is required to take into consideration the need to provide for the meaningful resolution of disputes relating to social and economic issues[7].

Proof of the resilience of the community based ADR mechanisms in Sri Lanka lies in its ability to function throughout the worst periods of Sri Lanka's ethno-political conflict. As the USAID

[5] http://www.justiceministry.gov.lk/MEDIATION%20BOARDS%20ACT,%20NO.%2072%20OF%201988.htm
[6] http://www.justiceministry.gov.lk/index5.htm
[7] http://www.justiceministry.gov.lk/NEW%20LEGISLATION/vm.htm#Mediation%20(Special%20Categories%20of%20Disputes)%20Bill%20-%20Passed%20by%20Parliament%20on%20May%206th%20%202003

report goes on to state "While not perfect, the Sri Lankan mediation boards have been incredibly successful at providing low cost, accessible justice to a majority of Sri Lanka's rural poor. The system is well-administered and enjoys an outstanding reputation."

It has been noted that the mediation boards in Sri Lanka function predominantly in the rural areas, serve the lower socio-economic classes, and address minor disputes. However, the very success of community based mediation and ADR processes in Sri Lanka have led to structural problems that mirror the court based justice systems. The inability to conduct mediations in private spaces, the backlog of cases, demands placed on the mediators and the existing ADR systems and the lack of any central data store for evaluation and analysis of on-going processes are, *inter alia*, opening cracks in a system which has otherwise managed to gain the trust and confidence of those who have used it.

The existing ADR framework, the community awareness of such mechanisms, the availability of trained mediators, the issues that such mechanisms deal with coupled with cutting edge development in other areas of ODR in the on-going peace process, gives Sri Lanka a unique foothold in the possible experimentation of ODR systems that are designed for peacebuilding.

## Beyond resolution: ODR and conflict transformation

Using ODR systems for virtual one-text / single-text negotiations[8] or peacebuilding requires a shift from theories which concentrate on dispute resolution to frameworks that engage with conflict and mitigates violence. Such frameworks would recognise that the 'resolution' of protracted ethno-political conflict is untenable and the very best mediation can hope to do is to bring about a transformation of the value systems of disputants so as to achieve a change in the hearts and minds of combatants that in turn de-escalates violence and empowers communities to manage difference peacefully. As such, the author submits that ODR systems are located *within* the conflict itself and as such, must use culturally acceptable ways to build existing capacities within violently conflictual contexts that helps communities transform such violence.

[8] The One-Text procedure is a systematic process to elicit underlying interests and needs of parties and providing a mechanism and space to jointly explore and develop many options and deciding on one. The process is called the 'One-Text' because quite literally there is only one text - drawn on the texts of each of the stakeholders. All the parties' positions - on every issue - are reflected in the workspace. New positions and proposals are captured daily and included in a dynamic document through a joint and collaborative process.

At present, there isn't a single ODR system designed for peacebuilding[9]. Few even recognise the difference between dispute resolution and conflict transformation, which necessitates a brief exploration of the term. The art of the possible, in countries in the throes of, or coming out, of violent conflict, is often determined by inter-linkages between traditional seats of power and their contestation by new societal forces. The complexity of mapping these forces in order to draw up holistic interventions for peacebuilding is not an easy task. Third parties who are asked to mediate the conflict with the mutual acceptance of the warring factions often become scapegoats when the process gets bogged down by an inability or unwillingness of stakeholders to transform themselves and their actions. Interpretations of the conflict, and the resulting solutions, are often generalised and made timeless, thereby creating gaps between ground realities and high-level negotiations. As Miall succinctly states, "conflict transformation is therefore a process of engaging with and transforming relationships, interests, discourses and, if necessary, the very constitution of society that supports the continuations of violent conflict" (Miall, 2003: 3). Thus, while conflict transformation recognises that violent conflicts take time to transform, it problematises and also calls for a radical deconstruction of the status quo – recognising that institutions, systems and frameworks which breed grievances need to be altered to accommodate diversity and become inclusive and participatory. Conflict transformation is also a prescriptive concept. It suggests that the destructive consequences of a conflict can be modified or transformed so that self-images, relationships, and social structures improve as a result of conflict instead of being harmed by it. Usually, this involves transforming perceptions of issues, actions, and other people or groups (Hattotuwa 2004).

Furthermore, while much has been written on the digital divide in the Global South, many of these studies have looked at alleviating the structural conditions of inequality by the distribution of more PC's to remote cyber-centres, or village cyber cafes. The author contests the validity of the assumption that the installation of PCs connected to the internet automatically uplifts the lives of communities who may not know how to translate information on the internet into useful knowledge that has currency in local communities. On the other hand, such models of community IT empowerment rarely, if ever, take into account the sustainability of such interventions. Failure to recognize that the latest computing equipment cannot function without requisite maintenance and technical support, grand IT enlightenment projects flounder months into their launch when issues like continued cost of access & maintenance dog efforts at promoting the use of PC's for pervasive, user friendly and

[9] Conley Tyler, Melissa, "One Hundred and Fifteen and Counting: The State of Online Dispute Resolution 2004" in Conley Tyler, Melissa, Katsh, Ethan and Choi, Daewon (Eds.), Proceedings of the Third Annual Forum on Online Dispute Resolution. Hosted by the International Conflict Resolution Centre at the University of Melbourne in collaboration with the United Nations Economic and Social Commission for Asia and the Pacific (UNESCAP), Melbourne, 5-6 July 2004. Available www.odr.info, March 2005. Hard copy in press.

sustainable efforts at community empowerment. These considerations are equally important when discussing the use of ODR in the Global South.

Social discrimination and marginalisation, exacerbated by exclusion from those equipped with the technology and knowledge skills to use ODR systems can severely undermine dispute resolution (alternative or online) in fragile states with complex political emergencies, protracted ethnic conflict, gross underdevelopment or social inequality etc. It is the contention of this paper, however, that despite the difficulties involved in setting up ODR structures countries coming out of protracted conflict, or in the Global South in general, it is possible to successfully fashion technologies and frameworks that are resonant to demands from the grassroots, sustainable, empower communities by taking ODR to the people instead of making the people come to technology hubs and create architectures that can enable ODR to take place from such locations as paddy fields, the post office or the village chieftain's residence.

As the author has noted earlier, given the extremely complex nature of violent and protracted ethno political conflict, and the familiar litany of issues related to the digital divide, ODR must not be seen as a panacea that is the magical harbinger of a new social order overnight. Rather, the use of ODR in peacebuilding has to be deeply cognisant of, *inter alia*, social schisms, changing power centres, emerging stakeholders and new actors, spoilers, the fears and concerns of the masses, partisan and zero sum politics and politicians, intra party tensions and ethno-religious tensions. Without such a holistic framework, the blinkered use of ODR may lay the foundation for the continued marginalisation of certain segments of society, and may create new rifts that hinder the transformation of violent conflict (Hattotuwa, 2004: 47).

It is in this light that this paper encourages the creation of ODR systems that are radically different to those which are employed today using PC's. The ODR systems for conflict transformation promoted in this paper strengthens existing capacities, technologies and social networks to facilitate both the wider use of ODR – spreading its benefits by in contexts where ADR is used through viral networks (social networks that use technology) – and to take ODR to communities who are unfamiliar with ADR / ODR. To this end, the author will submit the importance of fully incorporating two technologies with high penetration in almost all regions in the Global South – mobile telephony and community radio – in the creation of ODR solutions that are better able to address the unique challenges of peacebuilding and conflict transformation.

## Designing for the future: Using mobiles and radios

Given its history as an outgrowth of ADR in the West, existing ODR theories & technologies are ill suited for anything other than the interesting but short term experimental projects in the Global South. This is because much of what is taken for granted in the West – PC's, low cost of access, human resources, technical skills, low costs of maintenance, ubiquitous internet access via a very high penetration of broadband services – are absent in many contexts in countries in South Asia.

Realising the potential for the widespread use of ODR in the Global South requires a shift in thinking. This requires heavy emphasis on the process as opposed to the technology, on what is achieved and sustained through ODR, as opposed to what the technology is capable of in ideal lab environments. The arguments here take ODR beyond its comfort zone in the Global North as the 'fourth party' in dispute resolution (Katsh 2003), to a facilitator of inter and intra-party dialogues that are inextricably entwined with peace processes, social empowerment, sustainable development and other complex and volatile societal processes that most often define countries and regions in the Global South. The opposition to this revision is palpable – ranging from those who say that ODR was never designed or conceptualised to address or resolve problems of this nature, to others who say that such hybrid frameworks, which use mobile telephony, radio and the internet, are beyond what's actually possible.

The counter-arguments such criticisms are under-girded by independently verifiable facts. It is a fact that mobile phone use is exploding in the Global South. It is a fact that mobile internet services, ranging from the high-speed 3G networks from DoCoMo in Japan to the world's highest per capita SMS users in the Philippines, are more prevalent in the Global South. It is a fact that mobile users, even in countries that have undergone protracted ethno-political conflict, see massive year-on-year growth – in Sri Lanka alone, mobile phone subscribers on all networks grow by tens of thousands every quarter[10]. It is a fact that while many in North America only use their mobile phones for voice calls, many in the Global South use it for a range of other purposes – from SMS, to data services via GPRS, to news services and also advanced voice services. It is a fact that many countries in the Global South are leapfrogging technological developments to create footprints of mobile phone coverage in areas that copper-based lines (PSTN) do not exist. Much of this footprint is serviced by cutting edge technology – from high speed network (GPRS-Edge and 3G) services to, even in countries like Sri Lanka, mobile video. In Sri Lanka alone mobile telephony usage grew by 263% from 1999-2002 with a range of text and multimedia services now available in the vernacular (Sinhala and

[10] *Still, we only have about 500,000 usable PCs and not more than 150,000 Internet connections. On the other hand, there are at least 1.5 million mobile connections in Sri Lanka. I take these from the published sources, so they might be slightly outdated. It was a few months ago, that the mobile operator with the largest market share celebrated having its one millionth customer, so the aggregate number of cellular connections at present cannot be too far from the 2 million mark, or one mobile phone for every ten people.* See http://www.dailynews.lk/2005/04/25/fea05.htm

Tamil). Though legally questionable, one also cannot discount the high sales of smuggled mobile handsets in facilitating the rapid growth of cellular phone subscribers in the Global South.

More generally, mobile phones have a long and varied history that stretches back to the early 1970s in the certain countries in the Global North, though widespread use came about only from the mid-1980's onwards. Due to decreasing cost of mobile phones after every iteration of technology, their decreasing form factor, the vast improvements in technical sophistication, reliability and the ability for rapid deployment, mobile phone networks have since spread rapidly throughout the world, outstripping the growth of fixed telephony. As noted earlier, this is especially evident in many parts of Asia, where PSTN growth has lagged behind the explosion in mobile phone subscribers. While in at least two countries (Norway and Lithuania) the number of mobile phones has surpassed the population, even in countries such as Sri Lanka, their use can be seen from low income segments of the population to the social elite.

In sum, using not just the so-called 'thumb generation'[11] but larger communities which have access to mobile phones even if they will never own a PC, innovative social development initiatives like the Grameen Phone System in Bangladesh, features like vernacular text messaging (SMS) and language independent multimedia (MMS) services, push-to-talk technology and the growing use of phones that can record sound, images and video, mobile telephony continuously pushes the boundaries of work that has hitherto only been possible through the use of PC's.

However, let us not forget the importance of the relatively low-tech radios. Radios are owned by more people in Sri Lanka than users of PC's and mobile phones combined. Radios have more reach than TV, PC and mobile phones combined. Listeners are counted in millions, services are available in the vernacular and users don't need to be literate to receive and understand knowledge that is disseminated, can make use of radio services even from paddy fields and have access to a wide range of information and entertainment, even when electricity fails. Sri Lanka in particular showed early innovation, though projects such as the Kotmale Internet Radio Station, in strengthening and promoting community radio[12] that used the internet in creative ways to facilitate knowledge transfers to grassroots communities to help address their problems. Strengthening internet community radio stations in particular can help support ADR /

[11] In Japan today, there are so many new data entry devices that young people are called *oyayubi sedai*, the Thumb Generation.

[12] Community radio is a type of radio service that caters to the interests of a certain area, broadcasting material that is popular to a local audience but is overlooked by more powerful broadcast groups. Modern-day community radio stations often serve their listeners by offering a variety of music selections that are not necessarily catered for by larger corporate radio stations. Community radio outlets may also carry news and information programming geared toward the local area, particularly immigrant groups that are underserved by other media outlets.

ODR mechanisms in any given context – not just by raising awareness of such mechanisms, but by community and issue specific programming that facilitate knowledge transfers between and within communities on key issues (land and other resources, domestic violence etc) that give rise to disputes and when unaddressed, to violence.

Given that virtually every single platform today that promotes and uses ODR is designed for the PC, the puissance of exploring frameworks and systems that take us beyond the limits of restrictive paradigms that give centre-stage to PCs becomes evident, especially in light of the facts discussed above.

## ODR: Expanding the art of the possible

The vision of radically new ODR architectonics in Sri Lanka is founded upon the work of others who have written on the subject earlier:

> *Simple communications functions for the ODR process may therefore rely on mobile phones, while moving intelligent functions (such as software-aided negotiations, videoconferencing, extensive real-time or asynchronous communications, case-management) into selected public access points.* (Parlade 2003: 14)

The author believes that the art-of-the-possible is only limited by our inability to see beyond the PC based ODR paradigms. Given the high prevalence of land disputes in Sri Lanka, it would be useful to explore ways in which ODR systems can augment existing ADR initiatives, not only making them more pervasive and user-centred, but using technology to take mediation to the hinterland of conflict instead of getting disputants to travel to 'centres of resolution'. In-field ODR opens up new vistas of possibilities that the PC based ODR paradigms cannot match or even hope to achieve. In doing so, as argued earlier, ODR must locate itself within the established canon of conflict transformation and peacebuilding, instead of just conflict resolution in a strict legal sense. This would involve the creation of ODR systems (for instance, large virtual single-text negotiations platforms) that are resonant to the unique and dynamic demands placed on such systems by processes of peace negotiations, spoiler dynamics, grassroots mobilisation and conflict transformation.

Eschewing the tendency for PC based ODR systems to impose top-down hierarchies and sometimes exacerbate the digital-divide in the Global South, technologies that use mobile telephony and radio assume that communities are more comfortable using what is familiar as opposed to what is not, however sophisticated and powerful such systems might be. To this

end, ODR systems must identify and develop existing local / grassroots capacities. In Sri Lanka, this would involve using the very high literacy rate (91%), the ubiquity of radios (AM / FM and SW), easy and low cost access to batteries, one of the most highly developed ADR mechanisms, with supporting legislation, in the Global South, thousands of trained mediators, multiple village level peace networks (very often with little or no communication within and between these social networks) and exponential growth of mobile subscribers and related services, with lower cost of access than PSTN telephones and coverage in conflict ravaged areas where traditional copper-wire infrastructure is still decades away.

How then can this powerful foundation, even in a war fatigued nation such as Sri Lanka, be used to facilitate processes that address macro, meso and micro level (Track 1 to Track 3) interventions for peacebuilding? While a comprehensive mapping of such a structure would be beyond the scope of this paper and require an in-depth analysis and comparison of relevant technologies and architectures, the author will attempt to draw the contours of an ODR system in Sri Lanka for the resolution / mediation of land disputes that uses mobile phones and radios in innovative ways to strengthen the more traditional ADR and community dispute resolution mechanisms that already exist.

Of the many ways that one can envisage the creation of radically new ODR systems that uses mobile telephony and community radio, for the purposes of this essay, a skeletal structure will be given for a system that uses existing technologies to augment existing ADR interventions.

**Data gathering**

- Plotting the GIS coordinates of the disputed territory, including details of the location, resources and details of adjacent territory
- Details of disputants, including audio and video testimonies, multimedia footage and documentation of case details
- The in-field mediator or contact person can make his or her own notes and add them to the case file – through text, multiple answer questions via SMS, audio notes or video recordings
- Rapid entry of key case details, which the mediator can then go back and expand

**Real time ODR**

- System generated messages can be handed out to disputants to follow up with a voice message system that gives them the status of the case in the vernacular
- Mediators can be informed of similar cases in real time using intelligent comparisons of data and disputes

- GIS boundaries of land can be plotted and sent to regional centres which can print out the maps and hand them over to the disputants to visually aid the process of mediation
- Case details can be semantically linked to provide mediators with expert systems that are able to generate options to help with decision making
- F2F synchronous and asynchronous mediation using mobile video conferring technologies

**Offline ODR**

- Indexed case histories can feed into knowledge repositories that can be accessed offline, in print or as audio files to help train and build mediation capacities of ADR mediators
- Anecdotal input by mediators can be indexed to create expert system that examine semantic linkages within and between such input to influence options generation – for instance, the family history of a particular disputant, the structural underpinnings to a land dispute which may be linked to loss of face and other observations
- Ability to access thematic or issue based case studies over a given period of time, or examine a particular case against possible options and the probability for resolution based on historical data, or access to case histories in a particular context, region or identity group (ethnic, religious or gender).
- A central repository of information on past and on-going ADR and ODR processes, grouped by issue, region, ethnicity, mode of settlement, mediator etc

**Settlement process**

- Disputants get vernacular SMS notification of settlement. Those who cannot read also get a voice mail with relevant details. Simple disputes can be resolved on the spot with expert systems that help in options generation for the dispute.
- Video conferencing via mobile phones can aid where disputants are far removed from ADR centres. Mediated voice conferences can aid in settlement processes along with asynchronous video, wherein parties get to see and hear each other's viewpoints.
- Mobile systems can complement and strengthen traditional face-to-face (F2F) meetings but reducing the need for physical meetings, reserving F2F meetings for the most intractable disputes, facilitating virtual F2F meetings between active disputants and those that have successfully resolved similar disputes in the past in the same region or on the same issue, enable mediators themselves to interact with each other to discuss, transfer knowledge and share information between each other.

**Support infrastructure through Community Radio / Internet Radio**

- Community radio programmes that use ODR databases to design informational programmes that address issues that are specifically related to their local footprint
- Broadcast conflict management and mediation support programmes tailored for children and adult learning.
- Create a wider awareness of the rich texture of ADR and ODR processes that communities can avail themselves of instead of communal violence
- Patch into ODR systems use voice mails to respond to specific queries with information sources from local, regional and international mediation experts, ODR expert systems, online libraries and other electronic resources.
- Send personalised alerts to disputants when a programme dealing with a relevant topic is going to be aired – thus creating awareness amongst communities about the larger import of issues and helping them think more broadly instead of just a victim-aggressor mentality.
- The use of pod-casting[13] technologies, to fertilise radio programming with a multiplicity of grassroots voices that speak on issues important in their own communities, can again facilitate ADR processes by putting a human face to problems and exploring the common aspirations of disputants to take them beyond localised conflicts into thinking about shared and mutually interdependent future scenarios.

The ODR processes thus envisaged (note the plural, since the author submits the importance of a multiplicity of such systems, operating concurrently in multiple levels with seamless data exchange using industry standards[14]) range from grassroots to stakeholders involved in official peace negotiations.

While mobile phones and PDAs can aid the work of mediators in the grassroots, radios can cover entire villages and communities. Technologies such as Wi-Max[15] and the use of creative ways of last-mile information delivery systems such as using bicycles with portable Wi-Fi[16] routers that go through villages several times a day picking up and delivering email, or using Worldspace[17]

---

[13] Working a bit like TiVo for radio, a Pod Cast is an audio file you can download to an MP3 player. You choose what programs you want to listen to, download them to your player and listen to them on your schedule. Most of the content available for download is free and ranges from talk radio type broadcasts to music shows, interviews, speeches, news, comedy and anything else you might find on the radio, but with a wider range of topics and broader spectrum of independent music. See http://reviews.cnet.com/4520-6450_7-6212319-1.html?tag=cnetfd.sd

[14] XML based industry standards for information exchange between ODR systems is still embryonic but shows great promise.

[15] **WiMAX** is a standards-based wireless technology that provides high-throughput broadband connections over long distances.

[16] Short for wireless fidelity This is another name for IEEE 802.11b. It is a trade term promulgated by the Wireless Ethernet Compatibility Alliance (WECA). "Wi-Fi" is used in place of 802.11b in the same way that "Ethernet" is used in place of IEEE 802.3. Products certified as Wi-Fi by WECA are interoperable with each other even if they are from different manufacturers. A user with a Wi-Fi product can use any brand of Access Point with any other brand of client hardware that is built to the Wi-Fi standard.

[17] See http://www.worldspace.com/howitworks/receivers.html

self-powered digital satellite receivers for radio programmes and high-speed internet downlinks, can all help the information gathering and delivery mechanisms that under-gird any ODR framework. Such systems can use their footprint to serve ODR solutions to entire villages, districts and provinces – creating links within and between them, along with links to international ODR experts and mechanisms. Such regional and international ODR systems need to be based on PC architectures, which remain computing devices with the greatest capacity for storage and computing power. While mobile telephony in particular can either be used as a first-mile access or last-mile delivery systems and community internet radio can be a very effective support mechanism in for ADR / ODR processes, the author by no means belittles the importance of PC's to power the databases and knowledge repositories that power such hybrid systems. With their big screens, sophisticated operating systems, complex databases, vast amounts of storage and well established place in data management (one cannot, for instance, think of large databases of information residing in mobile phones) hybrid ODR systems that use of mobile telephony and radio cannot ignore the use of PC's.

However, the central thrust of this paper is the need to move away from systems that do not engage with the potential of technologies that are already entrenched in grassroots communities. This eschews the notion that ODR is simply ADR augmented by the use of the internet via PC's. For communities that do not have access to PCs, cannot maintain the equipment, cannot afford internet access, do not have the necessary infrastructure (from regular supply of electricity to PSTN telephone lines) and lack the necessary IT skills to avail themselves of sophisticated ODR systems, a purely PC based solution would be sub-optimal and may give rise to even more structural violence on account of the marginalisation of those who do not have access to such technology. The perception that some disputants 'have it better' because they have access to computers itself can create societal rifts and increase communal conflict, irrespective of whether the communities that ostensibly visibly have access to ODR systems that use PC's use the system or not.

It is evident therefore that the argument for the incorporation of mobile telephony and radio in the creation of new ODR systems goes far beyond a mere technical or design issue and is deeply linked to conflict sensitive approaches to the creation of such systems in contexts of nascent peace processes or protracted ethno-political conflict. Low cost of access, their explosive growth, the ubiquity of radios – these are many other factors strengthen the argument that ODR systems that use mobile phones and community radio are better placed to be accepted by communities than frameworks that use PCs .

## Challenges

Recognising the need to create new ODR architectures to deal with peacebuilding presents ODR with new challenges that are as unique as they are complex. These challenges need at the very least to be identified in order to explore ways in which they can be overcome. For ODR systems that use mobile telephony, the following challenges in particular present themselves:

1. Cramped user input / UI
   Mobile phone & PDA screens are much smaller than even those of ultra-portable laptops and far smaller than the standard displays of PC's, for which the majority of present-day ODR systems have been designed on and for. Text input using mobile keypads is laborious even with predictive text input and requires skill. Predictive text input in the vernacular is still being developed. ODR UI's for mobile and PDA screen haven't been developed as yet and it will take a great degree of innovation to provide experience akin to that which users are used to on PCs.

2. Embryonic technology
   ODR technologies that use the mobile phone telephony as discussed in this article, in tandem with community internet radio, as yet, don't exist. While technologies exist today that can easily contribute to the creation of such advanced systems, extensive research and development will be required to ensure that systems thus developed are actually responsive to the specific dynamics of culture, language & context in which they will be applied.

3. Irregular connectivity
   Even with advanced tri-band GSM / CDMA networks, reliable data transfers over mobile networks remains a highly oracular process. While it is highly probable that future advances in the technology enables greater reliability, high tension communal disputes may require far greater reliability / redundancies built into ODR systems designed for peacebuilding.

More in general however, ODR systems for peacebuilding bring up many challenges in not just systems design, but, *inter alia*, also the ways in which such technology is used, by whom and the wider social implications following the introduction of ODR.

1. Systems architecture
   Given that ODR systems for the Global South need to work with technologies that it has hitherto excluded, a period of experimentation and a blossoming of many standards,

possibly incompatible with each other, will be followed by a period of consolidation and standardisation. Systems architecture in this interim period will deal with the problems and challenges associated with data exchange, input and dissemination within and between hugely disparate systems with a broad spectrum of users.

2. Mobile telephony

   The use of mobile telephony in the Global South, despite its volcanic growth, is by no means a given. There are large swathes of land areas not covered in the cellular footprint of major mobile telephony providers, creating or exacerbating existing digital divides[18]. Furthermore, mobile telephony, though robust, still isn't sophisticated enough to handle mission critical ODR processes, like those that take place to quell the eruption of violent communal conflict. For areas without local mobile footprints, Thuraya satellite phones or Worldspace radios may provide interim technology solutions, but high costs of access may prohibit from widespread use of such systems, especially if funding mechanisms are unsustainable in the long-term.

3. Legal and political context

   The volatile political context that is inextricably entwined in nascent peace processes and the very nature of peacebuilding itself can undermine the processes engendered by even the best ODR frameworks. A lack of enabling and supportive legal frameworks can undermine the trust in ODR systems, or at worst, create the perception that such frameworks do not have the clout to ensure compliance and are a waste of time.

4. Resistance from *l'ancienne régime*

   Many of the old guard in ODR are suspicious of efforts to broad-base its services, expand its theories, explore new territories of application and create systems for problems that do not lend themselves for resolution. Those who have invested millions of dollars in years of research and development for PC based systems have a vested interest in the promotion of PCs as the central component ODR systems. Theorists and even practitioners of ODR in the Global North, and sometimes, those who have fought hard to establish ODR frameworks in the Global South are oftentimes blinded by their own realities to the possibilities of alternative technologies that can support their work in ways that are far better than what they presently employ. Conflict transformation is a concept and a body of theory that is alien to many lawyers. Given that ODR has evolved from a tradition of law, mediation and arbitration, its transition to non-legal

[18] The gap that exists between those who have and those who do not have access to technology (telephones, computers, Internet access) and related services.

frameworks and contexts will inevitably be challenged as a dilution of core principles of ODR by early adopters.

5. Culture & language

   At present, ODR systems pay scant regard to the entrenched cultures of disputants or ways in which such cultures help or impede mediation processes. Ethnic conflict and other value based conflicts are under-girded by complex cultural constructs that need to be recognised in the design of ODR systems for peacebuilding. Influencing the selection of technology to the modes of service delivery, the study of culture will play a vital role in the creation of ODR systems in the Global South for processes far removed from commercial disputes, domain name resolution or e-commerce disputes in cyberspace. The ability to access and benefit from ODR systems will also rely heavily on the language of use – systems that use English exclusively will alienate large swathes of grassroots communities who do not speak, read or write English. From simultaneous translation to multi-lingual interfaces, new generation ODR systems need to eschew monolingual approaches and design systems with the flexibility to operate in several languages seamlessly.

## The future

The vision for ODR in peacebuilding and conflict transformation using mobile telephony and radio is based not just on theory, but a confluence of what is eminently possible in countries such as Sri Lanka and the need to re-write the theories on ODR to fully deal with the challenges of new iterations of systems that are specifically designed for conflict transformation.

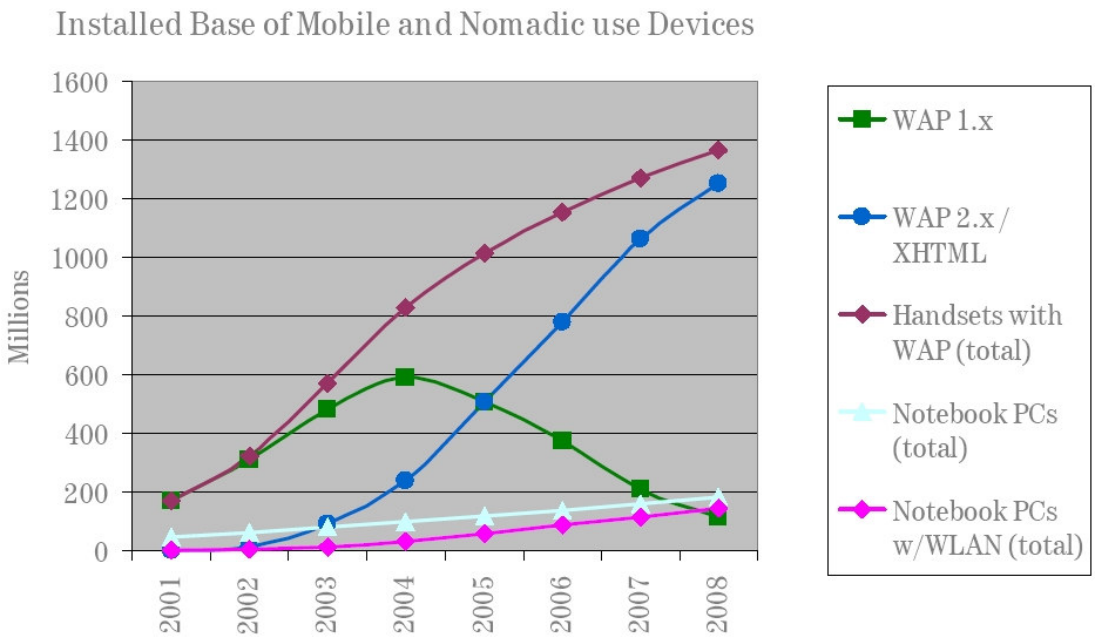
*Inter alia*, the author submits that these new generation ODR systems must go beyond the mere replication of web based content for PC on mobile devices. Rather, ODR systems must treat the smaller form factor of mobile devices as an advantage, creating User Interfaces (UI) that are designed to effectively make use of phone keypads and smaller screens, pervasive and user independent standard for data exchange between PC and non-PC devices, expert systems that intelligently manipulate information and deliver it in appropriate ways to users of the system, systems that use voice and video to facilitate virtual F2F interactions and use internet radio to promote ADR mechanisms and most importantly, augment the capacity of existing ADR providers to engage with the complex socio-political issues that result from protracted conflict and peacebuilding.

Developing a sophisticated hybrid ODR system as has been argued in this paper would require recognising the importance of addressing questions in the following matrix (inspired in part by ADR Practitioners Guide 1998: 59):

| What are ODR needs? | Is ODR appropriate? | Is ODR feasible? | What are the key design criteria? |
|---|---|---|---|
| **Issues in the traditional court justice system / ADR process:**<br>• Access?<br>• Cost?<br>• Time?<br>• Transparency, accountability? | **Probably appropriate:**<br>• Zero or subsidised costs to participants of the system<br>• Corrupt court system with crippling delays<br>• Geographical / topographical constraints hinder access to justice<br>• Entrenched ADR culture with supporting legislation<br>• High penetration of mobile phones and radio<br>• ICT frameworks and supporting legislation | **Important considerations:**<br>• Enabling political culture and legislation<br>• Trained ODR providers adhering to industry standards<br>• Open systems vs. closed networks<br>• Sustainable financing with minimum costs to communities / participants<br>• Cognisant of and supportive of progressive cultural and institutional norms<br>• Operates in the vernacular as well as in English<br>• Uses & develops existing grassroots capacities<br>• Uses existing technologies via creative methods<br>• Creates systems that aren't a burden on the community to use and maintain<br>• Gives voice to the marginalised, creates jobs for the unemployed, creates trust within and between communities | **Recommendations:**<br>• Emphasis on process vs. goal / transformation vs. resolution / people vs. system<br>• Standards based information exchange<br>• Standards for ascertaining and maintaining impartiality of ODR providers<br>• Establish effective monitoring, oversight and on-going training for ODR providers<br>• Use internet community radio to support ODR technologies and mechanisms<br>• Create holistic system that use PC's, mobile phone and radios to empower communities<br>• Create open architectures based on open standards, eschewing proprietary standards in closed networks<br>• Build trust into the system<br>• Build redundancy into the system<br>• Allow for exponential growth |
| **Venues:**<br>• Within civil justice system<br>• Other sectors<br>1. Commercial<br>2. Land<br>3. Community<br>4. Development<br>5. Relief aid<br>6. Peacebuilding and negotiations<br>• Take venue from urban ODR centres to the village community centres / from centre based operations to in-field operations | **Probably not appropriate:**<br>• Contexts of high violence and personal insecurity<br>• High politicised contexts which undermines mediation processes<br>• Lack of legal standards / enabling legislation<br>• Low IT penetration – PC's & mobile phones<br>• High cost of service delivery<br>• Perception of partisan bias in ODR processes | | |

As Parlade notes ODR empowers mediators in many ways, regardless of a mediator's approach, that is, whether he uses "interest-based approaches" or "rights-based approaches", or whether the method employed is "facilitative" or evaluative". (Parlade, 2003: 6) While he goes on to say that "… just by being offered online, ODR already provides the benefit of greater accessibility compared to offline mediation." (*ibid*) the benefits of greater accessibility do not lie with existing ODR systems, but in systems that are yet to be developed on lines similar to those proposed in this paper that use mobile telephony with requisite support from community (internet) radio.

The future of mobile telephony itself can be a powerful driver for ODR systems that engage with such technologies. As the graph below shows, both the number of mobile handsets with the ability to access the internet and the use of the access technology itself (WAP 2.x) shows massive growth[19].




Source: T-Mobile, modeled on Credit Suisse First Boston, Mobile Data 2004, Pyramid Research, Global Mobile Capex Handbook, August 2004

Coupled with the growth of mobile telephony, the sheer potential for ODR systems that use mobile technology is indubitable. As Parlade goes on to note "With appropriate use of available technology, even if far from the cutting-edge, ODR may be able to deliver on the promise to

[19] Saved from http://www.w3.org/2005/Talks/0511-keynote-tbl/

improve access to justice and quality of justice even in a developing country context." (Parlade 2003: 15) Countries and governments in the Global South will have to increasingly acknowledge that the digital divide is best addressed not just with the promotion of PC's, but with technologies that are already in the hands of (or within easy reach) grassroots / rural communities who have thus far been excluded e-commerce, ODR, ICT4D and e-government frameworks.

## Final thoughts

This article was not intended to be a precise blueprint for the advancement of ODR beyond its current frameworks into peacebuilding and conflict transformation but an exploration of how and why such advancement needs to engage with mobile telephony and community internet radio. ODR has a rich history that traces it ontological roots to a general dissatisfaction with traditional court based justice systems. ODR has since sprouted many systems and theories leading to gaunt frameworks that deal with e-commerce, domain name resolution *et al*.

Moving beyond such paradigms, we must now engage with the possibilities of ODR in peacebuilding and conflict transformation. In doing so, we must fully recognise the rich possibilities of using mobile telephones and community internet radio to strengthen our existing work and to push it into areas hitherto marginalised by ODR constructs[20].

Although beyond the scope of this paper to explore in detail, such systems could seamlessly feed into issues related to refugee and IDP re-settlement, disaster relief management, conflict prevention and early warning, resource based conflicts, support peace support operations, feed into e-government initiatives, create more jobs for youth in communities and help with a myriad of other that challenge societies coming out of protracted ethnic conflict.

ODR is at the cusp of a radical upheaval from its foundations as a PC based framework to one that centres around the possibilities engendered by mobile telephony, 'old media' such as radios and existing endeavours of community internet radios. As Whitney M. Young, a leading US civil rights leader said "It is better to be prepared for an opportunity and not have one than to have an opportunity and not be prepared."

It behoves ODR to prepare for the mobile revolution today.

[20] Further exploration of key arguments in this paper can be found at http://katsh.org/cyberweek2005/viewforum.php?f=3&sid=21d64159357ab4e974ab8b7911eb74d6

# Bibliography


1. *Alternative Dispute Resolution Practitioners Guide*, 1998, Technical Publication Series, Office of Democracy and Governance, USAID, Washington, DC.
2. Edrisinha, R 1999, 'Trying Times: Constitutional attempts to resolve armed conflict in Sri Lanka', in *Demanding Sacrifice: War and Negotiation in Sri Lanka*, ACCORD, London.
3. Hattotuwa, S 2002, 'Facets of Terrorism in Sri Lanka', in H von Welck (ed.), *Liberal Times*, Friedrich-Naumann-Stiftung, New Delhi, vol. 10, pp. 24 - 9.
4. Hattotuwa, S 2003, *Overview of the Peace Process in Sri Lanka: 2002 - 2003*, Centre for Policy Alternatives, Colombo.
5. Hattotuwa, S 2004, 'Untying the Gordian Knot: ICT for Conflict Transformation and Peacebuilding', paper presented to Third Annual Forum on Online Dispute Resolution, Melbourne, Australia.
6. Katsh, E & Rifkin, J 2001, *Online Dispute Resolution: Resolving Conflicts in Cyberspace*, Jossey-Bass.
7. Katsh, ME & Rifkin, J 2001, *Online dispute resolution : resolving conflicts in cyberspace*, 1st ed. edn, Jossey-Bass, San Francisco, California.
8. Katsh, E & Gaitenby, A 2003, 'Introduction: Technology as the "Fourth Party"', paper presented to UNECE Forum on ODR 2003, Geneva.
9. Loganathan, K 1996, *Sri Lanka: Lost Opportunities*, Centre for Policy Research and Analysis (CEPRA), Colombo.
10. Parlade, CV 2003, 'Challenges to ODR Implementation in a Developing Country', paper presented to UNECE Forum on ODR 2003, Geneva.
11. Philipson, L 1999, *Breaking recurring themes in the cycles of war and peace in Sri Lanka*, The Centre for the Study of Global Governance.
12. Wijesinha, R 1995, 'Inter-community Ethnic Conflicts in Sri Lanka', in J Axer (ed.), *The Human Rights Community and Conflict Resolution in South Asia - the Applicability of European Examples*, Friedrich-Naumann-Stiftung, pp. 68-72.