IN NEPAL, COMMUNITY MEDIATION OFFERS those who have been traditionally undervalued or disenfranchised access to justice and propels them into positions of respect and authority at the local level. For women and others who participate as mediators, it provides human rights and leadership training, practical experience in the public arena and a high-profile position within the community. For both mediators and participants, it creates a socio-cultural environment where gender and caste issues are treated equitably. In the wake of political unrest in Nepal and a vacuum created by the termination of local governments, the community mediation program takes significant steps to create local “socio-judiciary” institutions and to enhance women’s access to public life.
Community Mediation as a Tool for Addressing Social Exclusion in Nepal

PAMELA A. DE VOE AND C.J. LARKIN

Introduction

Semi-formal, community conflict resolution programs can create in-roads against women’s exclusion in conflict-ridden communities. Where community norms do not recognize women’s issues, and formal conflict resolution mechanisms (such as the courts) are failing due to inaccessibility or anarchy, community-based mediation programs can reduce violence against women, educate community members about human rights issues and create opportunities for women to gain problem-solving roles of increased prominence. Such semi-formal, localized programs, supported by international non-governmental organizations (NGOs), can make incremental changes in the status of women, perhaps more easily than major national, political or legal gains can be made and sustained in times of conflict. Nepal provides a case study of how important community-based programs can be in bringing about such change.

Nepali Women’s Role and Status

Nepal is a multicultural society with more than 60 ethnic groups that are usually categorized into two distinct families: Tibeto-Burman and Indo-Aryan. Although gender relations vary considerably within the various groups, the statistics on the position and status of women in Nepal, whatever their ethnicity, portray a bleak picture. This is true for all major indicators, such as life expectancy, education levels and employment. According to the Asian Development Bank, Nepali women are among the most oppressed and disenfranchised in the world. Their life expectancy is lower than for men, making Nepal only one of three countries worldwide where this is true. In terms of literacy, while both men and women have low literacy rates, women have significantly lower levels of literacy than men.

The reasons for women’s position are multifaceted. Nepal is an agriculturally based nation with concomitant economic underdevelopment, the legal system is highly patriarchal and the socio-cultural environment undervalues women and tolerates gender-based violence. In addition, Nepal is presently immersed in violent civil conflict involving Maoist insurgents and government forces. This conflict has its own detrimental impact on women and their place in society.

It is often assumed that one reason women suffer discrimination is that they do not engage in productive labor and that if they shared the economic burden with men they would be recognized as (more) equal to men. However, in Nepal, women typically work harder and longer than men. Moreover, the agricultural field is being increasingly feminized: rural and hill areas are increasingly dependent on women’s agricultural labor since many men have abandoned their homes either from fear of civil unrest or in search of economic opportunity in urban areas or in India. Nevertheless, women’s work remains undervalued and unremunerated, leaving them in the position of receiving little or no status for their economic contributions to their natal families before they marry and to their husbands’ families after they marry.

Against this traditional backdrop of discrimination, some rural and ethnic minority women look to the Maoists, who are currently challenging the government for political power and authority. The Maoist movement’s expressed philosophy stresses gender equality. Such a stand strikes a chord with many young, oppressed women. Further, in rural Nepal, where anti-government activity is strongest, the police and army, under the guise of an anti-Maoist campaign, allegedly kill innocent men and rape women and girls, thereby creating a heightened anti-government sentiment. The confluence of the apparent Maoist gender sensitivity and anti-government sentiment has resulted in many young women joining the Maoist cause. Interestingly, there is a tradition in Nepal “of armed political activism and struggle by women of ethnic and indigenous groups.” Women fought against the British in 1815 and, more recently, were active in the democracy movement.

In spite of their current involvement in Maoist revol
lutionary activities, the prospects for change in Nepali women's status remain questionable. In the past, armed political activism did not lead to greater gender equality. Further, there are at least two issues that suggest that women will not fare any better under a Maoist regime. First, the Maoists suggest that gender equity will come about naturally when their revolutionary war is won. As a result, there is no programmatic schedule for change or even for incorporating gender interests in the struggle. Second, although initially there were women in leadership positions within the Maoist organization, as the movement became more militarized and formalized, women's roles and leadership positions have diminished. This reversal or containment of gender issues is not unusual and the pull of existing socio-cultural patterns is often stronger than political rhetoric or will.

Gender and Nepal’s Legal System

While women have substantial rights in the folk culture of many of Nepal's ethnic groups, the country's legal system is based on Hindu caste traditions and a patriarchal society that creates gender-based inequities. Although Article 1 of the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) prohibits discrimination against women, there are at least 118 areas of Nepali law that do discriminate against them. For example, citizenship passes to children only through the father, rules of inheritance often exclude female children, widows lose property they inherited when their spouses died if they remarry and, in certain criminal cases, women receive more severe sentences than men. Domestic violence is not considered a crime, which gives women little or no legal recourse against violent spouses or relatives. Women's rights to land are limited. In an agriculturally based society, land ownership is critical in maintaining a livelihood and independence. Without meaningful rights to property, divorce for women becomes almost impossible. As a result, many women continue to live with the horrors of domestic violence.

This mixed legal environment exists in spite of the 1990 Nepali Constitution calling for equality for all citizens. Nepal's Supreme Court ruled that the principle of equality did not mean that every person should be treated equally before the law. The Court maintained that there should not be discrimination between persons of the same position, but that people could have, and do have, varying positions within society. That is, as Hari Bansh Tripathi noted, “the right to equality is not absolute.” Therefore, while the Constitution guarantees fundamental rights to all citizens without discrimination, laws supporting those rights have not been passed or upheld by the courts. As a result, another system where women can access justice needs to be put into place. The community mediation program addresses this equal-access-to-justice issue and, at the same time, creates new opportunities for change within Nepal's socio-cultural environment.

Community Mediation as a Tool for Change

International organizations such as the United Nations, the US Agency for International Development and the Asia Foundation have blended their human rights and social development agendas with the promotion of justice and conflict resolution by providing funding and technical support for community mediation, particularly in Nepal's rural areas. The NGOs are firmly behind the goals of increasing women's power and participation in Nepali society. The message is equalitarian, collaborative and tolerant of diversity.

Community mediation is in its nascent stage in Nepal; however, it has strong commitment and support from civil society, including educational and judicial groups. Litigation within the formal, patriarchal legal system is often too expensive, too slow and too geographically remote to be accessible to poor, rural and disenfranchised people. Further, since the legal system relies on written records and documents, those who are not at least semi-literate are at a distinct disadvantage in court. Therefore, community mediation, with its reliance on local, indigenous trained mediators, provides the disenfranchised with an opportunity to address perceived wrongs.

NGOs, such as the Centre for Victims of Torture (CVICT), the Mainstreaming Gender Equity Programme (MGEP) and the Kathmandu School of Law (KSOL) have developed programs of conflict resolution that combine mediation of individual disputes with education and raising awareness regarding human rights within the community. The model for most of these programs appears to be a combination of mediation, public meeting and nonbinding arbitration (where a decision or recommendation is made by the neutral(s)). Community mediation in Nepal also recognizes the difference between formal and situational equity. Therefore, community mediation, with its rights-based and community-oriented emphasis, is being used as a technique to bring justice to those not yet adequately served by Nepal's political, social and judicial system.

CVICT has been engaged in community mediation in rural Nepal for more than four years. It provides that at least 25 percent of the mediation committees must be women. In at least one village, women mediators were found to be more successful than their male counterparts. At the same time, CVICT has found a change in perception of women and their roles. For example, in a CVICT video, “Toward Social Justice,” a female mediator comments on her pleasure in being able to use her new skills to help community members reach a resolu-
tion. Her husband comments that at first he was uncomfortable about her participating in public life to this degree but now is very proud of her. This changed perception is consistent with MGEP’s experience as well.

MGEP also notes, however, that it faces the on-going challenge of changing the traditional gender views held by male mediators, participants and villagers. At this time, MGEP has trained 166 community mediators, 73 of whom are women. This 44 percent participation rate for women mediators exceeds MGEP’s original target. The import of this participation rate is compounded by the recent evaluation of the program by the United Nations Development Programme, which determined that, in the wake of the political unrest and vacuum created by the termination of the local governments, community mediation has made significant steps to create local “socio-judiciary” institutions that enhance women’s access to the public sphere. That is, the program is seen as having given increased public recognition to women’s specific issues.

Women Community Mediation Committee (CMC) members have noted their increased mobility, public exposure and levels of personal self-confidence. According to the MCEP program manager, “Conventional exclusionary restrictions imposed on [women] at the household and community levels are gradually weaker, men have started sharing domestic burdens with them, social reform initiatives have been launched to eliminate caste based discrimination” and there has been a decrease in “violence against women and problems emanating from excessive liquor.”

MGEP notes, however, other significant challenges to these positive developments for women: (1) one of their ten CMCs was closed by the Maoists, (2) many of the women have low literacy rates or are illiterate, hampering their leadership ability, (3) there is a lack of qualified resource persons at the local level to support and expand the program, (4) the ongoing political violence puts women and girls at greater physical risk, and finally, (5) while most of the CMCs do operate under the Maoist regime, it has not been possible to fully institutionalize the CMCs as there is no local governmental authority. In other words, the continued civil unrest limits the program’s reach and development or puts it entirely in jeopardy.

The importance of continuing community mediation programs, however, was suggested by CVICT’s finding that in areas where CMCs exist, and where they also assisted in the development of women’s groups, there was a decline in the level of violence and prejudice against women. This finding indicates that merely by implementing the process—i.e., by providing the previously unempowered with access to justice—there was a spillover effect in a concomitant decrease in the overall level of gender-based violence.

In Nepal, community mediation is not viewed as merely a tool to avoid the formal legal process, it is viewed as a process that brings equality and fairness to the disenfranchised. In particular, it is used to mediate levels of inequality based on gender, caste, ethnicity and education. It offers quick, inexpensive and equitable justice to those previously marginalized. As a part of this activist process, the CMC members are trained in human rights and basic Nepali law. Their training emphasizes that they are working “for the betterment of society,” and they are encouraged in their “feelings of equality and togetherness.” This encourages everyone, the mediators and the local participants, to be more sensitive to gender issues and to respect all mediators as leaders and public figures within their communities.

The Function of Community Mediation

As noted earlier, although in the past Nepali women have (1) stood with their men to fight against outsiders (and continue to fight according to their consciences today), (2) taken over the care and responsibility of their family farms and (3) joined the money economy by taking on work outside the house, none of these achievements has lead to greater equality or respect. To achieve equality, therefore, Nepali women need to be part of a structural change. Community mediation with its training programs, practical experience in leadership positions and public authority offers one avenue for developing a gender-sensitive, rights-based, structural change at the local level.

The main reason for using the community mediation process in Nepal was that it addressed the prevailing lack of equal access to justice. It has, however, also become an active tool in creating structural change for women in the public arena. Community mediation raises the awareness of discriminatory practices vis-à-vis women in male-female relationships and allows women to take and be seen in high-profile positions, thereby giving them status and prestige traditionally available only to men.

The community mediation approach is relatively new in Nepal. At present, these programs remain vulnerable in rural areas where an unsettled, dangerous environment may interrupt their implementation. To achieve sustainability, these programs should be extended to urban areas where there is relative peace at this time. In this way, women will continue to acquire the skills, prestige and public presence at the grassroots level that is necessary for the development of true gender equality. From the Nepali model, it is apparent that community mediation programs have the potential to be a grassroots tool for human rights education, community harmony and the empowerment of women and other disadvantaged classes of people.
COMMUNITY MEDIATION AS A TOOL FOR ADDRESSING SOCIAL EXCLUSION IN NEPAL

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BIBLIOGRAPHY


De Voe, Pamela A. “Nepal: Community Mediation in a Non-Western Setting” (a status report for ADR Programs, Washington University School of Law; St Louis, Missouri) (2004).


Student Interviews. Healing Classrooms Initiative in IRC Home-Based Schools in Kabul Province (May 2004).


ENDNOTES

1 Poudel, Keshab, “Battle for Recognition.”
3 Ibid. The Asian Development Bank also noted that the gender gap is increasing, not decreasing: for example between 1975 and 1993, life expectancy for men increased by 15 years while life expectancy for women increased by 11 years. Ibid., xiv.
4 Ibid; “Nepal” in Library of Congress Country Studies 1991. Available literacy rates vary, from 40 percent of females (Women Awareness Centre Nepal) to 27 percent (Asian Development Bank, 14). Also, within some communities, the rate is crushingly low, for example, among the dalit, women have a seven percent literacy rate.
Unequal access to education is due to many factors: (1) lack of resources for poor families – since females are considered the property of their husband’s family, using a natal family’s limited income to educate their female children is not considered economically sound; (2) girls begin work at a very young age; (3) parents are extremely concerned about their daughters’ virginity, resulting in the girls marrying early and (4) educational opportunities are more difficult logistically in mountainous and rural areas where there are not many schools for the local children.

While the accuracy of reported labor force participation is an ongoing issue, according to available figures, women comprise at least 40 percent of the workforce. This does not include women working in family businesses or on the family land (women usually do the farm work), most of which is unrenumerated work. An early study (Asian Development Bank 28-31) suggested that 74 percent of mountain women, 58 percent of hill women and 27 percent of Terai women reported being economically active. The latter figure for Terai women is thought to be underreported, since an earlier study indicated that they were as active as women in the mountain and hill areas. (See Acharya and Bennett. “An Aggregate Analysis and Summary of 8 Village Statistics”, Asian Development Bank 28).


Note Deepak Thapa’s edited volume Understanding the Maoist Movement of Nepal and Li Onesto “Hope in the Himalayas: Women Rebels in Nepal.”


See Ibid., 95; Thapa (2003), xv;

Note for example, the American, Chinese and Cuban experiences.


Tripathi, (2002), 515.

De Voe, P., “Nepal: Community Mediation in a Non-Western Setting, a status report.”

The Centre for Victims of Torture (CVICT) is sponsored by the Department for International Development. CVICT has set up Community Mediation committees in a number of villages in three districts in Central and Eastern Nepal. Mediation teams are made up of men and women. For most women in rural Nepal, this is a new role and a new experience for them as they move beyond the privacy and confines of their homes. The Community Mediation teams consist of trained mediators and local leaders.

Although not specifically set up to aid women, at least 25 percent of the Mediation Committees must be women. In at least one village, the women Mediators were found to be more successful than their male counterparts. Given cultural traditions where men are decision-makers who provide answers whereas women tend to be listeners and assistants, this result is not surprising, particularly considering that listening and guidance techniques, not an authoritarian approach, are essential in the mediation process.

18 The Mainstreaming Gender Equity Programme (MGEP), which assumes inequity in power and status between people, is a joint program of the Ministry of Women and Social Welfare and the United Nations. Its main objective is to increase women’s access to justice and to establish women’s rights. Therefore, it (1) provides legal aid to women in four areas (rape, trafficking, domestic violence and abortion) and (2) works to change Nepali law through education and making people more sensitive to women’s issues. While the Community Mediation Program in MGEP was designed at the national level, it is perceived as a grass-roots system because it integrates local community members into the Mediation Committees. From the very beginning, the MGEP has involved local representatives from each gender, social class and caste. After doing a baseline survey concerning what cases were registered and comparing that with the number of actual cases of violence against women and lower castes, MGEP worked to get the community to see that there was a problem with violence within their community that was not being addressed in the legal system. Once the community saw the problem, committee members were recruited and trained in community mediation techniques. The committee membership had to be at least one-third women and have representatives from the different castes. It also included individuals who were recognized as leaders in their communities. Finally, there was geographic diversity: the villages were divided into nine wards or sections and at least one person was selected from each section. It is this indigenous group that would then make up the Community Mediation Committee for the village. As a control on political and family bias, MGEP monitors the community mediation sessions and their results. If a bias is observed, the mediator at fault will be retrained on the mediation process. This step was considered essential in implementing the program, since, as one MGEP staff person observed, “To change the mind-set of the people is very hard.”

19 The Kathmandu School of Law was established in 1999 with the community mediation program as part of its program and commitment to community service. Presently, they are working in the village where the school is established and in one neighboring village. Both villages have about 5,000 people. These two villages are considered laboratories for the community mediation program. Of the 12 community mediators in one village, nine are women and three are men. As with MGEP’s program, the villages will be divided into sections with the Mediation Committee reflecting this geographic variance as well as reflecting gender differences. These initial two villages will be models for other villages—demonstrating how the community mediation process works by mediating cases that deal with local violence and environmental issues.

20 The ground rules for mediation sessions are consistent and well established: (1) the party or parties asking for the mediation are called the First Side; (2) those asked to come to the mediation are called the Second Side; (3) a letter goes out to the participants, asking them to come to the Mediation; (4) people are asked not to use abusive language; (5) all present (including villagers who are a part of the audience) get a chance to speak one at a time; (6) the audience is asked to produce a solution to the conflict; (7) the parties consider the solutions offered by the villagers/audience and (8) the process may take several days to reach a decision. Also, a conclusion is not forced on the conflicting parties and failure to produce a solution is an option but apparently does not happen often.

21 Personal communication with Indu Pant Ghimire, National Programme Manager, MGEP, April 8, 2005.

22 Ibid.
