



EUROPEAN UNION



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JULE

DISPUTE RESOLUTION THROUGH GRASSROOTS MEDIATION

REPORT SUMMARY

*Ha Noi,
June 2020*

Grassroots mediation is an alternative dispute resolution mechanism for minor disputes, conflicts and violations of the law arising in the daily lives of communities. This is a voluntary procedure. Grassroots mediation is widely used because of low costs, accessibility, confidentiality and its ability to reduce tensions between parties. As a result, the number of cases transferred to the State's competent agencies or courts is reduced.

Context

In Viet Nam, grassroots mediation is currently regulated by the 2013 Law on Grassroots Mediation. By the end of 2018, 107,086 mediation teams had been established with 652,819 mediators in total. Between 2014 and 2018, 760,755 cases were subject to grassroots mediation.

However, despite these achievements, there are still certain shortcomings and weaknesses that compromise the effectiveness of grassroots mediation. The number of grassroots mediators varies. The participation of persons who are qualified to become grassroots mediators has not been the most effective. They include lawyers, jurists, and former personnel of judicial agencies and agencies conducting legal proceedings, as well as former government officials, civil servants and staff. Currently, educational qualifications and legal knowledge of mediators remain limited. The majority of mediators lack the required skills, thus in some cases, grassroots mediators settle cases that should not be mediated. The performance of grassroots mediation teams in some localities mainly focuses on achieving their target of successful mediation cases, instead of paying attention to quality and protection of the rights of the parties.

In order to understand the current situation of grassroots mediation and propose solutions to improve its quality and effectiveness, a survey on the "Current situation of dispute resolution via grassroots mediation" was conducted

in three provinces, including Ha Giang, Dak Nong and Kien Giang in September 2019. The survey was carried out by the Vietnam Women's Academy with support from the Department of Legal Dissemination and Education, Ministry of Justice. This activity falls under the framework of the EU Justice Legal Empowerment Programme (EU-JULE), supported by the European Union along with financial contributions from UNDP and UNICEF.

Research Methodology

The research combined both qualitative and quantitative research methods, including questionnaires and in-depth interviews. The surveys were conducted with the participation of 303 beneficiaries and 151 grassroots mediators. In-depth interviews and group discussions were conducted with the participation of 150 people, including beneficiaries, mediators and judicial – civil registration officials.

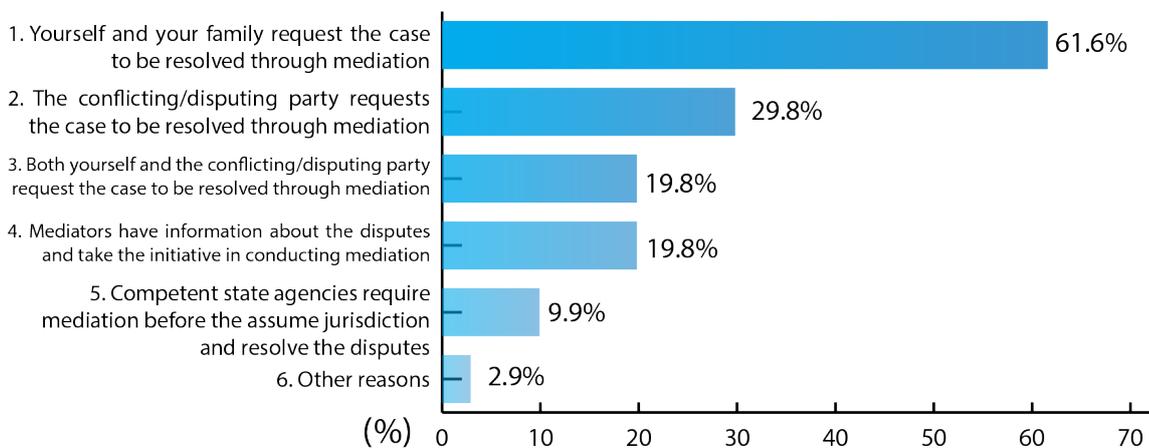
- In *Ha Giang* province: The survey was conducted in Ngoc Duong commune, Ha Giang city and Pa Vi commune, Meo Vac district.
- In *Dak Nong* province: The survey was conducted in Dak Nia commune, Gia Nghia town and Dak Ha commune, Dak Glong district.
- In *Kien Giang* province: The survey was conducted in Vinh Hiep ward, Rach Gia town and Dinh Hoa commune, Go Quao district.

A. CURRENT SITUATION OF GRASSROOTS MEDIATION

1. Reasons for choosing grassroots mediation

61.6% of the interviewed beneficiaries said that they and their families request the case to be settled through grassroots mediation; 29.8% beneficiaries used this method because one party requested the case to be mediated; 19.8% said that both

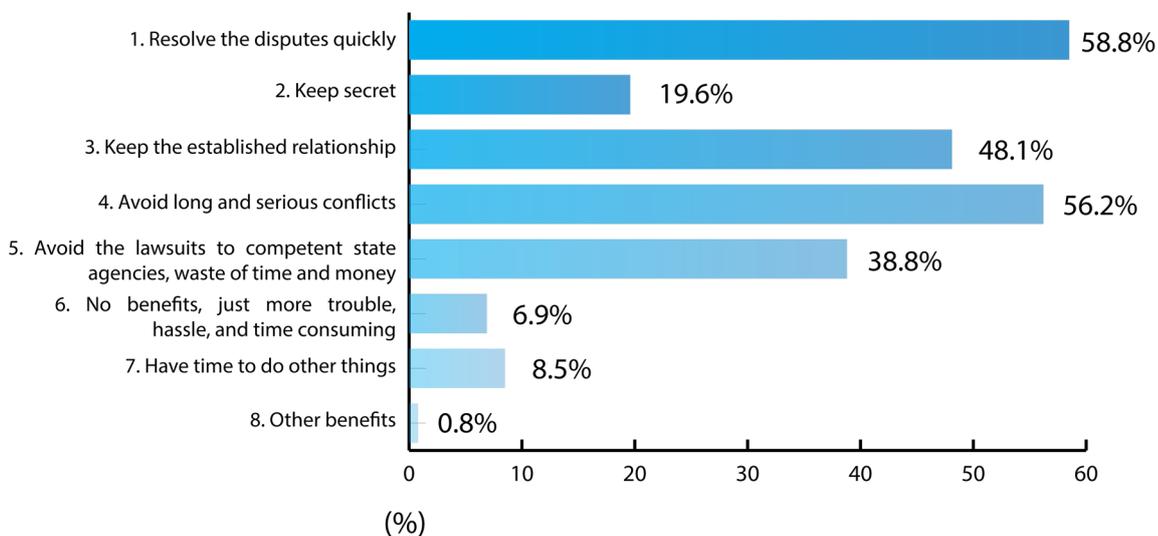
parties agreed to use grassroots mediation. Moreover, 19.8% of grassroots mediation cases were conducted because mediators had been informed of the conflict and proactively proceeded with mediation; and 9.9% of the cases were requested by authorities when the beneficiaries filed their complaints to them in order to have their cases settled.



Reasons for beneficiaries to use grassroots mediation to solve conflict

Interview results showed that 58.5% of interviewees choose grassroots mediation as a dispute resolution mechanism because it is fast; 56.2% of interviewees stated that

grassroots mediation has the advantage of avoiding long-standing and serious conflicts; and helps maintain friendly relations among relatives and neighbours (48.1%), etc.

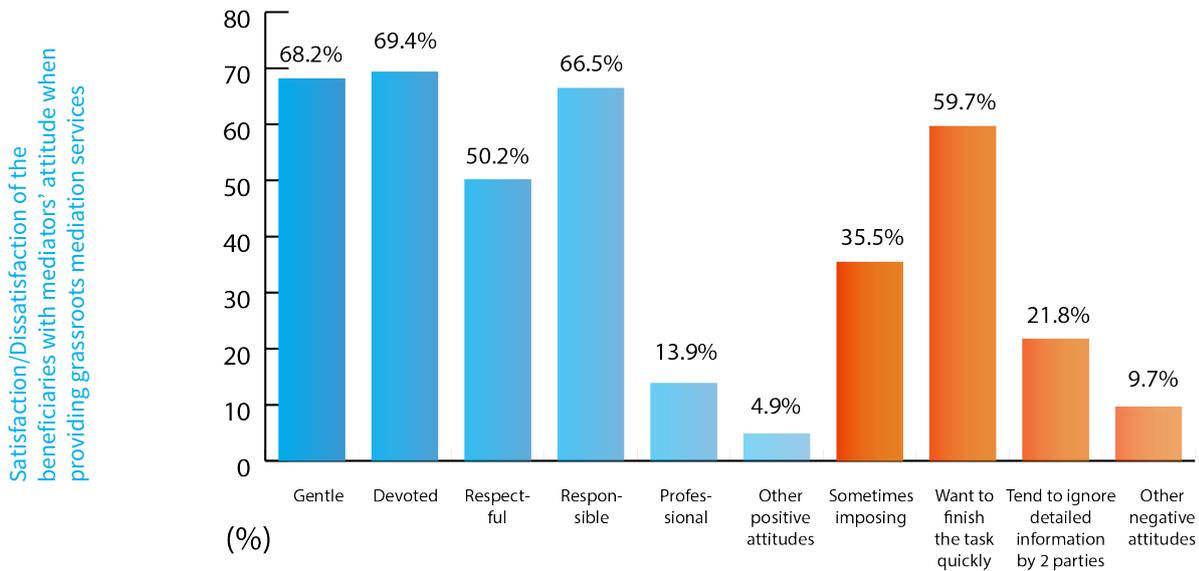


Benefits of resolving disputes or conflicts via grassroots mediation

2. Satisfaction of beneficiaries with the mediation process and outcome

2.1. Satisfaction of the beneficiaries with mediators' attitude

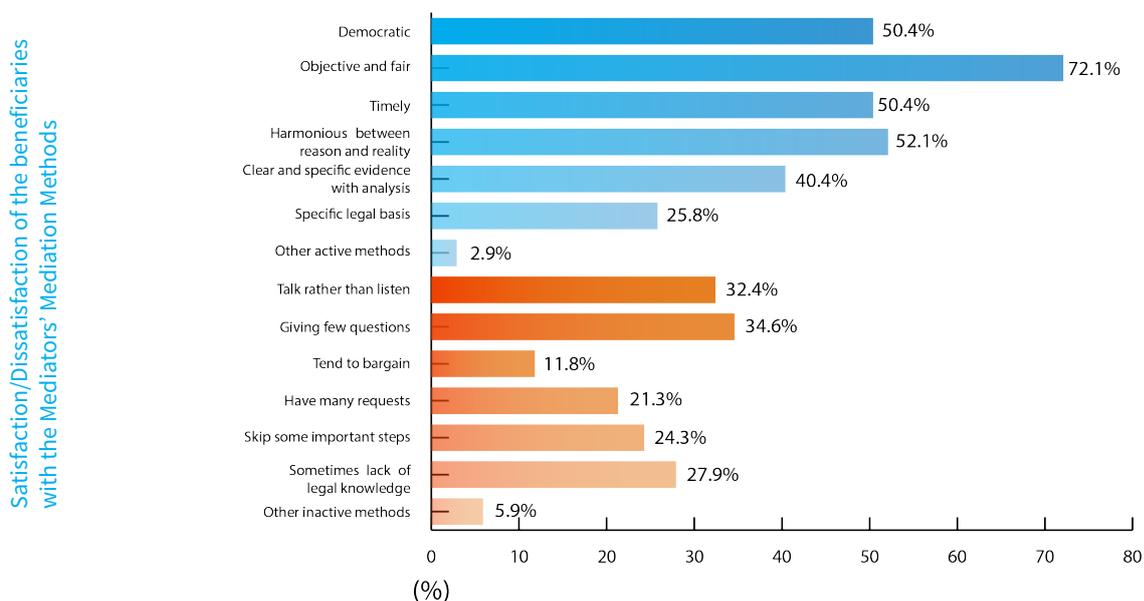
The majority of the beneficiaries who had their cases mediated expressed positive opinions about the mediators. The beneficiaries were satisfied with the mediators' enthusiasm (69.4%); gentleness (68.2%); responsibility (66.5%); respect towards the beneficiaries (50.2%).



2.2. Satisfaction of the beneficiaries with the mediation methods of mediators

The majority of interviewed beneficiaries expressed satisfaction with the mediation methods. 72.1% of them were satisfied with the mediators' objectiveness and fairness during the mediation process. 52.1% beneficiaries were satisfied with the reasoning provided by mediators that combination of legal regulations and practices. 50.4% thought that mediators worked in a timely manner and ensuring active participation of beneficiaries.

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However, according to the respondents, there were certain shortcomings. 34.6% of interviewees reported that mediators rarely asked questions to the parties. 32.4% felt that mediators talked too much and rarely listened to the parties' opinions. 27.9% believed that mediators' arguments were not founded on legal grounds. 24.3% thought that mediators skipped some important steps in the mediation process. These issues should be given special attention in order to improve the quality of and the beneficiaries' satisfaction in grassroots mediation.

2.3 Satisfaction of the beneficiaries with the capacity of grassroots mediators

75.6% of interviewees stated that they were happy with mediators' responsibility,

2.4. Assessment of the beneficiaries' trust in grassroots mediation

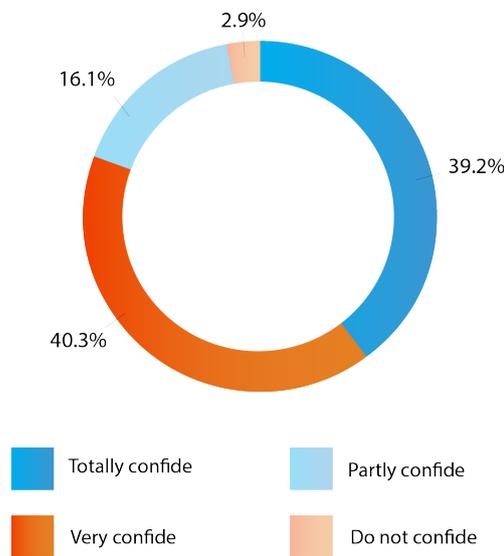
Similar to the previous assessment on beneficiaries' satisfaction, 79.5% of interviewees

enthusiasm and dedication; 68.8% of the interviewees believed that mediators understood the local customs and habits. However, only 53.2% of the interviewees expressed their satisfaction with mediators' mediation skills, which is one of the most important factors influencing the outcomes of mediation.

In particular, 50.6% of beneficiaries tended to be dissatisfied with the mediators' general knowledge. Similarly, 47.6% were not impressed with their legal understanding and knowledge. 36% regretted their lack of experience.

Beneficiaries' dissatisfaction with mediators' capacity is one of the fundamental difficulties and challenges in improving the quality of grassroots mediation.

responded that they placed their trust in the mediators to help them resolve their conflicts or disputes. The remaining respondents only partially trusted grassroots mediation (16.1%) or did not trust grassroots mediation (2.9%).



Assessment of the beneficiaries' trust in grassroots mediation

Among the 2.9% of the beneficiaries who did not trust grassroots mediation, approximately 45.5% of them believed that other competent agencies would resolve their cases more

effectively and produce better results; 27.3% of them did not trust mediators' capacity and qualifications; and 23.6% of them even believed that their mediators lacked credibility.

B. GRASSROOTS MEDIATION AND THE MEDIATORS' CAPACITY

1. Legal knowledge and mediation skills of mediators

Many officials in charge of grassroots mediation believe that mediators' legal understanding and professional skills are limited. The majority of mediators lack legal knowledge; many mediators are not educated or trained on professional skills required for grassroots mediation. There are limited opportunities for mediators to self-study and

update their legal knowledge and skills. Despite the fact that there are currently no criteria for mediators' educational qualifications, the survey results show a higher percentage of mediators who graduated only from primary and junior high schools. In terms of professional qualifications, the percentage of mediators without vocational training was 50%; only 9.9% of mediators have college and university degrees.

Educational and professional qualifications of grassroots mediators

Educational qualifications	Rate	Professional qualifications	Rate
1. Illiteracy	0.7%	1. Not trained	50.0%
		2. Vocational training without vocational certificate	2.8%
2. Primary education (Grade 1 – 5)	10.7%	3. Short-term vocational training with vocational certificate	8.5%
3. Lower secondary education (Grade 6 –9)	40.7%	4. Elementary vocational training	14.1%
		5. Secondary vocational training	12.7%
4. Upper secondary education (Grade 10 – 12)	48.0%	6. Vocational training college	1.4%
		7. University	8.5%

2. Knowledge and skills training for grassroots mediators

2.1. Trainings on Legal Knowledge and Mediation Skills for Mediators

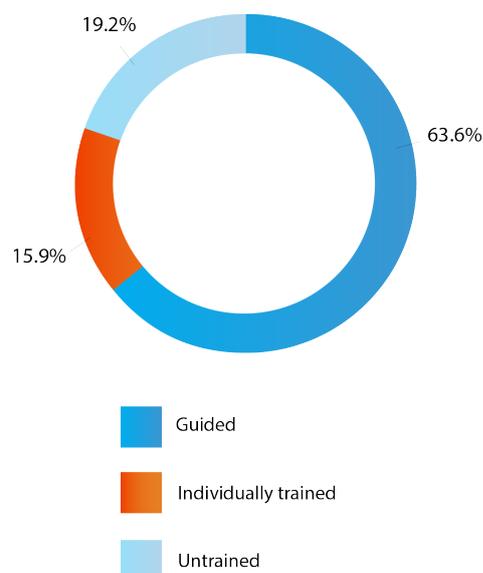
The People's Committees at district level have responsibility for organizing trainings on legal knowledge and skills for grassroots mediators to support them to perform their tasks effectively. The percentage of interviewed mediators who participated in trainings on legal knowledge and skills is as follows:

Contents of trainings	Percentage of mediators who attended the trainings
1. Benefits and meaning of grassroots mediation	72.4%
2. Process of conducting a mediation case	54.3%
3. Legal provisions on grassroots mediation and related laws	58.3%
4. How to learn and get legal provisions from current legal documents	29.1%
5. How to update legal information from the amended and supplemented legal documents	43.3%
6. Grassroots mediation experience at localities and other places	43.3%
7. Matters to be noted, how to handle them in the process of grassroots mediation	29.1%
8. Skills to approach subjects to obtain information about the case and the interests of the parties	51.2%
9. Skills to look up, search for legal documents, find solutions for the parties	29.9%
10. Skills in organizing, operating and managing a mediation process	34.6%
11. Skills of active listening, interpretation, persuasion, guiding the parties to negotiate conflicts and disputes on their own	58.3%
12. Note-taking skills of mediator; record notebooks of grassroots mediation activities	47.2%
13. Skills of mainstreaming, dissemination, education, legal advice in grassroots mediation	38.6%

Contents of trainings for grassroots mediators

2.2. Trainings to improve skills to work with specific groups

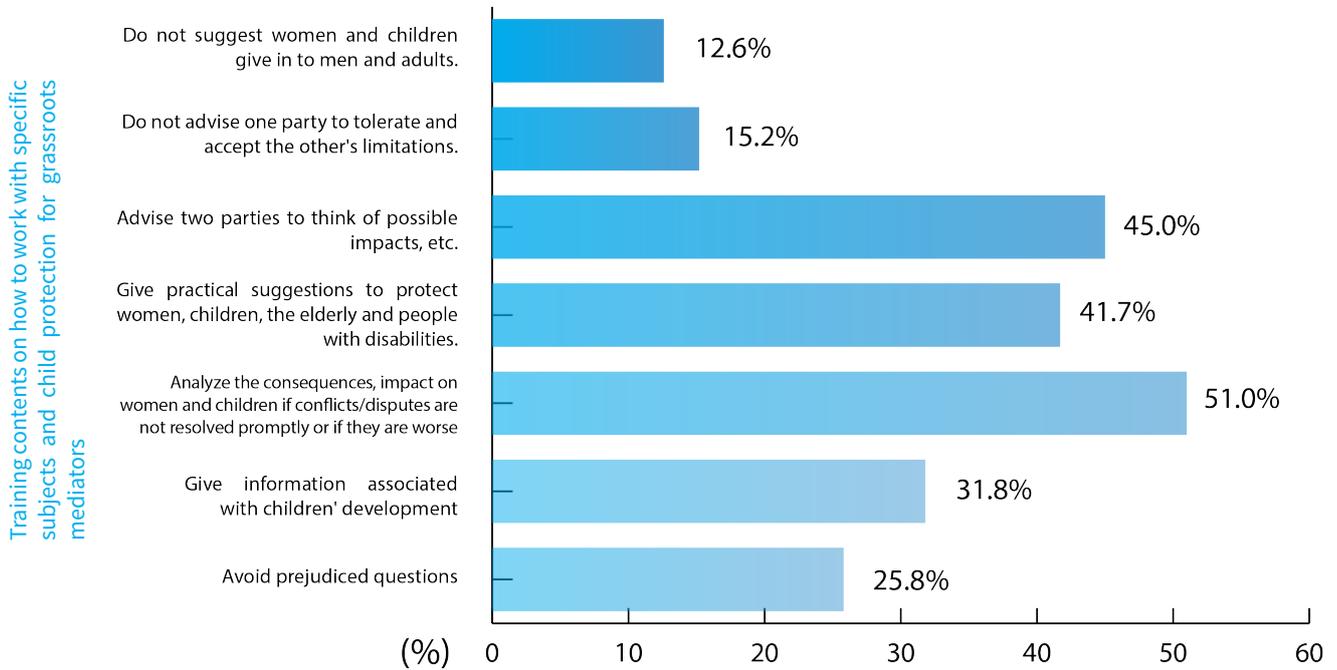
In addition to the above contents, 63.6% of interviewed mediators said that they were trained to improve skills to work with specific groups (including women, children, persons with disability, the poor, ethnic minorities, etc.). Among those trained mediators, 15.9% attended in-depth trainings. However, approximately 19.2% of them had not been trained in such skills as their localities rarely organized trainings or guidance sessions.



Situation of trainings and guidance on how to work with specific groups for grassroots mediators

In terms of training contents for grassroots mediators on how to work with specific

groups, mediators stated that they were trained on the following contents:



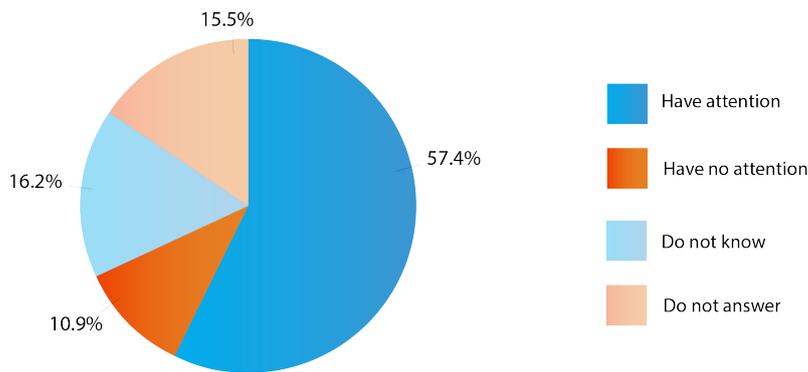
3. Current situation of grassroots mediation for vulnerable groups

Many mediation cases involve vulnerable groups such as women, children, the poor, ethnic minorities, persons with disability or the elderly. Therefore, mediators should be flexible to seek various solutions to accommodate the needs of all participants. One of the problems is that many mediators cannot speak the languages of ethnic minorities. In cases directly involving vulnerable groups, 60.3% of interviewees stated that they “requested the mediation team to find suitable supporters to join the mediation process” when the involved parties were persons with disability or ethnic minorities who cannot speak the Kinh language. 13.5% of mediators “found suitable supporters to join the mediation process by themselves”. 15.6% of the interviewed mediators stated that they were not involved in any cases in which one of the parties were persons with disability or ethnic minorities who could not speak the Kinh language.

3.1. The beneficiaries' responses on how mediators ensure gender equality and child protection when working with vulnerable groups

We conducted a survey to determine whether mediators paid enough attention to child protection and gender equality when working with specific groups.

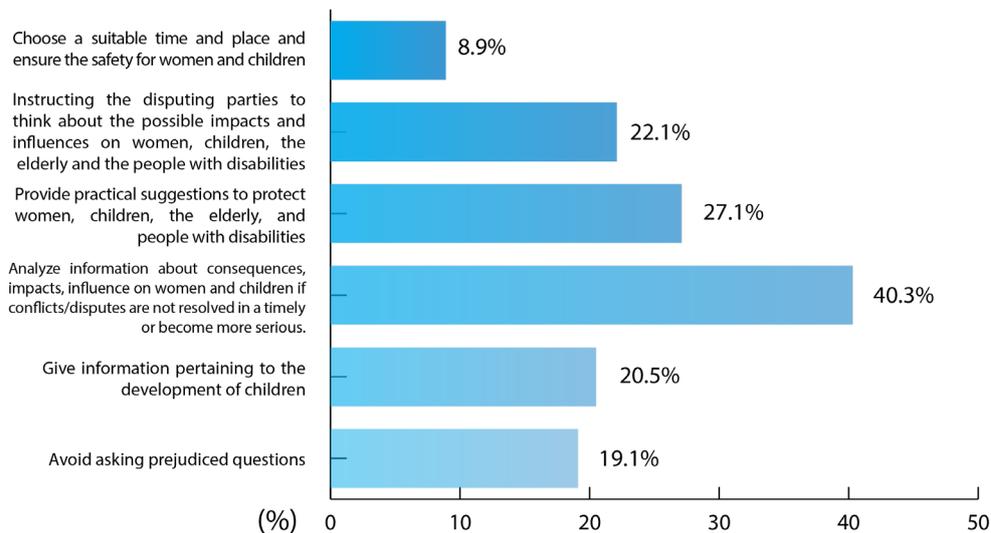
The surveys and interviews of the beneficiaries who had their cases mediated showed that only 57.4% of interviewees believed that their mediators paid attention to these matters and 42.6% of them believed that their mediators did not show their attention to these matters. This percentage is much lower than the percentage of mediators who received training and guidance on these matters (accounting for 79.5%).



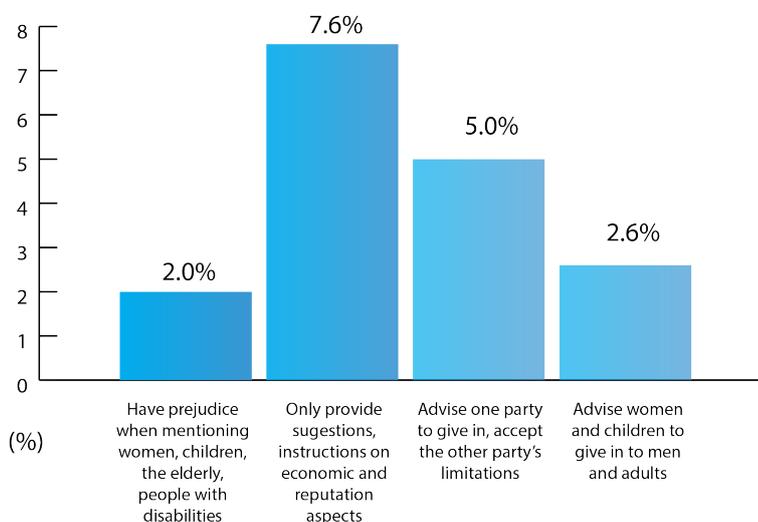
Participant Assessment of Mediators' Attention on Gender Equality

Even though the percentage of trained mediators on gender and child sensitive mediation is high, their performance on this area is not satisfactory according to the

beneficiaries. Therefore, there is a large gap between the available trainings and the need to apply the skills on these matters in practice, as showed in two following charts:



Assessment of the beneficiaries on factors that mediators paid attention to when working with specific groups to ensure gender equality and children protection



Assessment of the beneficiaries on mediators' expression of lacking attention to ensuring gender equality and children protection

Managers of grassroots mediation also felt that many mediators lacked the necessary knowledge and skills, particularly relating to the mediation of sensitive cases (such as cases of domestic violence, cases involving women, children, the elderly, persons with disability, etc.). As result, the mediation's results did not meet the expectations.

3.2. Participation of female mediators in mediation teams

Strengthening the participation of female mediators is one of the key factors to ensure

the rights of specific groups such as women, persons with disabilities and children, in mediation. However, the current participation rate of female mediators remains low. According to the Ministry of Justice's statistics, at the end of 2018, there were only 364,188 female mediators out of 1,290,676 mediators, accounting for only 28.2%. Moreover, female mediators who are members of the Women's Union are lacking in mediation skills and legal knowledge, or are only included in mediation teams to show the presence of female mediators.

C. DIFFICULTIES AND CHALLENGES OF GRASSROOTS MEDIATION

1. Low allowance for mediators

Localities usually apply the rate of 200,000 VND per case for all members participating in mediation, but some localities only apply this rate for successful cases. Meanwhile, unsuccessful cases are often difficult cases in which mediators had to put greater efforts and time. There are insufficient and undue payments for mediators, which discourages mediators to actively and enthusiastically participate in mediation cases.

2. Language barriers

The surveyed areas were areas with high poverty rates and low education levels; the prevalence of ethnic minorities is high, leading to language barriers for both grassroots mediators and beneficiaries. Consequently, communication on legal issues and the Law on grassroots mediation becomes more difficulty.

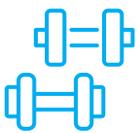
3. Difficulties of mediators in grassroots mediation

61.5% of mediators experienced difficulties due to their lack of legal knowledge; 34.5% feel they have insufficient necessary skills and experience. 48.3% lack various material resources.

Moreover, interviewed mediators indicated that they also faced with some other difficulties, as follows:

Other difficulties of mediators	Rate
1. Relations in the community are complicated and hard to work	23.1%
2. Disputes and conflicts are too complicated and difficult to mediate	34.3%
3. It is hard for the beneficiaries to interact with or listen to each other, and they are impatient	46.2%
4. The beneficiaries prefer other agencies handle their cases because they believe it would be quicker	25.2%
5. The beneficiaries tend to only care about their own rights and those of their families, and less interested in how the law deals with their matters	44.8%
6. Other difficulties	3.5%

D. RECOMMENDATIONS



Strengthen the capacity of mediators, focusing on the knowledge, skills and methodology of grassroots mediation;



Focus on improving legal knowledge and skills for grassroots mediators from ethnic groups;



Develop more guiding materials on grassroots mediation and a database of reference documents for mediators;



Increase budget for grassroots mediation and adopt various forms of incentives and rewards for mediators;



Build capacity and strengthen skills for grassroots mediators to work with vulnerable groups such as women, children, the elderly, persons with disabilities, ethnic minorities, etc., including in order to ensure gender equality and child protection;



Strengthen legal dissemination to the people in the community about the Law on Grassroots Mediation;



Strengthen monitoring and evaluation of grassroots mediation activities;



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