epal is a small country of 23 million people. Most of its population lives in rural areas, separated from each other and the rest of the world by rugged geographic terrain. The Indian Hindu caste system has profoundly influenced the social structure of Nepal. While caste is no longer a legal division within Nepal, the concepts and ramifications resulting from this system still affect everyday life and all social interactions. While Hindu beliefs and traditions originally formed the basis for Nepal's legal system, there has been a strong movement towards secularization over the past 20 years, culminating in a recent call by parliament for increased secularization. Currently, the legal system can be considered both constricting (for example, regarding the rights of women and children) and tolerant (for example, the existence of Nepal's various religious and cultural traditions). Further, the country has recently been in the news for the Nepali people's (mostly) nonviolent overthrow of royal rule and the ongoing Maoist insurgency. In the midst of this chaos, what role does community mediation play? In order to understand the place of community mediation in Nepal, we will examine its impact on social and political equality in this young democracy.

**Political Crisis in Nepal**

In 1948, the first constitution of Nepal was established, creating a parliament, yet retaining executive powers in the hereditary prime minister. Since then, Nepal's political struggles have reflected a tension between the King (considered to be the incarnation of Vishnu), the Prime Minister, Nepal's democracy-seeking political parties and the public. As a result, in more than one instance, parliament has been disbanded, political parties banned, and activists jailed and sometimes tortured. Political accord was reached in 1990 when King Birendra rein-
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Instituted parliament and an elected Prime Minister.

However, problems continued to erupt. In 1996, a Maoist insurgency arose to protest the conditions of the poor living in the rural areas of Nepal. In June 2001, a massacre in the royal palace left King Birendra, his wife, and son, the Crown Prince, dead. King Birendra’s brother, Gyanendra, became King. In February 2005, citing the continuing Maoist insurgency, King Gyanendra removed the Prime Minister and disbanded parliament effectively collapsing the local and national government.

In April 2006, a People’s Movement, led by the seven political parties and their student affiliates, brought more than a million protestors to the streets of Kathmandu and other major cities in Nepal for 19 days, demanding a return to democratic rule. As this article goes to press, the King has capitulated to internal and international pressure, reinstating the party-selected Prime Minister and reinstating parliament. At present, there is a call for a constituent assembly and full general election, in which the Maoists fully expect to participate. At this writing, tense negotiations between the Maoists and democratic parties are focusing on the contours of the new Republic and the role, if any, of the monarchy.

Community Mediation: Status Quo vs. Social Change

Indigenous mediation systems within Nepal’s varied tribal groups have effectively controlled local problems for many years. However, over time, the national government eliminated local mediation in an effort to force the people to use the national court system. The new reliance on the federal court system has had the unintended effect of disenfranchising the poor, women, and lower caste or non-caste peoples.

There are a number of organizations attempting to institute a form of community-based mediation modeled on western mediation practices. The goal is to help parties reach mutually acceptable agreements and to not force acceptance of one point of view over another, which happens in litigated cases. In addition, a social justice component has been added—giving a larger focus to the western mediation model.

This new model of community mediation stresses two main areas which promise to revolutionize Nepali society: 1) women’s issues, including domestic violence and women’s civil rights, such as property rights and the right to divorce; and 2) caste issues as seen in Nepal’s social, legal, political, economic and educational systems. In spite of national law, which forbids discrimination, lower caste and non-caste people are consistently discriminated against.

Another over-riding interest in community mediation is to achieve equal access to justice, which is sorely lacking under the present system. Litigation is expensive and slow. Nepali community mediation, with its rights-based and community-oriented emphasis, is being used to bring justice to those not adequately served by Nepal’s political, social and judicial system.

Community mediation has been strongly supported by international organizations, such as the United Nations, the US Agency for International Development and the Asia Foundation. By providing funding and technical support, these organizations have used community mediation as a tool to bring human rights and social development agendas to Nepal and, in particular, to its rural areas.

There are many influential organizations in the field of community mediation in Nepal that provide administration, coordination and training. Among these are the Gender Equity Programme (MGEP), the Center for Legal Research and Resource Development (CelRRd) which is a sister organization of the Kathmandu School of Law (KSL), the Centre for Victims of Torture (CVICT), Forum for Women, Law and
Development (FWLD), Institute for Governance and Development, and Service to Underprivileged Sectors of Society.

MGEP is a joint program of the Ministry of Women and Social Welfare and the United Nations Development Programme. MGEP’s main objective is to increase women’s access to justice and to establish women’s rights using the community mediation program. In addition, it stresses the rights of the poor and dalits (also known as “untouchables”). While MGEP’s community mediation is a national program, it was developed in consultation with the local community and incorporates local leadership. Therefore, it is seen as a grassroots system.

As a control on political, family, caste and class-based bias, MGEP trains its mediators in gender rights and human rights, as well as mediation skills, before sending people into mediation sessions. Further, MGEP monitors the community mediation sessions and their results in order to ensure that mediators are impartial and unbiased. If a bias is observed, the mediator will receive additional training. 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 and needs continuous coaching and mentoring.”

The Kathmandu School of Law, established in 1999, is a non-profit, community-based college that provides community mediation as part of its community service program. KSL, through its students and faculty, participates in CelRRd’s fieldwork activities as well as carrying out its own ADR programs. CelRRd is providing mediation and training in more than 50 villages. KSL has agreed to become a coordinating resource center for various agencies by providing community mediation training and research in order to identify best practices and unify community efforts.

The Forum for Women, Law and Development conducts paralegal training and community mediation training in 15 districts. The training program includes basic information on international human rights and domestic laws. Community mediation is presented as a means both to settle local disputes and to create access to justice for women, minorities, dalits, the poor and the disenfranchised.

The Centre for Victims of Torture, sponsored by Nepal’s Department for International Development, takes a rights-based perspective on mediation. CVICT has community mediation committees in three districts in Central and Eastern Nepal. While serving all people, their aim is to bring justice to dalits and the poor. Mediation teams are made up of men and women who are trained mediators and local leaders. Mediation sessions include the disputants, mediators and the villagers—who act as both audience and participants. All present get an opportunity to speak and to offer solutions. The process may take several days, but failure to reach an agreement appears to be rare. In a study conducted by the Centre for Victims of Torture, researchers found that there was a decline in the level of violence and prejudice against women in areas where there were women’s community mediation programs. This finding, supported by the experience of other community mediation agencies, indicates that the mediation process helps decelerate conflict, provides the disempowered with a route to justice and reduces the level of violence perpetrated against the unempowered.

These three programs are excellent examples of how community mediation has expanded the western model to include a mission directed towards human rights (especially for women and the lower caste) and towards general equality and democratization.

Contrasting Nepali and Western Community Mediation Models

As suggested above, most Nepali NGOs were trained in the western model of mediation; that is, an interest-based model focused on a collaborative process aimed at identifying the disputants’ needs and maximizing their goals. In our first discussions with our Nepali mediators, trainers and program coordinators, it became clear that their actual mediation practice departed from the western model in three significant ways.
1. Human Rights vs. Individual Rights. Most community mediation programs in Nepal are directed by NGOs with a human rights mission. They begin with a focus on improving and equalizing the standing of women, dalits and the poor and disenfranchised. They empower groups by remedying their exclusion from leadership and decision-making by training them as mediators. They also address inequality by focusing on conflicts affecting these groups; providing an inexpensive, local process for groups to redress injustice and to address their conflicts. While this approach is similar to western mediation models, more emphasis is put on human rights in Nepal. For example, one of the organizations mediated a landlord-tenant case in which the landlord had evicted the tenant for non-payment of rent. In caucus with the landlord, the mediators reminded him of his superior socio-economic class and caste position and encouraged him to consider the social justice and ultimate fairness of a wealthy man punishing a poor man for his poverty. Most western mediators would not put this kind of judgment and pressure on one party and would consider this kind of intervention to be outside the bounds of neutrality.

2. Substitute Dispute Resolution vs. Alternative Dispute Resolution. From a political perspective, the western model was developed and functions in the environment of robust democratic and legal cultures where community mediation serves as an alternative to more formal legal mechanisms. On a practical daily level, governmental and legal systems in Nepal have been non-functioning and/or unavailable to the average person. Therefore, in Nepal, community mediation has been a substitute, not an alternative, for governmental and legal structures. It often operates in a vacuum created by political chaos and dysfunction.

3. Legal Counsel to Balance Power. In response to their human rights mission, Nepali community mediation programs have sought to remedy power imbalances by providing legal counsel to women, dalits and others perceived to be socio-economically disadvantaged in the dispute. For example, in domestic violence cases, as well as those involving witchcraft claims, other resources from the mediating agencies can be provided to the victim. In domestic violence cases, mediators will discuss the negative impacts of the abuser’s behavior and remind him of new laws in Nepal providing women with more rights and protections. Further, if the mediation is not successful, the mediators will suggest that legal recourse be taken by the woman and, in many cases, will provide her with access to legal counsel. In the West, mediators may attempt to balance power by procedural interventions during the mediation as well as suggestions to the parties to obtain more information if needed, but they would not provide legal representation.

In a bizarre episode, two field mediation trainers from a community mediation program were kidnapped by Maoists for a few days and then safely returned. It turned out that the Maoists wanted the field mediation trainers to train their staff in mediation techniques!
Community Mediation in the Midst of Political Chaos and Revolution

One of the most significant aspects of the Maoist insurgency and King Gyanendra's suspension of democracy was the negative effect on local government, especially in the rural areas. Previously, Village Development Committees (VDCs) were the local government and decision-making bodies in the rural areas. The VDC members were elected locally and provided a conduit between local leadership and the national government and parties. In 1998, the Local Self Governance Act was enacted which provided for the formation of arbitration boards at the VDC and Municipality level to hear and settle the cases filed in the local body. The local body prepares a list of arbitrators from among the local people, including social workers, women and other disenfranchised peoples.

However, with political chaos came the suspension of VDC elections and functioning. Access to the legal system, which had always been cumbersome and prohibitively costly, especially for the rural poor, was unavailable due to governmental dysfunction and Maoist blockades on travel. Through the interventions of local and international NGOs, programs in community mediation were created to focus on access to justice, local decision-making and conflict resolution.

According to a staff member of MGEP, the following procedures are used for setting up a local community mediation program which must be done in conjunction with each village's VDC. Currently, the local VDC is staffed by one civil servant—the VDC Secretary—a non-elected employee of the monarchy. MGEP enters into a village and holds discussions with the people of the community about the need for a mediation program. If there is sufficient interest, they enter into a memorandum of understanding (MOU) with the VDC Secretary. MGEP agrees to provide training and case coordination for community mediation and the VDC provides local legitimacy and, in many cases, offices and meeting space. The villagers are notified of a general meeting, jointly sponsored by the VDC and MGEP, in which they choose representatives by consensus. These representatives, in turn, choose the mediators who sit on the Mediation Committee.

Prior to the cessation of parliament, in addition to a VDC Secretary, each VDC had 47 elected officials. Our Nepali colleagues noted that the representatives chosen are many of the same elected officials who formerly served on the VDC or are emerging village leaders who likely would have been elected to serve if the political process was currently functioning. In essence, the creation of the local mediation program is a de facto democratic election.

The Future of Community Mediation in Nepal

In examining the growth of community mediation programs in Nepal, we were intrigued by a practical political question—how were the Maoists reacting to the community mediation projects—especially since the projects were supported and/or implemented through international organizations in collaboration with a representative of the royal government. We observed a range of responses from the Maoists. On one end of the spectrum, they have shut down (or refused to allow) a community mediation program in one VDC. No clear reason was given but it is thought that there might have been bad blood between the Maoists and the VDC Secretary or between the Maoists and the leadership in the village. This was the reaction we expected. But on the opposite side of the spectrum (and, apparently, the more frequent response) is that the Maoists have accepted community mediation at the village level. Apparently, Maoists (without necessarily identifying themselves as such) participate in the election of the representatives in charge of the Mediation Committee and may, indeed, be candidates. In a bizarre episode, two field mediation trainers from a community mediation program were kidnapped by Maoists for a few days and then safely returned. It turned out that the Maoists wanted the field mediation trainers to train their staff in mediation techniques! For the most part, the Maoists appear to accept community mediation in the villages and encourage its use.

There are still many questions involving the survival of community mediation in Nepal. The programs have both developed conflict resolution capacity among women, dalits and the poor as well as reinforced the will for local governance. These mediation programs have maintained a progressive movement toward human rights for the powerless, in spite of an increasingly dysfunctional political process. By focusing on the immediate issues of family, neighborhood, and community conflict, the community mediation programs uphold the value of equality and democratization, while keeping the spark of civil responsibility and problem-solving alive in the often chaotic countryside.