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LIKE YEAST THAT LEAVENS THE DOUGH? COMMUNITY MEDIATION AS LOCAL INFRASTRUCTURE FOR PEACE IN NEPAL

JEANNINE SUURMOND AND
PRAKASH MANI SHARMA

Keywords: Community mediation; Nepal; Infrastructure for Peace (I4P); peace building; dispute resolution

Introduction

Internationally, discussions between academics, practitioners, policy makers and others about the concept of Infrastructure for Peace (I4P) are ongoing. There seems to be general agreement that I4P can consist of different components (such as ministries for peace, local peace committees and early warning platforms), which, through dialogue and problem solving, aim to contribute to peacebuilding and conflict prevention in a society. Yet some authors describe I4P in broad terms (Kumar 2011; Van Tongeren 2011), while others attempt to delineate the boundaries of the concept, for example by relating I4P to national-level peace processes and, more explicitly, to government involvement (Hopp-Nishanka 2012).

This briefing discusses community mediation in Nepal. Depending on how I4P is understood, community mediation might be considered as an I4P in itself, as a component of it or as falling outside the scope of the concept.

Community mediation is one of the informal mechanisms through which disputes are settled in Nepal. It complements

the formal justice system and quasi-judicial bodies, as well as traditional justice mechanisms. Regardless of variations in style, community mediation generally is a process through which impartial mediators help disputing parties improve their relations and reach a mutually satisfactory agreement. In Nepal, mediators tend to be recruited from the diverse social groups that make up a community. Because multiple mediators work together on a case, they can reflect *and* transcend community fault lines of gender, caste, ethnicity and religion, a point recognised by John Paul Lederach in reference to the community mediation programme coordinated by The Asia Foundation (TAF): '[Mediators function like] "critical yeast" – a group of improbable relationships crossing social divides, just large enough in number and unique enough in its formation to create a sustainable, new space of interaction' (Lederach and Thapa 2012, 11).

After providing some political and juridical context, the briefing will describe community mediation as practiced in Nepal in more detail and conclude with several observations about community mediation as a potential component of a national infrastructure for peace.

Political and Juridical Context

Ten years of violent conflict between the Communist Party of Nepal (Maoist) and the government formally came to an end with the signing of the Comprehensive Peace Agreement (CPA) in 2006. The violence between 1996 and 2006 left more than 13,000 people dead and thousands of others displaced. Since the conclusion of the CPA, Nepal has seen the abolition of its monarchy, a new interim constitution, six different governments, the rise of various ethnic identity movements and four extensions of the mandate of its constituent assembly before its final dissolution in May 2012, effectively stalling the constitution-writing process. At the time of writing, the main political

parties are negotiating a way out of the impasse.

The formal justice bodies in Nepal are the Supreme Court, the appeal courts and the district courts (75 in total). Quasi-judicial bodies include the district administration offices, the village development committees, municipal offices, and local police offices. Their inaccessibility, complicated legal procedures and the poor quality of services are among some of the most frequently mentioned complaints (DFID, DanidaHUGOU and UNCT 2011; USAID 2009). Another challenge is the over-burdening of the courts; in March 2012, in the Supreme Court alone, 10,420 cases were pending.

Complementing or replacing the formal system are the indigenously evolved informal justice mechanisms present in most communities, like *mukhiya*, *anjuman* or *pancha bhaladmi*.¹ Typically combining elements of dialogue facilitation, arbitration, and mediation, they tend to be easily accessible and cost efficient, and produce prompt results. Yet they too have received criticism for being biased and corrupt, breaching human rights norms and perpetuating social inequalities (Pro Public 2012; Chhetri and Kattel 2004). Other informal justice mechanisms are the community mediation programmes operating with various degrees of success.

The most important legal provisions relating to community mediation are the Mediation Act of 2011, the district development committee (DDC) and village development committee (VDC) guidelines of 2010, and the Local Self-governance Act (LSGA) of 1999. The Mediation Act, although not yet implemented, aims to recognise court-referred mediation, local government mediation and community mediation as legal ways of resolving disputes. The DDC and VDC guidelines encourage local government bodies to provide grants to community mediation centres. The LSGA created an institutional basis for settling disputes at the local level

by decentralising the right to adjudicate (and later also to mediate) to the VDCs and the municipalities. In their efforts to support the government in the full implementation of the LSGA,² local NGOs and donors introduced components of social justice and human rights in the dispute resolution processes, for example as part of professional trainings for mediators.

Community Mediation in Nepal

Building on Nepal's age-old tradition of resolving conflicts via dialogue, community mediation developed and expanded throughout the last 16 years. Today, various community mediation programmes are present in about 50 of the 75 districts.³ The overarching goal of community mediation is to offer access to justice to those otherwise excluded from the formal system. The programmes seek to promote human rights norms and empower individuals by training them as mediators. Generally the approach has been that local NGOs establish mediation centres at the village and district levels, with financial and technical support of donors. Among the community mediation programmes running are: the paralegal committees set up by the United Nations Development Programme (UNDP) and the United Nations Children's Fund; the Madhesi mediation committees supported by the United Kingdom's Department for International Development (DFID); the community mediation centres established by the Community Mediation Capacity for Peaceful and Harmonious Society Project/Japan International Cooperation Agency (COMCAP/JICA) or supported by the Danish International Development Assistance/Human Rights and Good Governance Unit (Danida-HUGOU); and the community mediation centres set up by Pro Public and other NGOs in cooperation with TAF.⁴ The nature of the mediation tends to be programme-specific. It can represent a rights-based approach, as in the paralegal committees, involve a group, as in the

Madhesi mediation, or resemble the interest-based style, as in the programmes supported by TAF, COMCAP/JICA and DanidaHUGOU.

Common to these programmes are their level and reach. Community mediation processes tend to happen at the grassroots level, addressing disputes between neighbours, family members and relatives. While community mediation might deal with practical consequences of the peace process (such as land disputes resulting from the failure of the political parties to endorse the land reforms stipulated in the CPA), usually the main focus is on local conflicts. Typical cases relate to land boundaries, mistreatment and assault, discrimination, money lending and the destruction of crops. Local government officials might at times be involved, but usually trained mediators guide the process.

While the availability of research on the long-term impact of the community mediation programmes is limited, and a thorough discussion of their successes and challenges is beyond the scope of this briefing, several observations can nevertheless be made. The overall dispute settlement success rate seems to be high – generally around or above 70%. For instance, under the Madhesi community mediation programme implemented by the Human Rights and Community Development Academy Nepal and local NGOs and supported by DFID in six Terai districts, 2,355 cases were registered in the period 2008-2010, of which 69% were successfully mediated (Rai 2010). The community mediation centres set up over the past three years by the Centre for Legal Research and Resources Development in four districts with the support of the Access to Justice Project of UNDP had registered 3,488 cases by March 2012, of which 70% were resolved (Bista 2012). By September 2011, in TAF's community mediation network, 19,144 cases had been registered in altogether 12 districts. Of these, 86% were

successfully settled (Lederach and Thapa 2012).

Some programmes have been criticised for being discriminatory, reinforcing existing hierarchies or being influenced by political parties (Coyle and Dalrymple 2011). When tensions are exacerbated, discrimination is perpetuated and resources are wasted, the negative impact of community mediation on the development of a community might be seen. Additional concerns relate to the sustainability of mediation services and the often limited coordination with the formal justice sector (Bista 2012; DFID, DanidaHUGOU, and UNCT 2011).

On the other hand, high satisfaction among users due to the free-of-cost services and fair, efficient, independent and neutral processes is widely reported (Bista 2012; COMCAP 2012; Coyle and Dalrymple 2011). In many cases, the community mediation centres are receiving logistical and/or financial support from the VDCs, or have been 'adopted' by them, which allows the centres to virtually run without any donor involvement. Most of the Madhesi community mediation centres, for example, had received support from the VDCs through funds provided by the central government in 2010. Practically all community mediation centres established by Pro Public/TAF are now independently managed by the VDCs, although in some cases support is still provided in the form of training and/or practice-sharing meetings.

The positive impact of community mediation on development might be observed in: the empowerment of women and marginalised groups as they become respected mediators in the village; an increased sense of confidence among villagers in their ability to resolve their own disputes; and the development of increasingly horizontal rather than vertical power relations in the community (Lederach and Thapa 2012; Coyle and Dalrymple 2011; Sharif 2010). Sometimes

community mediation has a direct impact on development, for example when it relieves the burden of quasi-judicial mechanisms. One VDC secretary pointed out that his involvement in the development projects of the village had increased since mediators relieved him of the time-consuming task of resolving local disputes (COMCAP 2012, 5).

Conclusion

Community mediation centres are physical infrastructures run by trained mediators who, through dialogue and mediation, attempt to contribute to peace and social harmony. As the case of Nepal illustrates, community mediation is a potentially powerful way to increase the capacity of communities to resolve their own conflicts in the short term, while challenging existing hierarchies and empowering marginalised groups in the long term. In the ongoing political vacuum and the absence of an effectively functioning judiciary, community mediation can be a relief to villagers engaged in a dispute, who otherwise have few options for redress. Community mediation can be regarded as 'peacebuilding from the bottom-up', for example when it addresses inequality and discrimination, issues that motivated the political conflict in Nepal in 1996 and continue to be pressing.

According to broad definitions of I4P that emphasise dialogue as a means and conflict prevention and peacebuilding as goals, community mediation might therefore be regarded as an I4P or a component of it. Community mediation as it is currently practised in its various forms in Nepal, however, seems to fall outside the scope of definitions that prioritise structural government involvement in an I4P and direct links to the national peace process. In order to determine more conclusively whether community mediation is an I4P or a component of it, a more thorough exploration of the boundaries of the concept is required. Building on the ongoing discussions, relevant questions would concern the

nature and extent of the possible role of government in the various components of I4P, the type of conflicts I4P or its components should address, and the composition and purpose of an I4P at various stages of national conflict, as well as during peacetime.

Awaiting the crystallisation of the concept, and for the reasons mentioned above, it would be advisable to consider community mediation as part of a potential national I4P for Nepal.⁵ Such an I4P could consist of, for example: formal components, including the Ministry of Peace and Reconstruction and the local peace committees; traditional components, such as the indigenous justice mechanisms; and informal components, including community mediation.⁶ Like yeast that leavens the dough, and like mediators who create a new space of interaction, a Nepal Infrastructure for Peace could give rise to something new, today and beyond the national conflict and peace process.

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Endnotes

¹ Coyle and Dalrymple provide the following definitions: *anjuman* is a committee of three men from within the Muslim *samaaj*, or membership-based ethnic society, who are responsible for resolving disputes within the Muslim community; the *mukhiya* system refers to the dispute resolution practices of the Thakali communities of north-central Nepal; and *pancha bhaladmi*, a traditional informal justice system operating in areas of eastern Nepal, are a fixed council of five elders from the community who would form in order to

arbitrate disputes in their community (2011, iv–vi).

² Clauses 33 and 101 relating to mediation have still to be enacted.

³ Based on the February 17, 2009, figures compiled by the Nepal Alternative Dispute Resolution Coordination Group.

⁴ Pro Public became an implementation partner of TAF in 2003. The other partners of TAF are Service to Underprivileged Sectors of Society, the Centre for Legal Research and Resources Development, the Rural Women's Unity and Development Centre and the Institute for Governance and Democracy.

⁵ Pro Public translates I4P as *shantiko laagi purbadhar* in Nepali, which seems to resonate well with local politicians, policy makers, NGO staff and community mediators.

⁶ As suggested by various participants during a meeting on I4P in Nepal, hosted by the government of Nepal and initiated by Pro Public with the support of ZFD/GIZ, in Kathmandu in August 2012, in which representatives of ministries, embassy officials and international donors participated.

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