Community Mediation and Social Harmony in Nepal

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ACRONYMS

ADR
Alternate Dispute Resolution

CMS
Community Mediators' Society

COMCAP
Strengthening Community Mediation Capacity for Peaceful and Harmonious Society Project

CVICT
Center for Victims of Torture

DANIDA
Danish International Development Agency

DANIDA-HUGOU
DANIDA Human Rights and Good Governance Advisory Unit

DFID
Department for International Development

HUCODAN
Human Rights and Community Development Academy Nepal

JICA
Japan International Cooperation Agency

MoFALD
Ministry of Foreign Affairs and Local Development

NGO
Non-governmental Organization

TAF
The Asia Foundation

ToC
Theory of Change

UNICEF
United Nations Children's Fund

USAID
U.S. Agency for International Development

VDC
Village Development Committee

Background Note

In 2012, with support from DFID, The Asia Foundation (TAF) started a research partnership with the Justice and Security Research Programme based at the London School of Economics and Political Science. The first phase of the research partnership involved LSE researchers visiting several TAF country offices. Ms. Danielle Stein, an LSE researcher, visited TAF's Nepal office to study the office's longest-standing Community Mediation Program. She stayed in Nepal for three months, making numerous field visits and reviewing the Theory of Change of the program. Her paper, '*Community Mediation and Social Harmony in Nepal'* JSRP Paper 5, took a critical look at community mediation programming and the associated Theory of Change.

One major conclusion of Stein's paper was that TAF frequently uses the term 'social harmony' in its community mediation programming but has not defined it. She also argued that evidence is lacking in community level outcomes to show improved social harmony. This paper attempts to clarify some of the issues that Stein raises in her paper. It does this by explaining and expanding TAF's understanding of its community mediation program and the rationale behind its usage of 'social harmony' to describe the achievements of the program. In doing so, this paper also strives to present a better analysis of how TAF perceives that the program impacts broader community relations and broader social harmony.

Executive Summary

This is a companion paper to Danielle Stein's paper *'Community Mediation and Social Harmony in Nepal'* published in May 2013 as paper 5 in the TAF-JSRP *Theories in Practice* series. Stein's paper focused on TAF's Theory of Change for its community mediation program, focusing particularly on the link between the program and improved social harmony. She identified three possible pathways of achieving this link: dispute resolution and prevention, relationship building, and empowerment.

Stein's paper concluded that the term 'social harmony' is used frequently but is undefined in TAF's community mediation programming. She argued that there is evidence at individual level but evidence is lacking in community level outcomes to show improved social harmony. Similarly, she claimed that there is evidence of empowerment of individual mediators from marginalized groups but the broader impact of such empowerment on social harmony lacks evidence.

This paper attempts to clarify some of the issues and concerns raised in Stein's paper. It therefore references many critical points from that paper. Starting with a brief historical background on traditional and alternate dispute resolution practices in Nepal, this paper first explains and introduces TAF's approach and methodology in its community mediation programming in Nepal. This paper also explains and expands TAF's understanding of its program, usage of the phrase 'social harmony' in its program, and aims to provide a better analysis of how TAF perceives the program as impacting broader community relations and broader social harmony.

The focus of Stein's paper was on 'social harmony' and how there is a lack of evidence to claim achieving social harmony beyond an individual level. This paper makes an attempt to document the three ways through which TAF believes the program is contributing to broader social harmony: social transformation, awareness with access, and balanced evolution of harmony. Going further, this paper ends with explanations and arguments on how TAF believes its community mediation programming is also contributing to a micro-to-macro flow of harmony.

TAF believes that social transformations are achieved via personal, relational, cultural and structural transformations. While many organizations launch awareness campaigns with limited support for access, TAF's community mediation program provides both awareness and access, thereby providing a valuable service that promotes and contributes to social harmony. The program also contributes to a balanced evolution of harmony through a program that is inclusive, empowering and participatory. While horizontal linkages promote and expand the program to other locations, vertical linkages have ensured that there is greater engagement with national level policy makers. The vertical linkages ensured the passing and enacting of the Mediation Act beginning April 14, 2014 which grants legitimacy and legal validity to informal justice programs.

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1. Introduction

Nepal has a long history of traditional dispute resolution. There are 102 different castes and ethnicities, and 92 different spoken languages. This rich diversity also extends to dispute resolution mechanisms with many ethnicities and groups having their own dispute resolution systems and mechanisms. The push towards formal litigation during the Rana regime weakened traditional dispute resolution systems, but they did not collapse[3].

A 2008 DANIDA report[4] described a number of current traditional dispute resolution systems in Nepal. Tharu communities in Bardia and Nawalparasi have the *badghar*[5] system to resolve their disputes. Kunwar communities in Nawalparasi practice the *pradhan* system [6]. Sherpa communities in Solukhumbu have the *khada yangza* system while Thakali communities in Mustang have the *mukhiya* system. Maauth communities in Banke have the *barha basne* system[7]. Farming communities in Jhapa have the *farmer's court*[8]. Western hill districts of Kaski, Lamjung, Syangja, Gorkha and Nawalparasi have *Tamudhi samaj, Magar Sewa samaj*, and *Thakali Sewa samaj*. These latter three are also registered as NGOs and work towards preserving their respective cultures in addition to resolving disputes within their communities. A 2011 Saferworld report [9] mentioned that Muslim communities in Nepal resolve their disputes through the *anjuman* system.

Until 1961, dispute resolution at the village level was a mix of traditional and formal institutions. Local village heads in many cases functioned both as chiefs of their community and as representatives of the national government, with formal and traditional responsibilities to

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[3] According to Yubraj Sangroula, professor of law at Kathmandu School of Law, the Rana regime opposed traditional community mediation systems and promoted court litigation. The reason for doing so was purely financial as courts could generate revenues for the regime. Courts charged fees in every step of the litigation process. Disputants had to pay fees to register disputes, to enter the court premises, to produce witnesses, to withdraw cases, etc. See: *Community Mediation: A Pedagogic Reflection in Context of Nepal.* Available at: http://www.ksl.edu.np/cpanel/pdf/Community_Mediation_Nepal.pdf

[4] Massage, Ingrid, Satish Krishna Kharel, and Hemanga Sharma (2008). *Analysis of Informal Justice Systems and Human Rights in Nepal.* DANIDA-HUGOU. Kathmandu.

[5] *Badghar* means 'big house'. Officials of the *badghar* are selected by the communities once every year on the first day of the month of Magh.

[6] The *Pradhan* is a highly respected elder chosen from among the community members.

[7] It literally translates to a meeting of 12 elderly and respected people from the community to resolve a dispute in hand.

[8] These courts coordinate with local advisors and police to settle disputes. Women are, generally, not invited to the proceedings.

[9] Coyle, Daniel, and Sarah Dalrymple (2011).' *Snapshots of informal justice provisions in Kaski, Panchthar, and Dhanusha districts, Nepal'.* Saferworld. May.

administer justice and settle disputes. While the decision-making power of village heads in some communities was unchecked, village heads in most communities followed customary ethnic practices and could call a council of notables to assist in conflict resolution. Decisions were often handed down based on power relationships, having little to do with the facts of the case. Weaker parties, such as those from marginalized social groups, shied away from asserting claims.

The democratic movement in 1990 brought democracy back to Nepal, and resulted in the drafting of a new constitution that recognized Nepal as a constitutional monarchy. It also prompted two noteworthy changes: the end of the party-less Panchayat system [10] and a strengthening of the formal judicial structure. Both these changes had an impact on village-level dispute resolution. The 1990 constitution more clearly defined and delineated the structure of the formal court system, making it a more independent branch of government. However, the new constitution remained silent on village mediation and, more significantly, it failed to address the issue of how to connect village mediation or adjudication to the formal system, a major gap in a state with an overwhelmingly rural population.

In 1999, the government passed the Local Self-Governance Act (LSGA) which did take on the matter of local mediation, by strengthening and defining the judicial role of the Village Development Committees (VDCs). VDCs were formally authorized to hear and decide cases relating to a range of matters including land disputes, forced labor, trespassing, and paupers. Most importantly, the LSGA provisioned that such cases would be heard and settled either by mediation or 3-person arbitration boards, appointed by the VDC "as agreed upon between the parties to a case." Unfortunately, the clauses of LSGA that gave judicial power to the VDCs were never implemented.

Nepal enacted the Mediation Act on May 15, 2011. Mediation Regulations flowing from the Act were passed in 2014, and the National Plan of Action (NPA) 2013-2018 was drafted in the same year. The Government of Nepal has laid a strong legislative foundation through the implementation of the Act in April 2014. There is also much political will and interest among governmental and non-governmental agencies to work in supporting the effective implementation of the Act.

At present, dispute resolution in Nepal can be characterized as an increasingly formalized judicial sector, coupled with a patchwork of village-level dispute resolution mechanisms. The government is working to bring uniformity to mediation through implementation of the Mediation Act. Community mediation exists in only a small number of villages. Elsewhere, disputants continue to turn to traditional institutions, to the VDC Secretary. In some locations, disputants also turn to Maoist *People's Courts* that sprang up during the latter half of 2006 as the

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[10] In 1960, King Mahendra dissolved the democratically elected parliamentary government, and took over all State power banning political parties from their rights to contest in elections. This dictatorial form of regime was termed the 'Panchayat system' where the King nominated all government officials. People elected local representatives but power at the national level remained with the monarch who appointed ministers for various positions. According to Gellner (2007), "Ethnic and caste affiliations were discouraged, in the name of patriotism and nation building." The 1990 people's movement overthrew this system and brought parliamentary democracy back in Nepal. See: Gellner, David (2007). '*Caste, Ethnicity and Inequality in Nepal',* Economic and Political Weekly. May 19.

Maoist conflict headed towards a resolution.[11] Access to justice, in any form, remains limited either because of geographic barriers, politicization and corruption, or discrimination against marginalized groups.[12]

2. Alternate Dispute Resolution (ADR) programs in Nepal

In early 2002, The Asia Foundation (TAF) supported the Ministry of Local Development in preparing plans to introduce and pilot test community-based dispute resolution in accordance with the LSGA. The Hewlett Foundation and TAF funded the initial implementation of activities in three districts. Later that year, USAID provided funding for two years, allowing TAF to expand its activities to eight additional districts. The pilot project included 64 VDCs and 11 municipalities, in 11 districts. [13] In 2004, TAF joined Save the Children's USAID-funded UJYALO project as an implementing partner for peacebuilding activities in five far western districts. TAF utilized its staff and training expertise to develop community mediation programs in three new districts - Doti, Kailali, and Kanchanpur - as well as community workshops on peacebuilding in those districts. In September 2007, The McConnell Foundation provided additional funding, allowing TAF and its four local partners to continue program support in the 12 project districts and, importantly, to promote the long-term sustainability of established services. The primary focus was to strengthen and deepen the program model for future sustainability and replication in other parts of the country. As of October 2014, TAF implements its community mediation program in 114 locations in 12 districts.

The 2008 DANIDA report also tracked a number of other donors and NGOs that have been running community mediation programs in Nepal. Since October 1999, under its Access to Justice program, the UNDP has conducted a number of studies of formal and informal dispute resolution mechanisms. It also provided mediation training to a number of traditional dispute settlers in some districts. The Paralegal Committees run by UNICEF since 1999 work mainly with children and women through a community based mediation approach. In 2001, DFID started a community mediation program through CVICT with a rights-based mediation model. The program ran for six years in Ilam, Jhapa and Saptari with an objective to "provide access to justice to the poor, women and disadvantaged groups." [14] The program continued later in partnership with HUCODAN, a Nepali NGO in Bara, Dhanusa, IIam, Mahottari, Panchthar, Parsa, Rautahat, Saptari, Sarlahi and Siraha. JICA ran its community mediation program through the Ministry of Federal Affairs and Local Development (MoFALD) in Sindhuli and Mahottari from March 2010 till February 2013.[15] The program is currently in its Phase II programming. DANIDA/HUGOU implements a mediation program in Morang, Rupandehi, Makwanpur and

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[11] '*Judged by the people*',. The Economist. October 5, 2006. Available at: http://www.economist.com/node/8001629
[12] Coyle and Dalrymple (2011).
[13] The 11 districts were Banke, Chitwan, Dadeldhura, Dhading, Dhankuta, Dhanusha, Kaski, Mustang, Nawalparasi, Sarlahi, and Tanahu
[14] Massage et al. (2008)
[15] COMCAP Newsletter. January 2013. Available at:
http://www.jica.go.jp/nepal/english/activities/c8h0vm000001jlq1-att/peace04_08_EN.pdf

Bardiya. Similarly, PACT/SAJHEDARI has also started implementing a mediation program in Dang, Banke, Bardiya, Kailali, Kanchanpur and Surkhet districts in mid- and far-west Nepal. JICA, DANIDA/HUGOU, and PACT/SAJHEDARI follow the TAF model in their mediation programming.

3. TAF's community mediation approach

Mediation is an effort by a third party to assist disputing parties to resolve conflicts through face-to-face meetings.[16] The process focuses on the ability of mediation to satisfy disputants' needs by enabling them to discuss the full dimensions of the conflict. This differs from a court-based approach where discussions are limited to facts bearing on the matter of law. A panel of three mediators facilitates the mediation process. Each disputing party gets to choose a mediator. The third mediator is chosen by the VDC or the district coordinator to ensure that the mediation panel is diverse in terms of gender and ethnicity.

Many disputants who approach a community mediation program for dispute resolution do so because they know that such a program exists in their community. Some cases that do not involve crimes committed against the state are referred to the program by local law-enforcement agencies such as the police or the district courts. Other local organizations and groups such as the paralegal committee or the mothers group also refer cases to mediation programs. In most instances, cases are referred to the mediation program by the respective local VDC or municipality where disputants first register their grievances.

TAF's mediation begins with sending letters to disputants and their chosen mediators. This is followed by a meeting of disputants and mediators, in which ground rules for the mediation sessions are explained and the disputing parties are oriented and informed about the mediation program and process. Disputants then tell their stories, information is gathered about the dispute, and issues and interests of the disputing parties are identified. In mediation sessions, options are explored, evaluated and finally an agreement is reached. Bargaining and negotiations by the parties themselves may take place, along with the selection and assessing of options. Once an agreement is reached, details of the agreement are finalized, recorded, and signed. The entire process may take several face-to-face meetings. The disputants may also turn to an agreed third party to undertake fact-finding. Mediators undertake a follow-up, three to six months after the resolution, to assess whether agreements have been implemented and relationships have improved.

For over a decade, TAF's community mediation program has been acting as a "mechanism for access to justice, an alternative for local communities for whom the formal legal system could be prohibitively costly and unmanageable."[17] It started out as an interest-based approach[18] of

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[16] A good description of the community mediation process can be found in Mulcahy, Linda (2000). 'The Devil and the Deep Blue Sea? A Critique of the Ability of Community Mediation to Suppress and Facilitate Participation in Civil Life', *Journal of Law and Society.* Vol. 27: 1, pp 135-136

[17] Lederach, John Paul, and Preeti Thapa (2012). '*Staying True: Participatory Action Research and Community Mediation in Nepal',* Working Paper. The Asia Foundation.

mediating disputes through neutral mediators who helped disputants to reach their own solutions. The program and mediators do not actually provide judgment, but disputants reach a solution through their own mutual understanding and collaboration. The program and the mediators only facilitate the exchange between disputants in order to arrive at solutions.

TAF's approach to mediation is facilitative, but there is also an evaluative element with mediators recognizing and acting if there is a power imbalance between the two parties. TAF mediators empower weaker parties by reframing questions and interests to bring clarity to the interests, needs and options of weaker parties. In instances when the less powerful may want to come to a hasty or uninformed agreement because of their lack of knowledge about certain laws or rights, mediators use their social justice and legal rights training to advise the weaker party to approach legal aid programs for an awareness of their rights and of the relevant laws. If mediators feel that a disputant may need psychosocial counseling or help during mediation sessions, they are referred to psychosocial counselors. If the parties then wish to come back for mediation, they will be able to make a more informed decision after they have received adequate counseling. In cases where mediators feel that a disputant needs protection, they are referred to the Police or other social service providers.

After supporting the program for several years, and based on political or local government support and available capacity for conflict resolution, TAF creates an endowment fund and hands the ownership of the program to local government -VDC and municipality offices. After the handover, the local governments provide physical space, personnel and funding to keep the program running. TAF establishes an endowment fund and hands the program over to local government in all program locations hoping that this keeps the program sustainable over the long run. Endowment funds are partially matched by contributions from local development budgets, with the total amount placed in high-interest bearing accounts.

TAF's community mediation program has evolved through the years to respond to emerging needs. The program started as an access-to-justice mechanism to address and resolve interpersonal disputes in program communities—VDCs and municipalities. When the program started receiving requests to resolve small group disputes, TAF designed a group dispute mediation training curriculum and trained its mediators in all 12 program districts on group mediation. When the Domestic Violence Act mandated that community mediation programs should also mediate domestic violence cases, TAF provided domestic violence and gender training to all of its mediators. In recent years, when the program started receiving requests to resolve natural resource disputes and other multi-stakeholder disputes, TAF partnered with the Danish Embassy and the Swiss Embassy to design a multi-stakeholder mediation training curriculum and trained TAF and DANIDA mediators on multi-stakeholder mediation.

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[18] Interest-based mediation is mediation conducted on the basis that the fears, concerns, needs, hopes and expectations of the parties are of prime concern, whereas in the rights-based approach, in addition to the parties' interests, legal and human rights issues are considered. For example, in a dispute between brother and sister over property, the sister's interest might be that her brother takes care of her rather than giving her a share of the parental property. But rights-based mediation rely on law and determine whether she is entitled to receive equal partition of property with her brother as stipulated in the constitution and the law.

4. The Theory of Change (ToC) for TAF's mediation program

Stein and Valters (2012)[19] state that "ToC is seen as a way to plausibly demonstrate impact in fragile and conflict-affected regions of the world". It has also been called "a roadmap, a blueprint, an engine of change, a theory of action and more."[20] In 2011, TAF received DFID funding to engage in a regional study of its peacebuilding programs. The community mediation program in Nepal was selected as one of the programs that would be studied using the Theory of Change approach suggested by DFID. Therefore, TAF Nepal developed a Local Conflict Transformation Theory to describe its understanding of how its community mediation program works towards its goal of improving justice and social harmony in the communities that it serves. The program aims to remove obstacles that cause social disharmony in areas that are remote, have no access to justice services, and suffer from high dispute rates. The theory states:
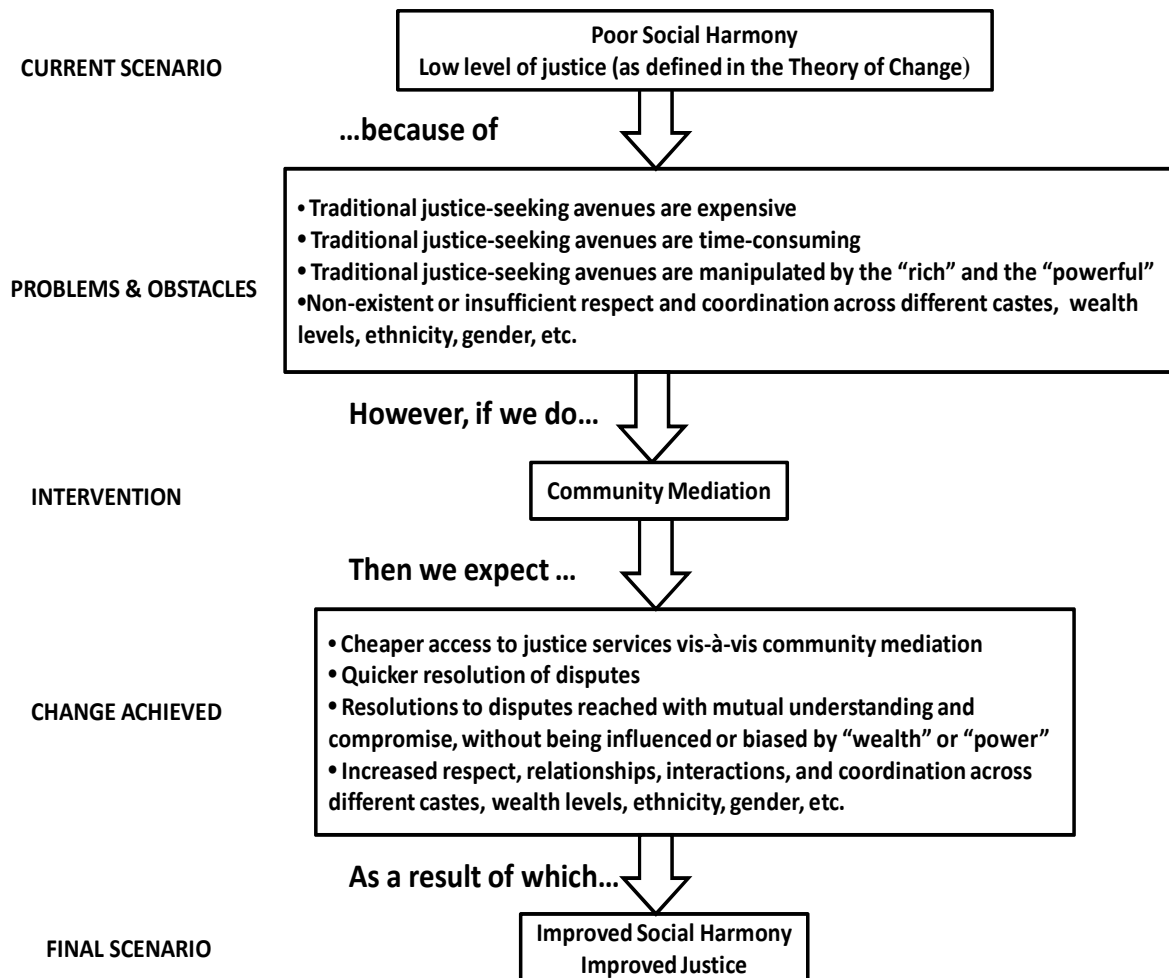
> *Local Conflict Transformation Theory: By supporting the expansion of mediation services in rural Nepal, there will be a steady improvement in access to justice for local communities. It is expected that the provision of community mediation services will contribute to improvements in social harmony at the local level. In the longer term, and more indirectly, it is expected that by improving the level of engagement between local governance actors—particularly the VDC, mediators and host communities—the expanded mediation program will contribute to broader peace building efforts. This is expected to enhance an important state function through local collective action, and thereby gradually improve state-society relations.*

Although the ToC was framed based on a decade-long experience of running the community mediation program in Nepal and the lessons that were learnt on the way, it also incorporates expectations that TAF Nepal believes the program will meet through continued programming.

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[19] Stein, Danielle and Craig Valters (2012), 'Understanding Theory of Change in International Development', *JSRP Paper 1,* July 2012

[20] Reisman, Jane, Anne Gienapp, and Sarah Stachowiak (2007) '*A Guide to Measuring Advocacy and Policy'* Organizational Research Services for the Annie E. Casey Foundation. Baltimore, Maryland (USA). cited in Stein and Valters (2012).

Figure 1: Theory of Change for community mediation programming

CURRENT SCENARIO	**Poor Social Harmony** **Low level of justice (as defined in the Theory of Change)**

...because of

PROBLEMS & OBSTACLES	• Traditional justice-seeking avenues are expensive • Traditional justice-seeking avenues are time-consuming • Traditional justice-seeking avenues are manipulated by the "rich" and the "powerful" • Non-existent or insufficient respect and coordination across different castes, wealth levels, ethnicity, gender, etc.

However, if we do...

INTERVENTION	**Community Mediation**

Then we expect ...

CHANGE ACHIEVED	• Cheaper access to justice services vis-à-vis community mediation • Quicker resolution of disputes • Resolutions to disputes reached with mutual understanding and compromise, without being influenced or biased by "wealth" or "power" • Increased respect, relationships, interactions, and coordination across different castes, wealth levels, ethnicity, gender, etc.

As a result of which...

FINAL SCENARIO	**Improved Social Harmony** **Improved Justice**

In the short term, TAF's community mediation program creates a dialogue-based approach to local conflict that is more immediately available to communities and provides satisfactory outcomes to many local grievances and conflicts. Over the middle- and long-term, the presence of a community based and owned mediation program contributes to higher levels of social justice, relational harmony, and good governance, which in turn enhance and improve state-society relations.

The ToC suggests that groups within the community who, in the early stages, had significant conflicts and divisions, or simply had no relationships at all, increase their interactions, have greater capacity for cooperation, and learn over the longer term to prevent violence. Of particular note, mediation training that includes awareness-raising on issues of caste, ethnic, economic, and

gender rights leads mediators to recognize when the pressure to achieve social harmony interferes with protection and respect of rights under the law. Over the long term, social justice and harmony raise the level of respect for human rights and improve relationships.

Finally, the presence of community mediation centers increases the range of response mechanisms around interpersonal and group conflicts. Therefore, they effectively become part and parcel of local governance outreach and resources. Delivery of the program under the respective VDC lends the program an 'official' status. The dispute resolution service received is perceived to have come from a government institution and not from a donor-funded project. These factors, combined, suggest that justice gained through the program is perceived as legitimate, and outcomes are generally followed by the disputing parties.[21] The ToC suggests that a community-based mediation center working cooperatively with the VDC and local justice administration, such as the police, increases the range of resources available and improves state-society relationships at the local level.

5. Contribution to social harmony

Because unresolved tensions and disputes cause disharmony, and because "mediation is a way of managing disharmony", TAF's community mediation program does contribute to managing disharmony at the local level.[22] This "management of disharmony could possibly contribute to a higher level of harmony, but there isn't enough evidence to bridge that gap."[23] TAF's definition of social harmony states "coexistence, fairness, equal participation" with attention to historic tensions between different caste, class and ethnic groups.[24]

The development literature defines social harmony as the promotion of social factors, such as "adapting to social norms and fulfilling relational obligations", that increase happiness.[25] However, social harmony "cannot be imposed through some moral policy or convention", but it has to result "from spontaneous communication" and "shared values are not the condition but the result of this process."[26]

Social justice and harmony require a broader understanding than is typically understood by access to justice and dispute resolution measures. The concept of "harmony" under TAF's

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[21] Two rounds of Citizen Report Card surveys commissioned by TAF—one in April 2012 and another in January 2013—show that, on a scale from 0 to 10, the average score given by users was 9 and 8.9 respectively for the statement "All provisions of the agreement have been fulfilled". Follow-up surveys of disputants who resolved their cases through mediation, between June 2012 and June 2013, had 96% of disputants reporting to have fulfilled all agreements from their settlement.

[22] June 24, 2013, interview with David Lewis, Professor of Social Policy and Development at the London School of Economics.

[23] Ibid

[24] PPA Component 4 Year 2 Annual Report prepared for DFID CHASE-PPA. On file with authors.

[25] Suh, *et al.* (1998) cited in Uchida,Yukiko, Vinai Norasakkunkit, and Shinoba Kitayama (2004), 'Cultural Constructions of Happiness: theory and empirical evidence', *Journal of Happiness Studies, Vol5:3, pp223-239*

[26] Desalles, Jean-Louis (2011). 'Sharing cognitive dissonance as a way to reach social harmony'. *Social Science Information*, Vol 51:1, pp116-127.. Available at: http://ssi.sagepub.com/content/50/1/116

community mediation program focuses primarily on the relational value of cooperation and respect fostered by a process that permits people to talk about their relationships, communication, and decision making. The concept of "justice" in the program goes beyond generic connotations to include respect, inclusion, equal treatment, and participation.

5.1 Social transformations

TAF conducted a participatory action research in 2007 to deepen its practice of mediation in Nepal. Begun as an access to justice initiative using a Western model, the program started observing significant changes above and beyond those envisioned from an access to justice program. In particular, the action research identified four types of social transformations: personal, relational, cultural and structural.

Personal Transformation

Personal changes have mostly occurred in mediators who have reported "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."[27] The mediation process not only "strengthens people's capacity to analyze situations, consider the perspectives of others, and make effective decisions for themselves" but also encourages community members to transcend fatalistic attitudes and "take ownership of their problems."[28] In the meantime, mediators also learn to be more respectful and less judgmental.

Observing the kind of personal transformations that mediators experience, VDC secretaries have begun taking TAF's community mediation training. Advisory committee members, who are mostly influential local political and civil society leaders, have recognized the personal transformations that mediators have gone through after their trainings. As a result, TAF has received a growing number of requests from advisory committees in many program locations to organize community mediation training for them.

Despite not dispensing a 'decision', mediators do tend to provide advice that facilitates moving towards possible dispute resolution. Advice given by mediators tends to improve social harmony as it is consensus-driven and based on justice. However, although social harmony is a desired outcome, as stated above, it does not come at the expense of the rights of women and minorities.[29]

Although it may be difficult to pin down exactly what factors cause 'social harmony', researchers have noted that the absence or breakdown of relations between members of the

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[27] Lederach and Thapa (2012).

[28] Thapa, Preeti (2008). *From Nepal: Social Transformation through Community Mediation,* In Asia Blog, The Asia Foundation. September 17. Available at: http://asiafoundation.org/in-asia/2008/09/17/from-nepal-social-transformation-through-community-mediation/

[29] For example: encouraging a woman to stay with her abusive husband tends to achieve social harmony, but at the cost of diminished respect for the woman's rights. In order to avoid this from happening, TAF trains its mediators on issues of social justice and on the rights of various groups in the community.

community cause 'social disharmony'.[30] Therefore, the opposite must also be true, that the creation and improvement of relations between members of the community improves social harmony even if it does not directly cause it. Civility and group interactions promote social harmony.[31]

Vervoort (2012) claims that community relations are difficult to establish in ethnically diverse communities, and it has been observed that "high levels of ethnic diversity within a neighborhood may create difficulties for social interaction"[32] and may have a "negative effect on local contacts of all kinds."[33] Social exclusion has been a factor in recent conflict and political crises in Nepal.[34] The notion of inclusion is particularly important in terms of the participation of low caste, disadvantaged economic groups and women, in terms of the respect they gain locally, and their increased participation in the community and in the decisions that affect their lives. The inclusiveness of mediators in terms of caste and ethnicity, ensures that justice seekers are comfortable with the mediation process and accept it as unbiased. Stein (2013) agrees that this kind of promotion of 'inclusion' in TAF's community mediation program is consistent with the understanding that an inclusive community level program can help promote social harmony.[35] Hedeen and Coy (2000) explain 'empowerment' as individuals taking back control over their lives from dominant, oppressive, and unfair institutions.[36]

Relational Transformation

In addition to resolving disputes, the mediation program helps build relationships between different members of the same community: different ethnic groups, the rich and the poor, high castes and 'untouchables', women and men, and so on. Relational changes have occurred mostly among mediators during their training together, after listening to one another's views, and reflecting on the diversity within the group. Listening and reflecting on the viewpoint of fellow trainees from another gender, caste, class or ethnicity increased their respect towards one another regardless of the gender, caste, class or ethnic divisions. Disputants have also reported post-resolution improvements in relationships. However, Stein (2013) argues that "'improving' relationships may mean different things to different people, and may not necessarily lead to social harmony." She also argues that there are gaps in TAF's ToC as well as its claim of social harmony through fostering and development of better relationships between disputing parties.

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[30] Bannister and O'Sullivan (2013), 'Civility, Community Cohesion and Antisocial Behaviour: policy and social harmony', *Journal of Social Policy*, Vol 42:1, pp 91-110

[31] Ibid

[32] Vervoort (2012) cited in Bannister and O'Sullivan (2013).

[33] Gijsberts *et al.* (2011) cited in Bannister and O'Sullivan (2013).

[34] Glazer, A (2005) cited in Stein, Danielle (2013). *Community Mediation and Social Harmony in Nepal: A Theories in Practice Paper*. JSRP Paper 5,(May), London School of Economics.

[35] Stein, Danielle (2013). *Community Mediation and Social Harmony in Nepal: A Theories in Practice Paper*. JSRP Paper 5 (May), London School of Economics.

[36] Hedeen and Coy (2000) cited in Stein, Danielle (2013). *Community Mediation and Social Harmony in Nepal: A Theories in Practice Paper*. JSRP Paper 5 (May), London School of Economics.

She states:

> [T]he norms established by the mediator – equality, respect and cooperation – may become internalised in the disputant relationships and foster trust over time. Though this approach seems to understand social harmony as rising from the aggregation of improved interpersonal relationships, the mechanism by which interpersonal interaction affects broader society, or indeed other interpersonal relationships within that society, is not considered in the current Theory of Change. (p. 22)

Improved relationships—not just between disputants, but, in general, between people living in the same community—is a net positive. Putnam (1995) writes that successful outcomes on social objectives, such as "education, urban poverty, unemployment, the control of crime and drug abuse, and even health", have been found to be more likely if communities are more "civically engaged."[37] Through one such social objective—dispute resolution at the community level—TAF's mediation program does foster civic engagement between mediators, and mediators have formed a close-knit community. According to Putnam, such engagements strengthen the social fabric through the creation and promotion of 'social capital' where social capital "refers to features of social organization such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit."[38]

Stein agrees that TAF's ToC on community mediation "also highlights building relationships between members of groups with such historic tensions" which has been argued to "promote social harmony by increasing cooperation and trust", and she agrees that this approach is "consistent with theories of social capital, which find that forming such 'bridging' relationships between groups promotes cooperative norms" (p.23). She argues that there is "strong evidence of community mediation's ability to build interpersonal relationships, but mixed evidence related to inter-group relationships" (p.25).

However, there is plausible evidence that TAF's community mediation program has fostered the formation of inter-group relationship. Allport's 'contact hypothesis' suggests that "intergroup prejudice can be lessened through institutional support for intergroup cooperation based on equality of status between the groups involved."[39] Institutional support plays a critical role in fostering interactions and building relationships because "spatial proximity alone does not provoke interaction nor does interaction necessarily engender civility" without institutional support.[40] It is important to have an institutional support to promote "pleasant and cooperative interaction" that, in turn, promotes relationship building between diverse community members.[41] TAF's community mediation program provides such an institutional support, especially to

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[37] Putnam, Robert (1995). 'Bowling Alone: America's Declining Social Capital', *Journal of Democracy,* Vol 6:1 . Available at: http://www.saddleback.edu/faculty/agordon/documents/Bowling_Alone.pdf

[38] Ibid

[39] Allport (1954) cited in Bannister, Jon, and Anthony O'Sullivan (2013). 'Civility, Community Cohesion and Antisocial Behaviour: Policy and Social Harmony*', Journal of Social Policy.* Vol 42:1. January.

[40] Flint (2009) cited in Bannister and O'Sullivan (2013).

[41] Hewstone and Brown (1986) and Nielsen *et al.* (2006) cited in Bannister and O'Sullivan (2013).

marginalized groups in program communities, for meaningful interaction with other groups during and after the mediation process.

Structural Transformation

After completing the 30-month training cycle, TAF hands its program over to local government. Mediation centers are housed in VDC or municipality offices with significant support by those offices in terms of office space and other resources[42]. The increasing number of referrals sent to the mediation program by local police and VDCs indicate that local state institutions trust the program and are increasingly comfortable with sending referrals. This, in turn, indicates the institutionalization of the community mediation program as a legitimate avenue for dispute resolution.

Local courts have recognized the strength of the program and include community mediators in their rosters for case referrals.[43] Courts also refer cases to community mediation centers, if one is available in the location. Community mediation programs have been recognized as complementary to the traditional justice system in helping reduce the caseload of Nepali courts.[44] Local governments refer complaints to the program and also earmark funds through local development budgets.[45] From April 14, 2014, implementation of the Mediation Act has now begun and it grants legal validity and legitimacy to resolutions reached and agreements signed in formal as well as informal mediation centers across the country. These developments have brought positive structural changes to the Nepali justice system.

TAF has observed two kinds of structural changes: through ownership and recognition of the mediation program by local government offices and institutions as a legitimate avenue to resolve disputes, and through policymaking efforts at the national level. Recognition of the community mediation program as a high-quality institution offering access-to-justice and dispute resolution services helps to build public trust in the program. As a network of community mediators from all over Nepal, the CMS has been working on the institutionalization of mediation practice and acting as a mechanism to amplify and include the voices of practitioners into policymaking. Research shows[46] that the level of trust is more of an institutional phenomenon than a cultural

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[42] Mediation centers in most TAF program locations are housed in VDC offices, and the VDC office manages the registration of cases and salaries of mediation center's coordinator. A fixed location of the mediation center in VDC offices ensures that people know where to go if and when they need help resolving their disputes.

[43] Nepali courts have mediation centers where they hold mediation sessions for Court Referred cases.

[44] Suurmond, Jeannine, and Prakash Mani Sharma (2012). 'Like Yeast That Leavens the Dough? Community Mediation as Local Infrastructure for Peace in Nepal', *Journal of Peacebuilding and Development*. Vol 7:Issue 3. Available at <http://dx.doi.org/10.1080/15423166.2013.767648>

[45] TAF hands its community mediation programs over to local governments after setting up endowment funds for the program in those locations. Interest earned from the fund is used to cover program running expenses. The endowment fund increases every year as most local government offices contribute annually to this fund.

[46] Nannestad, Peter, and Gert Tinggaard Svendsen (2006).' *Institutions, Culture, and Trust'*. A presentation at the Annual Meeting of the European Public Choice Society (EPCS). Turku, Finland. 20-23 April.

one. Therefore, a stronger community dispute resolution institution builds great generalized trust in the community that it serves.

Cultural Transformation

Even remote VDCs in Nepal are today becoming increasingly heterogeneous due to factors such as in-country migration to escape the decade-long Maoist insurgency, or the fact that a significant proportion of the Nepali labor force migrates overseas for jobs. Therefore, traditional dispute resolution systems, which mostly catered to a very homogeneous group, are breaking down. In that context, TAF's community mediation program promotes itself as an inclusive, fair and interest-based facilitation alternative to resolving disputes, which could be more acceptable to today's increasingly heterogeneous communities.

The program has made an impact in the culture of program villages through:

> "empowerment of women and marginalized 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."[47]

In traditional villages, where women have a limited role in public life, the introduction of community mediation has significantly transformed the lives of these women through increased participation as mediators, and subsequent participatory roles in other community activities.

Studies of conflict societies, such as South Africa during apartheid, show that social networks help sustain communities through "decades of poverty, persecution, and suppression" particularly through the involvement of "women and horizontally-structured organizations."[48] These networks generate social capital, which in turn builds and maintains "the trust necessary for social cohesion and change"[49] and social cohesion is built through conversations.[50]

5.2 Awareness with access

Many NGOs, INGOs and rights based organizations in Nepal work towards increasing awareness on a variety of rights issues, with limited support in providing information on how people can use their increased awareness to actually access resources and avenues to resolve their problems. Female victims of violence in Kailali[51] mentioned that Maoists were very successful in increasing awareness among women, dalits and marginalized groups regarding their rights. However, they did not inform the victims where they could go to access those rights.

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[47] Suurmond and Sharma (2012)
[48] Moser, Caroline (1999). *Violence and Poverty in South Africa: Their Impact on Household Relations and Social Capital.* The World Bank.
[49] IBID
[50] Dubner (1996) cited in Desalles (2011).
[51] Kailali district in Far-west Nepal was severely affected during the decade-long Maoist insurgency.

Rights awareness programs targeted to women with no mechanism to get access to those rights are not only "unhelpful but also dangerous because they have a tendency to further increase violence upon women."[52] Unless every awareness program comes coupled with an access program, awareness itself could do more harm than good.

> **Awareness without access: More harm than good[53]**
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> In the Hindu caste system, the dalits are classified as "untouchables" and barred from entering any temple. In 2005, local dalits from Siligudi VDC in Doti, a district in Far-west Nepal, had received awareness training on the rights that they enjoyed under the law. Empowered with new information about their rights, the dalits went to a nearby Saileshwori temple and entered its premises against the wishes of the rest of the community. As a result, they faced violent opposition from the rest of the community. The two groups clashed, and many were injured. In the absence of a mechanism that could resolve the conflict through dialogue, the altercation and violence persisted with no resolution.

Leslie Dwyer's 2013 research[54] in Doti, done for TAF, revealed that there was good coordination among NGOs, INGOs and government offices in making women aware of their rights on GBV and other issues. However, these organizations provided no training or information to women on where to go and how to access those rights. TAF's community mediation program has thus become the avenue through which women, dalits and marginalized groups can access rights that other organizations make them aware of.

Beneficiaries can only really benefit when there are linkages between awareness and access programs. The Saileshwori temple case from Doti (box above) shows that awareness without access can do more harm than good On the other hand, a similar case from Baghthata VDC in Doti (box below) shows that the presence of TAF's community mediation program helped resolve a conflict that could have potentially resulted in loss of lives and limbs had it not been resolved immediately.

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[52] Interview with Leslie Dwyer, Assistant Professor of Conflict Analysis and Anthropology at George Mason University. Dr Dwyer conducteda research on women and violence in Nepal in 2013 for TAF.
[53] Interview with TAF mediators from Doti.
[54] Interview with Leslie Dwyer.

> *Awareness with access*[55]
>
> The Bhuwa dance is a centuries-old tradition in the Baghthata VDC of Doti district. The festival starts with people from the *damai*[56] caste playing traditional musical instruments, and people from other castes dance, particularly the *chhetris*[57] who dance with swords. For centuries, a member from a particular *damai* household plays the same instrument that his/her ancestors played.
>
> In 2010, Tek Bahadur Auji, lead musician, let the community know in advance that he would not be playing the instrument any more. His family had been playing the lead instrument for centuries. Fortune had favored him over the years, and he had become the richest person in his community by 2010. Upon learning of his refusal to play the lead instrument, other *damai* musicians refused to play their instruments too, arguing that tradition does not permit them to play their instruments without the leader playing his.
>
> The situation escalated quickly when *chhetris* let Tek know that a refusal to play the instrument would mean there would be no Bhuwa dance that year. If that happened, they would be sacrificing his head instead of the customary buffalo head in the festival. The VDC has 200 *chhetri* households with access to swords and other weapons while there are only 50 *damai* households. It was clear that if the festival did not happen, there would be a bloodbath in the VDC with *damais* suffering the most.
>
> TAF's mediators from a neighboring VDC intervened in the conflict, and resolved it on the eve of the festival. The lead musician agreed to play the instrument for the sake of preserving a centuries-old tradition. The presence of TAF's community mediation program in the neighboring VDC thus avoided a bloodbath in Baghthata.

The Maoists are credited with raising awareness among marginalized groups in rural communities. They set up parallel courts, called the People's Court, as an avenue that these newly aware communities could access to practice their rights and resolve their disputes. However, the sense of justice achieved through the People's Court was often forced upon the parties, and disputes resolved by People's Courts have been coming back to TAF's community mediation program in some program locations.[58] Whilst the Maoists may have done a good job

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[55] September 30, 2013 interview with Madan Bhandari, mediator from Doti district. Mr Bhandari was one of the mediators who mediated the Baghthata case.

[56] Damais, along with kamis, are considered 'untouchables' and rank lowest in the Hindu caste system.

[57] Chhetris are the warrior caste and with Brahmins rank highest in the Hindu caste system.

[58] October 11, 2012 interview with Laxmi Bhandari, local coordinator for TAF's community mediation program in Dhangadi municipality, Kailali.

of increasing awareness, the People's Court appeared to be a less-than-ideal avenue for people to access their rights.

Nepal is a fairly conservative society, in terms of social structure and customs, and Nepali families still look down upon those who take family matters to courts or the Police because such actions are perceived to have lowered the family's prestige. As a result, women often do not take their problems to formal justice systems in order to maintain family prestige. They could suffer even more violence if they did. However, Nepali society has a very established culture of approaching a third-party, mostly community elders, to resolve any dispute, even family related ones. TAF's community mediation program is housed in the community and mediators are members of the community. The program, therefore, fits well into the culture and acts as the "third party" that is approached for dispute resolution. The program empowers disputants to open up and provide details that they would not provide otherwise. Even when mediation does not resolve a case, mediators help disputing parties to explore the best alternatives to resolve their cases, and facilitate the process to access other avenues for possible resolutions. This ensures that the relationship between disputants does not deteriorate any further. In many cases, even with no resolutions, relationships between disputants have improved simply because disputants felt they heard and understood both sides of the argument.[59]

5.3 Balanced evolution of harmony

Communal harmony evolves in many ways. TAF's community mediation program has ensured that this evolution is more organic and balanced. The program has been able to do this through inclusion, empowerment, and participation.

Inclusion

Since the inception of the mediation program, TAF has been aware that men and women have different needs, experiences and views regarding 'justice'. It is also critical to understand who has access and control over resources, opportunities and influence in the program communities. TAF is also cognizant that gender issues in Nepal are further complicated by ethnicity, language, caste, age, class and economic status. With all these taken into consideration, TAF strives to make the selection of mediators fair, inclusive and representative of the community.

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[59] August 21, 2012 interview with mediators in Sunwal VDC, Nawalparasi.

Breakdown of mediators by year [60]

	Breakdown	Number	% of Total
March 2009	Male	3006	71.5%
	Female	1196	28.5%
	Dalit	355	8.4%
	Indigenous	1199	28.5%
March 2011	Male	3207	70.5%
	Female	1341	29.5%
	Dalit	390	8.6%
	Indigenous	1309	28.8%
March 2013	Male	2804	65.4%
	Female	1484	34.6%
	Dalit	361	8.4%
	Indigenous	1436	33.5%

Over the years, the proportion of dalit mediators has not changed much while that of indigenous mediators has increased. The program reached its target of 33 percent female representation in 2012.[61] Women remain highly vulnerable to violence, displacement and other harm in a post-conflict situation. Many women in rural Nepal face discrimination and lack support in becoming community leaders. An increased representation of women as mediators empowers all women in program communities to believe and aspire to higher goals as community members.

Greater inclusive representation by women, dalits and indigenous people as mediators has ensured that the program retains its legitimacy in the community and also solidifies the community's "ownership" of the program. An inclusive mediation panel has resulted in greater use of the program's services by marginalized groups.[62]

Empowerment

TAF's documents and reports argue that the community mediation program has been able to empower community members by increasing their access to dispute resolution, while at the same time increasing their perception and behavior towards mediators in reference to respect, inclusion and participation. Feedback from service users shows that they are very satisfied with the mediation process, the conduct of mediators, mediation outcomes, and the longevity of resolutions. However, both the "satisfaction" and "perceptions of power" gained through mediation programs are not considered valid results of empowerment by some researchers.[63] They also suggest that the "absence of conflict does not necessarily indicate the presence of justice."[64]

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[60] Source: TAF program database

[61] At the end of March 2013, 34.6 percent of mediators in the program were women compared to 29.5 percent in March 2011 and 28.5 percent in March 2009.

[62] Last year's data (from April 2012 to May 2013) shows that 40.7% of disputants were indigenous and 25.6% were dalits.

[63] Cobb, Sara (1993), 'Empowerment and Mediation: A Narrative Perspective', *Negotiation Journal*. July.

[64] Hofrichter (1987) and Abel (1982) cited in Cobb (1993).

Empowerment of disputants comes from being able to select a mediator of their choice to mediate their dispute. Stein (2013) writes that the most significant empowerment from the mediation process has occurred for mediators from marginalized groups because "empowerment theory suggests mediation's practice of training these individuals with the 'skills and confidence necessary to exercise power' and placing them in socially prominent positions supports this aim" (p. 26). However, Stein also recognizes that the program has empowered the disputants themselves:

> Primary research reflected consistent claims that including individuals from marginalized groups as mediators also empowered disputants of these groups. In interviews across Nepal, female and Dalit disputants repeatedly noted the importance of being able to select someone like themselves as a mediator. (p. 26)

TAF's selection of mediators focuses on diversity and reflects the demographic composition of each local community, believing that community members should view mediation panels as being a proper representation of their community in order for the program to gain the community's respect and attention. Because avenues for interactions between well-off and marginalized groups in communities are absent, and because Nepali rural communities are traditionally discriminatory, the presence of TAF's community mediation program provides a stage for interactions which otherwise would not happen. Stein (2013) agrees:

> [A]pproaching social harmony from the perspective of empowerment and social inclusion is a more expansive way to understand this concept than simply resolving disputes and repairing relationships, and is consistent with mediation theory. (p. 28)

Participation

A particular strength of the program is that an interest-based facilitative approach allows disputants to explore interpersonal and social interests without the limitations of legal processes and procedures that occur in traditional court of law. Unlike traditional court litigation, disputing parties are allowed to involve other stakeholders and community members if they wish to do so. Additionally, unlike what is possible in a traditional court of law, disputing parties can use non-legal remedies such as an apology or other forms of restorative justice, and draw more heavily on community norms and traditions, to resolve their disputes.

TAF's mediators promote participation between disputants in a neutral and impartial manner. However, TAF realizes that neutrality and impartiality are concepts that are difficult for mediators to learn. Jayasundere and Valters (2014)[65] have analyzed this in TAF's Sri Lanka mediation program. They write that TAF's training manual proposes:

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[65] Jayasundere, Ramani, and Craig Valters (2014). *'Women's experiences of local justice: community mediation in Sri Lanka', JSRP Paper 10,* London School of Economics.

> [M]ediators can still play the 'role of a neutral' in their relationship to the parties (and also be impartial) and assist others to deal with their conflict in a constructive manner. This begins to show how in practice neutrality and impartiality may not come easily to mediators despite mediation skills training. (p. 13)

Because the mediation program is housed in VDC offices, mediators play a significant role in bridging the gulf between the community and its local state by letting one know the concerns and expectations of the other. This was especially critical during the Maoist conflict when VDC secretaries could not stay in the VDC and had to flee to district headquarters for safety and security reasons. Moreover, frequent interactions between mediators and VDC secretaries on a range of issues mean that mediators play a vital role in ensuring checks and balances in the workings of local government. This is critical especially in the absence of locally elected officials.[66]

Greater participation through empowerment[67]

Gauri Chaudhary from Sripur VDC in Kailali district stopped going to school after finishing Grade VIII when her family married her off. Her in-laws refused to let her go back to school. Her husband was a teacher in the local public school, but he, too, did not support her wishes to go back to school.

When TAF launched its community mediation program in Sripur VDC, Gauri was selected as one of the mediators. Although hesitant at first, she decided to give it a try and completed the training. After having worked as a mediator for some time, she started feeling stronger and more confident. She disobeyed her husband and in-laws, and enrolled herself in Grade IX in the same school where her husband taught.

In the aftermath of the Maoist conflict, she single-handedly mediated and resolved a very complicated family property dispute involving three brothers. The dispute had emerged during the conflict but had remained unresolved even after the Supreme Court had decided in favor of one of the brothers. The case almost tore her family apart as disputing parties called in favors from local thugs and politicians, and threatened Gauri and her family with death threats.

As her confidence level grew, along with her experience as a mediator, she started participating actively in community activities. She led a number of community efforts, including becoming the president of a local women's group. In the meantime, she also completed her high-school education. Today, she is the manager of a local cooperative. She is still an active mediator in TAF's community mediation program in her VDC.

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[66] Nepal has not had a local election for the past fifteen years and no locally elected officials in the past eleven years.
[67] October 10, 2012 interview with Gauri Chaudhary, mediator in TAF's community mediation program in Sripur VDC, Kailali.

Increased participation, as a product of community mediation, has been observed not only at local level but also at regional and national levels. Because TAF-trained mediators have cultivated impartial and unbiased personalities capable of resolving disputes in an effective manner, communities increasingly choose to place them in development committees, school management committees, and education and infrastructure projects. "The hope is that these individuals will not succumb to corruption and that they will be able to resolve disputes, if one arises among the committee members."[68]

At the national level, TAF's mediators have participated in the formation of a Community Mediators Society (CMS) in order to help harmonize and sustain high quality mediation practices in Nepal. With constant lobbying along with other stakeholders, a mediation bill has been enacted by the government in order to provide institutionally-based safeguards to promote the mediation process. TAF's community mediators were also instrumental in shaping and drafting regulations for the Mediation Act. Those working within TAF's mediation program have also found ways to create networks, and cooperate and coordinate with local and the national governments.

6. Micro to macro level flow of harmony

Experience in Nepal suggests that even the most successful national efforts to build peace can easily be derailed by local outbursts of violence.[69] In order to consolidate the peace process at the national level, a holistic and durable approach to peacebuilding must respond to post-conflict crises. Nepalis require attitudes and skills to resolve conflict and build a culture of peace in their communities and beyond. Many rural Nepalis are still unaware of their various rights. Low level of literacy[70] in rural Nepal results in very limited understanding of rules and laws. As a result, many rural Nepalis prefer to resolve disputes at the community level. These factors combine to dissuade most Nepalis, who are under-educated and under-informed, to refuse to approach a formal system of dispute resolution such as the courts which deal with information and absolute proof.

Formal justice system in Nepal also exists mainly in the form of courts housed in district headquarters. Given Nepal's geography, and the resulting remoteness, access to courts for many Nepalis is very difficult, if not impossible. People have to incur considerable expenses in terms of time and money to travel to district courts and formally register a case. Even to those living in or near district headquarters, the high number of cases in courts has meant that cases have piled

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[68] September 27, 2012 interview with Ganesh Kadayat, district coordinator of TAF's community mediation program, in Kailali district.

[69] For example: the Madhes uprising that began in 2007 started from Dhanusha and Sarlahi districts in the Southern terai region. But, it escalated and quickly spread to all corners of the country. This escalation, and the subsequent increase in power of the actors involved in the uprising, was one of the reasons for the failure of the previous Constituent Assembly. There are many other similar regional contributors, such as the Tharuhat, Limbuwan, and Unified Far-west movements, that played their part in derailing the peace process.

[70] Source: *CIA World Factbook 2013* which cites Nepal's 2011 Census that 57.4% of Nepalis are literate. Literacy of the rural population is even lower.

up, and have taken too long to resolve. As a result, for many Nepalis, pursuing justice through formal courts is an expensive and drawn out affair, especially for rural, poor and marginalized communities.

Also, traditional dispute resolution mechanisms are breaking down as Nepali village society changes due to factors like rural-urban migration as well as migration of a significant proportion of the population for overseas work. In a country with growing competition for scarce resources and simmering social unrest, this situation poses a threat not only to individual rights and security, but also to national stability.

It is under these circumstances that the TAF community mediation program has fostered and gained popularity where disputes are not resolved through who has what proof but through mutual dialogue and reconciliation. The program also contributes to increased community harmony through easing of tensions vis-à-vis dispute resolution, as well as facilitating the provision of peacebuilding attitudes and skills in program areas. Mediators' training as peace builders is especially important because TAF's community mediation program launched during the height of the Maoist conflict when the Nepali state—national, regional and local—was locked in confrontation with the rebels, and the rebels viewed any and all Nepali state bureaucrats and agents as "agents of repression."[71] The Maoist threat saw local state bureaucrats vacate their offices and take up residence in the relative safety of district headquarters.

During the Maoist conflict, the absence of VDC secretaries in VDC offices resulted in declining interactions between local society and the local state which meant that the very fabric of state-society relationship at the local level risked being torn apart by the conflict. In this context, TAF's community mediation program acted as a mechanism whereby people could resolve their disputes through facilitative mediation under the aegis of the VDC office. Because people's disputes were being resolved by the mediation program housed in the VDC office, this helped people feel that their resolutions were coming through the VDC office, and thus helped rebuild the broken linkage between local state and local society. That, in turn, enhanced the harmony between local state and local citizens.

> *Micro to macro flow of harmony*
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> Kaushila is a resident of Bindhi VDC in Dhanusha district. Her elder son worked as a conductor on long-distance buses. He used to come home with friends in tow who often stayed for days. Sometime last year, villagers started accusing Kaushila of being too cozy with her co-workers from a local construction company, and accused her of having a 'loose character'.
>
> Things took an ugly turn when a local teashop owner, with behind-the-scenes support from a local Nepali Congress politician, started leading a crowd of 40-50 people to her home. The crowd accused her of prostitution, hurled verbal abuse, and threatened to beat her, burn her house down, make her homeless,

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[71] June 3, 2013 interview with Mukti Rijal, Chairperson of IGD, TAF's community mediation implementing partner in Chitwan and Tanahu districts.

and evict her family from the village. Although the crowd never actually followed up on those threats, they did break a portion of the bamboo fence surrounding her home. When Kaushila's niece came to her defense, the crowd levied similar accusations on her, and threatened her too.

The crowd also approached the local police to lodge a complaint against the two women, and asked the police to have them evicted from the village. However, upon learning the details, the police asked Kaushila to approach TAF's community mediation program in the VDC. When mediators started digging into the issue during a mediation session, it became clear that the teashop owner was being instigated by the politician.[72] The dispute was resolved after a two-hour long session with both parties agreeing to live peacefully in the community.

The program excels in ensuring community harmony by resolving disputes of a nature that would never make it to court, such as minor physical assault, verbal abuse, misunderstanding between spouses, cases where an individual is ostracized by the community (see box above),[73] and local development disputes. Disputes of these natures would be difficult to fight in court. However, if left unresolved, these disputes create disharmony in the community. By becoming an avenue to resolve these kinds of disputes which would never go to courts, TAF's community mediation program has contributed to community harmony.

Expansion of the program into locations experiencing social justice and identity issues; the high volume of conflicts and the potential of escalation of such conflicts; a lack of adequate ADR mechanisms; high demand; and support from district level stakeholders and civil society ensures that the program is able to contribute to horizontal flow of harmony.[74] TAF has expanded its programming in conflict hotspots where divisions in social and political identity coupled with constant struggle between various groups for control over natural resources make the areas conflict-prone. The presence of a community mediation program in such communities ensures a high possibility of mitigating, managing or transforming conflicts before they escalate and become unmanageable.

Over a decade of mediation programming has brought changes in the culture of dispute resolution in TAF's program communities by establishing and popularizing community mediation as a legitimate access-to-justice service. The program has filled the gap in areas where courts and other traditional access-to-justice services are unavailable, and has complemented traditional services in areas where they are available. Increasing referrals to the program from local state institutions, such as the Police, showcase complementarity. Ink spot expansion[75] of the

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[72] October 7, 2013 interview with mediators who mediated Kaushila's case in Bindhi VDC, Dhanusha.

[73] October 7, 2013 interview with Kaushila Mandal, disputant.

[74] June 5, 2012 interview with Rohit Deuba, district coordinator for TAF's community mediation program in Dadeldhura. When selecting new location expansions in 2012 with DFID funding, Mr Deuba picked neighboring VDCs to existing program VDCs where requests for the program are very high. This "ink blot approach" to expansion also ensured that new locations had significant number of disputes in order to justify the expansion.

[75] When a program is launched in a new location, neighboring locations observe the program and its success over the next few years. Thus, the successful implementation of the program in one location brings requests from

program to neighboring communities, based on high demand, ensures that the program continues to be accepted as an avenue for stabilizing local peace. Changes that spread and become rooted in neighboring communities are more likely to be stable.[76] The evolution of a culture of dispute resolution, and the acceptance of a community mediation program as a cultural norm, means that 114 peaceful TAF program communities become 114 fewer problems for national level peacebuilding.

Community mediation programming has also brought changes in social norms through empowerment and social inclusion. Citing a study by De Voe and Larkin (2005), Stein (2013) argues that the "presence of female mediators in Nepalese communities reduced men's prejudice against women and changed men's perceptions of women's social roles."[77] Stein's own fieldwork in Kailali suggested that "the presence of effective, professional female and Dalit mediators seemed to improve how the surrounding community perceived these groups" (p. 27). She also suggests the plausibility of an establishment of "norms of respect and equal treatment that begin with mediators but filter out to the wider community" because of "increased empathy, self-reflection and willingness to engage in dialogue among individuals who received even limited training in alternative dispute resolution" (p. 27).

In the long run, inclusion and empowerment create more interactions between community members. Mediation sessions in TAF's community mediation program bring together disputing parties, and facilitate 'communication' between them to learn one another's concerns, issues and options. This is done primarily by allowing both parties to tell their 'stories' about how and why the dispute arose. Then, the parties are allowed to discuss their options and solutions for dispute resolution. Research shows that storytelling and discussion are the "two basic forms of interactions that create spontaneous communication."[78] By providing a medium for these kinds of interactions and communications, TAF's community mediation program assists in increasing civility, and improving relationships between different groups in the community. Those, in turn, contribute to greater social harmony.

Community mediation's efforts at the grassroots to promote social harmony have been complemented by solid institutional linkages with local and national level institutions in order to grant greater legitimacy to the program. The legitimacy must be protected and further strategic partnerships must be fostered through national level strategy, local partnership strategy, wider social understanding and dissemination strategy and donor strategy. TAF has partnered with government agencies like the Supreme Court and the Ministry of Law and Justice to improve and promote community mediation programming in Nepal. An assessment of the Court Referred Mediation Program that TAF conducted in 2013 for the Supreme Court of Nepal through CMS guided the Supreme Court's National Plan of Action on Mediation. Vertical linkages between grassroots level programming and national level policymaking was possible through tireless

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neighboring locations for the program to be expanded there. In this way, a good program spreads to neighboring locations like an ink-spot on blotting paper. This approach to development is demand-driven.

[76] Lippitt, R, J. Watson, and B. Westley (1958). *The Dynamics of Planned Change*, Harcourt, Brace and World: New York.

[77] De Voe, P., and Larkin, C. J. (2005). *Community Mediation as a Tool for Addressing Social Exclusion in Nepal*. Critical Half. Cited in Stein (2013) p27.

[78] Bruner (1986) cited in Desalles (2011).

lobbying by TAF and other like-minded mediation practitioners to draft and implement the Mediation Act, which guarantees legitimacy and legal validity to mediation programming in Nepal. Organizations and donors such as JICA, Mercy Corps, PACT International, DANIDA, GIZ, and the Swiss Embassy in Nepal have approached TAF to seek advice and support for their mediation programming and activities. The Danish Embassy, TAF and the Swiss Embassy formed a partnership in 2013 to conduct an action research to scale-up the practice of mediation by training mediators on multi-stakeholder mediation.

Social harmony, social cohesion, and social capital literature suggest that TAF's community mediation program shares characteristics of these development concepts. Stein (2013) also suggests that the community mediation program's influence and impact on how social norms have changed in the program communities pose challenges to local elite capture. These challenges "invite the possibility of conflict, tension and social *dis*harmony" (p. 28). However, as Stein observes, there are significant evidence gaps in claiming that increased social harmony in program communities is directly linked to community mediation activities. Also, it is unclear what describes accurately the results and achievements of TAF's decade-long community mediation programming. Is it social capital, social cohesion or social harmony? Could 'community harmony' better represent TAF's work at the community level and narrow the definition from the broader term 'social harmony'?

7. Conclusion

In her 2013 paper, '*Community Mediation and Social Harmony in Nepal*' Danielle Stein criticizes the usage of 'social harmony' by TAF to describe the achievement of its community mediation program in Nepal. While this paper is not a rebuttal of Stein's criticisms, it is an attempt to clarify some of the issues raised in her paper with an additional articulation of TAF's understanding of its claims.

In her paper, Stein argues that while there is evidence to claim improved harmony at the individual level, there is no evidence for that claim at the societal level. On the contrary, TAF strongly believes that individual level accomplishments are cumulative and, when summed, contribute to a more peaceful and harmonious community. TAF's claim that its community mediation program generates social trust and norms in peace building is consistent with Putnam's 'social capital' theory. Allport's 'contact hypothesis' supports the claim that individual to societal level changes reduce prejudice through institutional support to community mediation programming. Stein herself mentions that the mere presence of female mediators reduces men's prejudice on women's social roles in Nepal and changes their perceptions. TAF believes one step further, that such changes aggregate and result in improved 'social harmony' in program communities.

Based on what we have been carefully hearing, on iterative and deeper observations, and on tracking results over time, TAF believes that its community mediation program in Nepal contributes to broader social harmony through social transformation, awareness with access, and a balanced evolution of harmony. Social transformations are achieved via personal, relational, cultural and structural transformations. The community mediation program provides both

awareness and access, thereby providing a valuable service that promotes and contributes to social harmony. A review of the social capital, social cohesion and social harmony literature suggests that the community mediation program shares many of its characteristics with those ideas. TAF agrees that more research is needed to more narrowly define the achievements of its community mediation program. However, until such further research is undertaken, TAF contends that promotion of 'social harmony' best describes that achievement.

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