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[OCCASIONAL PAPER NO. 10, JANUARY 2012]

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Understanding Community Mediation through Action Research

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We started seeing ourselves, those of us who are in and close to the actual mediations, as having resources to contribute to the training, and to see that we ourselves are in the best position to identify our needs, according to the realities of our communities, not according to somebody's view from outside. This was a big change in how we saw ourselves.

—Hari Pandit (Kaski, Nepal).

ABSTRACT

This paper explores the use of participatory action research as a method to deepen the practice of mediation at the village level in rural Nepal. Mediation, initially introduced with a strong Western orientation, has evolved through practice and the response to daily conflict during and after the civil war. At its inception, the program was framed as an "access to justice" initiative. The modalities and decisions by which the mediation centers were established in local communities, and the actual practice of mediators, suggested significant variance from the way both trainers and mediators described their work, and were seen as contributing to wider social transformation in ways that went beyond access to the legal system. Conducted with district and village-level mediators and trainers, the research yielded important insights into how and why mediation practices were effective, and led to significant changes in training materials and approach. Discussion of how participatory action research affected the participants concludes the chapter.

INTRODUCTION

Seated on a bench along the block wall inside the Village Development Center, we watch a panel of three mediators open a dialogue between a husband and wife. Only miles from the Indian border, in a remote area outside the town of Nepalgunj, what initially appears, and would be classified for statistical purposes, as a "marital dispute" slowly peels back the layers of challenges facing poor, rural families and communities in Nepal. Married at a young age, and having their first child within a year, the couple lives with the husband's family. From a lower caste, the wife finds herself at the bottom of the household hierarchy. With little power in her new family and no outside job, her livelihood depends exclusively on her in-laws. The husband dropped out of school at an early age to work as a day laborer. The civil war emerged in Nepal. What few jobs existed disappeared, and the pressure to survive took him to India to work in the fields of another family.

Within months he fell deathly sick. His new family in India gave him care, but pressured him to marry their daughter. With a second marriage came another child. When the husband returned to Nepal after several years, the news leaked out. His young Nepali wife, distraught at the betrayal, but worried even more that she would now be pushed out of the in-laws' home and left destitute, struggled to make sure her son would not lose his legal right to inheritance, nor she her tenuous rights as the daughter-in-law. She brought her situation to the local mediation center.

Now they sit side-by-side, surrounded by numerous family members, listening to three mediators. A few hours later, after much deliberation adeptly facilitated by the mediators, and with an intervention at one point by the husband's father, the couple signs an agreement. The young man listens as his father reprimands him, and the oldest of the mediators, who appears to be a close friend of the father, extols the importance of staying together as a family. Through the agreement, the husband's young son has been legally established in the family inheritance, and the young wife given rights to stay in the house. How she feels about her husband and marriage seems very ambiguous, but she appears relieved that her future and survival have been assured. What will happen with the second family in India is unclear. The young man still has no employment in Nepal.

Questions abound. How did the young woman choose this process? Why is there a panel of three mediators? They are from this community and seem to be known and friends, yet they were quite formal and disciplined in hearing out each person and asking them for their proposed solutions. How did they get chosen for this panel? How did one of them, a former government official, come to sit alongside a fellow mediator from the much lower caste of untouchables? What is their notion of giving advice without imposing solutions? Was this equitable and fair to the young woman? Was justice done, or perhaps better, what level of justice was done? And if she had not had access to the mediators, would this situation have been brought to a court? What would have happened to her and her son? This paper proposes to explore the backdrop to these questions.

Community mediation emerged and developed in Nepal during the past sixteen years. First proposed as a mechanism for access to justice, an alternative for local communities for whom the formal legal system could be prohibitively costly and unmanageable, mediation focused on providing a different venue for addressing disputes. The early model of training and mediation, however, arrived with a hybrid mix of international conceptions of effective practice and a Nepali structure mandated by a government act. International supporters and Nepali NGOs characterized the mediation program as an "interest-based" approach providing "neutral" facilitators who help disputants reach their own solutions, but while international resource people using professional Nepali educators provided the mediation training, the actual implementation and practice evolved at the local ward level. This evolution incorporated important Nepali language and cultural understandings into the practice of mediation. While community mediation today is quite distinct from the older "elders councils," it also seems different in real life applications from the descriptions first offered by professional mediators and NGOs.

In 2007, some five years after the initiation of community mediation, five Nepali NGOs supporting those efforts identified the need for research in three areas. First, the time had come to revise the training program and materials to reflect the experience, lessons and practices that had emerged in local settings and develop a corps of Nepali trainers with direct experience in mediation. It was no longer viable to depend on outside resources and the materials. But how to get from the existing training program to something created by and for Nepalis? Second, by all accounts—in fact literally by counting—mediation had been shown to be a success. But beyond the numbers showing favorable settlement

rates, little was known. Having emerged during a time of war, was community mediation simply an "access to justice" program, or was it contributing to wider social change? In what ways did community mediation address justice and harmony? Third, the actual practice of mediation seemed to have evolved some uniquely Nepali characteristics that were contributing to its success. Beyond the formal description of mediation, how was it actually being practiced in rural Nepal?

A research proposal emerged to address these questions and challenges through a process of participatory action research. This paper will describe the process by which participatory action research was applied by local mediators and mediation program coordinators. It will also examine some of the findings and results of the research process, and outline the initial reflections of participants on the impact that participatory action research had on them. We start with a review of community mediation in Nepal.

HISTORY OF COMMUNITY MEDIATION IN NEPAL

Third party forms of mediation have long been practiced in Nepal. This can be traced as far back as descriptions and advice found in ancient Hindu religious books. *Manusmriti*—the code given by Manu as the basis of Hindu law—states that mediation was a good practice of state authorities. The idea of facilitated dialogue as a response to conflicts, often understood in simple terms and provided by wise people whose impartiality and decency were considered central, has been an integral part of Nepali social tradition, and various of these traditional forms can still be found today.

In Nepal, with its very diverse ethnic and linguistic population, different regions and groups have their own unique and indigenously evolved customs for resolving disputes. For example, Thakalis, Magars and Tharus have traditional institutions that continue to function, such as heads of villages, or (ethnic) community organizations such as *mukhiya, mahato* or *badghar*. These tend to offer a form of facilitation that permits conflicts to be more openly discussed, but that then may take the form of arbitration. Mediation by local notables, known as *bhaladmi* or *pancha bhaladmi,* is also prevalent. These institutions combine mediation, arbitration and even more formal adjudication. In the past, the state also provided some local services through institutions like *subbas* and *jimmuwal* that function something like local authorities. Use of social pressure and even force was not uncommon, as for example in the disputes settled by *subbas*, which were tasked by the state with collecting revenue, maintaining law and order, and settling disputes within their territorial jurisdictions. These were mostly abolished in the 1960s. Conflicts often were and still are presented to the Village Development Committees (and previously Village Panchayat or elders councils), or to locally based organizations such as women's groups or associations of water users or forest users.

For poor and rural Nepalis, the formal judicial system is of little value and largely inaccessible for addressing their day-to-day issues. For these villagers, access requires time, and comes with the cost of travel and the need to hire professionals to help them. In addition, they will often then face district courts notorious for inefficiency, corruption and bias. The problem is especially acute for women who have family obligations or

social expectations that keep them close to home. In recent years, the effects of the decade-long civil war have further fragmented Nepali society, creating significant demographic shifts accelerated by impunity and insecurity. In many areas, village populations have drastically declined as internally displaced persons have settled around municipal centers.

The program and partners involved in this study emerged from an initiative started by The Asia Foundation in 1993 through USAID/Nepal's Strengthen Democratic Institutions in Nepal project. In 1994, Dr. Paul F. Kaplan, a social anthropologist supported by the Foundation, conducted a community mediation study in 12 districts across Nepal.[i] The findings indicated that people preferred to resolve conflicts at the community level, that many people were not aware of the law or their legal rights, and that many did not know where or how to seek justice or solutions to their disputes. The Kaplan study also showed that traditional dispute resolution mechanisms were breaking down in districts lying in the mid-hills and Terai (the plains area bordering India).

In 1995, based on the findings of the Kaplan study, a pilot community mediation project was conducted in six districts. There were two major components: (1) to provide basic legal and human rights awareness to villages, and (2) to form informal mediation groups or train those already existing in order to reestablish traditional mediation mechanisms for alternative dispute resolution at the community level. By 1996, The Asia Foundation and three Nepali NGO partners had redesigned the mediation component of the program in response to evaluations and feedback from the pilot project. These early efforts provided an important foundation on which to build when the Local Self-Governance Act (LSGA) was promulgated in 1999. The LSGA called for dispute resolution by Village Development Committees (VDCs) and municipalities, the lowest tiers of local government. The LSGA originally framed the process of dispute resolution as one of arbitration, but in 2001, based in part on exposure to programs in Sri Lanka and the Philippines, the government committed in principle to amend the LSGA to provide for local mediation as well as arbitration.

In early 2002, the Foundation supported the Ministry of Local Development in preparing comprehensive plans for a pilot program of local-level dispute resolution under the LSGA. In September 2002, it funded initial implementation of these plans through a grant to the Institute of Governance and Development (IGD) made possible through a grant from the Hewlett Foundation and The Asia Foundation's General Grant funds. Later that year, USAID support provided for the expansion of these activities to eight additional districts, creating a base of more than 75 village-level programs in eleven districts. The program was envisioned to increase access to justice for rural communities. The Asia Foundation, in cooperation with five Nepali NGOs, hired U.S.-based international consultants to assist in preparing training materials and to conduct training of master trainers to launch community mediation across the 11 districts, a number which subsequently grew to 14.

PARTICIPATORY ACTION RESEARCH PROJECT

To date, with the primary emphasis on access to justice, community mediation programs have focused their research efforts primarily on collecting data showing numbers, cases and statistics of settlement. For example, by September 2011, in The Asia Foundation-coordinated community mediation network, 19,144 applications for mediation services had been registered with the partners in the 12 districts. Of these, 16,473 cases were successfully settled, 1,863 cases remained pending, and 808 cases were unsettled.

From these numbers, it seems quite clear that with systematic training the community mediation program has been able to provide important services. Requests for mediation have increased in number each year, and the process certainly has shown the capacity to resolve disputes. However, as the program solidified over several years of experience, questions emerged about the actual practice of mediation, how it was understood and conducted, and the wider impact it was having on local communities. In 2007, as part of the bridge funding provided by the McConnell Foundation, The Asia Foundation, and its five Nepali partners initiated a three-year participatory action research project.

One starting point for the action research was a significant observation. The training of community mediators used an "interest-based" model of dispute engagement facilitated by a panel of three mediators, a design laid out in the LSGA. While great care was taken to develop the training modules with culturally appropriate delivery methods and easily accessible Nepali-language materials, the basic model incorporated concepts, assumptions and a structure borrowed from community mediation practices in the United States. In face-to-face meetings, novice mediators were taught how to facilitate a session through various phases, including introducing ground rules, storytelling, framing issues, generating options and writing agreements. Mediators were taught communication skills, listening, reframing, and question formation. Key concepts included neutrality, impartiality and the discipline to refrain from simply offering solutions. When translated into Nepali for training purposes, these ideas came to constitute a specialized language unfamiliar to local villagers. The master trainers were drawn from professional educators in Nepal who commonly provide capacity-building in a variety of local social change endeavors, from health to agriculture. The trainers were taught the model and content of mediation, but they were not themselves experienced mediators, nor did they actually do any local mediation.

After the program was well under way, close observation of actual cases and the conduct and behavior of mediators suggested that while the training materials provided a structure, language and framework for agency, significant indigenous elements were emerging in actual practice. The research proposal suggested that something more than monitoring, evaluation and tracking settlement statistics could be useful. More care was needed in exploring how mediation was actually practiced, in order to identify key elements contributing to success that could inform the training of mediators in the future. The mediation training to date had not incorporated in significant ways the experience gained from practice. The proposed action research would seek to understand what was

Nepali about the way mediation had evolved in practice from original training and materials that were based on approaches from *outside* Nepal.

The three words "Participatory Action Research" provide the foundation of this method. *Participatory* refers to the fact that those delivering services or engaged in the action directly participate in developing and conducting the research. In this respect it has elements resembling the methods of participant observation. *Action* suggests that people continue to engage in the delivery as "activists" with an interest in promoting social change. *Research* focuses on methods, tools and intentional reflection that are developed to systematically study the proposed activities, actions and programs.

Action research approaches learning and inquiry by providing tools for local participants and activists to engage directly in the development of theory related to their work and goals. It has an explicit orientation toward values-based social change that links problem identification, planning, action, and evaluation with the people directly affected in local settings, and increases their capacity to more systematically study and improve their programmatic endeavors.

As a *participatory* action *research* approach, the early process involved the formation of a Nepali team of action researchers. These were drawn from a combination of district-level mediation program coordinators, trainers, mediators themselves, and a select number of national NGO staff overseeing community mediation programs. The team eventually numbered 20 people, all of whom had direct access to ongoing mediation practice at local levels and had been involved with the programs for several years. None of them, however, had ever been engaged as researchers, and this fact necessitated a process to develop their capacity to understand the approach, work with the necessary tools, and participate in establishing and sharpening the research agenda itself — deciding what would be most useful to know and investigate. In iterative sessions over several years, the research team identified the primary areas of inquiry that the action research would focus on. As the process evolved, additional inquiries continued to emerge.

RESEARCH INQUIRIES

At the outset, the action research team agreed that something "Nepali" had emerged in the practice of mediation at the village level. To put this another way, the mediation practice at the level of local conflict had unfolded in ways that appeared different than suggested by the language in the training materials, language which was commonly used by national and district coordinators to describe the mediation process to others. Their descriptions relied heavily on the technical professional language found in the training materials. This was particularly true when they explained community mediation in English to the donor community. The action researchers agreed that this language was not particularly common or idiomatic in local communities, suggesting that something more in tune with the culture and patterns of the local setting was needed. But what was this "something Nepali" about the way mediation functioned in the local villages? How did it

work? And how might that Nepali imagination and genius find its way back into the training process and materials?

Next, the team had the impression that mediation was producing effects and constructive change significantly beyond the original purpose of providing "access to justice." Most program reviews concentrated on counting the number of cases and calculating the agreement rate, but they provided little more than anecdotal evidence about broader program impact within the local communities. Those close to the program felt that the presence of local mediation programs in 14 districts, growing to include more than 4,700 mediators, was contributing to a range of community changes not captured in the published statistical results. Some of the most significant indications of transformation were unrelated to how local people interacted with or gained access to the formal justice system. In fact, for the most part, community mediation had very little contact with any aspect of the formal justice system. What were the deeper changes emerging from local mediation? What kind of transformation was observed and documented by people whose primary presence for the past four years had been in the local community?

Lastly, key leaders in the Nepali national NGOs supporting these programs presented the case that mediation as a dialogue- and interest-based approach to local conflict not only provided greater justice, it also promoted the value of social harmony during a time of great polarization, when many local villages were affected by the violence of the 10-year civil war. But, as noted by the action research team, there can be strong tension, if not outright contradiction, between the ideals of justice and harmony. Justice, when it promotes social change in the patterns of exclusion and the nurturing of human rights at local levels, may in fact provoke disharmony. Community mediation claimed to work on both these values. Here key questions emerged in the research design: How do local mediators understand these concepts? How do justice and harmony emerge or submerge in actual practice? Can village-level mediation hold both together?

METHODOLOGY

The 20 members of the action research team met every few months over a three-year period. They came from ten different districts across Nepal: Banke, Chitwan, Dahldedura, Dhanusa, Doti, Kailali, Kaski, Nawalparasi, Sarlahi, and Tanahu. The authors of this essay served as the facilitators for the workshop encounters. Early in the process, the workshops provided a range of inputs on action research; a framework based on four lenses of conflict transformation—personal, relational, structural and cultural (Lederach, 2003)—to reorient the exploration of change beyond mere case statistics; and some simple tools and assignments to explore the primary research questions. These included journals, careful observation of case development and mediation sessions, interviews with mediators and disputants, and exploration of local language and the framing of key concepts. As participant-observers the team also contributed their own understandings and knowledge, which for many included the experience of more than five years of work with local mediation.

The research had a strong learning focus: to understand how mediation was actually practiced in local settings. As objectively as possible the researchers sought to *describe* what mediators and mediation centers do (not what the training manual said they do), and to suggest how this understanding of actual practice could inform training and capacity-building going forward. The intent of "learning" was not so much to document these findings for academic publication or a program report. The learning in question was by and for the people who were themselves engaged in the local practice of mediation, and who hoped they could become the educators and trainers for future generations doing this work. To date, most if not all of the mediation trainers in Nepal have not themselves been practicing mediators, while those most experienced in conducting mediation have not been trainers. This action research approach proposed to change that situation. The practice of local mediation and the experience gained would be better understood and would inform and frame the training. The broader purpose was to develop a capacity for reflection based on experience, and training based on grounded practice.

There is an inherent tension in this approach, as in most action research. On the one hand, the researchers are themselves close to, if not engaged in, the practice they wish to study. Their knowledge and understanding form a significant part of their exploration of the phenomena under investigation. On the other hand, their proximity to the practice and phenomena, and their preferred and natural way of describing what they observe, can easily create blinders or lead to misinterpretations of what they see. Using an iterative process of repeated sessions researchers visited and revisited their findings, descriptions and ideas. By cross-referencing the initial ideas with different teams of researchers including both returning to local communities and in-depth discussions and explorations in the joint sessions provided validation of key findings and concepts as used in local settings. In action research validation rises from a dialogical approach that anchors emergent theory in careful exploration of peoples' local experiences and meaning structures (See Van der Riet, Mary. Participatory Research and the Philosophy of Social Science: Beyond the Moral Imperative. *Qualitative Inquiry* 1077-8004 June 2008, v14 i4, p546-565.)

In the case of local mediation, one of the biggest challenges was to move beyond the technical jargon used in the training, which had become commonplace for the NGO staff and district coordinators. Instead, the research focused on how language-in-use and practice-*in-situ* were actually operating. Discussions were often long. Debates were arduous and animated over the meanings and uses of terms, ideas and practices. By the end of the three years, the learning process had become focused on developing a revised, Nepali-language manual written by the mediators themselves. While the basic structure and many ideas and terms were kept from earlier written materials, the revision incorporated the findings of the action research, first in the form of a book, and then in the development of locally accessible and appropriate materials, including posters with images of key ideas, short videos illustrating the process, and a more simplified and expanded training manual.

KEY FINDINGS FROM ACTION RESEARCH

Many insights and findings that emerged in the three-year process made their way into the mediation training manual and materials, new approaches to training itself, and the overall approach to establishing and delivering community mediation. For the purpose of this essay, a few illustrative examples will focus on (1) changes in the community created by mediation; (2) the importance of how mediation is established and structured; (3) the relevance of local language, and (4) the tension and potential in justice and harmony.

Changes Created By Mediation—To move beyond the basic statistical data of settlements, the action research team wanted to explore how mediation was creating change in the community. Conflict transformation (Lederach, 1999) provided the orienting framework. This approach emphasizes developing "lenses" that focus on four different kinds of change commonly produced by conflict, and that responses to conflict seek to affect: personal change, relational change, structural change and cultural change. The local researchers approached their own communities, their mediator colleagues and various disputants, making a range of inquiries to probe for change in each of these categories. In the first three categories, early evidence suggests that the program has had significant impact:

- Mediators consistently reported personal changes, including a significant increase in their own self-esteem, in their capacity to participate actively in community processes and wider group decisions, and in their confidence in providing facilitation and leadership in local conflicts. Women and low-caste participants in particular described an important increase in self-esteem and empowerment, often described with the phrase, "We feel confident to speak out and be leaders." This was found consistently across the 10 districts being researched. Mediators and disputants also reported an increased sense of confidence in understanding conflict and how local communities can respond to disputes. People reported they no longer felt as isolated or fearful of uncontrolled escalation of disputes. Having tools to analyze and respond to conflict diminished the feeling of helplessness many would typically have experienced prior to going through a mediation process.

- Relational changes were found primarily among those people who formed the mediation groups. The local mediation groups reflected the diversity within the community. Receiving training together and then functioning as mediation teams changed team members' views of each other and the nature of their relationships. They reported increased respect for one another across caste and economic lines, and increased participation in community processes by the historically less-privileged members. Many reported they now had more contact, communication and cooperation in caste, class and gender relations in the community.

- The researchers also noted evidence that the mediation centers were having some impact on local structures and institutions. For example, VDC leaders began to refer cases for mediation that might previously have remained unresolved or

would have required a police response, and in some districts they provided houses for mediation centers, land, and even ponds for endowments. Early evidence was found suggesting that where careful relationships were cultivated, police supported the mediation process and encouraged dialogue rather than punishment.

The action research suggests that mediation has *not* made a significant contribution to the formal justice system. This seems to be due primarily to the fact that most rural villages have very little connection or access to the formal system. However, the mediation program seems to have significantly contributed to the transformation of social relations and patterns of exclusion within the communities where the Centers have found their niche, and where the mediators reflect the demographic make-up of the community.

This initial research seems to suggest that community mediation provides much more than just the resolution of disputes. Changing "lenses," from a narrow view of "resolving cases" and "access to justice" to a wider view encompassing broader affects on the local community, shows that when mediation is available as a response to conflict, and when it is conducted using local resources, it changes both individuals and historic patterns of exclusion. In essence, mediation programs create a new kind of space for cooperation within the local community. The process of establishing the mediation program, and the caliber of those who come together from the community to form the mediation group, seem to provide a basis for wider social change that includes, but is not limited to, providing a service for handling disputes in a new way.

Mediation Structure—The focus on changes beyond the simple resolution of disputes opened an inquiry by the researchers into how and why the *structure* of mediation programs and the *delivery* of the process-as-practiced contributed to the four kinds of change. To understand the key findings, it is useful to describe in several aspects how mediation was developed and services were delivered in local communities.

The starting point for building a mediation program was the structure of the Village Development Committees, which in turn are based on the nine wards. The ward represents the most local level of organized governance in Nepal, and in rural areas, where mediation began, the ward is often composed of extended families. As established by the LSGA, local mediation was to be conducted by a panel of three mediators. The authors of the LSGA conceived of mediation as a facilitation that could potentially require an arbitrated solution if the dispute could not be resolved. Three people, it was reasoned, would yield a simple majority in cases where the panel members could not agree. Those recruiting candidates for the mediation training decided to pick three people from each ward, creating a pool of 27 people to form the local mediation center. In part, this number was chosen to create a large enough pool of people to survive possible attrition. Care was taken to identify and consult respected people in each ward, but also to include people reflecting the diversity of caste, class and gender across the VDC. It is useful to note that by the choice of a large pool reflective of the demographics of the community, a group of local citizens was recruited into a common VDC-level project that involved new relationships and different ways of relating. By this very composition, the ward-based group may account for the relational and structural changes found by the

researchers in the local community, changes markedly in contrast with the significant historic divisions and forms of exclusion in rural Nepal.

Mediation offers a facilitated dispute resolution process. In the Nepali community, delivering this program involves several key components, the most important of which is the establishment of a three-member panel for each case. The most commonly reported scenario for creating this panel begins when one party—sometimes an individual, but often a family or an extended family—brings a dispute to the attention of the mediation program and seeks help and remedy. The program's services and procedure are described, and those bringing the case, if they wish to continue, are shown a *photo list* of the local mediators and asked to choose one. The other contending party, if willing to participate, also chooses one mediator from the photo list. The mediation program coordinator assigns the third mediator. This panel of mediators then takes up the case, convenes the disputants and conducts the face-to-face sessions. The action research teams looked into this overall structure and delivery process, attempting to understand both how it is practiced and why it works well, or not so well. The action research team made several key findings:

- The quality and sustainability of the mediation process depend on careful recruiting of the original group of mediators so that they reflect the diversity of the community. Where the chosen group of 27 did not reflect this diversity, or where there had been inadequate consultation with the nine wards, the program was far less successful. It appears, then, that the target of 27 people is something more than just a cushion against attrition. Rather, it seems to provide an adequate base to reflect the true diversity of the local community, while at the same time constituting a new formation within that community sufficient in size to support a process of social change. This approximates the strategy Lederach (2006) has called a "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. In the case of community mediation, three people from each of nine wards—27 people working together to learn and then deliver conflict mediation services—is large enough to be a significant new formation at the VDC level, yet small and directly interdependent enough to develop meaningful relationships.

- The choice to have three mediators, originally mandated by the LSGA, became a procedural mechanism for establishing the panel of mediators for each case. Each party chooses one, and the mediation center adds the third. Action researchers, through interviews, observations and discussions, found that people chose their mediator from the photo list for a variety of reasons. Some chose the person because he or she was known to them and they trusted that person. Others said that they thought the chosen person would be more likely to understand and represent them. For example, a person from an ethnic minority might choose a mediator from their ethnic group. Some chose as they did because they believed the person had moral or social status to enforce the solution on the other side. What is clear is that much more than a notion of neutrality is at play in these

choices. Through the action research, the photo list came to seem more significant, and understanding its function rose in importance in the view of the researcher-practitioners. Several possible explanations of how the photo list contributes to change emerged. The photo list provides a level playing field for those who cannot read and write. It clarifies who the prospective mediator actually is in a community where many people may share the same name. And perhaps most importantly, it allows people to situate themselves as disputants among the locally known and locally based resource people. The panel of three also appeared far more important than its original, legally mandated purpose. The formation of the panel requires participation by the disputants, and creates for each case a mix of people coming from different parts of the community. The mediators are perceived as "embedded," and are known within the local community. The panel often comprises a mix of caste, gender, class and ethnicity. The mediators as individuals can be recognized as coming from one or more identity groups within the community. As a group of three, however, they provide a certain balance. This more closely resembles an "inside-partial" than an "outside-neutral" approach to mediation (Wehr, Paul and John Paul Lederach. "Mediating Conflict in Central America," in *Journal of Peace Research*, Vol. 28, No. 1, 1991, pp. 85-98). The action research studied this "embedded" characteristic by creating maps of the community showing the locations where disputants and mediators lived. The maps often showed mediators and disputants living in close proximity—in some cases almost next door.

- Finally, the action researchers found that the mediators emerge from training with a capacity to *suspend judgment,* and the discipline to resist simply giving disputants a solution. This, they felt, was different than "neutrality," given that the mediators as individuals may often have social connections to the disputants. The key was whether, as a team of three, they could create a space for the participants to reach the solution, rather than having it imposed or suggested by the mediators. This differs from the older system of *panchayat* and the Nepali cultural tendency to offer advice when approached with a problem. However, the researchers did observe the degree to which mediators, while suspending solution-making, still mobilized subtle forms of "advice-giving," particularly about the need to harmonize relationships.

Here some insights into the question, "What is Nepali about community mediation?" seem to emerge. One key is to recognize, especially at the VDC and ward levels, that the mediators function as *embedded* neighbors within a network of primary and extended family relationships. This form of "inside-partials" has some strengths and presents some challenges. Among the strengths is the capacity to relate to, engage with, and understand the concerns of the disputants. The greatest challenge is to achieve balance in the team. Researchers noted that the tendency to provide advice on maintaining harmony in relationships did not naturally come with an equal tendency to provide advice about human rights. Key for training will be recognizing the pull of partiality towards the disputants, and the need to work as a team of mediators to strike a balance between harmony and rights, where the tendency toward harmony has greater cultural *gravitas*.

The mediation programs have addressed this systematically, adding more inputs and special workshops on the issues of legal and human rights and gender-based violence.

Learning to suspend judgment and open a space for decision-making by the disputants themselves is perhaps the most important aspect of the community mediation program. This approach, when translated into English, is often referred to as "neutrality." In fact, it might better be described as the self-discipline of not judging or recommending a solution, while still providing a context that appreciates the interpersonal relationships so important in the Nepali context.

Finding the right words—The issue of language led the action researchers down a two-fold pathway. One pathway explored the challenge of moving away from the technical language, more familiar to professionals than to locals, which seemed to pervade the ideas, descriptions and discourse of mediation. Roughly a third of ward-level participants have few if any literacy skills. The researchers' concern in this instance was to observe more closely how citizens and local mediators understood and talked about key concepts, and to find the language most suitable for the level of participation and engagement the program sought to foster. The second pathway led to important discussions about the meanings of words, how to convey a range of key concepts in local languages, and how the local language embodied unique understandings about things like conflict, harmony, neutrality, and the role and image of a mediator. In large part, the action research approach helped both mediators and trainers to identify more appropriate language, and sometimes produced important conceptual discussions. A few examples may illustrate this point:

- In discussions with mediators at the village level, researchers identified the 20 terms that mediators most commonly used to describe the mediation process and explain it to disputants, and that they felt conveyed the key concepts for understanding mediation. The researchers then narrowed this longer list to the top five concepts representing the Nepali language-in-use in the local community. They are *aadar* (respect), *samman* (honor), *dhairya* (patience), *surachit mahasus garnu* (to feel secure), and *samaan byawahar* (equal behavior or treatment). Notable are the terms for respect and honor, which refer to the mediators' discipline of equal treatment for everyone, regardless of status, caste or gender, and which seem to suggest a more nuanced understanding of interaction than simply not taking sides.

- The concept of neutrality on the part of mediators provoked a significant discussion among the action researchers. When the idea was first introduced in the original training, the word used, *tathastha*, was a political term commonly used to describe Nepal's position and status as a small country between its big neighbors India and China**.** Research had suggested that this term was meaningful to the professional Nepali trainers and those from larger urban centers, but it was found that at local village levels, mediators and district coordinators had dropped the term and tried instead to explain within a wider context the idea of not taking sides or having a bias. One commonly

used expression, *kasaiko pakcha naline,* may be translated into English as "not taking sides," but more literally it conveys the idea of walking straight on a path, neither turning nor leaning to either side. This image of staying straight on the path was effectively conveyed in posters for the mediation program, which showed a bicycle rider on a narrow bridge carrying buckets of water hanging from the two ends of a bamboo cane across his shoulders. In essence, the phrase conveys staying balanced and true to the goal, centered in the path and the purpose.

- The action researchers devised three major categories for the key terms: language that described *personal disciplines* of the mediators (show respect, honor, and patience); *creating a good environment* (help people feel safe and create openness); and *ensuring a fair process* (equal treatment, stay true to purpose, do not offer or impose solutions).

The detailed exploration of language facilitated the development of new instructional materials and approaches to training that were more accessible to local populations. It also provoked careful reflection by Nepali mediators and trainers about how they understand mediation in Nepal, and how they convey the key concepts.

Justice and harmony—The action research took up the challenge of exploring local understandings of justice and harmony, and how community mediation provides elements of these broad values and goals. When combined, these goals are often in tension, though the mediators believe their process can promote both values simultaneously, which in the end the research both affirmed and challenged:

- Action researchers found that disputants' perceptions of how mediation provides justice centered on their increased sense of inclusion (especially for marginal groups), the respect shown to them in the process, and the delivery of timely and much less costly solutions to problems which could often pose threats to survival. Many disputants also talked about accessibility as a justice theme, but usually not in the sense of gaining access through mediation to the formal justice system. More often they described local situations where they were unable to afford a lawyer to take cases to court, or unable to travel to larger cities, and mediation provided a way within their means to pursue a remedy. In finding that way to pursue a remedy, they felt a sense of justice.

- Early evidence from this research seems to suggest that the shift in the relationships between marginal groups (e.g., *dalits* and women) due to their direct participation in the mediation program increased their sense of justice as equality, through more respect, inclusion, equal treatment and participation in decisions. More time must pass before we can say whether this change will affect the historic patterns of caste, class, and gender injustices.

- Disputants' perceptions of harmony focused primarily on the relational values of cooperation and respect fostered by a process that permitted people to talk about their relationship, communication and decision making. Harmony was often about staying in relationships: wives would not leave the family home; families would communicate better; neighbors would talk with each other again.

The tensions between justice and harmony remain readily apparent. Action researchers observed that when advice-giving occurred in mediations, it did so as a harmony-driven impulse. Among Nepalis, this natural inclination has a relational context that encourages people in families and local communities to compromise and get along, often reinforced by survival needs in situations of subsistence living in rural settings. Going it alone is not an option personally or culturally, and for many local people, sustaining harmony and staying in relationships is driven by the need to survive. The tendency toward maintaining harmony can cover up significant injustices. For the mediation program, the countervailing impulse toward justice needed reinforcing. A new approach, framed in the language of equal treatment and respect, prepared mediators to recognize issues of human rights, particularly in relation to violent behavior, gender abuse, and caste/class discrimination.

IMPACT OF PARTICIPATORY ACTION RESEARCH FOR PARTICIPANTS

Beyond the research objectives of understanding how mediation works in local communities and how experience and context might inform the training manual, participatory action research had a clear impact on the researchers. At one level, they acquired new tools and ideas for conducting research, and they certainly gained experience developing their concepts and conducting local interviews. More importantly, however, the participating mediators, coordinators and trainers reported at the end of their three-year process that participatory action research had affected how they understood themselves, the local community, change processes, and the theory and practice of mediation itself.

Increased legitimacy of local knowledge—The researchers noted at the end of this process that their view of their own knowledge and their view of the community's understanding had shifted. At first they had placed primary value on the expertise of outside, "professional" resources, while granting little standing or legitimacy to their own evolving experience. "Action research demonstrated that we as mediators actually know a lot more than we thought," observed Bhandu Raj Paudel, a mediator and coordinator from Chitwan. "Before, we thought the expertise could come only from outside trainers." Or as Hari Pandit commented, "We started seeing ourselves, those of us who are in and close to the actual mediations, as having resources to contribute to the training, and to see that we ourselves are in the best position to define our needs, according to the realities of our communities, not according to somebody's view from outside. This was a big change in how we saw ourselves." Gyanu G. C., one of the more experienced mediators from Nawalparasi, said that participatory action research had given participants confidence to evaluate more carefully the concepts they had been given or were developing. "With action research, we now have the capacity to evaluate concepts. When we began to write

the manual, we could always ask, who is this for? And we could take concepts, understand ideas [and] focus them for the very local community."

There was also a shift in how they saw the local communities and the people they work with. "Now, instead of looking down on people as if we have the best ideas, we also have strategies that help us see through their eyes," Bidya Khanal, Coordinator from Tanahu, noted. Bandhu Paudel suggested this was about looking at the community as a resource rather than just a recipient of outside training. "Now we see the local resources differently. We can appreciate the way people think and the traditions they have as positive contributions."

Building practice from experience—Among the important elements that emerged through the action research was the basic idea that experience and context inform practice and approach. In general, social change training in Nepal has tended to characterize rural communities as having low education and great need. In its earliest phases, the mediation training relied heavily on models and processes from outside Nepal, and many of these basic ideas and techniques were seen as helpful and empowering. The subsequent delivery of mediation, however, began to encounter the realities of context and the worldviews and cultural norms of rural Nepal. The researchers noticed how participatory action research encouraged them to take more seriously the experience they had gained and the complex realities they faced in local communities. As Bidya commented, "We learned that we could develop ideas about how things work from our own experience. We started to create our own theories and ideas and frameworks. We knew that understanding was there, but we had never thought to make use of it."

This translated into the process by which they undertook the development of the manual. Rather than assuming that the original terms and ideas about the process could only be transferred through professional jargon, they discovered that they were, as Hari put it, "making our own manual from our own experiences." Amar Chandra Anil from Dhanusa suggested that the focus on "everyday language" made a big difference. "Previously, we used the language and terminology that had been given to us, language that we probably understood, but that the local people really did not — it was not their language. Here the approach was to let people speak for themselves and find a language that works. It made a space for their authentic voice."

Noticing change—A third effect is revealed by how the participants described their capacity to observe and take note of change. "Earlier, our approach was like a recipe: 'here's how you do it,'" says Hari. "We focused on counting—people, cases, solutions. We only could see numbers. We never really thought much about the quality of what was happening in terms of process, in terms of change, or in terms of sustainability." Pankaj Karna, Coordinator from Dhanusa, put it this way. "Understanding this as a process of change within the community, as a web of relationships, like the spider webs we studied, really made a difference. We saw things that have always been there, but that we had never noticed. Action research gave us the key for the first time to see and understand the relationships and changes that were emerging." As suggested here, several participants felt that action research gave them new lenses, but also more of a capacity for critical

analysis. Rohit Deuba from Dadeldhura noted, “We now have lots of questions. We are never quite satisfied. We always want to look for more. We want to know more about what makes the process work. We want to learn.” As Hari put it, “Action research made us step back. We started seeing a much bigger picture of mediation, involving a whole range of changes in people and the community. We could envision this as a program in the wider community, bringing change for the community, and for justice more widely defined.”

CONCLUSIONS

Participatory action research proved to be a flexible and useful tool for exploring community mediation practice. In the original proposal, the primary justification for using action research was to improve the capacity of local coordinators and practitioners to discover and more carefully assess the evolution of the practice of mediation at local levels, and then use those findings to inform and improve existing training materials. This research approach certainly achieved those objectives, but it also provided a range of valuable insights well beyond this intended purpose.

First, the focus on *participatory* research contributed significantly to the sense of ownership in the development of the community mediation program. In “becoming researchers,” participants learned to pay attention to and value their own experience and capacity for analysis, not as something that others did and gave to them, but as something they themselves were capable of producing.

Second, social context and local knowledge came to be valued differently. In earlier phases, less attention was paid to local language, conceptualizations or innovations, and much greater value was placed on the expertise of established professionals from outside the local communities. As participants watched and listened more carefully, however, they were better able to identify both language-in-use and key concepts that were embedded in the local worldview, including some that might contribute to and others that challenged the mediation approach as originally developed. This made possible both the contextualization of the training materials, and the deepening of understanding about why mediation worked, and how it adapted within the communities.

Third, a new appreciation for theory that could be accessible and useful for practice began to emerge. Rather than just accepting certain practices, a curiosity developed about the key features that seemed to have made mediation successful beyond the simple story told by settlement rate statistics. This led to a much more careful assessment and theoretical discussion of how and why 27 participants were chosen for the ward level local programs, the effectiveness of the photo list, and why using a three-member mediation team had proven to be well adapted and even transformative within the local practice of mediation in Nepal.

Fourth, action research contributed very directly to creating a more robust capacity to move from experience to context-informed training and the use of more appropriate language. Instead of relying on key terminology imported from another language and

culture, mediators had begun to adapt local language, understanding and concepts to the purposes and practice of mediation in local communities. This led to different kinds of training materials, which still included a book and manual with parallels to the earlier versions, but now had a wider array of posters, adapted language, role plays developed by the mediators themselves, and a more relevant explanation of the mediation process in the context of rural Nepal.

Finally, the action research approach yielded a much deeper appreciation of the complexity of change, and a greater capacity to describe the range of impacts that the mediation program had in local contexts. Participants became more attentive to what was happening in and around the program. They commented that throughout the first decade of community mediation, they had an implicit and intuitive understanding that the mediation program was making a difference, but did not have the tools to develop and assess their own theories and ideas about what was really taking place. While much remains to be learned, participatory action research provided a way for those closest to the actual practice to understand more clearly the impact and significance of the mediation program in fostering wider social change.

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