

The Impact of Tribal Mediation on The Judicial System, Specifically in the Context of the Kurdistan Region of Iraq

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How to cite this article: Nishtiman Othman Mohammed, Adnan Ahmed Fatah (2024) The Impact of Tribal Mediation on The Judicial System, Specifically in the Context of the Kurdistan Region of Iraq. *Library Progress International*, 44(3), 16979-16992

Abstract

The paper aims at analyzing the complexities that exist among the tribes in relation to the mediation process within the judiciary system of the Kurdistan Region of Iraq, while stressing on the importance of using the traditional approach on handling disputes. It starts by providing background information on the position of tribes in Kurdish society and the significance of tribes as well as the political connotations. Thus, the research confirms that tribal mediation practices act as parallel systems with the formal judicial authority, especially in districts where state power is regarded as inefficient or uncreditable. In a quantitative survey of the public, the study evaluates the community's attitude towards the effectiveness and cultural suitability of methods used in tribal mediation as opposed to the legal system. This research reveals that there is a lack of confidence in the formal judicial system and that many would prefer tribal courts, this is because they come to a decision faster and conform more to the community norms. The paper concludes by analyzing the problems of both systems such as gender dynamics and human rights while calling for the more reasonable vision of legal pluralism in Kurdistan. This paper therefore calls for harmonization of the customary practices with legal systems to improve the efficiency and effectiveness of the delivery of justice and promote the unity of the society in the region.

Keywords: Judicial System, Traditional Practices, Tribal Mediation, Human Rights, Conflict Resolution, Political Influence, Crime Prevention, Reconciliation.

1. Introduction

The concept of tribes has a long history in Kurdish society, signifying a common origin through blood and place ties, corresponding to a strong collective identity and having socio-political implications. This social organization, which emphasizes tradition, locality, and hierarchy, was believed to decline with the expectation of modernization movements (Burç, 2024). It is estimated that the population of Iraq in 2016 was approximately 37,548,000. The three big communities are Shi'a Arabs, Sunni Arabs, and Kurds, and most of the latter are Sunni Muslims. Other people of different faiths are the other population groups in the country. Before ISIS entered, the number of Christian people in Iraq was estimated to be 350,000, Yezidis – 500,000, and Kaka'i – 200,000. In ethnic terms, eighty percent of the population are Arabs while the Kurds are the other twenty percent. These ethnic minorities are Turkmen, Shabak, Chaldeans, Assyrians, Armenians, African Iraqis and Roma. Some of the Yezidis consider themselves as ethnically distinct from the Kurds while some of them consider themselves as Kurds. (Iraq, n.d.).

Tribal conflicts in Iraq are resolved through mediation, which is a very essential factor given that Iraq is also a country where tribalism is well grounded. This influence is evident in Kurdistan where in many situations numerous tribal systems are used to address the lapses in the formal judicial systems. The tribal justice in these areas is to maintain a sense of order and group integrity; it exists where the official legal system does not work or is thought to be incompetent or untruthful.

Tribal leaders are known to be involved in the process of solving different disputes in the tribal areas and most of the time they handle issues of both civil and criminal cases. The tribal leaders are always involved in the process of solving different disputes in the tribal areas and most of the time they handle issues of both civil and criminal cases. Thus, the parties get to accept culturally adequate solutions regarding tribes' behaviors in the given case, which can be more satisfying than legal methods in the courts. Tribal mediation often sees the parties come to a resolution, but the agreements they make are

presented to state judges. This could result in more lenient prosecution or in some instances complete exemption from a case to demonstrate the effectiveness of a tribal accord on formal legislation. The state judiciary acknowledges tribal process especially where the individuals may have lost trust in state authorities or may not be able to access any of them. (Bobseine, 2019).

The judicial system in Kurdistan exclusively incorporates current legal practices with traditional tribal customs. To comprehend such a system, it is necessary to go deeper into the specifics of tribal mediation – a practice that has always been an inherent part of Kurdish culture. Like most Kurdish conflict resolutions, tribal mediation in Kurdistan doesn't involve state laws but the wisdom of the elders or leaders depending on cultural and customary laws prevalent in the area of conflict today which mainly focuses on reconciliation rather than justice.

Considering the existence of both state and tribal justice in Kurdistan, it is crucial to explore how tribal mediation relates to the larger system of justice in the region. This study is significant to highlight how those traditional cultural practices work in concordance or opposition to legal processes of justice and order in the region.

In the context of Kurdistan, tribal mediation represents an established practice due to its traditional approaches, in which the heads and elders of important tribes of the region serve as mediators. The long consideration phase involving negotiation and consensus-building reflects the deeply community-based reality of Kurdish society. The practice is deeply integrated into Kurdish culture where the tribe plays a very central role.

The judicial system has its authority in the Kurdistan Region of Iraq but remains consistently affiliated with the general legal structure of Iraq. It consists of a formal system of courts that hear civil, criminal and administrative matters. This formal legal system overlays the traditional tribal mediation system producing a complicated interaction between the two structures.

Tribal mediation in Kurdish society reflects the traditional conflict resolution system, in which elders and tribal leaders play a pivotal role, particularly in resolving familial conflicts. This method is preferred to the formal judicial systems because it is traditional and less time-consuming when compared to state courts which many people consider as slow and ineffective (Tas, 2014). Customary mediation plays a vital role in maintaining community harmony, with traditional leaders facilitating resolutions that resonate with local values. For instance, Indonesian customary courts provide affordable and speedy remedies and uphold the position of community legal norms, with justice equivalent to societal standards (Tas, 2014). Hence, Kurdish and Iraqi societies favor traditional mediation to obtain an appropriate and efficient justice system.

2. Characteristics of Tribal Jurisdiction

Tribal arbitrators are not entirely dedicated to the judicial profession but live as ordinary individuals and engage in different careers hence are residents of the community and are familiar with customs existing around them. The tribal judiciary does not have a written constitution or rules that are shaped by previous experience from similar cases. In addition, the tribal judicial hearings are conducted in the presence of an audience and are not done in secluded rooms just like the formal courts. In customary law, liability affects all relatives (fathers, sons, brothers and grandfathers) and not only the offender. But in crimes of theft and assault on honor, the offender is solely liable. The punishment by the tribal judge is restricted to monetary penalties or moral restraint such as appealing and no imprisonment, mutilation, or death sentences (Alghushami, 2020; Al-Ghanem, 2022).

3. Traditional Tribal Mediation in Kurdistan

Traditional tribal mediation in Kurdistan plays a critical role in resolving conflicts within Kurdish tribes, with tribal leaders, or Aghas, central to the process. These leaders resolve different issues including blood feuds and family issues through secular approaches that are appealing to diverse communities (Mohammed, 2020). A similar practice occurs in southeastern Turkey where rituals such as the “nane asitiye” (dinner of peace) are employed to help reconcile blood feuds (Burç, 2021). In Iraqi Kurdistan, the Yezidi community effectively uses traditional methods of mediation, with grassroots mediators bringing into practice those traditions that contribute to social cohesion (Mohammed et al., 2018).

Despite the progress toward modernization, tribal structures still exist within Kurdish society and sustain the collective conscience of the tribes, which strengthens the collective identity and unity necessary for conflict resolution. Tribal mediation aims at reconciliation and may use the role of third parties and is therefore consistent with the collectivist culture (Wall et al., 2008). Tribal leaders, typically respected elders or sheikhs are highly trusted and derive their authority from social status and reputation, rather than formal legal training (Tas, 2014). This process is reconciliation-based rather than punishment-centered, and settlements could be in the form of monetary remunerations or even mere verbal or written apologies (Abbas & Yigit, 2016).

Although tribal mediation exists alongside the framework of the formal judicial system, it is preferred for its efficiency,

speed and perceived fairness. However, there are concerns regarding gender dynamics and human rights, as tribal decisions may not always align with formal legal standards (Ardic, 2019; Abbas & Yigit, 2016). Tribal mediation, which is still traditional and prevalent in the Kurdistan Region of Iraq is an alternative mechanism to the formal justice system. This is considerably different from the formal legal processes, which can be regarded as rigid and unsympathetic (Burç, 2024). Tribal mediation also helps to dispense much of the formal judicial burden due to the rapid results they provide and the unification of the community. However, it can be ineffective due to reasons like the absence of good faith or the use of biased mediators or mediators with inadequate training. These challenges are equally similar to those encountered in the constitutional proportion of judicial mediation. Thus, while tribal mediation is a rich form of cultural endowment as well as a highly significant alternative, it has its areas of difficulty seen as affecting the effectiveness of the medium where it exists within the legal framework.

4. Current Judicial Framework

The judicial system in the Kurdistan Region of Iraq (KRI) is established by both the local legislations governing the region and the Federal Court of Iraq, which plays a paramount role in influencing the judicial structure of the KRI. The Kurdistan Region of Iraq (KRI) and the federal judiciary have been on uneasy ground with periodic conflicts and legal disputes that affect the level of governance and autonomy.

The KRG implements its judicial system through the Supreme Judicial Council which in turn is responsible for overseeing the courts and the legal processes in the region. This council is supposed to oversee the fair administration of justice under the laws of the region. The Federal Supreme Court of Iraq has influenced the KRG legislation to a great extent and often has been deciding on the issues of constitutionality of the regional legislation. The KRG's legal system is based on both the Iraqi constitution and those laws that apply within the region. Article 117 states that the Kurdistan region has its independent authorities to perform the executive, legislative, and judicial powers (United Nations, 2021). However, the absence of a supreme constitutional court as provided for under Article 92 of the Iraqi constitution weakens this framework by leaving many legal interpretations open to challenge.

5. Interaction Between Tribal Mediation and the Formal Judicial System

Tribal mediation coexists in a complicated relationship with the formal court system and this relationship has an important role in the resolution of disputes, especially in situations where formal institutions are either absent or not well-performing. Tribal mediation often serves as a complementary system to the formal judiciary. When the formal judiciary is unable to resolve disputes, tribal mediation can step up to provide resolutions. This duality enables a more complete process of justice, most particularly in regions where formal systems are overwhelmed or inadequate (Alghushami, 2020). One of the biggest differences between tribal mediation and formal courts is how quickly disputes are solved. Formal courts are often perceived as slow, taking years to reach a verdict while tribal mediation runs quickly, sometimes resolving matters within a matter of days or weeks. The level of this efficiency results in many opting for tribal mediation over formal judicial processes, which are often slow and cumbersome (Alghushami, 2020). Many view the formal judiciary in a negative light and think it is slow and inefficient. Expressions such as 'courts are graveyards of cases' display a prevalent sense that formal systems do not work, and people resort to alternative dispute resolution using tribal means. According to Alghushami (2020), tribal mediation can influence the rules and procedures of the formal judiciary. This influence can manifest in two primary forms: as a complementary system which would serve to contain conflicts or as an alternative which would provide binding resolutions if the formal system failed to act. The complementary relationship between tribal mediation and the formal judicial system also exists, wherein tribal mediation emphasizes speed, public perception and legal influence and complements the formal judicial system to ensure effective dispute resolution.

Societal values and norms which are reflected in tribal customs can explain the context of certain behaviors. This can lend some cultural relevance to judges who can then make decisions that seem grounded in the values of the community. According to the Iraqi Penal Code, some tribal customs are mitigating circumstances, for example, "honor killings." For instance, in Article 409, an individual who kills another in response to discovering adultery has their punishments reduced by prevailing social customs. The legal system can support social cohesion and stability by being aware of the tribal customs as it respects how interpersonal relationships operate in the tribe. There is further ambiguity in the law in inheriting the impact of tribal customs, the customs may not be formally codified. This can result in a lack of consistency in justice, as tribal customs overshadow the written law.

The reliance on tribal practices can undermine the authority of the Penal Code, with judges under stress to subsequently consider these customs over established legal texts. This ultimately leads to the creation of crimes and penalties not provided by the law, and thus violates the principle of legality (Muhammad, 2022). Gender inequalities are often the result

of tribal customs in which men were treated more leniently in cases of honor-related violence. Women may face harsher penalties or societal condemnation, reflecting outdated social traditions that the legal system inadvertently supports. Legal reforms intended to modernize the penal system are often hindered by a strong influence of tribal customs. Efforts to align the law with contemporary human rights standards may be resisted due to the entrenched nature of these customs in society (Muhammad, 2022).

The judicial system in the Iraqi Kurdistan Region has undergone significant reforms compared to the rest of Iraq. Kurdistan authorities have also newly reformed several articles of the Iraqi Penal Code (IPC) enshrining human rights values. This reform is a result of the changes going on in the social realities of Kurdish society (Begikhani & Faraj, 2016). While these legal reforms brought forth positive outcomes, implementation of new and reformulated legal provisions remains a challenge. Given such socio-cultural boundaries and ineffective institutional functioning, these reforms are not fully realized. In addition to formal legal processes, there is a practice known as "solhi Ashayri," which refers to tribal conciliation. Tribal governance supplies this informal law and also acts as an alternative legal remedy in some situations (Begikhani & Faraj, 2016).

6. Methodology

This study employed a quantitative methodology to evaluate the influence of tribal mediation on the justice system in the Kurdistan Region. Data collection was conducted through a structured survey disseminated via Google Forms, engaging 169 participants. The respondent demographic was diverse, with ages ranging from 18 to 56 years, and included both males and females. Educational backgrounds varied significantly, covering levels from primary and secondary education to advanced degrees such as bachelor's, master's, and doctoral qualifications. The survey reached participants across all four provinces of Kurdistan: Erbil, Sulaimani, Duhok, and Halabja.

7. Findings and Analysis of Survey Results

The survey designed to evaluate public perceptions about the judicial system of Kurdistan, and the role played by traditional tribal mediation reveals complex interactions between formal and traditional dispute resolution approaches. The survey attempts to answer critical issues such as how much confidence individuals have in their justice system, why people decided to intervene in tribal mediation, who are the beneficiaries of such practices and what factors affect this choice. It also examines how tribal mediation integrates with the formal judicial system, the disadvantages associated with each approach, preferences for resolving disputes, and their effects on social relations. This analysis shows how clientelism is present, and how cultural norms are influential on legal practice, as seen in the Kurdish community, where they have adapted to customary legal practices in diaspora settings, which reflects a mixture of traditional values and modern legal frameworks. The insights gained underscore the need for a nuanced understanding of legal pluralism in Kurdistan.

7.1 Trust in the Judicial System

Fundamentally, trust in the judicial system depends upon the view that courts ensure such as honesty; transparency; and fairness. As a critical lens for assessing public perceptions, the concept of procedural fairness suggests that people's views of judges' motivations can greatly influence their trust levels (Vitale, 2018). Rather than believing that low trust is the result of a lack of understanding of this judicial system, recent studies show that many people, even with little direct exposure, have a reasonable understanding of legal processes. And this implies that raising civics education is not enough to restore trust. The decline in trust can have significant societal implications if people choose alternative ways of resolving conflicts, undermining the rule of law and the authority of the judiciary (Ng 2007). Such trends imperil the functioning of the justice system because public compliance with court decisions is an essential element of judicial legitimacy (Glick, 1983).

Figure (1) illustrates the survey results that show a pronounced perception regarding the impact of tribal mediation on public confidence in the judiciary. Notably, 42.6% of respondents indicated that tribal mediation has greatly diminished their trust in the formal legal system, suggesting concerns about inefficiency and bias within the courts, which aligns with findings that public trust is crucial for effective judicial functioning. In addition, 36.1% indicated a moderate weakening of confidence, indicating a preference for tribal methods in certain cases, and an indication of a complex relationship between tribal and formal systems. Only 11.8% felt minimal impact from the use of tribal mediation as a complement to the judiciary, while 9.5% said it had no impact on their confidence, suggesting a small group still values the judiciary. Overall, 78.7% of the respondents had reduced confidence, suggesting a fundamental hurdle the judiciary must overcome to regain public confidence as there is growing demand for tribal dispute resolution.

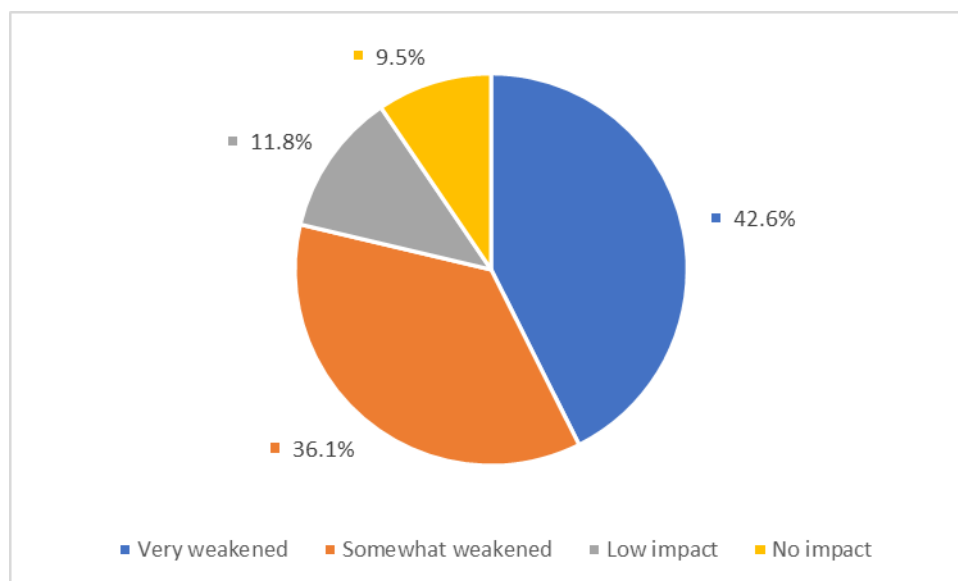


Figure 1: To what extent has the settlement of cases and disputes through tribal mediation weakened your confidence in the courts and the judiciary?

A multifaceted approach to rebuilding trust in the judicial system that takes into account the whole range of public experience and perception of the judicial system is needed. It is essential to enhance procedural fairness, as systemic issues like judicial corruption erode public confidence and its legitimacy in the courts. Activities that aid in engagement with communities, with the goal of judicial diversity, achieve a feeling of representation and legitimacy (Chen & Savage, 2024). Additionally, measuring public sentiment continues to prove vital to close out these confidence gaps, especially between political groups and demographic groups. If the judicial system addresses these factors, it will make the much-needed effort to restore public faith and guarantee even access to justice for all.

7.2 Reasons for Tribal Mediation

Tribal mediation, especially where judicial systems are assumed to be deficient, is a robust alternative dispute resolution mechanism. This reliance is a reflection of a lack of trust in the formal court system, most of which is widely considered ineffective and slow, and many would instead turn to the more efficient and responsive approach of tribal mediation (Gayo, 2024). Additionally, individuals often lack awareness of their legal rights and the complexities of formal processes, making the more accessible and familiar procedures of tribal mediation appealing (Burghate & Herkal, 2024). The cultural roots of tribal mediation further enhance its legitimacy, as tribal leaders and mediators are integral to maintaining social cohesion and resolving disputes within their communities (Gade et al., 2024). This cultural acceptance suggests the role that community norms and values play in the identification of resolve practices, suggesting the need for rules that balance those traditional systems with formal judicial mechanisms.

Given the perceived ineffectiveness of tribal courts, lack of legal literacy, and cultural realities, among other problems of the formal judiciary system, tribal mediation provides an important alternative. Mediation is favored by many Indigenous communities because it is in line with them belonging to cultural values and practices (Siregar et al., 2022; Zhomartkyzy, 2023). The role of community leaders, particularly religious figures in Madura, also emphasizes the role of mediation in a community in surmounting disputes without resorting to litigation (Hasanah et al., 2019). With the increased caseloads and problems of access that characterize the formal judiciary, this is a further reason for the use of alternative approaches like mediation to lighten the burden on the courts without compromising on the imperative of justice being done in a culturally sensitive way. Understanding these dynamics is necessary to improve the performance and accessibility of the formal judicial system from tribal communities.

A weakness of the institutions and the dynamics of the society can explain the preference for tribal intervention and mediation in Kurdistan. Formal judicial systems are often unable to solve justice, especially due to corruption and inefficiency, hence individuals seek other ways to solve disputes in a tribal tradition based on community values and collective identity (Burç, 2024; Gayo, 2024). Since modernization, the tribal structures have been resisting de-tribalization and consequently offer a culturally resonant and familiar framework for conflict resolution (Burç, 2024). The role of customary leaders in mediation processes further enhances the effectiveness of these tribal practices, as they are perceived as more equitable and just compared to formal courts (Gayo, 2024; Zhomartkyzy, 2023). This reliance on tribal mediation

is seen on a broader note from many Indigenous communities in the use of traditional mediation tools as the best fit based on cultural value and community cohesion (Majhi & Dansana, 2024; Zhomartkyzy, 2023).

Based on the responses gathered as shown in Figure (2), the primary motivations for tribal intervention and mediation can be encapsulated as follows: Court Weakness (39.1%) indicates a widespread belief in the judiciary's inability to deliver dispute resolution, and thus respondents tend to resort to traditional conflict resolution methods, which better reflect the underlying gaming of the legal regime. Social Backwardness (24.3%) underscores that entrenched norms of tribal customs tend to result in choosing tribal mediation over formal institutional dispute resolution because of cultural preferences. Further, a Lack of Legal Awareness (30.8 %) indicates there is a large gap between the basic knowledge of legal rights and processes among people and so, individuals seek tribal mediation due to unfamiliarity with formal legal avenues. Finally, Uncertainty or Indifference (5.8%) shows that a minority of respondents are either unsure about the causes of tribal intervention or indifferent about them. These findings underscore the interplay between systemic judicial shortcomings and sociocultural dynamics that shape reliance on tribal mediation.

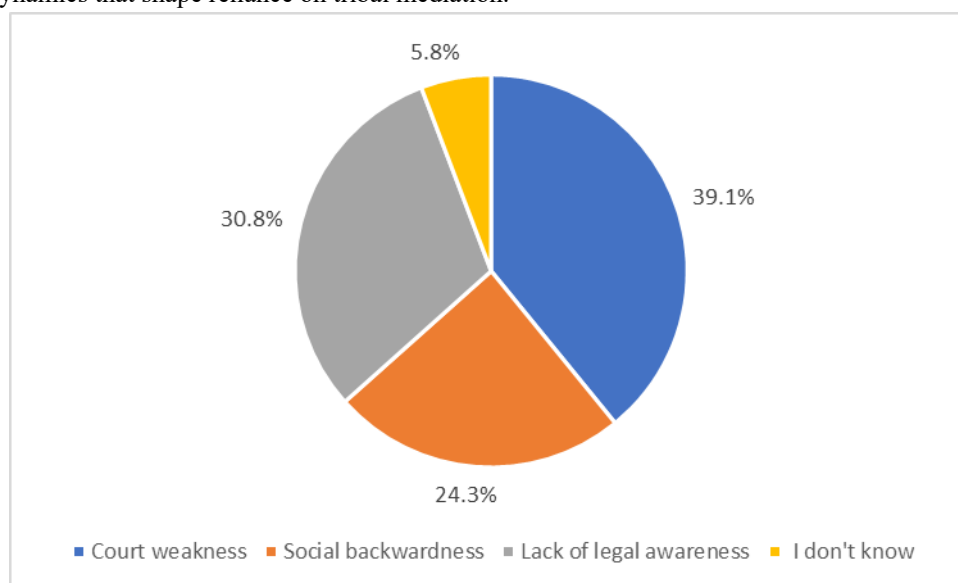


Figure 2: What are the reasons for tribal intervention and mediation?

The survey results indicate some of the complex reasons for the preference for tribal mediation in Kurdistan, based on notable deficiencies in the formal judicial system. The findings presented here indicate that conflict resolution choices are strongly mediated by social factors, such as perceptions of progress and legal awareness. It is observed that communities in a period of state weakness resort to customary practices of mediation, notably because of the lack of trust in state mechanisms with traditional tribal leaders (Aghas) occupying the role of mediator reflecting the traditional roles of tribal leaders. The integration of ethnic customary systems, such as Adat, into modern conflict resolution is indicative of the role of cultural mediation in achieving a just result in dispute settlement (Siregar, 2018). To have a more reliable judicial environment, it requires an improvement in legal education and a reform of formal judicial processes, to rebuild public trust and confidence in the judiciary (Susskind, 1985; Hajdari, 2018).

7.3 Beneficiaries of Tribal Mediation

The use of tribal mediation may unintentionally encourage criminal activity because individuals may believe that they can negotiate lighter outcomes with tribal leaders and may perceive it as a shield against severe penalties (Simonen, 2021). The perception of such a situation underscores the deterrence effect of formal legal systems and this fact may make offenders less afraid of judicial consequences (Coca, 2012). Additionally, when communities come to perceive tribal mediation as a superior form of justice, and the authority of state judicial systems accordingly erodes, crime rates are sure to rise (Krasniqi, 2019). Tribal mediation, being an informal process, may not be accountable as well as a formal judicial process and may lead to varied outcomes sometimes that seem unfair (Reyner & Tawang, 2018). Furthermore, tribal leaders may lack resources or knowledge sufficient to compel serious crimes such as murder and sexual assault to answer for their crimes (Hajdari, 2018).

In Figure (3), the analysis of how people perceive which party benefits the most from tribal mediation in dispute resolution is highly biased towards the accused. About 74.6% of respondents believe that the accused person gains the most from this process, confirming a view that tribal mediation may favor leniency and reconciliation as opposed to punitive measures,

which is consistent with the principles of mediation, which emphasize compromise and mutual benefit. On the other hand, only 5.3% consider that the benefit goes to the victim, suggesting a concern that victims may not receive adequate justice or compensation compared to formal legal systems. Lastly, 4.1% of respondents are uncertain of the benefits, which indicates a lack of consensus concerning the effectiveness of tribal mediation. The overall findings support a perception that tribal mediation generally works to the advantage of the accused to the detriment of the victims.

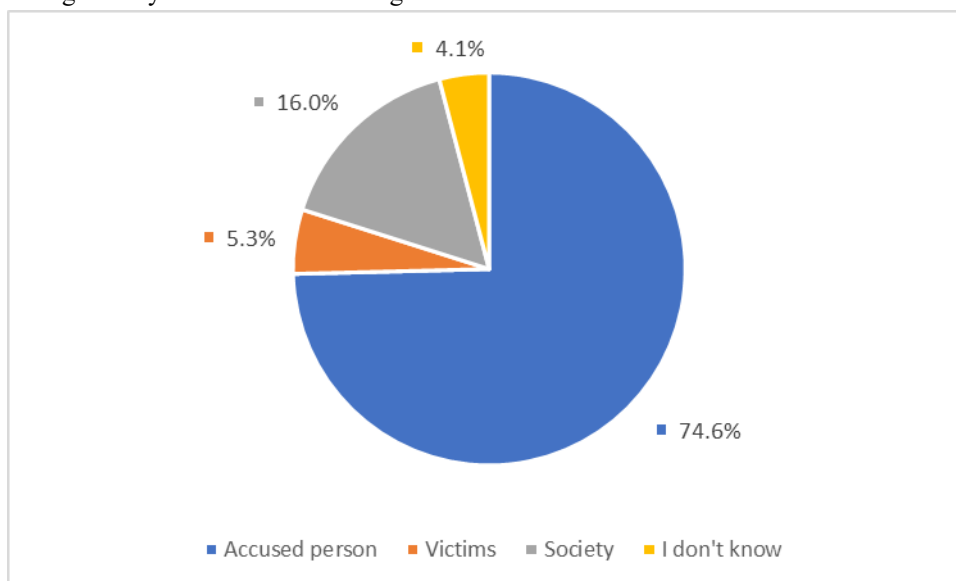


Figure 3: Who do you think has benefited most from the use of tribal mediation in dispute resolution?

Tribal mediation is seen in many of the studies to be biased toward the accused, suggesting injustice to the victims. In the case of the mediation practices in Indigenous conflict resolution systems, for example, part of its aim is to maintain social harmony and peace at the expense of victims' needs during the resolution process (Siregar et al., 2022; Masenya, 2022). These systems also foster community solidarity and address conflicts in culturally relevant ways that attempt to repair broken relationships and provide reconciliation (Tesfaye, 2021). In addition, the effectiveness of traditional practices in solving disputes as well as their match with community values offers a broader social case to preserve peace and order regardless of the perceived imbalance (Zhomartkyzy, 2023). Ultimately, the objective of tribal mediation may shift more to the accused, but as a whole, preserving communal harmony and stability is the objective (Almarsaban & Said, 2023).

7.4 Cultural Influence on Tribal Mediation

The practice of tribal mediation in Kurdistan is mainly affected by cultural factors, which are favored by the social and cultural features of Kurdistan, which depend on tribal leaders to resolve conflicts. Tribal identity is strongly rooted in loyalty and belonging, compelling people to use the trusted elders to aid in collectively choosing wise and neutral men who agree to mediate and enhance the legitimacy of the process (Burç, 2024). Additionally, cultural values emphasizing honor and reputation encourage discreet dispute resolution within the community, steering individuals away from public legal battles (Zhomartkyzy, 2023). This fits with the communal social philosophy that is common amongst many indigenous societies, where social harmony is the most important (Gayo, 2024). In addition, culturally informed mediation techniques transform conflict cultures, fostering a greater knowledge of conflicts and helping communities steer disputes in line with their cultural values. Together, these help explain why tribal mediation is still a favored tool in resolving conflicts in Kurdistan.

The analysis of data in Figure (4) shows that the practice of tribal mediation is strongly influenced by social and cultural characteristics in Kurdistan, as seen through 60.4% of respondents agreeing to this influence. Stemming from this strong belief are entrenched traditional norms that have ensured that tribal and local traditional values have remained important for the solving of disputes in such a society. An additional 31.4% noted that these factors moderately influence mediation processes while traditional customs are taken into account. On the other hand, however, only 4.1% think that social and cultural factors exert only a minimal impact, which means the modern judicial ways of handling cultural and social issues could succeed in certain parts. A similar percentage of respondents expressed uncertainty regarding the interaction between these elements and underlined the existing gaps in awareness.

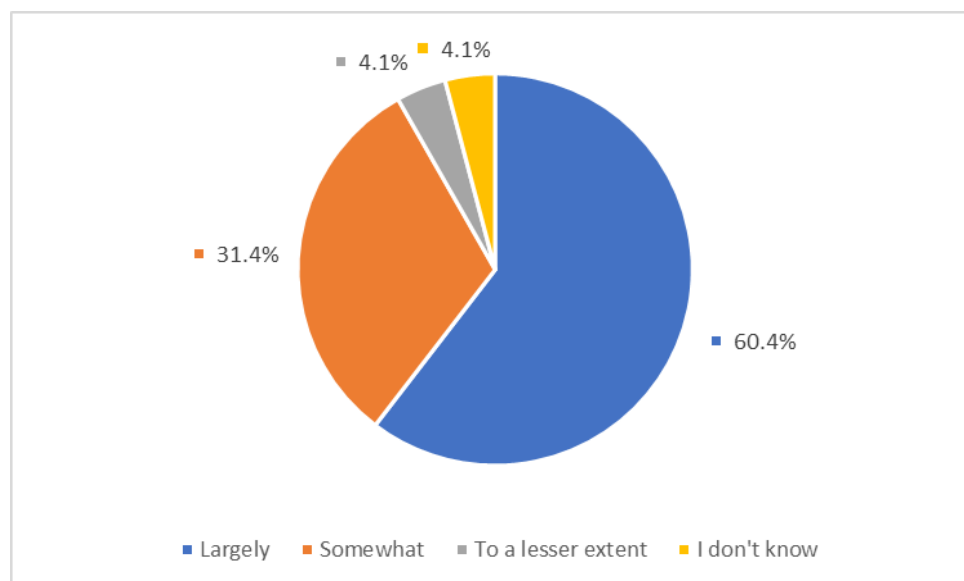


Figure 4: To what extent do social and cultural characteristics in Kurdistan influence the use of tribal mediation for conflict resolution?

The findings reveal that tribal mediation serves as the primary mode of conflict resolution, as conducted through Indigenous communities whose cultural identity is intrinsic through values and social structures (Siregar et al., 2022; Zhomartkyzy, 2023). For instance, tribal leaders have an important role in settling disputes related to marriage conduct or land use developments to retain social unity and environmental stability (Almarsaban & Said, 2023; Bardy et al., 2022). Yet there exists a growing landscape in which these traditional practices are concurrently interacting with contemporary legal foundations. This integration is crucial to resolve modern issues confronting the tribal community, legal and proprietary rights recognition and resource management to ensure that the community's rights and cultural heritage are protected (Kumar & Jain, 2023; Zhomartkyzy, 2023). Traditional and modern systems working in collaboration together can contribute to enhancing conflict resolution strategies and promote sustainable development and justice for Indigenous peoples (Bardy et al. 2022; Zhomartkyzy, 2023).

7.5 Integration with the Judicial System

The incorporation of tribal mediation with the judicial system in Kurdistan presents a plethora of challenges, most notably around which may impair potential formal legal institutions and reinforce current power imbalances. The persistence of tribal structures, in this context, can create challenges to modern governance and conflict resolution in Kurdish tribes. These structures frequently place collective identity over individual rights, resulting in ineffective protection of individual disputants (Burç, 2024). In addition, mediation, despite its advantages of reducing judicial burdens and performing restorative justice, is not, probably, the ideal solution for significant criminal cases, leading to justice and accountability discrepancies (Shardakova & Soroka, 2024). Experiences from other regions show that mediation could be integrated into legislation, as seen in Emirati legislation, however, this integration is conditioned on careful planning training and qualification for mediators, so that there is coexistence of the two systems without mutual conflict or inequality (Alnuaimi & Alkrisheh, 2024). Therefore, a balanced approach is important for integration that neither violates the integrity of tribal legal frameworks nor reduces the functionality of formal legal frameworks.

The result of the survey question, as shown in Figure (5), demonstrates the diverse public opinions on the integration of tribal mediation with formal judicial processes. Results show that 30.8% of respondents support this combination of traditional third-party involvement (mediation) and the formal legal framework, where the traditional model is seen as potentially useful for culturally sensitive resolutions or lightening court burdens. On the other hand, a respectable 62.1% are against this idea because they prefer modern legal institutions are worried that tribal mediation is not fair and have a desire to maintain a clear separation from traditional influences. Moreover, 7.1% of respondents are unsure about the integration's implications, which suggests that they lack information regarding the integration.

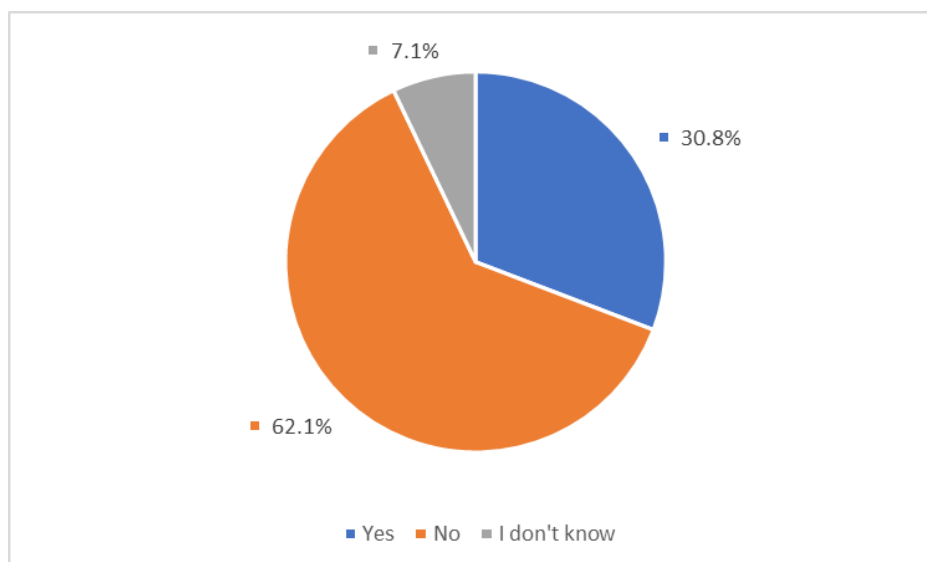


Figure 5: Do you think tribal mediation should complement the judicial system in Kurdistan?

The findings reveal an important tension between efforts to modernize judicial systems and the need to protect the time-honored tradition of dispute resolution, particularly concerning cases with cultural sensitivities. Customary mediation, a process traditionally applied by the Indigenous community, is based on communal value, harmony, and culture-based solutions in resolving a conflict, especially in a conflict that crosses interfaith or culture, and is moreover, more successful compared to the formal judicial process (Gayo, 2024; Fathullah et al., 2024). Mediation based on customary law, according to research, not only ensures ownership over conflicts but also keeps in line with the values underlying cultural society while promoting peace and cooperation (Siregar et al., 2022). While there is a push toward modernization and formality, there is still great value to many for the enduring tribal mediations; highlighting the need for a balanced approach that respects both traditional practices and modern legal frameworks (Zhomartkyzy, 2023).

7.6 Disadvantages of Tribal Mediation

Tribal mediation, which is very important for settling conflicts all through regions such as Kurdistan, has its disadvantages mainly due to bias and favoritism. Disputes are often mediated by Tribal leaders or Aghas, but depending on the case and the personal relationship or social status of the two parties could lead to partial decisions that favor certain parties over others. However, this bias blurs the legitimacy of the mediation process because outcomes may incline more in favor of the mediators' friends (Zhomartkyzy, 2023). The social standing of a tribal leader may also influence judgments, favoring people from similar lineages or those who can reward them with something (Zhomartkyzy, 2023). In addition, Aghas may have a personal stake in the dispute they are mediating, sending conflicts of interest and impairing judgment regarding services that confer equal resitutions. This dynamic underscore the necessity for fair and transparent mediation goods that treat everyone taking part appropriately (Zhomartkyzy, 2023).

In regions like Kurdistan where tribal mediation carries cultural significance, there are many problems which stand in the way of its being effective or fair. Whereas courts are obligated to follow laws defined beforehand, tribal mediation relies on customs that range wildly from one tribe to the other, resulting in differing and sometimes unfair outcomes; even in serious cases (Adnantara, 2024). The weakening of the authority of the judiciary as a result of this lack of formal procedures can lead to further eroding of the rule of law in areas already facing legal challenges (Alnuaimi & Alkrisheh, 2024). Social inequalities are perpetuated by tribal mediation as power dynamics usually favor male leaders while leaving women and vulnerable groups marginalized which may lead to results which do not sufficiently take account of their rights and needs (Gayo, 2024). Secondly, the focus on reconciliation may force victims, especially from cases of violence, to accept an insufficient settlement from the perpetrator, with the result that they receive neither adequate justice nor proper protection (Utami et al., 2024; Bhatnagar, 2024). There is therefore a place for tribal mediation, but its limitations must be critically examined for the outcomes to be equitable.

In Figure (6), the survey results show concerns about the use of tribal mediation in contrast to the formal judicial system. A significant 54.4% of the respondents considered tribal mediation as biased mainly because the mediator will naturally side with the offender because of family connections; the scenario goes against the ethical principles of justice. Moreover, 20.1% of respondents mention that tribal mediation has insufficient legal forum and regulation as the institutionalized

courts; this makes the outcomes unpredictable and unenforceable. Additionally, 18.3% share a concern that using the tribal mediation system reduces the populace's confidence in the formal court systems as a sign of their inability to meet the needs of society.

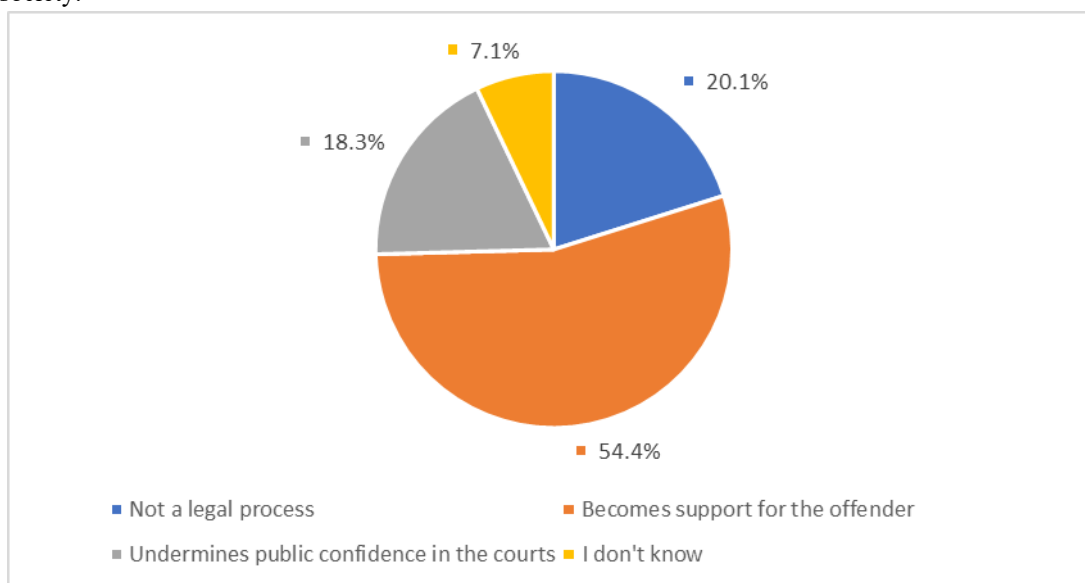


Figure 6: What are the main disadvantages of tribal mediation compared to formal judicial procedures?

Tribal mediation can be of great cultural significance, for its tone is more inclined towards discourse and agreement rather than conflict, because, like other ingrained social values, this tone can reinforce community resiliency (Adra, 2016). However, problems like power relations and cultural diversity of justice conceptions can lead its inefficiency, especially when mediators who come from the Western countries try to apply equal treatment to both parties (Mayer, 2020, Campbell & Chong, 2008). To avoid such drawbacks, there is a need to achieve a balance whereby accommodation of cultural sensitivity such as co-mediation provides the much-needed cultural interface between the parties to foster well understanding (Mason & Kassam, 2011). It enables representation of cultural diversity while maintaining the integrity of the mediation process. Ultimately, respecting traditional practices while ensuring justice and accountability requires a nuanced understanding of the cultural frameworks involved, fostering an environment where all voices are heard and valued (Zhomartkyzy, 2023; Campbell & Chong, 2008).

7.7 Preference for Dispute Resolution

Tribal mediation is preferred by the Indigenous communities because of cultural appreciation of the practice since it adheres to the culture, tradition and/or norm of the communities, which makes all the community members feel responsible. It is usually more efficient and costs less than traditional legal procedures, allowing for greater control over outcomes while maintaining privacy (Gayo, 2024; MH et al., 2024). Nevertheless, the results obtained in such mediations may not be legally obligatory if not put down in legal form and its effectiveness remains influenced by the mediator's efficiency and power relations between the disputants (Zhomartkyzy, 2023; Sunarno & Khan, 2023). In cases where the matter of crimes is serious and significant power imbalance rules, processes that require the involvement of a trial court may be necessary. As a result, tribal mediation, while culturally sensitive and efficient, may or may not be an appropriate method, and its appropriateness varies by case.

In Figure (7), the survey question on preference for resolving legal disputes via tribal mediation rather than formal courts relays significant insights into public sentiments. Only 5.9% of respondents favor tribal mediation, suggesting that though some think traditional methods are more culturally sensitive or more effective, it's not a popular option. In contrast, 59.2% strongly prefer formal court procedures because they reflect a belief that the judiciary can produce legally binding resolutions in a structured manner to ensure that justice is done, and accountability occurs. Furthermore, 27.8% of the respondents support a hybrid approach that addresses the strengths of each system — the strength of culturally sensitive tribal mediation and the strength of having courts enforce it. However, the 7.1% who are undecided indicate some ambivalence, with some people suggesting they've not experienced either system.

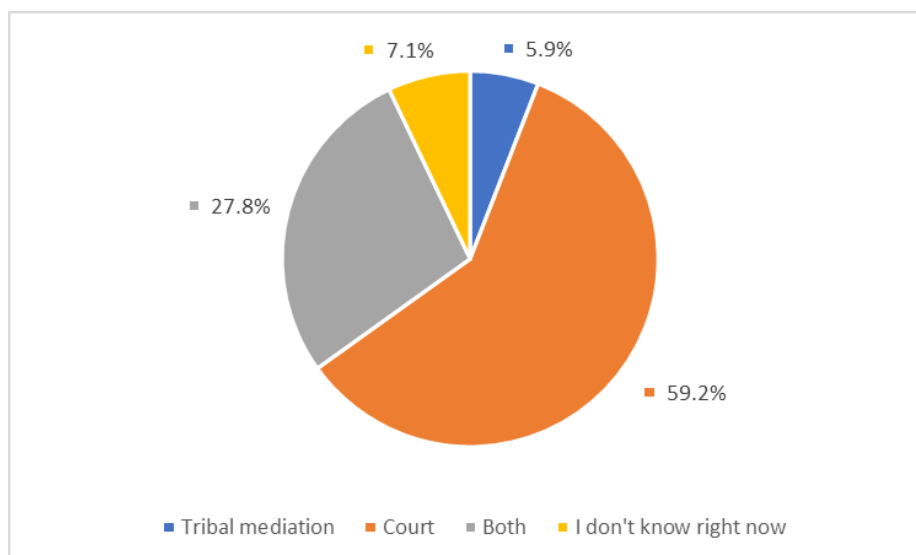


Figure 7: If you had a legal dispute, would you prefer it to be resolved through tribal mediation or the court?

The survey results show that society is moving towards formalizing legal processes but that traditional customs remain valuable, demonstrating a growing preference for structured, transparent means of dispute resolution mechanisms. Such findings agreed with the importance of customary law and mediation practices which are embedded in communal values and local wisdom (Utami et al, 2024; Gayo, 2024) as seen among the indigenous communities in Indonesia. Comparative studies of customary law suggest the need for enforceable judgments under the auspice of justices and human rights principles (Febrianty et al., 2024). This has been despite continued support for tribal mediation, however, which seems to reflect the backdrop of culturally driven conflicts found within Kurdish tribal structures (Burç, 2024). Hence, Kurdistan's legal system is challenged to balance both approaches so that formal legal processes strengthen, rather than weaken, custody of cultural heritage reflected in tribal mediation for a justice system which is both legally valid and culturally meaningful.

Conclusion

Tribal mediation is a multi-purpose institution in the judicial system of Kurdistan, empowering Kurdish society citizens to resort to culturally sensitive, hand highly valued ways. However, it suffers from fairness, gender sensitivity and compatibility challenges with the formal legal regime. Tribal mediation is recognized as a valuable asset to the formal judicial structure for enhancing conflict resolution, and as such its positive role in social relations is recognized despite its areas of weakness, especially in a consistent assimilation of tribal mediation practices in the legal realm. Based on the integration and adaptation of the elements of tribal mediation to modern legal concepts, with consideration of cultural components which are effective and culturally sensitive to Kurdish people, the identified issues need to be addressed through further research, and policymaking. Furthermore, it has been noticed that the effect of tribal reconciliation on the crime rate in the Kurdistan Region of Iraq is not positive, moreover, settlement of disputes using tribal authorities may lead to other perceptions of the concepts of justice.

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