

Members Only?

Online Dispute Resolution in the Kibbutz Society*

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Abstract

The rise and fall of the kibbutz society in Israel provides an unique opportunity to examine the application of technology to dispute resolution in a non-traditional setting. The internal dynamics of a small, closed community in an ideological crisis reflect technology's role not only in undermining existing social order, but also in developing new norms, building consensus and resolving disputes.

The article describes the nature of disputes in kibbutz communities, which is influenced greatly by the ongoing relationships between the parties, as the lines between co-workers, neighbors, friends and authority figures are blurred. It examines the existing dispute resolutions mechanisms, their formation, their advantages in relation to existing the social norms and their shortcomings, and introduces the concept of online dispute resolution (ODR) in this context.

Finally, this article applies the advantages of ODR in the traditional, closed-community setting, and suggests additional opportunities for meeting the unique challenges of disputes in the kibbutz society. This merger plays a double role, as it challenges common perception of community disputes, while introducing new and unexpected avenues for the development of ODR.

Keywords: community ODR, Kibbutz, online mediation, online arbitration, dispute system design.

1 Introduction

The kibbutz, a cooperative community movement, is a unique feature of Israeli society. However, over the past few decades the kibbutz movement has gone through a fundamental change both in ideology and lifestyle, which raises challenging new issues. These issues concern not only the legal rights and status of the kibbutz members but also the nature of the resulting disputes in the community.

Born and raised in a traditional kibbutz that has transformed over the years, I chose to look into these questions, out of both personal interest and the need for developing new solutions for these disputes. Much of this article is therefore

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based on personal knowledge and experience, with as much objectivity as possible, but not without criticism.

The aim of this article is to examine the particular features of disputes in the kibbutz community, review the existing methods and framework of dispute resolution and suggest innovative new ideas for the use of technology within this framework. First, I will briefly attempt to answer the question ‘what is a kibbutz?’ The kibbutz has a unique status in Israeli law, as well as a developed subculture and social system, which sets it apart from the rest of Israeli society. I will continue by reviewing the different types and features of disputes in the kibbutz society, including inter-member disputes, disputes between members and the kibbutz authorities and conflicts of a public community nature, which require consensus building. This review will go on to examine the existing framework for dispute resolution, its features and its shortcomings. Based on this analysis, I will propose several technological dispute resolution applications, such as online arbitration, online mediation, anonymous online complaint systems and crowdsourcing, while attempting to adapt these applications to the specific nature of disputes in the kibbutz.

Finally, I will address the possible limitations of using technology-based dispute resolution mechanisms in the kibbutz community, issues of enforcement and the exciting new prospects this union can offer both the kibbutz society and the field of online dispute resolution (ODR).

2 The Kibbutz – Legal, Social and Cultural Aspects

In order to understand the nature of disputes in the kibbutz society, we must first understand what sets it apart from the rest of Israeli society.

2.1 *The Kibbutz: Social and Cultural Background*

The Israeli kibbutz is an unusual phenomenon both in Israeli society and globally. A unique feature of Israel’s demography, the kibbutz movement consisted of 270 settlements (‘kibbutzim’) as of April 2013, with a population of approximately 150,000 – 1.6 percent of the Israeli population. Settlement population size ranges from several dozen members to more than 1,000 in the larger communities. After years of desertion by its members and demographic deterioration, 2007 saw the kibbutz population growing for the first time in decades. This trend is supported by the housing crisis and wage erosion in Israel, which have driven more and more individuals, mostly young families, back into the communities. The cooperative income is based mostly on industrial ventures (approximately 70% of the income, a remarkable 8.4% of Israeli industry) and agriculture (15% of the income, approximately 33% of Israeli agriculture).¹ Culturally, many kibbutz communities adopted the communist ideology and lead a secular lifestyle to this day, though some religious Jewish traditions, such as holidays, were preserved to a

1 The United Kibbutz, ‘Planting Hope for Future Generations’, 2009, available from <www.kibbutz.org.il/tlua/dover/dafdefet_engl.pdf> (last visited on 7 June 2015).

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certain extent by offering a new take on the old traditions, focused on building the nation and working the land.²

The rise and fall of the Israeli kibbutz is closely tied to the rise of the Zionist movement and the establishment of the Jewish state in Israel at the beginning of the 20th century, emphasizing the ideological nature of the kibbutz as a social-Zionist movement.³ The founders of the first kibbutz settlements were mostly young men and women, former members of Zionist youth movements in Europe, which found purpose in building the new Jewish state in Israel. To this day, many of the kibbutz settlements are situated in peripheral areas, remnants of a vision of Jewish settlement across all areas of Israeli territory.⁴ However, the political and social circumstances have obviously changed dramatically in the 100 years since the birth of the kibbutz movement, undermining the viability of its ideology.

The golden age of the kibbutz movement, which saw great economic and demographic growth, lasted until the 1980s. At the height of its success, the kibbutz population constituted over 7% of Israel's entire population. However, ideological conflicts were abundant even in times of prosperity, creating an irreconcilable rift in the once united movement, which eventually led to its fragmentation and social decline.⁵ This cautionary tale and its destructive results are perhaps the best demonstration of the ideological passion and faith, which were a part of kibbutz life at the time. This ideological rift, followed by a deep economic crisis, put into question the continued existence of the kibbutz movement in its cooperative framework. The founders of the movement regarded the kibbutz as a utopian dream,⁶ and its decline was a rude awakening. The consequent reform, intended to save the kibbutz from complete disintegration, eventually changed the delicate social fabric and balance within the community.

Another unique feature of the kibbutz society is the way in which its members and inhabitants perceive it as a part of their identity. For the 'kibbutznik' (a member of a kibbutz settlement), the community is not only a business corporation, but also a home and a way of life.⁷ As a development of the kibbutznik identity, members developed a subculture of common folklore, traditions and even

2 D. Helman, 'The Kibbutz in the Early 2000s', in M. Aharoni & S. Aharoni (Eds.), *Israel 2000*, 2000 (in Hebrew), available from <<http://lib.cet.ac.il/pages/item.asp?item=4826>> (last visited on 7 June 2015).

3 A. Lapid, 'Hakibbutz [The Kibbutz]', in S. & M. Aharoni (Eds.), *Ishim Vemaasim Be-yisrael: Sefer Hayovel [Influential Figures and Actions in Israel: The 50th Anniversary Book]*, Miksam, Kefar Saba, 1998, pp. 518-520 (in Hebrew); Z. Tsur, 'The Zionist Origins of the Kibbutz', in Y. Gorni, Y. Oved & I. Paz (Eds.), *Communal Life*, Yad Tabenkin Transaction Books, Israel, 1987, pp. 249-252.

4 The United Kibbutz, 2009.

5 Lapid, 1998. For further reading on the economic and social change in the Kibbutz, see U. Levitan, 'Is It the End of Utopia? The Israeli Kibbutz at the Twenty-First Century', Paper No. 31764, University of Saskatchewan, Centre for the Study of Co-operatives, 2003.

6 A. Lieblich, 'Hakibbutz Al Saf Ha-Alpayim: Halom Vegilgulav [The Kibbutz on the Brink of the Third Millennium]', in A. Shapira (Ed.), *Medina Ba-derech: Israeli Society in Its First Decades*, Zalman Shazar Centre for the History of the Jewish People, Jerusalem, 2001, pp. 295-316, at 299 (in Hebrew).

7 Helman, 2000.

certain linguistic adaptations and phrases, which can only be understood within the context of kibbutz living. Kibbutz members would not often say they are from a kibbutz, but rather 'I am a Kibbutznik': their home is their identity.

It is not surprising, therefore, that the change in communal lifestyle caused a great upheaval in the value system of the kibbutz, forcing members to form a new identity. This combination of uncertainty and disappointment, as well as the forceful process of change, which was not achieved by consensus, created new tensions in the community. The unusual situation, where members are given new rights in exchange for giving up their old identity and sense of belonging, creates friction between the members themselves as well as kibbutz authorities. This new balance of rights and obligations raises the need for an effective new system to resolve these disputes.

2.2 *The Kibbutz as a Legal Entity*

The legal definition of a kibbutz is a cooperative society ('Aguda Shitufit'): "a settlement society which is a separate settlement, sustaining a cooperative community of its members, based on the principles of collective ownership of property, whose goals are self-employment, equality and sharing of all production, consumption and education resources, and is defined as such by the [cooperative society – R.R.] registrar."⁸

This ambiguous description of the kibbutz as a cooperative society effectively subjects the kibbutz and its members to the Law of Cooperative Societies. Additionally, Israeli law provides different ad hoc legislation, pertaining to the special status of the kibbutz, such as tax legislation, national security and debt settlement among others.⁹ The legal status of the kibbutz members is that of cooperative society members, as prescribed by the by-laws.

Interestingly, the most meaningful normative source that applies to the kibbutz is not the law per se, but the individual kibbutz by-laws.¹⁰ In fact, the incorporation of a kibbutz is based on these by-laws, which are considered a binding multilateral contract between the kibbutz and its members. The by-laws stipulate procedures of membership, rights and obligations of members, withdrawal of membership and rights and much more. Most often, court cases involving the kibbutz revolve around the interpretation of its by-laws, rather than statutory law, making contract law a dominant normative source. In addition to being a social community, the kibbutz is also a business community, based on the common interests and ownership of property by its members, most often including real estate, agriculture and industrial ventures. As a corporation, the kibbutz itself is a legal entity separate from its members, which bears liability for its obligations and benefits from rights and ownership of properties, and is free to engage in legal activity.

8 Collective Societies Law, 1973, § 1.

9 E. Ben-Rafael *et al.*, 'Report on the Kibbutz', Public Committee on the Kibbutzim Subject, 2003, p. 33. (in Hebrew).

10 Helman, 2000.

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The kibbutz is also a miniature democracy: decisions are made by vote of the members, and community-wide resolutions are reached by equal vote in the kibbutz assembly.¹¹ The assembly is the highest normative institution in the kibbutz, and its resolutions provide legal validity to the actions of the community. These resolutions are then executed by office holders and committee, in accordance with the kibbutz by-laws.

Throughout the century-long existence of the kibbutz movement, the underlying principle of its ideology was the communist notion that members contribute to the best of their ability and that in return their needs are provided for. According to this principle, kibbutz members have no personal ownership of property, as the benefits from the collective property are allocated evenly among them. However, during the 1980s, the entire movement suffered a deep economic crisis, as debts mounted and creditors demanded settlement.¹² To avoid complete default of this important economic sector, the Israeli government appointed the Ben-Rafael Committee to investigate and suggest possible solutions.¹³ Following the Ben-Rafael Committee's recommendations, the kibbutz movement underwent an organizational and legal overhaul, which resulted in new legal classifications by the Cooperative Societies Law¹⁴ and a fundamental change in lifestyle.

Under the new law, the legal classification of cooperative societies is now based on the different property regimes, which each individual kibbutz applies. Some of the societies still operate under the 'old' regime of collective property, while others are considered a 'renewing kibbutz', where members gain ownership over their private residences and are sustained by external employment or a non-equal salary allowance, based on the level of their contribution rather than need. However, even in the renewing kibbutz, the principle of mutual guarantee is still applied, as the community effectively insures its members.¹⁵

These legal developments have had a far-reaching effect on the frequency and nature of disputes in the community. The transition from a supposedly equal community without personal property to a new property- and performance-based society created new status levels within the community, based on economic capacity. While this process may seem natural to many, tensions in the communities continue to rise, with the scale and severity of conflicts increasing, requiring new resolution mechanisms.

11 A. Pavin, *From Self-Management to Elective Democracy: What Happened to the Kibbutz Democracy*, University of Haifa, Institute for the research on the Kibbutz and the Cooperative Idea, Haifa, 2002, p. 20 (in Hebrew).

12 *Id.*, p. 24.

13 The Ben-Rafael Public Committee on the Kibbutzim was established by the Israeli government, which saw the urgent need for a transformation and adaptation of Kibbutz living to the changing reality. Headed by Prof. Eliezer Ben-Rafael of the University of Tel-Aviv, the committee filed its report in August 2003. Following the report, the Israeli legislator conducted a comprehensive legal transformation of the Cooperative Societies Law.

14 Cooperative Societies Regulations, 1995, § 2.

15 Ben-Rafael Committee Report, 2003.

3 Private Disputes in the Kibbutz Society

3.1 *Member – Kibbutz Disputes*¹⁶

The majority of legal disputes within the kibbutz are conflicts either between members of the community or between a member and the kibbutz authorities. Following the privatization of collective property and the allocation of property between the kibbutz members, there has been a growth in disputes concerning property rights, as well as neighbour disputes. The legal limbo, wherein members acquire entitlements and obligatory rights but property rights remain in the hands of the kibbutz, effectively means that even neighbour disputes involve the kibbutz itself as a party.

An additional area where conflict arises is family disputes. This area of disputes is also highly affected by property privatization, especially in issues concerning future property divisions between separated or divorced partners. In the past, when a member couple separated, they each received individual allowance and residence. Had this continued after the privatization, it would have led to an absurd inequality between married and unmarried couples, as divorcing members would actually economically benefit from their separation. To avoid this inequality, this policy was revoked, which in turn resulted in an influx of disputes concerning marital assets, the rights to which are often based on a weighing of joint seniority. The kibbutz by-laws and the Law of Property Relations between Spouses¹⁷ remain vague on this issue.

Another highly debatable topic is the issue of privatization and member livelihood. Unlike during the days of self-employment, following privatization the responsibility for employment lies entirely on members. However, members' ability to provide for themselves is often limited. Older members, with no professional training or education, are being terminated for the sake of economic efficiency, but cannot find alternative employment. These members are not eligible for allowance from the community since they are unable to prove their inability to support themselves. They are able to work, yet unable to find work. Other debated issues include the kibbutz policy on pension rights, ownership of external property, members with special needs and rights of non-member habitants.

3.2 *Member-to-Member Disputes*

As mentioned, the majority of disputes in the kibbutz society concern property or economic rights, with the kibbutz being a party to the dispute. However, much like any other social system, the kibbutz society is not void of personal disputes. One of the distinct features of disputes in a close-knit community such as the kibbutz is the preference of members to avoid direct confrontation and adopt other ways of expressing discontent. In the age of privatization, the meaning of this preference is the use of legal claims as an outlet for personal disputes.

16 The data and analysis regarding member disputes and arbitration in the kibbutz are based on an interview with Yossi Halabi, head of the United Kibbutz Movement Institute for Arbitration and Mediation (19 October 2009).

17 The Property Relations between Spouses Law (1973).

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Direct conflict avoidance serves different purposes, such as protecting the existing system of social hierarchy and promoting cooperation and harmony in the community. This behaviour is common in systems that include long-term relationships between the parties, such as workplaces, unlike temporary or singular encounters that are common in commercial or consumer disputes.¹⁸ Therefore, by the time conflict erupts, there is already great emotional involvement by the parties, based on their relationships and past events. These disputes are usually resolved within the community and not in court, as the kibbutz authorities attempt to mitigate the animosity. However, some neighbour disputes do end up in court, most often in a small claims court.¹⁹

3.3 *The Existing Dispute Resolution System*

When faced with a dispute, the member or the kibbutz can turn to several forms of dispute resolution. It should be noted, however, that prior to a hearing before an external arbitrator or the court, internal procedures must be performed, such as a board of director's discussion or assembly hearing, in accordance with the law and the kibbutz by-laws.²⁰

3.3.1 *Alternative Dispute Resolution*

The statutory jurisdiction for arbitration in disputes within the kibbutz society is in the hands of the Registrar of Cooperative Societies, whose resolution has the validity of a district court judgment.²¹ However, the cooperative society by-laws require exhaustion of internal resolution procedures before a request can be filed for arbitration with the registrar.²²

In addition to the statutory jurisdiction of the registrar, parties can turn to alternative forms of dispute resolution, in accordance with the kibbutz by-laws.²³ The Israeli Supreme Court has ruled that the by-laws are to be seen as a contract between the members and the cooperative society, making its provisions legally binding.²⁴ In most cases, the by-laws include a provision concerning dispute resolution. In the standard by-laws, which were adopted by most societies, article 113 requires the parties to turn to arbitration exclusively within the institutes of the United Kibbutz Movement, the umbrella body of most cooperative societies in

18 B. Benishu & H. Syna Desivilya, 'The Role of Conflict Avoidance in the Kibbutz Community', IACM 2007 Meetings Paper, 2004.

19 Telephone interview with Gil Dagan, Attorney at Shlomo Cohen Law Office, specializing in Cooperative Societies Law, 2009 (October).

20 *Id.*

21 The Cooperative Societies Ordinance, 1933, § 52.

22 The Cooperative Societies Regulations (Dispute Resolution), 2005, § 2.

23 The UKM Institute of Arbitration and Mediation Rules of Arbitration, November 2014 (in Hebrew), available from <www.kibbutz.org.il/multimedia/sal/media/3712/f5_141110_clalei_gishur.pdf> (last visited on 7 June 2015).

24 CA 4245/00 Chen v. Tel Katzir, IsrSC 57(6) 10, 2003.

Israel.²⁵ The United Kibbutz Movement (UKM) Institute of Arbitration and Mediation is the internal body of the UKM, which handles most of the out-of-court cases. In essence, parties have a choice between arbitration with the registrar by law and arbitration with the UKM Institute under contractual agreement.

Arbitration with the Registrar of Cooperative Societies is conducted by professionals in the area of cooperative societies law. The procedure is based on substantive law, and includes the duty for legal reasoning and an appeal mechanism. However, the UKM Institute of Arbitration and Mediation conducts the arbitration procedure in accordance with the Israeli Arbitration Law²⁶ and its own internal by-laws.²⁷ Resolutions are not based on substantive law, and arbitrators are given leeway to interpret the kibbutz by-laws. Arbitrators therefore have a broad margin of consideration to settle the dispute, based on their integrity, their judgment and the kibbutz by-laws.²⁸ The purpose of this policy, as well as the absence of a duty to provide legal reasoning for the resolution,²⁹ is to promote the finality of decisions. Furthermore, according to the rules of the Institute, a resolution is always made by a tribunal of three arbitrators, most of whom are kibbutz members or were so in the past, and are familiar with the kibbutz system. Some of the arbitrators are jurists, especially in cases that require a certain degree of substantive law or when one or more of the parties obtain legal representation.³⁰

In addition to the default choice of arbitration, the Institute promotes mediation as a preferred method of dispute resolution. In order to do so, the UKM issued a decision requiring that the option of mediation be presented as an alternative in every request for arbitration. If the mediation does not succeed, the dispute may be transferred to arbitration or filed in court.³¹

3.3.2 *Litigation in Private Cases*

In spite of the inherent preference for alternative dispute resolution methods, litigation is a growing trend in kibbutz-related disputes, as individual and interest groups turn to the court system to settle disputes with the kibbutz. This relatively recent trend may be attributed to the ongoing process of change in the kibbutz society, which influences the fundamental values of cooperation and sharing, specifically in matters of property and resource allocation. This process of privatization may negatively affect certain members or interest groups that are a minority

25 According to section 113 of the Standard Kibbutz Bylaws, any dispute between a member and the community, regarding or related to the membership, will be settled by the UKM institute, provided that the member agreed to the arbitration. However, it also allows the member and the community to resolve the dispute by alternative avenues, such as the Registrar of Cooperative Society or the national workers union. *See* The Standard Kibbutz Bylaws, § 113 (in Hebrew), available from <www.kibbutz.org.il/cgi-webaxy/sal/sal.pl?lang=he&ID=3&act=show&dbid=pages&dtaid=aaaaa_shinui>.

26 The Arbitration Law, 1968.

27 The UKM Arbitration rules, 2014.

28 *Id.*, § D(1).

29 *Id.*, § D(2).

30 Interview with Yossi Halabi, 2009.

31 Interview with Attorney Gil Dagan, 2009.

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within the community.³² Many of the plaintiffs feel hurt by the unilateral decision to change the communal lifestyle, have lost faith in the internal institutions of the kibbutz and believe that internal mechanisms of dispute resolution do not serve their interests. This perspective leads plaintiffs to turn away from the kibbutz system towards what is perceived as the more objective jurisdiction of the court.³³

Most court cases concern substantive issues of community life and property rights, such as seizing of members' property on account of the kibbutz's debt, validity of assembly resolutions, withdrawal of membership and the like. However, even court proceedings are considered problematic for kibbutz members, which may refrain from litigation due to its high costs and the extensive resources at the disposal of the kibbutz, which create an inherent imbalance of power.³⁴ To mitigate this effect, the Ben-Rafael Committee provided a partial solution, as the kibbutz is obligated to cover a percentage of members' costs of litigation or arbitration.³⁵ In addition, the imbalance in power may assist the member plaintiffs, who are perceived as the weaker party by the court, and as a result may be granted legal remedy even in the absence of a solid normative basis. For this reason, member plaintiffs are rarely charged any litigation costs, even when the case is lost.³⁶

3.3.3 *Private Disputes: Limitations of the Existing Dispute Resolution System*

While the kibbutz society welcomes alternative forms of dispute resolution, the increasing number of court cases indicates that the existing framework is ineffective, for a number of reasons. Practically speaking, resolution of property and land disputes is virtually unenforceable. When a member of the community invades a property, the ability to enforce, prevent or sanction him is extremely limited. This is one of the fundamental challenges of the change in lifestyle. What was once enforceable through social norms can no longer be enforced by either social or legal norms, as members disregard the policies and resolutions of the kibbutz institutions.³⁷ Further practical difficulties arise from the nature of a small, close-knit community and the high level of familiarity. When it comes to the pool of potential arbitrators, for example, there may be difficulty in assembling an impartial tribunal, as they may have previous acquaintance with either of the parties. That is especially common in arbitration by the UKM Institute, where arbitrators are appointed according to geographic regions, increasing the odds of partiality and previous acquaintance.³⁸

Conflict avoidance is another factor that influences the severity of conflicts between members as they become more complicated and challenging to resolve.

32 Y. Yanai, 'The Kibbutz Members Are Going to Court', *Nihul*, Vol. 140, 2001, p. 44 (in Hebrew).

33 Interview with Attorney Gil Dagan, 2009.

34 Y. Yanai, 'The Kibbutz Members Are Going to Court (continued)', *Nihul*, Vol. 141, 2001, p. 29 (in Hebrew).

35 The Cooperative Societies Regulations, 2005, § 3.

36 Interview with Attorney Gil Dagan, 2009.

37 Interview with Yossi Halabi, 2009.

38 *Id.*

The emotional nature of these disputes may affect parties' rationality, decreasing the odds of achieving consent in mediation. In these cases, members are eager to litigate, and settlement is harder to reach even when the legal circumstances are clearly not in their favour.³⁹

4 Public Disputes and Consensus Building

Public disputes in the kibbutz community have a number of unique features, such as the common needs of the parties and the existence of ongoing interaction and relationship. When addressing public disputes, these factors must be taken into account in order to maintain the peaceful nature of community life.⁴⁰

4.1 Public Decision-Making Process

In order to better understand the process of decision-making in the kibbutz community, it is crucial to understand the organizational structure of the kibbutz. Unlike other types of corporations, which have a distinct and planned structure, the kibbutz structure was developed organically and informally, as a result of the circumstances of life at the time. The first kibbutz settlements consisted of small groups in which agreements were achieved by way of discussion and consensus. Decisions concerning community life were made spontaneously, without a clear agenda, procedural rules, or institutions. Occasionally, the voting procedure was conducted without individual voting by members, but rather by an expression of general agreement.⁴¹ As settlements and population grew, this decision-making system was no longer suitable for the complex needs of the community. Therefore, new institutions were created, such as the general assembly, where members would vote, and the secretariat, whose role was to coordinate between members and the general assembly.⁴² Over time, committees and secondary bodies were established to ensure implementation of assembly resolutions and effective management of the kibbutz. In fact, this structure still prevails in most kibbutz societies today, aside from structural changes that followed privatization, such as separation between property and resource management and community management. The procedure for community decision-making is set out in the kibbutz by-laws, which provide the normative basis for assembly resolutions. In case of a disagreement within the community, the issue is first discussed in the internal secretariat committees or board meetings, and, in some cases, brought before the general assembly. Issues pertaining to fundamental issues of community living, such as appointment of office holders or acceptance of new members, are brought to an anonymous vote.

39 Interview with Attorney Gil Dagan, 2009.

40 L. Li-On, 'Community Mediation: True Social Change', *Nekudat Gishur*, Vol. 8, 2003, p. 12 (in Hebrew).

41 Pavin, 2002.

42 *Id.*, p. 17. For further reading on the traditional decision-making process in the kibbutz, see R. Rothman & A. Shapiro, 'Conflict Resolution in an Israeli Kibbutz', *Peace & Change*, Vol. 2, 1974, pp. 29–39.

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4.2 *Community Mediation*

Unlike private disputes, community disputes have no default option of alternative dispute resolution, and most cases in which the community fails to agree end up in court. However, a recent trend in achieving public agreement is community mediation, enabling the members to take a bigger part and feel included in the decision-making process. Mediation has obvious advantages: a focused, interest-based, cost-efficient procedure, which prevents escalation and preserves the ongoing relationship between the parties.⁴³ Similarly, community mediation is a result-based process, taking into account available resources and the fairness of the procedure.⁴⁴ Mediation as a consensus-building process aims to incorporate all positions in the discussion, including minority opinions, while focusing on practical solutions that will be accepted by almost all members of the community.

An additional option is establishing a community mediation centre, the purpose of which is to consult, promote discussion and provide mediation services by trained practitioners, pertaining to the values of the community. For the kibbutz, the biggest advantage of creating a community mediation centre is having an independent, publicly managed body,⁴⁵ mitigating members' fear of bias towards the kibbutz, unlike the dispute resolution of the UKM and the registrar. Using the mediation centre may also be preemptive, as conflict is identified and settled in advance, minimizing frustration and coercion of minority groups.⁴⁶ However, the use of community mediation has yet to be widely implemented in the kibbutz society, leaving only a limited scope for discussion and consensus building.

4.3 *Litigation: When Consensus Fails*

The process of change and the ideological crisis in the kibbutz movement have increased the volume of court cases not only in private matters, but also in regard to community disputes, although courts tend to strictly enforce the duty to exhaust internal procedures. Additionally, the courts tend not to intervene in material questions arising from assembly resolutions, and the most likely cause for suit is procedural fault, rather than a material one.⁴⁷ Similarly to administrative law, the exception to this approach is the possibility to question the reasonability of the resolution. This may be done, for example, in cases where the minority opinion was disregarded by the assembly, or in case of a request for equal representation of minorities in the kibbutz board of directors.⁴⁸ In cases where the majority for a resolution cannot be reached, the parties may turn to the court for a material judgment.⁴⁹ In fact, there is no default alternative dispute resolution mechanism for community disputes. The process is linear: a vote (or several votes) that ends up in a deadlock is then followed by an application to the court.

43 Y. Yanai, 'Mediation: Appropriate for the Kibbutz', *Nihul*, Vol. 32, 1998, p. 224. (in Hebrew).

44 G. Cohen, *Consensus Building in the Kibbutz*, Sulcha: Israel Mediation Portal, 2002 (in Hebrew), available from <www.sulcha.co.il/collective-agree/> (last visited on 7 June 20).

45 Li-On, 2003.

46 Interview with Attorney Gil Dagan, 2009.

47 CA(Nazareth) 187/01 Caspi v. Kibbutz Hasolelim (unpublished, 16 May 2004).

48 Interview with Attorney Gil Dagan, 2009.

49 Yanai, 2001.

However, the involvement of courts in internal affairs is risky, and may cause more damage than good. If the judge is unfamiliar with the intricacy of the kibbutz community, judgment may be socially destructive or completely unenforceable.

4.4 *Public Disputes: Limitations of the Existing Framework*

The current decision-making procedure in the kibbutz seems to be lacking, especially in a community-seeking consensus. Unlike the direct democracy of the early kibbutz, privatization has eroded members' ability to influence decisions regarding community life. The assembly, once the most powerful institute in the kibbutz, has delegated much of its power and jurisdiction to the corporate business board of directors, limiting members' accessibility and influence on economic decisions that concern the community. Very few of the decisions made by the board are reviewed by the assembly in open public discussion, which has become merely a procedure for retroactive ratification of board decisions and can no longer serve the purpose of policymaking and monitoring.⁵⁰ This lack of effectiveness created an overall atmosphere of indifference and the sense that members' ability to voice their opinion has very little meaning. As a result, many refrain from participating in the process all together. In many cases, the dominant factors influencing a member's vote are not their independent opinion or best interest, but peer pressure.

Another problematic issue concerns the balance of power between majority and minority interest groups. The conflict surrounding the transition period of the kibbutz has undermined the foundations of communal living and created a sense of stagnation, as minority groups stalled necessary procedures. On the other hand, these minority groups were left with a sense of frustration and deprivation when their opinions were eventually disregarded.⁵¹ Additionally, board decisions may often be influenced by interest groups, preventing or promoting issues of personal interest at the expense of public interest.⁵² However, the alternative of the court system does not cater to the specific needs of the kibbutz community. In fact, a public dispute that the community failed to resolve in its early stages is not likely to be successfully resolved in court, because of lack of experience or consideration of community interests. In addition, the possibility of community mediation may be beneficial for achieving consensus, yet it is not commonly practised and still suffers from distrust by community members and fear of bias.⁵³

50 A. Pavin, 'From the Round Table to the Manager's Desk: Change and Democracy in the Kibbutz', *Mifne: Bama L'inyanay Hevra*, Vol. 51, 2006, p. 42 (in Hebrew).

51 *Id.*

52 Interview with Yossi Halabi, 2009.

53 Li-On, 2003.

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5 Applications of Online Dispute Resolution in the Kibbutz Society

As the above review demonstrates, there are many channels of dispute resolution in the kibbutz, yet the system is still lacking and fails to meet the needs of the community. As this section will show, ODR may offer new solutions to old problems.

5.1 *History and Development of Online Dispute Resolution*

ODR is a relatively recent trend, which began in the late 1990s and developed parallel to the growth in Internet use worldwide.⁵⁴ ODR systems were initially created to handle small-scale consumer disputes, mainly those that originated in online transactions. The rising volume and frequency of these disputes made e-commerce providers and users alike seek a quick and efficient resolution that would overcome geographic and practical barriers.⁵⁵ Pioneering the field was e-commerce giant eBay, which in 1999 initiated a pilot online mediation system for disputes between buyers and sellers based on email communication,⁵⁶ Following the success of the pilot, eBay decided to develop a permanent system for settling user disputes – SquareTrade.⁵⁷ In doing so, eBay enabled its users to pursue small claims that would have otherwise been abandoned due to high litigation or alternative dispute resolution (ADR) costs. This service, in addition to offering a feedback system and claim insurance, led to a higher level of consumer trust and, consequently, a significant growth in transactions.⁵⁸

The successful implementation of the online resolution mechanism for online disputes paved the way for consideration of the possible benefits online resolution systems could have with regard to offline disputes. In this regard, technology is often considered the ‘fourth party’ to the dispute, working alongside the third-party neutral and aiding the rival parties by increasing accessibility of information, providing flexibility and mitigating emotionality in personal disputes.⁵⁹

These advantages are not limited to disputes that originated online, but can further assist offline conflict resolution through online tools by using open online mediation platforms, such as Juripax.com,⁶⁰ or designated arbitration systems like Benoam⁶¹ (which is further discussed in Subsection 4.2). The success of these online human-facilitated ODR systems encouraged the development of new, automated ODR applications, in which technology plays an even bigger part. An example is the SquareTrade automated mediation system, which is able to facili-

54 O. Rabinovich-Einy & E. Katsh, ‘Technology and the Future of Dispute Systems Design’, *Harvard Negotiation Law Review*, Vol. 17, 2012, pp. 151, 164.

55 E. Katsh & J. Rifkin, *Online Dispute Resolution: Resolving Conflicts in Cyberspace*, Jossey-Bass, San Francisco, 2001.

56 E. Katsh et al., ‘E-Commerce, E-Disputes and E-Resolution: In the Shadow of ‘eBay Law’’, *Ohio State Journal on Dispute Resolution*, Vol. 15, 2000, p. 708.

57 O. Rabinovich-Einy, ‘Technology’s Impact: The Quest for a New Paradigm for Accountability in Mediation’, *Harvard Negotiation Law Review*, Vol. 11, 2006, pp. 257, 265.

58 *Id.*, p. 254.

59 Katsh & Rifkin, 2001, pp. 93-95.

60 See <www.juripax.com>.

61 See <www.benoam.co.il>.

tate negotiation without the involvement of third-party neutral.⁶² Another example is CyberSettle, which facilitates an online blind bidding, allowing parties to reach an agreement on compensation on torts and malpractice cases.⁶³

Lastly, the involvement of technology in public disputes globally cannot be denied. This was evident from the impact of social networks, such as Facebook and Twitter, on the eruption of civil protests during The Arab Spring and the Occupy Wall Street movement. Technology is slowly tipping the scales in favour of public involvement in democracy and decision-making. This is not to say that technology will replace traditional mechanisms, but it will undoubtedly play a bigger role. The age of smartphones and easy access to the Internet is already changing the way we communicate. This change calls for a new thinking about the boundaries of privacy and transparency, as well as a broadening of the dispute resolution spectrum.

5.2 Online Arbitration

The dispute resolution system in the kibbutz relies heavily on arbitration as a means to avoid litigation and to better control the result of the procedure. The concept of arbitration is certainly fitting, especially considering the level of expertise demanded of the arbitrators and their familiarity with the field. However, even the existing arbitration framework can be improved on by using technology.

Online arbitration was originally developed as an answer to commercial disputes (B2B). Maintaining parties' autonomy is a paramount principle of arbitration, as parties can agree to conduct the arbitration using online applications.⁶⁴ This can be done by using easily available technological tools, such as shared folders, emails or online documents. Additionally, parties may agree to conduct the procedure itself online, based solely on documentation and without holding a frontal hearing. However, any use of technology to conduct the procedure must be agreed upon and documented by the parties.⁶⁵

Additionally, need-specific, designated systems of online arbitration may be specially developed to meet the needs of a community or area of disputes. One such example is the 'Benoam' online arbitration system.⁶⁶ Benoam was created as an alternative to the overflow of litigation in small vehicle-related insurance claims (the system handles small claims and minor damages cases, while legally complex cases are decided in court).⁶⁷ The excess number of lawsuits in the area flooded the courts and compromised the efficiency of the entire system. As a solution, Benoam offers an interactive online system, conducting the entire arbitra-

62 Rabinovich-Einy, 2006, p. 258.

63 See <www.cybersettle.com>. See also P. Kirgis, 'Cybersettle and the Value of Online Dispute Resolution', *Indisputably*, 7 July 2010, <www.indisputably.org/?p=1456> (last visited on 24 April 2014).

64 J. Hornle, 'Online Dispute Resolution – More than the Emperor's New Clothes', *International Review of Law, Computers & Technology*, Vol. 17, No. 1, 2003, pp. 27-37.

65 *Id.*

66 See <www.benoam.co.il>.

67 O. Rabinovich-Einy & R. Tsur, 'The Case for Greater Formality in ADR: Drawing on the Lessons of Benoam's Private Arbitrations System', *Vermont Law Review*, Vol. 34, 2009, pp. 529, 545.

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tion procedure via remote access. The Benoam system has direct access to all participating insurance companies' databases, as well as all documents and evidence relating to the case. Every action by either the parties or the arbitrator is recorded in the system. The arbitrators are professionals in their field, such as torts attorneys or vehicle inspectors, who examine the evidence before and issue their decision without conducting a frontal hearing (except for rare and unusual cases), in accordance with Benoam's standard arbitration agreement. Once a decision is issued, it is immediately available online. Benoam further offers a debt collection system, simplifying the enforcement of the decision.⁶⁸ In short, Benoam is a success story: effective, long-term solution, tailored to the needs of its sectors.

But could this success be extended to the area of disputes in the kibbutz society? First, much like the insurance claims, disputes in the kibbutz are of a specific, limited scope, with repeat players. Second, the legal issues in question are often repeated, most of which are questions of property allocation. Furthermore, the current arbitration system is split between the parallel jurisdiction of the UKM Institute and the Registrar of Cooperative Societies. Creating a unified, online database will increase the efficiency of the arbitration procedure, minimize procedural time and costs and enable the development of expertise by practitioners of both institutes. This type of system would be particularly efficient in resolving issues of property allocation, as blueprints, documents and evidence will be available immediately to the arbitrators, allowing them to make a swift yet informed decision while maintaining neutrality and protecting the privacy of the parties. An online arbitration system would further broaden the pool of arbitrators, which will no longer be appointed on the basis of geographic proximity, while still allowing for accessibility and convenience.

However, disputes concerning specific economic rights or division of property shares may be harder to resolve on an online arbitration platform. Disputes regarding employment or allowance, for example, are of a more complex and emotional nature, and require a dialogue between the parties, which cannot be achieved in this framework. For these types of disputes, the option of online mediation may be more suitable.

5.3 *Online Mediation*

Much like online arbitration, online mediation originated in the area of commercial disputes, in an effort to achieve effective and independent resolution of small-scale consumer disputes. As mentioned, pioneering the concept of online mediation is the world's largest online auction website, eBay.com, which operates an efficient online mediation system to resolve user disputes between buyers and sellers. The system initially enables the parties to conduct the procedure independently, based on the type of dispute. For example, if the disputes concern payment, the system will suggest automatic solutions based on past cases, which the parties may agree to. Among the eBay system's greatest advantages are its neutrality and impartiality⁶⁹ without nudging parties in the direction of a specific sol-

68 *Id.*, p. 546.

69 Hornle, 2003.

ution. If parties refuse to accept the automated suggestion, the procedure goes on to mediation by a third-party practitioner.

Online mediation through a neutral third-party practitioner is not inherently different from traditional mediation, and is based on the principles of interest-based discourse and achieving agreement, while minimizing procedural time and costs by using technology.⁷⁰ It allows parties to maintain their position and control the process, but also to find creative solutions other than monetary compensation. One of the greatest advantages of online mediation over classic mediation is availability and accessibility, enabling the resolution of disputes that would not have been addressed otherwise, owing to high administrative costs.⁷¹

As traditional mediation may be an efficient tool in resolving complex member–society disputes, online mediation could present an efficient solution to internal member disputes. Automated mediation can provide an answer to small-scale disputes that would otherwise be filed in a small claims court. These minor, sometimes petty, disagreements such as neighbour disputes often involve repeat players and bear little practical complexity. The reoccurrence of these disputes creates unnecessary tension in the community and increases the workload of community authorities. While the existing system is able to resolve these disputes quite simply, it is unable to minimize the volume of disputes or handle them in an efficient manner. In this regard, online mediation is a relatively simple solution, allowing independent resolution by the parties efficiently and discreetly without the involvement of authorities, with an end result that is based on consent rather than coercion. Additionally, an online mediation system may resolve the issue of conflict avoidance from fear of confrontation and social sanction, and encourage members to pursue their claims.

It must be noted that minor causes are often exploited by members for personal purposes rather than legitimate claims, as the involvement of kibbutz authorities increases the animosity and tension. The very existence of a default option of online mediation will disable the political or social motivation to pursue the dispute, prevent frivolous claims and may, in fact, minimize the volume of disputes. Finally, eliminating the involvement of authorities will save resources, time and money, and promote resolution neutrality.

Another type of dispute, which requires a new resolution mechanism, is private disputes between the members and the kibbutz, which tend to have a more complex and emotional nature. As mentioned, these disputes are not easily resolved in traditional mediation due to parties' bounded rationality, preventing them from achieving an interest-based agreement. These disputes are likely to end up in court, driven by a pursuit of justice and occasionally vengeance, and will often result in a judgment that is equally harmful to both parties.⁷² This is a fine example of a case where both traditional mediation and litigation have failed but online mediation prevails. The unique nature of the kibbutz society calls for a nat-

70 S. Raines, 'Mediating in Your Pajamas: The Benefits and Challenges for ODR Practitioners', *Conflict Resolution Quarterly*, Vol. 23, No. 3, 2006, p. 359.

71 Hornle, 2003.

72 Interview with Attorney Gil Dagan, 2009.

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ural solution of alternative dispute resolution. In this respect, online mediation is the best of both worlds: an interest-based process guided by an impartial third party, using technology as the 'fourth party' in order to enable better judgment and mitigate the emotional effect on parties.

As parties are not required to enter into a direct confrontation, tensions are reduced and the imbalance of power neutralized between members and the kibbutz representatives. Additionally, parties are given the possibility to consider their reaction to an offer, instead of reacting impulsively and emotionally, which can be harmful to the process.⁷³ Online mediation maximizes the advantages of mediation, providing an effective and cost-efficient solution to the needs of the kibbutz community.

5.4 Online Complaint System

The concept of an online complaint system was initially developed to handle online consumer complaints. The need to preserve business reputation and avoid negative publicity and consumer reviews motivated manufacturers and service providers to create a complaint system designed to offer a quick and efficient answer to consumer complaints, thereby maintaining their positive reputation.⁷⁴ However, the potential advantages of an online complaint system are not limited to consumer disputes, but can also be efficient in hierarchic systems, such as workplaces or organizations. Nowadays, many websites offer an online, Web-based complaint system. One such example is AnonymousEmployee.com,⁷⁵ which allows employees to post complaints regarding various subjects, such as violence or sexual harassment, discrimination, misconduct and ethics. The system then mails an anonymous message to the employer, protecting the privacy of the complainant, who cannot be traced.

The characteristics of disputes in the kibbutz society are easily equated with disputes in the workplace, such as employee disputes, managerial disagreements or organizational conflicts. In both cases, parties face a long-term relationship and an imbalance of power, and both share the need for a swift, discreet procedure that will protect parties' privacy.⁷⁶ In both cases, disputes are highly emotional, with a joint interest of maintaining a positive reputation and 'saving face', as well as preventing the development of future disputes or lawsuits.⁷⁷ Anonymity is crucial in cases of complaints concerning office holders or organizational function, in which the importance of privacy is paramount, making the use of technology advantageous.

73 O. Rabinovich-Einy, 'Going Public: Diminishing Privacy in Dispute Resolution in the Internet Age', *Virginia Journal of Law and Technology*, Vol. 34, 2002, p. 52.

74 S. Jun Lee & Z. Lee, 'An Experimental Study of Online Complaint Management in the Online Feedback Forum', *Journal of Organizational Computing and Electronic Commerce*, Vol. 13, No. 1, 2006, p. 65.

75 See <www.anonymousemployee.com>.

76 F. Milman-Sivan & O. Rabinovich-Einy, 'Mediating Procedure and Substance: On the Privatization of the Justice System and Equality at Work', *Mishpat Umimshal*, Vol. 11, 2008, p. 517 (in Hebrew).

77 Rabinovich-Einy, 2002.

As mentioned, a core issue of communication and conflict avoidance in organizations, and in the kibbutz specifically, is the fear of repercussions. Office holders are often appointed from within the organization, making employee or member complainants vulnerable to informal sanctions, such as social sanctions by other community members or harassment and intimidation by the management. As the influence of the kibbutz assembly diminished, office holders gained a more prominent role in policy and decision-making, drawing criticism on ethical conduct and efficiency.⁷⁸

However, inter-organizational politics may deter necessary review of their function and reduce transparency. This is especially crucial in matters of managerial misconduct or internal corruption,⁷⁹ in which members would prefer to maintain their position and social status at the expense of transparency. Additionally, for many of its members, the kibbutz is both a community workplace combined. Once conflicts arise in the workplace, those members may be faced with difficulties in confronting their superiors in view of social implications outside of the workplace.

With this in mind, an online complaint system could provide a complementary mechanism for dispute resolution. This system will refer anonymous complaints to an external body, such as the UKM or the registrar, which in turn could initiate an examination of the claims. The system will protect the identity of complainants, allowing them to maintain their working relationships. Furthermore, the system may be used as an online channel for feedback from members, who could suggest improvements and express their level of satisfaction with the management of the community. This discourse will create an atmosphere of cooperation and trust, while still preserving the delicate social balance.

5.5 Crowdsourcing

Crowdsourcing is a business entrepreneurship model developed online, outsourcing tasks once performed by an individual or a professional team to the hands of the public by issuing a call for proposals.⁸⁰ This model is common in online advertising and software, as well as user-based-content websites, such as Wikipedia. Participants in crowdsourcing projects are not employed or compensated, and are motivated by altruism and the gain of positive reputation in their community, as well as the value of creation and participation.⁸¹ In exchange for their ideas, participants are rewarded with a one-time gift or benefit, as the developer makes use of the ideas for their personal benefit.⁸² In certain respects, crowdsourcing has a great advantage over a small professional team, especially with regard to problem solving. The combination of many ideas by many participants brings better results. This concept of the 'wisdom of the crowd', or collective wisdom, is based

78 Pavin, 2002, p. 76.

79 *Id.*, p. 68.

80 D.C. Brabham, 'Crowd Sourcing as a Model for Problem Solving: An Introduction and Cases', *Convergence: The International Journal of Research into New Media Technologies*, Vol. 14, 2008, p. 75.

81 J. Brito, 'Hack, Mash & Peer: Crowdsourcing Government Transparency', *Columbia Science and Technology Law Review*, Vol. 9, 2008, p. 19.

82 Braham, 2008.

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on the notion that ‘no one knows everything, everyone knows something’, making the whole greater than the sum of its parts.⁸³ While the business sector was the first to make use of crowdsourcing for commercial needs, the trend is continuously spreading to other areas, such as government transparency⁸⁴ and urban planning procedures. For example, public participation in planning procedures may be beneficial, providing another perspective, aside from that of professional planners. This perspective can result in creative new ideas, unlike strictly professional consideration, and improve the final outcome of the procedure.⁸⁵

In order to conduct a productive process of public participation and create a better understanding of the joint interests of the parties, there is a need for equality between the public and the administration. Online platforms provide the anonymity, availability and accessibility necessary, while the interactivity of the platform enables exchange of information and dialogue in case of hierarchic gaps between the parties, while avoiding barriers of inter-organizational politics and conflict avoidance.⁸⁶ These advantages provide an opportunity to share information and mitigate the imbalance of power between participants and organization. Additionally, an online process of discussion can encourage the participation of more passive members of the public, who would not otherwise participate. Online public participation allows members of the organization or community to actively partake in the decision-making process and make constructive suggestions and review existing ones,⁸⁷ while having a chance to be heard.

With respect to the kibbutz society, online crowdsourcing is a remarkably beneficial mechanism, particularly in a process of decision-making concerning the core issues of community living. One fundamental problem of decision-making in the kibbutz is the low rate of public participation, which is limited to the final decision and leaves little room for discussion. In effect, decisions are made by a small group of members in positions of power, in cooperation with external advisors, without public involvement in the process. This, in turn, leads to both frustration and apathy. Facilitating public discussion using an online platform has the potential to remove these barriers to public participation, by making available information and records regarding the actions and decisions of community authorities, as well as relevant information relating to the matter in question. Information availability will enable members to form an informed opinion, present suggestions for improvement, prevent misconduct and increase transparency.⁸⁸ Additionally, the use of crowdsourcing creates a larger pool of ideas, allowing for creative ideas that otherwise may not have been heard.

The ongoing change in lifestyle in the kibbutz society is a process of extreme internal and ideological shift, which is, in a way, dictated by the kibbutz leadership. In many cases, the only dialogue in the process comes down to attempts by

83 *Id.*

84 Brito, 2008.

85 D.C. Brabham, ‘CrowdSourcing the Public Participation Process for Planning Projects’, *Planning Theory*, Vol. 8, 2009, p. 242.

86 *Id.*

87 *Id.*, p. 254.

88 Brabham, 2008.

leadership to gather a voting majority, with little wiggle room for members and limited scope for new suggestions. Furthermore, each community has its own social structure and economic resources. The members are the driving force behind the system; they live in it and shape it, making their participation and the process of change invaluable.

Public participation is moderately practised in community mediation procedures, yet it does not make use of the easily available online technology and its advantages. An internal discussion system, such as an Internet forum or even a Facebook group, can provide a space for discussion and deliberation and cooperative decision-making. Information and documents can be made easily available, and debatable issues can be polled to encourage an active community discourse. Finally, and perhaps most importantly, the inclusion of members in the decision-making process has the potential to mitigate the sense of frustration and dismay and prevent its escalation into a legal dispute.

6 Online Dispute Resolution in the Kibbutz Society: Limitations, Advantages and Opportunities

ODR systems have been operating successfully for years in a wide spectrum of uses and legal areas. The knowledge and experience in the field of ODR can be used to implement technology as another aspect of dispute resolution in non-commercial settings. Is there a need and possibility to implement ODR in the kibbutz society? What are its limitations, and what new opportunities does it offer?

6.1 *Enforcement*

In recent years, the lack of efficient enforcement has become a severe problem in the kibbutz society. When a member of the community disregards board decisions or acts against them in various ways such as trespassing or committing breach of agreement, community authorities have a limited scope of sanctions, and even that is not commonly exercised. In effect, community authorities are unable to enforce their own decisions and the kibbutz by-laws or to implement policy. An additional problem is selective enforcement, as the community lacks a clear and unified policy, and enforcement depends on the identity and social status of its subject.⁸⁹

As far as ODR is concerned, the lack of effective enforcement has several implications. First, with regard to monetary disputes, the use of an 'electronic wallet', an internal debit system common in most communities, enables enforcement and collection of damages or rewards in accordance with the kibbutz by-laws. Second, in many disputes, offline or online, the practising party is the kibbutz itself, which tends to comply with the results of the dispute resolution procedure. Finally, ODR procedures are based on consent. Both arbitration and mediation require the consent of the parties to the process and its results, unlike the unilateralist nature of the by-laws or the law. Considering this consent, it is more

89 Interview with Yossi Halabi, 2009.

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likely that parties will choose to comply with a procedure they agreed to, based on their common interests. This is especially relevant in interest-based mediation procedures, where the result is not dictated by a third party, such as an arbitrator or a judge. Based on past experience, in these cases, parties tend to willingly comply with the result of the procedure.⁹⁰ It seems that the issue of enforcement presents no particular limitation to ODR systems. Moreover, since such a system is based on consensual agreement, it can improve on the current level of enforcement and compliance.

6.2 *Anonymity, Privacy and Trust*

The social system of the kibbutz is delicate and complex. Therefore, parties to a conflict within the community are most likely to avoid a public dispute. To create a useful and practical ODR mechanism, the system must be discreet and secured at least to the same degree of offline systems, if not more. Privacy concerns may deter members from using an ODR system, for fear of leaking information.⁹¹ Additionally, conducting an online procedure in writing creates additional documentation available online. Another concern is the protection of anonymity in case of complaints against office holders or members in positions of power. These concerns, while valid, are not justified. First, offline arbitration and mediation procedures are equally documented in writing, with the difference being the online availability of documentation. Furthermore, unlike offline documentation, online systems can easily limit and monitor the availability of documentation, and minimize the exposure of case materials. Additionally, the system can use advanced technologies of encryption and data security to protect the parties' identity and privacy. Concerns of anonymity are further addressed by conducting a procedure in writing, which prevents bias and distinction based on age, gender or education, making it easier to conceal the identity of parties, if necessary.⁹² External service providers can be used for this purpose, to avoid the risk of breach in the internal network.

Finally, to gain the trust of kibbutz members, the system must create a safe and positive user experience. Most people find it hard to trust processes and systems that they do not understand,⁹³ an assumption that is all the more relevant in respect of older members, who are less technology savvy and have a suspicion towards innovation in general. Simple and clear instructions, and guidance, can improve members' willingness to use ODR procedures and alleviate privacy concerns. As more communities and members use ODR procedures, the system will be better customized to the unique needs of the kibbutz society, and willingness to incorporate these procedures will increase, creating a network effect.

90 Rabinovich-Einy, 2002.

91 *Id.*

92 *Id.*

93 C. Rule & L. Friedberg, 'The Appropriate Role of Dispute Resolution in Building Trust Online', *Artificial Intelligence and Law*, Vol. 13, No. 2, 2005, p. 200.

6.3 *Why Choose Online Dispute Resolution?*

The kibbutz society welcomes a variety of dispute resolution mechanisms, be it internal hearings, arbitration, mediation and, to a certain extent, litigation. However, even within the existing framework, many problems remain unanswered, such as enforcement, conflict avoidance, failure to avoid litigation in highly emotional cases and lack of knowledge and expertise of the court. Additionally, an atmosphere of conflict creates tensions in the community, leading both to apathy and disengagement, which are not taken into account in the existing dispute resolution framework.

An ODR system, such as the application suggested above, can provide a complementary layer to the existing system. ODR is time and cost efficient, enables the system to handle a larger volume of cases without the direct interference of community authorities and provides an alternative where traditional disputes resolution often fails. Furthermore, the consensual basis for most ODR systems leads to greater cooperation and compliance and, therefore, more effective enforcement. ODR further provides the necessary privacy and anonymity while allowing for an open public discourse, enriching community life and welcoming new solutions offered by community members. Finally, all ODR systems reviewed here are existing, viable, successful mechanisms for dispute resolution, which can be easily tailored to the needs of the kibbutz community. ODR offers accessible, available and efficient systems, which can be incorporated within the current dispute resolution framework.

7 Conclusion

The communal living element of the kibbutz society is the starting point of this article. This delicate social balance is the underlying principle of all dispute resolution systems, which seek to preserve it. For its members, the kibbutz is a multi-layered entity: a legal corporation, a workplace, a home and a part of their identity. The combination of the economic foundation, ideology and education is what shapes the relationships between members in the community and wields great influence on the nature of disputes.

This article makes a general distinction between two kinds of disputes in the kibbutz: private disputes between members and the kibbutz, mostly regarding economic rights and property, and public conflicts that relate to public decision-making and community life. It then goes on to review the interaction between the existing dispute resolution mechanisms; any dispute or conflict in the kibbutz must first be handled by internal community institutions, such as the community board or committee. Only in cases where the dispute cannot be resolved internally is it transferred to an alternative dispute resolution procedure, most commonly the default option of arbitration as prescribed by law or the kibbutz by-laws, or filed in court.

Review of the common disputes and the existing dispute resolution system shows that many issues and difficulties are not addressed in the current framework. In particular, the enforceability of decisions is inefficient, creating distrust

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and damaging the social balance. Additionally, arbitration and mediation procedures are ill-equipped to handle the highly emotional nature of certain disputes, which often end up in court. The court itself is lacking in expertise and sensitivity to the special circumstances of life in a kibbutz community, which leads to suboptimal judgments. Finally, the existing decision-making process does not meet the needs of the community. It lacks public involvement and creates an atmosphere of tension, frustration, hostility and distrust. The direct result is apathy of community members, who avoid participating in the decision-making process, which affects the entire community. This in turn increases animosity and leads to more litigation, encountering once again the shortcomings of the court.

Against this scenario, ODR offers new solutions to existing dispute resolution limitations, as a complementary element of a comprehensive dispute resolution system. First, as the practice of arbitration in the kibbutz society is highly developed, an *online arbitration* system can be suggested, based on the successful Benoam model used for insurance claims, enabling quick and efficient resolution of property disputes, based on mutual agreement. Another application of ODR is *online mediation*, which can assist in handling a large volume of small claims disputes or dismantle emotionally charged disputes that would otherwise be filed in court. Another option is an *online complaint system* to resolve organizational ethics and workplace disputes, as well as increase transparency while still protecting complainants' anonymity and social standing. Finally, with regard to public disputes, *online crowdsourcing* can be used to engage community members and encourage participation in the decision-making process and improve the final result of the procedure.

From a practical perspective, there is little difficulty in adapting and implementing ODR systems in the kibbutz society. The backbone technology, as well as the specific applications, already exist, and need but minor adjustments to fit the needs of the community. Privacy concerns have proved to be unfounded, with a developed technological ability to protect users' identity and data. Finally, enforcement concerns are mitigated, as ODR procedures are based on consent, which is likely to encourage parties' compliance.

An ODR system is the perfect fit for the kibbutz. It need not replace the existing framework, but can operate as an integrative mechanism, customized to face the unique challenges of disputes in the kibbutz society. However, ODR in the kibbutz society is a two-way street. While the kibbutz society undoubtedly benefits from the advantages of this coupling, the field of ODR gains a hold over new uncharted territories, new relevance and broader scope of practice. ODR was born out of the need to settle online disputes, but in order to evolve it can, and should, be successfully adapted to new areas and types of disputes, as demonstrated in this article. The advantages of ODR should not be limited to a small familiar community like the kibbutz, nor to the ambiguous, impersonal Internet society. As technology plays an ever-growing role in our lives, there is a place for implementing ODR across the full spectrum of human interaction.