



Community Mediation

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Policy Brief

Community mediation has gained popularity as a form of local-level dispute resolution, and a credible forum for promoting justice. A long-term strategy with programme support however is required if community mediation is to be replicated and extended further.

Introduction

This paper is intended to provide an overview of the Enabling State Programme's (ESP) contribution to access to justice in Nepal, as seen through the lens of ESP-supported community mediation programming. This paper will discuss the evolution of ESP's approach to community mediation as well as the key features of this approach. Based on programme monitoring data as well as independent field-based and stakeholder consultations, this discussion will consider the direct and indirect results of ESP-supported community mediation to-date, and highlight key lessons learned for future justice programme.

Access to Justice in Nepal

Community mediation was initially conceived as a response to the broad inaccessibility of formal justice services in Nepal. "Formal justice" in this case describes courts and other quasi-judicial entities, whose location far away from most villages in district headquarters and high processing costs make them inaccessible to the majority of Nepalis. This lack of access is particularly pronounced for members of poor and marginalised communities, who have fewer financial means, are less mobile and whose circumstances are not well represented or understood in these institutions. Quasi-judicial entities such as offices of the Village Development Committees (VDC), district administrations, forest administrators, along with land reform and land revenue authorities is often no different. Case resolution in both formal and quasi-judicial institutions tends to be slow which, combined with their complex filing processes, further discourages

many people from utilising these justice outlets. Perceptions of corruption and mismanagement further compound this disinclination. Rather, many people first approach community authorities or the police when a dispute arises due to the perception that their ability to use force gives the police power in the community. However, these entities have neither the jurisdiction over many kinds of common disputes nor the legal authority to resolve them.

Despite these barriers to accessing the formal justice system, Nepal has a strong culture of local dispute resolution. Traditional approaches to dispute resolution vary by regional, ethnic and linguistic groups, and range from arbitration to community consultative processes. These systems generally seek to maintain social order and resolve disputes, but have historically been important channels through which local authority is established and expressed.

These informal justice practices were codified in the *Panchayat* system established in 1964. *Panchayats*, composed largely of local elites, were charged with local dispute resolution and governance but were sometimes misused to suppress political party leaders and cadres who were against *Panchayat* autocratic regime. After the 1990's people movement and restoration of multi-party democracy, VDCs officially replaced *Panchayats* as local representative bodies. Though community level groups called *panchetis* continued to resolve disputes, they came under attack during the armed conflict (1996-2006), leaving many villages without government representatives for years. While the Local Self-Governance Act (1999) officially devolved dispute resolution responsibility to the VDC level, the low capacity

and continued absence of elected representatives in VDCs long after the end of the conflict continues to complicate access to this form of justice.

Against this backdrop, ESP follows the overall theory of change: *“Nepal will be more peaceful, prosperous and better governed if the state is more inclusive and accountable to its citizens, especially the poor, excluded and women.”*¹ In order to fulfil this goal, ESP’s community mediation project was developed as a way to promote good governance through improved access to justice. Doing so in a way that promotes social inclusion of marginalised groups like women, Dalits and Janajatis was thought to both empower these communities and allow them to exercise voice in both formal and informal decision-making. The word used for community mediation in Nepali, *meImilap*, captures the nuances of facilitated, community level, mutually respectful form of dispute resolution represented by mediation. ESP supports community mediation as a key intervention under its broader aim to promote access to justice.

ESP’s approach to community mediation²

ESP began supporting community mediation in 2001 and has developed significantly in its approach that time. This approach builds on Nepal’s long history of community-based dispute resolution and evolved in three distinct phases.

Background

Phase 1 (2001-2007): ESP began supporting community mediation during the height of Nepal’s conflict through the Centre for Victims of Torture (CVICT-Nepal) and other local partners, including Human Rights and Community Development Academy Nepal (HUCODAN). Focusing on three districts of eastern Nepal, this project aimed to make justice accessible to all especially to women and the poor and marginalised whose rights were particularly threatened by the lack of rule of law and

on-going violence of the conflict period. During this time, many local disputes escalated to more serious conflicts as political rivalry deepened. Formal justice authorities had abandoned many rural areas in the eastern Terai for fear of being targeted by armed militant groups and associated criminal elements. At this time, mediation played an essential role in promoting local participation in good governance initiatives and enabling community members to protect their rights. This phase included two projects, the first implemented between 2001-2004 and the second between 2004-2007.

As a volunteer-based programme, ESP-supported community mediation welcomed all individuals as mediators regardless of background. Women were also especially encouraged to be involved both in Human Rights and Mediation Committees (HRMCs) as well as Women Peace Committees (WPCs). A reservation system with a minimum of 25% women and reasonable participation of marginalised groups were key features at this time. This phase established the importance of a rights-based approach to mediation, the impartiality of mediators (free of any affiliations e.g. political, religious), access to the local governance system, working with community structures, and networking and coordination with formal judicial forums and socio-cultural organisations.

Phase 2 (2008-2012): This phase saw the highest profile ESP intervention in community mediation through the Madhesh-Terai Community Mediation Project (MTCMP).³ This project was implemented in three phases in the Eastern and Central Terai, which remained fragile into the post conflict period: (i) April 2008 to May 2011, (ii) June 2011 to January 2012, and (iii) February 2012 to January 2013, implemented by HUCODAN and its local partners.

This phase built on many of the same tenants as the Phase 1, and focused on increasing access to justice through mediation, while at the same time supporting human rights, particularly of women. These efforts were

1 ESP Strategy (2011 - 12 and beyond), GRM International, 2011; p.n. 24.

2 Other organisations, including The Asia Foundation, UNDP, Danida and the Japan International Cooperation Agency also support forms of community mediation which vary in terms of geographical scope and methodology. See for example, Jeannine Suurmond & Prakash Mani Sharma (2012): Like Yeast That Leavens the Dough? Community Mediation as Local Infrastructure for Peace in Nepal, *Journal of Peacebuilding & Development*, 7:3, 81-86.

3 While the programme has several names according to its funding phases, for consistency, this report will refer to this programme as CMP.

important during the peace process period as well as in the context of the first post-war national-level elections. The main shift was to expand this programme in the eastern and central Terai, which faced a deteriorating security situation with frequent human rights violations. These organisations were largely members of district-level legal communities, and thus had good knowledge of local networks and legitimacy in their communities. In this phase, the project covered 90 VDCs in six districts of Terai, namely, Saptari, Siraha, Dhanusha, Mahottari, Sarlahi, and Rautahat. Not only were these districts known for heavy case back-logs in the formal sector, but are also predominantly composed of Madheshi Dalits and indigenous people who were often victims of discrimination.

This phase also intended to build the capacity of Women Rights Groups (WRGs) and Community Mediation Committees (CMCs) to mediate issues related to women at the local level, and promote the development of social activist networks. WRGs work for protection and promotion of women's rights by supporting CMCs to bring domestic violence and violence against women (VAW) cases to mediation as appropriate, as well as in post-mediation monitoring. These groups ensure that women's issues are discussed sensitively in mediation, and prepare female victims for the mediation process. These groups also form alliances with other women's groups and networks to advocate for women's rights and exert strategic pressure for change in cases the law has prohibited mediation.

During this phase CMCs at the VDC and ward⁴ levels increased their outreach to make mediation more accessible in rural areas. This work aimed to establish a functional network and to mediate issues related to VAW, women's rights and other common issues such as irrigation and public land disputes. This work also sought to build the capacity of emerging mediators, particularly from poor and marginalised communities.

Phase 3 (February-December 2013): The MTCMP project was renamed Community Mediation Project (CMP) for a final phase. This project builds on the

success of previous phases and aims to ensure that community mediation committees are recognised and supported by the government at the local level. It also aims to promote capacity building and sharing of lessons learned. At this stage the project has been extended to Bara, Parsa of Terai and Ilam and Panchthar hill districts. As with the previous phases, this phase was implemented by HUCODAN along with local partner organisations in other districts.⁵ During this phase, ESP-supported mediation was expanded from 90 VDCs in six districts to 140 VDCs in ten districts.

Approach

Community mediation relies on two key groups: mediators and disputants. Mediators are volunteers selected from local communities, and are intended to be representative of the gender, ethnic and caste make up of their communities. Mediators are often socially active and respected individuals in communities though do not necessarily hold formal positions of power. Though many mediators may have previously resolved disputes in informal settings, all mediators follow through a basic mediation training prescribed by the Supreme Court of Nepal. This includes eight days of basic training covering a 40-hrs of curriculum along with human rights and women's issues, plus annual refresher trainings and exposure visits to solidify this knowledge. CMCs and WRGs are also trained in proposal development to promote the sustainability of their programme.

To begin a mediation session, disputants arrive at VDC and ward-level mediation committees through a number of avenues, including word of mouth, referral by the police or VDC Secretary, as well as the advice of local community members, WRGs and local leaders. After registering a case at a mediation committee, the mediation process starts.

Community mediators are trained to facilitate the resolution of disputes with a 'win-win' outcome, meaning that both parties must agree on a solution. This process is informed by human rights and entitlements

⁴ Ward is the smallest unit of the VDC. Each VDC has nine wards.

⁵ They are Human Rights and Community Development Centre (HURCODEC) in Siraha, Human Rights and Social Development Academy (HUSODAN) in Dhanusha, Human Rights and Social Development Project (HRASDP) in Mahottari, Village Community Development Centre (VCDC) in Sarlahi, Environment and Child Development Council (ECDC) in Rautahat, Jana Jagaran Yuba Club (JJYC) in Bara, Arunodaya Yuba Club (AYC) in Rautahat, and Peace Action Group (PAG Nepal) in Ilam and Panchthar districts.

as well as the specific needs and interests of each disputant. This role for mediators differs significantly from lawyer-led and legal aid approaches, in which lawyers advocate for, offend or defend a disputant. In this case, mediators are seen as facilitators that support disputants throughout the mediation dialogue. Mediation sessions are generally open and done in groups in the presence of the community, unless the disputants opt for private/closed ones. In gender-sensitive cases two female mediators must facilitate open mediation sessions, with a maximum of five female mediators involved in closed sessions. While ground rules are made by both disputants in the beginning of the session, community mediators are bound by their code of conduct to always act in an impartial, supportive role.

Once disputants have agreed to a settlement, terms of the agreement are written down and signed by disputants and the mediators involved. This serves as evidence should the same issue recur. These settlements could include an apology, change in behaviour or practice as well as division of property or land if that is the case. It is notable that while traditional *pancheti* decision-makers may impose fines on disputants as part of a penalty, disputants do not pay fines as part of community mediation.

A key feature of ESP-supported mediation is the *open form of dispute resolution*, which allows community members to witness the presentation of the dispute and the negotiation process. This allows for transparency in the process and engages communities in enforcement of the decision by giving them knowledge of the terms of the agreement. Despite these benefits, disputants can request closed sessions in the case of especially sensitive disputes. Domestic violence and family matters that require confidentiality are always resolved in closed sessions.

Results and accomplishments of community mediation

Case resolution

Overall, ESP-supported community mediation programmes have made a significant contribution to resolving disputes in each of the target districts. *Table 1* below illustrates the registration and success rate for each district. Note that ESP-supported community mediation in Bara, Parsa, Ilam and Panchthar districts is

relatively new. Ilam and Panchthar are also hill districts and significantly less densely populated than many of those in the Terai.

Table 1: Resolution rates of community mediation in ten districts

District	Registered	Success %
Saptari	2,225	82.3
Siraha	1,524	76.9
Dhanusha	1,799	83.1
Mahottari	2,010	77.5
Sarlahi	1,621	87.8
Rautahat	1,630	79.6
Bara	45	48.9
Parsa	30	100.0
Ilam	54	85.2
Panchthar	44	93.2
Total/Average	10,982	81.2

Source: HUCODAN Database, November 2013

Table 2 below illustrates the range of cases registered in community mediation and their respective success rates across all districts.

Table 2: Cases registered in community mediation, January 2009 to November 2013

Type of case	Number registered	Success rate %
Land related	2,818	72.2
Domestic violence	870	89.2
Economic transaction (Lenden)	1,324	80.4
Compensation (Kshhetipurti)	627	88.5
Common issues (Public property and interest)	461	80.7
Lootpit (forceful taking away property and assault)	421	78.9
Violence against women	435	90.3
Jhai-Jhagda (petty disputes)	413	89.1
Others*	3,613	83.7
Total	10,982	81.2

Source: HUCODAN Database, November 2013

* Partition (*ansh*), assault and battery (*kutpit*), affirmation of one's right (*haquekayam*), children related, libel and slander (*gaali-baijjat*), foreign employment, salary-wages, invocation of relationship (*natakayam*) etc.

According to the Local Self-Governance Act (1999), all cases seen in community mediation must meet certain legal standards and fall within the remit of civil rather than criminal law. As illustrated above, different types of cases are more difficult to resolve than others.

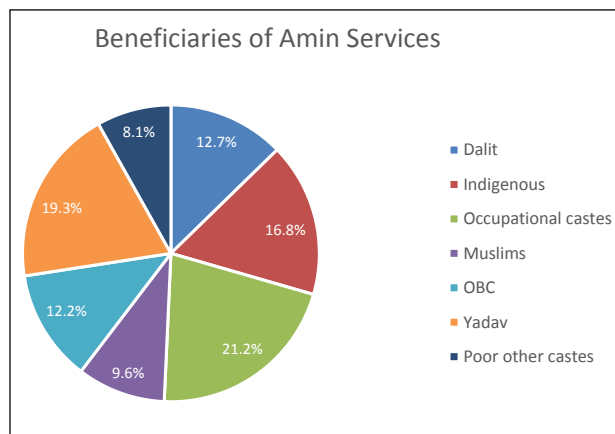
Many of the primary disputes resolved by community mediation disproportionately affect socially marginalised groups. Two of those most common and complex types of disputes involve *land* and *debtor-creditor relations*, detailed below.

Land disputes

Land-related disputes are both the most commonly registered cases in community mediation as well as the cases with the lowest resolution rate. The high frequency of land disputes can be explained by a number of factors, including the trend of not registering property ownership, differing methods of measuring property, historical practices of share cropping and the increasing presence of land mafia and property speculators, all of which lead to land disputes. Rising land values also compound these disputes, as higher land values make people more concerned with even small changes in their land size and less likely to compromise in disputes. These higher values also allow increasing numbers of households to use their land as collateral for bank loans to support their relatives to work abroad. Land disputes are often the beginning of much more serious law and order problems, and are particularly destructive for those who depend on land for their livelihood. Land disputes are also often more difficult to resolve in a setting like mediation, as disputants with deeds, measurements or historical boundaries are often less apt to compromise.

To address this specific need, ESP-supported community mediation established a connection with *amins*, or land measurement professionals, who help to clarify boundaries and property size. By assisting in this simple task, *amins* provide information necessary to settle disputes between neighbours, farmers and tenants and prevent these disputes from escalating. Accessing *amin* services can normally be costly and time consuming as governmental *amins* may take weeks to conduct a measurement. As such, ESP-supported services are particularly essential for marginalised communities, including women, lower castes and ethnic minorities who may be particularly affected by a land dispute and less able to afford or arrange for *amin* services. Figure 1 below shows the distribution of ESP-provided *amin* services by beneficiary population.

Figure 1: Beneficiaries of ESP-supported *amin* services



Debtor-creditor disputes

Debtor-creditor disputes also often disproportionately affect poor and marginalised populations. Though many are simple money lending issues, some can involve

Value for resources in community mediation

In addition to resolving local level disputes, ESP-supported community mediation has also achieved a high level of value for resources (VfR). An analysis of the ESP-supported Madhesh-Terai Community Mediation Extension Project (MTCMEP) identified a resolution cost of NRs 14,946 (approx. US\$ 150) per case (approx. US\$ 75) per disputant, as compared with the minimum cost of using the formal system of NRs 20,650 (approximately US\$ 207) per disputant. As mediators are volunteers, the majority of these resolution costs are comprised of mediator training and training materials, initial organisation and management set-up as well as establishing a district resource centre. Many of these are one-time costs and are distributed over the life of the programme. It is important to note that the costs of community mediation are borne by the programme, whereas disputants must pay their own costs in the formal system. Given that Nepal's average per capita income is about \$700 per annum, these costs preclude many for seeking justice from the formal system, making mediation significantly more affordable.

wilful deceit of disadvantaged borrowers by lenders. This may also include high interest loans as well as share cropping and property sharing arrangements, which can quickly become complicated. In many communities, a few individuals derive their livelihoods from these practices, at the expense of many of the poorest and most marginalised. Though these cases arrive in both mediation and courts, mediated resolutions to these cases tend to be much more favourable to the poor than decisions handed down in courts. In courts, a strict interpretation of these deeds prevails because what has been duly written and signed must be treated as evidence. However, in community mediation, other factors influence dispute resolution, including the intentions of lenders, the attempts by borrowers to repay funds, and the borrowers' financial situation. With the guidance of mediators, disputants tend to be more empathetic towards one another in mediator than in adversarial courts. In these cases may not depend solely on documentary evidence, the process facilitated by community mediators, helps the truth to come forward.

Social inclusion

In addition to settling some of the most important disputes affecting people's day to day lives, ESP-supported mediation has successfully integrated members of marginalised groups into VDC and ward-level mediation committees. The national norm of at least 33% women's representation has also been integrated into the structure of mediation, with an average of the 55% of the 10,501 mediators and WRG members trained through community mediation programme being women. *Table 3* below shows the overall composition of ESP-supported committees.

Table 3: Composition of CMCs and WRGs of 140 VDCs

Caste/ Ethnicity	VDC-level CMC	Ward-level CMC	WRG	Total
Dalits	609	1,260	441	2,310
Indigenous	399	1,323	420	2,142
Occupational	315	1,008	336	1,659
Muslims	105	504	168	777
Others	672	2,205	735	3,612
Total	2,100	6,301	2,100	10,501

Source: HUCODAN Database, November 2013

This diversity of mediation committees allows for members of marginalised groups to be involved in the mediation process, making the structure more appealing and comfortable to disputants of marginalised groups. This diversity also offers communities a chance to seek non-discriminatory outcomes that meet the needs of both parties without resorting to a formal dispute settlement mechanism. As a result of this diversity, many minority representatives at the community level feel that community mediation protects minority rights and demands better than district courts. Women in particular note that the presence of female mediators allows disputes to be resolved in gender-sensitive ways. This has raised awareness of the value of public representation and of discriminatory practices vis-à-vis different social groups and ethnicities, as well as in male-female relationships.

ESP's Main Accomplishment in Community Mediation

- 1,400 community mediation committees and 140 WRGs formed and active in 140 VDCs across 10 districts of eastern and central regions.
- Over 10,500 community members, average 55% women, affiliated with the mediation committees and women's groups.
- Over 10,980 local disputes registered with mediation committees with 81.2% resolution rate.
- 26% of the disputes registered were land-related, with over 72% resolution rate.
- ESP community mediation partner organisations have been registered with district court as mediation service providers in six districts.
- 93 cases referred to community mediation from the formal justice sector, all of which were resolved.
- Over 80% dispute resolution rate on common interest disputes brought to community mediation, such as irrigation and public land use.

Spin-off results

Though including members of marginalised communities aimed to make mediation more accessible to these groups, the presence of these individuals has also had a number of other positive results at the community level.

While resolving disputes is a major achievement in itself, community mediation also empowers women, Janajatis, Dalits and minorities by helping them take socially high-profile dispute positions as mediators, traditionally given to privileged men. This has a significant demonstration effect in many communities, and shows other members of marginalised groups that assuming positions of influence is possible for them. It has also been clear that the use of women mediators to settle disputes between men has further empowered women, as their good performance and fairness earns them respect from men.

Through trainings and these empowering experiences, many mediators are able to continue serving their communities beyond mediating disputes. This may include being members of local consumer committees and other civil society forums, as well as offering trainings to others. The Judibela VDC of Rautahat district even offered NRs 100,000 to the local WRG to organise trainings to other women in society.

This shift in empowerment may begin in mediation training, which focuses on mediation procedures as well as human rights. Many mediators find the basic training regarding women's rights exciting, and men speak of how this training has shifted their own traditional perspectives on women and their role in family and society. Women who were involved as mediators or as members of WRGs are also able to consult their neighbours on specific women's issues. This has led to an overall improvement in community-level knowledge about human rights as well as the Nepali legal code among local communities and women's groups. For example, these groups have learned the legal regulations against polygamy, child marriage, witchcraft, untouchability and caste-based discrimination, dowry, domestic violence, and the factors that make a case criminal. They have also learned and helped others learn about the registration of vital statistics in the family and how to secure necessary papers from government offices. Mediators have also helped their families support demands for service delivery in local

hospitals or health posts along with village- and district-level development initiatives.

Significantly, in the collaborative process of mediation, diverse mediation committees working with diverse communities provide a good example of coexistence and mutual respect. This is further highlighted by the equality inherent in mediation sessions, which allow both parties equal opportunity to speak, and place all mediators and disputants at the same level, regardless of class, caste, ethnicity and gender.

Sustainability

Local

At the local level, mediation is sustained through the financial support of VDCs. After initial training and group organisation, a minimal amount of funding is needed to sustain these groups, as mediators are volunteers and incur few expenses. Serving as volunteers enhances prestige that mediators earn in their community, which is a significant incentive to participate. This prestige stems from the belief that only honest people would sacrifice their time for their community. Beyond the training and resolved cases, many communities believe that this emphasis on moral characteristics will remain intact in the mediators long after the project ends.

Over the past three years, 10 VDCs supported CMCs in the first year, which grew to 16 in the second year and 31 in the third year. Out of 140 VDCs, VDC-level CMCs in 79 VDCs are housed in VDC offices and CMCs in 42 VDCs are housed in health posts and agriculture service centres. In absence of space in these institutions, local community-based organisations and social workers have provided space for CMCs in the remaining VDCs. By September 2013, CMCs and WRGs have succeeded securing about NRs 1.5 million resources from VDC offices. In addition, CMCs and WRGs in some VDCs collect money from mediators and the community to meet their operations cost and organise events for social causes. For example, the CMC of Barahampur VDC of Saptari district started the tradition of honouring two great social workers (1 man and 1 woman) from their VDC every year. As a further sign of sustainability, 12 VDC secretaries have completed mediator trainings and joined mediation committees. More than 20 local police recommended by District/Area Police Offices have also completed basic mediator trainings.

VDCs that are not able to contribute financially also support mediation committees by providing rooms or land to use for committee meetings and mediation sessions. For example, the Bastipur VDC office of Siraha district has allocated land to a VDC-level CMC and NRs 100,000 for building construction. Additionally, one of the local beneficiaries of the community mediation service of Arnama VDC of Siraha district has donated land worth NRs 250,000 for constructing an office building. Other VDCs have allocated budget to support training and transportation for mediators.

The project has gained recognition, acceptance, and voluntary input from the communities it has worked with because of its system of transferring skills, regular monitoring, and backstopping support. The broad-based interventions have increased motivation for social service within the communities. There has been replication of similar community practice of resolving disputes in non-project VDCs as well. For example, people of Mahendranagar VDC in Dhanusha district have resolved a property partition case by adopting community mediation model. The case was running for over 15 years in Dhanusha District Court.

Institutional

At the institutional level, there have been significant indications of the long-term institutional sustainability of community mediation since the programme began. Most crucial was the passage of the government of Nepal's Mediation Act (2011), which builds on the approaches to mediation supported by ESP as well as other organisations. This Act has recognised all community mediation practices that meet legal standards as legally sanctioned forms of dispute resolution. Though this indicates a political and cultural recognition of community mediation as an important feature of local justice, this Act has yet to be implemented.

Lessons learned

- **Forming socially inclusive CMCs and WRGs** was instrumental in increasing the image and acceptance of these local structures. WRGs further promoted inclusion by protecting and promoting women's rights in mediation processes.
- Land disputes are rampant in Terai districts, and are difficult to resolve without technical knowledge of land measurement. **Provisions for credible technical services**, such as *amins*, as part of community mediation significantly contributed to resolving land-related disputes at the source.
- Mobilising **District Resource Groups**, composed of 20 highly skilled CMC and WRG members, helped improve the quality of mediation, particularly in instances of GBV. By serving as community trainers, these groups also supported best practice sharing and skills improvement of other CMC and WRG members in the community.
- **Forming technical mentoring bodies** such as the District Consultative Committees involving local public officials and administrators, increased recognition of community mediation and supported community mediators. Their regular meetings and monitoring provided a common platform for sharing experiences, generating lessons, facilitating coordination and addressing issues pertinent to community mediation at the district level.
- **Involving VDCs and DDCs as long-term partners of CMCs** was essential not only to gaining political support for mediation locally, but also for ensuring the financial sustainability through VDC funds and other resources. The Mediation Act however does not have necessary provisions to guide this engagement beyond designating VDCs as a local depository of deeds generated in the local CMC.⁶
- **Forging alliances between CMCs, WRGs and local police** contributed to cross-learning and resolution enforcement. This was done with the facilitation of project implementing partners and in coordination with the District Consultative Committees. As these groups operate independently and competently, all groups will be better able work together to support community security, justice and dispute resolution at the local level.
- **Involving local organisations** as lead and implementing partners was essential to grounding mediation programming in the realities of each

6 Section 34(6) of the Mediation Act.

community. This allowed each CMC to provide locally credible community mediation practices, minimise programme cost and promote ownership at the local level.

- **Significant engagement between ESP and implementing partners** strengthened the quality and efficiency of community mediation. This engagement provided significant technical assistance/mentoring, coaching and hands-on support, embedded throughout the life of the programme. This model is particularly innovative as most donor-funded projects provide funds only.

On-going challenges

- Many traditional systems of dispute resolution in Nepal lost their credibility due to politicisation and lack of respect for diversity. Community mediation therefore offers something new and appealing, and **ensuring that CMCs remain neutral is essential.**
- **Without the implementation of the Mediation Act it is not possible to give a firm legal grounding to community mediation.** Once implemented, this act will enhance the legal status of the mediation profession and components of civil administration are likely to be further supportive of current and future community mediation efforts. However, the lack of locally elected officials and weak central government capacity prevent this act from being implemented.
- Despite being represented in justice sector coordination meetings, **community mediators are not legally entitled to representation in state forums.** Their presence could help facilitate communication between judges, police, the local development office, the district administration office and the Nepal Bar Association.
- **Regulations for archiving mediation agreements do not support full archiving.** Archiving mediation agreements at the district level would be very useful were disputes to recur. However, the Mediation Act only provides for archiving of mediation agreements at the VDC level, and more funds would be needed to expand this.
- **Nation-wide expansion of community mediation, as laid out in the Mediation Act, will be difficult**

to meet with current resources. The mandatory forty-hour mediator training as set by the Supreme Court may need to be reconsidered, along with the potential synergies between community and court annexed mediation programmes.

- **Courts have yet to fully accept community mediation as a form of justice resolution.** This barrier exists despite mediation's utility in reducing case-loads in courts, particularly at the district level. This lack of acceptance reduces the possible sources of financing for mediation, putting the closed mediation used in GBV cases at particular risk.

Building on ESP's success

- **More support should be given to the enforcement of decisions made in community mediation.** Even though the decisions are not themselves legally binding, many carry with them legal implications. This affects many of the most common issues resolved in mediation, like property ownership and division, decisions pertaining to which must be filed with the land registration office. Providing disputants access to filing and facilitating this often difficult and expensive process would better protect decisions made by disputants.
- **Establishing a system to track the implementation of decisions reached in mediation** would add a significant dimension of understanding to current programming. This would ideally capture the durability of decisions (agreements between disputants), reasons for non-implementation of decisions, as well as the wider implications their resolution carries for the community.
- **Ensuring the on-going implementation of mediation's code of conduct is essential to preserving the integrity and human rights-orientation of the process.** Refresher trainings, practice sharing and exposure visits for mediators have been successful to support this. Establishing on-going training programmes as well as a system of mediator certification to ensure that untrained individuals do not work as mediators may further support this goal.
- **Involving beneficiaries in the design** of mediation programming allows it to be responsive to the changing local contexts. The existing District Resource

Group or similar groups should be strengthened and exchange of resources/learning across various districts encouraged. Community mediation may be useful to support the development of dispute prevention and proactive awareness raising.

- **Documentation of mediation processes needs to be periodically assessed by designated legal officers** to ensure its clarity, consistency and compliance with legal standards. This data can be analysed for the study of dispute trends, resolution patterns, and areas of improvement.
- Considering the image and acceptance of CMCs and WRGs, **these platforms can also be used as public hearing forums** as requested by local government agencies.

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