

RETHINKING PEACE AND CONFLICT STUDIES
Series Editor: Oliver P. Richmond

Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building



Edited by Tamra Pearson d'Estrée
and Ruth J. Parsons



Rethinking Peace and Conflict Studies

Series Editor
Oliver P. Richmond
University of Manchester
Manchester, UK

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Tamra Pearson d'Estrée • Ruth J. Parsons
Editors

Cultural Encounters
and Emergent Practices
in Conflict Resolution
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Editors

Tamra Pearson d'Estrée
Conflict Resolution Institute
University of Denver
Denver, CO, USA

Ruth J. Parsons
Conflict Resolution Institute
University of Denver
Denver, CO, USA

Rethinking Peace and Conflict Studies

ISBN 978-3-319-71101-0

ISBN 978-3-319-71102-7 (eBook)

<https://doi.org/10.1007/978-3-319-71102-7>

Library of Congress Control Number: 2018942895

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Cover illustration: Martin Barraud / Getty Images

Printed on acid-free paper

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The registered company address is: Gewerbestrasse 11, 6330 Cham, Switzerland

To the colleagues with whom I have worked in various projects and from whom I have learned so much. It is from their energy and motivations that I have decided to pull together this volume of stories to be shared with others who are committed to this endeavor.—RJP

To Vivian, Karyna, Guguli, and Esra, international colleagues and friends who have endured conflicts and hostile governments to bring dreams and tools of self-determination and peace to their people, and from whom I have learned so much, including realism with resolve.—TPE

ACKNOWLEDGMENTS

We would like to acknowledge our intellectual debt to both Christopher Moore and John Paul Lederach, whose shadows in this field in terms of both practice and scholarship are long. Their assistance in our own projects, as well as mentorship of us as colleagues, has been invaluable. We would also like to thank Kevin Avruch for supporting the idea of this volume and for lending his traditional wit and insight to the task of bringing together and integrating diverse experiences.

We would like to thank our partners at Palgrave Macmillan, specifically International Relations Editor Sarah Roughley and assistants Samantha Snedden and Oliver Foster, for their patience and support. Our chapter authors also exhibited diligence and engagement in working through multiple drafts to polish this book.

Several students in the master's program in Conflict Resolution in the Josef Korbel School of International Studies at the University of Denver contributed to the tasks of background research or editing, including Jonathan McAtee, Isaac Oxom-Montenegro, and Emily Zmak. Institute Director's assistant Heidi Resetarits provided both logistical and moral support to keep the office running when we were out writing.

Pearson/d'Estrée family members also provided moral support, pride, interest in the topic ranging from casual to truly engaged, and endurance for holiday and weekend activities foregone or without mom. Thanks to the Parsons family for their on going support for both in the development of this book and the years of work that went into many of the projects reported here.

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NOTES ON CONTRIBUTORS

Catherine Ali is a mediation researcher, trainer and practitioner, and a policy and practice consultant in mediation, gender, conflict trauma, and restorative justice. Dr. Ali has lectured at UWI Mediation Studies Programme; BRICS/Global Unit for International Mediation, Rio de Janeiro; developed the online mediation course UWIOC for the Caribbean Region; Affiliate of the Centre for Conflict Education and Research, Carleton University, Ottawa; Research Fellow at Boston College Lonergan Institute, Mass., USA, on developing insightful questions for use in psychological trauma and insight mediation in Trinidad and Tobago. Ali is developing a women's empowerment gender and development programme and runs a bio-photomodulation pain healing clinic, in Marabella, San Fernando.

Andrés Álvarez Castañeda holds degrees in Anthropology, Sociology, and Conflict Resolution. Dr. Álvarez Castañeda has worked in applied anthropology (agriculture, sexual health, environmental issues, and education) from 1998 to 2000 and was directly involved in Guatemala's security sector reform process from 2001 to 2006. Since 2007 he works at Universidad del Valle de Guatemala (UVG) as a professor, researcher, and administrator. He directed UVG'S Anthropology and Sociology Department from 2007 to 2013 and was appointed as Dean of the School of Social Sciences in 2014. The school has expanded under his tenure and currently includes four undergraduate programs, five master's degrees, and a PhD in topics ranging from neuropsychology to heritage management.

Kevin Avruch is the Henry Hart Rice Professor of Conflict Resolution, Professor of Anthropology, and Dean of the School for Conflict Analysis and Resolution at George Mason University. He has published more than 70 articles and essays and is author or editor of six books, including *Critical Essays on Israeli Society, Religion, and Government* (1997), *Culture and Conflict Resolution* (1998), *Information Campaigns for Peace Operations* (2000), *Context and Pretext in Conflict Resolution: Culture, Identity, Power and Practice* (2012), and *Conflict Resolution and Human Needs: Linking Theory and Practice* (2013). He was a senior fellow in the Jennings Randolph Program for International Peace at the United States Institute for Peace; a Joan B. Kroc Peace Scholar at the Kroc School of Peace Studies, University of San Diego; and a Fulbright Specialist at the Malaviya Peace Research Centre, Banaras Hindu University, Varanasi, India.

Tamra Pearson d'Estrée codirects the interdisciplinary Conflict Resolution Institute at the University of Denver, Colorado, USA, and is the Henry R. Luce Professor of Conflict Resolution in the Josef Korbel School of International Studies. Her research areas include identity dimensions of social and ethnic conflict, intergroup conciliation and reconciliation, procedural justice, and evaluation frameworks for conflict resolution. She is also involved in conflict resolution training and capacity-building, and facilitates intergroup interactive problem-solving workshops.

Gail Ervin is Principal of the Ervin Consulting Group, and a team leader for the Mediators Beyond Borders Kenya Initiative. Dr. Ervin manages the Warriors to Peace Guardians initiative developed during her participatory action research on the unique characteristics of pastoralist-designed and pastoralist-led peacebuilding. Her praxis includes engaging volunteer pastoralist peacebuilders in catalyzing neotraditional peace efforts in remote arid and semiarid areas of Kenya subject to cattle rustling and political violence, and building a network of local peace guardians committed to sustaining peace. The context of her research involves grassroots applications of emergent peacebuilding design.

Julie A. Hawke is a practitioner focusing on youth engagement and technology-supported peacebuilding. She is a facilitation officer for the Sharing Perspectives Foundation, where she runs intercultural dialogue and virtual exchange programs. She is also an associate at Build Up, a social enterprise that amplifies citizen participation in peace through

technology, arts, and research. Julie obtained her MA in Conflict Resolution from the Josef Korbel School of International Studies at the University of Denver. She formerly worked in North Africa with the Peace Corps and Search for Common Ground, and she currently lives in Bradford, England.

Merrick Hoben is Director of the Consensus Building Institute's (CBI) Washington, DC, regional office, a practitioner-associate at the MIT–Harvard Public Disputes Program, and a faculty associate at the Lincoln Institute of Land Policy. As leader of CBI's "corporate–community engagement" practice, he specializes in helping business and its stakeholders/rights holders engage one another more effectively, designing and guiding voluntary standard setting processes, supporting collaborative resource management efforts, and leading complex strategic planning initiatives. Merrick's extensive experience with mediation, negotiation, and training in Latin America and the Middle East has been greatly successful due to his bicultural and bilingual Spanish training and mediation experience.

Pushpa Iyer is an associate professor in the Graduate School of Policy and Management at the Middlebury Institute of International Studies in Monterey, California, USA. Dr Iyer is the founding director of the Center for Conflict Studies, where she plays the role of editor, trainer, researcher, and organizer. She is a practitioner with years of experience working on identity conflicts, non-state armed groups, civil wars, and peacebuilding. Dr Iyer, a long-term advocate for the poor and marginalized communities in Gujarat state in India, continues her activism work in the United States through programs designed to fight racial inequity, discrimination, and violence.

Selma Talha Jebril is an international development practitioner specializing in monitoring, evaluation, and knowledge management. She has coauthored several evaluations research on education, local governance, conflict resolution, and youth development projects. Her geographical area of expertise is North Africa. She currently works as a monitoring, evaluation and learning specialist on a Moroccan primary education project reforming the national curriculum for early graders, implemented by Chemonics International. She has earlier worked with Search for Common Ground in Washington, DC, Morocco, and Tunisia. Selma holds a bachelor's degree in International Relations and Commerce

from Cergy Pontoise Université (Paris XIII), France and a master's degree in Sustainable Development, International Policy, and Management from the School of International Training (SIT) Graduate Institute, Brattleboro, Vermont.

Mary-Anne Lechoe is a team leader for the Peace Guardian Core leadership group, and a paralegal for a Member of Parliament. She also serves as an ex-officio board member and facilitator for Samburu Aid in Africa (SAIDIA). Mary-Anne brings her legal, policy, and participatory action research experience into her passionate commitment to build peace throughout remote pastoralist areas of Kenya. She leads women and youth empowerment as well as peace guardian trainings and activities, and manages local partnerships for the Warriors to Peace Guardians initiatives.

John Paul Lederach is Professor Emeritus with the Kroc Institute for International Peace Studies at the University of Notre Dame. Dr. Lederach currently works as a senior fellow at Humanity United and is author of 16 books, including *The Moral Imagination* (Oxford, 2005). He works extensively as scholar-practitioner in conciliation processes in Latin America, Africa, and Asia.

Guguli Magradze is Professor of Social Psychology and Conflict Resolution at Tbilisi State University, Georgia. She is founder of the Institute of Conflict Analysis and Management (ICAM). ICAM leads researches and runs an MA program in conflict management. Dr. Magradze is the author of over 80 publications in conflict resolution and social psychology. She is recipient of following awards—the Fulbright Scholarship, NATO, Carnegie Foundation, US Department of State, USAID, Soros Foundation, and others. Dr. Magradze is founder and head of the following organizations—Education for Peace, Women Initiatives Support Movement, and US Program Alumni Association of Georgia. Dr. Magradze was vice rector of two Georgian universities and member of the Academic Council at Tbilisi State University. Dr. Magradze graduated from the Department of Psychology at Tbilisi State University. She also holds degrees in Law and European languages. She was elected as a Member of Parliament of Georgia for three terms: during 2004–2008, 2012–2016, and 2016–2020. She is Deputy Chair of the Committee on Education, Science, and Culture in the parliament of Georgia.

Christopher Moore is a partner of CDR Associates, an international stakeholder engagement, collaborative decision-making, and conflict management firm based in Boulder, Colorado. Dr. Moore has worked in the field for more than 40 years and is an internationally recognized mediator/facilitator, dispute resolution systems designer, trainer, and author. He has consulted in more than 50 countries. Internationally, Moore works with governments, the private sector, and civil society to implement peace accords, implement innovative democratic decision-making and dispute resolution systems, and promote sustainable development. Domestically, he specializes in addressing and resolving political, public policy, natural resource, and organizational issues.

Ruth J. Parsons is a research professor at the Conflict Resolution Institute, Joseph Korbel School of International Studies, University of Denver, Colorado, USA. Dr. Parsons has taught, consulted on curriculum development, trained, and conducted research in conflict resolution for 30 years. Her specific area of research and writing include culturally based perspectives, strategies, and methods for conflict resolution and peacebuilding, as well as social work practice and empowerment.

Carlos Alberto Sarti Castañeda anthropologist and political scientist, held several directive positions in the Central American University Council (CSUCA) from 1989 to 1991. He was the Regional Program Officer for the Danish Association for International Cooperation in El Salvador and Honduras (1992–1996) and Guatemala (1997–1999). He was directly involved in the creation and implementation of the OAS/Propaz project (1999–2002) and executive director of the ProPaz Foundation since 2003. He has published extensively in books and articles regarding conflict resolution, human security, and peacebuilding. He has been a board member of important applied social science initiatives such as ECAP (post-war mental health issues), IIARS (historical memory), and CAFCA (post-war forensic anthropology).

Erin Dyer Saxon is a conflict resolution trainer and consultant in educational and corporate settings. She was Director of the Center of Peace Studies and Conflict Resolution at Endicott College, and has provided training workshops for undergraduates, graduate students, and professionals in mediation and conflict. She was coordinator for *Iktashef*, an experiential program with the Holy Land Trust in Bethlehem, Palestine,

to introduce Westerners to Palestinian and Israeli cultures, politics, and peace work. Saxon holds a PhD and an MPhil in Peace Studies from the Irish School of Ecumenics at Trinity College Dublin, and a BA in Communication Sciences from Temple University.

Preeti Thapa is the Senior Program Officer in The Asia Foundation's Nepal office. A US-trained lawyer with 20 years of experience in the fields of peacebuilding, law, gender, and governance, Thapa provides her expertise on community mediation and dialogue projects aiming to ensure the rights of women and marginalized communities through formal and informal justice mechanisms. Thapa has supported nine partner NGOs to design mediation training materials and train more than 7000 mediators, which include women, ethnic minorities, and marginalized communities. She has provided substantive inputs for the drafting and passage of Nepal's first Mediation Act and Regulation. She is a trainer of the Swedish Folke Bernadotte Academy's courses on Dialogue and Mediation.

Sharia Walker is the founder and CEO of Walker Consultancy, based in Jeddah, Saudi Arabia. Her agency provides alternative dispute resolution services in a variety of settings, including academic institutions, NGOs, health-care facilities, companies, and organizations. Sharia holds a second MA degree in Conflict Analysis and Resolution from the Joan B. Kroc School of Peace Studies at the University of San Diego. The context of Sharia's research is Saudi Arabia and the Arab world, and she focusses on gender equality, religion/culture and conflict, negotiation, mediation, political power structures, and structural violence. She is also Senior Youth Development Specialist for the Islamic Development Bank in Jeddah.

ABBREVIATIONS

CBO	Community-based organization
CSO	Civil society organization
IFC	International Finance Corporation
INGO	International non-governmental organization
NGO	Non-governmental organization
UN	United Nations
USAID	United States Agency for International Development
RFP	Request for proposals

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CHAPTER 1

The State of the Art and the Need for Context-Grounded Practice in Conflict Resolution

Tamra Pearson d'Estrée and Ruth J. Parsons

INTRODUCTION

As old as human conflict itself are social practices for resolving conflict. Primatologists suggest that as mammals dependent on the social group for survival, mechanisms for restoring social harmony were essential in our evolutionary history (De Waal, 1989). Practices of conflict resolution have been documented by anthropologists across many cultures (Nader & Todd, 1978; Gulliver, 1979). However, anthropologists teach us that cultures and cultural practices are not static. They evolve and adapt to respond to new challenges. Social innovations occur that respond to problems in new ways.

Social innovations provide novel solutions to existing social challenges or problems in a way that brings benefits not only to individuals but also to the society. They provide measurable improvements over existing

T. P. d'Estrée (✉) • R. J. Parsons

Conflict Resolution Institute, University of Denver, Denver, CO, USA

e-mail: tdestree@du.edu

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building,*
Rethinking Peace and Conflict Studies,

https://doi.org/10.1007/978-3-319-71102-7_1

practices, often addressing areas that have been neglected or poorly served by market approaches or state services. Many definitions of social innovation include an empowerment dimension: changing “the basic routines, resource and authority flows or beliefs of any social system” and transferring agency to underserved or marginalized groups (Westley, 2008).

Conflict resolution practices have also experienced innovation. While conflict resolution practices involving intermediaries have been documented for centuries (Bercovitch, 2002) and exist across many religions and cultures (Nader & Todd, 1978; Gulliver, 1979; Moore, 2003), the modern era’s increased awareness of individual human rights brought accompanying emphases on participation and agency (Moore, 2003). Conflict resolution practices evolved to address people’s demand for participation in democratic processes, and for voice in decisions that affect them (Lind & Tyler, 1988; Tyler, 1990), including justice, fairness, and social ordering. Innovative conflict resolution processes emerged with increased attention to efficiency, participation, and self-determination, as well as attempts to counter the divisive and exclusionary framing of gains embedded in adversarial (legal) approaches to dispute resolution. The “alternative dispute resolution” movement both generated new approaches and institutions, such as community mediation centers and neighborhood justice centers, and modified existing institutions, such as adding mandatory mediation tracks to family and civil courts.

Another characteristic of innovations, social and otherwise, is that they are disseminated or exported. New ideas and technologies spread through cultures in understandable, if not always predictable, ways, depending on adopters, communication channels, time, and the social system itself (Rogers, 1962/2003). Decades of research on the diffusion of innovation have led to increased understanding of elements, process and rate of diffusion, and the way that opinion leaders, organizations, and networks play a role in the adoption or rejection of an innovation. However, while a bias often exists toward assuming innovations are positive and should be adopted (Rogers, 1962), scholars acknowledge that both positive and negative outcomes can result from the adoption of innovations (Rogers, 1962/2003; Wejnert, 2002). Innovations can even be costly: as innovation diffuses, cultural traditions and beliefs can be consumed by those of the culture bringing the innovation (Downs & Mohr, 1976). Though such models assume one-way communication and transference of the innovation, many have acknowledged the oversimplification this represents, and that in complex environments, communication and information

travels in both directions, both from and back to the sender (Robertson, Swan, & Newell, 1996), and may in fact out of necessity be designed to be more participatory. As novel conflict resolution practices are exported to new settings as innovation, existing cultural traditions and beliefs are often ignored. Communication of innovation in complex environments would suggest the need for mutual information exchange and a participatory learning approach.

Cultural similarities and differences manifest in particular when cultural models “meet” in new settings where social innovations are disseminated, such as training development. In his 1995 work on training in other cultural contexts, *Preparing for Peace: Conflict Transformation Across Cultures*, Lederach proposes a continuum from prescriptive training to elicitive training. While the most prescriptive trainers transfer “Western” ideas about ideal conflict resolution to a new culture, the most elicitive trainers distill out norms and practices from within a new culture to shape ideal conflict resolution training. Most trainers, as well as models for conflict resolution training, fall somewhere along this continuum. As cultures interact, partners learn about each other’s best practices as well as synthesize new and emergent practices for conflict resolution implementation and training. This edited book documents experiences in the intersection of traditional cultural mediation practices with Western cultural frameworks and models. In each chapter, the author(s) tells a unique story of efforts to bring together “institutional” or Western models of mediation with traditional or customary practices in a given cultural setting.

This book is in response to the developmental waves over the last approximately 30 years in the transfer of neutrality-based “institutional” or “formal models” of mediation to many developing countries with highly diverse cultures. Steeped in the cultural norms and values of Western societies such as the UK, the US, Canada, and Australia, the original *carte blanche* approach to this transfer has been a questionable and uneven process, highly criticized by many for its lack of attention to the local and traditional cultures and customary practices. Subsequent waves of analysis have focused primarily on documenting traditional and indigenous cultural practices. Yet curiously missing has been the recognition and analysis of the actual intermingling and interacting of Western and traditional cultural practices that have produced new and emergent practices in our global community. Documenting such innovations and lessons learned from these encounters is the next logical step in our evolution of understanding innovative and culturally relevant conflict resolution.

GROWTH OF MEDIATION AS SOCIAL INNOVATION

We begin our understanding of these encounters by first outlining the development of mediation as a social innovation in the West that then some sought to transfer and others sought to receive. Mediation, the use of intermediaries to facilitate the negotiation and decision-making of the parties themselves, is to be distinguished from conflict and dispute resolution processes where a third party acts as an authoritative decision-maker or adjudicator (Gulliver, 1979). Mediation practices have been documented across the ages, as early as the Bible (ca. 2000 BC), the Amarna letters in Egypt (1500 BC), and the *Iliad* (750 BC) (Bercovitch, 2002), and likely before, and across many cultures. Though most early mediators functioned within religious roles and institutions, the rise of secularism and nation-states brought secular figures playing mediative (as well as adjudicatory) roles also (Moore, 2003). North America had colonies where immigrants of both ethnic and religious sects such as Puritans, Quakers, Jews, and Chinese brought and developed alternative procedures for their communities (Auerbach, 1983; Moore, 2003) that coexisted with preexisting procedures developed by indigenous North Americans (LeResche, 1993).

Mediation as a practice and as a profession gained momentum during the twentieth century. Mediation evolved from a role attached to existing positions and professions (clergy, teacher, elected or appointed leader) to become a profession unto itself. Mediation processes that returned the decision-making authority to primary parties reflected the zeitgeist of increased attention to individual human rights, democratic processes and political participation, support for private ordering, and acceptance of diversity (Moore, 2003).

A renaissance and reexamination of the innovation opportunities provided by mediation had grown out of increased scholarly and practical attention to conflict processes more generally. Conflict strategies did not have to be reduced to dominating or being dominated, or pursuing compromise as the only hybrid. Mary Parker Follett, the foremother of these new approaches, outlined in the 1920s how conflict could be turned to positive ends in the search for solutions where desires were *integrated* (Follett, 1995): “[T]hat means that a solution has been found in which both desires have found a place, that neither side has had to sacrifice anything. ... [T]he revaluing of interests on both sides may lead the interests to fit into each other, so that all find some place in the final solution”

Her classic teaching example was two library patrons in the same reading room, where one wanted the window open, and the other wanted it shut. By opening the window in the next room, one was able to have fresh air, while the other could avoid a draft, and neither had to curtail their desire. Integrative solutions could be achieved through inventiveness, training ... and a critical examination of the “habit” of relishing domination.

Schelling (1960) also questioned this habit: “[W]inning in a conflict does not have a strictly competitive meaning: it is not winning relative to one’s adversary. It means gaining relative to one’s own value system; and this may be done by bargaining, by mutual accommodation, and by the avoidance of mutually damaging behavior” (pp. 4–5). Thomas (1976) mapped out these broader possible conflict strategies used by individuals, groups, and even nation-states to include avoidance, accommodation, competition, cooperation/compromise, and collaboration, which were later translated into a commonly used conflict style inventory (Thomas-Kilman instrument).

Conflict processes were often complex because the strategies of parties would interact in reciprocal and even escalatory ways to entrap people in counterproductive behavior. Cooperative strategies elicit and escalate cooperative behaviors, while competitive strategies elicit and escalate further competitive behaviors (Deutsch, 1973, 1980, 1982). Dilemmas result from engaging in seemingly rational behavior (Luce & Raiffa, 1957). Competitive strategies may lead to stalemate, as parties can get stuck in the strategy they have chosen. Empirical research on conflict worked to identify conditions under which parties can change their strategy and their outcomes. Parties in conflict were encouraged to explore underlying interests, rather than assert aggressive positions, consider the needs and interests of other parties, and develop strategies of collaborative and creative problem-solving such as “expanding the pie,” taking advantage of different preference orderings, starting with trial agreements and developing rules and processes for respectful coexistence (Menkel-Meadow, 2003).

Greater attention was also paid to the range of alternative conflict processes available, offering choices for individuals and options for overburdened systems. By considering the range and varieties of dispute resolution mechanisms—court adjudication, arbitration, administrative processes, mediation, conciliation, and negotiation—it became possible to analyze which cases might be best for courts and which could be processed in another way (Sander, 1976). “Alternative dispute resolution” could relieve

increased demands on courts that had evolved from a decline of family and religion and their accompanying disputing processes.

The renaissance and reformulation of mediation was also a reaction to increasingly vocal perceptions that institutionalized dispute resolution and Western legal traditions, and their focus on adversarial methods, were actually producing conflict and distress. An argument culture imbued the Western approach to the world, urging people to approach the world and each other with an adversarial frame of mind (Tannen, 1998). Whether discussing an idea, covering a news story, or settling a dispute, the approach pits two “sides” against each other as the way to find truth. However, issues are seldom only two sided: “Often the truth is in the complex middle, not the oversimplified extremes” (Tannen, 1998, pp. 3–4). “Polarized debate distorts the truth, leaves out important information, simplifies complexity, and often obfuscates rather than clarifies,” with the result that courts are often not the best settings for addressing complex, multifaceted, and multisided problems (Menkel-Meadow, 1996, pp. 6–10). Western legal systems, hobbled by a focus on adversarial methods and perceived elitism on the part of the public, had lost attractiveness and even legitimacy for many as a forum for resolving conflicts or addressing grievances. Mediation provided opportunities for considering multiple issues, addressing relationships, incorporating and addressing varying perceptions of justice and fairness, and returning decision-making—and thus power—in disputes and conflicts to the parties and communities themselves.

The last four decades saw increased expansion of mediation use and institutionalization, particularly in North America, but also in Europe, Australia, and New Zealand, and to a lesser extent in other parts of the world. Disputes in the industrial arena gave rise to the first area of institutionalized mediation in the US (Simkin, 1971). The US Labor-Management Relations Act of 1947 provided for the settlement of issues through collective bargaining, encouraging mediated settlements as alternatives to costly and sometimes violent strikes and lockouts. Similarly, after violence racked US cities, the US Civil Rights Act of 1964 established the Community Relations Service as part of the Department of Justice, in order to address disputes linked to discrimination on the basis of race, color, or national origin. The pattern for growth in North America, Australia, and New Zealand was similar in that initial expansion was supported by government agencies, followed by community centers being established in many states and provinces and in larger urban areas. Local

justice centers became institutionalized and either became independent nonprofit organizations or attached themselves to local government. Local and statewide/provincewide programs developed to offer mediation services in a wide range of disputes, from interpersonal to group to community and public disputes.

Two areas where mediation expanded rapidly and quickly became grafted onto existing court services were in areas of family law and minor civil cases. Mediation provided opportunities for attention to relationships as well as to legal issues in disputes, and offered access to justice for even the smallest claims of minor claimants to be heard. Mediation is often used by court systems for family disputes; many systems now have mandatory court-connected programs where one must try mediation before one can appear before a judge. Similarly, mediation has become popular for court systems to use as a first step in civil cases where financial claims are below a certain lower limit, so-called small claims. Mediation is now increasingly used in many arenas, including corporate, commercial and workplace disputes, other organizational conflicts, health-care disputes, environmental and public policy disputes, and for the negotiated articulation of regulations mandated by statute.

WESTERN “INSTITUTIONAL” MODEL OF MEDIATION

While the practice of mediation in Western cultures has emerged from work in many contexts and for many purposes, leading to a broad diversity of approach and the development of alternative schools of practice, institutionalization has also exerted pressure for uniformity and routine (Menkel-Meadow, 1995). The oversimplified approach has itself now become subject to critique. Strands of a dominant, “institutional” model can be identified.

In 1981, Fisher and Ury’s book, *Getting to Yes*, an instructive book for business negotiators from the Harvard Negotiation Project, became a national best seller for many years and launched a popular framework that provided a basic structure for many subsequent frameworks in North America. Its description of “principled negotiation” became the primary advocate for what became known loosely as the interest-based approach, with a framework that was dependent upon assumptions of rationality, individuality, capacity to separate emotions from issues of dispute, and engage in give-and-take processes through agreement. The model has morphed into various forms with permeable and fuzzy boundaries and

with parenthetic fluid applications to other settings (Kolb, 2001). But these premises have remained prominent as an undercurrent of the basic assumption that if one knew this basic mediation process, one could use it everywhere in any setting. It was a set of universal principles based upon the following:

- Linear thinking and rationality
- Individualism
- Low degree of shared meaning and heterogeneity
- Expectation of horizontal power relationships
- Direct and open expression of and dealing with conflict
- Problem-solving more central than relationship issues
- Process is neutrality based; conducted by impartial outsider
- Written and spoken word as prominent—face value of communication

This very Western individualistic framework (Tuso, 2011; Triandis, McCusker, & Hui, 2001; Moore, 1996; Syukur & Bagshaw, 2013a) has an assumptive base steeped in Anglo culture, and has been critiqued and its cultural assumptions contrasted with cultural norms in many societies to which it has been generously introduced. These critiques include not only its heavy and nearly exclusive reliance on rationality, individuality, and material resources for both creating a process and settling a dispute, but also its concept of mediator as professionally trained outside neutral; its lack of provision for addressing spiritual dimensions of conflict; the exclusion of rituals, confession, and forgiveness; a lack of consideration of concerns of the larger community context (Tuso, 2011; Behrendt & Kelly, 2008); and ignoring oppressive power differences (Brigg, 2003).

Certainly, conflict resolution strategies within Western nations have not themselves remained static. What began as government-supported neighborhood justice centers and gained momentum as an alternative to court processes continued to evolve in community settings, where many adaptations were created by professional groups for their practices, creating various frameworks such as transformative mediation (Bush & Folger, 1994), narrative mediation (Winslade & Monk, 2001), insight mediation (Picard & Melchin, 2007), therapeutic mediation (Lebow & Rekart, 2007), and various forms of restorative justice (Zehr, 2002), all of which have deviated in theory and practice from the basic principles of interest-based “Western” or institutional mediation. However, even when subsequent revisions and alternative mediation models began to emerge in Western

literature, the dominant interest-based alternate dispute resolution (ADR) court-influenced model prevailed as a sort of ideal or even ideology, and remained the main model disseminated “for export.” Remaining to be answered is whether or not some of the newer strategic approaches developed may be more complementary with traditional practices elsewhere than the classical ADR model, which was predominant in the early training models taken to various cultures.

Menkel-Meadow (1995) discusses how mediation has grown in its diversity of practice and ideology, in part to be responsive to variations in contexts, participants, and goals. However, she argues that particularly when brought into bureaucratic contexts (courts, community justice centers), mediation practices lose flexibility and become routinized scripts (see also Shook & Milner, 1995). These formalized mediation practices are more likely to reflect Western ethnocentric assumptions and behaviors, such as the value placed on “expressing your feelings,” or rules such as “no interrupting.” It is these very models of routinized mediation attached to formal settings that are most likely to be exported elsewhere, rather than more general clusters of values, skills, and experience-based adaptation to context. Menkel-Meadow goes so far as to warn of a new sort of “process imperialism” exported in the name of transformation.

Cultural value patterns are constructs for observing cultural variation. They express shared patterns of value that guide meaning-making. They undergird social norms, guide what is considered “normal” behavior, and influence literally what one sees and doesn’t see. They manifest in behaviors as the unwritten scripts for doing things, influencing how we perceive conflict and how we behave to resolve it (Gold, 2005). Exploring how these assumptions guide our understanding of conflict and responses to it allows those who cross cultures to better recognize the role of cultural values in all contexts of meaning-making, and allows innovators to further examine and experiment with the range of behaviors that will increase effectiveness in addressing conflict. We now consider the progress made in encountering, understanding, and working with differences in cultural values and practices in conflict resolution.

WAVES OF MEDIATION SCHOLARSHIP

A significant amount of the literature devoted to the study of conflict and different processes for addressing such conflict exists in a distinctly Western framework. Most of the literature excludes the role of indigenous or

culture-specific processes that existed prior to the emergence and widespread adoption of Western-influenced ADR methods, as well as current practices in various cultures, which may be culturally different from the assumptions in the Western model. While currently in the Western literature there has emerged a call for cultural relevance and the incorporation of traditional practices into the frameworks, there is little indication of how this incorporation happens or can be focused in any nuanced way. The stories in this book attempt to breakthrough this conundrum and explore integrated or “hybrid” systems that integrate both Western and indigenous conflict resolution practice.

The *first wave* in the transfer of Western institution models to various diverse cultures came in the 80s and early 90s, and was a somewhat *carte blanche* transfer, without significant question regarding the cultural limits and transferability of these institutional approaches. It was based on the belief that this teachable model (in most cases, a primarily interest-based model, adopted from the ADR movement) would work everywhere if people just simply learned to use it. These initial assumptions of universality have been questioned. Kevin Avruch and John Paul Lederach were two pioneers, joined by many others, acknowledging the necessity of culture in conflict resolution, and particularly questioning the validity of establishing a universally valid set of conflict resolution techniques and uncritical transference of Western-styled ADR processes to other cultural contexts (Avruch, Black, & Scimecca, 1991; Avruch & Black, 1993; Avruch, 1998; Lederach, 1995; Fry & Fry, 1997; Bush & Bingham, 2005; Behrendt & Kelly, 2008; Tuso, 2011).

As many authors have suggested, not only do many traditional cultures have indigenous practices rooted historically in their approaches to conflict resolution, but they also have current norms, behaviors, and preferences around conflict resolution that cannot be ignored in the provision of useful conflict resolution services (LeBaron, 2003; Zion, 1998; Chia, Lee-Partridge, & Chong, 2004; Said & Funk, 2001). These norms may fit the international norms embedded in imported conflict resolution approaches, or there may be a mismatch. Significant differences are pointed out regarding assumptions, practices, and roles of third parties in conflict through particular religious or ethnic lenses (Abu-Nimer, 1996; Bermudez & Stinson, 2011; Lang, 2002). Mohammed Abu-Nimer specifically breaks down inherent assumptions in the Western framework and challenges the uncritical transfer of Western models of conflict resolution into other cultures.

A mismatch in international norm transfer often leads to local resistance (Richmond, 2010; MacGinty, 2011). Acharya (2004) has argued that it is a dynamic and strategic process depending on both the fit with existing local norms and the presence of those locally (“insider proponents”) who themselves see benefit in adapting and adopting these new norms and practices.

Failure to examine the limits of imported formal institutional models ignores cultural differences such as values, family structures, power, gender relationships, governmental structures, and other cultural indicators that influence how members of varied societies both perceive conflict and go about its resolution. Specifically, Tuso (2011) emphasizes that “the field of conflict resolution still remains a Euro-centric model in all aspects of its functions (e.g. degree curriculum theoretical frame, research orientation, and practice) ... conversely, many other indigenous practices which have been modeled for many centuries by indigenous communities around the world remain largely ignored” (2011, p. 246). Because the Western ADR movement emerged as an alternative legal mechanism to address labor disputes in the 1970s, and became an alternative to court hearings within the legal system, there may be limited connection (if any) to daily experiences of interpersonal and group conflicts in traditional societies around the world. Even if the transfer was basically geared toward various legal systems, the particular laws and regulations of the court system may not be assumed to be equivalent to Western legal systems. While there are various reasons why cross-cultural challenges in the transfer of models were either ignored or downplayed (Tuso, 2011; Avruch, 2013), it is argued that the wide gaps created by such practices are at the root of much failure in the efficacy of the utilization of Western models and frameworks in culturally diverse settings (Syuker & Bagshaw, 2013a; Tuso, 2011).

After recognizing that most cultures have their own significant traditional and contemporary practices for conflict resolution which are no doubt relevant to the transfer, the *second wave* of development came in efforts to understand psychosocial dimensions that impact how conflict and conflict resolution are viewed and practiced by cultural groups. Mostly etic dichotomies were used to categorize societies or cultures as having characteristics which belong to certain dimensions that can be compared across cultures. These included high versus low context (Ting-Toomey, 2001), monochronic versus polychronic (Hall, 1959), individualism versus collectivism (Triandis et al., 2001), high versus low power distance, (Hofstede, 1991), and expectation of hierarchical relationships versus

expectation of horizontal relationships (LeBaron, 2003). Others include emphasis on task achievement versus relationship (Hofstede, 1991), homogeneity versus heterogeneity (LeBaron, 2003), direct versus indirect dealing cultures (Moore, 1996), and modern versus traditional (Lederach, 1987). While the dimensions outlined above are conceptualized as continua and, in some cases, emphasized as not being rigidly dichotomous, in discussion and conclusion sections of research studies, national groups are often described in a shorthand, essentialist way (Chuang, 2003; Collier, Hegde, Lee, Nakayama, & Yep, 2002), as in “Japanese are collectivistic.” Other authors argue from results of research studies that dimensions of cultural variability, such as collectivism, should not be equated with national style of communication, nor viewed as separate, isolated dimensions, nor as either/or dichotomies (LeResche, 1992; Chuang, 2003; Chia, Lee-Partridge, & Chong, 2004; Worchel, 2005; Davidheiser, 2005; Parsons, Hadeed, Collier, & Nathaniel, 2010; Collier, Parsons, Hadeed, & Nathaniel, 2011).

These concerns about cultural oversimplification led to a *third wave* of work in the form of research activities and documentation of indigenous and traditional perceptions of conflict and conflict resolution. Studies of indigenous practices are expanding as contemporary authors show myriad case studies which focus more on particular geographic areas and cultural practices within them. Wide-ranging emphasis has been placed on purely indigenous conflict resolution practices in Africa (Ati, 2009; McIntyre Miller, 2013; Graybill, 2004; Quinn, 2010; Leopold, 2005; Burka, 2013). Conflict resolution practices of indigenous peoples in Australia have also seen a similar focus (Brigg & Tonnaer, 2008; Walker, 2013; Behrendt & Kelly, 2008). Other authors emphasize the conflict resolution approaches in Southeast Asia and South Pacific populations (Appiah-Marfo, 2013; Chia, Chong, Lee-Partridge, Chantel, & Koh Wei-Fei, 2001; Alfitri & Hambali, 2013; McWilliam, 2007; Young, 1997; Barnes, 2002; Syukur & Bagshaw, 2013b) and native people in the Americas (Grendon & Hille, 2013; Pinto, 2000; George-Kanentiio, 2009).

For example, Zeng Xianyi (2009) shows mediation as a long-standing cultural dispute mechanism in China, tracing back to the reign of sage-kings Yao and Shun in Ancient China (475BC–221BC), with codification during the Yuan Dynasty (1271–1368). Throughout history, the focus on a common goal of “harmony” has further incorporated mediation into dispute resolution, although Xianyi suggests that this may be less focused on the “harmony” aspect and more on peasant farmers being

“simple folks fearful of the law,” with “people of the prefecture fear[ing] meeting their officials. Thus, few are keen to litigate” (2009, p. 18). Yet the emphasis on mediation exists today, and the author clearly asserts that “the West lags by a considerable margin in the scope of mediation and the diversity of mediation channels” (2009, pp. 20–21) and suggests that Chinese society look beyond the Western institution by creating a China-specific system for mediation in dispute resolution.

These studies of customary perceptions of conflict and its resolution have contributed a necessary and critical development in conflict resolution literature (Tuso, 2011). These studies almost universally endorse documentation of traditional practices as critically important. While these studies may establish conflict resolution values and practices and, in some cases, compare these with the principles of Westernized formal models and frameworks, they do not take us further into how or if the Western contemporary models can contribute to the conflict resolution development in these cultures. Furthermore, they do not address the reality that in most cases these local perceptions and practices are daily encountering Western-imported practices. If the reality is that cultures do not persist in isolation, but continue to evolve as they interact with other cultures and a changing environment (Avruch, 2008), then the question that should be asked is, what are challenges and benefits arising from the encounter between conflict resolution practices from different cultures? While there is some enthusiasm for the idea of blending these diverse practices, and some case studies have been reported in the literature, it is unlikely that there is a multitude of tidy success stories waiting to be told. Little information is available about how or whether traditional and indigenous practices can be combined or integrated with Western models for a mutual beneficial outcome. Furthermore, if those cases exist, what do resulting models or frameworks for dispute resolution look like?

These waves of development have brought us to a place where the investigation in this book heralds a significant and timely *fourth wave*: what are the experiences of authors who have been a part of collaborations in culturally diverse sites on the integration of local and traditional models with classical ADR institutional models, and also more contemporary Western approaches? And what can we learn from those experiences? There exists some agreement regarding the benefits of such integration of frameworks (Berendt & Kelly, 2008; Ramsbotham, Woodhouse, & Maill, 2011). However, clearly, there have been bumps along the road, with barriers and challenges that are also instructive. For example, Syukur and

Bagshaw (2013b) chronicle the emergence of court-annexed mediation in Indonesia and the challenges posed by combining Western-based ADR in a society that already contained three legal sources that exist independently but influence one another (*sharia* or Islamic law, *adat* or customary law, and state law). The inclusion of Western-style mediation structures as an obligatory process preceding litigation in 2003 has faced difficulties in implementation throughout the country. Indonesian mediators are trained in the Western mediation model, often outside of the country, if they are trained at all. Furthermore, there are few incentives for mediators, as the Indonesian legal culture views mediation as a “second-class dispute resolution” with “lack of judicial support and goodwill in the Supreme Court” (2013b, p. 277).

Such conflicts and delicate balances can be expected. In fact, we are cautioned that intense dialogue regarding differences between “modern” outside approaches and traditional customary practices may increase distance between the approaches. Through highlighting the differences, we risk decreasing the possibility of bringing the process into relationship for true collaboration (Brigg & Tonnaer, 2008), the humiliation and loss of faith by indigenous people of their own traditions in conflict (Tuso, 2011), and the tendency to ignore power differences in disputes and thereby promote injustice in the resolution process (Brigg, 2003). But it is in understanding these barriers and processes that we will be able to move toward the mutual benefit of attempts to blend Western and traditional methods.

Attempts to integrate contemporary models and Western models will likely continue, and may contain potential positive benefits for both participants of the blending. Alfitri and Hambali (2013) succinctly describe the need for culturally relevant conflict resolution practices similarly to Lederach and Avruch: “[T]o determine the solutions, the conflict needs to be observed and analyzed based not only on the theories of universal conflict, but also national or local paradigm” (p. 129). Furthermore, examples have begun to appear in the literature. Behrendt and Kelly (2008) give an account of the formation of an intercultural model from traditional aboriginal dispute resolution practices, informed by contemporary mediation and facilitation frameworks. Called “bicultural co-facilitation,” this approach values the outside neutrality of a Western approach combined with an “insider cultural expert” to “recognize, enhance and utilize each culture’s conflict wisdom” (p. 67). Similarly, Tan (2002) describes the development in Singapore of a blended model of mediation in the community mediation centers that preserves what works

in traditional informal networks and incorporates it into modern structure. Created in the local cultural context and keeping consonant with traditional Asian ways, the effort is to bring back traditional principles which have been lost, but framed in a contemporary way, which have shown to be useful in dispute resolution.

The actual process detailed by Tan is a neutral facilitator conducting a problem-solving model where great effort is made to accommodate the vast cultural and ethnic diversity found in Singapore. Selection of mediators is critical and utilizes indigenous traditional community leaders, but also young professionals in order to respond to the vast diversity that is found in Singapore. Indigenous members of the community are especially effective for family and neighborhood disputes, and training is required by all. The blended approach utilizes the San Francisco Community Boards model to foster community relationships, providing public education in peer mediation in order to increase awareness and acceptance of mediation in the public. Tan suggests the necessity of blending effective contemporary strategies with traditional and culturally relevant conflict resolution approaches in order to respond to a very diverse, changing culture and settings.

To address this need to further understand the blending of cultural models, this book asks chapter authors to “tell their stories” of partnerships that have been forged between local practice expertise and bearers of “institutional/Western” models to build culturally relevant modern approaches to formal mediation and other conflict resolution strategies. Including descriptions of these experiences and the resulting models that emerged, this book raises central questions in cultural variation and integration, including attitudes toward conflict; perception of purpose and function of resolution processes; arenas and timeframes; third-party utilization and expectations; concepts and role of neutrality versus social embeddedness, including trust networks; and roles of participation (Moore & Woodrow, 2009). In addition, authors were asked to describe barriers to process use, including potential bias of urban elite against their own traditional cultures (Tuso, 2011), as well as the desire on the part of governments to embrace “modern society” strategies. An important area of reflection by authors is the dynamics of power between the “outside” consultant or trainer and the “insider entities.” The results of this compilation of experiences and outcomes provide insights into the key elements of effective encountering, partnering, and integration. Taken separately and together, these chapters provide lessons learned from cultural encounters in conflict resolution.

CASE STUDIES GUIDED BY A COMMON ANALYTICAL FRAMEWORK

To enable comparison of experiences and lessons across cases, authors were asked to include analysis of several specific issues.

Goals for Training, Conflict Resolution Model(s) Brought to Training

Each of these initiatives began with a vision and a set of goals for what needed to be accomplished in light of current needs and strengths. It can be expected that both the hosting partner and the Western training partner had at least implicit goals, which likely overlapped in some ways and diverged in others. What were the goals each partner had for this training effort? Also, each of these initiatives was begun in response to factors in the context. There may have been a compelling community need, or a new institutional priority, or a new funding opportunity. How and why did the training/education effort come about? Did local partners seek out the effort? Was it sought by another entity, such as a local leader or government, an institutional head, or an outside agency or funding body? Was it initiated by the trainers themselves, and if so, for what purpose? What was the nature of the initial relationship between the partners?

Well-established centers and programs typically have evolved to prefer certain models of practice that in turn are captured and passed on to novices in training modules. Authors were asked to describe their dominant and preferred models of conflict resolution used by their organizations, as well as the central models used in training and teaching conflict resolution. These models may function as defaults used only when no other model presents itself as the more logical choice.

Preexisting Local Practices, Models, and Context

In each context where an educational project took place, the initiative would inevitably encounter preexisting conflict resolution models and practices. Preexisting cultural theories of why conflict exists and how to address it (*ethnotheory*) and cultural practices in conflict (*ethmopraxis*) (Avruch & Black, 1991), both effective and ineffective, form part of the context to which new techniques and theory are brought. Also part of the receiving context would be other practices and theories left by prior outside

training and educational initiatives, and practices imposed by outside bodies such as colonial powers. Finally, adding to the dynamics of the new encounter would be attitudes toward each of these other sources of conflict resolution practices. Local partners may feel proud and/or protective of their local practices, or may reject them as anachronistic or “backward,” or may feel a mix of both. Local partners may feel that practices brought from elsewhere may be useful, or they may have mixed or ambivalent feelings toward past “imports.” To the degree these theories, frameworks, or practices may have been either introduced by government representatives, policies, or laws, they may have mixed reception and use.

Authors were asked to describe preexisting conflict resolution models in use in the context, as well as any implicit or explicit cultural theories and practices around conflict resolution. They were also asked to discuss in that analysis the attitudes they found toward those models and practices.

Training Approach—Relative Mix of Elicitive and Prescriptive

As discussed above, Lederach (1995) characterized a continuum of training approaches that ran from prescriptive approaches, where the learning transfer was one way, to elicitive approaches, where the training and learning exchange was mutual between trainer and host. Most training contexts have elements of both, and the relative mix may not be up to the trainer alone to determine. Our authors were asked to capture the relative mix of prescriptive and elicitive training used in this chosen context, describing both the elements of trainings outside trainers brought to the context and those they helped to elicit from local partners and communities and develop within the context.

Encounters and the Dynamics of Partnerships

As Western trainers entered these contexts to implement initiatives in partnership with their local hosts, they experienced the dynamics of partnering. Our authors were asked to describe the nature and evolution of the partnering relationship, challenges that may have emerged, and ways they attempted to address these challenges. Depending on the approach they took to the encounter and the models they brought to share, they may have encountered needs for modification or even sources of resistance. How were these negotiated, and what were the results? What were the dynamics of acceptance of outside contributions? Of local practices and

theories? Of prior outside trainings? What was the power dynamic between the entering trainers and their local partners?

“Partnering” does not necessarily imply that partners have equal power, influence, or choices in the relationship. Newer models of intervention hold up an ideal of an egalitarian partnership. To what degree might this have happened, and what barriers and challenges might make purely egalitarian partnerships difficult? How and when was attention paid to this aspect of the partnering relationship? Did partners engage on possible value, culture, or power differences? Did the partnership allow for critiquing of the project or program’s added value?

Integration with Context

The enhancement of local techniques and the introduction of outside models and practices is often part of a larger strategy of systemic change. Additional tasks likely include increasing the acceptance beyond the project of the emergent practices and approaches. Our authors also were asked to discuss this dimension of integration. How receptive was the existing context—institutionally, culturally, legally, and so on—to new and hybrid practices? Authors reviewed any larger system goals, and discussed the nature of the sociopolitical milieu and its acceptance of the new practices and procedures. Was a larger strategic plan part of the initiative itself? And whose plan was it? If not, how might such a plan have been useful? If so, how were these goals met and what challenges were faced?

Model of Conflict Resolution That Emerged from Interaction

As trainers and practitioners using different practices and models of conflict resolution encounter each other, new practices and concepts and theories are tried out. These may be rejected or accepted, but more likely, they are integrated, modified, hybridized, or meshed. Innovation comes when unmet needs drive experimentation and search for alternatives.

Through their partnership efforts, our authors participated in the creation of new combinations of practices, training modules, and even new ways of thinking about conflict. Each chapter tells a different story, a unique process of how outside training and/or expertise is introduced and received, what interactions occur between them and local participants around cultural blending, and how and what modification and adaptations are made. The authors describe not simply the encounter between the

trainers and the local partners, but the process of evolution and development over time which lead to further adaptations, further blending, and further integration with critical cultural components. Each chapter may capture different time elements in the interactional whole. Some authors give information during the training period, and frameworks. Some authors give accounts of the evolutionary and developmental aspects of the training, but all summarize the innovated conflict resolution models and practices emerging from the interaction of models and cultures.

CASE STUDY SUMMARIES

Uncovering Cultural Preferences

Nepal. Our cases begin with Lederach and Thapa (Chap. 2) exploring how to “find the local” and deepen the practice of mediation at the village level in rural Nepal, using participatory action research as a method. Mediation, initially introduced with a strong Western orientation, has evolved through practice and the response to daily conflict during and after the civil war. At its inception, the program was framed as an “access to justice” initiative. The modalities and decisions by which the mediation centers were established in local communities, and the actual practice of mediators, suggested significant variance from the way both trainers and mediators described their work, and were seen as contributing to wider social transformation in ways that went beyond access to the legal system. Conducted with district- and village-level mediators and trainers, the research yielded important insights into how and why mediation practices were effective, and led to significant changes in training materials and approach to reflect the blend of effective practices being used. Discussion of a Nepali hybrid model of mediation as well as how participatory action research affected the participants concludes the chapter.

Trinidad and Tobago. The Republic of Trinidad and Tobago (TT), a twin island state in the eastern chain of Caribbean islands, has a diverse racial, ethnic, and religious population of 1.3 million. While rapidly moving toward a developed modern state, the last ten years have brought increased gang activity in drug and gun trade, violence in the family and the community, notorious corruption at all levels, as well as one of the highest murder rates in the world. Trauma, fear, loss of freedom, pain, and grief have ebbed into the daily lives of its citizens. Drawing on their own research and that of others into TT cultural practices and societal needs,

Ali and Parsons (Chap. 3) discuss perceptions and practices in negotiation, mediation, and restorative justice. Cultural themes in conflict include a “great divide” based on gender and a hierarchical structure of power present at all levels in the society. Preferences and practices for resolving conflict include a mediator known to all parties of the dispute who would take an active role in making and carrying out agreements, religion as a guide for dealing with disputes, and relationship repair on equal par with resolving substance of a dispute. Increased trauma in the population suggests transformative, advocacy, and educational models to mitigate power discrepancies and promote healing through amplified listening and understanding.

Embedding Conflict Resolution into Cultural Grammars

Guatemala. The story of Fundación Propaz in Guatemala is an exemplar account of the integration of cultural models, written by the editors, together with Andrés Álvarez Castañeda and Carlos Sarti of Guatemala (Chap. 4). Guatemala’s 36-year civil war, which ended in 1998, is estimated to have cost 200,000 lives, leaving in its aftermath persistent intergroup tensions, as well as a vacuum of government or other institutional mechanisms for regional or even local conflict resolution. Originating from the Organization of American States, during the Peace Accords of 1998, the initiative was inherited by nongovernmental organization (NGO) Fundación Propaz to continue to contribute to the consolidation of peace, democracy, good governance, and the prevention and settlement of conflicts. Aided in its early development by expertise offered through conflict resolution trainers from the US, it has evolved into a uniquely blended model of intervention consisting of basic tenets of Western institutional models and traditional indigenous practices, with enormous context sensitivity. This mediating role of Fundación Propaz is based on raising citizen awareness by promoting dialogue and negotiation, and on educational and training activities. Propaz became a significant mediator between government and various Mayan and other groups by utilizing traditionally respected methods of interaction, including trust and respect-building, symbols, ceremony, critical attention to who is at the table, and time to voice pain and suffering. This chapter documents the philosophy, goals, strategies, and evolution of the Propaz organization and conflict resolution models.

Georgia. The Republic of Georgia’s mix of rapid post-Soviet reform, long-standing ethnic tensions, and economic challenges made it a setting

for simmering hostilities. Changes in standard operating procedures, business norms, educational guidelines, and administrative and legal practices added to the uncertainty produced by uncertain economic conditions, ethnopolitical conflict in border regions, and large numbers of internally displaced persons. Under such circumstances, conflicts were inevitable, yet the post-Soviet vacuum in social capacity for resolving conflicts had been slow to fill with resurrected Georgian customary practices or institutional mechanisms perceived as legitimate and just. Magradze and d'Estrée (Chap. 5) discuss their university partnership to enhance an MA program in Conflict Management and develop a university-based mediation clinic, providing training for hundreds of students and citizens and mediation services for several high-profile disputes. In the course of these activities, much has been learned about devising a conflict management model that would work in a Eurasian context, as well as revising models of training and clinic administration for cultural appropriateness. Integration with existing judicial structures and practices represented larger challenges that required flexibility and innovation. This chapter reviews the challenges faced and insights gained during clinic development, and the lessons learned for establishment of mediation in a hybrid legal, social, and cultural context.

Empowering Missing Voices

Kenya. Ervin and Lechoe (Chap. 6) share the story of indigenous-led peacebuilding among Kenyan pastoralists. Drawing from participatory action research and emergent peacebuilding design, the Warriors to Peace Guardians project established an inclusive network of diverse peace guardians in three remote pastoralist communities in Kenya, empowering youth, women, and elders. Youth were given an alternative Peace Guardian role to replace their traditional, and increasingly violent, Warrior role. Their story also illustrates an effective shift in NGO role from international interventionist to catalyst and facilitator. Literature suggests that support for grassroots peacebuilding is often hampered by Western teleological approaches that have limited capacity to deal with complexity and emergence. With the support of a flexible funder, this project overcame such limitations, adapting successfully to emergent realities on the ground, and retaining indigenous ownership in partnership with an international NGO, Mediators Beyond Borders International.

North Africa. With waves of reforms following popular protests, democratic transitions and elections, and increasing ideological polarization within and across borders, the discourse about North Africa from 2011 onward has largely focused on the big pictures of a rising generation in revolution, youth bulge, extremist recruitment, and social unrest. Indeed, there are manifest needs and opportunities for the furthered involvement of youth in conflict transformation. Jebril and Hawke (Chap. 7) document the implementation of conflict resolution training programs designed as youth capacity-building in Morocco and Tunisia. They find that, in spite of larger influencing factors, the conflicts and stories inevitably uncovered were about neighbors, friends, families, parents, and routine encounters with confrontation, compelling them to reexamine how youth might engage in conflict transformation in their communities. In a region pregnant with existing and emergent paradigms for resolving social disputes, where do youth stand between diffused transnational norms and traditional processes of reconciliation that hinge on seniority? Are youth viewed as reliable resources to solve the societal problems they so often are assigned fault for? What are effective models of training and how can they be further adapted to existing concepts and practices? Finally, if youth in the Maghreb feel equipped to intervene in interpersonal conflicts, will they be more encouraged to engage as leaders in larger social issues? Fundamentally, youth are symbols for liminality between old and new, tradition and change, and learning from their responses to conflict offers unique insights into evolving models for reconciliation.

Personal Journeys in Working with Culture

India. Working with culture is usually not straightforward, and may be fraught with logistical and even ethical dilemmas. Iyer and Hoben (Chap. 8) share the story of their work in India, a country of multiple and complex cultures and a nation rife with conflict. Conflict produced by cultural differences within India is witnessed in the form of communications breakdown, lack of authority to enforce common cultural norms, and, most importantly, the lack of unified identity. Caste and religion, including language and gender, are the dominant aspects of the culture, especially during conflict. As a local (insider) trainer with a foreign “Western” (outsider) education and perspective, Iyer’s dual identity enabled her to assess critically both glorified local cultural practices and prescriptive universal models imposed on the culture from the outside. Moreover, while the

use of “elicitive approaches” (Lederach, 1995) to training is optimal, this chapter raises challenges due to the intersection of conflict and culture, asking important questions about what is culturally appropriate, what is ethically called for, what is professionally expected, and what is practically possible.

Palestine. While intending to assess the applicability of the transformative mediation model in a Middle East setting, Saxon (Chap. 9) came to recognize the influence and preference for a local capacity for peace. *Sulha*, a traditional Arab process for peacemaking, predates Islam and remains a core means to confront conflict, prevent escalation, acknowledge anger and grief, and restore peaceful relations within pluralistic communities in the Middle East. The end result may not be formal agreement, but reconciling the relationship of the people involved. This chapter documents the practice of *sulha* within collectivist Palestinian environments. Initial comparative research hoped to clarify the underlying theory supporting *sulha*, and compare these concepts to the Western developed transformative mediation framework to consider the potential for training in the region. However, through interviews with *sulha* practitioners, the analysis focused less on how transformative mediation could be applied in a new cultural context, and more on the need for any introduced model to honor the core principles and practices evident in Palestinian society. Ultimately, work in Palestine reinforced that conflict and peacemaking processes must be understood within the broader context in which they occur.

Saudi Arabia. Walker (Chap. 10) describes her work to create a Saudi model of mediation training and practice. In response to King Abdullah’s call for the reform of the judicial system in 2010, ADR centers were to be established around the Kingdom of Saudi Arabia. The Saudi judicial system is based on strict Islamic law, also known as Sharia law, and the process of reconciliation is central to the culture. Other critical cultural norms include traditional power structures and authority, the gender-segregated nature of society, and various religious tenets representing central cultural values in everyday life. A lifelong resident of Saudi Arabia, Walker describes the process of integrating traditional Islamic beliefs and practices with Western approaches she learned in graduate school. She outlines the continually evolving training approach she has developed to express Saudi norms and values, while also recognizing the need to embrace further reforms as Saudi society continues to shift.

Building Systems to Embrace Culture

Timor-Leste (East Timor). Finally, Moore (Chap. 11) describes his experiences working with Indonesian and Timorese partners to design a new dispute resolution system to resolve housing, land and property (HLP) disputes in Timor-Leste. The disputes resulted from violence after the population's vote for independence from Indonesia and years of Portuguese colonialism and Indonesian occupation. To resolve the disputes, the United Nations, and later the Timor-Leste Ministry of Justice, created a Land and Property Directorate (LPD) that was mandated to settle highly contested and potentially volatile HLP disputes in cities, towns, and rural customary communities. This chapter describes approaches used to decode Timor-Leste customary dispute resolution practices, and presents procedures used by the partners to develop LPD dispute resolution capacities using elicitive and prescriptive procedures for training, designing the new system, and educating the public.

Comparative Analysis, Lessons Learned, and Reflections

In the closing section, d'Estrée and Parsons (Chap. 12) attempt to identify patterns of encounter and integration and draw lessons for conflict resolution capacity-building. Finally, Avruch (Chap. 13) concludes the book with his perspective of four decades of research on culture and conflict resolution.

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PART I

Uncovering Cultural Preferences



Staying True in Nepal: Understanding Community Mediation Through Action Research

John Paul Lederach and Preeti Thapa

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

—Hari Pandit (*Kaski mediator*, 2010)

This chapter explores the use of participatory action research as a method to deepen the practice of mediation at the village level in rural Nepal. Mediation, initially introduced with a strong Western orientation, has evolved through

J. P. Lederach (✉)
Kroc Institute for International Peace Studies,
University of Notre Dame, Notre Dame, IN, USA

P. Thapa
The Asia Foundation, Kathumandu, Nepal
e-mail: preeti.thapa@asiafoundation.org

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building*, Rethinking Peace and Conflict Studies,
https://doi.org/10.1007/978-3-319-71102-7_2

practice and the response to daily conflict during and after the civil war. At its inception, the program was framed as an “access to justice” initiative. The modalities and decisions by which the mediation centers were established in local communities, and the actual practice of mediators, suggested significant variance from the way both trainers and mediators described their work, and were seen as contributing to wider social transformation in ways that went beyond access to the legal system. Conducted with district- and village-level mediators and trainers, the research yielded important insights into how and why mediation practices were effective, and led to significant changes in training materials and approach to capture the Nepali way.

INTRODUCTION

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

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

Now they sit side by side, surrounded by numerous family members, listening to three mediators. A few hours later, after much deliberation adeptly facilitated by the mediators, and with an intervention at one point by the husband’s father, the couple signs an agreement. The young man

listens as his father reprimands him, and the oldest of the mediators, who appears to be a close friend of the father, extols the importance of staying together as a family. Through the agreement, the husband's young son has been legally established in the family inheritance, and the young wife given rights to stay in the house. How she feels about her husband and marriage seems very ambiguous, but she appears relieved that her future and survival have been assured. What will happen with the second family in India is unclear. The young man still has no employment in Nepal.

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

Community mediation emerged and developed in Nepal during the past 16 years. First proposed as a mechanism for access to justice, an alternative for local communities for whom the formal legal system could be prohibitively costly and unmanageable, mediation focused on providing a different venue for addressing disputes. The early model of training and mediation, however, arrived with a hybrid mix of international conceptions of effective practice and a Nepali structure mandated by a government act. International supporters and Nepali non-governmental organizations (NGOs) characterized the mediation program as an "interest-based" approach providing "neutral" facilitators who help disputants reach their own solutions, but while international resource people using professional Nepali educators provided the mediation training, the actual implementation and practice evolved at the local ward level. This evolution incorporated important Nepali language and cultural understandings into the practice of mediation. While community mediation today is quite distinct from the older "elders councils," it also seems different in real-life applications from the descriptions first offered by professional mediators and NGOs.

In 2007, some five years after the initiation of community mediation, five Nepali NGOs supporting those efforts identified the need for research in three areas. First, the time had come to revise the training program and materials to reflect the experience, lessons, and practices that had emerged in local settings and develop a corps of Nepali trainers with direct experience in mediation. It was no longer viable to depend on outside resources and materials. But how to get from the existing training program to something created by and for Nepalis? Second, by all accounts—in fact literally by counting—mediation had been shown to be a success. But beyond the numbers showing favorable settlement rates, little was known. Having emerged during a time of war, was community mediation simply an “access to justice” program, or was it contributing to wider social change? In what ways did community mediation address justice and harmony? Third, the actual practice of mediation seemed to have evolved some uniquely Nepali characteristics that were contributing to its success. Beyond the formal description of mediation, how was it actually being practiced in rural Nepal?

A research proposal emerged to address these questions and challenges through a process of participatory action research. This chapter will describe the process by which participatory action research was applied by local mediators and mediation program coordinators. It will also examine some of the findings and results of the research process, and outline the initial reflections of the participants on the impact that participatory action research had on them. We include reflections on a Nepali approach to mediation and hybridity of models and practices.

HISTORY OF COMMUNITY MEDIATION IN NEPAL

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

In Nepal, with its very diverse ethnic and linguistic population, different regions and groups have their own unique and indigenously evolved customs for resolving disputes. For example, Thakalis, Magars, and Tharus have traditional institutions that continue to function, such as heads of

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

For poor and rural Nepalis, the formal judicial system is of little value and largely inaccessible for addressing their day-to-day issues. For these villagers, access requires time, and comes with the cost of travel and the need to hire professionals to help them. In addition, they will often then face district courts notorious for inefficiency, corruption, and bias. The problem is especially acute for women who have family obligations or social expectations that keep them close to home. In recent years, the effects of the decade-long civil war have further fragmented Nepali society, creating significant demographic shifts accelerated by impunity and insecurity. In many areas, village populations have drastically declined as internally displaced persons have settled around municipal centers.

The program and partners involved in this study emerged from an initiative started by The Asia Foundation (TAF) in 1993 through USAID/Nepal's Strengthen Democratic Institutions in Nepal project. In 1994, Dr. Paul F. Kaplan, a social anthropologist supported by the Foundation, conducted a community mediation study in 12 districts across Nepal (Kaplan, 1995). The findings indicated that people preferred to resolve conflicts at the community level, that many people were not aware of the law or their legal rights, and that many did not know where or how to seek justice or solutions to their disputes. The Kaplan study also showed that traditional dispute resolution mechanisms were breaking down in districts lying in the mid-hills and Terai (the plains area bordering India).

In 1995, based on the findings of the Kaplan study, a pilot community mediation project was conducted in six districts. There were two major

components: (1) to provide basic legal and human rights awareness to villages, and (2) to form informal mediation groups or train those already existing in order to reestablish traditional mediation mechanisms for alternative dispute resolution at the community level. By 1996, TAF and three Nepali NGO partners had redesigned the mediation component of the program in response to evaluations and feedback from the pilot project. These early efforts provided an important foundation on which to build when the Local Self-Governance Act (LSGA) was promulgated in 1999. The LSGA called for dispute resolution by VDCs and municipalities, the lowest tiers of local government. The LSGA originally framed the process of dispute resolution as one of arbitration, but in 2001, based in part on exposure to programs in Sri Lanka¹ and the Philippines, the government committed in principle to amend the LSGA to provide for local mediation as well as arbitration.

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

PARTICIPATORY ACTION RESEARCH PROJECT

To date, with the primary emphasis on access to justice, community mediation programs have focused their research efforts primarily on collecting data showing numbers, cases, and statistics of settlement. For example, by September 2011, in TAF-coordinated community mediation network, 19,144 applications for mediation services had been registered with the partners in the 12 districts. Of these, 16,473 cases were successfully settled, 1863 cases remained pending, and 808 cases were unsettled.²

From these numbers, it seems quite clear that with systematic training, the community mediation program has been able to provide important

services. Requests for mediation have increased in number each year, and the process certainly has shown the capacity to resolve disputes. However, as the program solidified over several years of experience, questions emerged about the actual practice of mediation, how it was understood and conducted, and the wider impact it was having on local communities. In 2007, as part of the bridge funding provided by the McConnell Foundation, TAF and its five Nepali partners initiated a three-year participatory action research project.

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

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

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

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

Action research approaches learning and inquiry by providing tools for local participants and activists to engage directly in the development of theory related to their work and goals. It has an explicit orientation toward values-based social change that links problem identification, planning, action, and evaluation with the people directly affected in local settings, and increases their capacity to more systematically study and improve their programmatic endeavors.³

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

RESEARCH INQUIRIES

At the outset, the action research team agreed that something “Nepali” had emerged in the practice of mediation at the village level. To put this another way, the mediation practice at the level of local conflict had

unfolded in ways that appeared different than suggested by the language in the training materials, language which was commonly used by national and district coordinators to describe the mediation process to others. Their descriptions relied heavily on the technical professional language found in the training materials. This was particularly true when they explained community mediation in English to the donor community. The action researchers agreed that this language was not particularly common or idiomatic in local communities, suggesting that something more in tune with the culture and patterns of the local setting was needed. But what was this “something Nepali” about the way mediation functioned in the local villages? How did it work? And how might that Nepali imagination and genius find its way back into the training process and materials?

Next, the team had the impression that mediation was producing effects and constructive change significantly beyond the original purpose of providing “access to justice.” Most program reviews concentrated on counting the number of cases and calculating the agreement rate, but they provided little more than anecdotal evidence about broader program impact within the local communities. Those close to the program felt that the presence of local mediation programs in 14 districts, growing to include more than 4700 mediators, was contributing to a range of community changes not captured in the published statistical results. Some of the most significant indications of transformation were unrelated to how local people interacted with or gained access to the formal justice system. In fact, for the most part, community mediation had very little contact with any aspect of the formal justice system. What were the deeper changes emerging from local mediation? What kind of transformation was observed and documented by people whose primary presence for the past four years had been in the local community?

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

understand these concepts? How do justice and harmony emerge or submerge in actual practice? Can village-level mediation hold both together?

BUILDING CAPACITY FOR KNOWLEDGE GATHERING

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

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

There is an inherent tension in this approach, as in most action research. On the one hand, the researchers are themselves close to, if not engaged

in, the practice they wish to study. Their knowledge and understanding form a significant part of their exploration of the phenomena under investigation. On the other hand, their proximity to the practice and phenomena, and their preferred and natural way of describing what they observe, can easily create blinders or lead to misinterpretations of what they see. Using an iterative process of repeated sessions, researchers visited and revisited their findings, descriptions, and ideas. By cross-referencing the initial ideas with different teams of the participant researchers, including their conversations in local communities and the in-depth discussions and explorations in the joint sessions, provided validation of key findings and concepts used in local settings. In action research, validation rises from a dialogical approach that anchors emergent theory in careful exploration of peoples' local experiences and meaning structures (Van der Riet, 2008).

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

KEY FINDINGS FROM ACTION RESEARCH

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

Changes Created by Mediation—To move beyond the basic statistical data of settlements, the action research team wanted to explore how mediation was creating change in the community. Conflict transformation (Lederach, 2003) provided the orienting framework. This approach emphasizes developing “lenses” that focus on four different kinds of change commonly produced by conflict, and that responses to conflict seek to affect: personal change, relational change, structural change, and cultural change. The local researchers approached their own communities, their mediator colleagues, and various disputants, making a range of inquiries to probe for change in each of these categories. In the first three categories, early evidence suggests that the program has had significant impact:

- Mediators consistently reported personal changes, including a significant increase in their own self-esteem, in their capacity to participate actively in community processes and wider group decisions, and in their confidence in providing facilitation and leadership in local conflicts. Women and low-caste participants, in particular, described an important increase in self-esteem and empowerment, often described with the phrase, “We feel confident to speak out and be leaders.” This was found consistently across the ten districts being researched. Mediators and disputants also reported an increased sense of confidence in understanding conflict and how local communities can respond to disputes. People reported they no longer felt as isolated or fearful of uncontrolled escalation of disputes. Having tools to analyze and respond to conflict diminished the feeling of helplessness many would typically have experienced prior to going through a mediation process.
- Relational changes were found primarily among those people who formed the mediation groups. The local mediation groups reflected the diversity within the community. Receiving training together and then functioning as mediation teams changed team members’ views of each other and the nature of their relationships. They reported increased respect for one another across caste and economic lines, and increased participation in community processes by the historically less-privileged members. Many reported they now had more contact, communication, and cooperation in caste, class, and gender relations in the community.

- The researchers also noted evidence that the mediation centers were having some impact on local structures and institutions. For example, VDC leaders began to refer cases for mediation that might previously have remained unresolved or would have required a police response, and in some districts, they provided houses for mediation centers, land, and even ponds for endowments. Early evidence was found suggesting that where careful relationships were cultivated, police supported the mediation process and encouraged dialogue rather than punishment.

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

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

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

The starting point for building a mediation program was the structure of the VDCs, which in turn are based on the nine wards. The ward represents the most local level of organized governance in Nepal, and in rural

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

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

- The quality and sustainability of the mediation process depend on careful recruiting of the original group of mediators so that they reflect the diversity of the community. Where the chosen group of 27

did not reflect this diversity, or where there had been inadequate consultation with the nine wards, the program was far less successful. It appears, then, that the target of 27 people is something more than just a cushion against attrition. Rather, it seems to provide an adequate base to reflect the true diversity of the local community, while at the same time constituting a new formation within that community sufficient in size to support a process of social change. This approximates the strategy Lederach (2005) has called a “critical yeast”—a group of improbable relationships crossing social divides, just large enough in number and unique enough in its formation to create a sustainable, new space of interaction. In the case of community mediation, three people from each of nine wards—27 people working together to learn and then deliver conflict mediation services—is large enough to be a significant new formation at the VDC level, yet small and directly interdependent enough to develop meaningful relationships.

- The choice to have three mediators, originally mandated by the LSGA, became a procedural mechanism for establishing the panel of mediators for each case. Each party chooses one, and the mediation center adds the third. Action researchers, through interviews, observations, and discussions, found that people chose their mediator from the photo list for a variety of reasons. Some chose the person because he or she was known to them and they trusted that person. Others said that they thought the chosen person would be more likely to understand and represent them. For example, a person from an ethnic minority might choose a mediator from their ethnic group. Some chose as they did because they believed the person had moral or social status to enforce the solution on the other side. What is clear is that much more than a notion of neutrality is at play in these choices. Through the action research, the photo list came to seem more significant, and understanding its function rose in importance in the view of the researcher-practitioners. Several possible explanations of how the photo list contributes to change emerged. The photo list provides a level-playing field for those who cannot read and write. It clarifies who the prospective mediator actually is in a community where many people may share the same name. And perhaps most importantly, it allows people to situate themselves as disputants among the locally known and locally based resource people. The panel of three also appeared far more important than its

original, legally mandated purpose. The formation of the panel requires participation by the disputants, and creates for each case a mix of people coming from different parts of the community. The mediators are perceived as “embedded,” and are known within the local community. The panel often comprises a mix of caste, gender, class, and ethnicity. The mediators as individuals can be recognized as coming from one or more identity groups within the community. As a group of three, however, they provide a certain balance. This more closely resembles an “inside-partial” than an “outside-neutral” approach to mediation (Wehr & Lederach, 1991). The action research studied this “embedded” characteristic by creating maps of the community showing the locations where disputants and mediators lived. The maps often showed mediators and disputants living in close proximity—in some cases almost next door.

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

Here some insights into the question, “What is Nepali about community mediation?” seem to emerge. One key is to recognize, especially at the VDC and ward levels, that the mediators function as *embedded* neighbors within a network of primary and extended family relationships. This form of “inside-partials” has some strengths and presents some challenges. Among the strengths is the capacity to relate to, engage with, and understand the concerns of the disputants. The greatest challenge is to achieve balance in the team. Learning to suspend judgment and open a space for decision-making by the disputants themselves is perhaps the most important aspect of the community mediation program. This approach, when translated into English, is often referred to as “neutrality.” In fact, it might

better be described as the self-discipline of not judging or recommending a solution, while still providing a context that appreciates the interpersonal relationships so important in the Nepali context.

Researchers noted that the tendency to provide advice on maintaining harmony in relationships did not naturally come with an equal tendency to provide advice about human rights. Key for training would be recognizing the pull of partiality toward the disputants, and the need to work as a team of mediators to strike a balance between harmony and rights, where the tendency toward harmony has greater cultural *gravitas*. The mediation programs have addressed this systematically, adding more inputs and special workshops on the issues of legal and human rights and gender-based violence (GBV).

This is an example of how successful community mediation programs still have needed to adapt to changes in the types of disputes brought forth by disputants in response to changes in Nepali society. Over the past few years, there has also been a marked increase in the occurrence of disputes related to GBV and discrimination. These affect women disproportionately, and are particularly pronounced in the current post-conflict context in which forced changes in gender roles and a breakdown in community and family support structures have escalated incidents of violence against women, including GBV and domestic violence (DV). These violations have not been addressed adequately by the formal justice system nor through transitional justice mechanisms. There is thus a critical need for access to justice modalities in Nepal, including community mediation, to strengthen the systems and processes that can reduce and eventually eliminate GBV, and by doing so, promote gender equality among all those seeking justice within Nepal's justice systems.

Through a new training curriculum designed in 2010, mediators learned the causes and consequences of DV, legal provisions relating to DV, social and psychological needs of survivors, and best practices in addressing DV through mediation. TAF trained 24 core trainers and around 1000 community mediators from project districts through this curriculum. Beyond this, mediators have expressed additional need for more advanced and specialized skills to analyze gender dynamics in complex GBV cases that can be exacerbated by complicating factors such as caste, ethnicity, and class. To address this, in 2014, TAF developed an advanced gender training curriculum that introduced processes, strategies, and skills informed by international best practices, national laws, and international human rights into the mediation process. The curriculum

also clearly defined training strategies and processes to impart skills on mediation prescreening and risk assessment, systemic analysis of cases within a context of gender norms and behaviors of both the survivor and the perpetrator, safety planning for survivors, confidentiality, and referral mechanisms. The curriculum also focused on issues of inclusion and helped mediators recognize that gender issues intersect with caste, class, race/ethnicity, location, sexual preference, professions, age, and so on.

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

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

first introduced in the original training, the word used, *tathastha*, was a political term commonly used to describe Nepal's position and status as a small country between its big neighbors, India and China. Research had suggested that this term was meaningful to the professional Nepali trainers and those from larger urban centers, but it was found that at local village levels, mediators and district coordinators had dropped the term and tried instead to explain within a wider context the idea of not taking sides or having a bias. One commonly used expression, *kasaike pakcha naline*, may be translated into English as "not taking sides," but more literally, it conveys the idea of walking straight on a path, neither turning nor leaning to either side. This image of staying straight on the path was effectively conveyed in posters for the mediation program, which showed a bicycle rider on a narrow bridge carrying buckets of water hanging from the two ends of a bamboo cane across his shoulders. In essence, the phrase conveys staying balanced and true to the goal, centered in the path and the purpose.

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

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

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

- Action researchers found that disputants' perceptions of how mediation provides justice centered on their increased sense of inclusion (especially for marginal groups), the respect shown to them in the

process, and the delivery of timely and much less costly solutions to problems which could often pose threats to survival. Many disputants also talked about accessibility as a justice theme, but usually not in the sense of gaining access through mediation to the formal justice system. More often, they described local situations where they were unable to afford a lawyer to take cases to court, or unable to travel to larger cities, and mediation provided a way within their means to pursue a remedy. In finding that way to pursue a remedy, they felt a sense of justice.

- Early evidence from this research seems to suggest that the shift in the relationships between marginal groups (e.g., *Dalits* and women) due to their direct participation in the mediation program increased their sense of justice as equality, through more respect, inclusion, equal treatment, and participation in decisions. More time must pass before we can say whether this change will affect the historic patterns of caste, class, and gender injustices.
- Disputants' perceptions of harmony focused primarily on the relational values of cooperation and respect fostered by a process that permitted people to talk about their relationship, communication, and decision-making. Harmony was often about staying in relationships: wives would not leave the family home; families would communicate better; neighbors would talk with each other again.

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

A HYBRID NEPALI APPROACH TO MEDIATION

In early 2004, TAF had started providing mediation service to the community using an interest-based facilitated community mediation model as the most appropriate and effective approach to local-level dispute resolution. Though TAF started with a facilitative approach to mediation, concerns were received from the mediators in early stages of the program saying that they had difficulty facilitating mediation sessions when there is a power imbalance. Women, Dalits, and people from other marginalized groups also required access to a whole range of social support services, including legal aid, psychosocial counseling, and human rights advocacy and protection, among others.

To address this need and concern, advanced mediation training materials were designed to deepen knowledge of the mediation process and strengthen skills to address the challenges of potential power imbalance and social justice in mediation. Different mediation training materials designed by TAF have increased the skills of mediators on the issues of caste, ethnic, economic, and gender rights. Mediators were given the skills to recognize when the impulse toward social harmony has inappropriately replaced a concern for protection and respect of rights as contemplated in the law and human rights conventions (see also Khanal & Thapa, 2014). Furthermore, TAF developed procedures for regular monitoring of a significant sample of mediation settlements in cases involving disputants of different gender and social status. Settlements were analyzed to ensure that rights of women and marginalized groups are not abused.

In addition, linkages, relationships, and referral procedures and guidelines were developed among and between community mediators, lawyers, police, and psychosocial counselors to ensure that disputants receive a set of high-quality, comprehensive, holistic, and integrated services tailored to their needs. Therefore, mediators play a role of evaluative mediators if there is a power imbalance between the two parties. To illustrate, 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.

Mediators also give special emphasis to empowerment and recognition as in transformative mediation (Bush & Folger, 2004) to transform historic tension into a cordial relationship. In 2014, restorative justice principles

were introduced to the mediators to guide the process of mediation with criminal cases, especially in cases related to DV. In such cases, mediators use restorative justice principles to address the needs and harms experienced by the parties and the community. Therefore, over the years, those in Nepal have started saying that they use a hybrid approach to mediation to provide justice to the parties in dispute.

IMPACT OF PARTICIPATORY ACTION RESEARCH FOR PARTICIPANTS

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

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

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

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

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

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

Noticing change—A third effect is revealed by how the participants described their capacity to observe and take note of change. “Earlier, our

approach was like a recipe: ‘here’s how you do it,’” says Hari. “We focused on counting—people, cases, solutions. We only could see numbers. We never really thought much about the quality of what was happening in terms of process, in terms of change, or in terms of sustainability.” Pankaj Karna, a coordinator from Dhanusa, put it this way—“Understanding this as a process of change within the community, as a web of relationships, like the spider webs we studied, really made a difference. We saw things that have always been there, but that we had never noticed. Action research gave us the key for the first time to see and understand the relationships and changes that were emerging.” As suggested here, several participants felt that action research gave them new lenses, but also more of a capacity for critical analysis. Rohit Deuba from Dadeldhura noted, “We now have lots of questions. We are never quite satisfied. We always want to look for more. We want to know more about what makes the process work. We want to learn.” As Hari put it, “Action research made us step back. We started seeing a much bigger picture of mediation, involving a whole range of changes in people and the community. We could envision this as a program in the wider community, bringing change for the community, and for justice more widely defined.”

CONCLUSIONS

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

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

Second, social context and local knowledge came to be valued differently. In earlier phases, less attention was paid to local language, conceptualizations, or innovations, and much greater value was placed on the

expertise of established professionals from outside the local communities. As participants watched and listened more carefully, however, they were better able to identify both language-in-use and key concepts that were embedded in the local worldview, including some that might contribute to and others that challenged the mediation approach as originally developed. This made possible both the contextualization of the training materials and the deepening of understanding about why mediation worked, and how it adapted within the communities.

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

Fourth, action research contributed very directly to creating a more robust capacity to move from experience to context-informed training and the use of more appropriate language. Instead of relying on key terminology imported from another language and culture, mediators had begun to adapt local language, understanding, and concepts to the purposes and practice of mediation in local communities. This led to different kinds of training materials, which still included a book and a manual with parallels to the earlier versions, but now had a wider array of posters, adapted language, role-plays developed by the mediators themselves, and a more relevant explanation of the mediation process in the context of rural Nepal.

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

NOTES

1. The Asia Foundation (TAF) worked with Christopher Moore in Sri Lanka, who played a crucial role in designing and implementing community mediation programs under the Ministry of Justice there. These programs also used facilitative interest-based mediation, though the administrative approach was significantly different.
2. By June 2017, registered cases had increased to 35,000, with 85% of these resolved through mediation.
3. For more on participatory action research, see Demusz (2000), Lundy and McGovern (2006), McIntyre (2008), McNiff and Whitehead (2002), McTaggart (1997), and Reason and Bradbury (2009).

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CHAPTER 3

Trinidad and Tobago: A Study in Cultural Paradox

Ruth J. Parsons and Catherine Ali

INTRODUCTION

A woman is describing to a Family Court mediator a family conflict that began at her father's death ten years ago. She lived in the house with her parents and cared for them for many years, and because the house became her home, her father left his house to her in his will:

[A]nd my siblings, when they found out the contents of the will they were displeased because, I, as the executor of the will, had to read the information to them and it created conflict. ... upon his death I realized that he had made changes without informing me and had left out my brother and left the main house to me, and when that information was passed on to my siblings, they were of the opinion that I was influential in him doing it like that and that created the problem. ... it really created division in the family, ... Here ... the eldest son is the most important, and he believes he has the right to everything that is left, and even though the court is there for that,

R. J. Parsons (✉)

Conflict Resolution Institute, University of Denver, Denver, CO, USA

C. Ali

University of the West Indies Open Campus, West Indies, Trinidad and Tobago

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building, Rethinking Peace and Conflict Studies*,

https://doi.org/10.1007/978-3-319-71102-7_3

the court sometimes goes ahead and gives the property to the oldest son. I think that is why dad left him out of it. He didn't want me to be out on the street. ... I think family should be family ... but, I don't talk to one of my brothers and one of my sisters. ... I would like it to be resolved and we get over this and get back how we used to be ... where we looked out for one another. ... but I need to know if I have a place to continue living, but I also have to live with my family and I don't like where it is right now. If I have to give up the house, then the Lord will have to look after me. So, the will is to go before the court, and the judge wants us to come to agreement before that. So that is why I am here. (Trinidad woman, age 34, 2006)

This family conflict raises many issues found in the culture of Trinidad and Tobago (TT): power differences (both formal and informal) based on gender and intrafamily status, mixing of traditional and modern cultural values, the lack of access to the courts in a timely manner (ten years many times), and a confusing message about legal rights. Although the Family Court was created to provide a quicker and more satisfactory alternative in family conflicts by offering mediation to sort such issues, what is the nature of a third-party conducted process which can be fair, useful, and will work in such a conflict? Can the power discrepancies between gender, status, and value differences be bridged without further destruction of families and denial of legal rights?

In efforts to process such cases as this one, in 2000 and 2004, the government of TT, in response to extremely clogged court dockets (waits for civil cases averaged excess of six years), passed legislation to create Community Mediation Centers (CMC) and, in 2004, to establish the Family Court, a court annexed family mediation program. A quick response to the need for trained mediators resulted in rapid and uneven development of conflict resolution training programs in TT. Much of this training was imported from the outside and was not at all uniform, nor did it take into account the cultural issues of the country. CMC directors grew concerned and advocated for more standardized, credentialed, and culturally sensitive training and education. Their request to the University of the West Indies (UWI) at St. Augustine resulted in a subsequent partnership between the Conflict Resolution Institute at the University of Denver (DU) and the Department of Behavioural Sciences at UWI. This chapter tells the story of this partnership project, which, through dialogue, research, and discovery, suggests important cultural attributes in TT's highly diverse culture and implications for conflict resolution approaches.

HISTORY OF CONFLICT RESOLUTION TRAINING IN TT

Formal conflict resolution training and practice in TT began in the mid-1990s, when a non-governmental organization (NGO), Alternatives To Custody (ATC), began public education and lobbying to the central government to pass legislation for community-based mediation practice as an alternative to litigation and incarceration (Ali, 1998). This initial trajectory resulted in the passing of the Community Mediation Act (2000),¹ and provided services in four CMCs. Practice of mediation in TT, initially through the Chamber of Commerce and the UWI Law School clinic, had already taken on the culture of legal processes, with formal dress and decorum, legal composition of the Mediation Board, and the images of the legal profession, mostly imported from outside the culture. Although such ADR legal frameworks from Canada and the United States were readily imported and accepted due to the long-standing linkage between TT and these countries, little attention was paid to the appropriateness of these training models for the culture of TT. However, along with the success of CMCs, the directors and other NGO activists began to voice a need for a systematic credentialed program with a theory base and cultural relevance, as well as the need for local trainers. They desired approaches that could more readily deal with emotions, human development issues, communication facilitation, and empowerment principles. They wanted more local experts as trainers who would be familiar with the landscape of TT, including parenting challenges, weak family structures, overburdened women as single parents, vulnerable children, inequality in gender and status relations, intergenerational poverty, growing violence, and harsh sentencing in the criminal courts. One response to this by the Social Development Ministry was to increase alternative training, more appropriate to the cultural landscape, for example, a trainer from Jamaica, and one of the authors from DU with a social work perspective, provided small training programs for the TT government. However, various training models for conflict resolution had already spread, and although mediators in the community centers were required to complete standard “40-hour” training, the wide assortment of trainings available in the community provided no consistency of preparation among center mediators. This context gave way to the development of a partnership described in this chapter.

DEMOGRAPHICS AND CULTURE OF TT

The Republic of TT is a twin island state seven miles from Venezuela and last in the archipelago of islands stretching from Florida across the Caribbean Sea. Last colonized by the British, TT gained independence in 1962, severing links with the monarchy in 1976, when it became a republic. Its parliamentary democracy is based on the Westminster system; paradoxically, the Judicial Court of the Privy Council in Britain remains its final appeal court. While Tobago is a more tranquil tourist destination, Trinidad has an urbanized and energy-producing economy. This small country is a highly complex culture due to its multiethnic, multireligious, and socioeconomic mix. The population is 1.3 million, made up approximately of 35% East Indian, 34% African, and the remaining mixed ethnicities, including Asian, Middle Eastern, and European. Religion is an important part of life, with 1% Orisha, 5% Muslim, 18% Hindu, and 56% Christian, the largest group being Catholic 20%. Life expectancy is 70.17 for men and 76.50 for women (Government of Trinidad and Tobago, 2012). Having been colonized by England for approximately 165 years, the predominant language of the country is English; however, Barrow (1998) notes that “the Caribbean countries share a heritage of colonialism, slavery, migration, plantation structures and global periphery status, all of which have combined to shape contemporary cultural patterns”, while “in countries such as Trinidad and Tobago, St. Lucia and Dominica, controlled by the French or Spanish at some time during their colonial history, the addition of Catholicism, Creole language (Kweyol) and Carnival distinguishes them [from other Caribbean nations]” (p. xiii).

TT is a cultural paradox at many levels. As a rapidly developing nation, it typically contains suggested antecedents of individualism: affluence, financial independence from primary groups, industrialism, cultural complexity, and smaller, more mobile families (Triandis, Brislin, & Hui, 1988). However, while information technology, industrial, and infrastructural developments reflect modernity, many social roles, rules, norms, and values continue to reflect traditional values. African symbols, beliefs, and practices have survived to contribute to a reconstituted Creole culture (Barrow, 1998). With recent increase in oil and gas reserves, TT is moving rapidly toward developed country status, but national culture is still contested and complex (Reddock, 1998).

Unequal distribution of power seems to be a central characteristic of TT. Discrimination between men and women, geographic inequalities,

hierarchical structures and roles are experienced as reduced agency (Reddock, 1998). Men own more power, even though women are higher achievers at all educational levels, have overtaken men in most professions, and remain heads of households. Despite major policy thrusts toward gender equity, complex gender operations and implications are generally not understood and remain unresolved.

Economic resources in TT have democratized social development through free universal education, free health care, free elections, media and communication systems, very low unemployment, and extremely low energy costs. Still, crime and security are beyond state control, with extreme societal violence and murder rates. The first decade of this millennium (2000–2010) witnessed pronounced increases in fatal incidences of domestic violence, road deaths, murders, kidnappings for ransom, and more recently, the countrywide proliferation of gangs fueled by drugs and gun trade that lead to further crime and violence (Heeralal, 2011). The numbing effect of repeated violence within the society is largely unattended and serves to form what Rohlehr (2007) has defined as emotional “sticking”, blocking developmental steps and social change (Rohlehr, 2013).

TT is awash with conflict at many levels and within systems that struggle to cope with the magnitude of crime conflicts. The UNDP 2012 Caribbean Human Development Report found that perceptions of corruption in TT’s criminal justice system were the worst of seven Caribbean countries surveyed.² Less than a quarter of respondents rated the capacity of TT’s criminal justice system as sufficient and said they felt secure. However, on the other hand, TT was ranked at the top of the Caribbean and 31st in the world on a happiest assessment from the United Nations Sustainable Development Solutions Network (UNSDSN), (World Happiness Report, 2013), using the variables of gross domestic product (GDP) per capita, healthy life expectancy, having someone to count on, perceived freedom to make life choices, generosity, and freedom from corruption. This paradoxical ambivalence is representative of TT’s cultural complexity and rapid change into a modern and industrial society. Such ambivalence can also be found in present attitudes and in the historical roots of conflict and its resolution.

Conflict Resolution Traditions

Traditional and current persistent conflicts in TT include intergenerational feuds; family conflicts, from highly varied family structures which do not necessarily fit the laws of the land handed down from the British legal system; land disputes—a long-standing practice of “squatting” and lack of legal deeding of land; work place and employment; political and religious group conflict; neighborhood and community disputes regarding noise and property rights; gender inequality, interfamily feuds associated with gang murders; and finally, conflict within and around Carnival, the annual national festival which attracts thousands of participants from all over the world. Historical factors such as slavery, indentured servitude, colonialism, and capitalism have embedded a legacy of hierarchical/dominating power prevalent in social policy and practice (Ali, 1998). Some cultural facets can be characterized as holdovers from plantation and slavery such as prominent wealth owners having unquestionable power, resulting in less powerful persons’ predisposition to conflict avoidance.

However, TT has strong multicultural conflict resolution roots as well. The Trinbagonian context was born from European rule, but the society was not entirely European, for the heritage of African and Indian traditions came with the slaves and indentured workers to form part of the society (Smith, 2013). *Panchayat*, the traditional Indian community approach to conflict settlement, while not present during indentured servitude, resurfaced after that era ended and provided “resurgence of ethnic pride in ancestral India” and “gave to the traditional Indian elite the moral authority they were previously lacking in the Eurocentric, Christian-dominated colony” (Singh, 1996). Consisting of five respected males who were basically arbitrators in their role, Panchayat represented attempts to establish important Indian traditions, but those attempts were not sufficient to stand up to the power and strength of the British colonial court system. Even though Indian citizens used the Panchayat system, the colonial court system was generally the alternative, which, in effect, rendered the practice of Panchayat without official sanction and power. However, some remnants of the tradition carried forward and are still practiced today in some communities.

Likewise, the African Council of Elders, a traditional West African form of conflict resolution, was imported into Trinidad from Africa and from various islands of the Caribbean. Relying on preservation of relationship and friendship, it is marked by food-sharing rituals central to fellowship

practices which can still be found not only in TT, but also in the Caribbean region. Based on the concept of “Ubuntu”, which means wholeness of personhood and connectedness of spirituality, it extends to conflict transformation and recreation of the common good, using an African saying: “[Y]ou cannot take a friend to court and still remain friends” (Omale, 2006, pp. 50–51). Other conflict resolution practices are based in historic tradition as well.

Rich art forms have both provided insights into conflict and served as outlets and mechanisms for conflict resolution. Calypsonians have, for over a century, provided social commentary on contentious issues, composed lyrics that tell stories, and explored cultural resolution practices in race, class, and gender relations (Chalkdust, 2014). Historically, stick-fighting competitions between gangs and varied community groups established leadership and boundaries, and gave way to fierce steel band competition (assisted by government intervention), which is still alive today. Even though many of these traditional roots can still be found in various norms and values in TT, Chief Justice Archie (2015), speaking on the state of social justice in TT, suggested that the British legal legacy overtime has crowded out alternative forms of conflict resolution, created overwhelmed court dockets, subdued common sense within the system, and denied access to effective conflict resolution and social justice. He called for social justice reforms such as alternative dispute resolution and restorative justice programs in prisons and courts.

PARTNERING FOR EDUCATION

Roots of this partnership began in 2002 when CMC directors approached UWI and requested a credentialed and more culturally relevant mediation training program. The Dean of the Behavioural Sciences Department agreed to take on development of the project, even though departmental resources, such as faculty and other partners with necessary expertise, were lacking. One of the authors of this chapter, already collaborating with the social work program at UWI and known by faculty in the department, collaborated with the Behavioural Sciences Department and DU’s Conflict Resolution Institute in assessing the potential for an educational partnership. Agreement was reached and the planning phase began in 2003. Goals of the project were to increase capacity for mediation education and training at UWI and at DU through exploring mediation strategies and the relevance to the TT culture.

Funding for Partnership

In 2004, collaborators from UWI and DU secured a grant from US State Department's Bureau of Education and Cultural Affairs to form a partnership, with general goals to build educational capacity at UWI and to enhance practice in the community. During the planning phase, two faculty members from UWI and two from DU developed a plan for training, teaching, and development. Specifically, the partnership aimed to strengthen the curriculum of the newly formed Postgraduate Diploma and to launch a master's program in Mediation Studies at UWI, train faculty and graduate students in the skills of conflict analysis and resolution, establish a center at UWI with resources for the community, and examine western-based concepts and models of conflict resolution and mediation in this specific culturally diverse setting. The project included a core group of faculty and, later on, graduate students, all of whom were preparing to teach in the academic programs. By 2007, both the Postgraduate Diploma and the first and only master's program in Mediation Studies in the Caribbean at the St. Augustine campus were operating, with an initial master's class of 36 highly diverse students. The students came from law, human resources departments, various governmental ministries, ministers, counselors, and political activists.

Training Approach and Implementation

Activities in this three-year partnership included DU faculty providing training sessions both at UWI and at DU, and also other national and local experts for special topics in training, such as restorative justice, mediation center administration, and cultural theory of conflict and resolution. Exchanges included DU faculty teaching on-site courses at UWI and appointments of UWI faculty and graduate students as visiting scholars at DU. The two faculties joined together to create specific courses in conflict resolution. UWI faculty educated the DU partners about TT life and culture, and mediation activities such as the TT National Family Court. Training topics and substance were altered through discussion and assessment of the content from both sides.

Most of the UWI partners were social work and social science faculty, but had not been exposed to conflict resolution theoretical approaches, and two others were mediation practitioners. Thus, the initial thrust of the partnership was the provision of basic training in conflict and resolution

approaches. While DU's approach extended back into the roots of western models such as the core processes of interest-based negotiation by Fisher and Ury (1881), Christopher Moore's *The Mediation Process* (2003), and others, their own adapted frameworks were further adapted and significantly elaborated upon during the training. Specific foci in the training included strong power discrepancies in conflict, ethical decision-making in mediating disputes, value entrenchment, promotion of effective communication processes, sorting out of relationship issues, and responding to emotional pain and trauma. Training goals and activities were altered to respond to locally identified issues, such as gang violence and restorative justice approaches, cultural relevance, and issues of trauma that were building within the society due to an increase in violence and crime. One specific trainer introduced basic philosophy and frameworks in restorative justice relevant to the recent development of restorative justice programs in both TT courts and prisons. Another international trainer in cultural issues in conflict gave a workshop to explore critical cultural aspects of conflict in TT. This open approach to the training invited dialogue around relevance of the content to the culture, which became a central question in the project, ultimately resulting in conducting of small research studies to explore these questions.

THE CULTURAL ENCOUNTER: AN OPPORTUNITY FOR DISCOVERY

Discussions regarding cultural relevance were launched at the outset during the partnership, and the explorative and collaborative nature of the relationship provided enough unknowns for both the UWI and DU partners to question the relevance of universal models, and such questions were frequently raised. At first, some resistance was voiced by UWI participants to the notion that western frameworks needed to be adapted in order to be relevant in TT. It was argued by that while TT had its own culture different from the "western" countries, it was at the same time a highly westernized society, accustomed to learning from and adapting many western approaches in many fields, and that the interest-based universal approach to conflict resolution could be applied in the TT context. However, as participants became more familiar with the cultural nuances in those frameworks, they recognized that many of the assumptions of a universal interests-based framework could well be questioned as a fit with

the culture. Through the use of both prescriptive and elicitive approaches³ in the training sessions (Lederach, 1995), cases presented by partners from UWI helped to generate both critical cultural theory questions and practical local knowledge of the culture. For examples, one TT participant argued that in the TT culture, there could be no such dynamic as “separating the people from the problem” because of the emphasis on separation of emotion from facts, and furthermore, that emotions and relationship in conflict were prominent and equally important to agreement in negotiating settlement. Furthermore, others were skeptical that TT citizens would seek help from an outside unknown neutral but would instead prefer a reputable person known to all parties. A third-party person would be expected to participate in problem-solving and serve as a guide in finding solution, and would stay involved with the disputants after the resolution process was over to follow up to see how things were going. In a small society where people see each other before and after any such formalized process, neutrality was described as a false concept:

Neutrality is like peeling off your skin – you can’t do it. You cannot shake off yourself, your race, values, and your orientation. The best mediator is not a neutral, but someone who can be impartial manner even if they know the parties.

Additionally, participants suggested that a mediation process would not proceed as a linear sequence, but instead, each process would have to be revisited as needed. They surmised that the process for resolving conflict would necessarily be face to face, informal, and begin with storytelling, which would lead to relationship issues first. Rules of talk would be assumed and guided by the third party only if necessary. Differences in participants’ opinions demonstrated differences among various pockets and groups, for which these values might vary. This speculation and discussion regarding cultural conflict theory helped to formulate assumptions about actual conflict behaviors and attitudes in TT, and prompted an agreement on the following questions as relevant for further exploration in the project and provided the stimulus for three small research studies.

Questions Regarding Cultural Differences

- What are cultural assumptions in conflict in TT? Assumptions embedded in western models are highly individualistic, whereas in other cultures, assumptions are more reference group based. A

question arose as to what assumptions operated among the TT population regarding conflict resolution.

- How do people communicate in a conflict? Who speaks and how? Are there differences between western culture and TT in the norms of communication in conflict? Are emotions common and acceptable parts of discussion?
- Are some modes of communication more acceptable than others? Are people comfortable with direct face-to face communication or do they prefer a go-between that would protect them from face-to-face communication? Participants suspected this might vary among different groups.
- Are there differences between groups of the TT population in perception of conflict and assumptions about resolution? How do differences in race, class, and identity play out? Are some people more comfortable with a western style of communication than others?
- How does hierarchy impact the management of conflict? Significant differences in power up and down hierarchical structures were frequently noted, and questions arose as to how these might play out in a resolution process and what a mediator or facilitator might need to do in regard to these structures? For example, the difference between men and women, and social class difference?
- Many assumptions in conflict are based on cultural and religious values. Are these identifiable in TT? How are values heard? Given the vast complexity of cultural values in TT, is there recognition and tolerance for different values and how are those handled?
- Who is in a position to be a third-party neutral? Because the cultural literature suggests who would be an acceptable mediator to disputants may vary by cultures, this question was raised during the discussions and deemed important.
- Is repairing relationship or finding an agreement more primary in a resolution process in TT? Likewise, the cultural theory literature regarding conflict suggests that in some societies, harmony in relationship is valued over resolution, while in others, resolution is seen as more important than relationship repair. UWI participants were curious as to how people of TT might view that difference.
- Are the cultural norms around conflict more similar to more individualistic societies or to more traditional collective societies? Various typologies of cultures are created to make comparisons with modern developed countries or traditional developing countries. Participants

suspected that both comparisons could be made within TT because it is a society in a state of rapid modernization.

While the partnership did not provide funds for research activities, curiosity regarding these questions motivated project participants, who voluntarily conducted three exploratory studies of their interests. Each study was done by a team of both DU and UWI participants. In addition, master's and PhD research by one of the participants and coauthors of this chapter also provided information for the project. The combined results of these studies, although small and exploratory, provided opportunities for further discoveries around culturally relevant elements in conflict resolution in TT. These studies are briefly described below.

Project Studies

Sogren and Parsons (2008) explored TT's Carnival as a metaphor and a vehicle for understanding historical and current conflict behaviors in TT. An evolutionary event, it serves as a symbol of cultural issues in conflict, characterized by numerous rumblings and eruptions from its inception in the late 1800s. Carnival is today a multicultural, multilayered three-month season which embodies revelry and official competition among steelbands, calypsonians, soca artistes, and costumed masquerade bands, and is riddled with a variety of reoccurring conflicts. A second exploratory study (Parsons, Ali, Picard, & Taylor, 2012; Collier, Parsons, Hadeed, & Nathaniel, 2011) was conducted by students of mediation, under the direction of one of the project participants. Using an in-depth interview guide, largely based on the particular cultural themes posed earlier, this group conducted 19 in-depth interviews with Trinidadian citizens regarding their perceptions of conflict and resolution. The third study conducted by the coauthors in 2012, used four focus groups of 24 practicing mediators and trainers in TT to explore experiences and challenges they encountered as third-party mediators in their various contexts. Analysis suggested some clear themes for assessing mediation frameworks and their fit in the culture. In addition to these studies conducted through the partnership, the second author, who was a TT project participant and a mediation center director, conducted research on the question of potential empowerment outcomes through negotiation, mediation, and restorative justice processes (Ali, 2013a). Searching for local language for empowerment in mediation and negotiation contexts, she observed

numerous negotiations/mediations and documented cultural attitudes and behavior, which added attention to cultural norms. In addition, she documented the programs and processes of an innovative and successful restorative justice approach in the San Fernando court system, which was focused on healing and transformation of offenders, without including the primary victim, unless victim was within the offender's family. These exploratory studies were the basis of new learning through the project and provide insights into many of the above questions formulated through project dialogue. Common themes from these studies are summarized below.

DISCOVERIES REGARDING CONFLICT BEHAVIORS AND PREFERENCES

In spite of great diversity in economics, religion, rural versus urban, race, ethnic identities, gender, and age, the studies suggested common and at times paradoxical threads of attitudes, values, and behavior around conflict. Lederach (1995) suggests that in paradox, the energy of the opposing ideas is enhanced when, like two sides of a coin, they are held together. Such energy is found in TT in the capacity to hold opposing views and values. This is shown in the discussion below.

Conflict Expression and Coping Behaviors

Conflict is pervasive, expected, and freely expressed both in public discussions, songs (such as calypso), dance, other art forms, and in daily life. A common expression in dealing with unsettled arguments is, "take it to the rum shop", where locals gather and hammer out issues and disagreements in a civil manner. Carnival, for example, continues to act as an outlet (or escape) for conflict and reaffirmation of ethnic identities. An old historic annual ritual and an international celebration with many cultural attributes, Carnival is a virtual laboratory of conflict among its various components, a symbolic mechanism for expressing conflict and, some say, for releasing tension within the society (Sogren & Parsons, 2008). But while societal conflict is openly expressed, personal conflicts are not publicly aired, keeping family or in-house matters quite private.

A code of language and respectful behavior are implicitly expected in any resolution process, and lack thereof would result in failure of a

communication, and to some extent, a violation of religious-based moral behavior. However, there are common behavioral traits associated with conflict expression such as “cut eye”, an eye motion that expresses strong disagreement; “stuyppsing”, a sucking in of the lips against the teeth to indicate clear disagreement and confrontation; and “coolyaself”, an expression from one person to another to ask them to calm down and not escalate. Humor, a part of the national psyche, is often used to put differences in perspective, reframe, and de-escalate conflict situations (Sogren & Parsons, 2008), and conflict tolerance and avoidance are created by religious principles for doing the right thing, deferring to the common good, not losing sight of the big picture (Collier et al., 2011).

Power Dynamics

In spite of vast differences among this population, there is a strong national identity, yet power discrepancy is a dominant theme. Captured in the expression “all ah we is one” (Sogren & Parsons, 2008), a sense of unity pulls through the historical weave of hierarchical rule of unquestionable power and dependency, creating the paradox of both an expectation of hierarchical power arrangements and, at the same time, a desire for more equality, as demonstrated by the woman in the property dispute case cited above. This tendency of holding tensions of opposing polarities is built into the TT psyche as well as “moving on” (Sogren & Parsons, 2008). Power differences are attributed not only to position, but influence, access to resources, and significantly, gender bias and discrimination. An expectation of, but a discomfort with, gender-based power differences is strong in the society, again, was indicated in the property case cited above. Deference to authority and hierarchical structures, along with internalized powerlessness, promotes an ingrained habit of not expecting and not exercising rights. The woman in the opening case description was wondering if it was worth it to fight for her rights and began to take a less assertive position of letting the Lord take care of her. In the absence of powerful civil society groups to garner horizontal public support against hierarchical structures, citizens seek wise council from those in authority positions, not to be told what to do, but to seek advice on how to proceed and to gain some leverage in conflict resolution (Ali, 2013a; Parsons et al., 2012). In the face of obstacles to resolution and when redress appears unavailable, people “make noise” and “go public” to garner support, push back, and embarrass authorities and bullies, and to politicize unfair situations and relationships (Ali, 2013a).

Recycling of Conflicts

A common outcome in resolution attempts is partial and temporary resolution. For example, conflicts associated with Carnival resurface on an annual basis and resolution attempts are not complete, even those that go to court for legal settlement. Similarly, reports indicate repetitive cycles of the same conflicts in families and communities, creating numbness and becoming stuck in seeking desired solutions. Cultural differences between groups based on gender, religion, islands of origin, and economic status create different styles of communication, value entrenchment, and bias:

One family conflict was created amidst an extended family neighborhood, where one man had opened a vehicle sanding and painting business which was causing dust and paint fumes in the air and penetrating into people's houses. While he and his mom were proud of his economic success, another brother and family recently moving from a less prosperous island up north did not understand why a relative of theirs would continue to pollute the air their families were breathing in the name of money. A split among the extended family caused great pain and unhappiness, unsuccessful resolution attempts by a local clergy, ultimately leading to an assault and legal process, which was not available for a long period of time in which the family and neighborhood issues continued to grow.

Concern that negotiation may force one to “give up one's values”, and the tendency to “prove oneself as right” create listening barriers and challenges to negotiation even in the face of willingness to work out a solution (Parsons et al., 2012), thereby often rendering conflict resolution efforts less effective and feeding the recycle of the conflict. Ongoing stress from either no or partial solutions to emotional conflict feeds the psychic trauma in society.

Violence, Crime, and Hypermasculinity

Pain that is not transformed is transferred. (Richard Rohr, 2007)

TT is said to have developed a traumatized national psyche, creating “tiredness, numbness and, cognitive and emotional stuckness, feeding and fueling traumatic effects” (Rohlehr, 2013). Collective trauma is historical, cultural, and structural, resulting from conditions such as poverty and denial of rights, and serving as an assault on collective dignity and development. A case in point, in a study of young men convicted of serious

crimes who were participating in Bail Boys, a transformative restorative justice approach, Ali (2013b) observed blocks in emotional intelligence and self-awareness aided by lack of relationship or communication with parental figures. Furthermore, as a part of her study, Ali analyzed *The Portal*, a book depicting the numbing nature of crime and violence. Spiritual Baptist Preacher Sr. Sarah Taylor, the central character, is introduced at her roadside shrine, lighting 16 candles on the spot where her nephew ‘Iron’ was killed, surrounded by a group of mothers of murdered sons, all lost to blood-letting in Laventille. Sr. Taylor laments that young gang members with violent

“slap chop” attitudes become “Dons” who pump bullets and walk with change in their pocket for women, funerals, food, parties, school, bail money and bribes to ensure there are no witnesses and no prosecutions (...) Maintaining the culture extends within structures by keeping contacts in the police, judiciary and politics, and keeping international mafia bosses happy, keeping demand, supply and business profits up, providing bling, and girls who love bling, to make men feel real. (Ali, 2013b)

Having no words for their feelings and lacking connection to families and neighborhood, these young men exemplified attitudes of “hyper masculinity” in efforts to be recognized as participants in society at some level. Gang masculinities serve as barriers to humanness which is complimentary to the gender bias deeply embedded in the culture. Lack of family structure and community and institutional support feeds domestic violence and other criminal behavior. An ongoing experience of uncontrolled violent behavior promotes numbness and “stuckness” in TT citizens.

Perception of Conflict Resolution Processes

Mediation processes are relatively new in the country and many people, unfamiliar with the concept, may not trust nor understand the process. The language can also be unfamiliar to parties so that meaning of terms may be interpreted differently or may cause confusion, and impair listening. Ali (2013a) recognized the importance of creating local language for the concepts in mediation in order to place the process more effectively in the cultural context.

A clear preference is noted for informal approaches to resolution, where possible, such as negotiation. Legal process is the least preferred option

for resolution, albeit one that is used often (Sogren & Parsons, 2008; Parsons, Hadeed, Collier, & Nathaniel, 2010), without satisfactory results due to long wait times for court dates. Direct dealing or face-to-face dealing is predominantly preferred unless it might escalate and create further deterioration in relationship, such as in a family matter (Parsons et al., 2010). In most cases, respondents prefer to talk out the situation with the other person, whether it might be with a facilitator or without one. A “go-between” mediator is not a preference. Repairing relationship in dispute resolution is viewed as equally important, or more so, as finding agreement, and is often seen as the primary reason to come to a negotiation table with another disputant (Parsons et al., 2010). However, mediators are often seen as powerful figures who have answers to be shared (Parsons et al., 2010), who can provide insights into a problem, and who even take actions that are needed, as in the example below:

A man whose wife had gone to the US to work to save some money approached a mediator in the mediation center and asked the mediator’s help in convincing his wife to return home to the family. “I know that you have some authority.” You are in a respected position. You need to tell her it is her duty to come home.

Consistently, mediators are expected to give advice and they serve as a guide, an expert who would have ideas about resolving the conflict or at least would assist the disputants in creating effective resolutions. They help disputants figure out what to do: teaching and guiding, coaching, advocating, and sorting gender complexities (Sogren & Parsons, 2008; Collier et al., 2011). In the face of inexperience in successful negotiation, preservation and honoring of dignity in a conflict resolution process becomes important as to whether the disputant decides to negotiate rather than attempt to gain attention by making noise and searching in the open space for support against an opposing party or institution (Ali, 2013b):

A man described his bewilderment with the housing authority about his subsidized apartment. When the sink and toilet did not work in the apartment, he did not pay his rent in order to bring attention to the situation. However, not only were the plumbing problems not attended to, but he received an eviction notice. When he tried to negotiate with those in administration, he was given no alternative. “I did not know where to go, to get advice, to let me know what I might try. I did not want to move my family, but I couldn’t get through to them; couldn’t talk to them, and didn’t know

where to go next. They had all the power and I had no one to tell me how to make them listen. I wanted to find others like me and form a protest.”

Disputant coaching and education may help preserve dignity by combining advocacy and expertise and by expanding deeper listening skills. Coaching disputants to *work through* and *get through* without taking over for them provides the greatest learning potential (Ali, 2013a). A successful mediator may not be an unknown neutral, but instead an advocate; not a facilitator, but a human development navigator; not an impartial, but a justice provider that levels the playing field to give disputants leverage for negotiation. Who is most desired for this role? First and foremost, known, local, and trusted persons, not outside neutrals, would be preferred as mediators and facilitators (Parsons et al., 2010). Trust and familiarity matter most in choosing a facilitator unless that familiarity would make a particular situation worse, such as family, in which case a distant family member or a family agency member with a formal approach would have currency, but there is little support for an unknown outsider to intervene in family, neighborhood, community, or organizational disputes. While it is believed that a known and trusted person can conduct an impartial process; however, there is a general skepticism about mediators' fidelity in maintaining confidentiality, particularly mediators not known to the disputing parties.

In summary, our discoveries around cultural assumptions and behaviors suggest an open acceptance to public conflict and its discussion, but private conflict may be held closer to the primary group. And, while there is a desire to resolve differences in a fair way, entrenchment in value difference may prevent listening and result in partial resolution and numbing recycling of the same conflicts. Common nonverbal behaviors around conflict are used to express differences, and humor and religious principles are used to diminish severity of conflict. Power differences are expected, and may prevent the exercise of rights, but there is also an expectation of diminishing those power differences in conflict resolution efforts through advice, coaching, support, advocacy, and in general, promotion of empowerment of participants through leveling the playing field. Traumatization due to everyday exposure to violent crime creates fatigue, tiredness, and “stuckness” in human and societal development. A face-to-face process led by a known reputable person to all parties, who will be a participant in decision-making and also follow up with the disputants, is preferred. While not all of the questions generated through the project were answered,

these discoveries provide a glimpse of conflict culture in TT and suggest modifications in practice and policy for more culturally comfortable approaches to resolution.

MODIFICATIONS TO MEDIATION APPROACHES AND POTENTIAL HYBRIDIZATION

In the growing, bustling, and highly diverse environment of TT, there are increasing needs for conflict resolution in various realms, from business, social policy, criminal justice, NGOs, government ministries, community, neighborhood, and family. No one approach can be expected to meet all needs at all levels. And, even if remaining threads of traditional Panchayat, Elder Council approaches, and rich Carnival cultural arts can be accessed to meet some conflict challenges, none of these strategies, nor standard universal interests-based approaches, are sufficient to the challenge of modern welfare, entrenched gendered and hierarchical power biases, trauma based on repeated conflicts, and crime corruption. Facilitators/mediators may work with various models and frameworks, but also need to recognize that there are relevant cultural aspects to be considered.

Discoveries from this project led to hybrid approaches, including concepts from “western approaches” and those cultural tendencies found in this exploration, namely *power brokering, education, known and trusted persons as mediators in an informal approach, where mediation includes coaching, advocacy, and training and time for dealing with trauma.*

Power Brokering and Empowerment

Power differences are openly recognized and a desire was expressed for an opportunity to learn, grow, gain confidence and skills, stand up for one’s rights, and become better problem solvers. An empowerment approach attempts moving from “power over” to “power with” and enables participants to gain power to negotiate for their needs and rights. Even in the face of acknowledged differing status, the door is opened for attention to power differences and power brokering through acknowledging hierarchical power and, at the same time, encouraging disputants to become self-advocates. Recognizing power issues upfront, instead of attempting to balance unequal power, allows the power imbalance to become a topic of

dialogue (Folger & Bush, 1996), through which communication and relational shifts can occur. Time and space are needed for past developmental constraints, injustices, deference to authority, and ingrained habit of not expecting and not exercising rights (Ali, 2013a). Addressing gender differences suggests a need for a gendered process in conflict which exposes gender inequity by identifying, tracking, and analyzing ways in which power operates both in negotiation and in outcome (Ali, 2013b).

By giving disputants the decision about what issues are to be discussed, including “hot button” issues such as race, gender, or high emotional conflict (Folger, 2015), disputants have rights and responsibilities to speak for themselves (with less emphasis by mediators on reframing and more on reflection of what is spoken) in order to promote greater understanding of the conflict and of self by disputants (Folger, 2015). Methods in facilitation use small steps toward creating new perceptions of relationships with authority and rebuilding a sense of power within structures and relationships. Specific processes include deeper listening, preserving dignity, validating rights, and amplifying voice (Parsons & East, 2013).

Education as Central

The idea that disputants come to the table with a working knowledge of negotiating differences is an unrealistic expectation, particularly given the central role of power discrepancies. Learning opportunities through communication and negotiation are vital in order to promote clients’ growth and capacity to use and stretch the process to meet their needs. Educating disputants gives some options and choices, which is the basis of power brokering. Mayer (2004) proposed that mediators have to become conflict educators and trainers in order to empower participants to negotiate for themselves. Because of western models’ excessive emphasis on “making the deal”, the role of power, values, identities, and great inequities is underplayed, and Mayer’s vision of the mediator of the future was that of an assertive advocate for disputants to learn and understand more about conflict—a coach who informs disputants about the process for resolution and who helps disputants to understand themselves. The mediator role becomes one of conflict educator, coach, and teacher, as well as of facilitator.

Attention to Pain and Trauma

Trauma is a multilevel phenomenon. It does not end with individuals, but spreads to community, resulting in “afraid, closed, over-reaction to threats” (Hanson, 2016). Intersecting influences of poverty, education, and lack of political clout conspire to generate hypermasculinities as hard, rough, and uncommunicating ways of being men, feeding violence in society. Restorative justice programs are a necessity for attention to such deep-seated attitudes of hopeless bravado. Furthermore, such a traumatic context cannot be ignored when conducting a process for conflict solutions in daily life. Time and space is necessary for recognition of the hopelessness that accompanies this context. Importantly, Picard and Melchin’s insight mediation (IM) (2007), which has been imported well into TT and recognized in some spaces as a relevant approach, gives some instruction. IM engages disputants in a dialogue to discover their own perceived threats to deeply held (entrenched) values as well as their habitual responses and patterns of behavior that results in temporary resolution, and to fuel and replay conflict. The mediator becomes more of a teacher and less of a simple process manager. Inviting narratives of disputants’ perceived threats, the IM approach has room for dealing with developmental issues and numbness associated with psychic trauma. It relies upon the educational component of a negotiating process, facilitated by the mediator, to gain insight and understanding of conflict and self. Likewise, the recognition of need for gendered process that exposes dynamics in the oppression of women is critical.

Mediator as Known and Trusted Person

Another discovery which provides direction for a culturally relevant approach is a preference for a mediator who is known and trusted by both parties to conduct a fair process. Similar to what Moore called a “network” mediator (2003, p. 43) or “inside-partial” approach (Wehr & Lederach, 1991), it is suggested here that neutrality may be based on relationship (*confianza*) and trust between disputants that would not be broken during facilitation (Lederach, 1995), and that an impartial process need not include an unknown outsider. This may mean that mediators are recruited from existing identified and trusted intermediaries in the community who are then trained to assist and coach in mediation processes. Likewise, already trained mediators could reach out to the community in

order to become “persons of trust” to community members, and to provide means of giving disputants some choice in the selection of mediators. Tan (2002) provides a relevant example of such blending in Singapore, where trusted persons, both indigenous traditional community leaders and young professionals, were trained in contemporary strategies for an approach that reaches for the great diversity of Singapore. Created in the local cultural context and keeping consonant with traditional Asian ways, the framework brings back lost traditional principles of a known and trusted person as a mediator, but also blends with contemporary strategies, where an unknown neutral mediator is preferred.

Current Local Practices

Within the cultural paradox of TT, blending of traditional practices with contemporary techniques and strategies seems highly appropriate. Mediation practice in TT is now drawing together examples of blended explorations and approaches, such as Panchayat, elders, the use of theater, religious and cultural arts, and restorative justice practices, with oral culture of calypso as showcased at Trinidad’s annual Mediation Symposia 2014 and Tobago’s Peace Symposium 2014 (www.mediationboardtt.org/). In the ongoing mediation training program at UWI, which was established by this partnership, there is more focus on the therapeutic aspects of mediation, assisting disputants to gain insight and behavior shifts in the process as well as dealing with trauma issues presented in the context of conflict. Local practices, combined with adaptation of specific strategies from current existing approaches, can create blended frameworks with alternate views of neutrality—an emphasis on dialogue and power brokering, relational shifts, preserving dignity, education, and promoting empowerment.

While some of these elements were present in the initial training of the partnership, new discoveries which came out of the partnership shed greater light into important cultural behaviors and expectations in conflict. Interestingly, most of the cultural questions posed from the partnership’s initial dialogue were quite relevant, and the results speak to the felt need of NGO leaders when they requested that UWI launch a mediation training program. One of the goals was to train mediators, who would be more aware and able to work with cultural traits of the population. The emergence of these discoveries—dealing with power and gender issues, the need for education and training around conflict, dealing with trauma,

known, trusted persons as mediators, as well as facilitating dialogue for relationship repair—was stimulated by the dialogue within the partnership and the subsequent studies carried out by the partnership.

REFLECTIONS ON PARTNERSHIP

As the project unfolded, cultural gaps between the two partners became more obvious and presented many learning opportunities in working across value and norm differences, at both the university levels and in the quest to identify important elements of conflict and its resolution. These included the following.

Decision-Making Processes

The process and procedure for development of the degree program within the department created both mistrust and resistance. Faculty participants did not identify the conflict resolution program as filling an unmet need, but instead, the decision to take on the degree program was made at the administrative level in the Behavioural Science Department without adequate faculty buy-in for the new program and its content, proving to be a clear challenge. To some degree, the collaboration relationship in the project, at least initially, was between the administrative staff and the department heads rather than with the actual faculty and graduate student participants. Even though while in the entry and planning phases, faculty partners acknowledged the importance of conflict resolution to their academic areas, there was however resistance to the burden of taking on additional academic knowledge, courses, and specialization within their program. Consequently, the named coordinator for the program, new to the conflict resolution field and to the academic department, at this pivotal point in the development of the program, had to search for a path to work through the resistance and move the program forward. However, eventually through discussion and persuasion, sufficient faculty and graduate students were recruited as participants and prepared to teach in the program.

The Knowledge Gap

While DU participants questioned the fit and validity of universal models for the TT context, and while they incorporated openness to learning into the project proposal, they needed deeper engagement with TT partners to

fully grasp the multilayered cultural paradox of TT. On the other hand, most of the UWI participants lacked exposure to conflict resolution frameworks as well as to theory regarding the culture of conflict. Moreover, most were not mediators, but educators, so that the dialogue did not have sufficient “rich hands-on experience” in the TT context. These gaps created some ambivalence on both sides regarding the validity of the knowledge and skills exchange created by the partnership. These gaps and ambivalence were addressed by ongoing dialogue about what was hoped for in the project. As the elicitive process progressed over time, cultural themes became more apparent, along with a willingness on both sides to acknowledge the unknown and to launch small research projects to explore these issues in more depth. Perhaps, the greatest learning was that each side came to understand more about the basic foundations of its own culture and what it means in resolving conflict. The DU participants became more acutely aware of the highly individualistic assumptions of a western framework, and the UWI participants became more aware of the diversity and complexity of cultural pockets and paradoxes in TT. All partners increased their awareness of the critical role of cultural factors in creating dialogue and convergence in communication.

There were hurdles in the community as well in terms of accepting the validity of the UWI programs. The degree programs at UWI were not readily accepted by the Mediation Board of TT, the government appointed credentialing authority for mediation training. Because the training was different than most of the ADR-based training programs that the Board had previously sanctioned, assertive scrutiny was applied to the contents of the program for certification purposes. The UWI program also opened up the field of mediation to a broader spectrum of the population, and was perhaps perceived as competition to existing trainers in the community, many of which were associated with the Board. After time and multiple application submissions, the program was certified by the Board and is still in existence.

The cultural encounter of the educational partnership (from 2004 to 2007) reveals both differences and blending of cultural values and attitudes. Both sides of the partnership gained keener understanding of TT’s complex culture and of the cultural bases of theoretical frameworks for mediation. Lessons learned include the importance of buy-in of ownership on the part of participants in the project, as well as how wide gaps between western trainers and local participants can be narrowed through dialogue.

REFLECTIONS AND INSIGHTS

In summary, paradoxical issues abound. Even with an historical legacy of hierarchical power and gender inequality, and in recent years, trauma from increase in crime and violence, there is yet a significant thrust toward newer horizontal resolution processes at both governmental and NGO level. And while there is a lag in the trust placed in those systems, a willingness to engage in resolution attempts provides an opportunity for societal change.

The culture of TT shows paradoxical character. While it cannot be categorized as either individualistic versus collectivistic; task versus relationally oriented; or traditional versus modern, the universal interests-based institutional models were found to be too distant and simplistic for the complicated range of culture, power, and gender issues present. While one might argue that perhaps pockets of imported business practices and the western-based legal profession may be sufficiently westernized to accommodate legal ADR models, it is doubtful that the general population of family, neighborhood, and community will experience those basic tenets as meaningful or useful. This writing suggests a more robust, power- and gender-sensitive, and educational-based empowerment approach that provides time and space for expression of effects of trauma.

However, in reality, universal legalistic ADR approaches were prominent in the initial importation of training in TT and have been institutionalized in mediation practice certification in the country. Outside trainers, who lacked even a surface knowledge of the on-ground cultural indicators around conflict, did not modify their strategies for intervention. Moreover, officials who extended training invitations were reluctant to question the application of the imported knowledge. So, as these models were integrated into the system, there was little recognition that the western interest-based model has significant limitations in the many and varied cultural contexts of TT. This *carte blanche* importation and adoption of western knowledge may be seen by some as a viable means for bringing the country and society forward. As pointed out by Tusso (2011), at times, the “urban elite” in developing countries have a bias against the traditional cultures of their own country and seek to embrace imported approaches, and move conflict resolution beyond the traditional culture and thereby reduce its power to make a difference. For example, the 2004 TT mediation law, which provides guidelines for mediation practice, was patterned after a solidly western ADR model, thereby holding all certified mediators

to adhere to many basic tenets contrary to those suggested here. Even though TT is sufficiently westernized to be able to adapt and utilize some “western” approaches, closer examination suggests elements in the culture significant enough to warrant different approaches.

These early beginnings may be viewed over time as a logical, useful, and not unusual first step of conflict resolution knowledge development in the country. However, another step is needed to take mediation services further into the culture. Policy changes are needed which endorse new images and alternative mediation models, and recognize varying needs in varying contexts, with special attention to cultural preferences. The stage is set for synthesizing models and stratification of mediation practice, pushing the boundaries of theory and practice.

NOTES

1. Trinidad and Tobago Parliament. “The Community Mediation (Amendment) Act No 45 of 2000”. Accessed February 1, 2013, <http://www.ttparliament.org/legislations/a2000-45.pdf>. After agreeing to establish a mediation Act, it was discovered that a previous government administration had been working on similar policy and legislation, based on Nils Christie’s Norwegian Model and Victim Offender Mediation, and this fast-tracked the process. Prior to and post mediation legislation, institutional models were evident. Labor conciliation dates back to 1960s. In the late 1990s, the Law Association recommended ADR. By 2000, the Chamber of Commerce had set up an ADR Dispute Resolution Centre, and the Hugh Wooding Law School offered a Legal Aid Clinic, which included ADR for a while. The wide-ranging Mediation Act of 2000 was replaced by a legalistic Mediation Act of 2004 (<http://www.mediationboardtt.org/welcome>) providing for court-based family mediation and the Mediation Board of Trinidad and Tobago (TT) to regulate and accredit mediators, trainings, and agencies. The Board did not become functional for several years. A number of private, government, and court-annexed ADR/mediation agencies have since been established, and with rising crime and violence, interest has exceeded the narrow scope of the 2004 Act, and this is reflected in the widening agenda of the annual Mediation Symposium.
2. United Nations Development Programme (UNDP) *Caribbean human development report 2012: Human development and the shift to better citizen security*. New York, NY: United Nations Development Programme, 2012.
3. Lederach’s distinction between these training models describes the prescriptive model as based on transfer, of passing on the approach, strategy, and technique mastered by the trainer, whereas the elicitive approach sees train-

ing as an opportunity for participants in a given setting to discover and create models of conflict resolution (CR) in the context of their setting. In this model, the participants and the knowledge they bring are a significant resource in the training.

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PART II

Embedding Conflict Resolution into
Cultural Grammars



CHAPTER 4

Fundación Propaz: The Evolution of a Mediation and Peacebuilding Strategy in Guatemala

*Ruth J. Parsons, Tamra Pearson d'Estrée,
Andrés Álvarez Castañeda,
and Carlos Alberto Sarti Castañeda*

INTRODUCTION

Fundación Propaz was founded in 2003 as a part of multinational efforts toward peacebuilding at the end of the Guatemalan 36-year Civil War. Today, it operates as a private nonprofit organization in Guatemala, with many ongoing projects revolving around processes of dialogue and conflict

R. J. Parsons (✉) • T. P. d'Estrée
Conflict Resolution Institute, University of Denver, Denver, CO, USA

A. Álvarez Castañeda
Universidad de Valle de Guatemala, Guatemala City, Guatemala
e-mail: aalvarez@uvg.edu.gt

C. A. Sarti Castañeda
Fundación ProPaz, Guatemala City, Guatemala
e-mail: carlos_sarti@propaz.org.gt

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building,
Rethinking Peace and Conflict Studies*,
https://doi.org/10.1007/978-3-319-71102-7_4

analysis and transformation (“Proyectos”, Propaz, 2014). The original impetus for Propaz came from the Organization of American States (OAS), which established a number of initiatives to begin and facilitate momentum toward dialogue and creation of Peace Accords in a country that had just recently emerged from military dictatorships and horrific Civil War. Through coordination with the United Nations (UN), the United States, Denmark, the Netherlands, Norway, the United Kingdom, and Sweden, as well as the Inter-American Development Bank (IDB), and the Soros-Guatemala Foundation, which provided financial support, a peace agreement was reached and dialogue was initiated between the Guatemalan rebel group *Unidad Revolucionaria Nacional Guatemalteco* (URNG) and the government, bringing an end to many decades of violence (Organization of American States, General Assembly, 2000). This was followed by resolutions and programs of support for the peace process in Guatemala (Organization of American States, General Assembly, 1997, 2000). One of the support missions, Culture of Dialogue: Development of Resources for Peacebuilding (OAS/PROPAZ), founded in 1995, was specifically concerned about determining and analyzing the sources of conflict in the government and civil society, and creating basic conditions for conflict transformation, focusing on dialogue and training rather than on mediation (Shamsie, 2007). When government funding subsided, that organization evolved into Propaz.

Today, Propaz stands as a seminal success story in the integration of emerging theory and practice of conflict resolution, with Guatemalan traditions, practices, models, and values. Propaz partnered with Western instructors to provide initial trainings within the framework of the Peace Accords’ support mission, as well as developing their own unique model and approaches uniquely suited to the challenges facing Guatemalans. Though well known in Latin America and among the Spanish-speaking world, Propaz’s story is less known in English-based literature. A cooperative project in 2011 between Universidad de Valle and University of Denver partners helped to document the Propaz story and its important approach to conflict resolution hybridization.

GUATEMALA HISTORY AND CYCLES OF VIOLENCE

Over the course of many centuries, the people of Guatemala have seen vast amounts of political and social change, but up until recent memory, the history of the country has been dominated by autocratic rule and formal structures of exclusion, particularly of those from indigenous descent.

However, in spite of intense pressure to force assimilation, many groups resisted, fought, and died to maintain their distinctiveness of identity and human rights. The relatively recent signing of the 1996 Peace Accords between the Guatemalan National Revolutionary Unity (URNG) and the Guatemala government marked a historical change in attitude and policy toward minority groups and democracy in the country. However, much work remained to reconcile a long history of violence and division between the government and indigenous groups and to provide mechanisms of dependable and legitimate/accepted conflict resolution. A very long history, before this significant event, includes the Mayan period, the Spanish conquest colonization of the Mayans, the “Liberal” era, the Revolution, and the contemporary period following the passage and adoption of the 1996 Peace Accords (Krauss, 1991).

Mayan civilization represented an apex of early civilizations, with complex city and social structures, but was also characterized by war and violent religious practices. While it persisted in some form until the Spanish conquest and occupation of the sixteenth century, a large abandonment of Mayan cities around 900 AD prompted various explanatory theories, including war, famine, or disease, but also social upheaval from the lower class or classes, resulting in the collapse of the Mayan political structure (Krauss, 1991; Santley, Killion, & Lycett, 1986). The Spanish conquerors, who came to dominate the Maya both militarily and culturally, created alliances with certain competing indigenous groups, and through diseases and suppressed rebellions weakened and reduced the indigenous population. Subjugated locals were forced through tax structure onto plantation labor, and also to convert to Christianity. Consistent sexual abuses of indigenous women by the Spanish resulted in an additional population of people of mixed heritage, called *Ladinos*, whose presence marked the establishment of a hostile narrative between indigenous and nonindigenous groups, as well as the creation of a new demographic that served as a reminder of the occupation and the culture of violence and oppression.

The Liberal era was fraught with strife between Conservative and Liberal factions, over fundamental differences around the United Provinces of Central America, a confederation composed of modern-day Guatemala, Honduras, Nicaragua, El Salvador, and Costa Rica. This confederation continued to subjugate indigenous groups, who through rebellion helped to resolve the confederation into independent states. The conflict cycles in this period regarding the structural exclusion of indigenous people from decision-making processes and land ownership, and economic exploitation

led the indigenous people to flee to the mountains and begin a more active form of resistance, which was countered by the military (Krauss, 1991).

Foreign investment and control characterized the 1930s and 1940s, with increased influence by the US-owned United Fruit Company, later to become Chiquita Bananas. The United States expanded the railway system in exchange for tax and import duty exemptions, and supported a military-organized coup by reformists in 1944, which became known as the October Revolution. Open conflict continued under the leadership of Colonel Jacobo Arbenz, a nationalist who legalized the Guatemala Communist Party and worked to decrease the dependence on the United States by promoting democratization, literacy, registered voters, land expropriation, and redistribution to poor farmers and to preserve Mayan culture (Krauss, 1991). Meanwhile, the United States fought to protect its interests (electricity and transportation systems) and install a more sympathetic regime, using the Central Intelligence Agency (CIA) to fund, arm, and base the National Liberation Movement (MLN), which in 1954 took power and quickly reversed many of the more progressive policies Arbenz had put in place. The survivors would go to Honduras and establish guerilla groups that would later compose the rebel forces of the Guatemalan Civil War (Krauss, 1991).

The Guatemalan Civil War

The Civil War can be seen as a continuation of the conflict that had begun after the colonization of the territory by the Spanish. However, it was also distinct in that it marked a certain apex of violent conflict, with the death of an estimated 250,000 mostly unarmed indigenous civilians (United States Department of State, “Institute of Peace, Guatemala Truth Commission”, 2016). Regrouped as Rebel Armed Forces (FAR), the guerillas fled to Honduras, returned to Guatemala, and were defeated by the MLN, the US-backed powerful organization that then became the unofficial security apparatus of the government. The retreat of the FAR factions to the jungles of Petén in the north of the country and a movement by the Catholic Church to encourage indigenous people to migrate north along the border for cheap land formed a nexus for the collaboration of the main guerilla groups, and ultimately the foundation in 1982 of the Guatemalan National Revolutionary Unity (URNG), claiming to represent the interests and needs of both Ladino and Indian Guatemalans (Krauss, 1991).

Thus, the 36-year period following the October Revolution coup in 1954 was a period of rapid conflict. Filled with autocratic governments and the growth of various guerrilla movements, severe political instability found indigenous groups caught in the middle and forced by default to either join the civil defense patrols organized by the government or the guerrilla groups, or were displaced to the jungle or to Mexico. In 1982, the constitution was annulled; congress was dissolved, political parties were suspended, and the electoral law was canceled.

COMPLEXITIES OF PEACE

A final coup in 1983 resulted in the temporary assumption of power by Defense Minister Oscar Humberto Mejía Victores and installation of democratic congressional elections. Vinicio Cerezo, who became the first president under the new constitution in 1986, punished former regime crimes of the police death squad, succeeded in raising the international image of the country, and secured US support for police and judicial institutions. Institutional reforms by the government in regard to human rights created a period of transformation, during which the OAS and the UN, through the efforts of Esquipulas II, organized to find resolution to the conflict and to create methods of establishing lasting peace. Talks between the URNG and the government resulted in the Peace Accords of 1994–96, which, promoted democracy, and worked to address issues of human rights and, in particular, the rights of indigenous peoples. The Accords established both the MINUGUA, a UN human rights verification commission, and integrated the URNG as a legitimate political party (US/OAS “Esquipulas II Accords”, 2016).

The Accord for a Firm and Lasting Peace signaled the end of the war and a new era of progress toward peace. Key elements in the Accords focused on the decentralization of power, as well as the rights and need for integration of indigenous peoples (Arnson, 1997), signaling a marked shift from past practices. Recognizing the need to strengthen the state and the social linkages between indigenous and nonindigenous peoples, they devolved power to customary law practices of indigenous communities, so long as they do not conflict with norms of international human rights. Similarly, Sieder (2011) notes the paradox of the Accords where the state devolved authority to communities to allow for traditional practices of justice and in turn gave up a level of sovereignty. While this allowed those groups to exercise their norms, it also created a weakness in the ability of the state to protect the lives of all citizens from vigilantism.

The Accords also addressed the transformation, or at least desired transformation, of the formal systems of justice and the perception of conflict and how it could be resolved by different peoples. However, implementation of the Accords contained challenging paradoxes that have themselves undermined implementation of the spirit of the reforms. The rush of government to quickly solve the issues of violence and criminality, together with the continuation of the military in internal security operations, undermined public confidence that the government was fulfilling its promise of change (Sieder (2011)).

INSTITUTIONALIZING PEACE: THE FOUNDING OF PROPАЗ

The 1994 Peace Accords, one of the most advanced of its kind, had a vision for the future in which Guatemalan society would work toward peace and democracy and restore the rights of indigenous people, but the country was challenged to execute it. The Peace Accords brought political peace, but not social peace. Following a 30-year conflict, perpetuated by racism and poverty, the agreements struggled because even though they proposed solutions to real problems, the changes implemented by the government did not address the critical bigger issues that caused the 35-year armed conflict, such as poverty, health, education, land rights, and racism. The Accords themselves created more complicated national issues and strong splits such as national debate over genocide—did it happen? Should we prosecute the president? The social context was very tense. Support for the Peace Accords was not generalized, and a leadership crisis emerged in all areas of Guatemala. This was a time in Guatemalan history when the state was viewed only in its repressive capacities, and likewise, civil society was seen as a form of social rebellion and anarchy. Where there was hope at one time, the lack of progress brought frustration and doubt. Thus, the postconflict environment was highly volatile. A culture of trauma prevailed, both from the long violent war, which resulted in total lack of trust in the government, and from the postwar violence which has invaded the country in the form of drug and human trafficking, and unprecedented domestic violence in the family. The need was not just new government policies, but also a broad and deep societal reform, and a social movement about engaging in conflict differently.

It was in this environment that Propaz was founded in 2003 to create conditions for peace in the country (Shamsie, 2007), particularly in

relation to the government's capacity for conflict resolution and transformation, in order to bridge the gaps left of a long and brutal Civil War. Today, Propaz operates as a private, nonprofit organization, engaged in many varied and rich projects toward this end. Much of the following account of how Propaz evolved and developed is based on interviews with the staff of Propaz and with its director, Carlos Sartí, conducted in 2012 under the auspices of the project between the University of Denver, Universidad de Valle, and the Propaz organization.

Initial Goals

The main goal of Propaz was the creation of a "critical mass" of people trained in conflict resolution and transformation who were capable of bridging the gap between the state and civil society. It opened a mediation unit that would directly intervene in conflicts, and it began doing social research and working on other theoretical frameworks such as psychosocial dimensions of conflict, systemic thinking, and eventually, futures studies. While the original goal for the OAS program was to train government officials and civil society leaders in basic conflict resolution competencies, the work of Propaz focused on bringing dialogue and making peace between civil institutions and the politicians, and was based on the larger goal of constructing peace and promoting democratic processes, with the pieces of mediation and facilitation and so on falling under that main directive.

Activities of Propaz took the form of capacity-building through workshops for training and education of facilitators at the local level. Empowerment of community facilitators to create local interventions for local problems is at the heart of their work. The goal is to build local capacity to continue the process so that Propaz can leave—the idea is to train people how to manage their own conflict in the community that they know best, wherein they can bring government and civil society together. The work conducted by the facilitators in various settings in the country is long-term work and may last 3–5 years, one year minimum, because in the process over time, the facilitators come to see structural changes and linkages to government and civil society. Keys to the Propaz approach include thoughtful preparation and trust-building, multilevel and history-attuned practice that makes room for dealing with deep emotions associated with the pain and trauma of a long war, and engaging in cultural contextualization.

The Propaz Approach

From the very beginning, the Propaz project was conceived as being for practitioners by practitioners, without the orthodoxy of following specific theoretical models. The basic tone of Propaz's work was that of a flexible model tweaked as needed by local Guatemalan practitioners in order to respond to the situation at hand. The main characteristics of the original model included adapting to context; taking into account the immediate needs of the parties in conflict; creating relationships; designing a specific path for each conflict; taking a medium- and long-term perspective, often contradicting the initial goals and needs of actors involved in conflicts, who want to see resolution in the short term; and double-loop learning (Argyris, 1976), a process where negotiations and mediations need to be streamlined, and instead of waiting for a perfect model to arise, they tend to the immediate need and then evaluate the process, gaining new knowledge from and lessons learned. In short, Propaz's model is process based, systemic, contextual, and seeks to build local capacities. While Propaz holds that people can solve their own problems, and that capacity-building effort with actors directly involved in conflict should always be a priority, it was inevitable that the government and other actors began viewing the foundation as a valid third-party mediator or facilitator. Propaz is an active mediator as well as negotiator and trainer.

Partnerships and Customary Practices

In early development, compelled by the signing of the Peace Accords in December 1996, there were various partnerships between OAS/Propaz and both internal and external organizations, the original being with the Guatemalan government, with local communities as always the most important partners. Eventually, as Propaz emerged, it expanded its network of funders, partners, and friends in a significant manner, to include UNDP, the governments of Sweden, Norway, and Holland, as well as several universities, other foundations, and the private sector. Early influential partners from the United States included John Paul Lederach, who began training processes with the original Propaz staff. Eventually, Phillip Thomas and Christopher Moore were also invited. Although these partners were initiated by OAS, the ideas were quickly embraced by the Guatemalan government, who welcomed outside international expertise.

Those particular “outsiders” were viewed by the Propaz staff as open to the most important local customs, and the trainees were very receptive to the trainers.

A central principle of cultural contextualization has been a basic guide for Propaz interventions. Because Guatemala is roughly composed of 50% indigenous Maya, any solutions would have to be custom made. Lederach’s and the broader Quaker approach were fundamental in the beginning of Propaz, but the organization also had to go through the process of contextualization. Propaz endeavored to focus on the local context and on the particulars of Guatemalan histories. Culture was very much at the base of many of the country’s conflicts at that time, so multicultural, and eventually intercultural, perspectives were necessary. Important work is adjusting outside methods for *local* ethnic and gender groups. Preconceived models for conflict resolution from other people or locations don’t apply, including those from urban centers. Material brought by partners and often that which was available from the governmental organizations was culturally skewed, including celebrities and soccer stars that were not all that well known in rural Guatemala. US case examples did not apply to this context for example, either selling property or divorce negotiation. New examples and cases that were closer to local realities had to be created; Propaz tried to make the examples and trainings more local—land, food, and so on beyond what outside organizations could understand. International corporations made suggestions such as quotas and affirmative action which completely break the cultural norms of communities. A good example is quotas toward women. If women are invited, there has to be a space created to bring children and a separate space for the men to represent the community, or invite men to join the women in the female focus as well. The women need to bring husbands and children in order to increase participation by women. Propaz has to negotiate around these norms, and they accept that and work with it.

However, much difficulty is encountered in such complexity, including working across various languages, which requires careful and nontraditional training processes, with extended periods of time to build rapport and trust. It is also important to work with the various cases, from family to community leaders that need to be a part of a project. This leads to long-time processes and parties becoming frustrated with the lack of results. But it was important, especially in the first years of Propaz, to stay

focused on the population and acquire this cultural sensitivity. It was about building peace and harmony and responding to the need for help for people who were previously invisible to the state.

Encountering Traditional Practices

Even in a long-term war context, there are traditional practices that influence how conflict is perceived and handled. Historically, Spanish legislation definitely imposed a colonial “style” of conflict resolution, but this was more obvious during the eighteenth and nineteenth centuries. The twentieth century was characterized by authoritarian rule, conflict between ruling elites (even within the army), and the use of force. These were large scale, top-down processes mediated by big actors such as the Spanish government and the Catholic Church. But they were improvising along the way; there was never a training program associated to these negotiations. There had been previous other projects that had to do with small training exercises at the grassroots level of local churches (Catholic and Protestant), who were probably also using Lederach’s framework, as well as the internal training done by the three main political parties: Christian Democrats (center-left), the National Unity for the Center (UCN, centrist), and the MLN (far right). Thus, many of the approaches brought by Propaz were indeed in contrast to existing local practices. For example, a major change during the transition from OAS to Propaz was from viewing peace as something to be done between parties to the view held by Propaz, where peace-making was something to be done in the public space with more parties and stakeholders.

In many cases, Propaz had to say no to places they were invited to intervene because of ethical questions. This could be no to government actors asking for quick fixes or mediation where only one party wanted to participate. Moreover, Propaz was not an actor in place of the community; they did not speak for or about any actor; they never replaced the actor, which is common in Guatemala. They provided opportunities for the actors to speak for themselves. Generating legitimacy and rapport was the first and most important part of the transition, and this helped build trust and legitimacy. Because most conflictive situations in Guatemala had been solved through legal or forceful actions, dialogue processes were so new that people did not get a chance to reflect much on third-party interventions; they were mostly grateful that a dialogue was set in place.

THE CHALLENGES OF A NEW APPROACH

Propaz faced a challenge of perceived neutrality. While OAS, as an international organization had been easily viewed as neutral, Propaz emerged as a local organization and struggled to establish and maintain a neutral path and image. The government had a very specific interest in transforming Propaz into a government institution, but Propaz worked diligently to remain an intermediary between the local communities and the government, so as not to lose neutrality and autonomy, which is at the heart of the organization. Negotiating its role with powerful entities from both within and outside was necessary. For example, government officials often viewed Propaz as the “solution” to certain long-term conflicts, but Propaz would prefer to decline participation than to get involved in something it was not ready to handle, or if the expectations were unreal. Likewise, Propaz had to negotiate between the donors (i.e. the Swedes) and communities regarding project timelines, with the former wanting quick results and the latter usually dragging on certain phases of the projects unnecessarily. Effective negotiation was essential.

Importantly, the logic of Propaz was in contrast to the government, which wanted technical, fast, cost containment reforms put into place. But civic organizations wanted process, reflection, and history. The two sides could not agree on the process. Propaz spent many years in this intermediary role on specific issues for peace in the municipalities, bringing a balance between military and local communities. Some communities showed stronger resistance against the government than others, for example, some Mayan communities. In general, people had a lot of demands. They wanted reconciliation, mutual respect, logic of peace construction. But Mayors and other government entities influenced the process. Government was on one side; general society and civic organizations were on the other. Propaz had to prepare groups to come together to work on relationship and to build capacity of each side for negotiation—teaching negotiation, mediation, good communication, how to make a decision, with prepared written materials on each of these skills. Actor mapping regarding power relations is an important part of Propaz’s work, and it is only natural for them to include these tools in their relationships with different actors and institutions. Propaz implements specific actions that tend toward more symmetrical relationships between actors. This is not always well received by the actor perceived as more powerful, but they have managed to implement it in practice.

Integration with context and culture was perhaps the main challenge regarding Propaz's work. The foundation has transitioned from being a small NGO dealing in an obscure topic to a national reference in what is now perceived as a strategic asset: dialogue capacity. Together with the impartiality that Propaz strives for in every project/intervention, another important strategy is to maintain a low profile. While the country is full of institutions that love being in the news, Propaz has always been camera-shy, but this has been advantageous. Strategic partnerships and friendships have always been important, too. The director of Propaz has interacted with different members of the political elite, who tend to share a positive perspective of Propaz's work, regardless of their political or ideological differences. Some important friends of Propaz have been the people they have trained, who later on in their professional careers went off to occupy different posts in government, academia, or the private sector. Additionally, Propaz has a positive image because of the way its board of trustees is conformed. At least two seats are reserved for members who usually do not have a saying in civil society organizations: the private sector and the government. And finally, Propaz has been clear that large-scale, systemic change can only be produced by reinforcing government institutions. In this sense, Propaz has trained a series of cohorts of government officials in different ministries, including the national police, the intelligence agency, and specific conflict resolution offices within larger institutions, all of which have promoted the integration of their work into society.

CORE ACTIVITIES AND APPROACH

Analysis of Propaz's activities suggests common specific strategic approaches across the various projects which characterize their interventions. Data gathered from interviews with staff members regarding these activities and programs were analyzed through thematic analysis, producing themes that could be characterized as generic activities of intervention. Those are summarized and explained below.

Bringing Diverse Groups into Engagement

Critical to Propaz's work is the inclusion of a diverse and important set of participants. This polarization that exists speaks to how the methodology for intervention had to be adapted to Guatemala and shaped to what is acceptable, normative, and what can happen in a particular context. The

projects are difficult and complicated because there are many different constructions of groups and social dynamics based on race, ethnicity, income, education, and culture across Guatemala. Guatemala is hierarchical and people tend to have trouble getting over such barriers, and therefore avoid participating. Thus, getting people together from different status levels can be very challenging. A theme in Guatemala is the perception that there is an imbalance of power that prohibits a democratic process—it is already decided who will have more power and how the information will be used, as much of the war was perpetuated by socioeconomic disparities and histories of structural inequality. The focus is about understanding across classes and options.

A main challenge is working across languages—there are several traditional Mayan languages, and Spanish is not the first language of many. This was important for working across cultures—a huge challenge was to create all the documents in the native language. This work is difficult because the people have their own history and narrative of the conflict, a tradition of self-regulating with peaceful dialogue methods. Training while adjusting for culture took more than a standard training process. At times, the training is nearly individualized and is faced with a constant effort to build rapport and trust. The fact that this is happening is a huge step for Guatemala.

Creating Dialogue Among Diverse Groups

Creating dialogue is generating safe spaces for sincere conversations about difficult topics—abortion, gang violence, leadership, and equality. Dialogue is meant to break down the culture of silence in Guatemala; it is to provide listening in a severely traumatized society, to provide opportunity for people to express themselves and open doors to communicate with others. It is the creation of opportunity for conversation where none existed. However, dialogue is often rejected because it has come to have a negative image due to its use in a surface manner; it is seen as an artificial fix producing shallow agreements and no follow-through. The government response to any crisis is to ask for a dialogue right away, with improper preparation and planning, ending without follow-through and without change. Intensive effort by Propaz is directed toward creating meaningful and lasting dialogue structures, not just intermittent temporary meetings called in crises. Forms used include Citizens' Cafés, Dialogical Debates, and Comprehensive Dialogues.

Citizen's Cafés

World Cafés or “Citizens Cafés” are established in a given location where broad topics can create a culture of discussing the issues and necessary interventions, emphasizing cultural themes that get people talking. Such World Cafés are ways of discussing topics that some years ago would have been impossible to address; this approach has been used since 2005 to recover confidence in postconflict societies. In particular, Guatemalan youth is thirsty for new and innovative ways of participating in national issues and making their voices heard. The effort is to organize the disorganized—people who are not part of an organization to talk about obscure, hidden-away issues. The goal is to generate trust—transform the dialogue space into something less formal. The methodology varies but involves subsequent rounds of conversations on the same topic, not with any aim of achieving a solution, which is how it is different from the government’s approach, or even of establishing a particular relationship, but of creating understanding and starting discussion where there is little. Sometimes it is just about having conversations as a citizen exercise. A secondary objective of World Cafés is to take a sampling of what people are thinking and feeling around topics in the country. Many people enjoy the discussions and go to all the meetings despite the topic, and then ask what’s next.

Dialogical Debates

Dialogical debates are more formalized and structured, and provide deeper insight than Citizen’s Cafés. The dialogues are transmitted to the public in written form. Written materials are translated into necessary languages. They also make Handouts and inserts of popular documents are inserted into national magazines to share the work with others and increase interest. Propaz usually describes their new process and work in the paper for people to read—more of a summary of the theoretical idea and practical application. Sometimes, it proposes action in these articles. The idea is to build a common position through debate—“dialogical debate”. There was a large effort to transmit the results and studies around the project. Propaz published books for the public and for distribution, and for the more oral people, they had closure workshops to provide context and to describe the book.

Comprehensive Dialogue Opportunities

Comprehensive dialogue opportunities are even more structured, consisting of 3–4 sessions about the same topic, or with the same people on different topics, and are similar to sustained dialogue. Dialogue represents two large changes: locally, there is a space for people to express themselves; institutionally, there is the political dialogue in which there is much more expression of political values and willingness to consider other perspectives. Propaz works to establish a dialogue commission as well that continues this work. These dialogue structures are then completely transferred into local hands when Propaz leaves the project.

Training Leadership for Democratic Participation

Propaz provides leadership training for participation in democratic processes. One example is a project for building leadership capacity in a poor and indigenous municipality where 300 people were trained to carry on the work. The project builds capacity of leaders in the municipality to form community facilitation groups and leaders to work with local authorities on conflict understanding and transformation. A second project is building democracy through development of leadership capacity in youth, resulting in 675 trained young people who will participate in local government activities. The program had presence in three parts of Guatemala. The purpose was to create a critical mass of young people sensitized and trained in these processes. It is formed in practice of citizenship, democracy, and creative arts such as theater of the oppressed. There were other groups working together to cover 20 more municipalities to spread the work between three institutions and cover more ground; 51 municipalities in total over 15 departments. Based on each context, the youth would prioritize a topic they could work with their local government on to be involved. They are trying to generate consensus with other actors and the municipal government so they can create a proposal for resolving these conflicts. Each local government was different in this process and how they cooperated. Stereotyping youth is a major barrier. Power differentials between youth and adults are a formidable challenge. Helping these youth groups network to build trust and for people to take them seriously is important. Trying to get them to exercise full and complete citizenship without getting in trouble; helping the youth feel like part of the community—building self-esteem and feeling like an integral

part of the community are challenges to this work. From an organizational point of view, most of the municipalities were strengthened or new groups were created based on this program. Youth training is provided for local proposals for peace with the local governments around current and specific political and social incidents.

Multilevel Intervention

Propaz directs change at multilevels. Change is directed at established systems in the community; intermediate leaders, and higher level of government for a trifold system of dialogue—community, institution, and municipal government. Development councils are a system established during the Revolution, and they have many levels, including a community level. They have legitimacy that Propaz can use to build rapport in the community. However, Propaz's work goes beyond community leaders to important and necessary networking across municipalities for building lasting relationships and structures. They have created a level of intermediate leaders, under government but higher capacity than the community, to act as middle-level leaders. All levels work together, and there are strategic projects and meetings set to ensure cross-level communication. Propaz maintains that large-scale systemic change can only be produced by reinforcing government institutions. In this sense, Propaz has trained a series of cohorts of government officials in different ministries, including the national police, the intelligence agency, and specific conflict resolution offices within larger institutions.

Structural Change

While Propaz's training is directed toward dealing with the surface and immediate conflict issues, structural issues require a different strategy and approach. Longer-term structural issues require not only revising institutions but changing hearts and minds. Structural context changes everything from who is accepted as intermediary, how things are done, and even when and how meetings are held. All programs in Propaz adapt—they do not set up the process they set out to create. Resistance from the structure changes the intervention. There is a general resistance in Guatemala to change. A main challenge is creating a culture of peace—how we talk to each other about topics that generate tension, because we cannot wait for the structure to change. Nonetheless, much effort is directed toward this goal.

During the Civil War, there was a process where the traditional conflict resolution authorities were violently replaced with military authority. Propaz is trying to create capacity to reassume the role of community leaders in Guatemala. The government has a perspective of repressing indigenous authority as if they were against the government. Propaz has created a training course for Mayan leaders to help combat this. In some municipalities, traditional indigenous authority is being restored.

Transfer the Work to Local Hands

Propaz endeavors to transfer their work into the hands of local groups and structures. The work is long term. Two years is a short time for a project to develop. Local leaders who take the training can perpetuate the process in the absence of Propaz. Various structures and organizations come together to sustain the efforts. Many times Propaz empowers the community to paint a mural in which the community paints their story to show their progress and where they are in their history of developing the work. Local leaders are looked to as the facilitators; Propaz acted only as a guide and capacity-builder. The local leaders have to train on their own to perpetuate the process. This was a process of dialogue and resolution, but in this context, there had been other organizations that worked with in these structures.

In summary, from interviews with Propaz staff, these elements of an intervention framework came through, that is, bringing diverse people together in a group; creating dialogue among diverse groups for amplifying voice and sharing diverse perspectives; training various groups for leadership and democratic participation; focusing on multiple levels of society, from small communities to municipalities and larger government institutions; making efforts for lasting structural change; making the work public for many people to see and know about; and finally, transferring the work to local entities for continuation after Propaz has left the project.

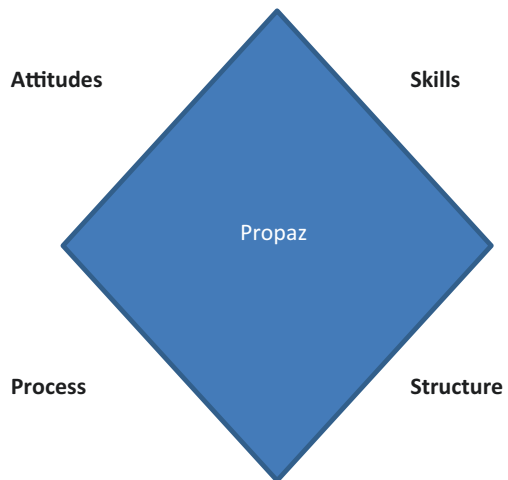
CONCEPTUAL FOUNDATION: THE PROPАЗ LENS

This section explicates the vision and mission of Propaz. Guatemala is considered a postconflict society with expected characteristics, but which change over time. The intervention framework for Propaz is one that is constantly adjusted, but the theoretical framework remains consistent, with human rights as the lens of the eye. Reconstructing the vision of

peace after conflict, the future rebuilding is holistic; focus on one small area is not sufficient for change. Construction and building peace are articulated with building democracy—when you build one you build the other. This results in the prioritization of human rights. Building peace and democracy together means you cannot have either without human rights. Propaz visualizes its efforts through the connection of prevention, resolution, and transformation of conflict as an umbrella over the many issues of the Peace Accords and the mission of human rights. While cautious about the use of prescribed models that may dictate an intervention, Propaz does however use a general conceptual frame, as a screen, which guides how they begin to approach and hypothesize the nature of the conflict situation. The framework includes emphasis on training, education, skills, and capacity-building at the local level in order to form links and build bridges to the larger macro system. It contains the use of cultural symbols and ceremony, continuous negotiation of who is at the table, providing time to voice pain and suffering, and transformation through trust- and respect-building.

This conceptual framework is explained by Propaz’s director, Carlos Sarti, as a diamond, as seen in Fig. 4.1. The sides of the diamond represent areas of change for conflict resolution and transformation: *attitudes, skills, process, and structure*. How they work with this framework is described below.

Fig. 4.1 Conceptual framework for Propaz’s work



Propaz begins with an assessment of what their clients/participants need right now. They start at the place in the diamond that is needed and address first what the client has requested and allow it to convert and shift into other sections of the diamond, depending on the direction the conflict takes, using the different frames to develop the intervention.

While the four sides of the diamond are normally working together, Propaz often starts with attitudes and skills. Attitudes are primary in any intervention and arise early in the meetings because of deep prejudices between the various ethnic groups: whites, Ladinos, and Maya. The attitude part of intervention is about emotions. Strong emotions have many times resulted in people taking actions into their own hands—that is, public lynching. Therefore, emotions have to be on the table for discussion. Attitudes arise immediately and are worked through sensitization activities. Using a principle that groups can disagree but do not have to kill each other to win, Propaz works through stereotypes and prejudices between whites and non-whites through workshop activities. Attitudes can be changed through movies and Citizen Cafés, where citizens come and have informal discussion and dialogue. The ability and opportunity to dialogue were nonexistent after the postwar culture of silence, and now it is promoted as a part of capacity-building through workshops and services of Propaz.

Change of attitudes is related to acquisition of new skills. The work between attitudes and skills is programmed through sensitization activities. Skill development, such as listening, problem-solving, conducting group discussion, reframing, and partializing problems, is dependent upon attitude change, so the two are viewed as interdependent. Power is derived from skills as an intermediary between levels of authority. Skills are the key to beginning inroads toward the development of specific processes and structure. Increased skill level creates opportunity for relationships to build and promote change in local community and regional attitudes, and larger macro structures. Work with the middle level of community relationships can be a bridge between community and large structures. Building upon these processes, macro or larger country structures can be changed. There is no norm for how such training proceeds—all the tools are practiced and implemented as a whole, but each will require a different specialization or main tool to be used.

Going beyond the diamond, Propaz has two visions: transformation and relationships. Transformation comes from change in relationship and trust among the various groups. Without transformation the conflict will

return. Building of relationships, new and old, makes it easier to go back and create change. Development and training of community-level people creates procedures and structure to resolve conflict locally and build capacity toward peaceful dialogue and peace. This framework guides the work of Propaz.

LESSONS LEARNED: AN EVOLVING RESILIENT ORGANIZATION

Propaz has now completed nearly 15 years of operation and has changed and adapted over time to work with conflict and development opportunities where they may arise. Important lessons have been learned through this extensive and evolving work.

Context Is Fundamental

In the continuum between elicitive and prescriptive models, Propaz is situated closer to the former. Even very elicitive models, still needed to be validated in the field, in the context of great social, cultural, and historical diversity.

Legitimacy in a War-Torn Society

Extreme polarization in the country meant that many actors were already positioned firmly regarding most postwar issues. But the Propaz experience shows that you can build legitimacy among actors despite this polarization. Building legitimacy is not easy—it requires making hard institutional and personal decisions, especially regarding the types of projects and interventions that are embarked and those that are declined. This in turn influences funding, and eventually, the capacity to engage in reflective practice.

Maintaining Funding Is Difficult

After the Peace Accords were signed, money came into Guatemala for prodemocracy work; now it is not necessarily the case due to a history of misuse and corruption. Up until 2008, there was institutional funding that allowed for more autonomy. Specific countries and NGOs were

providing the funding originally—Sweden, Denmark, and Soros. In 2008, international cooperation changed—funding is now mostly based on specific projects rather than for the institution as a whole. Institutional funding is needed because projects are very short term and funders are looking for a specific operation—not theory, and long-term institutional work. The long-term view of the program is difficult to maintain when funding is on a case-by-case basis. They offer courses in capacity-building to bring in funds.

Evaluation

Evaluation is the foundation from which the organization grows and builds. Analysis and change modifications are the key to systematic assessment and evaluation. Reflection on action is systematization: it contains three critical assessments: methodology, reflection, and results. This is done through the following systematic activities:

- Document everything—there are interviews and forms at different places in the process, reports from the project managers, and so on. These are used for funding updates as well as for the project managers to better understand their interventions.
- Description of process and analysis for each process and project at different stages. Mostly this is a process created by and for external actors and there are less formal processes for discussion internally, which is more of a community for learners.
- Comparison against the reality of the population. At different points, interventions are analyzed against the reality of the population and projects are modified and changed for the future, to test against conflicts as they change and have new needs so that the practice can evolve to those needs. They create an overview of the process, what worked and what did not work, and publish it for public use.
- They do not always have time for reflective practice—there is often no funding for it either—not all cases get evaluated, but rather a few times a month, they group to discuss a few cases and analyze and update.
- Once a year, there is a retreat to discuss issues, reflect, alter, and respond. Using the framework of Strengths, Opportunities, Challenges, and Threats, they analyze their work.

Multilevel Dialogue: Key to Building Peace

Through the years, Propaz has been involved in high-level talks with government officials and civil society leaders, as well as in grassroots dialogue experiences with youth in urban and rural settings. All levels are important in building a culture of peace after 36 years of Civil War and 500 years of colonialism and conflict.

When there was funding for the institution as a whole, there was more freedom for when and how the work was done, and reflective practice was easier. With funding on individual projects, there is a focus on the logical framework instead, which usually implies a two-year horizon, which often takes the place of reflective practice. The early years of sustained funding allowed for reflection, contextualization, and eventually, building legitimacy and participating in many levels of dialogue. The current funding situation and donors' topic agenda seem to set the tone for Propaz participating in lower-level, short-term dialogue projects, and the challenge remains to maintain legitimacy, reflective practice, and influence in other levels of society.

CONCLUSIONS

Looking forward, Propaz sees that many issues in the country will be around natural resources, for example, large plantations modifying watersheds as they see fit in order to irrigate their crops or produce electricity. Propaz has been a part of some of these dialogues around water. Environment disputes are disputes of ideology—industry finds it technical and indigenous tribes view it as a spiritual conversation. The country's demographic structure, immigration trends, and the gang-related violence, all point to clear interventions regarding peacebuilding with young people at local levels. If Propaz can build upon the lessons learned of contextualization, reflective practice, building legitimacy, and influencing multilevel dialogue, while securing funding for both short-term projects and long-term interventions, then their impact will continue to be fundamental for peace and development in the country. We hope this brief summary of their work will help to put the spotlight on Propaz's legacy, and eventually will foster the documentation and analysis of other local organizations that are contributing to peace worldwide.

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Cultivating Mediation in Georgia: Old Traditions and Modern Developments

Guguli Magradze and Tamra Pearson d'Estrée

The Georgian Mediation Clinic sits in a corridor off the main hallway in the Social Sciences Building of Tbilisi State University (TSU). The hallway opens out onto Ilia Chavchavadze Boulevard, a main thoroughfare in the busy, noisy capital of the Georgian Republic. Community members now enter the university not only to listen to lectures, but to have their family and community disputes mediated by TSU faculty and graduate students. Two neighbors enter with a dispute over the building of a new balcony. One neighbor wishes to add this common feature of Georgian houses used for relaxing and for sleeping. The other neighbor does not wish the balcony to encroach upon her home, with such an intimate view of her own living quarters. Because the balcony would be less than eight meters from her home and thus violate building codes, she could go to court to block her neighbor building a balcony. However, their long-term relationship compelled them to give mediation a try. With the help of a TSU mediator, the neighbors negotiate a solution where the new balcony would be built on the front, both sides' interests were satisfied, and the

G. Magradze (✉)

Ivane Javakishvili Tbilisi State University, Tbilisi, Georgia

T. P. d'Estrée

Conflict Resolution Institute, University of Denver, Denver, CO, USA

e-mail: tdestree@du.edu

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building, Rethinking Peace and Conflict Studies*,

https://doi.org/10.1007/978-3-319-71102-7_5

relationship was preserved. A partnership between TSU and the University of Denver brought resources, expertise, and institutional will to bear on the establishment of this Mediation Clinic, in order to provide services as well as a continuing training and capacity-building location, with a vision to nurture the growth of a culture of mediation in Georgia.

In 2005 when this project began, Georgia's mix of rapid post-Soviet reform, long-standing ethnic tensions, and economic challenges had made it a setting for simmering hostilities. Conflict at all levels—regional wars, political conflicts, domestic violence, and youth violence—was accompanied by high levels of stress throughout the population. Changes in standard operating procedures, business norms, educational guidelines, and administrative and legal practices had added to the uncertainty produced by uncertain economic conditions. Despite significant reforms and development after the Rose Revolution in 2003, concerns remained over underfunded health care and social programs, reconstruction of the educational system, and persistent poverty. Development also continued to be complicated by ethno-political conflict in Abkhazia and South Ossetia, and the introduction of additional internally displaced persons (IDPs) as a result of Georgian–Russian hostilities in 2008, toward the end of this project. Tensions were also exacerbated by a high level of inflation, perceived unfair elections, the absence of an independent court, violation of human rights, governmental control and monopoly on business, pressure on independent mass media, and the lack of dialogue between the ruling party and the opposition, or between the government and the public. Concerns that the executive department was exerting extralegal influence over the judiciary added to suspicions about institutional dispute settlement mechanisms. Under such circumstances, conflicts were inevitable, yet the post-Soviet vacuum in social capacity for resolving conflicts had been slow to fill with resurrected Georgian customary practices or institutional mechanisms perceived as legitimate and just.

After Georgian independence, international governmental and non-governmental entities attempted to bring outside mediation and conflict resolution expertise to the region; however, local expertise that could engage in conflict resolution with the insight of insiders to the conflicts had only recently begun to be re-established. TSU took the lead in preparing a local cadre of specialists, beginning with establishing a degree in Conflict Resolution in 2005. However before the project outlined in this chapter, opportunities did not exist beyond the classroom for hands-on training. Also, no logical local institution existed for providing mediation

services or for training and certifying local specialists in mediation. This partnership between TSU and University of Denver (DU) set out to create a Georgian university-based clinic as an educational training center and curricular model that would support a growing cadre of mediation and conflict resolution practitioners in the South Caucasus region. Through intensive training, classroom seminars, and mediation observation and practice, students in this mediation clinic would learn to mediate various civil and community disputes. In addition to the training for MA Conflict Management and Analysis students, the clinic would provide free and confidential mediation services to the general public as well as to staff, students, and faculty at the university. The Mediation Clinic would provide the reforming business, educational, and legal sectors a local and well-respected institution to whom to take their disputes.

This project sought to provide new training, expanded curricula, and institutionalized conflict resolution services, but also to validate local expertise and historical wisdom in conflict resolution processes. The University of Denver partners emphasized the identification of Caucasus approaches specific to conflict resolution, and worked with TSU partners to build on their assessment and research components to evolve Georgian training, teaching, and practice models. This chapter reviews the Georgian context, the development and implementation of the project, the lessons learned, and the Georgian approach to mediation that is providing new opportunities for the constructive and nonviolent resolution of conflict.

GEORGIAN POLITICAL AND CULTURAL CONTEXT

Understanding the current context at the time of any project must be set against a backdrop of enduring and evolving social and cultural patterns and preferences in conflict resolution. In the case of Georgia, this involves both traditional and customary practices, practices during the Soviet era, and post-Soviet practices both before and after the Rose Revolution.

Cultural Patterns and Customary Practices

Legal pluralism is a facet of all societies (Merry, 1988), with many processes for resolving disputes coexisting. In the Caucasus region it includes influences of state, Soviet, and multiethnic traditional practices (Voell & Kaliszewska, 2015). Different eras and rulers in Georgia have produced practices that then often continue to exist in subsequent eras, although

perhaps confined to certain arenas of social concern. This pluralism of conflict resolution approaches also varies by region, where the urban centers and areas influenced most by empires would be forced to use new institutions and practices, but the hinterlands would be less supervised and continue with past customary practices. While these traditions described below may no longer exist in Georgia, or may only be practiced in remote areas, they provide cultural background and history that often was forgotten or suppressed during the Soviet period and is only now being reacknowledged in an attempt to create culturally relevant mediation practices for modern Georgia.

Various mediatory traditions were historically practiced in Georgia. They favored the use of respected men of status managing the relations between families and clans. This system privileged community harmony and solidarity over individual rights. Villages often had both community assemblies led by elected elders (*makvshi*) to make important decisions, and also village mediators (*morval*). Mediators would reconcile disputing parties through facilitating an exchange of compensation, or in some cases, carry a recommendation to an offender's family that the family needed to leave the village. This sort of 'cooling out' over time might allow the family or descendants to return in the future. Though the goal might be reconciliation, exile was always also a possibility. Mediators used moral suasion and shuttle diplomacy to bring about a resolution.

Another tradition was the mediator-judge (*bche-judge*), a combination sanctioned by central authorities during the Kingdom of Georgia (prior to Russian occupation in 1801). Georgians find it important to note mediation's historical presence in Georgian traditional or customary law, exemplified by the law book codified by King Vakhtang VI of Kartli (1675–1737), which is seen to be underlying official Georgian legal practices such as the *bche-judge*.

Another historical role was that of the *shuamavali*, literally someone who would 'walk between' to manage conflicts between sides. He would usually meet several times separately with each party, discussing proposals carried from one party to another. His duty was through exchanging proposals to assist parties to find a solution which was more or less beneficial for both of them. Sometimes the mediation ended without need for a court hearing. In some cases when the case already was due to be presented in court, the *shuamavali* would prepare people for court. Mostly his service was very popular in the nineteenth century, as his work prior to the court hearing, discussing with the parties, made it easier for judges to

make a decision, particularly the Russian-speaking judges during the period of dominance of Russia (1802–1917). This intermediary would talk to both parties ahead of time, prepare them for their court appearance, and sometimes engage in mediation activities with them before they appeared in front of the judge. These intermediaries were paid by both sides for their services.

One place that still reveals traditional practices of mediation that may have been more widespread at some point are the practices operating, as Georgians say, “in the mountains,” in the area of Svaneti. In addition to the tradition of blood feuds, among the Svans, there were mechanisms to respond to egregious violations such as killing in a way that would rebalance the harmony of the community. These involved both elected elders and mediators. After the mediators came to a solution, the parties would make a public acceptance of the solution and swear on a Christian icon.

This representative practice of swearing an oath on an icon to hold a person to truthfulness is not unlike the Western court practice of ‘swearing in’ on a bible. The icon in orthodoxy represents God’s presence on earth, so swearing an oath on an icon is literally swearing before God, as well as before the community. Voell and colleagues (2014) describe how the oath on an icon (*khatze dapitzeba*) is an important aspect of Svan traditional law, used to discover truth in a conflict situation or to reaffirm one’s social obligations. Elders can ask one who has made a statement, either a defense or an accusation, to swear an oath on an icon that it is the truth. It usually requires supporting oaths by relatives or other guarantors. Svans traditionally also would swear on an icon that they will uphold the laws of the community; this is an ‘oath of unity’ (see Herzfeld, 1990).

How important are these traditional practices for modern Georgia? Voell and Kaliszewska (2015) discuss how ‘tradition,’ and therefore traditional practices, is a difficult term—it may be being used to locate and reinforce an identity assertion, while practices may not actually be what happened historically. With tradition closely associated with ethnic identity in Georgia, leading Georgian writers and scholars of the nineteenth century focused on “mountaineers”—people from Svaneti or Khevsureti—as embodying the traditional Georgian way. The constructivist Hobsbawm (1983) suggests that ‘traditional’ does not mean it is ancient practice, but that it is a recent, intentional reaction to a current situation. It is practices governed by ritual or symbolic rules “which seek to inculcate certain values and norms of behavior by repetition, which automatically implies continuity with the past” (Hobsbawm, 1983, p. 1).¹ Voell (2015) dis-

cusses how traditional practices are more about lived morality and ethics, and what one does in an ethical dilemma. She describes how, even now, in cases where state law may prescribe one sentence, traditional senses of morality may call for additional activities, such as reconciliation between the parties and their families facilitated by mediators to restabilize the community. Thus, even though traditional practices may no longer be used in most areas, recalling them gives a sense of identity and reinforces shared values and a sense of how to ‘properly’ resolve a conflict (see discussion of *ethnopraxis* in Chap. 1).

Soviet Era

Debate exists about whether or not the Soviet era replaced traditional legal practices or instead existed in parallel with them (Voell et al., 2014; Babich, 2000; Bobrovnikov, 2000); however, pluralism of forms is a common phenomenon (Voell & Kaliszewska, 2015). Jalabadze and Janiashvili (2015) document traditional law’s importance during and after the Soviet era, particularly at the local level: “[T]raditional law continued to be relevant at the local level of so-called ‘private cases’ and that the Soviet administration, to a certain extent, even supported local legal practice.” While the Soviet state imposed its code for most penal cases, traditional approaches were used for family law and ‘private cases’ where the aggrieved party was another party rather than the state, which might be called civil cases in some law frameworks. This would involve the use of elders and mediators, who would help in the resolution of these conflicts.

For example, an employee of a local Svaneti court reported that during the years 1964–1979, there were no divorces or other family conflicts recorded in the local court. This does not mean there were no divorces or family conflicts, but that these were handled with traditional processes. The head of the local court was ‘officially content’ with these conflict resolution procedures because he considered their decisions to be correct (Gegeshidze, 1975). In effect, officials turned a “blind eye.”

Kremenjuk (1996) argues that there is an underlying conflict management frame of ‘winning’ rather than collaboration in the cultural context of Soviet and thus post-Soviet states. He describes how western European notions of conflict management include not only Roman ideals of a ‘right side’ and ‘winning,’ but also notions of a social contract, communitarian ‘common-law’ values of accommodation, and cost–benefit analysis and the notion of a Pyrrhic victory (gains not worth the cost). By contrast, the

approach in the USSR and the subsequent independent states considers conflict to be the engine of change, to be ‘the midwife of history.’ Revolutions and armed struggle are seen to be the most effective means of social change. Marxist notions of progress through conflict of opposing forces can be seen to underlie assumptions of the value of asserting one’s position strongly, with the expectation that one’s opponent will also assert their maximum attempt. Kremenjuk argues that this strategy of conflict management through force can be seen to underlie both the central Soviet authority’s relationship to its constituent republics and the republican governments’ conflict management approach with their own ethnic minorities.

Post-Soviet Vacuum and the Rose Revolution

In 1990, the Soviet Union began to fall apart with the exit of Lithuania and other Baltic states. Georgia followed suit with a declaration of independence on April 9, 1991. Internal conflict divided high-ranking individuals in government over relations with Russia and the West, as well as regarding the best direction for economic development of the country, and the rapid ethnic tension in South Ossetia and Abkhazia in which Russia was actively involved.

After the dissident and first Georgian president Zviad Gamsakhurdia died under mysterious circumstances, the former Minister of Foreign Affairs under the USSR Eduard Shevardnadze became president. He was in many ways a continuation of the late Soviet period’s mode of governing, with cronyism, inefficiency, and corruption. Urban streets were managed by neighborhood networks of ‘thieves-in-law’ whose ‘street corner society’ had their own norms, hierarchy, and way of managing conflicts (Zakharova, 2015). Because these informal forms of conflict management and enforcement existed, urban Georgians in general were negative toward and suspicious of state institutions, and especially toward judicial mechanisms.

Defections of political elites from Shevardnadze’s governing party brought alternative parties and alternative leadership forward (Di Puppò, 2015). Nongovernmental organizations (NGOs) funded by international entities, such as the Soros Foundation and the US Agency for International Development (USAID), and other international organizations became alternative organizing bodies and provided alternative policy leadership. A liberalizing of the media meant that critical press and media could cover abuses. When the parliamentary elections of November 2003 were rife with fraud, thousands took to the street for the beginnings of the Rose

Revolution. When the new parliament considered by many to be illegitimate was about to be seated, the young former minister of justice of Georgia, Mikheil Saakashvili, and his team led a nonviolent 'occupation' of the parliament building, with people carrying red roses. Shevardnadze was deposed.

Saakashvili had been one of those recruited by Shevardnadze from the young people receiving education in the West. He rose to power on promises of fighting corruption, but framed in a new way that brought hope and a sense that these were not just the same empty promises of past leaders (Di Puccio, 2015). Zakharova (2015) notes that the negative attitudes toward state institutions and justice mechanisms prevalent under the communist period began to shift. As public opinion changed and trust in state law and state institutions increased, faith in customary practices of conflict resolution declined.

Political Context of This Project

The grant proposal for this project was submitted in the spring of 2006. In the five years preceding, Georgia had gone through momentous political and social shifts. The team of young politicians who had come to power in 2003 after the Rose Revolution began implementing rapid reforms in many areas of society. They hoped to move Georgia rapidly toward developed country status and into the orbit of the European Union (EU), which was expanding its membership.

However, these rapid reforms themselves stimulated conflicts, as old practices have inertia and are not easily replaced, and for many, it was hard to be open to these quick changes. Unfortunately, these reforms were also not well prepared, and the methods used to implement them were very severe. A 'zero tolerance' policy toward law violations resulted in the prison population more than tripling within just a few years. There were numerous violations of human rights by the ruling party, and a large majority of the population protested strongly against the government's activities. People were looking for any assistance to manage many kinds of conflict situations, particularly if it could avoid involving the state.

Due to these factors the need for a 'culture of mediation' was quite clear. A culture of mediation can change the 'rules of the game' when one is disputing, so that rather than resorting to coercion or advocacy, one engages a constructive process of searching for underlying interests and joint gains. It is often asserted as a goal for rule of law, peacebuilding, and

development projects. But there were no Georgian qualified mediators, and all such business was managed only by invited outside mediators sponsored by different international organizations. An additional impetus for developing mediation was Georgia's increasing ties to the EU. Georgia and the EU have maintained relations since 1996 in the INOGATE framework (INterstate Oil and GAs Transportation to Europe), and in 2006, a five-year "Action Plan" of rapprochement was implemented in the context of the European Neighborhood Policy (ENP). Subsequently, the 2008/52/EC Directive received by the EU parliament requested all member countries to make corresponding changes in their legislation for the implementation of mediation. All these factors created quite strong motivations to begin activities to prepare a base for the implementation of mediation in Georgia.

MOVEMENTS TOWARD ALTERNATIVE DISPUTE RESOLUTION/ CONFLICT RESOLUTION

The rapid pace of reforms, economic development challenges, as well as simmering ethnic animosities meant that Georgia was in a state of heightened tension and unrest. Norms for legal practice, business, and education were all undergoing changes that added to the anxiety produced by economic uncertainty. Soviet institutions had crumbled, including those for resolving disputes, post-Soviet legal institutions were not trusted, and Georgian traditional practices had been suppressed. Thus, the need for conflict management skills and institutions was pressing.

Nowhere was the need for conflict management skills more critical than in communities of IDPs. Georgia itself is ethnically diverse, and as Georgia broke away from the crumbling Soviet Union, different ethnic regions within Georgia themselves made claims for autonomy. Georgia has several areas recognized as conflict regions, including Abkhazia, South Ossetia, Adjara, and Javakheti Province. Conflict in these regions has resulted in massive internal displacement of people. In 2006, at the time of this project, Georgia had over 280,000 IDPs as a result of the ethnopolitical conflicts that occurred during 1991–1993. A total of 30,000 more IDPs were added during the 2008 war with Russia, when Georgia also lost one-third of its territories.

Many IDPs had lived for years with crumbling infrastructures and difficult access to health care. The most vulnerable categories were IDP youth and women, who had often become widows as a result of this conflict and

were the only supporters of their families. Mediation and other conflict resolution processes were needed in order to increase skills on the part of individuals and to help stabilize communities.

Thus, the need for mediation and mediation training was increasingly recognized. As a result of new legislation passed in 2005 and judicial reform, less populated regions would soon have appointed mediator-judges. In addition to legal knowledge, these mediator-judges would require mediation skills. Other sectors were increasingly open to alternative dispute resolution (ADR) approaches. Yet training was only available through outside providers. International governmental and nongovernmental entities brought outside mediation and conflict resolution expertise to the region, mostly from EU relevant structures, USAID, UN bodies in Georgia (UN Development Programme, UN Women), the Soros Foundation, and some small grants from different international organizations. However, local expertise that could engage in conflict resolution with the insight of insiders to the conflicts was needed, and local capacity for training had yet to be developed.

TSU had established a degree in Conflict Resolution in 2003, taking an important first step in preparing a cadre of specialists. The master's degree program in Conflict Management and Analysis, established as a result of a university partnership between TSU and George Mason University's Institute for Conflict Analysis and Resolution, which involved both authors, was one of the first interdisciplinary master's degrees in the country. It included 12 new courses, and three branches of TSU in Signaghi (East Georgia), Zugdidi (West Georgia), and Akhaltsikhe (South Georgia) started offering elective courses in conflict resolution. This was the first and only MA program in conflict resolution offered in the South Caucasus region and the program began attracting students not only from Georgia but also from Turkey. On July 13, 2005, the TSU program celebrated the graduation of its first class of 12 graduates. Similar numbers of students continued to study in the program in subsequent years. Program graduates went on to work as managers or human resources consultants in various government ministries and NGOs, since the profession of mediation did not yet exist.

However, two important developments remained to be addressed. First, while TSU graduates were emerging with an excellent grounding in theory and research, further skill development and refinement was needed for their placement into sectors requiring actual mediation services. Clinical supervision (by experienced practitioners) and internships, as is now done in many professions, remained to be established so that this new cadre of

specialists could begin to serve the need for professional mediators. Furthermore, the specialized training required for practice in sectors of law, family relations, and business was not yet provided by Georgian experts, and remained to be developed.

A second important development needed for establishing the societal foundation for the provision of mediation was an institutional location, both literal and figurative. Citizens seeking mediation services needed a respected host, especially since trust in social institutions was still being rebuilt. A mediation clinic could uniquely serve both needs, first providing graduate students with supervised opportunities to begin practicing mediation (typically co-mediating with a more experienced mediator), as well as providing a well-respected institutional setting for the provision of mediation services to the university and the larger community. A university-based mediation clinic could also provide professionals with advanced training in mediation and conflict management specialized in their particular sectors and grounded in the latest theory and research.

In addition to addressing these needs, the clinic would make trainings available for the development of expertise and resources in mediation which could contribute to social integration in the broader society. The development of dispute resolution models throughout private and public life of citizens could strengthen the social fabric and promote civil society and constructive civic engagement. TSU faculty leading the project felt that enhancing the conflict resolution expertise base could be a critical part of the institution strengthening and capacity-building thrust required to move toward developed country status, which had become a salient goal under the new administration and the expansion of the EU. Continued improvement and expansion of mediation and conflict resolution could further impact positively on the participatory process, building capacity for managing tensions and integrating differences, and strengthening the functioning of democracy.

INSTITUTIONALIZING CONFLICT RESOLUTION: FRAMING OF JOINT DU-TSU PROJECT

TSU project leaders thus had several reasons for pursuing a second partnership project to further build capacity in mediation and conflict resolution. They sought US partners who could assist with securing external funding resources, along with expertise regarding mediation clinic and

center establishment and maintenance. They also hoped for expertise in specific and advanced forms of mediation to increase its use in those sectors seen as undergoing reforms and possibly open to innovations, especially the areas of business, law, and education. They also hoped for partners who would be able to help them explore and potentially realize this innovation of developing a mediation profession that they had only heretofore read about.

Establishing a strong project partnership was helped by trust built through prior relationships and common networks. Drs. Magradze and d'Estrée's initial partnership project had created both TSU's MA degree in Conflict Management and Analysis and its Conflict Resolution Resource Centre, funded by a US Department of State NISCUPP grant to GMU. When the need for a training clinic became apparent, TSU partners again approached Dr. d'Estrée, who had by then moved to the University of Denver. Funding was sought and obtained for this project from USAID under its Democracy and Governance development sector, administered through the Higher Education for Development's (HED) New IDEAS Partnership Program.

This project planned to specifically address societal sectors undergoing critical reform, as well as regions suffering from conflict-induced displacement. This project would result in new training, expanded curricula, and institutionalized conflict resolution services, but also in the cultivation of local expertise and the validation of local historical wisdom in conflict resolution processes.

EXPANDING MEDIATION CAPACITY IN GEORGIA

Assessment of needs and existing practices. One of the first activities of the project was the conducting of a needs assessment by Georgian (TSU) faculty to determine what sectors of Georgian society would be most amenable to mediation services and training (Despotashvili & Magradze, 2007). This research was done among respondents in Tbilisi. Qualitative research investigated knowledge and opinions regarding mediation in both the legal and education sectors, as well as general public opinion.

In the legal sector, representatives of the court revealed more interest toward referring to mediation, as they saw much benefit in it both for the court and for the parties. However, at the time of surveying, Georgian

lawyers either did not consider the use of mediation as the function of a lawyer, or viewed it as a process completely separated from the legal processing of the case. While younger lawyers did not see possibilities for the use of mediation in family court cases, judges and professors of law did see the usefulness of mediation and expressed readiness to cooperate in creating supporting legislation to enable the implementation of mediation in the court. Mediation was seen as one of the possible options to raise court effectiveness. In the education sector, focus groups revealed little experience with mediation, but identified a sense that institutional conflicts in higher education could be addressed through mediation. Finally, a survey was conducted to investigate more general public opinion on mediation, community experience of third-party involvement in conflict resolution, and expectations toward mediation. Quantitative research showed that most of the 100 respondents had heard about mediation and were supportive of involvement of a third party in neighborhood conflicts and in conflicts between colleagues, with those with past experience of mediation strongly in support (see Fig. 5.1 and Table 5.1).

In addition to the needs assessment, a second initial assessment to facilitate planning involved eliciting local expert and lay knowledge about

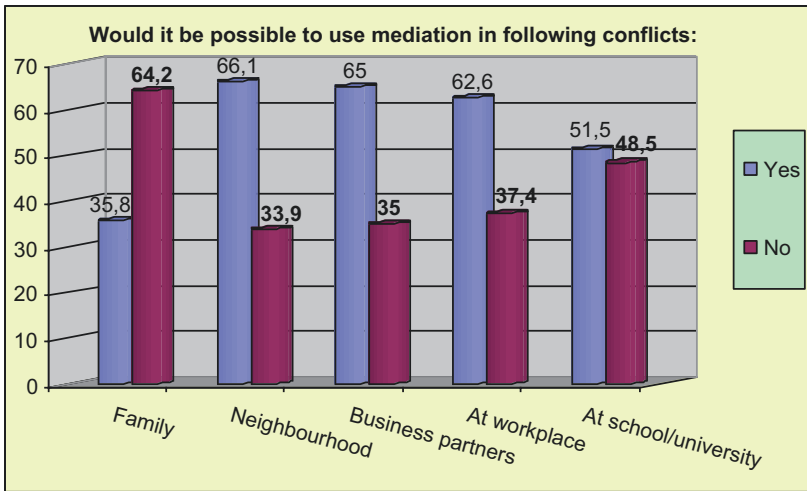


Fig. 5.1 Readiness to use mediation in conflicts, by type (N = 100) (Despotashvili & Magradze, 2007)

Table 5.1 Readiness to use mediation in conflicts, by type ($N = 100$) (Despotashvili & Magradze, 2007)

	<i>Family</i> (%)	<i>Neighborhood</i> (%)	<i>Business partners</i> (%)	<i>Co-workers</i> (%)	<i>Conflict with subordinates</i> (%)	<i>At school/university</i> (%)
Always	2.5	2.4	2.8	1.4	1.8	3.3
Often	1.8	6.6	11.3	9.1	5.7	6.3
Sometimes	5.7	16.3	31.1	21.4	19.1	19.9
Seldom	14.5	27.4	20.1	29.8	26.9	21.7
Never	75.6	47.2	34.6	38.3	46.6	28.9
Sum	100.0	100.0	100.0	100.0	100.0	100.0

Georgian traditional and customary practices, as well as Georgian cultural preferences and “lenses” for understanding conflict and its resolution (Lederach, 1995; Avruch & Black, 1993). Conversations from the beginning of project and proposal development suggested that recognizing and developing local capacity would involve identifying, at a minimum, cultural adjustments to Western models, practices, and training examples, and more likely the identification of (a) existing and historical cultural practices and (b) aspects of Western models that were not culturally a fit, such as practices like parties negotiating as autonomous individual agents, or culture-laden communication norms such as ‘no interrupting.’ Thus, the original proposal contained emphasis on identifying local practices and developing culturally appropriate trainings.

Elicitive training practices (Lederach, 1995) involve having conversations about what cultural practices either are or have been used in the past, and the ways in which these have been effective or not. However, even though Georgian partners realized that people had strong traditional mechanisms of conflict management through mediation in the past, these traditional mechanisms no longer operated in most places and the experience of Georgian mediation has been lost. During this project, Georgian partners took on research into their own historical and cultural traditions, perhaps motivated and silhouetted more clearly when contrasted with models and methods coming from the West.

Existing ethnographic material revealed that historically mediation was used as a method of conflict resolution across the whole territory of Georgia. In almost all villages and cities, the population would choose men with authority and experience, who were then asked to review

different disputes and to facilitate an agreement between disputing sides. Ethnographic data also revealed that starting from the 1930s and due to the increasing influence of Bolshevism and the Soviet government in all facets of Georgian society, mediation began to be restricted primarily to the mountainous regions of Georgia. There, even after court decisions, citizens would still approach a mediator to reconcile the disputing sides.

As part of the assessment phase of this project, Georgian partners documented any current practices of mediation in modern Georgian institutions. The only mechanism identified at the time of this project's conception was the mediator-judge, a type of lawmaking regulated by administrative code and utilized only for monetary disputes.

Faculty exchanges and on-site collaboration. US training expertise was brought to Georgia to supplement in advanced mediation the already rigorous teaching and training that TSU graduate students receive in their existing MA program. Faculty exchanges spread across the four years of the project allowed for development of training most suited to the needs of the TSU and Tbilisi community. Trainings to be given in Tbilisi were loosely planned before travel, with flexibility to allow for adjustment once further planning could take place on site with Georgian faculty co-trainers. Planning for training proceeded further in light of needs assessment results and discussions between TSU and DU faculty.

During visits by Denver faculty to Tbilisi, progress was also made to develop plans and avenues for the institutionalization of alternative conflict resolution approaches. Meetings were held to educate lawyers, judges, and parliamentarians on the value of incorporating mediation options into existing legal and judicial processes. Awareness was raised about the usefulness of mediation by offering mediation training not only to future mediators, but also to potential mediation users and supporters.

Faculty exchange visits also were the primary vehicle for furthering faculty development. During their visits to Denver, Georgian faculty were able to learn of new curricular and training advances, observe the operation of US mediation clinics and centers, and learn of techniques and strategies for clinic administration, case stream cultivation, funds development, and program evaluation. They witnessed the relationship cultivated in the US between mediation centers and courts, and how US courts use

mediation options to resolve community, family, and business conflicts with less acrimony and to better handle large caseloads of community disputes.

Expansion of curriculum. Courses and course units were also added to TSU's curriculum in the area of social and behavioral sciences. This included a course in mediation and also a training course. The mediation course is framed according to the Western model of mediation, but also includes a special unit on "cultural roots/trends of mediation" where students learn the role of cultural differences, including Georgian historical practices of mediation. The practical training course includes discussion of the specifics of Georgian 'mentality'—cultural frames, habits, and preferences—that are similar to European but with some peculiarities, and how students might work with them. In the undergraduate course, "Conflict, gender, and peacebuilding," a large section on mediation was included. Subsequent to this project, it was recognized that more direct training in law was needed for mediators to work in Georgian courts, and courses in ADR as well as in basic criminal, civil, and administrative law were added for those in that program.

Expansion of resources and services. Often trainings and training materials in international projects are in English. Through grant support, TSU faculty increased curricular offerings and developed supporting materials in Georgian. The primary English-language text used for training (Moore, 2003) was translated into Georgian. TSU faculty prepared a Georgian-language training manual for basic mediation as well as for more advanced mediation practice in specialized areas. Such resources aided in a new 'language' to speak about the constructive management of disputes in the vernacular, enabling a broader dissemination of these ideas and practices into the culture at large.

With space provided by TSU, its Mediation Clinic was able to hire staff, house resources, and expand its mediation and training activities. The Clinic quickly distinguished itself by providing mediation for several university cases, including grievances against the university in hiring, disputes over salary within one university division, a dispute over distribution of teaching hours within another, and demands against the university for compensation by retired professors. Other cases included land use cases, small claims cases, and high-profile cases such as between the Ministry of Health and staff of a cardiology institute, and between

the Ministry of Defense and a contractor. Within TSU itself, several divisions received training, including staff in human resources, in the student mobility department, and staff working with domestic violence and with IDPs. Other Tbilisi colleges and universities sought training from TSU's Mediation Clinic, including the Caucasus School of Business. Groups of attorneys, businesspeople, bankers, and NGO workers were also trained.

As envisioned for the final phase of the partnership project, TSU's Clinic trained groups of IDPs in Adjara, focusing on women and youth as the most vulnerable in order to empower them to constructively manage their difficult situations. Training would help them to manage problems interfacing with local host populations and administration as well as within their own IDP communities. However, TSU faculty added unanticipated trainings for IDPs much closer to home. After the August 2008 war with Russia, several thousand IDPs flowed into the capital city, stressing city and university resources. TSU Clinic faculty provided mediation training to humanitarian workers and to IDPs, who then were able to apply these new skills to tense situations in their communities. Flexibility in project design and use of resources, as well as funder flexibility, allowed for adaptation to new categories of need and new opportunities for sharing a culture of mediation.

Adapting to challenges. The war and its aftermath was one of several challenges requiring creative responses. Another challenge faced by the Clinic, and therefore the project, was that of attracting enough cases to the Clinic to allow for graduate students to take on a role mediating these cases sufficiently to give them actual supervised mediation experience. When cases through the Georgian legislative and judicial systems were not forthcoming, the TSU program initially compensated by using more simulated mediations for graduate student training, as well as by encouraging students to bring the disputes of their friends and neighbors to the Clinic for free mediation. Opportunities for graduates to use mediation skills have since expanded.

The project as originally envisioned also did not include adequate Clinic resources for advertising or for the development of future sources of revenue. Consequently, much that was done in the area of advertising, promotion, and development was donated by TSU faculty. A 'business plan' for the Clinic would have been a helpful addition.

Integrating into Existing Systems and Cultural Frameworks

The second ‘tier’ of implementation—changing the existing system to be receptive to these new practices—proved to be more difficult. This included both existing dispute resolution institutions, for example, courts and court officers, as well as the general public.

The Georgian legislative and judiciary systems were not yet ready in 2010, by the end of the project, to accept a system of mediation in the country, even with a cohort of Georgian mediators. Until the courts accepted such practices, having cases referred from courts for mediation, as is currently done in North America, would be practically impossible for the Georgian Mediation Clinic. Professional mediation was still considered to be a form of informal negotiation in Georgia, and there was no legislative basis for officially recognizing mediation as a means of dispute resolution. Because the documents drawn as a result of mediation had no legal standing, a solution achieved as a result of mediation was based on trust solely, as any oral agreement, and nonfulfillment of the promises given as a result of mediation often could create additional tensions and disputes.

Though Georgian partners attempted to convince their government representatives from all three branches of power—legislative, executive, and judicial—to amend the legislation to allow for mediation, these leaders thought it might cause serious changes in the whole system. These system changes were not their current priority, especially since Georgian society was not yet demanding it.

The general public was either wary or unaware of mediation and its benefits. Concerns existed that without the force of law or a mechanism for court endorsement, agreements reached through mediation would be easily abrogated, even though Georgian culture still emphasizes the importance of keeping one’s word. Western models of institutionalized mediation also presume people will be willing to have impartial outsiders mediate their disputes, and people learn of services through advertisements and public education. By contrast, Georgians trust recommendations from their friends, colleagues, peers, and relatives, and depend on reputation. Word of mouth and networks were critical, though TV and radio were also used. Once Facebook was available, this became a useful platform for advertising.

Using influentials in the community proved to be another way to raise awareness of the nature and benefits of mediation. Collaboration by TSU

faculty with the Georgian Bar Association and various committees of the Parliament of Georgia was found to be useful, including providing several presentations to them. As a result, the Parliament and Bar Association began sending clients to the Clinic who needed help with resolving various disputes (such as citizens with various complaints, family disputes, neighborhood disputes, and small business disputes). It also was found useful to conduct short-term trainings for awareness-raising among persons working in relevant organizations to supply potential customers with information about what kinds of services were available.

More recently, the situation has improved, and over time, amendments to laws have been passed supporting the use of mediation (see below). More time has been spent on raising the awareness of the general public on the benefits of mediation, preparing the ground for future legislation.

Partnership Dynamics

This partnership rested on a long-term relationship between the two principal project leaders, one on each side, who had framed this project. The project was initiated from the Georgian side. We now reflect on the dynamics of the partnership and the efforts to work toward an egalitarian and effective working relationship.

One could argue that whoever held the purse strings wielded the power in the relationship. In this case, it was the US partner (DU) that applied and received funds from a US funder (USAID), although they were required to have a Georgian partner institution. However, the budgets for the project for both partners were developed collaboratively, with negotiation around needs that could be met within budget limits. Items were expensed through DU's accounts; however, Georgian partners expressed that they felt the process was reasonably easy, with reimbursements for receipts and invoices presented. Georgian TSU partners felt a responsibility toward the DU partners because of the nature of their relationship, and in turn, the DU partners were responsible to the funder for appropriate use of funds.

In terms of the determination of priorities and direction, it was the Georgian partners who took the lead. Needs were identified by the Georgian partners and then the American partners would work with them to help satisfy these needs, presenting various options and alternative ways used elsewhere, possible materials, and training technologies. Common goals were shared of developing Georgian capacity for conflict resolution,

and as the project progressed, new objectives to meet that goal would be revealed and jointly addressed, for example, devising strategies to sell the value of mediation to the parliament so that laws supporting its use would be enacted.

The collaborative, flexible partnership allowed for co-creation of the steps needed for implementation. American partners had broad exposure to many models and techniques used in North America and in other international locations in which they had worked. Georgian partners initially knew only from books. Exchange visits were designed to provide experiences and exposure to actual practices; partners witnessed the creation of access to justice and conflict resolution capacity. This addressed the Georgians' search for options to address the problem of lack of trust in their state institutions, especially the courts. Mediation could provide access to justice and also outlets for airing grievances and trauma in a society reeling from conflict and political violence.

Efforts were made to establish an egalitarian relationship from the very beginning. The preexisting relationship between the primary partners may have facilitated this; both social and joint work time further strengthened this. Significant time was set aside for collaborative planning, whether through exchange of proposed visit agendas and training outlines via email, or time set aside in each exchange (on-site) visit for collaborative reflection and future planning. These exchange visits also became the vehicle for ongoing revision to objectives and activities, for example, the presentations by American and Georgian partners to the Georgian parliament, and discussion of existing practices and models there, which allowed Georgian partners to realize the gaps that called for the next strategic phase of activity.

Though cultural variations may have emerged in varying emphases on tasks within the mediation process, the partners found surprisingly strong alignment of values. In fact, it could be said that value conflicts experienced were more between the Georgian project partners and some sectors of their fellow Georgians. For example, Georgian partners strongly supported the empowerment of women and youth in taking leadership roles; this put them at odds with the traditional cultural expectations of older men, and often head of families, having the sole status to be an intermediary. Georgian partners felt mediation should be treated as a profession, where respect came from credentials and experience, rather than from gender and age.

Georgian project leaders ultimately felt the project had added value, not the least because all were changed as a result: “[W]e were all different people afterward.” The relationships established persisted beyond the end of the project, as partners from both groups continue to be in contact years later and continue to follow each other’s activities and each other’s country’s fates. It was acknowledged that additional needs remained at the end of the project that would require additional solutions: lack of acceptance by institutions such as parliament and the courts, changing public attitudes, discovering the possibility and therefore the need for youth programs in restorative justice. Unaddressed needs merely pointed the way for the next steps in the innovation process.

It could be noted that TSU partners were possibly able to maintain the lead in the development of their larger initiative and system change, both because of the seniority of some of the Georgian partners, and also because they worked on the many phases and pieces of this expansion with different international partners. There was no favored international partner who was allowed to cultivate an ongoing, exclusive, and potentially patron-like relationship with the Georgian initiators. While international partners may have taken the lead in shaping separate and contributing projects, the overall vision and trajectory for what was needed there in the Georgian context was maintained by the primary Georgian partners. These faculty cultivated relationships broadly, so it often had a pick of possible international partners when the shape of the next phase that was needed was seen.

A GEORGIAN APPROACH TO MEDIATION

Though the Georgian partners may have initiated this project with a prescriptive training approach in mind, the American partners began the project with a more elicitive agenda. The Georgian partners wanted Western techniques, materials, and training expertise, as well as financial resources to establish a training clinic. Western endorsement and expertise would help to make a case in Georgia for the usefulness of mediation as a tool of democracies for providing access to justice and skills for everyday constructive conflict management. The American partners sought to reinforce Georgian cultural and customary practices of mediation and supplement with innovate mediation practice ideas from elsewhere, and prepare Georgian trainers to run all trainings in the future.

This could have resulted in negotiations around a training agenda that would have produced a training with both aspects. However, the actual dearth of local knowledge about traditional practices meant that training had to begin as a more prescriptive agenda that could be modified *in situ*, with input from partners and from the professionals (businesspeople, educators) who attended the first trainings. Advanced trainings initially co-led with Western partners evolved into Georgian-led trainings. Discussions and reflections on the trainings by the partners, as well as participant observation by Georgian faculty performing subsequent clinic mediations, led to articulation of Georgian cultural approaches and needs. This in turn led to evolving modification of what seemed to be natural practices that best fit the context. These were a blend of both Western and Eurasian approaches.

As strong as Georgian traditions of mediation seem to have been historically, it may seem a contradiction that so little was known about these to inform the initial phases of training and curriculum development. However, Georgian project leaders described this gap as not so much one of knowledge as one of integration. Before the project, they did not know how to connect traditional conflict resolution practices to modern practices of mediation as they were being implemented in many countries around the world. They were open to learning from others: about how such processes are part of democratic development, and how such processes could provide alternative mechanisms to court, without interference from state institutions which were in transition and still not yet fully trusted. They hoped to study these alternative models for new ideas and solutions. Through this project and research for curriculum development, they began to observe how other cultures had modified these materials for their own contexts, and similarly embarked on alteration and innovation. Through the interchanges of this project they also began to recognize that they could find analogs and similar processes in their own historical experiences and traditions. Recognition of cultural and historical analogs in turn allowed them to make a better case to the Georgian public, and more importantly the legislature, for the resonance and appropriateness of these practices for the Georgian society and institutions.

The partnership to establish a mediation training clinic in Georgia proved to be a fruitful incubator for the development of insights into expanded conflict resolution options and hybrid practices that represent an ongoing conversation between contributing cultures. Culture and language factors were obvious components in the development and provision

of new courses, trainings and conflict resolution resources, leavened with wisdom learned from elsewhere, and available in the Georgian language. Culture also manifested in more basic and embedded ways—in communication patterns, cultural preferences, and institutional character and constraints.

Experience with both training and mediation services provision at the Mediation Clinic of the TSU allowed for the identification of the following Georgian mediation patterns and preferences (Magradze & d'Estrée, 2011), which continue to be updated through a decade of experience.

Referral by word of mouth and via relationships. Potential clients must first learn about mediation and the services available. Georgians trust recommendations from their friends, colleagues, peers, and relatives more than advertisements. The majority of TSU's clients have learned about the mediation clinic through word of mouth. Collaborations with the Georgian Bar Association and various committees of the Parliament of Georgia have produced recommendations and referrals. Offering trainings to potential users can create awareness and plant seeds for future requests.

Cultural preferences for extralegal processes. Georgian culture has been dominated mostly by traditions rather than by rule of law, though this situation is changing. In cultures dominated by law and legal standards, parties might compare the relative gains from mediation versus going to court. By contrast, Georgians prefer extralegal approaches, especially in the mountain regions. Making mediation a legal option allows for Georgians to engage in culturally preferred practices.

A trusted and credible mediator. Mediation helps with the reduction of tension and the regulation of relations. Therefore, the selection of a trusted and credible mediator is crucial. Because Georgia is a small country, it is easily possible and even likely that social networks between the parties and the mediator overlap, and information is shared rapidly and consistently by word of mouth. Thus, there is no 'neutral' mediator in the Western sense of a disinterested outsider. The reputation of the mediator, both personal and professional, must be assured before the mediation process begins, and so any questions about qualifications must be either dispelled or the mediator replaced.

More traditional Georgians may think that mediation can and should only be done by older men, assumed to have more experience, and even

men who are heads of family. They may doubt the capabilities of young and/or women mediators, even those with a lot of experience and training, such as the ones emerging from TSU's program. Young mediators and women in particular need to represent themselves as having practice and experience from the start. Therefore, the mediator's introductory speech has great significance in the Georgian context, and it should have a positive impact on parties, developing their trust in the mediator and respect toward the process.

High value placed on relationship. As a primarily polychronic culture (Hall, 1959), Georgians place a high value on relationships. This is expressed in some activities before the mediation begins; for example, the sides will emphasize hospitality, try to develop reciprocal exchanges, and ask about family members. During the negotiations between Georgian and Abkhaz, it surprised many foreign observers that Georgian and Abkhaz negotiators were very friendly, both before and after negotiations, but very tough on each other during the sessions.

... and time is flexible. Also characteristic of a polychronic culture, time is cyclical rather than linear. People more often multitask, combining business with socializing, eating with working, and so on. Time is flexible, and there is less stress on being 'on time.' Preserving positive relations are more important than meeting deadlines. If a mediation needs to be suspended and returned to at another point, that is perfectly acceptable and commonly done.

Importance of confidentiality of mediation process. Public controversy (e.g. conflict further aired in the court) often leads to further deterioration or even ending of relationships. In Georgia, relations are paramount, and maintaining relationships and social networks are critical. All encounters and interactions have social significance. People talk about each other. Therefore, the privacy and confidentiality of mediation can provide a way to maintain relations, both with the other parties to the dispute and with others in one's social networks. This can be particularly important for family or business disputes.

Regulation of process by the mediator. Because Georgian culture is primarily polychronic, the mediator in Georgia may need more effort in the process of regulation, including additional rules for the management of the process. As with many mediation approaches, rules of conduct are useful to set out at the beginning, which structures a more peaceful process and also fosters more constructive communication between disputing

parties. This may include, for example, suggesting to each party that they will each talk for a couple of minutes and then switch to the other party, and continue alternating. Though Georgian culture often naturally includes “talk-overs” when more than one person is speaking, this can happen in a more or less respectful way. The mediator may choose to only limit interrupting and talk-overs if it begins to escalate the feelings of competition and antagonism, but by then, parties are typically happy to have this structure imposed. Georgians are attracted to the possibility of “calmly” solving a dispute through mediation, a process also aided by its confidentiality.

Heightened emotion. Mediation is a process based on the will of the parties, where the decision is made by them rather than by the mediator. The success of the process will be influenced by the relations between the parties. The mediator’s task includes confidence-building between the parties, which in Georgian mediation process must be the first priority. Psychological preparation is one of the most important parts for the mediation process, taking into consideration the novelty of the institution of mediation as well as Georgian inclinations to be emotional. Georgians do not shy away from expressing emotion during mediation. However, fury and coarse language are culturally acceptable for men but not for women. At the same time crying, complaining, and eliciting pity is acceptable for women and not for men.

Regardless of the complexity level of the dispute, the first task will be to address the heightened emotion or psychological pressure, for which the mediator should prepare a strategy in advance. The mediator’s first step at the beginning of Georgian mediation needs to be the release of psychological pressure, such as by telling a joke, or remembering a funny story from his/her past experience. Taking more time for emotional relaxation at the start is very important. The joint excursion or even dinner before the mediation process will significantly improve the contending parties’ attitude toward one another. If this is not feasible, the mediator should begin with offering the parties initial rules of conduct, as noted above, which can frame cooperation and emotional expression.

Usefulness of mediation for addressing emotional investment in conflict. In mediation generally, but especially in Georgian mediation, it is the emotional work that can be done that sets it apart from traditional court processes and underlines mediation’s uniqueness and complementarity

with other processes. Detection and understanding of emotions can become the basis and precondition for a settlement, and possibly for relational repair in the form of simple human expressions such as apology and forgiveness. Such emotional issues are particularly prevalent in family, neighborhood, and inheritance disputes, social institutions that still play a central role in Georgian life, and thus it made sense that these disputes be given the opportunity for referral to mediation by the legislature. Emotional issues can prolong disputes within the courts, and a court hearing has no place for attention to emotional relationships. In the court framework, Georgians feel it is more important to 'win' or at least have a sense that one has given superior effort, than to search for a mutually beneficial, reasonable result, and no time and energy is spared in seeking this. For such disputes where the real issues in dispute do not fall within a legal framework, mediation is the right choice. Emotional background to the dispute can be channeled in a constructive direction, and even assist in the problem-solving tasks.

Indirectness, directness, and nonverbal communication. In Georgia generally there is dislike of directness. Parties often avoid confrontation and try to find informal or formal intermediaries. Parties would not be asked directly what they want, or what is their interest, as typically happens in Western mediation. Rather, like other indirect-dealing cultures, the sides may spend time talking about other things and try to express their needs in roundabout ways. Body language may reveal more than articulated words. However, cases and contexts do also exist where Georgians value face-to-face interactions and accept conflict and may have direct confrontation, such as direct-dealing cultures, where there may be direct dialogue, debates, and negotiations. It is no longer generalizable, and varies by context and case.

Looping or circular conversations. In the West, cultures prefer linear, systematic conversations for generating options. According to Moore (2003), cultures of more traditional societies, where option generation may be less formal, prefer extended linear, looping, or circular conversations. These circular or spiral conversations include lots of social asides, by which potential solutions evolve and are elaborated until they are mutually acceptable. Georgian negotiation and mediation mostly has this character.

Acknowledging status in patterns of communication and adjusting process accordingly. Communication between parties will vary, depending on their relative social status. For example, if one side is an ordinary person

and the other side is a high-status representative of a governmental office, indirect communication will be preferred. An agreement would never be directly refused, but instead phrases would be used such as “it would be difficult,” or “it seems impossible.” The high status side would try never to say “we would not do this.” In such cases, better results can be gained through separate negotiation with each side, that is, through shuttle negotiations.

Sealing an agreement and challenges of trust. Expression of trust is also specific in Georgia. It is still awkward not to trust a verbal promise and instead to demand a written document. Because of this approach people often face disputes and tense relations with each other over one’s broken word. This can be a ‘sore spot’ at any level; for example, this is a charge that was leveled between the ruling and the opposition party due to non-fulfilled promises. A challenge at the start of mediation in Georgia was that because professional mediation was still considered only informal negotiation, and there was not yet any legislative basis recognizing official mediation as a way of dispute resolution, then no documents drawn as a result of mediation had legal validity. Such agreements were based solely on trust, and nonfulfillment of promises often created additional tensions and disputes. Traditional Georgian society is a high-trust society, but gradually it is transforming into a low-trust society where dispute resolution and reconciliation are expressed in a written form, officially approved, and authorized by the involved sides.

More recent additions and modifications to the Georgian model of mediation training and practice have included the following:

Impasses, caucusing, and termination of mediation. In many mediation models, mediators are taught strategies for dealing with an ‘impasse,’ a point at which the parties seem stuck and the mediation is no longer making progress. Mediators in Georgia are also taught to potentially call a break and let parties calm down, or find other strategies for deescalating emotion before proceeding with negotiation. If one anticipates caucusing will be needed, and parties are of different status, it is advisable to not caucus during the meeting but rather meet separately with the parties at another time. This allows this process of engaging with the parties separately to be done more privately, not in front of people, which is more face-saving. By contrast, however, Georgian mediators are also taught that when parties cannot resolve a dispute, it is better to not

insist on continuing. Impasse strategies are often not used. Rather, it is accepted that the parties may be tired, or impatient with the process, and pushing for a solution is not always desirable. It is okay to terminate the mediation without a solution. Sometimes parties may have satisfied their need to voice their concerns to each other and/or to a third party, and this may be what was primarily desired. Or they may decide to return on another day.

Importance of a written agreement. When they do reach an agreement, parties will sometimes resist recording their agreement in written form, saying “we trust each other,” or “we don’t like paper.” They may stress an oral agreement. However, these agreements sometimes still break down (see the section on trust above). Mediators are now trained to gently push back on them to have a written agreement. This is an interesting example where cultural preferences may have now hybridized with emerging professional practices based on experiences and best practices from elsewhere.

Importance of reflective practice in a community of practitioners. Training now includes the importance of coming back to your fellow mediators and sharing experiences—being a ‘reflective practitioner’ (Schön, 1983; d’Estrée, 2013) who learns from what worked and did not work and continues to improve. An Association of Mediators is now being formed in Georgia and will soon be available as a professional community for continued reflection and field development.

Enlarge training to broader conflict resolution topics. The TSU Meditation Clinic found that there was great interest in broader conflict resolution training beyond just mediation. It now offers conflict resolution trainings as well, which cover topics such as conflict types, conflict dynamics, and other methods of conflict resolution besides mediation. Often what may be needed in the Georgian context is not mediation per se, but conflict analysis and another conflict resolution process. Also it was found that within an increasingly globalized world, it made sense to broadly discuss cultural variations and appropriate preparation and adjustment. Units that discuss Georgian and Western cultural approaches to mediation are now taught as more general inquiry into cultural variation and appropriate adjustments of mediation practice. For example, students learn about cultural features of Japanese and other possible Asian participants.

In sum, what has emerged over time is a Georgian approach to mediation that reflects both Western and Eastern cultural aspects. Georgian preferences have shaped the way the process unfolds and is completed.

INTEGRATING INTO CONTEXT AND SYSTEM: RECENT EXPANSIONS OF MEDIATION USE

Through the efforts of this project, TSU's Mediation Clinic was established, becoming a vehicle for service provision and for training that was locally based. Revisions to the institutional structures that would support both mediation training and service provision remained essential for sustainable system-level change, and became the subsequent agenda for the Mediation Clinic and its Georgian faculty and supporters. In subsequent years, mediation began to be integrated into the court system as a court-sanctioned alternative (as ADR); it was linked to notaries as a route to produce solutions with an official seal and also integrated into labor disputes, juvenile cases,² health insurance and tax cases, and other agency dispute resolution.

Legislation was first added piecemeal, for example, adding provisions that allowed certain types of court cases to be transferred to a mediator: cases of family (except for adoption, adoption declared invalid, restrictions on parental rights, and termination of parental rights), inheritance, and neighborhood legal disputes. The legislature also equipped the legal status of mediator with notary functions. Notaries in Georgia are used to approving of documents and sealing agreements, and so can protect an agreement emerging from a mediation. A notary who has additional training in mediation can also bring to bear mediation skills to foster conciliation among the parties.

Further motivation for increased mediation options and increased legislation came, as these practices were increasingly also recognized and implemented in the EU, which Georgia aspires to join. Under the 2008/52/EC Directive, the European Commission (EC) recommended to member states to provide in legislation for mediation and other conflict resolution methods. This action also directed the preparation of a report, due in 2016, that would check to see how this directive was being implemented by the member states. Though Georgia is not a member of the EC or EU, when one of these international bodies asks for such things to be done, Georgian leaders consider that these are things that are important

to implement. Thus, this was an extra factor to encourage the Georgian government and parliament to initiate a general law on mediation.

Such legislation for a general law is now formulated and will be considered by the Georgian parliament soon. This new legislation includes provisions on court mediation (how to prepare, who can be a court mediator), notary mediation, professional certification of mediation, and provisions for nonlawyer mediation of noncourt cases with proper certification that then will be recognized by the state.

LESSONS LEARNED

Priorities of this partnership included investing time into the relationship, maintaining this relationship over years, and using the reflecting within this relationship on what lessons may have been learned over time with the execution of this project. We offer our lessons on project execution, system change, and partner relationships.

Important to do initial assessments. Following good intervention design practice, assessment should inform planning and design, and should assess both *needs* and *cultural assets* (resources and practices). It is central to involve the local partner in both of these; it is likely best if they take the lead, though research consultation may be needed.

Provide concepts and materials in the local language. Our project has substantially increased the level and quantity of resources grounded in Georgian language about mediation that are available to educators, practitioners, the media, and the general public. This both allowed for ownership of this new technology as authentically Georgian and not merely an import, and improved the likelihood that Georgian insights and cultural needs could be integrated with these new concepts.

Need to include planning for awareness raising and for larger system change. Mediation Clinic establishment for training and service provision was part of a larger strategic plan to create a culture of mediation and constructive dispute resolution in Georgia, particularly at a time when rapid social, economic, and political reforms and change were creating conflict. It was found that providing people with new skills was relatively easy, and if they had immediate places to apply them—such as IDP camps or university disputes—then these new skills would be used. However, reforming systems and patterns that were already in place for handling

disputes—such as courts—proved to be very difficult, and required local allies in other fields and professions.

Developing institutional frameworks for validating mediation's legitimacy. Even though under the project, sessions were held to educate judges, lawyers, and parliamentarians as to the benefits and workings of mediation, they had no incentives to change the operating system. This required pressure for change—pressure from constituents who now were seeking mediation options, and pressure from outside bodies seeking to bring in international norms and practices for legal and judicial reform.

Looking for preexisting cultural analogs and precedents will make conflict resolution innovations more acceptable. While innovations that are unusual and different may garner attention, those that are adopted and used are those which fit into preexisting cultural frames or scripts for performing certain actions and getting things done. We found two types of analogs were useful to research and highlight when introducing mediation. First, cultural and historical precedents could make this innovation also feel 'authentic' and Georgian. Second, finding the use of analogous processes in existing institutions, even with different labels, could endorse mediation's validity and social acceptability.

Identifying mediation's unique contribution within that context. Mediation has long been known to be better than legal processes for allowing attention to nonlegal issues, and thus is better in cases where preserving relationships is also important. This is a strong selling point in the Georgian context. Past extralegal traditions recognized this need and addressed this component of conflict. With mediation, issues beyond legal categories can be included, people can seek mutually beneficial outcomes, and emotional background can be directed constructively.

Recognize and build on benefits mediation may offer in the specific context. Several reasons Georgians may prefer mediation were eventually identified, and became the focus for public awareness and marketing: (a) Mediation gives a platform for speaking one's mind, even if no agreement is reached, or one does not achieve their hoped for solution. Mediation can provide a platform for self-expression and demonstration of competency, which may be one of their primary outputs desired from the process. (b) Mediation allows for reasonable consideration of alternatives even when one does not have the documentation needed to press a court case, for example, in neighborhood or business disputes. (c) Mediation can be useful when one cannot win in court using legal

frameworks, but feels a solution could be worked out to preserve the relationship, for example, business, neighborhood, family disputes. (d) Mediation is a good fit when one or both parties do not want publicity, such as when one side is high in position and needs to keep it out of the courts to preserve reputation, or a business wants to avoid unwanted publicity. (e) Mediation is a good option when one wants a resolution quickly, since court can take 6–12 months for a case to be heard. Judges now also see the value of reducing their court dockets through referring to mediation.

Preserving trust and guaranteeing agreement execution. Historically, high-context cultural traditions relied on one's commitment to a community and one's word as one's bond. However, as Georgia has itself been influenced by other cultures, and has modernized, it has begun to reflect low-context cultural approaches as well, where trust is guaranteed through written agreements that are backed by an institution of enforcement such as a court of law. Ironically, trust in the judiciary was just beginning to return during the time of our project, and so neither traditions nor institutions could provide a source of trust for mediated agreements. Thus, one of the biggest needs was for institutionalizing mediation services so that agreements that emerged would be officially recognized and sanctioned.

Flexibility and time are needed for the emergence of adaptive and appropriate approaches. A Georgian characteristic is resilience and resourcefulness in the face of a long history of invasions. Georgians are skilled with working within a system and making it their own, whether it be Persian, Russian, Soviet, or EU. With flexible parameters and an openness to adjustment and innovation, this project was able to allow for the catalyzing and growth of a Georgian mix of Western and Eastern approaches to mediation. If an external certifying body had maintained control over defining what 'correct' mediation was, this adaptation would have been stifled and the natural trend toward adopting a new, locally appropriate approach would have had to come from the top down or wither away.

Strong and active partnership relationships take dedicated face time. The most fruitful discussions and innovations came when partners had set aside dedicated time for having conversations about what was working and not working, and where to go next. Divergent thinking and brainstorming for responses to challenges and roadblocks happened best when partners were engaging in face-to-face conversations, either during in-person exchange visits or via Skype. Collaborative planning and shared decision-making

(regardless of formal authority) came more naturally when partners were in regular conversation.

CONCLUSION

When she first encountered mediation training and practice on a visit to the US, the first author knew that this was a kind of capacity that her country of Georgia could use to address its many layers of conflicts. It was important to both authors to grow it in Georgia in a way where it could take root as a comfortable and natural option, promoted and taught by local trainers, and used for dispute resolution by citizens, from teachers to businesspeople to politicians. The mediation model that has emerged in Georgia is a blend of both borrowed and native Georgian practices, traditional and modern, and both Western and Eastern cultural proclivities. As a result of the Mediation Clinic established through this project and partnership, public awareness of mediation in Georgia has increased. All branches of power—government, parliament, court, and media—increasingly recognize the benefit of mediation for Georgia’s democratic development, and the legislation package on mediation that is currently in the Georgian parliament will open exciting further possibilities for the growth of a culture of mediation.

NOTES

1. For example, even though modern Svans are now mostly dispersed from their original villages, young Svans recount traditional village life and practices, with the result that “these traditions are part of the idea of being Svan, even if they are not practiced any longer” (Voell et al., 2014, p. 110).
2. As in several other countries, Georgians have experimented with a variant of mediation for criminal cases. Victim–offender mediation (Umbreit, Coates, & Vos, 2004) is now being gradually introduced into Georgia’s juvenile justice system.

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PART III

Empowering Missing Voices



Warriors to Peace Guardians—Emergent Peacebuilding Design in Kenya

Gail M. Ervin and Mary-Anne Lechoe

Kenya is a land of stark contrasts. Large metropolitan centers such as Nairobi concentrate the power of the majority, while minority pastoralists (nomadic herders), representing less than 20% of the national population, largely reside in arid and semi-arid drylands (ASALs), which cover over 83% of the land (Republic of Kenya, 2011). Pastoralists have adapted to this harsh environment through a livestock economy, moving across open lands to areas of pasture and water as the rains allow. Traditions were established over time for sustaining each tribal community in ways that supported and guided

Gail Ervin is Mediators Beyond Borders Kenya Initiative (MBB-KI) Team Leader, and Mary-Anne Lechoe is the Peace Guardians Core leadership group Team Leader. Many thanks to Mediators Beyond Borders International (MBBI) Team members Victoria Grey, Lisa Rose, Prabha Sankaranarayan, and Marcus Tan de Bibiana for their wonderful insights and contributions to this chapter.

G. M. Ervin (✉)

Mediators Beyond Borders International, Arlington, VA, USA
e-mail: gail@ervincg.com

M.-A. Lechoe

Peace Guardians Core, Nairobi, Kenya

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building*, Rethinking Peace and Conflict Studies,
https://doi.org/10.1007/978-3-319-71102-7_6

young men in their role as warrior protectors and replenished livestock lost to drought and disease. Yet, as colonialism and an influx of small arms and light weapons (SALW) interrupted and perverted these traditions, the practice of stealing livestock, known as cattle rustling, became deadlier and erupted into full-scale war in many remote areas. Communities have struggled to deal with the violence, and top-down, internationally led governmental and nongovernmental organizations (NGO) approaches have generally failed to resolve the underlying issues. The most effective peacebuilding has come from pastoralists themselves.

This chapter shares one of their stories, a story that illustrates an effective shift in NGO role from international interventionist to catalyst and facilitator. Drawing from participatory action research (PAR) on the Laikipia Peace Caravan,¹ we describe key factors that led to effective and sustainable indigenous peacebuilding. Further, we link how these factors are aligned with current research on emergence, systems, and complexity, and led to articulation of a concept of *emergent peacebuilding design* that focuses on establishing optimal conditions for emergence, self-organization, and enhancement of community capacity to sustainably generate local solutions and outcomes. The remainder of this chapter discusses how this learning was implemented in an adjacent county experiencing conflict through the Warriors to Peace Guardians (WTPG) Initiative in Baringo County.

THE SETTING: PASTORALIST CONFLICT IN THE RIFT VALLEY

Pastoralist families in Kenya's ASALs, for the most part, retain a traditional nomadic existence, dependent on livestock such as cattle, goats, sheep, and camels, which allows them to adapt to water and pasture conditions. With climate change, droughts are coming more frequently and lasting longer. As water sources and pasture dry up, pastoralists move their homes to areas where they can access these resources, or send their warriors (often well-armed) out further and further with their herds to find the water and pasture they need to survive. The economic, social, and political life is centered on cattle, and their herds are considered their primary currency and assets. A gerontocracy traditionally governs this nomadic lifestyle, policed by elders, who resolve conflicts through restorative justice and arbitration, as well as spiritual methods such as blessing and cursing.

While herds are their primary assets, social networks play a close second. Pastoralists' complex social networks are defined by Hendrickson, Armon, and Mearns (1998) as a *moral economy*. These networks, critical

for ensuring survival, are based on kinship, friendship, and patronage. “Association is considered the most basic asset, even more important than livestock and at the very core of all livelihood strategies. The pastoral economy is based on people’s capacity to associate with others and to acquire powerful memberships” (Krätli, 2001, p. 21).

This moral economy also helps pastoralists endure the persistent marginalization they suffer, deeply rooted in colonial stereotypes, which characterize them as backward people who are environmentally destructive. This stereotype survives despite the many studies that have proven the environmental logic and sustainability of pastoralist practices in arid lands, and the significant value of the livestock production to Kenya’s economy (Krätli & Swift, 2014; Republic of Kenya, 2015). Pastoralists have seen very little development in the ASALs until recently, when adoption of the new constitution that created county governments started providing localized development funding. National policy formation and local development has, for the most part, persisted the fragile and remote conditions pastoralists experience by centralizing livestock processing and failing to provide adequate education, health care, water infrastructure, security, and resolution of postcolonial land issues in the ASALs. Pastoralists in the ASALs continue to suffer from poverty; low literacy rates and limited access to education; insecurity; human/wildlife conflicts; poor or nonexistent infrastructure; lack of markets; susceptibility to droughts, famine, and epidemic diseases; and noninvestment in the pastoralist economy— notwithstanding the fact that more than 90% of tourism interests are located within pastoralist lands (Pastoralist Development Network of Kenya, 2015). The persistent stereotypes and negative attitudes ignore the value of indigenous strategies that evolved to survive and sustain dryland environments, and the adverse social and environmental costs of encouraging sedentarization and rangeland fragmentation (Fratkin, Abella Roth, & Nathan, 2004; Mortimore, 2013).

Unfortunately, cultural methods for survival in these harsh conditions have also always involved interethnic violence, intensifying with colonial and postcolonial interventions (Kenya Pastoralist Elders Council, 2011; McEvoy & Murray, 2008; Mkutu, 2008; Republic of Kenya, 2011). Since independence, pastoralists have suffered a significant increase in such violence for multiple reasons, to the point of making areas of Kenya inaccessible, as well as regularly blocking local access to markets, businesses, schools, and roads. Violence has resulted in a significant loss of life and property, as well as internal displacement. In addition, external conditions

such as the influx of SALWs, climate change, and local and national politicians exploiting ethnic identities as a political weapon (Nabaala, 2012) put further strains on traditional coping mechanisms such as elder control of warriors, resulting in an increase in violence that the government has been unable to fully contain.

Traditionally, it is the young men of each ethnic community—their warriors—who are responsible for ensuring community survival through the protection of herds, and replenishment after periods of drought. Young men still must gain bride price of anywhere from 8 to 170 head of cattle to start their own families, and young women use song and dance to encourage warrior behavior and even praise them for killing the enemy (Nabaala, 2012). Gaining the necessary herds is often through the practice of cattle rustling—the raiding of another community for their livestock—to replenish livestock lost to drought or raids, or just to add to a warrior's wealth.

Cattle rustling² has traditionally served the purpose of redistributing resources between herders, and raids were conducted as a community. Redistributive forms of raiding were managed by elders and prophets, and obeyed a set of rules and reciprocal relationships within the moral economy (Bollig & Österle, 2007; Hendrickson et al., 1998). Raiding still initiates boys into manhood, trains them as warriors, and provides them the opportunity to prove themselves as brave and good protectors, especially in the eyes of women, elders, and their peers. The wealth and prestige it brings is a strong incentive to keep this practice alive.

Under traditional rules, it was considered shameful to kill from a distance. Honorable behavior required opponents to face each other and spare the life of a warrior who surrendered, and to never harm women, elders, or children (although women could be taken as wives). Elders traditionally practiced restorative justice between communities without involving the police:

When something happens that interferes with peace, our elders plan and go to negotiate with the other side. We pay compensation as a community if our sons go to raid and kill the other community—what a loss on both us and them. We know the pain of having to pay for something that someone else did, so we minimize opportunity for confrontation with other communities. (Pokot woman, 2014)

Today, however, colonial imposition of political boundaries, disparate treatment of ethnic groups, the influx of SALWs, the breakdown of tradi-

tional rules of acceptable/honorable livestock replenishment, and pressure from climate change has brought increasing competition over decreasing communal land resources. The livestock economy often can no longer sustain communities alone, and the lack of educational opportunities leaves illiterate youth with few options. Young men become susceptible to recruitment for raids that are commercialized, politicized, and predatory, and even used just to dehumanize and humiliate the enemy through brutal attacks involving mutilation and unimaginable acts (Adano, Dietz, Witsenburg, & Zaal, 2012; Greiner, 2013; Nabaala, 2012).

Loss of communication between communities as perceived injustices increase has reduced elders' traditional ability to negotiate restitution. Yet adequate state institutions, security, and rule of law are lacking to address this violence. Township police are poorly paid and poorly trained for dealing with cattle rustling and raiding violence, having often been assigned to remote posts as punishment. Pastoralists believe police say "why should I risk my life over a cow?" and when police do intervene, they use state forms of prosecution and punishment that are distrusted and considered unfairly directed to whole communities rather than to perpetrators. Women express having less fear of being victimized than the fear of having their sons disappear in prison in Nairobi (meeting with Kisumu District Peace Committee, October 24, 2012). The state judicial process can take years, and can even lead to the death penalty. The national government also provides Kenya Police Reservists (KPR) for local security in remote areas; these are civilians who are armed with registered rifles with no training or income (Leff, 2009). This system is generally considered ineffective and corrupt. Pastoralists report that rustlers simply enlist to get free guns, or find reservists who will loan their weapons for raids. National security forces rarely venture into these remote areas, and the military's role is restricted to disarmament programs and large-scale incident response. When they do respond, their lack of relationships with the local community, and therefore their ability to gain critical intelligence, puts them at a severe disadvantage, which has led to mass casualties. As seen during the drought crisis of 2017, national "shoot to kill" responses tend to be coercive, repressive, and disconnected from the traditional law systems that govern pastoralists (Leff, 2009; Nalekat, 2017). By comparison, traditional justice provides restitution based on the nature of a crime. Such traditional processes promote healing and reconciliation, and keep families and communities intact.

National approaches to resolving conflicts in pastoralist areas have largely taken a top-down approach through Kenya's National Steering Committee on Peacebuilding and Conflict Management (NSC) and National Cohesion and Integration Commission (NCIC), charged with establishing peace mechanisms in the country. Kenya's highly commendable Infrastructure for Peace (Republic of Kenya, 2012), adopted before the new constitution modified the relationship between the national government and new counties, set up District Peace Committees (DPCs) throughout the country. Pastoralists, however, often complain that the DPCs consist of political appointees who, pastoralists believe, do not represent their interests well. Concerns are expressed that since DPC members only get paid to meet to resolve conflict, they have a perverse incentive to generate conflict to justify their positions and payment. This system is currently under review to align better with county-level priorities.

During high-conflict periods, the NCIC holds community *barazas*—large community gatherings held outdoors to discuss peace. County governments are also occasionally involved in meeting with communities and holding peace meetings. However, representatives are still reported to be politically selected. Community meetings are typically held in separate ethnic communities, by both governments and politicians, not jointly convened between conflicting communities. Peace meetings generally involve politically selected participants brought to hotels or government offices for meetings or trainings. Concerns are regularly expressed regarding the growing “peace industry” whereby people are paid large daily stipends to attend meetings or trainings, in addition to receiving meals and lodging, which may distort the motivations of people participating and builds expectations for participation that are difficult for grassroots organizations to meet. Churches hold peace meetings among their parishioners, but often not the wider community. Overall, there is an observed lack of connection and cooperation between the different efforts at all levels, and minimal direct community engagement. Activities to bring warring communities together in cooperative engagement are rare.

MEDIATORS BEYOND BORDERS INTERNATIONAL—KENYA INITIATIVE

Mediators Beyond Borders International (MBBI) is an NGO whose mission is to build a more peace “able” world by developing capacities for peace and promoting mediation worldwide. Its primary strategies for pro-

moting peace and justice are as follows: (1) upon invitation, capacity development projects that develop local peace and conflict resolution skills, (2) advocacy projects that promote mediation globally, and (3) consultancy services that promote peaceful conflict resolution. MBBI only works on capacity development projects upon invitation, and provides a unique blend of volunteers and consultants who work closely with local partners grounded in an elicitive approach.

MBBI was initially contacted by a Kenyan peacebuilder, Lantano Nabaala, with a request for mediation books and training manuals. Upon invitation in early 2009, MBBI journeyed with Lantano to remote conflict areas and saw firsthand the impact of deadly conflict between pastoralist communities. They met with 15-year-old Samburu warrior Sammy Lakoda, whose family had been killed by raiders. “Sammy has great potential,” said Lantano, “and if he grows up to be a cattle rustler, he will be dangerous.” They heard stories from a mother who lost her husband and a son to the violence, who pleaded with others in the tribe, saying that she would bare herself naked to avert another mother from experiencing the pain she did. MBBI members saw the devastation that conflict had brought to the people, and how locked they were in cycles of violence and retribution, without support from a distant central government. These observations initiated discussions to determine if a partnership could benefit these areas.

Later that same year, the conflict in Laikipia between primarily the Pokot and Samburu communities reached a crisis with the Kanampiu Massacre, when over 40 people, mostly women and children, were killed during a raid. In response, without any NGO or governmental intervention, a uniquely pastoralist form of volunteer peacebuilding emerged known as the Laikipia Peace Caravan (LPC). Through their efforts, an agreement was signed between the warring communities by December of that year, and Laikipia became known as an *island of peace*. Lantano was involved in the LPC, and he and his colleagues wished to extend what they envisioned as the peace caravan “model” to other pastoralist conflict areas. Their work influenced Sammy to protect his tribe as a young warrior, not with violence, but by using his weapons now as “arrows of peace.” The MBBI Kenya Initiative (MBB-KI) was formally launched in 2012 to support their efforts to scale up the Peace Caravan model to other pastoralist conflict areas.

MBB-KI worked closely with these pastoralist peacebuilders to help them articulate their methods and develop funding proposals to carry their model to other warring communities in other counties. However, various attempts at funding this peace caravan process were met with

resistance by funders, with declarations that such peace caravans were too expensive and ineffective. Yet this was wholly inconsistent with MBB-KI's observations during visits to areas of Laikipia west and north of Rumuruti Town, where the team witnessed the ongoing interethnic cooperation and relationships of a sustained peace. So, MBB-KI began a search for answers.

Upon investigation, MBB-KI found no project evaluation of the LPC or any reports besides a master's thesis based on a limited number of interviews. An evaluation for a series of "peace caravans" conducted for the USAID-funded Kenya Transitional Initiative (KTI) that were funded after the LPC was complete was provided as evidence of the LPC, thus indicating some confusion over timing, funding, and international involvement. Without benefit of this needed understanding, the peace caravan model was solely based on a few individuals' perceptions of their participation in the LPC and these subsequent peace caravans. Therefore, a PAR project (Ervin, 2016) was developed to investigate why the peace caravan in Laikipia was so clearly effective, yet similar approaches could not get funding.

The research team consisted of the lead researcher (Ervin) with five co-researchers from MBBI and 12 pastoralist co-researchers (including co-author Lechoe) from six ethnic communities. The research team collaboratively engaged in study design, data collection, inquiry, and qualitative analysis, exploring the question *how does effective grassroots peace-building emerge in pastoralist cultures?* Co-researchers conducted 49 semi-structured, multilingual interviews with Laikipia community members, LPC *professionals* (in pastoralist parlance, *professionals* are their sons and daughters who have gone to school and work in various professions while their families continued to live in villages at home), and officials who had been involved in the LPC. Archival data was also collected from a range of sources. From the findings, the research team collaboratively developed a *Warriors to Peace Guardians (WTPG) Framework* (MBB-KI, 2016a, 2016b), which outlines programs and initiatives for building sustainable, positive peace in the pastoralist counties of Baringo, Isiolo, Samburu, and Laikipia.

LESSONS FROM THE LPC

While the LPC is not the topic of this chapter, understanding its genesis and implementation is critical to understanding how the pastoralist peace-building approach discussed herein emerged in Kenya. After the Kanampiu Massacre, the flurry of traditional government helicopters and political

outrage quickly subsided. A group of Nairobi professionals from the Samburu Professionals Association went to their Member of Parliament (MP) and demanded that he do something. The MP responded that government could only do so much, and asked them what they could do as members of the communities involved. He then urged them to call the Pokot professionals that they knew—professionals from the ethnic community at war with the Samburu community in Laikipia—and made his boardroom available for meetings.

The professionals accepted, started utilizing their extensive pastoralist networks to contact professionals they knew from the ethnic groups engaged in fighting in Laikipia, and the LPC was born. This first step of bringing the professionals from the warring ethnic groups together was critical, because pastoralist professionals can be key conflict actors. They stay closely involved with their families in the ASALs, and can move money easily through their phones via Kenya's MPesa system, funding the purchase of weapons and bullets for warriors in their home villages. Professionals take their families' side in a conflict, and vigorously protect their home communities through such financial, as well as strategic assistance. This is a similar dynamic to the research on the influence of diaspora communities on conflict in their home countries (Democratic Progress Institute, 2014).

Through energizing the professionals' ethnic-based networks in Nairobi, resolving the differences between them, and bonding them as peacebuilders first, this energy was channeled into developing strategic messages of peace that were taken directly to the people *on the ground*—the pastoralist description of villages and homesteads. This group of interethnic professionals mobilized whatever resources they could find, and traveled regularly, in small teams and in larger peace caravans, to meet directly with communities throughout the conflict area. There was no international funding, no stipends paid to participants. The participants stood side by side, modeling cross-cultural cooperation as professionals—both men and women—from all the ethnic groups involved in the conflict, and spoke to their people as “their sons and daughters from that faraway land called Nairobi.” In community meetings, they would say to those present such things as “If we (professionals from different tribal communities) can work together in Nairobi and can sit here together, before you, you can do the same instead of fighting with one another.”

Their messages were delivered through narratives that resonated with their people, and they brought people together in dialogue across ethnic divides. They accessed traditional methods of conflict resolution through the elders, but gave women and youth voice in the dialogues:

I believe our ways of resolving conflicts are stronger now since the Laikipia Peace Caravan. The Caravan gave us voice as women. Now I am able to challenge any decision by the elders to go to raid with the Turkana and Tugen, who we still have conflicts with. Our young men also believe that their mothers have the power to curse them if they don't listen to them, and respect us, even more than the elders. The elders also respect us too. We take advantage of that and influence decision-making even at the family level. (Pokot woman, 2014; Ervin, 2016, pg. 178)

The high esteem that pastoralists have for their professionals gives them a powerful role as insider mediators,³ also known as social network mediators (Moore, 1996) or insider-partials (Wehr & Lederach, 1996), which the LPC used to great effect: “Before the caravan the communities were isolated, they could not meet with other communities ... there was no mediator between the communities and youth were not involved and women were not involved” (Pokot elder, 2014; Ervin, 2016, pg. 130).

There was no outside international organization involved in the LPC, although some professionals had NGO experience that may have influenced their approach, such as promoting gender inclusiveness despite their own cultural traditions. Overall, the process emerged out of the “practical wisdom and cultural sensitivities” of the participants—reflecting the professionals’ deep understanding of and connection to their own communities—through regular debriefs and fluid participation of professionals and community members. As a part of the PAR research, the key processes and strategies were identified, incorporated into the WTPG Framework, and led to the concept of *emergent peacebuilding design*, described below.

It is important to note that there was no follow-up in Laikipia by the government or any organizations, or even the professionals involved in the LPC. “The committees stopped preaching peace. All those involved in the caravan got better jobs and left” (Samburu Youth, 2014; Ervin, 2016, pg. 182). Yet, five years later, people on the ground proudly proclaimed themselves as members of the LPC, and the interethnic, gender-inclusive peace committee they self-organized still meets every Monday at Dam Nyekundu. This speaks strongly to the way the LPC built resilience in the communities’ self-organizing capacity that has helped them “withstand pressures and shocks that risk a (re)lapse into violent conflict” (de Coning, 2013).

The communities remained upset, though, that “peace dividends” promised by the government for schools and other development needs

never materialized. They believed ongoing peace caravans were needed to especially target youth, and to strengthen the peace network with the government. They felt they needed peacebuilding training. They also strongly supported taking this approach to Baringo County, and using it to deal “with the kind of hatred and bad blood between warring communities there.” The researchers integrated these concerns with the lessons learned in developing the WTPG Framework.

Emergent Peacebuilding Design

From the PAR data, the MBB-KI/Kenyan team of researchers identified a set of key factors for effectiveness and sustainability that influenced the success of the LPC, and which could provide the basis for future peacebuilding efforts. In looking at what made the LPC most effective, we found that the most important factors were (1) extensive networks connected horizontally and vertically, (2) leadership by insider mediators at the grassroots level, (3) capacity for self-organization through community ownership, (4) modeling of interethnic cooperation and gender inclusion, (5) activities rooted in cultural sensitivities and practical wisdom, and (6) ability to capture emergent phenomena. The data and review of current research were used to create a humanistic, interdisciplinary understanding of the theory behind these criteria, drawing from emergence, systems, chaos and complexity, ethnography, social transformation, education, organizational development, conflict resolution and peacebuilding, development, and philosophy. Through this process, we gave name to what is being done by peacebuilders and community leaders here and around the world—*emergent peacebuilding design*:

Emergent peacebuilding design encompasses a multi-dimensional, systemic approach to peacebuilding that evolves from grassroots participation in designing, implementing, and learning from culturally sensitive and adaptive peacebuilding processes. Such a process arises from social networks, embraces diversity and complexity, is inclusive of traditional methods, and adapts as necessary to meet changes in context and process. External partners take a role of facilitator, catalyst and mentor in working with local partners to synthesize traditional methods with international standards for human rights and inclusivity in culturally sensitive ways. In this way, the framework encompasses key international benchmarks for impacting *peace writ large*⁴ and provides a potential new approach to organizing, supporting and assessing grassroots peacebuilding. (Ervin, 2016)

The peacebuilding field struggles to adapt Western teleological approaches, generally designed for development projects, to the complex and often-chaotic conditions on the ground. Through the lens of the LPC as an example of emergent peacebuilding design, we determined that when the focus of project design becomes establishing optimal conditions for emergence and self-organization, the attention is no longer on what a project is producing through specific activities (predefined project outcomes), but on enhancing community capacity to sustainably generate their own solutions and outcomes. In the LPC case study, pastoralists have a strong relationship to networks, which is a basic pillar of their survival. The communities' educated "sons and daughters" were welcomed as insider mediators to bring their people together and revive past narratives of peaceful coexistence. The LPC established strong networks and participation of insider mediators from the ground, eliciting solutions that came from the people and building local capacity for ownership and self-organization. They modeled interethnic cooperation and gender inclusion, adding a new diversity of voices into local peacebuilding. The diversity of participation, new opportunities for interethnic association, constant debriefs, and learning captured and capitalized on emergent phenomenon.⁵

Through this process, the findings indicated that this grassroots, indigenous process met all five Reflecting on Peace Practice "criteria of effectiveness" (CDA, 2009) that signify program effectiveness in affecting peace writ large:

The peace committee established a local institution designed to "handle grievances in situations where such grievances do, genuinely, drive the conflict." The LPC contributed to a "momentum for peace by causing participants and communities to develop their own peace initiatives" (CDA, 2009, p. 29) for neighboring Baringo. Third, the effort prompted the communities of Laikipia to "resist violence and the provocations to violence" (CDA, 2009, p. 29). Fourth, the LPC resulted "in an increase in people's security and in their sense of security" (CDA, 2009, p. 29). Finally, the LPC resulted "in meaningful improvement in inter-group relations" (CDA, 2009, p. 29). Most importantly, the LPC met the Reflecting on Peace Practice primary condition of effectiveness by fundamentally transforming the community discourse from supporting cattle rustling to considering it a criminal act, thus eliminating the primary driver for conflict and violence. Women no longer incited warrior activity through songs and dance or by accepting stolen livestock, and elders cursed, rather than blessed, raids. The transformation occurred quickly, over a few brief months, and has been sustained to date. (Ervin, 2016)

Building from this, the WTPG Framework outlines a range of initiatives that take a systemic approach involving building peace networks through establishing cadres of interethnic *peace guardians* (PGs),⁶ addressing conflict drivers through *peace dividend* development partnerships, building trust between security forces and the communities they serve, supporting county governments to enhance pastoralist development and security, and building peace. Thus, based on the requests from the Laikipia community and reports of increasing violence in Baringo, both MBB-KI members and pastoralist professionals from the research team worked side by side to design the *WTPG Baringo Initiative*, guided by the emergent peacebuilding design framework and what was learned from the LPC, with hopes of applying these lessons and approach to Baringo.

WTPG–BARINGO INITIATIVE

Funded by a grant from the United States Institute of Peace (USIP), the first WTPG Initiative kicked off for Baringo County, Kenya, in March 2015. MBBI managed overall implementation as the grantee, serving as catalyst and facilitator, but the implementation was managed by volunteer pastoralist professionals, with minimal local staffing. The goal of the WTPG–Baringo Initiative was *to enable members of the Pokot, Tugen and IlChamus ethnic communities of remote Baringo County to interrupt existing cycles of violent conflict through adoption of conflict analysis, resolution, mediation/negotiation, reconciliation, and peacebuilding practices that promote sustainable peaceful coexistence and foster an environment characterized by continued nonviolent resolution of conflicts, improved livelihoods, social stability, and economic prosperity*. This goal was to be met by building broad, diverse, and inclusive networks of PGs throughout the IlChamus, Pokot, and Tugen communities in eastern Baringo.

Consistent with the elements of emergent peacebuilding design, a key to sustainability was the assumption that by developing a network of local PGs throughout the three communities and connecting them with local government and civil society, the team could enhance self-organizing capacity and local resilience to violent conflict (Carpenter, n.d.; de Coning, 2013). As articulated by Carpenter (n.d., p. 3):

Patterns of resilience are adaptive strategies that are self-organized, sustained with minimal outside support, and associated with outcomes that uphold key social institutions with a positive benefit for cooperation and risk mitigation. The ability of communities to manage the risk of violence suc-

cessfully depends on collective action and conflict management. Thus adaptive strategies depend on norms and mechanisms that promote cooperative behavior, and are oriented towards maintaining, strengthening, protecting, and resisting interference with these important components of social capital.

This pattern of self-organizing capacity and local resilience is evident in Laikipia's sustained interethnic peace and water and pasture committees. The area involved in the LPC most notably maintained its resilience against violent conflict throughout the 2017 drought crisis, while other parts of Laikipia succumbed to violence (J. Lenanyokie, personal communication, August 2017). Thus, using the lessons learned from Laikipia, the project was designed to maximize opportunities for interethnic association, dialogue, and collaboration in ways that could enhance this capacity. The objective was to establish an embedded cadre of Baringo PGs who had the skills and motivation to prevent and manage conflict, and develop their ability to pass on these skills and transformative narratives within and across pastoralist communities.

MBBI's role as catalyst, facilitator, and mentor supports volunteer peacebuilders to do their own work more effectively and access the resources they need. The basic project design provided for a tiered training and mentoring process, with MBBI training pastoralist trainers, and those trainers training and mentoring the designated PGs. To ensure inclusivity and process ownership, each community was directly asked to select three women, three warriors/youth,⁷ and four elders (typically male), to represent them as their PGs. Trainings were designed to give the PGs a safe space to learn together and bond across ethnic divides, create a common narrative for peace, and strategize for building peace between their communities. The project ultimately provided support for PGs to lead both single-community and joint community meetings, as well as warriors (key conflict actors) meetings, convened by and for pastoralists from these communities. Local staff and a project coordinator were funded to support the volunteer leaders in continuous communication, learning, and adaptation to emergent realities in the field. Government officials at all levels (from the NCIC to Governor to ward administrator) were kept informed and invited to participate in community meetings, strengthening linkages between the communities and external government systems. Perhaps most importantly, the funding came from an organization of practitioners and researchers at USIP, who provided tremendous flexibility to

adapt both schedule and design throughout the process, albeit within budget confines, based on current conditions and emergent realities.

Such flexibility was required almost immediately. When the proposal was submitted, there was significant ongoing violence in Baringo, and over 50 people had been killed in the months leading up to the proposal submission in October 2014. Several activities had been initiated by the government and local organizations, including such interventions as the convening of peace meetings and security operations. Early project meetings convened with Nairobi-based Baringo professionals noted that “government has been coming in to resolve the issue but they are not seeing the positive impacts. That is, nothing is happening; the DPCs [district peace committees] also have failed in peace initiatives” (MBB-KI internal meeting notes, 2015). Police corruption and purchase of guns by government officials for their ethnic communities were also cited as further provoking more violence. A peace network formed by a group of Pokot professionals was working primarily with Pokot warriors, but they reportedly ran into resistance when they tried to meet with the Tugen professionals in Nakuru. Initial project meetings with professionals made it clear that Nairobi professionals from the three communities had hardened their positions in support of their communities. Mistrust and anger between the professionals were aggravated by the Nairobi IlChamus professionals refusing to meet with those of Pokot and Tugen.

The issues with the Nairobi professionals exposed challenges with the local implementing partner organization and project staff. It became clear that the local coordinator did not have the experience needed to establish connections to the necessary ethnic community networks both among Nairobi professionals and on the ground in Baringo. Additional meetings for Baringo professionals were held, which successfully brought together key local opinion leaders and finally led to establishing the critical ground networks in Baringo. A second issue was an internal power struggle within the local partner organization, and disagreements about how USIP funding should be managed and spent. Despite repeated attempts to mediate the issues, it was finally determined that this organization could not continue in a managing role. MBBI successfully resolved this crisis by enlisting two key professionals, who had been involved in the PAR and proposal development, to take on project leadership and create a new local implementation team. They selected a professional from each of the three communities—Tugen, IlChamus, and Pokot—which together became the Peace Guardian Core (PGC) group, with a clear mission, vision, and

values statement for themselves and the project as well as a revised implementation plan. While part of the design was proscribed by the need to convene focus groups, administer surveys, and collect monitoring data to test the USIP IMPACT monitoring and evaluation (M&E) tools, the implementation was led by this PGC, continuously drawing adaptations from new knowledge emerging from the networks.

The project was relaunched with a new design and an extended schedule seven months after the initial kickoff. The original project design was much more closely based on the LPC process, which relied on Nairobi professionals. However, it became clear during early project meetings that Baringo was geographically very different from Laikipia, and required more PGs spread out over a larger area. In addition, conditions had changed since the county governments had formed; professionals were now mostly based in Baringo rather than in Nairobi. This new reality was reflected in a redesigned training program to be led by the PGC trainers and conducted in Baringo for a mix of ground professionals and community members designated by their communities.

Training

MBBI's approach to developing local curriculum involves working collaboratively with local partners. This involves co-creating a local curriculum they will deliver, identifying different dimensions to existing local conflict resolution methods, engaging with participants to find out what would be helpful for their communities, and working together to integrate existing practices with what is more commonly used in global practice. This is approached as a partnership between trainer and trainee. MBBI first trained the PGC leadership and their project coordinator as PG trainers in a manner that was responsive and rarely prescriptive, leaning heavily on elicitive training sessions. The training component concentrated on conflict management and mapping, facilitation and dialogue, ethical mediation and group dynamics, preparing for and managing focus groups, and practical skills for working with communities. The MBBI trainers and PG trainers then jointly developed the local curriculum, where strong attention was paid to cultural sensitivities regarding the way PGs could be hesitant to openly and constructively discuss their conflicts in a multiethnic setting. They specifically included training in trauma sensitivity, since they could expect that many of the PGs had experienced significant violence. Members of communities who usually had no part in conflict resolution, such as women and youth, would be given a voice potentially for the first

time. This needed to be facilitated and softly guided by the PGC trainers. Thus, their training needed to reinforce that difficult conversations and unpleasant outbursts were an inherent part of the process, and that their responsibility as local trainers was to guide the trainees past that.

Besides accounting for a range of literacy levels and multiple languages, there were also necessary adjustments to the way training was designed, from individualistic to collective⁸ methods. Storytelling and role-plays were incorporated as strong components of local practice. It was further critical for the trainers to be aware of the differences in individual community cultural practices as distinguished from stereotypes of each other. Such as, the way one community reportedly could never commit to anything until they had talked to the collective, and thus no decisions could be made in interethnic meetings, or the way another community believes that their tribe “never killed women and children during raids but one of the other communities was routinely guilty” (of that practice). All these issues were discussed collaboratively, integrating the PGC’s own cultural sensitivity and practical wisdom into the curriculum.

Because it was unknown how experienced the new PGC members were in training, MBBI encouraged them to include a Kenyan trainer from another organization who had been deeply involved in the LPC. However, as time progressed, it became clear that the PGC felt this person had been imposed on them. Recognizing the need to honor the PGC’s leadership and team choices, MBBI supported them in successfully conducting the second training themselves. A total of 63 community members and professionals were trained over the two sessions in conflict management and mapping, facilitation and dialogue, ethical mediation and group dynamics, bias recognition, perceptions, active listening, and conflict sensitivity. These trainings included examples of activities in a training environment that served to break down barriers between the participants, helped them work together as a team, and allowed the trainers to demonstrate and model cross-cultural and gender unity. The trainings also provided a critical opportunity to bring all PGs, leaders, and staff together to bond, strategize, and form supportive networks.

Implementation: Interethnic Bonding, Association, and Cooperation

Project implementation was structured around PG residential weekends (driven by training and funder data collection needs) and community meetings where we could support and observe the PGs engaging with

their communities. Field staff kept in contact with each PG to track their activities between meetings and gather stories from the field. While a key project objective was to increase community conflict resolution skills, the design was also intended to provide maximum opportunities for interethnic bonding, association, and collaboration.

To contribute to this, the PGC integrated the IMPACT focus groups as community brainstorming exercises, and had each community report back to the larger group. Focus groups were initially separated by ethnic communities; however, the PGC observed that this seemed to just solidify the community narratives about the other communities and increase agreement about their community grievances. For the second residential, they instead divided the groups by women, youth, and elders. The cross-community groups provided an opportunity for the PGs to hear from each other and identify shared issues and concerns. The focus group element of the M&E program therefore shifted into an integral part of interethnic bonding and cooperation throughout the project, and not just data collection.

To facilitate the PGs' transition from training to practice, the new PGs were then introduced to their communities in a series of *barazas* (local community meetings), first by community and then in an interethnic baraza, with strong participation by local government officials. The barazas connected with more than 1000 community members, and provided an opportunity for MBB-KI mentors and the PGC to observe the PGs' interactions in public meetings, and what kind of further support and guidance they might need. The PGs were introduced to the communities and performed role-plays of how conflict could be resolved peacefully, to the great amusement of the participants. Yet it is interesting to note that this warm welcome for the PGs and "outsiders" such as the project team members was not initially assured. The PGC had heard that the Baringo people thought that the project organizers were "there to make money using their name and problems," reflecting community fear of being used by outsiders. However, the teams' approach of reaching out to the communities where they live was shown to be appreciated here, as it was in the LPC. The PGC noted that the fact that all communities encouraged the PGs to meet with their warriors at their *kraals*⁹ was further evidence that the communities felt the organizers' intentions were honorable.

The communities also requested more barazas be held even deeper into hot conflict areas. The project team, however, observed that the traditional baraza format seemed to have been co-opted by the government. They felt too typical of government meetings, "where nothing but talking

was ever accomplished.” An idea emerged to provide support for a “mini” peace caravan deeper into the remote villages, with a greater focus on listening and learning. There was also concern about limited warrior participation in the barazas, considering their obvious role as potential spoilers of peace, and the need to reach them. Although the PGs capitalized on an opportunity to talk to a grouping of armed Pokot warriors washing clothes at the river, and stayed after the barazas to bring these warriors to meet with the Tugen community that was being raided, key conflict actors were not in attendance; thus, no agreements could be made.

Although field staff reported that after the barazas, the PGs were practicing their skills at home, cross-community communication and collaboration between the PGs was still limited. More cross-community bonding activities between the PGs were added to the next PG residential meeting, and members of the Laikipia peace committee came and shared their stories about what they did to sustain peace in their communities without external support. The increased bonding opportunities led to a significant observable increase in cross-community alliances and subsequent coordination on security and development issues. The PGs used their time together to strategize and plan the peace caravan deep into conflict hot spots, deemed critical to addressing emergent realities.

The peace caravan was implemented the following month with individual communities in Tangelbei, Kakir, and Komolion, and a joint meeting in Mukutani. Throughout these meetings, there was general agreement among participants that meetings still needed to be convened with the warriors. However, the PGC felt that there were insufficient funds remaining to do such meetings effectively. Based on principles of *do no harm*, the PGC chose not to move forward with such meetings at that time.

During the final residential, the PGs participated in extended dialogues with each other over the most significant changes they had seen in their communities. They created a new Baringo peace song together, and spontaneously formed a steering committee to keep the momentum going. The PGs further decided to form a community-based organization that would work to bring development peace dividends to all three communities. Each PG was provided a certificate of completion, a printed list of all the PGs and their contact information, and a generous airtime card to support ongoing communication.

Following the residential, due to good planning and efficient implementation by the PGC, remaining funding allowed the team to plan the critical warriors’ meetings, with a time extension from the funder. Leadership was

delegated to the PGs from each community to convene meetings with their warriors. The PGs reported back on these meetings, and then the PGC, MBBI, and the PGs convened a joint warriors meeting, which successfully concluded with points of agreement between the warrior groups that were blessed by the elders. The agreement included changes such as unblocking roads for improved security, reopening Kiserian's market, as well as planning to meet for further peace developments.

With the benefit of a flexible and responsive funder, the process described above successfully captured learning as it emerged, and continually responded as local contingencies, constraints, and opportunities arose. This included adapting to staffing shifts, organizational structure changes, training revisions, participatory design changes, and additional meetings that could never have been imagined at the beginning of the project, responding to and capitalizing on what was being learned throughout the process.

ACHIEVEMENTS

Reports from the teams' drivers experienced in transporting NGOs, government officials, and community members, all shared that no one had previously held meetings at the village level that brought all three communities together. The impact of this strategy, to build trust between communities, create a network of trained local PGs, and bring communities together across ethnic divides, was exhibited across all communities. Over the course of the project, cattle rustling, raiding, and the sound of gunshots decreased significantly, with regular raiding and violence dropping to one minor theft incident every month or two. Through staff collection of stories and most significant change discussions, the PGs reported significant improvements in security and interethnic relations and cooperation by the close of the project, resulting in a new freedom of movement across community lines, interethnic friendships, development and business activities, and reopening of schools, markets, and roads that had been closed for security concerns. Social media was reportedly free of hate speech and incitement, and there was a shift in the way communities spoke in meetings, away from blaming and othering, to specific concerns for joint problem-solving. The PGs were engaged with each other, the elders, and local chiefs across community lines and with government in addressing and resolving conflicts. Government officials noted that the PGs were involved in conflict management of all disputes.

The PGs reported that now both traditional and “peace guardian methods” (such as inclusive teams of PGs convening interethnic peace meetings) are used to resolve conflicts. Rather than the traditional overrepresented peace and conflict stakeholders taking control (chiefs and elders), or government interventions that politically select participants for peace meetings, PGs and warriors now convene and lead intergroup dialogues. In this way, the project accomplished its objective to *promote sustainable peaceful coexistence and the application of mediation skills to resolve conflicts within and between the Tugen, IlChamus, and Pokot communities of Baringo that are suffering the impacts of persistent conflict-driven violence*. Cycles of violent conflict were interrupted through increased association and trust building. Communities were now for the most part peacefully coexisting in an environment characterized by sustained nonviolent resolution of conflicts, improved livelihoods, increased social stability, and economic development.

The Baringo process also incorporated the primary factors that were identified as contributing to the LPC’s sustainability. The PGs were key to outreach and careful identification of leaders and key actors, which built community ownership of their role as peace leaders. Community ground networks were developed and nurtured, specifically by the development of PGs as peace leaders in Baringo. Ricigliano (2012) articulated a *SAT model* for effecting lasting, systemic change through transforming structural, attitudinal, and transactional societal domains, and such elements were reflected in both efforts. New structures such as interethnic steering committees and community-based organizations were created, inclusive of women, youth, and elders. Increased interethnic association, interaction, and constant mingling of people resulted in strong bonds, friendships, and partnerships. Community ownership of shifts in attitudes is reflected in the people’s recognition that it is their responsibility to ensure peace lasts, supported and reinforced by the network of peace actors established. New transactional methods, including neotraditional interethnic conflict resolution, are now practiced in both Laikipia and Baringo: “We have now followed our ways of resolving conflict and the ways that the professionals taught us” (Samburu Elder, confidential interview, 2014). In addition, community members are taking responsibility for returning stolen livestock and providing restitution/reconciliation without necessarily involving government. Reflecting sustainability, meetings with the PGC in early 2018 indicated that the Baringo PGs have continued to remain actively engaged in community meetings, and interethnic tensions have remained low throughout the areas involved in the project.

CHALLENGES AND LESSONS LEARNED

From the beginning, we have hesitated to call the LPC a “model,” because that implies a linear plan of action to replicate. By taking the lessons learned from the PAR research and using those to create an emergent peacebuilding design framework, we created a set of empirically based concepts to guide a process. Our actions were ultimately defined by how we could, in the Baringo context and culture, create conditions for emergence and self-organization, effectively capture and utilize emergent phenomena, and integrate peacebuilding best practices. Although the team pulled from what the LPC did, the process mostly emerged from the networks themselves. The implementation steps outlined in the proposal a year earlier looked very different in practice as the pastoralists did what they knew needed to be done to meet the project objectives.

Shared elements of emergent peacebuilding design that carried forward from the LPC into Baringo involved processes and actions that arose from social networks. All activities were rooted in awareness and incorporation of cultural sensitivities and common wisdom of the local communities. Solutions and methods were elicited from the community through dialogue and networking. Community ownership was a key value among all organizers, and all participants were actively engaged. Regular debriefings were held to learn and adapt. And both processes were multiethnic and inclusive of women and youth, versus traditional approaches conducted by male elders.

It is important to note that whereas the LPC was a passionate response to a great tragedy, recreating such a process without such a catalyst is a greater challenge. In the LPC, Nairobi-based pastoralist professionals from Laikipia mobilized themselves with the minor support of an MP. Only a boardroom and some teas were provided, and they had to gather the resources they needed. By comparison, in Baringo, the external NGO role as catalyst and facilitator helped bring community action to an area with endemic violence that caused pain and fear, but had not erupted to the point of extreme outrage. The professionals—in this case the pastoralist PGC—convened and mobilized the Baringo initiative with the external help of MBBi, unlike the purely emergent LPC process. It is difficult in the short term to discern whether the international support, by covering expenses for both the leadership and participants, had a distorting effect and limited local initiative and subsequent self-organization; however, 18 months post project, the PGs had registered a community based organization, and were actively engaged in working with local government to avert

potential raids during the drought crisis of 2017. We were concerned about suggestions that the large stipends paid in the 2010 KTI peace caravans had distorted the Nairobi professionals' motivations. Many were no longer personally connected to the communities they were talking to, and were suspected of being "more interested in showing up for payments than for building peace," which seems to have impacted the caravans' effectiveness. Thus, no stipends were paid in Baringo. There, external funding allowed us to remove barriers to participation and initiate mobilization for action before the conflict triggered another massacre, but still could be a factor in reducing local ownership of the process, and therefore sustainability.

The PAR research identified certain activities as key to the LPC effectiveness that were confirmed as valuable in Baringo. First, the PGs resolved their differences and bonded together as peacebuilders, then went to speak directly to affected communities on the ground. We cannot stress enough how unfortunately rare yet critical this is, and how appreciated it is by the communities. Second, a network of multiethnic, inclusive peacebuilders was developed, who used their combined practical wisdom and cultural understanding to collaboratively assess the cultural complexities, conflict, and key conflict drivers, and identify and engage key actors. They also became insider mediators for their communities. Third, politicians and elite were not allowed to co-opt the process. Fourth, strategic messages arose from the networks and were delivered by these "sons and daughters" as well as elders, women, and youth community leaders in a way that modeled interethnic and inclusive collaboration. Community meetings brought out elders, who could effectively share peace narratives and connect to previous times of peace, and women/mothers, who could connect the pain of war across communities. Fifth, the staff and leadership met regularly to consider and adapt to new information. Sixth, there was intentional community ownership of process and solutions. These all created optimal conditions for emergence, self-organization, and community capacity to sustainably generate local solutions and outcomes.

There were other lessons learned throughout this process that will inform us moving forward. In trying to meet funder requirements, the process may have somewhat restrained our local partners from fully mobilizing and capitalizing on what they were learning from the networks. The LPC did not try to train anyone, or bring people together for focus groups and surveys, so all resources were focused on bonding professionals and conversations at the ground. The Baringo process had more structure, since we were creating a cadre of local PGs, rather than using Nairobi-based professionals, and had certain funder requirements to meet.

While the training and M&E requirements served to bring together the PGs for alignment on a common goal and bonding, the M&E tools inadvertently created too much of a focus on mediation skills building. Field reports indicated narratives, dialogues and storytelling, and sharing were used most effectively at the local level, and will become the focus for future trainings. The trainings, in some ways, had more value as a safe space for these warring communities to come together, which for some was the first time in many years. Being trained as PGs gave them important social capital for bringing people together to talk, which may have been at least as productive as the specific tools they learned. This supports Krätli's (2001) observation that pastoralists place an extremely high value on such social capital, and thus it is a priority in everything they do. In the pastoralist context, measuring this, as well as new relationship forms, may have more value than measuring specific skills they learned, and resources could be focused on supporting more community interactions.

A key change in context since the LPC is devolution, which the full meaning of became apparent during our initial struggles with the urban professionals. After the LPC, the urban professionals went back to Nairobi and did not return. Professionals now live and work in the counties, and can participate directly, where they have an ongoing connection to their communities. It is still necessary to engage urban professionals to ensure they are aligned with the peacebuilding goals, and are no longer supporting conflict at home. But the focus has shifted even more significantly toward communities, and mixing professionals and community members in a common PG corps.

Over the course of the project it also became clear that more attention needed to be given to the geographic distribution of PGs in the planning stages, as additional areas were identified that were missing local PG support. This and the realization that more warrior meetings were needed are good examples of why grassroots peacebuilders need funders to provide contingencies for peacebuilding projects to capitalize on emergent realities. We were extremely fortunate to have a collaborative funder that was very understanding of the dynamic situation on the ground, but there were, as is typical, no additional funds available beyond the initial grant to meet such emerging needs.

New ideas regarding the location and format for meeting with the communities also emerged from our experiences. Barazas, traditional meetings, were initially used as the way to bring the communities together to meet their PGs and dialogue. Yet we discovered that the baraza format is

now used by the government, and the communities have adopted a certain way of acting in those meetings that limits local expression, as certain individuals monopolize the meetings; they are no longer dialogues. Although we knew from the LPC that it was critical to not let politicians co-opt the process, the cultural norms apparent in the baraza format was unexpected. The team and the PGs together decided to move meetings, as dialogues, deeper into the communities to have direct conversations where the conflict is most intense, bringing government representatives along as a partner rather than as a convener.

We also observed in these meetings that more empowerment of women and youth was needed to strengthen their influence and confidence. While they could be outspoken in the PG meetings and focus groups, their participation and leadership in the communities' peacebuilding processes was still muted or limited to presence or opinions given, rather than decision-making. Although the PGs modeled gender and youth inclusivity, it does not appear to have been emphasized sufficiently to shift cultural dynamics toward more inclusion. Traditionally, women are asked for input, but are not literally in the circle. By comparison, the LPC reportedly brought women and youth "to the table" in such a way that they now sit weekly with male elders on peace committees, making decisions together. Many variables could have contributed to that, including the smaller geographic area, more community meetings where women and youth expressed themselves, the openness of local male leaders to accepting them. The success of the Baringo warriors' meetings, which were spearheaded in part by PG youth, provides a positive example of possible entry points for youth, as their suggestions were well received by the elders and the results were positive. Based on this, our next project will test leadership and advocacy training with women and youth first, and then bring in the elders for joint PG training.

Administratively, the lack of organizational structure for the volunteers was the most significant challenge in terms of administering the grant. Although MBBI has a small US staff, the project teams are largely volunteers, as are their local partners. In-country, there are no MBBI offices and staff to provide daily oversight. We found that the budget allocated for in-country staff support was insufficient to hire a qualified consultant who could truly support the local volunteers, who were planning and implementing a very active project with extensive M&E requirements. Managing receipts in a cash society is particularly challenging and time-consuming. One of the key organizational learnings from this process is that a qualified, on-site manager, as

well as an MBBI project manager, should be fully funded in future grants to manage administrative responsibilities, especially when there is an intensive M&E program. This would allow the PGC and MBBI volunteers to focus on implementing, learning, and adapting to achieve the project goal.

Overall, using an NGO as catalyst and facilitator to support pastoralist-led peacebuilding in Baringo provided successful outcomes that signify the value and importance of this approach. Particularly in Kenya, this form of peacebuilding can contribute to resolving long-standing postcolonial issues that the formerly centralized government has been unable to resolve through top-down, westernized efforts. Beyond strengthening local resilience against violent conflict, building a network of committed insider mediators with cross-community relationships builds power and voice at the ground, connected across all levels of government, that can effectively participate in resolving the postcolonial land and resource issues peacefully.

CONCLUSION

MBBI's support of indigenous peacebuilding provides an example of how we can address the limitations of current approaches to complexity within the existing Western-centric peacebuilding paradigm (Chigas & Woodrow, 2009; Fisher & Zimina, 2009; Mac Ginty, 2008; Patton, 2011). The Western focus on productivity and results can easily co-opt a local, emergent process with a *better way*. Western mediation approaches dominate peacebuilding practice and "tend to be linear, staged, rational, solution focused and individualistic in orientation" (Bagshaw & Porter, 2009, p. 13). "This 'liberal peace' or 'Western peace' effectively minimizes the space available for indigenous and traditional approaches to peace-making" (Mac Ginty, 2008, p. 140).

John Paul Lederach (1995) was a leading voice against using a Western approach to mediation in non-Western international settings, arguing that such approaches retained a "residue of imperialism" (p. 38). He described such *prescriptive* approaches to cross-cultural mediation training as simply a transfer of knowledge from an expert trainer/facilitator. By comparison, MBBI aspires to his *elicitive* approach, which embodies a collaborative exploration of neotraditional conflict models that reflect local context and culture, and honors alternative discourses. This latter approach was taken in the WTPG project, designed and led by pastoralist peacebuilders.

MBBI's role is to support these local peacebuilders in doing what they do best, for their own communities, and share their story with the world.

As Carins (as cited in Peace Direct, 2011) notes, there is a “large body of work in emergent and transformative change that is done largely by local peace builders but is largely unseen.” MBBI’s struggle to adapt and implement a data-intense M&E program on a minimal budget in remote setting with volunteers is testament to why this work is often unseen. Fortunately, organizations such as the Alliance for Peacebuilding, Peace Direct, and universities are shifting the discourse toward greater understanding and support of locally led peacebuilding efforts.

Pastoralist-led peacebuilding provides us with an example of how emergent peacebuilding design inquiry can further shift the focus from a teleological design to a focus on the elements of peacebuilding that we know are effective and sustainable. Wheatley and Frieze (2008) described the *lifecycle of emergence* as the way “living systems begin as networks, shift to intentional communities of practice, and evolve into powerful systems capable of global influence” (p. 2). For pastoralists, who start with strong social networks, emergent peacebuilding design honors their cultural sensitivities and practical wisdom, while connecting them to international peacebuilders in a way that amplifies their work and contributes to peace writ large.

Yet these lessons extend beyond Kenya’s pastoralists, and contribute to the current paradigm shift toward inclusive, participatory, and systemic peacebuilding. Shifting the lens from what outcomes do we want to produce to how do we support the conditions for emergence and shared vision supports people in generating their own forms of peace. We know from theory and praxis that when people self-organize and take ownership, their solutions are more durable and their resilience to violent conflict is strengthened. The context and specific methods are less important than creating the conditions for emergence and self-organization, a diverse stakeholder-owned process that effectively captures and utilizes emergent phenomena, and one that integrates peacebuilding best practices.

NOTES

1. The conclusions from this dissertation research (Ervin, 2016), developed with the participation of 17 Kenyan and MBBI co-researchers, provide the empirical and theoretical basis for the lessons learned and design of the project discussed in this chapter.
2. Cattle rustling is a term that covers all livestock raiding.
3. As noted in the United Nations Development Programme (UNDP) Guidance (2014, p. 9), “insider mediation” has not yet been defined in

conflict resolution literature. UNDP defines it as “[i]ndividual(s), groups, entities or institutions possessing high levels of legitimacy and trust with the individuals and institutions involved in a specific conflict setting by virtue of their relationships and reputation with the parties and who/which possess a unique ability to directly and indirectly influence the conflict parties’ behaviour and thinking.”

4. “The long-term goal of peacebuilding programs is generally encompassed within the concept of *peace writ large*, a term developed by Mary B. Anderson and Lara Olson (2003) and used to describe changes at the broad level of society that include stopping destructive conflict and violence and building a just and sustainable peace. It refers to a preferred state of human existence provided by cumulative peacebuilding at all levels (Anderson & Olson, 2003; Anderson, Chigas, & Woodrow, 2008; Chigas & Woodrow, 2009). *Peace writ large* was introduced to address the lack of vocabulary to define peace at the broader societal level (CDA, 2009; Chigas & Woodrow, 2009)” (Ervin, 2016).
5. There is no universal agreement on the definition of *emergence*. Emergence is generally defined as the manner in which patterns and complex systems develop out of the multiple elements of relatively simple interactions. In this chapter we use Goldstein’s (1999) initial approach, which defines emergence as “the arising of novel and coherent structures, patterns and properties during the process of self-organization in complex systems” (p. 49). This is distinct from the simple definition and common usage of the term to indicate appearance or development (Ervin, 2016).
6. Peace Guardians are pastoralist volunteers, selected by their communities, who are committed to peace in and between their communities, and designated as their community leaders for peace.
7. Youth in Kenya are defined as young men and women 15–30 years of age. Pastoralists further organize groups into cyclical age sets corresponding to a set of years, recurring over generations (Keesing, 1981). In general, boys who reach a clan’s age criteria at the start of each age set are circumcised and become warriors, then progress to junior elders, and then various classes of elders. Samburu age sets are established every 15 years (B. Nabaala, personal communication, April 2014), while others could be as short as every 5–6 years (Keesing, 1981).
8. Triandis (2001) distinguishes collectivist cultures from individualist cultures, often referred to as “western.” “People in collectivist cultures, compared to people in individualist cultures, are likely to define themselves as aspects of groups, to give priority to in-group goals, to focus on context more than the content in making attributions and in communicating, to pay less attention to internal than to external processes as determinants of social behavior, to define most relationships with ingroup members as communal, to make more situational attributions, and tend to be self-effacing” (p. 907).
9. Traditional remote village surrounded by a thorn-bush branch fence.

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Interwoven Conventions, Innovations, and Generations: Youth Development Through Conflict Resolution Training in North Africa

Julie A. Hawke and Selma Talha Jebril

INTRODUCTION

Groups of young people aged anywhere from 15 to 30 years old crowd around make-do tables in the dusty, spacious, concrete room of a government-sponsored youth house. On those tables are flip-chart papers and markers, and in the penetrating heat of Morocco, icebergs are being drawn. The participants have been given a mediation scenario by their trainer of a couple getting divorced, and groups are busily scribbling the positions and interests of the hypothetical parties above and below the depicted water line. Someone raises their hand to ask the trainer, “Have you really mediated a divorce?” It is a legitimate question in a setting

J. A. Hawke (✉)

Peacebuilding and Youth Development, Bradford, West Yorkshire, UK
e-mail: Julie@howtobuildup.org

S. Talha Jebril

Conflict Resolution and Evaluation, NY, USA

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T. P. d’Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building,
Rethinking Peace and Conflict Studies*,

https://doi.org/10.1007/978-3-319-71102-7_7

where divorces remain uncommon, and no one in the room had heard of a community mediation center, let alone its use. The trainer assures that they have, and the training continues with a mediation toolbox of active listening, reframing, and maintaining neutrality.

Of what use is divorce mediation training to a smattering of youth in a small Moroccan town? This workshop, as well as the others like it in Tunisia, was just a ‘tip of the iceberg’ in a larger series of capacity-building initiatives catalyzed by geopolitical and socioeconomic forces far below the water line. With waves of popular protests, reforms, a democratic transition, economic hardships, and increasing ideological polarization within and across borders, the discourse about North Africa from 2011 onward has largely been characterized by conflict and risks. Countries and communities in the region are each in their own way walking tightropes of modernization, religiosity, a maturing demographic structure, and changing governance. One consistency in the Maghreb, however, is the depiction of the youth populations as drivers of both its challenges and its opportunities. Amidst fears of the youth bulge, high unemployment, disaffection, and extremist recruitment, and after witnessing the force of youth-led movements in the Arab Spring, young people are seen both as threats to be mitigated and as keys for constructive change. This chapter is informed by the authors’ participation in the implementation of analogous conflict resolution training programs that each responded to this bifurcation with a shared underlying logic: in order to become agents of peace, youth needed to have access to a set of skills and associated ethics such as communication, nonviolence, advocacy, and negotiation. Moreover, promoting a ‘culture of mediation’—the peaceful settlement of disputes and grievances, transformed relationships and processes, standards of accountability, inclusivity, and fairness—was intrinsic to the larger goals of which mediation trainings were a part, namely leadership development, civic engagement, and youth inclusion.

Carried out within larger organizational strategies and teams, the ensuing observations and conclusions represent the authors’ individual views from the various capacities in which they served, spanning three projects in Morocco and Tunisia from 2013 to late 2015. Selma Talha Jebriil was the Monitoring and Evaluation officer for the Search for Common Ground (SFCG)–Morocco project Increasing Civic Participation of Urban Youth, which aimed to increase the constructive engagement of Moroccan youth in local governance. At the same time, Julie Hawke was a US Peace Corps volunteer independently working with community counterparts on a National

Youth Peace Summit in partnership with the Sidi Slimane Ministry of Youth and Sports and SFCG–Morocco. Finally, Talha Jebri was the senior Design, Monitoring, and Evaluation officer (DM&E officer), and Hawke was an international intern for SFCG–Tunisia’s project Empowering Young Change Makers in Tunisia, which sponsored youth-led organizations in their efforts to effect positive change in their communities and constructively participate in local civic affairs in the newly democratized country. SFCG is the largest dedicated international nongovernmental organization (NGO) working in the field of conflict transformation in 34 countries worldwide. The reflections herein are written with respect for the 23-year history of SFCG in the Middle East and North Africa region and in the spirit of SFCG’s even longer history as a leader in fostering reflective practice in the peacebuilding field at large.

Much like the icebergs illustrated above, the mediation training conducted looked conventional on the surface, using many institutionalized practices and tools commonly employed globally. However, looking at the deliberate utilization and transfer of the substructure of mediation—its transversal skills, values, ethics, and cultural orientations—provides unique insights into evolving cross-cultural conflict resolution training and its emergent functions. If equipped with the associated skills, values, and ethics of conflict transformation, can youth be viewed as reliable resources to solve and transform the societal problems for which they are frequently assigned fault? In a region rich with existing paradigms for resolving social disputes, how does training youth in diffused transnational norms of conflict resolution intersect with traditional processes of reconciliation hinging on seniority and authority? What are the ways youth currently engage with conflict in their communities, and what form did partnerships take with programs centered on ‘youth capacity building’? What models of training were used? How context and culture inform them, and how can these models be further adapted to existing concepts and practices? Finally, what form does mediation take outside of its institutions when in relationship with broader goals of social and political transformation? These are the questions and reflections that will arise in this chapter as we peer beneath the water line of conflict resolution training programs for youth in North Africa to consider cultural variation, utilization, partnering, and hybridization.

A brief background on the countries represented, followed by a broad exploration of the historical and current frames of reference for conflict resolution practices in North Africa, will set the stage for the succeeding focused reflections.

OVERVIEW OF MOROCCO AND TUNISIA

Morocco and Tunisia are two of the five countries that constitute the ‘Maghreb’ region, or the Arab West, located in North Africa. Due to their location, the histories and cultures of each are a rich blend of African, Amazigh (Berber), Arab, Ottoman (in Tunisia), Roman, and European influences. French colonial rule for both countries ended in 1956. Today, Morocco is a parliamentary constitutional monarchy, and Tunisia is a unitary presidential constitutional republic. Algeria separates them to Morocco’s east and Tunisia’s west.

Morocco has a population of 33 million and a median age of 26, with the majority of its citizens living in rapidly growing cities along the coast (United Nations, 2013). Geographically the smallest country in North Africa, Tunisia has nearly 11 million inhabitants, with a median age of 29 (United Nations, 2013). According to both countries’ constitutions, Islam is the official state religion, and Sunni Muslims make up 99% of the populations (CIA, 2013). Morocco’s two official languages are Arabic and, in the wake of a new ruling in 2011, Tamazight, commonly known as Berber. Arabic is the official language of the more ethnically homogeneous Tunisia. French remains widely used in business and commerce, higher education, and government for both countries.

Both Morocco and Tunisia are classified by the World Bank as lower-middle-income countries with Gross National Income (GNI) per capita at \$3030 and \$3980, respectively (World Bank, 2012). In recent years, Morocco has enjoyed a flourishing economy, represented by a gross domestic product (GDP) growth of 4.4% in 2015, which has contributed to a reducing poverty rate, declining from 8.9% in 2007 to 4.2% in 2014. In contrast, Tunisia’s economy has drastically suffered from its political instabilities, with a GDP growth in 2015 as low as 0.8% (World Bank, 2012). As reverberations of the Tunisian revolution, the country suffered two terror incidents in 2015, the Bardo Museum and Souss attacks. These attacks, on top of the new government’s challenge to balance political cohesion with economic and social pressures, further affected the country’s main economic sectors: tourism and agriculture.

Indeed, in recent years, both countries have experienced important political changes. Tunisia is credited with symbolically giving birth to the Arab Spring in 2011 with the mass protests that ended Zine El Abidine Ben Ali’s 23-year rule. The political transition concluded with the adoption of a new constitution in 2014 and the successful parliamentary and presidential elections held in 2015, marking the beginning of a new government’s five-year term. Morocco had less drastic outcomes from the pro-democracy protests

of 2011, but they did lead to King Mohammed VI's implementation of a wide-range of social, political, economic, and environmental reforms, including a new constitution which extended new powers to parliament and opened the door for direct elections of regional councils.

HERITAGE OF CONFLICT RESOLUTION IN NORTH AFRICA

The multiethnic, multicultural, and multireligious societies of North Africa have a long history of responsive and systematized forms of conflict resolution. The heritage of Amazigh, pan-African, and Arab Muslim-majority inhabitants consists of long-embedded employments of a third party in traditional forms of mediation, arbitration, and reconciliation. Contemporary conceptions of these forms of conflict resolution are rooted in the inherited political, cultural, and religious philosophies and practices represented in this section.

As a powerful constituent of cultural norms and values, religion plays a major role in existential individual and social conceptions of peace. The teachings of Islam explicitly regulate both one's relationship with the divine and one's relationship with his or her fellow beings, providing a specific framework and ethos of conflict and dispute resolution. In this framework, *Wassata*, *Chafa'a*, *Sulh*, and *Isla* or *Musalaha*, all play instructive roles in understanding traditions for resolving conflict that derive legitimacy from Islam. They are hereunder introduced briefly.

Mediation (*Wassata*) is derived from the root of *wasat*, meaning middle, and is also referred to as *Al-Mashyu Bayna Al-Mutanaziinah*, or 'walking between the disputants' (Bouheraoua, 2008). Mediation is seen to epitomize the Islamic alternative dispute resolution (ADR) framework, has been the base for scholarship in conflict resolution, and holds a prominent place in Islamic law (Karmali, 2009). The Quranic verses and examples of the Prophet Mohammed (PBUH) which inform the study of *Wassata* include implicit principles that begin to make clear the religious contributions to an ADR framework. These include central concepts of self-determination, the addressing of each party's interests, the value of intervention, a balance of equidistant but known third parties, and a notion of reconciliation that includes the divine. Desired attributes of a third party rest on seniority, authority, networks, and the ability to suggest workable solutions.

Tabkim, or arbitration, predates Islam but has played significant roles in Islamic history and is explicitly transcribed in the Qu'ran. Traditionally, arbitration was practiced by *Oulema* (pl. *Alim*), Muslim scholars recognized

as Islamic law and theology experts, and the role was imbued with honor and status. With the power to issue binding rulings that ended disputes, they drew from principles of Islamic jurisprudence and communal and cultural norms. Today, arbitration is used as an alternative to litigation and is commonly applied to commercial or labor disputes. Depending on the arbitration agreement, an arbitrator conducts investigations, hears arguments, and issues decisions that are either binding or nonbinding.

Chafa'a, meaning intercession, refers to intervention on behalf of a party to find a beneficial resolution (Search For Common Ground Morocco, 2014a). Rather than an established process or set of procedures, it is a customary practice of a third party making a petition for resolution with or without the knowledge of a disputant, and it would conventionally apply to interpersonal or familial conflicts. Intercession can be a basis from which to understand the role of an authoritative third party that possesses enough respect and credibility to allow him or her to act on behalf of a disputant. Additionally, the intervention of a third party must inspire “values of forgiveness, mercy, justice, and benevolence” that the disputants will be able to accept (Search for Common Ground Morocco, 2014b).

Sulh, or conciliation, refers to the establishment of an agreement, truce, or settlement to prevent future conflict between parties or groups. A form of contract, conciliation illustrates the legal force that settlement agreements have in the Islamic tradition, where contracts are binding once they are voluntarily entered into; therein, the maintenance of amicable relationships is “dependent on legal and institutional guarantees obligating individuals to respect their transactional commitments” (Search For Common Ground Morocco, 2014a). It is a common form of ADR that is both ancient and modern, and is applied to many different kinds of disputes, including financial or consumer conflicts or a criminal or violent act in which a victim seeks reparations. A third party regularly consists of a committee of respected men, or *jaha*, to oversee the ritual, and they can employ both voluntary and coercive techniques to achieve settlement in a process that can compare with a mix of Western forms of arbitration, mediation, and restorative justice.

Often following or included in public or private rituals of conciliation or other conflict resolution processes are advances toward reconciliation. *Musalaha* translates directly to reconciliation, while *Islah* is related but means repair or reform. In alignment with the hierarchy of values and virtues in Islam, both prioritize above all the repair of relationships and the conservation of social ties. Forgiveness, restoring harmony, and communal unity are of prime importance. Both principles apply to but are not confined to interpersonal disputes, also extending to complex international or

violent conflicts, and do not have clear guidelines for intermediaries beyond a general call to promote dialogue and rapprochement.

Identifying the forms and resources within Islamic history and doctrine gives context to how they have traditionally been put into practice. In the Maghreb, these religious frameworks were integrated into informal and formalized third-party roles fitting Moore's (1986) descriptions of social network and authoritative mediators, which included tribal leaders, arbitrators (*Al Mouhakimin* or *Al Mouhakim*), elected commercial mediators (*Amine*), and religious leaders (*Imam*) (El Mahassine Fassi-Fihri, 2010). Tribal leaders, such as the Kabyle mediators of Algeria, were chosen by a *marabout* or clan of saints and were responsible for overseeing conciliation processes in intercommunity conflicts. Arbitrators and religious leaders conciliated family or civil disputes, and senior elected merchants mediated business disputes in their respective markets (Kormos & Liberto, 2006).

The mediators of the markets are a particularly resonant example of the heritage of North African conflict resolution. As described by Aomar Boum (2013) in his ethnography of Southern Morocco, weekly markets were a safe, even sacred space, often built around tombs of saints and used as refuges. It was morally wrong to threaten life, kill, or steal in a marketplace, and the ethics of markets were built on neutrality. Separate groups and diverse ethnic entities came together weekly, where no one had political or moral authority, significant especially in the diverse milieu of Arabs, Amazigh, West Africans, Muslims, and Jewish and Christian minorities that made up North African communities. The *amine* or market mediator was elected by his peers and worked beyond any judicial body to settle disputes that arose. There are records of amines serving as transaction witnesses, bargaining advisers, and dispute settlers in Tunisian markets as late as 1970 (Stone & Simmons, 1976). Market mediators are illustrative because their function represents a broader reality of intricate and overlapping forms of jurisdiction that included customary law (*'urf*), Shari'a law, and the later French legal system. Accepted systems of dispute resolution within customary law meant that litigants reaching a settlement (*sulh*) without the necessity of a judge or tribal council could bypass legal rulings based on the Shari'a (Boum, 2013).

The forms of conflict resolution presented here predate French colonization and the subsequent judicial systems and legal frameworks established in North Africa which fundamentally subverted these practices within customary law toward an agenda of modernization. While elements of traditional practice are maintained as a form of social regulation, especially in areas isolated from new forms of justice, conflict resolution in the form of alternatives to a predominant legal system lacked institutionalization in both Morocco and Tunisia until fairly recently. Subsequently, many traditional concepts

and practices were abandoned with the adoption of the French Civil Law that persists today. Recent years, however, have seen a resurgence of conflict resolution programs, namely ADR, driven by civil society, perhaps ironically, with a similar agenda of modernization. As the next section explores, mediation is in the midst of reemergence, but has returned largely with Western orientations. As Moroccan sociologist and mediation expert Hakima Laala disclosed in an interview, there is a need to ‘Morrocanize’ mediation in its current state. However, she also observed that traditional forms of conflict resolution are bound by the historical inequalities of their times, leading to conciliation that privileges the rights of some disputants over others and limits formally operating third parties by both gender and age (H. Laala, January 30, 2016). By necessity of a long history of diverse populations, foreign interventions, and a path of modernization, North Africa has a heritage of hybridizing forms of social regulation and access to justice that continues today.

RECENT LEGAL AND INSTITUTIONAL DEVELOPMENTS

While recourse to the courts has become relatively axiomatic in modern-day Morocco and Tunisia, the evolution and institutionalization of ADR have become increasingly important. Both countries have engaged in vast reformist projects to align with liberalized international governance and commercial practices, including using ADR processes as modernizing tools. Modernization, globalization, and the preeminence of international governance models have compelled Islamic countries to integrate ADR frameworks and programs into their institutional, judiciary, and legal bodies. These reforms have created new realities that touch many aspects of society and governance in a manner that some religious leaders have, at times, perceived as a threat to the role commonly played by traditions grounded in Islamic law. One thread in this skepticism arises from general concerns about the outcomes of Western economic, political, and cultural influences along with liberalization efforts in Muslim societies led by Western powers. More specifically, a perceived threat is that reforms are secular in nature and diminish the centrality of religious components in political–legal or socio-cultural contexts (Huda, 2010). Of note, there has been little effort by key actors to examine the conceptual foundations of conflict resolution and initiate impactful attempts to employ Islamic conflict resolution traditions.

Despite criticism, there remain efforts deployed nationally and subnationally to increase the awareness and application of a range of peacemaking and conflict resolution processes with concurrent agendas of modernization and building more cohesive societies.

Morocco

The integration of arbitration and mediation through legal channels, communities, and industries is starting to enter a maturation stage in Morocco more so than Tunisia. Morocco started these efforts long before the ‘Arab Spring,’ whereas Tunisia’s efforts in this sense only began in 2012. Beginning in the early 2000s, a proactive institutionalization effort of mediation began in response to an ineffective and overburdened legal system. Many credit its start to the national reconciliation commission of 2004, seen as avant-garde in the Arab world. Recognizing the mounting social pressure from the people, King Mohammed VI created the National Commission for Equity and Reconciliation—*Instance Équité et Réconciliation* (IER)—shortly after his succession of his late father Hassan II. The IER was a mechanism for documenting truth and determining institutional responsibility for the so-called *années de plomb* or ‘years of lead’ from 1956 to 1998, a term used to describe the years of political repression under King Hassan II’s reign, and also providing reparations in the form of material compensation to victims and their families. It is worth noting that Driss El Yazami, a human rights activist and former political prisoner who had spent 17 years in detention, headed the commission. The commission conveyed a strong message that conflict transformation is possible provided there is a political will, and it had notable effects. As Hakima Laala reflected, “I think we [Moroccans] no longer think in terms of confrontation, but society is trying to find a common ground to deal with conflict differently” (H. Laala, January 30, 2016).

At the creation of the commission, the Kingdom also established a state ombudsman to act as a concomitant national mediation body. In 2008, three years after the publication of the first report by the National Commission for Equity and Reconciliation, the ruling body passed an arbitration and mediation law (Code of Civil Procedure, amended 2007). This law institutes conventional contractual mediation as a confidential and flexible ADR procedure substitutive of formerly prescribed litigation. Now eight years after the law passed, much is yet to be done to develop the capacity for the law’s implementation. Some have suggested that the next development for the mediation field in Morocco is to revise this law to include a mandatory attempt at mediation before a court appearance. As SFCG Middle East and North Africa (MENA) Director Abou El Mahassine Fassi Fihri (2010) notes,

Such a mandatory system would have a significant impact on both the tribunal's current gridlock and the conflict resolution culture of the Moroccan society. Before adopting such a mandatory system, however, the Moroccan legislator must first ensure that the current pilot system has proven to be successful and learn from its first years of practice (p. 356).

Beyond legal contexts for mediation, ADR is advanced by education and civil society. Currently, at least three institutions of higher learning offer college-level degrees in mediation. Additionally, mediation and arbitration centers are functioning in Morocco's major cities, such as Casablanca, Rabat, Tangier, and Meknes. These offer training in mediation and arbitration and provide certifications. Civil society organizations, such as the ones running these flagship mediation centers, have championed the promotion and use of mediation more than any other actors. Chief among these is SFCG, which has been operating in Morocco since 2001 and aims to "transform the way in which people and institutions deal with conflicts and to develop a culture of mediation with a specific focus on youth" (Search for Common Ground Morocco, 2014a). Having trained and convened judges, lawyers, local associations, educators, and other local partners since the beginning of dispute resolution reform, SFCG has been the proactive primary advocate and provider of much of the capacity-building surrounding universal ADR practices in Morocco.

Tunisia

The fall of the Ben Ali regime in January 2011 instigated processes of political change and concurrent measures for transitional justice. An extensive public consultation system was undertaken with the purpose of inclusively crafting a transitional justice law. Ratified in 2013, the Law on Transitional Justice codifies a framework that includes a truth and dignity commission, memorialization of victims, institutional reforms, and standards for criminal prosecutions. Implementation of these measures has continued to move forward, despite significant challenges. Contemporaneously with this process, the Tunisian National Quartet, a coalition of civil society groups composed of the Tunisian General Labour Union (UGTT), Tunisian Confederation of Industry, Trade and Handicrafts (UTICA), the Tunisian Human Rights League (LTDH), and the Tunisian Order of Lawyers, was doing the intermediary work that would earn it the Nobel Peace Prize in 2015. The quartet's role and recognition as a credible third party validated the values of constructive conflict resolution and a source of pride for the country in an otherwise difficult transition.

The national efforts to promote social and political reconciliation paved the way for a series of civil society initiatives across the country sharing the same goals. The burgeoning civil society organizations played and continue to play a central role in raising public awareness about national conflict resolution processes and in integrating ADR approaches to numerous local and regional initiatives. Tunisia's National Order of Lawyers, a member of the Nobel-winning quartet, had twice attempted to form a formal body for mediation advocacy and were twice rejected by former President Zine el-Abidine Ben Ali. Now with restrictions on civil society groups lifted, the lawyers and other professionals have formed the Tunisian Association of International Mediation (ATIM) to advocate for ADR laws and provide resources and training for the field. Currently, civil cases throughout the country that opt out of litigation are referred to the head of a local municipality to act as a mediator, which is a time-intensive responsibility for local seats of government. The ATIM is looking to Morocco's community mediation centers for inspiration, and now with an unloosed civil society, ADR has the chance to thrive in Tunisia.

International NGOs were also unleashed, and many emerged to respond to what was seen as the country's needs. International Alert, Mercy Corps, United Nations Development Programme (UNDP), and SFCG, all opened regional and national offices in 2011 and had projects incorporating conflict resolution training with youth beneficiaries.

PROGRAMS OVERVIEW

In the broader MENA region, youth currently represent nearly one-third of the total population (United Nations, 2015). The size of this population alone has attracted much attention to those questioning if the high proportion of youth and a transitioning dependency ratio will be a 'demographic boom or bust' in the region. With drivers that include increased urbanization, political exclusion, and poor performing economies, research on "youth bulge" shows that countries with large youth cohorts consistently see higher levels of civic conflict and political violence (Urdal, 2006; Cincotta, Engelman, & Anastasion, 2003). In Tunisia, youth face high unemployment rates, currently 32%, and more significantly, 25% of young people aged 15–24 are NEET, not in employment, education, or training (OECD, 2015). Morocco faces the same challenges, with the Moroccan Ministry of Youth and Sports estimating that more than half of all young Moroccans are NEET (OECD, 2016).

The lack of opportunities delays transitions to adulthood and fulfillment of cultural and religious expectations, which become so uncertain that youth must improvise livelihoods outside of dominant economic and familial frameworks that may involve violent or risky behaviors. The slogan of the Tunisian revolution, ‘work, freedom, and dignity,’ speaks to the needs and priorities of a population coming of age. The ousting of Ben Ali also speaks to its potential. Yet now years after the revolution in Tunisia, there is a new saying: “The revolution is like a bus. The old ones sit on the chairs, and the youth stand up” (British Council, 2013). Grievances remain, in both countries, as young people still do not see the fruit of their efforts. According to Murphy’s (2012) interpretation of the larger Arab Spring, these perspectives are shared across the region as a generational narrative of exclusion, which “traverses public and private life and results from the political, economic and social failures of authoritarian regimes” (p. 3). With the narrative of exclusion continuing still, disillusionment and disenfranchisement deepen. Youth need to have a seat at the table, or on the bus, in their political, economic, social, and cultural spheres of influence. Despite criticisms and lingering resentment, the successes of toppling a dictator in Tunisia and amending the constitution in Morocco do not go unseen, and many young people are turning to civic engagement and political involvement in unprecedented levels to continue change-making. Other engagement, however, manifests in more marginalized populations as a call to violence. Tunisia has been shaken with the unwanted distinction as the country that sends the highest number of fighters to Syria and Iraq (US House of Representatives Homeland Security Committee, 2015). A lack of youth’s confidence in the potential for their communities or their lives within them is a risk factor for violence.

Ultimately, the capacity-building programs initiated in Morocco and Tunisia rested on the belief that a synthesis of conflict resolution and civic engagement trainings would leverage the capacity of young people to avert any violent futures predicted for them or their communities and help build a more positive peace. They were in response to the expressed need for inclusion, in which youth could feel a sense of belonging and power in a platform where their sociopolitical grievances could be shared, heard, analyzed, and attended to. The actions and collective narratives of youth influence how conflict is experienced and transmitted across generations. Young people are also innovative, energetic, earnest, and idealistic partners. Despite these strengths, barriers remain to their participation in local governance and civic affairs. Chief among these is the fact that most youth and youth groups lack the advocacy, leadership, communication skills, and opportunities to engage with leaders and decision-makers.

The programs described in this chapter experienced success in this regard. Key findings from project evaluations include positive changes in knowledge, attitudes, and practices applied to civic engagement and cooperation with local officials. Shared among all projects was an emphasis on positive engagement with local authorities, and these attitudes and skills enabled youth to exchange with those in positions of power effectively. In Morocco and Tunisia, local officials were routinely invited to take part in trainings and youth-led activities, providing the opportunities for essential dialogues to occur. One youth council project in Tunisia, for example, actually recorded a debate between youth leaders and politicians that was then shared widely on several social media platforms. In both countries, evaluations found that local authorities' responsiveness, openness, and, in some instances, financial support from local municipalities was another measure of success. In Tunisia, it was concluded that "Youth Councils show interest and understanding of the role of the youth council as an effective platform and strong channel between the local officials particularly the policy makers and the community members in addressing the pressing community issues and decrease the gap between the local officials as services providers and the community members as services recipients" (Search For Common Ground Tunisia, 2013). Additionally, this evaluation determined that participation in these programs boosted youth's confidence in being active actors of change, increased their self-esteem/self-perception, and strengthened their communication skills (Search For Common Ground Tunisia, 2013). Finally, success was seen post projects as youth members continued to identify themselves as leaders in their communities and active advocates for conflict resolution. Several subsequent projects have been initiated to date, including peace summits, Model United Nations (MUN) conferences, peace clubs, and advocacy campaigns.

With some programmatic differences, the initiatives in both Morocco and Tunisia were designed to be (1) a platform for dialogue and networking among youth, (2) a springboard for community action and local advocacy, and (3) a forum for capacity-building in the transversal skills inherent in conflict resolution techniques, which give a 'competitive advantage' in achieving aims to change perceptions of self, other and the issues to transform both relationships and exclusionary processes. Utilizing the core capacities and ethics of conflict resolution, these trainings endeavored to turn young people's frustrations into positive and effective energy as community-level leaders and problem-solvers.

TRAININGS DESCRIPTION

To achieve the ambitious objectives outlined above, the programs were designed around capacity-building trainings in civic engagement, leadership, and conflict resolution, with a focus on mediation. These were areas of expressed need that were lacking in the formal educational settings available to young people. Equipped with new networks and a versatile set of skills, partnering youth associations would be able to organize community initiatives, which would, in turn, increase their visibility, legitimacy, and continued opportunities for dialogue and cooperation. SFCG organized trainings in thematic blocks, implemented at the location of the youth civil society organization, and typically facilitated by local and national North African trainers hired as external consultants to provide training to the youth civil society organizations.

The commencing training block was conflict resolution oriented and included sessions on self-esteem, mediation, nonviolent communication, negotiation, and facilitation. The trainers themselves, respected conflict resolution professionals in their own right in Morocco and Tunisia, developed the training modules on these techniques. They used materials SFCG had produced in the past for similar regional projects. As expected, the trainings consisted of currently conventional ADR concepts and methods, such as conflict mapping, active listening, the Thomas–Kilman conflict mode auto-evaluation, and the interest-based mediation process. Trainings typically looked like the scene described at the beginning of the chapter, in a youth house or civil society space with a PowerPoint, note-taking participants, and intermittent activities for skills application.

A broader conflict transformation lens then informed subsequent training blocks in citizenship and social entrepreneurship which included advocacy techniques, gender-sensitive approaches, teambuilding, project management, and principles of leadership. After completing the prepackaged training modules, partnering youth Civil Society Organization (CSO) groups were given options of additional training packages and trainers to choose from based on their interests in new topics such as grant writing or advanced iterations of previous sessions. Through the various trainings, youth learned how to engage and address grievances with local officials and community leaders in collaborative nonzero-sum ways. But officials also needed to learn how to engage with youth, so in parallel processes, local officials were also trained in conflict resolution techniques and were regularly invited to attend the youth's trainings and other youth-organized

activities. In these cases, the joint training opportunities became an intervention in the conflict itself that occasioned the exchanges and meaningful dialogue youth had been demanding (Babbitt, 1997).

From prebuilt training modules to menu-like topic selection based on predefined needs, these trainings were decidedly prescriptive (Lederach 1995; see Chap. 1 of this book). As defined explicitly in the theory of change, the purpose of the trainings was to transfer skills, with particular importance given to the tools and techniques underlying conflict resolution models. Pre- and post-tests were given to evaluate the cognitive understanding of the content presented. While facilitators integrated elicitive elements into the trainings through discussions and endogenous examples, the overall framework of the training program centered around transfer, not discovery. As Lederach outlines in this regard, the cultural and ideological underpinnings of the models were unspoken. Rather, the matter-of-fact presentation of the skills and techniques of conflict resolution were accepted to be universal, even intentionally so, as they were represented to be transferable across domains to the youth's needs in family, community, employment, and civic engagement. Trainings were given in local settings, in local languages, with local trainers, further implicating the ubiquity and universality of the content and concepts.

From the resource base to the goals, process, roles of the trainers, and communicated universality, the program nearly fit the ideal type of prescriptive trainings. In many ways, this was beneficial, especially for young beneficiaries. Conflict resolution experts actualized the profession and served as resources and role models for the youth's goals. Because the participants had limited experience with conflict resolution, prescriptive trainings provided a base model to be built upon or deconstructed as they gained more experience in various cultural contexts. Also, the formulaic models and approaches lend learners more confidence when put in new conflict situations. On the other hand, hindsight shows the opportunity costs of unquestioned prescription. A more participatory focus using an elicitive approach rather than one of unilateral knowledge transfer perhaps would have had more consonance with the envisioned impact of inclusion. Hybrid models could have been co-developed for dealing with conflicts in the specific areas and environments youth are facing. Highlighting the role of culture could serve as validation of a rich heritage of conflict resolution and the discovery of approaches for youth's goals to affect change cross-generationally and cross-nationally.

A reflection on the benefits and opportunity costs of this training process lends itself to an examination of the larger dynamics of the partnerships surrounding the project, in which training approaches and partnerships had a mutually influencing relationship and wherein elicitive and prescriptive paradigms continue to apply.

PARALLEL PARTNERSHIPS AND POWER DYNAMICS

The ideal type of partnership conjures visions of value-laden relationships based on egalitarianism, mutual accountability, synergy, and interdependence. However, the gap between a normative intention of partnerships and their operationalization proves difficult to close when functioning in the time-bound, donor-driven, and projectized system of international development. Partnership is complex and complicated further by cross-cultural, interorganizational, structurally power-imbalanced relationships. This was reaffirmed in the various forms partnerships took with programs revolving around youth capacity building, which involved the transference of knowledge, skills, and change in attitudes to less qualified and less resourced beneficiaries. These relationships reflect the constant tension and sliding continuum between the merits of elicitive and prescriptive approaches. With three projects and multiple country-spanning partnerships with both unofficial youth groups and official youth-centered civil society organizations within each project, how did differing relationship dynamics represented on this continuum influence the goals, participation, and outcomes of the trainings?

The projects in Morocco and Tunisia were created, as standard practice, in response to a donor-solicited request for proposals (RFP), in other words, to meet donor goals given the donor's assessment of general need categories. The SFCG country offices responded based on their areas of expertise and operational theories of change, which, in the case of SFCG, is conflict transformation. The organization has a well-developed cross-cutting philosophy and set of tools, and it could apply its specialization to broad social problems, in this case the marginalization of youth, with the authority that comes from its subject expertise. This also meant that the projects' goals were in essence predetermined to align with this strategy. On the whole, this process of initiation lends itself to decidedly prescriptive partnership parameters, in which SFCG provided the needs assessment, project framework, strategic planning, overarching management, and funding. Even though SFCG's partners were involved in local planning, as

will be seen, this did not extend to the broader project design and theories of change which dictated the containers that local actions would fill. In some cases, young participants and 'partners' expressed discontent with the crux of the projects' designs being technical conflict resolution trainings, instead pointing to access to basic social services, reduced corruption, employment opportunities, and other priorities as answers to the problem of youth exclusion. Undoubtedly, there were also others who thought the conflict resolution trainings were entirely pertinent. However, elicitive opportunities were not available in the programs' critical design stages for the partners to negotiate these options, define the problem, or select other tools to address it.

The grassroots-initiated peace summit in Morocco could be seen as further along a partnership continuum toward locally positioned power, in which an informal group of youth had full control over the theme and goals for the week-long series of workshops. The needs assessment, project framework, planning, management, and fundraising were the responsibilities of the club, and partnerships with larger organizations were sought out based on gaps in resources or knowledge. Because of their reputation and technical expertise, SFCG Morocco was asked to provide the skill trainings in conflict resolution techniques. In this case, the design and management of the project was managed locally, and its content was solicited externally because of the partner's specialization. However, although attempts to replicate this process were made by other youth around the country who had come as participants, it proved resistant to scaling or duplication.

In contrast, prescriptive beginnings allowed for a larger scale of implementation and an increased number of partners. The SFCG Tunisia project ultimately consisted of partnerships with formal and informal CSOs, or 'youth councils,' in each of Tunisia's 24 governorates, meeting critical objectives of cross-regional exchange and network building. The challenge of elicitive design methods in this context is ominous. Furthermore, partnerships were dynamic once established, and there were both instinctual shifts and concerted efforts to move along the continuum toward elicitation, in which locally situated and generated objectives were prioritized and desired. Indeed, built into the original project framework was a sub-granting stage in which partnering youth councils would go through a facilitated process of defining local problems, negotiating options, and forming an initiative to address it. As described earlier, after the councils completed prepackaged training modules in conflict resolution techniques,

they were then able to request other content based on their needs or interests, often related to the design or implementation of their council's project. While these partnerships were not based on mutual influence, equal participation in decision-making, or mutual accountability, which was driven in part by funding sources, they were, however, actively negotiated within the dialectic of prescriptive and elicitive relationship paradigms, with subsequent goals and content determined in the process.

The varying ways in which partnerships were set up affected the nature of participation. Typically, in the proposal development stage, an international NGO (INGO) approaches local NGOs or civil society organizations, per RFP requirements, with a project pitch including what they would need to provide to be a potential partner. Understanding international development funding mechanisms, these potential partners, in turn, demonstrate their congruity with the proposed project. Relationships are then formed along shared repertoires, comparative advantages, and with a superordinate goal of organizational survival. In the case of SFCG Tunisia's project, the partnering organizations provided their proximity to targeted local communities, acting as mediators, door openers, and participant mobilizers. A persisting challenge with this role demarcation, notable because of its place in the formative stages of the project, was a tendency for participant selection not to be competitive, transparent, or targeted to those in need of the intervention. Because the ability to mobilize was a primary selection criterion for local partners, mobilizing in quantity became the indicator of success instead of engaging participants based on consonant interests or assessed community needs.

SFCG Tunisia's program further presents an interesting case which highlights one aspect of this dilemma of participation. Using a model of establishing 'youth councils' in each of Tunisia's 24 governorates, there were two phases of the project and subsequently two types of partnership development. Although both types of councils were securing their continued existence through mostly international funding, this two-pronged approach had notable differences in levels of engagement and commitment. The first category of youth councils consisted of preexisting, independent, formal youth-led associations with dynamic young leaders who were inspired by the revolution to continue making change at local levels. They were active in many aspects of civil society, diversifying their sources of funding, and conflict resolution training was one thread in their strategic

goals for community-building. Their participants included already engaged local leaders who had several programmatic options in which SFCG was only one. This enabled a more elicitive relationship, although it was evident that these youth were already in possession of the skills, ethics, and ultimately ‘inclusion’ the project sought to offer. Their self-selection into the process meant limited measurable gains from their participation due to their existing activity and capacities. The second category of youth councils was formed by SFCG itself through an *appel d’offre*, in which applicants were selected to form an unofficial CSO to represent their governorate. In this case, beneficiaries were turned into ‘partners,’ though dynamics remained mostly prescriptive. These partners were arguably more interested in free skills trainings than in conflict resolution, and the topics of the trainings were secondary to other perks in the partnership, including otherwise unavailable regional youth forums, long weekends in hotels, and national youth gatherings. While the second phase allowed for targeted needs-based participant selection and therefore more measurable change, these partners’ strategic interest in the program and ability to sustain themselves at the end of the funding cycle was in question.

In summary, with programs that required multiple, country-spanning relationships, dilemmas and tradeoffs in seeking an ideal partnership were routine. There were concurrent objectives, comparative advantages, and rational divisions of labor between partners, but these did not translate to mutual influence, equal participation in decision-making, or mutual accountability. Partnerships were instead spread along a continuum of the broadened paradigms of elicitive and prescriptive emblematic of external intervention that influenced both the content and outcomes of the trainings. In reflecting on the tensions these projects faced, a few lessons learned stand out: it is important to embed relationships in the ideation phases of the project before an RFP lands on the desk in order to secure a more mutual collaboration. Secondly, it is important to consider conflict resolution-related initiatives that meet youth’s expressed priorities for building peace via alternative and indirect means, that is, income-earning opportunities. Finally, instead of using the term ‘partnership’ assumptively, value laden yet elusive as it is, perhaps early and open conversations with partners, where circumstances permit, about power dynamics, organizational needs, and tensions and expectations within the continuum would do more to bring partnerships closer to their ideal.

‘CULTURE OF MEDIATION’—A HYBRID MODEL

From their outset, the outlined training programs were part of a strategic plan to achieve larger goals of youth inclusion, positive civic engagement, and leadership development. These goals were also nested in a vision to promote a ‘culture of mediation’ in a sociopolitical milieu defined by transformation and conflict at the hands of young populations and national modernization initiatives reliant on the integration of institutional ADR processes. Promoting the culture of mediation inherently seeks the peaceful settlement of disputes and grievances, transforms relationships, processes, and standards of accountability, inclusivity, and fairness. Its continued vision concretely includes raising awareness of the need for and utility of mediation in conflict prevention, management, and resolution; engaging more relevant actors, especially women, youth, and civil society in conflict resolution activities; providing forums for dialogue and exchange on shared problems; creating, cultivating, and expanding the available network of mediators; promoting mediation-related capacity-building; and mobilizing more resources to fund mediation activities. Where the training programs described advanced many of these objectives, they are only the tip of the iceberg. The means to achieve a ‘culture of mediation’ was the transfer of the ‘substructure of mediation’ for its use in youth’s wider actions for social change. The trainings herein were not immediately able or even intended to create professional mediators or influence institutional practices of mediation, instead focusing on the forms mediation can take outside of its institutions when in relationship with broader goals of social and political transformation. Furthermore, what lies beneath the water line, the substructure, is a codified complex of assumptions, values, and expectations whose development and promotion around the world has been centered in North America. This naturally raises the question, whose ‘culture of mediation’ is being transferred?

This chapter began by attempting to identify what a North African ‘culture of mediation’ might be in accordance with its history and religious sources of legitimacy. This is a culture that advocates unsolicited third-party intervention, prioritizes community harmony over the fulfillment of individual interests, and seeks solutions based on shared tradition and religion. Desired attributes of third parties revolve around seniority, status, and networks. With varied integration or conformity to legal systems, voluntary commitments remain contractually binding. Evolving forms of social regulation and access to justice are influenced by colonization, modernization, and more recent institutional reforms aligning with norms of

international governance. By all accounts, this was not a definitive attempt, and much more work is needed to articulate what principles and practices define conflict resolution in the region. The position of youth within a North African culture of mediation illustrates the tension between integration and change in this ongoing process of definition. Former models preclude both youth involvement as third parties and the utility and legitimacy of youth grievances, privileging the rights of some disputants over others based on status, gender, and age. Emergent models harkening from transnational norms see a role for young people, prioritizing professionalism, egalitarianism, and interest-based advocacy, yet remain detached from the integrated social fabric of their predecessors. In a simple characterization, existing North African models have an intrinsic collective and community-focused attitude toward conflict, where new models emanating from North America are individualistic and procedurally oriented. Existing models value third parties based on knowledge of customs and community, religious merits and status, or close connections with the dispute or the disputants. New models value training, certification, and the notion of neutrality, which denotes detachment from the dispute and disputants. Traditionally, a North African intervener advocates settlements that enforce social norms and culturally informed notions of justice. New models prioritize lasting agreements and creative, unbounded solutions. Integrating prevailing contexts and culture into training programs for youth becomes a challenge when there are no existing functions for young people within the local culture. Indeed, the notion of training itself harkens from conventionally North American models composed of values and norms that are now diffused internationally.

Opportunities for influence and design were found, nonetheless, in the broader programming, of which trainings were only one element. Youth partners determined avenues of community action in parallel processes with the trainings. Several of their self-organized projects unequivocally demonstrated the skills, values, and ethics of conflict resolution to solve societal problems, that is, dialogues with local officials, countering violent extremism campaigns, and media projects promoting the use of mediation in families. Where it was not found within the trainings, the conception and execution of these projects served as an outlet for the integration of cultural norms and frames. In fact, the interaction between technique-centered trainings and the adaptive vitality of their applications in youth-determined civic engagement initiatives characterizes the expanded model of conflict resolution this cross-cultural and cross-generational encounter represents.

Because of young people's inherent exclusion from institutionalized forms of conflict resolution in North Africa, traditional or modern, they readily adopt relevant principles and practices into broader goals of social justice and civic engagement. When youth assume the skills, values, and ethics inherent in the peaceful resolution of conflicts, there is an adoption of peacebuilding as a new paradigm for effecting social change. One example that illustrates this comes from a group of youth in Sidi Slimane, Morocco. They found that there was an issue in their community surrounding the necessity of extracurricular language classes in order to succeed in school and the inability for many students to afford the additional private lessons. In response, they formed a volunteer-based English teachers club that provided free lessons. In the words of one organizer, "[T]his club gave the opportunity for youths to build peace and express themselves. I would like to thank all youths, who worked diligently for the [English teachers club], and helped promoting peace and faithfully shared their knowledge and strongly prepared the courses, as if they were getting paid for it" (M. Sabri, personal communication, January 6, 2017). Building peace through teaching English was not an outcome or outlet that was envisioned, but young partners adopted peace as a goal and used their resources and talents to pursue it. With a Freirian notion of praxis, "reflection and action upon the world in order to transform it," youth gained a realization that a conflict- or injustice-filled reality is not static or unchangeable, but rather a series of situations which they have the power to reshape.

This adoption points to a rejection of the compartmentalism that delineates professionalized and subsequently 'technicized' Western models. It includes but goes beyond a set of specific techniques or the resolution of particular problems in relationships to include engagement in a broad array of constructive change initiatives. In this regard, there is a unique reclamation of a North African 'culture of mediation' that still values intervention, prioritizes community, and functions by the status and networks of the third party, which in this case is an increasingly connected and energized youth cohort.

RECOMMENDATIONS

Considering the hybrid model above that emerged from the training programs, we conclude with a series of speculations and recommendations for what future trainings could include to complement and foster the model's development:

Content—When training on standard conflict resolution tools of conflict styles, conflict analysis, and processes for resolution, that is, mediation, negotiation, and facilitation, together with the related skill sets of active listening, reframing, and consensus building, make explicit their cultural underpinnings and alternative forms and functions. For example, the conceptualization of neutrality as impartiality and disinterest in the outcome should be considered alongside a more traditional interpretation of the hyper-interest and multipartiality of connected third parties. If demonstrating interest-based mediation, provide the analytical and dialogic tools to uncover individual interests along with representing the view that there is more at stake than the interests of individuals, namely restoring dignity and harmony between their larger networks. In some settings it would be expected for a conflict intervention to take place only between primary parties and the intervenor, but a customary intervention would likely involve other entities, such as neighbors or extended family, which would bring to bear both additional challenges and resources. Procedures for gaining agreement also range from democratic voting to full consensus to deference to the decision of someone with status or authority. In short, culturally and contextually situated variance in principles and tools can be found across the board in what is generally presented as a simple, ‘standard’ toolbox. Presenting and comparing these globalized and local concepts together would both provide a language to describe difference and nonuniversality, and enable trainees to feel equipped to intervene appropriately in a myriad of settings. Finally, there remains a shortage of material in Arabic that is original or adapted beyond mere translations. A priority should be to support or insist on the endogenous development of training material, including case studies and training examples.

Furthermore, an expanded toolbox should consider the heritage, priorities, and applications for conflict resolution by and for youth in North Africa. For instance, trainings could explicitly include connections to religious practices and values to underline the framework and legitimacy that Islam already provides for peacemaking. Trainings could also familiarize youth with stories of moral exemplars, local history, and customs that a third party or conflict resolution advocate could draw from. These would aid in one suggested added objective of encouraging the adoption of ‘peacebuilder’ identities. A focus on identity formation around social responsibility, commitment to community, empathy, and respect for human dignity would provide youth with a sense of

inclusion and purpose, lending toward the creation and maintenance of wider value-based social networks. With the observed applications for conflict resolution being centered in civil society, trainings should also extend to include a range of civic competencies and skills, including network dynamics and mobilization, advocacy, project management, strategic planning, research and assessment, and creative avenues for change such as art and humor.

Methods—The use of more elicitive methods can draw from a trainee’s experiences to make the context of learning and the context of use more consonant. Specifically, methods can draw on experiential learning, wherein there is “a structured experience, reflection on that experience, and a subsequent experience in which behaviour may be altered based on the prior experience and reflection” (Susskind & Corburn, 1999, p. 16). Established interactive methodologies such as service-based learning, participatory action research, or participatory theater could supplement the use of trainings or workshops. In addition, a mentor or coaching model would satisfy the desire for qualified accompaniment or expertise while also providing the space for guided action and reflection in specific conflict contexts and responses. Peer support models could also serve this purpose while again attending to the importance of networks. Both should be designed to meet the crucial need for longer-term support and follow-up after training interventions. Finally, peer support models and interactive methodologies broadly can benefit from the integration of new technologies, which have demonstrated participatory promise and resonate particularly with young partners. Technology offers “tools that foster collaboration, transform attitudes, and give a stronger voice to communities,” and the integration of technology, for example, online spaces for networking, strategic communications to transfer information or elicit more voices, or platforms that enable crowdsourcing or mobilization, holds especial relevance in this setting (Puig Larrauri & Kahl, 2013, p. 2).

Design and Evaluation—Because of the wide applications of conflict resolution, trainings need to be rooted in larger strategies, whether it is constructive social change or more immediately practical goals of employability or professional development. In short, trainings should be a means and not an end. In addition, that end should not be unilaterally decided. Greater involvement of partners, trainees, trainers, project managers, and implementers in all elements of project design, including needs

assessment/baseline studies, theory of change, and goal formulation, can ensure to a greater extent that programs are relevant, accessible, and replicable by youth populations.

This also extends to evaluation. Similarly to engaging stakeholders in the design stage to ensure ownership and buy-in, during the evaluation phase, implementers should seek a similar kind of buy-in by organizing sessions to discuss evaluation design and findings. That is to say, results of evaluations should be disseminated via a facilitated conversation among the target groups to discuss the key findings and engage in a learning process. In the absence of the results and interpretation by the participants, evaluations are not utilized in the best way possible. In this sense, evaluation should be seen as an opportunity to practice a feedback loop by reinjecting the elements from the interpretation and learnings into future program design.

Finally, an outcome of the further development of hybrid training models may simply be new metaphors. Imagine a training in a dusty, spacious, concrete room of a government-sponsored youth house in which instead of standing around tables drawing icebergs, youth are drawing sand dunes. The Sahara, after all, covers the majority of North Africa, and there is nothing ‘frozen’ about the region. Much like an iceberg, there is literally and figuratively much beneath the surface of the tip of a wind-swept dune. However, the metaphor extends even further. Sand dunes, or conflicts, are connected and dynamic environments, moving all the time, gathering periodically and slowly to form huge dunes and shifting back to equilibriums to form fertile flats. They represent complexity as “things that maintain form over time yet have no rigidity of structure” (Wheatley, 2006, p. 16). Furthermore, shifting sands transform and are transformed by the environments around them. The levels of conflict, or dunes, are mutually influencing, from interpersonal to intergroup and beyond, and therefore have multiple entry points for intervention. In these regards and most importantly for our purposes, there is a place for youth in this metaphor. They are a part of the complex system and will inevitably shape and be shaped by it. The mobilization of young people with the skills, values, and ethics of a reclaimed ‘culture of mediation’ holds immense promise for the region and the furthered contextualization and hybridization of the means to engage in constructive social change within it.

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PART IV

Personal Journeys in Working
with Culture



Working Through Cultural Changes— Community Conflicts in India

Pushpa Iyer and Merrick Hoben

In this chapter, the authors detail their experience of working together on a consulting project for the Compliance Advisor and Ombudsman (CAO)¹ office of the World Bank. The conflict between the company that was responsible for the building of a hydropower project and the community that bore the destructive impact of this construction was overshadowed by the centuries-old caste conflict in the community. The authors, as conflict interveners, struggled to balance between managing systemic social change which the village of Jagatsukh was experiencing and the mandate given to them by the CAO to resolve the dispute between the company and the community. Realizing that their conflict resolution efforts could not parallel the cultural norms, they chose to stay true to their mandate to find ways to get the company and the community to dialogue. Ethical dilemmas notwithstanding, the case is a classic example

P. Iyer (✉)

Middlebury Institute of International Studies, Monterey, CA, USA
e-mail: Piyer@miis.edu

M. Hoben

Consensus Building Institute, Cambridge, MA, USA
e-mail: mhoben@cbuilding.org

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building,
Rethinking Peace and Conflict Studies*,
https://doi.org/10.1007/978-3-319-71102-7_8

of conflict interveners forced to create and operate in spaces where cultural norms are not given prominence, knowing fully well that resolutions reached without acknowledging culture may never stick.

BACKGROUND

At the time the two authors were involved with this case, the Allain Duhangan Hydro Power Project (ADHP), a 192 MW hydropower project, was being built near Manali in the state of Himachal Pradesh in India. The construction of the hydropower plant involved diverting Allain and Duhangan, two tributaries of the Beas River (see Fig. 8.1 for more details).

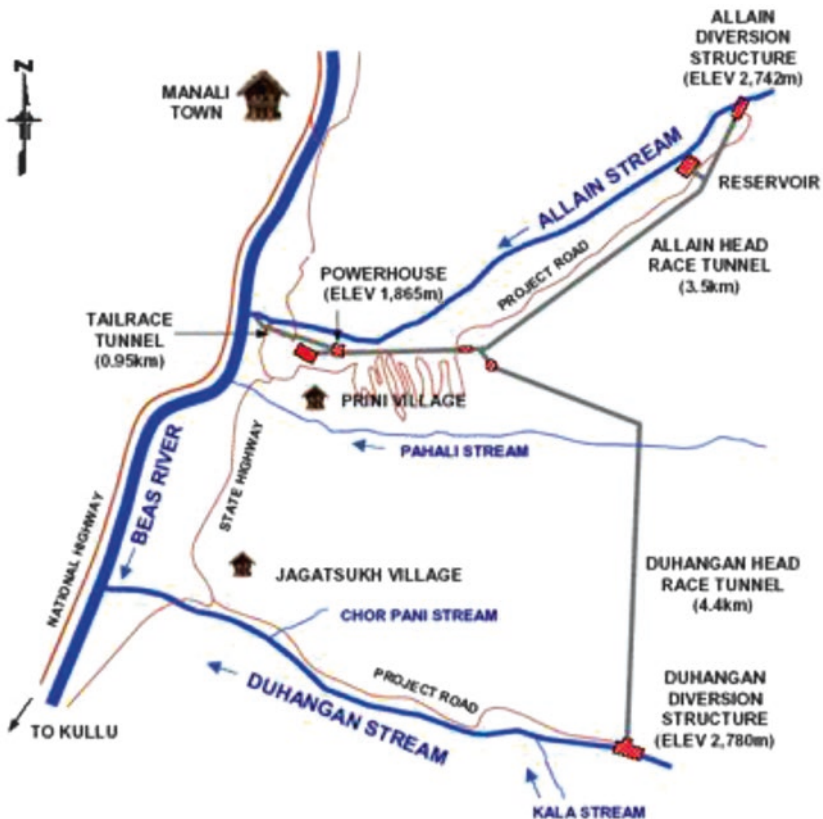


Fig. 8.1 Map of Allain Duhangan Hydropower Project

The International Finance Corporation (IFC), the private sector arm of the World Bank, was funding the project. While the project company, Allain Duhangan Hydro Power Limited, operated and maintained the power plant, the project sponsor was the Malana Power Company Limited, which was entirely owned by LNJ Bhilwara (LNJ) Group. The project was co-sponsored by Statkraft Norfund Power Invest AS (SNP) of Norway. with 90 percent equity, while the IFC had 10 percent equity. Some of the fears expressed by the leadership of the affected villages of Jagatsukh and Prini were acknowledged in the Environment and Social Impact Assessment conducted by the companies. One of these concerns was that the project, whose need, hydrology and benefits were in doubt, would destroy the pristine valley as well as the habitat of a number of threatened, rare and endangered species in the area. The project, it was alleged, was progressing without adequate information provided to affected communities, and the resettlement plans violated many of the World Bank and IFC norms.

In 2004, the CAO office of the World Bank received an official complaint from the residents of the village of Jagatsukh, a small farming village near the site of the hydropower plant. Upon receipt of the complaint, the CAO undertook two initial visits to assess the situation on the ground. During their third visit, they brought in a consultant, the second author, to assist them in beginning conversations between the various stakeholders on the ground. After this visit, the conclusion was that the CAO's efforts would focus on building capacities of the Jagatsukh community to strengthen their bargaining power when representing their concerns vis-à-vis the company and the local government. A decision was then made to bring in a "local" consultant (first author)—someone who had more a more nuanced understanding of the cultural aspects of the conflict. In short order, the authors planned a ten-day capacity-building visit to Jagatsukh. This chapter focuses on preparations made for this visit, key steps and follow-up engagements and focuses on the findings of our initial conflict assessment. More specifically, our plans included conducting training to increase the community's ability to communicate and negotiate more effectively with the company. In designing this training, we hoped to explore aspects of Indian and local community culture and use them when executing our broader intervention in the community. The actual outcomes of the CAO efforts to end the dispute between the community, the company, and the local government are not the purview of this chapter.

The words dispute and conflict are often used interchangeably in this chapter. The issues raised by the construction of the hydropower project were a mix of what Burton (1993) explains as the primary difference between disputes and conflicts. According to him, disputes are over negotiable interests, while conflicts are over “ontological human needs” that cannot be compromised or negotiated. The authors agree that they were hired to resolve a dispute (compensation by the company for losses suffered by the community) between the company and the community, but in reality, they ended up being faced with a conflict (deep-rooted needs and values being involved) within the community.

CONSULTANT TRAINERS

At the time of being hired, the first author was a Ph.D. student of conflict resolution. Much of her work experience came from working for social change in the state of Gujarat in India. Personally and professionally she was well acquainted with the way conflicts played out in India, although she knew fully well that familiarity with one part of India did not equate with how things worked in other regions. She had the advantage of language—being able to speak Hindi, a common language spoken by most in north India (including the state of Himachal Pradesh). Personally, the first author would describe herself as a blend of Anglo-American and Indian values and could understand and empathize with both sides in this conflict situation. This ability to transcend cultures, so to speak, fit well with her academic training in conflict resolution, which built on her belief, and her perspective that all sides in the conflict should carry equal weight and all stakeholders must be heard. It did contrast with her Indian upbringing that emphasized societal hierarchy, which in turn meant not all stakeholders in a conflict could ever be equal. Power, in an Indian context, was centered on some who made the top of the hierarchy and these were those institutions or individuals who had a combination of wealth, knowledge (education), social status (caste and religion), and gender privileges. As such, she was acutely aware of her own identity and how she would, therefore, negotiate power or the lack thereof when in Jagatsukh.

The second author, an experienced mediator and conflict resolution professional and Director of the Consensus Building Institute’s (CBI) regional office in Washington DC, came with many years of experience in the field, mainly working on environmental conflicts. With the academic knowledge that gave him the depth in understanding the environmental concerns that arose from the construction of the hydropower plant, his experience in

mediation and conflict resolution gave him the right credentials as a CAO representative, making him an educator-mediator (Nieman & Monyai, 2006). In this role, he had the expertise in the content of the conflict (environmental issues) and could step in where needed during mediation to educate or disburse knowledge and prevent the conflict from becoming one based on speculation and fears of the parties, and more focused on their rights. Further, he would be able to facilitate communication between the parties, their environment, and the subject of the conflict (the issues). His bilingual and bicultural Spanish training and mediation experience made him more sensitive, giving him the lens with which to view human rights and conflict issues in Spanish-speaking regions and elsewhere. However, the second author, because of his unfamiliarity with the Indian social structure and culture, would need some help in being able to navigate the conflict context. There was no doubt that once he did become aware, his intercultural competence would give him the ability to steer and mediate the dispute in Jagatsukh between the community and the company.

OUR MANDATE AND OUR APPROACH

Prior to scheduled meetings with the community, a high court ruling had urged the company and the community to work together “to resolve outstanding issues and concerns in an amicable manner” (Letter dated August 1, 2006, sent by the CAO to Jagatsukh *Panchayat*). The High Court of Himachal Pradesh had ruled that the company had met all its social and environmental requirements and that anyone impeding project construction would be arrested. Further, in a previous visit (the third CAO visit), the CAO team had noted that the company was using informal communication with the community and there were no formal mechanisms to deal with community grievances.

Therefore, our mandate going in was to enhance dispute resolution capacity of the community and the company, with the goal of building sufficient skills for constructive dialogue between the parties such that they could identify and resolve grievances related to the negative impact of constructing the hydropower plant. Our goals for our initial visit were as follows:

- (a) Help the community articulate their rights and needs.
- (b) Ensure the community spoke in one voice through their leadership to secure their rights from the company and the local government.

- (c) Train community (especially *panchayat*) members in negotiation skills.
- (d) Encourage the company to dialogue with the community (a goal that would be completed after the first three goals were in place).
- (e) Facilitate dialogue between the company and the community.

As we, the consultants, began preparing for our visit to Jagatsukh, one of the first tasks for the first author was to know the caste composition of the village—an aspect that had not yet been explored by the CAO. It is almost certain that caste² dynamics layer every single social, economic and political conflict in India. Working on this hunch and to truly understand the relationship between the two primary conflict parties (company and community), we decide to do a conflict assessment. Through communications from the CAO, we knew that tensions were high in the community following the High Court ruling that did not go in their favor, and so our conflict assessment was directed at understanding their issues, interests, needs, and positions. We planned to meet with the company representatives once we had understood the community better.

Conflict assessments are usually the first stage in any intervention process. An assessment can also be a tool in the hands of interveners to help parties take a step back from intense conflict; it could give everyone a chance to identify conflict changes as well as resituate and reorient themselves in the conflict with respect to how they would like to proceed (Susskind & Thomas-Larmer, 1999). While the practice of assessment can be traced to the customs in two-party mediation where a neutral third-party intervener meets with both sides separately before bringing them together to find common ground (Mayer, 2004), our decision to conduct an assessment at this stage would not have been unfamiliar to the community given the history of how local conflict resolution mechanisms (*panchayats*) operate when mediating conflicts, where the first stage is typically assessment.

Daily social interactions in a rural village in India are often characterized by casteism, feudalism, and patriarchy (PADMAD November 24, 2016), and these oppressive structures that produce conflicts are often the very same structures that manage and resolve these conflicts. Conflict resolution ends up being more about retaining the status quo—that is, retaining the social order in society. A quick look at dispute resolution in three eras in India's history—ancient India, colonial India and post-independence India—shows how the dispute resolution system evolved in practice, but its implementation invariably retained the notions of hierarchy and the centralization of power at the top of the hierarchy in all three eras.

CONFLICT AND DISPUTE RESOLUTION IN ANCIENT, COLONIAL AND INDEPENDENT INDIA

In ancient India, law was not a set of rules but a list of morals also known as *Dharma*. *Dharma* is an obligation, which is fulfilled when everyone stays true to their assigned role by remaining true to their morals. Morality is defined as a set of duties that are assigned depending on the individual's status (*varna*) and stage of life (*asrama*). *Dharma* was prescribed in the *Dharmasastras*,³ and its goal was to ensure that the status quo in society was maintained by giving every human being the opportunity to realize their full potential (Sharma, 1988). The kings in ancient India when dispensing justice did not make laws but decisions in consultation with the Brahmanas (*purohits*) and the council of ministers (*sabhas*), who in turn would refer to the *Dharmasastras* before advising the King. Further, the King's court took into consideration community-level mechanisms known as *panchayats* (formal political systems that came from the system of *Panchas*, which translates as the council of five village elders) or *sanghas* (committees) (Thomas, 2016). These bottom-level social institutions engaged in mediation by listening to grievances and allowing for negotiations among community members before suggesting and imposing resolution ideas as firm decisions, which then were binding, on all parties, an early form of “med-arb” (mediation followed by arbitration).

Due consideration was given to the maintenance of social order so that the losing side did not face further humiliation. In Indian culture, it is more important to save face and maintain harmony even if it requires avoiding conflict when it comes to communication during conflict. Loss of face (humiliation) happens when you embarrass someone else during a conflict (Katz, 2006). Mediation and conciliation were, therefore, cornerstones of conflict settlement in ancient India and much preferred by the communities than a court system. The introduction of the *Kazis* and *Muftis* (judges) by the Mughal rulers as a part of a central court system outside of the traditional village justice systems did little to affect the *Panchas* and the *Gram* (village) *Panchayats*, which people trusted much more (Thomas, 2016).

In colonial India, the community-level institutions suffered as a result of the introduction of English law that imposed legal court systems. The system undermined the existing customary methods of dealing with disputes, instead emphasizing individual rights as opposed to customary rights. Besides, the system gave importance to “high-culture laws” (as prescribed in *Dharmasastras* and the Koran⁴) but ignored the more

customary practices of caste based *panchayats*. The high-culture laws that became prominent meant the elites, often referring to the higher-caste groups, began mediating conflicts around marriage and rituals of lower-caste groups, which were traditionally settled by caste *panchayats*. With the status quo disturbed, the lower-caste groups often went to get their conflicts settled in the “English” courts if the decisions made by the elites did not please them. The resulting societal fragmentation led to a host of other problems that led to the British beginning to incorporate the *panchayat* system in their administration system, even though they realized that their legal system was in contrast to the *panchayat* system (Rudolph & Rudolph, 1965).

The *panchayat* system further gained recognition by the British largely due to the efforts of Mahatma Gandhi, who stressed *Gram Swaraj*—self-rule by rural village masses. His vision was to have the village republics—the *panchayat*—as pillars of the governance systems of India. The *Panchayati Raj* would lead to decentralized economic and political power and would be built on Gandhi’s vision of self-reliance. The *Panchayati Raj* would mean independent village units would have their *panchayats* to resolve disputes. As mentioned above, the *panchayat* system began to be incorporated in the British administrative system, and by 1992, after the 73rd Constitutional Amendment Act, it received constitutional status in the Indian political system (Thomas, 2016). Traditionally, the leaders of the local *panchayats* that settled issues and other disputes and conflicts were invariably those from the higher-caste groups, the elites of the village and usually men.

The newer, more formalized system of *Panchayati Raj* involves elections at the local levels, with seats reserved for scheduled castes and tribes (lower-caste groups who are recognized in the Constitutional Schedule) and women. The *Gram Sabha* (everyone in the village over the age of 18) elected the *panchayat* members through a secret ballot. The *panchayat* also continued to hear grievances and mediate conflicts, although, as explained in the colonial period, people had tasted the choice between courts (laws) and customs. The tradition of resolving disputes was so deeply rooted that even when disputes went to courts, the *panchayats* always emphasized retaining community status quo and relationship building. The goal as always was to maintain the status quo by encouraging conciliation and compromises (Sayta, 2010). Today, the *Panchayati Raj* Institutions (PRI) suffer from many shortcomings. From lacking the capacity to govern to corruption to misuse of the reservation system,⁵ the

PRI are riddled with problems that often make them ineffective in governing their villages to be self-reliant as Gandhi visualized them.

To conclude, the PRI has evolved, but its basic traditions of retaining societal status quo when it came to conflicts have mostly stayed. The PRI lays the groundwork for conflict assessment and for finding solutions from within the system. Therefore, us beginning with a conflict assessment would not be new to the Jagatsukh community (as any *panchayat* would have started with the same process). However, the fact that we were complete outsiders (neutral as we would define ourselves) would certainly play a role in how our conflict assessment would be viewed and accepted by the community. We were certain though that we would not be completely rejected as outsiders given that the PRIs had evolved with the influence of laws and legal courts (during British rule) and therefore outsider perspectives would receive some credence as well. In other words, a hybrid system already existed between western colonial law practices and local customary law practices. Parties sought to access whatever would give them the best solution.

EXISTING SITUATION IN JAGATSUKH

A brief overview of the situation in Jagatsukh also provides essential context before detailing our experiences with the conflict assessment and the subsequent training sessions.

Jagatsukh village was governed by a *panchayat*. The *Gram Sabha* elected the *panchayat* members (around 15); members comprised of different caste groups and there were a couple of women. The women members, we quickly found out, were mostly proxy for their husbands and did not actively participate in the proceedings. The village community, not unlike any other community, had differences among themselves, but the depth of those differences was not evident until we started questioning the social divisions in the community. In beginning conversations with community members, the first thing that became apparent about the Jagatsukh PRI was that the *Pradhan* (President) of the *panchayat* was from one of the lowercaste groups in the village. The *Up-Pradhan* (Vice-President) was of a higher-caste group in relation to the *Pradhan*. This simple fact dominated the entire conflict within the community in Jagatsukh.

When the PRI structure did not reflect the societal caste hierarchy, the status quo was hard to maintain when disputes arose. While the *Pradhan* represented the community grievances when discussing the hydropower

project with the CAO or the company, the fact is that he did so without sharing the *bhaiband* (brotherhood)—an critical component underlying the *panchayat* system. The *Pradhan* was an educated young man who was articulate and understood political negotiations and also understood the workings of the CAO and the company. Together with his knowledge of urban India, he made a strong leader, with a value system that did not necessarily go with the traditional values in the village. He also favored speaking directly to the company on his own when representing the village; the company, of course, found this informal individualized communication to their advantage. As the *Pradhan* did not always share all the information, the resulting lack of transparency laid the basis for tension in the community. For the Jagatsukh community, this situation—in a caste-based culture—was not familiar or comfortable. There were clashes between the *Pradhan* and the *Up-Pradhan*, with most of the *Gram Sabha* supporting the *Up-Pradhan*. The *Pradhan*, however, enjoyed the trust of his caste community and ensured they benefitted first from any compensation provided by the company. For example, when the company agreed to provide streetlights in the village in light of security concerns raised by the community, the *Pradhan* ensured the lights were first put in the area where the members of his caste group resided. The idea that the members of the lower castes enjoyed benefits before the members of the higher castes did not go well with the *Up-Pradhan* and the *Gram Sabha*. There was unrest and conflict between *panchayat* members and among the various caste groups in the community.

Indeed, what we were witnessing was social change. The *Pradhan* was single-handedly challenging the caste system in his village. He did not fit the cultural boundaries set out by caste and the feudal system (another hierarchy where landowners dominated the landless) and was trying to break through these boundaries. Playing favorites with his own caste community was no different from what the higher-caste groups have done for centuries. The *Pradhan* held out on to information as a way of gaining power, and this again was something that higher-caste groups have done for over 3000 years to keep the status quo of the caste system. Social change meant conflict—the kind of conflict that was good and desired to shake those oppressive (caste) structures. Our mandate from the CAO was to create consensus in the midst of this type of conflict and to get the community to speak in one voice when negotiating the company. *Who were we (as outsiders) at this juncture of social change to try and intervene and resolve the conflict? Given that we were witnessing a step in the right direction*

to end a structural conflict in Jagatsukh, should we at this time ask the community to manage this conflict while we focused on another conflict (with the company)? Could these conflicts be separated? It is important to note that if it were not for the hydropower project, the social change conflict might not have risen so strongly at this time. These were ethical questions with which both authors had to deal. For the first author more specifically, the question was, should she work with (and support) the social change she was witnessing given that fighting the caste system was something she had been committed to for years? And further, what leverage did the CAO, and the authors as representatives of the CAO, have in conflicts related to social change within the project context itself?

As referred to earlier, casteism, feudalism, and patriarchy dominated the PRI in Jagatsukh and hence the nature of the current conflict within the village. And therefore, how could the community come together at this time to negotiate with the company?

OUR EXPERIENCE

As we began our conflict assessment, we very quickly were made aware of the underlying caste conflict, and it became apparent that these were the dominant issues for the community. If we had not begun looking into culture, wherein caste was the first aspect, we may have not even become aware of the conflict. And this could be the reason why the previous CAO teams did not report on caste conflicts in the community and why the village had failed to unify and effectively negotiate with the company.

One thing quickly became clear, and that was the fact that the CAO was restricted regarding how much they could do. They had to make sure the community had the ability to negotiate directly with the company and settle grievances amicably. The CAO's scope did not extend much beyond that, and neither could they invest time and resources to deal with broader social issues, even though these were linked to the primary dispute (construction of the hydropower project) to which they were committed to finding a solution. As such, to complete the tasks we were given as consultants, we had to focus on the conflict with the community as a whole. We knew that we had to recognize the democratically elected *Pradhan* as the leader and the *panchayat* as the representative of the village and work through them. The spoilers—those who wanted to hold off against the *Pradhan's* leadership—would have to be left behind. These spoilers would be viewed as the total spoilers as defined by Stedman (1995); in other

words, those who pursue power to the exclusion of everything else and who are completely unwilling to negotiate their goals. A “departing train” strategy⁶ would be used to deal with them.

In keeping with our goals as consultants to the CAO, we decided it was impossible for us to engage the company and the community on this short visit. It seemed imperative for us to work with strengthening the capacity of the PRI of Jagatsukh and so we decided that we would postpone our efforts to bring the company and the community together for a dialogue. We wanted to organize at least one capacity-building workshop for *panchayat* members before we had to leave, and we hoped to mediate some of the conflicts between them so that they were better equipped to manage the social change process—both with the company and within their village. We hoped that our capacity-building workshop would help the community move past their internal differences and focus on the immediate issue before them—that is, negotiating with the company to secure their rights. We planned to include some time in the workshop to share community grievances (even if it meant it would have to be a look back into their past). We also wanted to help the villagers develop a common language to represent all the caste groups in the village and to build processes for increasing communication between community members. Lastly, we hoped to raise awareness and establish protocols on the need for transparency, and to train the members to list priorities for the entire community in order to deal effectively with the company.

As we continued with our conflict assessment in preparation for the workshop, another issue became prominent, the patriarchal structures—yet one more cultural aspect. We heard fewer women’s voices. We did make an effort to meet with women’s groups in the village to hear their concerns and grievances with the hydropower project. We also made it a point to hear the various caste groups to understand the broader impact of the project on the entire village. While the women willingly and openly shared with us their concerns and their feelings on the conflict, we, for example, did not force these women to speak directly to the men but gave them space by inviting them to certain meetings and representing their concerns.⁷ We participated in community traditions, including sharing meals at the homes of individuals from various caste groups.

Our cross-cultural partnership within our consulting team had its benefits and pitfalls. In all of our efforts, it was obvious that our identity certainly played a big role in getting the community to be willing to engage with us. In a country where one’s location in the hierarchy determines

power and leverage, the authors had some advantages. The second author was the lead consultant on this project, and although he would probably only accept his power from his position in the professional hierarchy, it was a fact that his identity as white, male and American would give him additional power vis-à-vis the first author and the community. The first author, as the junior consultant, had some power, as she was seen as a resident of the US and because she enjoyed the trust of the community as somewhat of an insider. On its face, the first author's gender did not play a negative role, but her experience working with rural communities in India told her that an Indian male in her place might have made greater inroads in relating to the *Pradhan* and the *Up-Pradhan* than she could. Both authors enjoyed some power by virtue of being representatives of the CAO, the institution that could potentially bargain on their behalf with the company and the IFC. The authors agree that they worked as a team, did not have any differences with regards to their approach and shared similar values and ethics. We put on a united front in the community and were not played against each other, something that can be quite common in conflicts, wherein conflict parties try to get mediators (or trainers such as us) into taking sides. We were at higher risk of this happening because one of us could be viewed as an insider partial⁸ (the first author), as she had experiences and opinions when it came to caste issues. The outsider neutral member of our team, the second author, could have looked past the caste issues and focused on the CAO mandate, leading to potential friction between the two authors, which could have been capitalized by the community.

When we gathered all *panchayat* members at our one-day capacity-building workshop, we presented the need to resolve internal disputes as a necessary means to achieve the superordinate goal of ensuring their rights vis-à-vis the company. The key aspects of the training program were that of

- (a) deepening the understanding of key stakeholder interests and needs,
- (b) knowing their strengths and their challenges as a community,
- (c) learning to prioritize their needs and grievances when negotiating with the company, and
- (d) introducing conflict resolution mechanisms to deal with differences among *panchayat* members (that is, how could the *panchayat* be the conflict resolution mechanism for the village if they, the *panchayat* members, could not solve conflicts among themselves?)

We wanted to use the opportunity to reintroduce the CAO and its mandate and make it clear that we would not be finding the solutions for their conflicts with the company. Our job was to facilitate the conversation between the company and the community so that the *Gram Sabha* and the *panchayat* could develop their solutions. Our primary thrust during the one-day training was to get the *panchayat* to realize the usefulness of staying together as one unit and to realize that fragmentation among them would benefit the company. The agenda for the day was packed, and the training was conducted in Hindi.

KEY CHALLENGES

A number of issues emerged from the training workshop and are discussed next.

Language and Training

The second author took the lead in introducing the goals of the training and introducing the CAO and its mandate by speaking in English, with the first author providing consecutive interpretation. However, depending on the questions and the discussions following some of our introduction, the first author, had to take the lead and interpret back and forth between the second author and the community. The process was, as expected, time-consuming.

A second issue was that the training had to be primarily led in Hindi. While the first author was well prepared and had familiarized herself with all the necessary words to communicate the conflict resolution terminology, it was still time-consuming because, often in Hindi, there were often no words to describe certain concepts. For example, conflict. The available words *galatafahamee* (misunderstanding), *matbhed* (differences), *ladaee* (fight) and *sangharsh* (struggle) did not capture the word. We had to explain the concept of conflict, and this too was time-consuming.

Contrasting Communication Styles

The community took every opportunity they were given to speak to highlight their grievances—with each other, with the company and with the local government. Their communication style involved significant storytelling. Every time we asked a question or sought a suggestion, the pre-

amble began with a story. It was at times excruciating for the second author, and in frustration, he once asked that the first author communicate to the *panchayat* members that they needed to speak in three bullet points! The first author was familiar with the cultural communication styles of both sides. She felt the stress of trying to be sympathetic to the community and be a good listener when they told their stories while being equally sympathetic to the frustrations of the second author in trying to get the task completed on a very tight schedule. The conflict within her caused her a great deal of discomfort. She wanted to be the bridge explaining to both sides to accept each other's frustration and modify communication styles, but with so much happening and given the tight schedule, her efforts fell far short of what was required.

Both authors were caught between being firm and asking the community to focus on the task at hand and allowing the *panchayat* members to speak openly about their grievances to and with each other in a more formal setting.

Balancing Training and Conflict Resolution

We had also spent a lot of time with key individuals of the *panchayat* prior to the workshop. In particular, we had discussed matters at great length with the *Pradhan* and the *Up-Pradhan*, and this meant that we not only had good relationships with the members but also had built sufficient trust so that the process would not be stalled. We found that all of the *panchayat* members willingly participated. However, the conflicts between the *Pradhan* and *Up-Pradhan* and therefore the divisions within the *panchayat* dominated the conversation. It became difficult to move the conversation beyond the continued airing of differences.

Support for Us as Consultants

The support we as a team of consultants had from the CAO played a prominent role in our confidence in continuing to push the *panchayat* to find ways to manage their conflict and strategize on communications with the company. The authors of this chapter agree that working together on the hydropower case was one of their most rewarding experiences of collaboration. The fact that we were on the same page is not meant to minimize the amount of effort we put into getting to know each other—personally and professionally—and in spending an immense

amount of time discussing the case, both in the preparatory phase and during the visit. We believe that our shared professional background and commitment played a significant role in how we naturally came together as a team.

At the end of the day, it was hard to evaluate the success of the workshop as per its goals. On our part there was some frustration, as we did not achieve all that we wanted—that is, the *panchayat* coming to agreement on how they would proceed as a unified entity in the future. Indeed, how realistic were our expectations? Not very, given the time constraints that we had and that we were dealing with a very deep-rooted conflict (caste). However, the mandate the CAO gave us, and the specific terms of our agreement with them as consultants, pressured us into thinking we needed to show results—even if conceptually we knew the impossibility of our task.

THE OUTCOME

It was clear during the workshop and all of our efforts leading up to it that we were following a more transformative mediation approach (Bush & Folger, 2004) in dealing with the conflicts within the *panchayat*, but specifically more so when it came to the conflict between the *Pradhan* and the *Up-Pradhan*. The transformative mediation approach goes beyond problem-solving and focuses on transforming relationships between parties in the conflict by empowering them (so that the parties could make better decisions for themselves) and changing their communication patterns. The transformative mediator also helps the parties recognize each other's perspectives and experiences. We were emphasizing a change between the two in the belief that when the two of them could develop a more nuanced understanding of themselves, and their situation/context, they could come up with better solutions to their conflict and the conflict with the company. The transformative mediation approach fit well with the goals that were set out for us by the CAO—that of empowering communities, helping them put on a united front against the company and negotiating by articulating their priorities as one community.

After the completion of the workshop, we encouraged the *panchayat* leaders to focus on a formal settlement to the conflict between them. While the need for a formal settlement might seem in direct contrast to the outcome we had hoped from our transformative mediation approach—that of having relationships transformed between more empowered parties—the fact is that in the short time we had, we could not see the

relationship change through the process. We had to go back into our mode of seeking tangible solutions to end the conflict. The *Pradhan* and the *Up-Pradhan* drafted and signed a document agreeing that the *panchayat* leadership would commit to working with the CAO to resolve their conflicts with the company amicably. This meant that the CAO and therefore hopefully the authors would continue to play a role in helping the community and the company dialogue. We, the authors, wanted to believe that the agreement was symbolic of the understanding the two men had reached. We dared not ask ourselves if they had *really* reached an understanding, and if the agreement was their way of not making us feel embarrassed about not reaching a positive conclusion at the end of our ten-day effort to end this internal conflict. We decided it was the former and reported back to the CAO.

We continued discussions with the *Pradhan* and the *Up-Pradhan* post visit but realized their relationship had not really improved. The *Pradhan* made no effort to be more inclusive, but then who could fault him for being the leader that was initiating social change in his village? He probably needed to go through these steps before social change would ensure a new status quo.

The company communicated to the CAO at this time that they felt the communications between them and the *panchayat* leadership was progressing well, and that there was no longer a need for the CAO's presence. The *Pradhan* communicated the same feelings. Knowing what we knew, it seemed like the *Pradhan*, and the company had a good understanding even though the caste conflict within the community prevented the possibility of them working as one village unit. The CAO, given its delicate relationship with the IFC and the company, decided to proceed cautiously, and it was at this time that the IFC made its visit and concluded that things had settled on the ground. The CAO then closed the case.

DILEMMAS

The Jagatsukh case is an example of traditional values of hierarchy and patriarchy being challenged. It is also an example of traditional modes of conflict resolution such as the *panchayat* system failing when the more "modern" values of equality and equity are introduced, necessitating the need for a different approach to conflict resolution—one that has its origins in more "westernized" societies. It does not signify that "western" approaches are superior to more traditional ones. Rather, to fight centuries-

old structural conflict such as the caste system, the solutions could not come from within those imbalanced structures, but instead from outside of them. Further, the clash between the traditional values and the more evolved and democratic forms of the *panchayat* system preceded the conflict with the company, putting the community at a disadvantage, as they were unable then to respond quickly to the immediate issues before them.

LESSONS LEARNED

The caste conflict in Jagatsukh with the election of the *Pradban* from the lower-caste group completely shook the status quo and challenged the existing social order. Culture—as in customs, traditions, and rules—was completely broken and community members were no longer able to relate to each other. Cultural breakdowns are witnessed in various forms—lack of authority or compromised authority as well as challenges to authority and, most importantly, the inability of a group to express themselves as a unified identity. These cultural confusions—a culture that supports and respects power asymmetry and hierarchy did not go hand in hand with the societal and institutional structures (democratic ones such as the PRI)—were inevitable in Jagatsukh during this time of cultural change.

Cultural breakdown and conflict go hand in hand, and it is when they are closely intertwined that interveners learn the most about them. There was no doubt that in the short time we had, we had a sharp learning curve, but the biggest challenge we were constantly trying to circumvent was how not to let the cultural breakdowns in Jagatsukh turn into our failure to work with that culture. We wanted to be culturally sensitive, which meant we respected the cultural changes taking place. To achieve the tasks set out for us by the CAO, we were oriented to be task focused and fail with regards to working with that culture—a difficult situation to accept. We may have, as interveners, been struggling between what Ugorji (2016) calls the clash between high-context and low-context cultures, that is, the clash between being culture focused and being task focused. Ugorji (2016) suggests that being culturally fluent (familiarity with culture) and culturally intelligent (being able to adapt to new cultural settings) are key in negotiating this clash. As a team, we were both culturally fluent and intelligent, which meant we had the ability to be more culturally focused, as is typical in high-context cultures. However, in reality, the CAO was task-oriented and had the power to insist we stayed true to our mandate, thus our decision to respond in ways that made culture less relevant.

One of our key lessons from this experience was that we might not always be able to work directly with culture. In fact, we sometimes have to work in specific ways in spite of culture (cf. Lederach, 1995). What this means is that as much as we needed to focus on adeptly building our awareness and navigating cultural practices and norms, we also needed to highlight the issues that go beyond the cultural needs and rules. In Jagatsukh there were immediate concerns about personal safety, employment opportunities, environmental concerns and other issues with project construction. Most of these concerns were time sensitive and important to resolve immediately and thus could not wait until the caste conflict was resolved. Although the caste conflict made it impossible for there to be a culture of conciliation and amicability, it was necessary to keep working on resolving the other issues. Therefore, in spite of the cultural breakdown at hand—that is, significant confusion around caste norms—we had no choice but to deal with the immediate conflict with the company. However, while dealing with immediate issues was our approach, we still seemed to harbor the hope that the *panchayat* leadership would heal their relationship with the company to find solutions for the conflicts with the latter. Working with this hope diluted our efforts to resolve the immediate conflicts and therefore became the biggest error in our approach.

Another area we might have failed was in holding people accountable for their behavior in spite of the cultural breakdown. It is true that in the time when Jagatsukh was dealing with the caste conflict and the resulting cultural breakdown, we did not do enough to check the behavior of the *Pradhan* or for that matter the *Up-Pradhan* and others in the conflict with the company. For example, the *Pradhan* holding back on information from the community as a way of controlling power was detrimental to the community, with the company reaping advantages from the situation. Calling the leaders out on their behavior was something we, as consultants, could have done more strongly, but our ethics and our sentiments regarding the caste system indeed may have made us partial to the radical social change advocated by the *Pradhan*. In retrospect, it was possible to stay true to our goal by insisting there be transparency while acknowledging the social change process led by the *Pradhan*.

The conflict in Jagatsukh was one where social justice goals clashed with the more technical conflict resolution goals of finding a solution to the dispute. Upon reflection, although we, the authors, feel that conflict resolution efforts should lead to social justice, the reality of time constraints and a narrow mandate made it difficult, if not impossible, for us to

push the social justice agenda, in the spirit of inclusive and informed consultation. Instead, we were forced to focus on the conflict resolution process, with the end goal being that of ending the dispute between the company and the community by focusing on immediate grievances.

What we did do well was articulate our goals and encourage the community to think about their conflicts within a culturally relevant framework. We created the space and utilized it to build understanding to our best abilities. However, given time pressures to complete our mandate, and on them to resolve their differences and negotiate with the company—it was difficult for us to stay true to our paths. The goals got further muddled as the conflict progressed and our only end-game solution space was to go back to our mandate. It is possible the community felt cheated by this approach—though we gave them a lot of time to resolve their internal differences. When time ran out, we imposed the CAO-dictated goals and forced them to find a way to collaborate.

Comparatively, our most significant strength was that we worked together as a kind of insider–outsider combination typically needed with interveners in such contexts. We had many inroads into the community with the first author being on the team, but the second author’s presence ensured that the conflict did not end being all about culture and caste issues. The second author was able to help keep the focus on immediate concerns, even when as a community they grappled with the dramatic social change process. One of the things we wish we had the support of was some nongovernmental organization (NGO) or community-based organization (CBO) that could have guided us a bit more on the local community culture and the nuances of the caste conflict. As mentioned in the beginning, familiarity with the caste conflict and hierarchy in one part of India did not correlate to understanding it in its entirety in another. An NGO with years of working in Jagatsukh could not only have given us the background to the conflict but could have also educated us on the personalities in the conflict. Jagatsukh, like most rural communities in India, did have an NGO working with the community, but the caste conflict, the mistrust within the community and the High Court order which led to a complete breakdown of its community relationships meant the NGO was no longer a presence when we got to the village. We had been put in a difficult spot with having to educate ourselves in a very short period.

To conclude, this hydropower case was extremely complex, with limited time to navigate it properly. Further, it required us as consultants to be very flexible, to modify our goals constantly and yet remain true to our

values and ethics. And when we were with the community, there was never much time for reflection; thus, we were forced to go by instinct. That said, having the CAO mandate in front of us helped us be realistic about what we could and could not achieve in the short time before us. We think our strategy to give the community the space to work through their internal conflict yet pulling them back to resolve the dispute with the company was our effort to balance the immediate issues that required resolution with the bigger cultural conflicts that ultimately need to be transformed.

Looking back, we do not find simple answers to what would have been the best approach. Indeed, we could have simply stayed task focused and ignored the cultural changes taking place in the community. However, that would have meant working with a divided *panchayat* and getting the *Pradhan* to make a deal with the company and claim that we had solved the dispute. The transformative mediation approach seemed best suited to our ethics and values, and was a more culturally sensitive approach, as it took into account the changing relationships among the Jagatsukh community. However, it certainly is an approach that requires much more time than what was allocated to us. With the result we achieved, we failed to smooth the process of cultural change or see it reach a conclusion regarding a new social order in place in the village. The authors continue to grapple with the fundamental query—did cultural breakdowns in the community lead to shortcomings in our approach, or did our approach fail them in their efforts to change their culture? The answer, we think, may be both.

NOTES

1. The CAO is an independent office within the World Bank Group charged with responding to complaints raised by people who believe they may be negatively affected by the International Finance Corporation (IFC)– or Multilateral Investment Guarantee Agency (MIGA)–supported projects. The CAO reports directly to the President of the World Bank; its ombudsman function seeks to assist the parties to find a jointly agreed settlement to the complaint that has been raised. CAO works with key stakeholders and existing institutions to strengthen their capacity to be accountable and participatory, and to promote good governance.
2. Caste is a system of social stratification based on occupation, signifying status during social interactions operating on principles of purity and exclusion.
3. A genre of Sanskrit texts that details Hinduism’s perspectives of *Dharma*.

4. The Dharmasastras and the Koran—religious texts were often read by the more educated, upper caste and elite of the society. So following these religious texts often became the rights given to the upper echelons of society.
5. Affirmative action enshrined in the Constitution based on caste and gender. This ensures that lower-caste members and women are elected in the PRI.
6. The spoilers would be invited to jump on the train (the process we were laying out), and if they did not get on the train, the train would leave the platform.
7. While the first author led the conversation with the women, the latter had absolutely no issues with the second author being present. It could be that the language barrier with him was in fact a way of trust building, since all conversations happened through the first author.
8. An insider partial is someone who is already a part of the conflict and therefore is partial toward one side, but able to play a third-party role. This is usually someone of a high stature from within the community who is accepted by all sides in the conflict (Lederach, 1991).

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CHAPTER 9

Peacemaking in Palestine: Encounters in Principles and Practice

Erin Dyer Saxon

INTRODUCTION

“I am here to learn about how you resolve conflict here in Bethlehem,” I said in English to the man at the door. “No problem,” the man replied as he welcomed me inside, “We have friends visiting us soon to discuss their conflict, if you would like to join us.” Moments later, eight men gathered in a room and I hurriedly tried to keep up with my elementary Arabic. Seated in a circle, many of the men were speaking at once, detailing their news, their conflict, and other issues. I wasn’t clear who among them were the mediators or the parties—the men appeared to be having open conversation with whomever would listen, with more staff listening from a doorway. Eventually, it became clearer that the listeners were mediating and absorbing the agitation and frustrations of the various speaking parties. A young man served traditional coffee to everyone in the room, and as I picked up my small cup from the tray, the *kabweh* spilled on my trousers. The cacophony of conversation came to a hush and attention was directed at me. I blushed with embarrassment, but a man, who was a party

E. D. Saxon (✉)

Inclusive and Equity Education, University of Denver, Denver, CO, USA
e-mail: Dyere@TCD.IE

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T. P. d’Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building,*
Rethinking Peace and Conflict Studies,

https://doi.org/10.1007/978-3-319-71102-7_9

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in the conflict, grinned at me and announced in English, “This will bring you good luck! *Mabrook!*” This pronouncement was met with smiles and agreement across the room. After a short time, the conflict was amicably resolved, though with none of the formalities I was accustomed to at home in the United States. The end result wasn’t a formal agreement, but reconciling the friendship of the people involved. This was my introduction to conflict resolution in Palestine.

While intending to assess the applicability of an American mediation model in a Middle East setting, I came to recognize the influence and preference for a local Palestinian capacity for peace. *Sulha*, a traditional Arab process for peacemaking, predates Islam and remains a core means to confront conflict, prevent escalation, acknowledge anger and grief, and restore peaceful relations within pluralistic communities in the Middle East. The practice of *sulha* within collectivist Palestinian environments is primarily among Christians, Muslims, and Druze in the West Bank, Gaza, and Palestinian-Israeli communities in Israel (such as those in the Galilee). My doctoral research in Bethlehem was a comparative study that clarified the underlying theory supporting *sulha*, and then compared these concepts with the framework of relational and communication-focused form of Western mediation known as transformative mediation, to consider in part the potential for offering transformative mediation training in the region (Saxon, 2018).

However, through my interviews with *sulha* practitioners, my analysis and assumptions shifted; I moved away from how transformative mediation could be applied in a new cultural context, and more toward the need for any introduced model to honor the core principles and practices evident in Palestinian society. Ultimately, conflict and peacemaking processes must be understood within the broader context in which they occur, and Palestine is no exception. *Sulha* adheres to valued principles within Arab societies, and these tenets are reinforced through successful implementation of the process. The reconciliation between parties and the return to peaceful relations in the community through a *sulha* process is cause for celebration—undoubtedly over a cup of fresh coffee.

WHY STUDY COMPARATIVE CONFLICT RESOLUTION

I wanted to learn more about how mediators’ assumptions affect the strategies and methods used to resolve processes, including their opinions on conflict generally, the people embroiled in it, and what would be a successful process. The idea that the context in which conflict occurs could affect the

ways in which intermediaries might approach resolution was a nagging question for me. When I proposed to study for my PhD, I asked the question of whether transformative mediation, as developed in the United States, could be utilized in the context of a Middle Eastern culture. Behind this question was the assumption that transformative mediation may be more readily adopted in a collectivist context such as the Middle East than the individualist-oriented problem-solving or evaluative mediation models used predominantly in the West.

Transformative Mediation

Bush and Folger (2005) asserted, “Mediation, with its capacity for transforming conflict interaction, represents an opportunity to express this new *relational vision* in concrete form ... Mediation was appealing not because resolution or settlement was good in itself and conflict bad, but because of the way in which mediation allowed disputing parties to understand themselves and relate to one another through and within conflict interaction” (p. 24). Transformative mediation posits that conflict is destructive not because of how it makes individuals feel about their competing interests, but because it is a crisis in interaction. Conflict can create a destructive cycle where individuals become more self-absorbed in their own narratives of the conflict and less willing to hear the narrative of the other. This harmful cycle becomes self-perpetuating: as individual feelings of fear, anger, and weakness (loss of empowerment) intensify, simultaneously, each party also experiences dehumanization and alienation of the other (loss of recognition). For many in conflict, being caught in this downward spiral is the most negative aspect of conflict: demonstrating their worst self and seeing nothing but the worst in the other (Bush & Folger, 2005). The role of the mediator in transformative mediation is to address this crisis in human interaction through a series of interventions to encourage the parties’ capacity to become clearer and stronger in their own voice (the empowerment shift) in order to create a space for parties to acknowledge and address the views of the other (the recognition shift). Bush and Folger (1994) assert that by supporting these shifts in conversation, parties have the opportunity to reverse the negative downward spiral and move toward more constructive conflict interaction. Unlike problem-solving mediation, the goal of transformative mediation is not a settlement per se but a fundamental change in conflict interaction toward a humanizing, constructive, connected dialogue. Transformative mediation is founded on relational ideology, which assumes people to be fundamentally social—constituted via

their connection with other human beings and propelled by an aspiration for both individual autonomy and constructive social interaction with others (Bush & Folger, 1994; Della Noce, 2002). It is this relational ideology that inspired me to dig deeper into its possible application in a Palestinian context. If relational ideology depended on the interdependent social nature of human beings, and a collectivist cultural context such as Palestine was fundamentally social and interdependent as well, I was curious as to whether the transformative mediation model can resonate in this non-Western context.

Wi'am: The Palestinian Conflict Transformation Center

I approached *Wi'am*, The Palestinian Conflict Transformation Center, in Palestine to request their help in learning more about the Palestinian conflict resolution process of *sulha*, after seeing their work highlighted by other curious researchers wanting to know more about how *sulha* works in practice. *Wi'am* is a small, community-based organization that focuses on conflict resolution, community development, and psychological support for people of Bethlehem. It operates transparently, featuring multilingual brochures in English, Swedish, and Norwegian, and frequently hosts groups from the United States and Europe to learn more about issues in Palestine and in Bethlehem specifically. The organization is eager to attract donors, but also to present visitors with the narrative of the people of Bethlehem; while the broader conflict with Israel may make headlines in international media, the day-to-day concerns about civil society leadership, encouraging local capacities for peace through indigenous informal justice mechanisms such as *sulha*, or programs to address psychological wounds in children are discussed through in-person meetings, brochures, and annual newsletters (*Wi'am*, 2012, 2015).

Palestine functions as a polychronic culture, a term that Edward Hall (1966) coined to describe cultures that value time in a cyclical way, where relationships are paramount, and so interruptions and tardiness are a customary part of social obligation to others. As a researcher from a monochronic culture, this was at first off-putting, as I had been socialized to value punctuality and task-centered approaches to relationships. I approached *Wi'am* by stopping by their office when I was in Bethlehem for a summer. They were very open to hosting me as I learned more about the process of *sulha*, but perplexed by why I was asking them far in advance about their openness to this research, in several months' time. After I left Bethlehem

that summer, I emailed them with my plans to return the following spring for research, as I would in a European or American context. No response. I wondered if I had made a misstep, or whether the staff forgot about me. In the spring, I decided to brave the journey without confirmation. I simply walked into their offices once again, seeking their assistance with speaking with *sulha* practitioners and giving them a timeline for my goals. I was relieved when this was not a problem. In this polychronic culture, my hosts were eager to demonstrate their hospitality and to support research that highlights their work.

Goals of the Project

I traveled to Palestine to research Wi'am's *sulha* work in a grounded theory fashion—meaning that I intended to form my theory based on what I observed in-country. However, I had a hope, too, that the ideology and model of transformative mediation would be a clear fit in this cultural context due to overlapping goals toward supporting interdependent social fabric of society within relational ideology and a collectivist culture. Wi'am admittedly did not need my help with their conflict resolution efforts. *Sulha* is an indigenous informal justice process that predates Islam, and continues to serve as a trusted procedure for addressing conflicts that have the potential to divide families and communities. *Sulha* is one of the many processes used by Wi'am to address discord and create opportunities for community. In addition, by hosting researchers from Europe and the United States, Wi'am benefits by gaining international exposure as a non-violent community organization dedicated to interfaith work and community education. They term this “citizen diplomacy” and see welcoming international visitors as an important aspect of their work (Wi'am, 2015). Wi'am does not need to solicit international visitors to their door; American and European researchers, interns, and government organizations regularly approach the organization to learn about their community work. In gratitude for their assistance in arranging interviews with *sulha* practitioners for my research, I offered to provide grant-writing and proof-reading assistance to their staff.

The goals of my field research were to speak one on one with local practitioners of the informal justice process of *sulha* and to learn more about the ideology behind their practice—why mediators do what they do, what guides them in their work, and their overall theory of practice. My research sought out the ideological basis for *sulha* practice by asking mediators to

reflect on their values. I also wanted to assess the opportunities to inject transformative mediation in a collectivist culture, where, I hypothesized, it may be more open to this relational practice than in the individualist culture of the United States.

In response to my goals for the research into *sulha*, the staff at Wi'am wanted to ensure that I had an accurate depiction of Palestinian culture, access to reputable *sulha* practitioners, and a clear representation of the *sulha* process. According to Hall and Hall (1990), the "close links to clients or customers [in polychronic cultures] creates a reciprocal feeling of obligation and a mutual desire to be helpful" (p. 16). Wi'am aided me in securing interviews with practicing *sulha* practitioners, and with each interview, I felt more indebted to helping Wi'am insofar as possible.

COLLECTIVIST CULTURE AND CONFLICT RESOLUTION

Conflict resolution in Palestine is not an oxymoron, contrary to the tenuous political environment plaguing the region. The modern conflict over territory, identity, and recognition began with the establishment of Israel in 1948, and has since claimed thousands of lives through state violence, paramilitarism, popular uprisings, and terrorism:

The first Intifada (1987–1993), triggered by political inefficacy and growing restrictions on the Palestinians, was largely peaceful and incorporated non-violence, but still resulted in over 1400 Palestinians and nearly 300 Israelis dead across Israel and the oPt [occupied Palestinian territory]. With the second Intifada (2000–2005), tensions unresolved from the Oslo [Accords Peace Agreement] re-emerged with disastrous consequences for Israelis and Palestinians alike. In stark contrast to the first Intifada, the second Intifada was exponentially more brutal, with a figure of more than 5000 Palestinian and 1100 Israelis dead as a result of military operations, search and arrests, undercover operations, targeted killings, terrorism, and internal Palestinian political conflict. (Dyer, 2013, p. 183)

In the face of the violence seen in the Israeli–Palestinian conflict, the evidence of nonviolence can be easily overlooked. In fact, *sulha* is just one of the many informal methods used for centuries in the broader Middle East for resolving community conflict.

An important distinction between Middle Eastern and Western conflict resolution practices is the cultural frames adopted by practitioners within each context. Individualist and collectivist cultures differ not only in terms

of how people within those cultures group themselves in their respective societies, but also how they differ in terms of their worldviews, their norms, their expectations of and obligations to others, among many other distinctions. Geert Hofstede's measure of "the extent to which people in a culture are expected to 'do their own thing' (individualism), or act as part of a group (collectivism)" explains how people may view the world through different lenses (as cited in Remland, Jones, Foeman, & Arevalo, 2014, p. 88). Triandis and Gelfland (1998) similarly described individualism and collectivism through distinctive and perpetuating social patterns that suggest approaches aligned with the valued cultural perspectives within each context.

Individualism, as championed in the United States, is characterized by individuals who see themselves as relatively independent from the collectives in which they are members; are motivated primarily by their own preferences, needs, rights, or contracts they have made with others; place more importance on personal than collective goals; and tend to make decisions on whether to associate. Collectivism, as valued in the Middle East, has a contrasting expectation: members of a closely knit society see themselves as connected with the collective in which they are members; are motivated primarily by the social norms and duties of their collective; place more importance on collective goals than on their own personal goals; and emphasize their connectedness to other members of the collective. Put simply, the West is seen through an ideology of individualism. Middle Eastern culture, and Palestinian society in particular, remains highly collectivist, based on the values and ideals that are evident through the understanding of *sharaf*, the value of stable social relations (even at the cost of personal peace), and the expectations of the strength behind the social connections within society (Dyer, 2011).

Collectivism in Palestine means that when conflict arises within a community, the conflict resolution process must involve families and broader society in order to ensure a restoration of harmony for the sake of the community. Storytelling, I learned, is a core aspect of *sulha*. Storytelling serves to separate the individuals from the conflicts at hand, to describe the conflict scenario using fictional characters so as to remove the immediate sting of fault and blame. It also serves to generalize conflict as harm to the harmony of the community. A mediator might describe a similar situation he has encountered and relate similar themes to the parties. He will then use storytelling to relate the narrative of the offending party to the offended party, and offer to act as the recipient for hurt, pain, anger,

disgust, and frustration. His role is to absorb this sense of loss and injury through listening and compassion so that the emotional toll of conflict may be contained to prevent retaliatory violence.

Storytelling in Western models is a process for individual parties, rather than for the mediator. Each party has dedicated time at the start of a mediation session to share their version of events, which a mediator will respond with paraphrasing, summarizing, and clarifying questions. These stories are shared and heard in presence of one another. In some cases, a separate meeting, or a caucus, is used for parties to share one on one with the mediator, who may or may not relay a summary of this discussion with the other party. Western mediation practices downplay the role of the mediator, whose role is to support each party in sharing their interests and points of agreement and disagreement, and charting a path for the journey ahead. The mediator is not the recipient of the emotional toll of the conflict, but a mirror for the parties to see and hear one another clearly in order for the parties themselves to address the conflict. Thus, storytelling has distinct purposes, processes, and functions depending on the individualist or collectivist frame of the practitioner.

Cultural values drive the conflict resolution process, and the values of community and harmony support and are reinforced through a process such as *sulha*, more so than individualist processes such as problem-solving mediation or Western forms of victim–offender mediation/restorative justice. These processes rely on face-to-face meetings of parties with a mediator to promote individual empowerment, providing a platform for hearing another point of view and promoting the active collaboration of the individuals involved in crafting their own agreement. A process such as *sulha*—owing to its application in a collectivist society where conflict and its resolution rely on the input and cooperation of the wider community—utilizes shuttle diplomacy with a team of *sulha* practitioners (*jaha*) in order to promote the value of the collective community which has been fragmented due to conflict.

To know the process of *sulha* is to place it in the history of the region. The history of what are now Israel and the occupied Palestinian territory (oPt) of the West Bank and Gaza is a complex series of ancient and recent empires and kingdoms, religious shifts, warfare, and foreign involvement with the region through trade, pilgrimages, external mandates, immigration, and emigration. Modern Palestinian history has seen four stages of political and military occupation: (1) Ottoman, (2) British, (3) Jordanian and Egyptian, and since 1948, (4) Israeli. From field research visits to the area, *sulha* practitioners

indicated that it is very difficult to separate the historical, political, and geographical dimensions of the conflict with Israel and the military occupation of the area from everyday experiences of Palestinians, including their conflict resolution practices.

As a historical reference point, *sulha* predates Islam by at least 600 years. *Sulha* was “found partly in early Semitic writings and Christian Scriptures” during the Roman Empire in first century CE (Cook in Jabbour, 1996, p. 13). With the rise of Islam in the 600s CE, conflict resolution principles and practices were developed and shared through the sayings of the Prophet (*hadith*) as well as the Holy Qur’an.

Informal justice grew prevalent because of mistrust of the influence exerted by foreign occupiers and the elite within formal justice measures. For example, Ottoman control depended on reliance on local leaders to run the empire’s administrative tasks, including tax collection and social affairs (Birzeit University Institute of Law [BUIL], 2004, p. 11). Within Palestine, “tension and rebellion against the central authority ... led to a weakening of the authority of Ottoman institutions” (BUIL, 2004, p. 30). Because of this, informal justice methods were a popular means to resolve conflicts meaningfully by sidestepping central authority. Practitioners of *sulha*, called *islah* men, inherited the profession from their fathers, and they were specialized in particular sections of law or social norms. In an interview by Birzeit University, an elderly, prominent *islah* man in the West Bank noted that he inherited the role from his father and uncle, who held the position in the Ottoman era (BUIL, 2004, p. 31). The elite of this time had control of the newly established secular court systems, relegating the religious (*shari’a*) courts to hear social matters relating to marriage, divorce, and burial (Pappe, 2006, p. 31).

When the Ottoman Empire collapsed following World War I, British Mandate Palestine, as it came to be known, came into effect. This saw the split of Palestine into two areas: Western Palestine, which was allotted to Zionists, who would eventually establish Israel, and Eastern Palestine, which was added to the newly founded Kingdom of Transjordan. Research by Fares and Khalidi (2006) supports that Ottoman laws remained in force and the British “amended, abrogated, and added legislation as the need arose” (p. 512). During this era, the British developed a “legal basis for the establishment of tribal courts” and “regulated the work of informal judiciary” (BUIL, 2004, p. 32). These tribal courts were formalized to “adjudicate cases among and between tribes” (Fares & Khalidi, 2006, p. 509). The legal authority established by the British Mandate may not

have been to encourage local capacities for resolution of conflicts, but rather to provide ways to control the colony through “indirect rule,” by “retaining local laws and local leaders in order to avoid opposition” (BUIL, 2004, p. 32; Fares & Khalidi, 2006, p. 512).

Since formal justice measures were accepted as a way to control the population, this meant that Palestinians distrusted them greatly. Therefore, the popularity of informal methods such as *sulha* surged. As time passed, and Israel was established, the Palestinian population continued to rely on informal processes to address sensitive conflict issues in their community. Informal justice at the time of Israel’s foundation is reported to have been either complementary to the formal courts (*nizami*) or well supported by the occupying Egyptian or Jordanian authorities according to *islah* men who recall that period (BUIL, 2004, pp. 32–33). Jordan occupied the West Bank from 1948, and with this, “Jordanian laws became enforceable in the West Bank as well” (Fares & Khalidi, 2006, p. 512). Instead of implementing tribal courts, Jordan recognized local informal systems of conflict resolution and “Jordanian authorities played a significant role in sanctioning and even organising the work of mediators” (Fares & Khalidi, 2006, p. 513). Jordanian law indirectly supported the informal justice system in the West Bank:

Legally, the Jordanian Penal Code of 1960 is still in force in the West Bank, despite the fact that it has been amended in Jordan. It contains several articles that allow for a reduction of the sentence or dropping the case based on a number of mitigating excuses, among which is reconciliation between parties to a conflict. The Jordanian period therefore witnessed the virtual formalization of the informal system through the state’s unofficial support for tribal and patriarchal social and political organizations and the legal provisions giving incentive to solve cases outside the courts through informal reconciliation procedures. This was in the context of a strong centralized state and a relatively efficient court system. (Fares & Khalidi, 2006, p. 513)

Later, when conflict festered between the State of Israel and the oPt during the first Intifada from the late 1980s until the mid-1990s, communities depended on processes such as *sulha* in order to both resolve disputes successfully while acting as a nonviolent means of protest against the institutions of the Israeli occupation: “[V]arious Palestinian factions united under one leadership formed ‘islah’ or reconciliation committees to undertake the job of resolving disputes between individuals based on shared customs and traditions and in the interest of the Palestinian people,

as a substitute for the Israeli justice system” (Fares & Khalidi, 2006, p. 513). While *islah* committees were conventionally led by established mediators and heads of families known to function in this role, an innovation occurred where there was the “introduction of new actors, young politically active individuals representing the various political factions, in such work, many of whom continue to carry out this function presently” (BUIL, 2004, 37). Further, over this period of the first Intifada, not only had the number of *islah* men increased, but the traditional characteristics of those practicing informal justice changed. No longer simply inheriting the position from their father, new *islah* men were “chosen as a result of their successful relations with the citizens or their position in the political structure” (BUIL, 2004, p. 37).

This era proved especially important in grounding the practice of localized informal justice measures with elements of the popular resistance against Israeli occupation while adapting the use of informal methods to the needs of Palestinians during the circumstances of the Intifada. “Rather than being subject to the Israeli court system, Palestinians resorted to a socially sanctioned, community based system of resolving disputes that addressed their concerns and with which they could identify” (Fares & Khalidi, 2006, p. 514).

Throughout a bloodier second Intifada, formal institutions of both Israeli and Palestinian control lacked credibility and capacity; informal justice practitioners confirmed that the absence of formally recognized executive, judiciary, or security elements contributed to a surge of dependency on *islah* services (BUIL, 2004, p. 37). Following these uprisings, *sulha* continues to exist to provide a creative, community problem-solving function, evading the invasion of privacy and control of formal justice avenues. The main issues affecting communities in the Bethlehem governorate are consistent with the ongoing conflicts of the occupation, yet not unlike issues that are at the center of conflicts around the world: land, water, housing, work, and marriage. Still, the context of Bethlehem means that conflicts, and their attempted resolution, are different. Wi'am, The Palestinian Conflict Transformation Center, outlines the specific difficulties in addressing conflicts within a Palestinian context: (1) lack of land, (2) restricted movement, (3) crumbling economy and infrastructure, (4) instability and uncertainty, and (5) unknown future (Dyer, 2011; Wi'am, 2006). As a result, the existing process of *sulha* provides an established practice of resolving disputes within an ever-changing environment.

Sulha

Sulha is practiced by older men, who are influential through religious, business, and societal means. They may be wealthy and well-connected, and since this work is seen as an honor, they are not paid. As described by Zoughbi Zoughbi, Director of Wi'am:

Sulha involves a social dispute and conflicting parties that resort to a neutral third-party mediator(s). One of the conflicting parties calls or approaches the mediator to narrate his/her story. Then mediation process starts with 'shuttle diplomacy' between the disputants. This listening stage is vital to fathom the issue at hand in order to weigh different options resolving the problem ... The success or failure of the mediation effort in the Palestinian context falls on the shoulder of the mediator ... Once the *Sulha* is performed, the dispute will cease to exist. The agreement is legally binding. (*Sulha* Mediation, 2010)

The process of *sulha*, like many models of Arab conflict resolution processes, involves collective responsibility for the harm and for making things right. Core to conflict resolution in Palestine is the application of *sharaf*, or honor, to move parties toward participation, negotiation, and resolution. Abu-Nimer (2003) describes the phases of *sulha* in five steps: (1) the expressed intention of the offending party to reconcile with the injured party; (2) the formulation of a group of mediators (*jaha*) to negotiate a period of cessation of hostilities with the injured party (*hudne*); (3) in the event of murder, the security of an amount of money (*'atwe*) to guarantee a ceasefire; (4) a specified truce period which can be renewed as the mediators work with parties on an acceptable agreement, and (5) the final stage of the process, *sulha*—a public reconciliation ceremony that marks the restoration of normal, peaceful relations with the signing of an agreement witnessed by the community and dignitaries, and (in cases of murder or serious injury) payment of an agreed sum. Ultimately, Rohne (2006, p. 189) says, “The *Sulha* process is a means of avoiding—or ending—a blood feud.”

The process of *sulha* works in the following way: mediator(s) are approached by the offender or his/her family. The victim or his/her family party may exercise “their right” of revenge for the offense or injury caused, so it is imperative for the offending family to approach a mediator to actively resolve the conflict as quickly as possible following the incident in question. The mediator must consider his power in the situation: will he be able to convince the parties that dialogue is in their best interests? If the

mediator feels that the offending party is worthy of speaking on behalf of, and the conflict is surmountable either through the mediator's own skill or through the use of a collective effort of fellow mediators, the *sulha* process will continue.

The mediators will beg the victim's family to engage in the conflict resolution process (Rohne, 2006, p. 190). This stage of the process, where notable and respected elders beseech the victim's family to peacefully work toward resolution rather than take matters into their own hands, is vital for the future of the negotiations. The fact that these highly esteemed members of the community are seen begging for mercy is usually enough to persuade the victim's family to participate (Pely, 2009, p. 83). The family will receive a small sum from the offending family to show commitment and to hold the truce (*hudne*), and then the shuttle diplomacy begins.

The length of time for discussions depends on the severity and complexity of the case: "The conflict situations that *Sulha* tackles across our society are marriages, families, domestic violence, local feud, brawls, land disputes, honor, neighborhoods, workplace, youth conflicts, and related community disputes" (*Sulha* Mediation, 2010). Murder and serious injury are also addressed through *sulha* processes. It is not unusual for multifaceted cases that involve many families and communities to take years and multiple mediators of graduated stature to resolve.

Once an agreement has been reached, the process ends with a public ceremony. This is both a serious and a celebratory occasion; the conflict has ended and relations have been restored. Both parties may take photographs, record the ceremony, and invite the community to witness the end to the dispute. The ceremony involves the offending family on a stage or public platform, receiving the victim's family and presenting them with compensation in a highly visible way. The money that is exchanged is to compensate the family for their loss and/or the lost income of their injured or deceased family member (Lang, 2002, p. 58). Once this money has been exchanged, speeches have been made, and hands have been offered and received, the offending family will host a meal for not only the victim's family, but the community.

To end, there is the symbolic closure of the ceremony (*mumalaha*). The victimized family will invite the offending family into their home to share a cup of bitter coffee, raising their *sharaf* in the process. The offending family will then provide a meal for the victimized family, the *jaha*, the notable guests at the ceremony, and the public witnesses of the *sulha*. This expensive meal, traditionally lamb, acts to raise the dignity and the honor of the

offending family and to reintegrate them into the community. “As Jabbour (as cited in Pely, 2009, p. 85) indicates, the ritual of *mumalaha* remains from the biblical tradition of sharing salt and bread as a sign of covenant and peace.” This exchange of symbols and ritual marks the restoration and resumption of normal social relations between the families. In both cases, the benefit of being the host increases *sharaf*. For the offender, the cost associated with providing food to the community would be substantial, yet they are rewarded with a reentry to the community through this final piece of the *sulha* process (Pely, 2009, p. 85; Lang, 2002, p. 97). In breaking bread, the community is made whole once again.

While I had read about *sulha*, I felt far more connected when I spoke with mediators directly about their work. Indeed, their process is a product of their environment, and the turbulence of the ongoing conflict with Israel meant that there is a need for a local model for conflict resolution: not imported, not externally taught or trained—*sulha* was a process that was owned and operated by the Arab population, a trademark of their cultural heritage which was under threat. I heard story after story about how the conflicts in Palestine are like those outside of Palestine, but the situation meant that conflicts escalate quickly, responses are disproportionate to the offense caused, and violence may occur more rapidly than in conflicts elsewhere.

With much to lose in terms of politics, geography, human rights, and security, Palestinians cling to aspects of their culture that they *can* control—such as dance, song, religious practice, language—and, yes, *sulha*. Realizing the types of conflicts that were evident in Palestine made the process of *sulha* less exotic and more accessible. I had initially prepared questions to *sulha* practitioners without thinking to ask about how the current Israeli occupation affected their work. However, I soon realized that *sulha* must be understood within the culture and environment in which it is used, and in Palestine, this inevitably relates on many levels to the occupation. Therefore, I asked *sulha* practitioners about how the occupation affected their work, and heard how, in many ways, the occupation resulted in the necessity for *sulha* practitioners. This added a deeper level of appreciation to understanding the conflict work that was done.

DYNAMICS OF PARTNERSHIP

The partnership between Wi’am and me was deferential because my goal was not to train or even present the model that I use to the staff at Wi’am. My goal in our partnership was to learn from my Palestinian hosts. I hoped

that there was a potential for transformative mediation overlap in a new environment, which might lend itself to future partnership through collaborative training efforts. Transformative mediation, itself a novel approach in Western contexts, appeared to be a promising fit for a collectivist society such as Palestine. I would later reflect that this partnership may hold curiosity and value for my hosts, but it certainly would not replace their methods. During my research, my methodology was to ensure that I did not distract my hosts with my professional leanings or create barriers to their honesty in describing their work and beliefs.

I prepared a number of interview questions for local *sulha* practitioners that would inform the theory and research questions of my larger dissertation questions, such as “Can you describe a situation that would be a ‘success’ for you?” and “Can you describe a situation that would be considered a ‘failure?’” as well as questions about assumptions of what people in conflict want and need out of *sulha* and the *sulha* practitioners. In practice, I found that *sulha* practitioners, perhaps owing to the role of *sharaf*, were not willing to divulge the propensity for failure. Instead, I worded my question in a vaguely more positive light, “How do you know when a mediation could be going better?” As mentioned earlier in the chapter, I soon added a question addressing the impact of the Israeli occupation on their work. I did this because the occupation affects Palestinians in a variety of ways (employment, movement, education, and so on), and I was curious as to how it affected the work of local conflict resolution. I was able to secure an interpreter who would help with those interviews with practitioners who lacked a command of English, since my knowledge of Arabic did not extend beyond greetings and basic polite conversation.

As I engaged with mediators, I adopted an elicitive approach to ascertain the ideological and practical descriptions of the work of *islah* men. Lederach (1995) responded to concerns about the lack of cultural frames in conflict transformation processes, and described the prescriptive approach by conflict transformation experts, where the “trainer’s knowledge is the key resource to be emulated by the participants” (p. 51).

In contrast, the elicitive approach to conflict transformation sees culture as a foundation to the model that will be created; rather than importing a one-size-fits-all model, an elicitive trainer facilitates the creation of a model based on the resources within a culture. I was a researcher and not a trainer for this project, but my goals were aligned in a similar vein; my purpose was not to create a new model, but to discover the basis for *sulha* practitioners to resolve conflict this way within a Palestinian context, with a curiosity of whether transformative mediation might also work within

this cultural context. I would ask questions, the practitioner would answer, and they often would share experiences to demonstrate their point. In one way, I took the lead in determining the goals of my research, the needs in order to complete it, and whom I wanted to speak with. For Wi'am, they were able to control whom I spoke with specifically and volunteered an Arabic-to-English interpreter to assist me in reaching my goals.

In this regard, Wi'am could be assured that I heard from the best that the organization and the practice had to offer locally. Our relationship was largely egalitarian and collaborative in terms of our mutual respect for one another's work—I was open and honest with the organization about my goals, and similarly Wi'am was upfront with their abilities to schedule interviews with practitioners.

There were challenges even with a positive working relationship established. For example, I was able to interview nine *sulba* practitioners with and without an interpreter. Though I had a qualitative research study, I had set out to interview as many practitioners as possible, and had wanted to interview ten practitioners at the minimum. This was not possible due to schedules and travel requirements, which was disappointing. Another challenge was the less predictable aspects of interning at an office that acts as a “catch all” for the community. While I was on hand to welcome visiting international delegations, tidying and helping to make tea and coffee in the office, the allure of Wi'am is that it is not a single-purpose entity but responsive to needs in the community. Wi'am not only provided *sulba* mediation, but also programs for engaging men in the community, women's empowerment, youth leadership, children's camps, and interfaith workshops. On one occasion, I was asked to be nimble and go beyond the proofreading of grants; I was asked to prepare and deliver a workshop for a small group of young adults traveling from Bethlehem to Montenegro for a youth leadership conference. To be frank, I knew very little about Montenegro. However, I wanted to be sure that I was able to return the generous assistance that Wi'am had offered to me, and dedicated time and a little money to research Montenegro and provide an overview of the country and cultural expectations for tourists (complete with a guide—however, this was in English).

The staff at Wi'am and I never explicitly discussed the differences we embodied in culture and power. Many of these differences, though, were obvious. As an American, I had a passport that allowed me freedom of movement between Palestine and Israel. I had educational, financial, and broader travel resources that afforded me an overall better quality of life

than most Palestinians that I worked with. Conversely, as a visitor in Bethlehem, my hosts had knowledge power. Aside from language, the staff at Wi'am were part of the fabric of the community, whereas I was clearly an outsider. In addition to being an outsider, I am also a woman. I was told that the truce celebration of *sulha* would not be accessible to me because women are not a part of these ceremonies. The closest that I could get to seeing what *sulha* looked like was to speak with the practitioners, and while it was not ideal, it did paint the culture in a new gendered lens for me. While men hold the public sphere, women often are influential in the private sphere. Wi'am counters this lack of women's involvement in the public sphere through a women's program and by training local women to be visible and outspoken members of society (but not yet as *sulha* practitioners).

The partnership between Wi'am and I was supportive and respectful in terms of cultural distinctions, project scope, and expectations. Wi'am was helpful not only by granting me access to *sulha* practitioners, but also in providing an environment to experience the professional and interpersonal aspects of Palestinian culture. The staff helped me navigate intercultural issues such as asking appropriate questions, responding in a culturally appropriate manner, and how to engage with practitioners in the complex milieu of Palestine. The experience of working with Wi'am allowed me to view mediation through a masculine cultural frame, and to be exposed to the areas beyond *sulha* in which Wi'am is attempting to engage all members of Bethlehem society. Through this relationship I found that transformative mediation, rather than having a promising potential to contribute to Palestinian conflict resolution, would be inappropriate and unnecessary in this context. Instead, I gained insights to take back with me to an American context. For example, if mediators in such an individualistic society as the United States approached conflicts as fractures within a community that might benefit from extended relationships in society—such as through partnerships with business, politics, aid organizations, and so on—parties in conflict might not feel so isolated and alone in their dispute. That is not to say that there were no valuable areas of theoretical intersection; many times the promise of mediation in a Palestinian context is to—however remotely—orient the parties to each other and the value of each party's pain and suffering. While Western–non-Western partnerships need honest discussion of the needs, appropriateness, and value proposition for one another's cultural framework, these partnerships can still result in fruitful and unexpected discoveries.

LESSONS LEARNED

I had hoped that transformative mediation would complement existing conflict resolution practice in Palestine due to the focus on preserving “relationship” in Palestinian informal justice processes. Instead, I came to learn that the understanding of what a “relationship” is looks quite different depending on the cultural worldview that one adopts. In the United States, ensuring a preservation of the relationship between parties is not necessarily key to alternative conflict resolution; instead, cultural norms dictate the expression of individual aspirations and interests as parties create a workable solution agreeable by all. In contrast, Palestinian conflict resolution, based in collectivism, assumes that the preservation of the community via parties to conflict is tantamount to conflict resolution success. The *sulha* practitioners, parties, extended family, community members, and influential members of wider society play a part in ensuring that an agreement will prevail not only for the sake of the parties but for that of the community, too. Individualism and collectivism drive processes as well as outcomes. In transformative mediation and its relational ideology, the most damaging part of conflict is the downward spiral toward weakness and self-absorption of the individuals in conflict. This reaction is due to the inherent struggle to be independent while remaining interconnected with others, and so transformative mediation aims to improve relations through supporting measures toward individual strength and recognizing the humanity of the other. In *sulha*, the danger of conflict is its potential to tear apart the fabric of community. In a collectivist context, an individual is valued, but the needs of the community are greater; the networks of relationships in this context supply accountability, security, and solutions for conflicts. In addition, the historical basis for *sulha*, combined with the existential threat faced by the community and the act of informal justice as a method of nonviolent resistance, was a very powerful aspect to the work that I did not account for.

Another unanticipated lesson that I was grateful to receive was the effect that the Israeli occupation had on the work of *sulha* practitioners. I initially prepared questions simply on the process of *sulha*, knowing that conflicts could relate to some aspect of the occupation (e.g. loss and lack of income, lack of land or space, frustration or boredom due to lack of movement, political debates on the situation), but I had not considered the effect of the occupation on the work of *sulha* practitioners. From Ottoman, to British, to Jordan and Egyptian, and finally to Israeli occupations, the intensity to

use *sulha* as a means of cultural expression while also resolving conflict grew. What I discovered in my reading and then understood more fully when I was in Bethlehem was that the process of *sulha*, while true to its roots, has evolved with the needs of the community and in response to the political reality in which it exists. *Sulha* practitioners assert their profession not only because the community depends on a collectivist method to addressing social conflict, but also because as an informal justice measure, it is also a means of resisting occupation. *Sulha* practitioners noted that their work is in itself a nonviolent means of resistance, since it supplements (and in some cases, replaces) formal justice measures within the oPt. The use of *sulha* was and remains a way to evade formal justice by occupation authorities or Palestinian courts overseen by occupation authorities. Working together under occupation was also seen as a way to find common ground within disputes, as two *sulha* practitioners noted:

The most important thing—the most important thing—we are under occupation. We must be easier together. If we take our minds to the hard thing, we all lose. Because we all, all the Palestinians, are under occupation. [Palestinians in conflict] should solve their problems. If the Israelis enter their problem, it'll be very, very [difficult]. [Palestinians] prefer to solve their problems [through *sulha*]. (Dyer, 2011, p. 259)

[Mediation] should also work in bringing ties together [that] is essential in society. People need to take a stand and [use mediation to strengthen ties]. Since we're occupied, we don't believe that under occupation there is a trust between people and the courts [which were at that time were connected to the Israeli justice system]. People didn't go to such places because in their mind their mentality tells them that when you go to such courts you're actually going to the occupation for help. That wasn't something in the Palestinian mentality. That's why local characters and people to a step in and people went to them. As a Palestinian society, we're connected to the Arab society, and the mentality of this kind of society is connected to the family and the extended family—it's like the Bedouin type. (Dyer, 2011, pp. 259–260)

Solutions to disputes were innovative and relate to the conflict at hand, but also, in collectivist fashion, by reintegrating those in conflict back into society. For example, a *sulha* practitioner relayed a story about how a sibling dispute over an expensive hospital bill for a parent was less about who would pay, but the broader injustice about work, life, and collective responsibility. The *sulha* practitioners in this case recognized the anxiety that the siblings

felt over the bill, and that each thought the other was more able to take on the financial burden (one was able to work in Jerusalem, which commands a higher salary, while another was not—relating to a larger issue about the accessibility of work permits for work in Israel). Beyond the financial costs of a bill, the *sulha* practitioners saw a family fragmenting over a lack of community. The solution was grounded in the collectivist worldview of the *sulha* practitioners and unified the parties to join together when faced with strife relating to the occupation: the community fund-raised to pay the hospital bill, and the family became integrated into community programming to reintegrate as a show of gratitude and strength for the community's support.

Through my field research, I was able to witness the narratives of conflict resolution practitioners in Bethlehem. These narratives provided me with humility for the wisdom of local practice and profound respect for how conflict resolution in Bethlehem reflects the sociopolitical reality for parties and mediators. My research goals were adapted to counter the challenges that existed, but the outcome of my research still surprised me. What I discovered was that by taking the time to examine the underlying theoretical assumptions guiding the practice of *sulha* practitioners, I identified many points of incongruity between the practices of transformative mediation and Palestinian *sulha*.

Comparing Palestinian Sulha and Western Transformative Mediation

My findings included a rich and diverse list of differences between Palestinian *sulha* and transformative mediation practices in theory and practice, including the third-party mandate, the use of inside-partial mediators, shuttle negotiation versus face-to-face dialogue, faith-based versus secular conflict resolution practices, and social justice.

Third-Party Mandate and Culture

The third-party mandate determines the intervener, party expectations of the intervention, and the role of the conflict intervener. The third-party mandate is based on three components: the relationship, if any, the third party has with the parties, whether the intervener has interest in the outcome of the dispute, and whether it is one person or a group acting as the third party (Folger, 2003). The differences between expectations of informal justice

practitioners in individualist and collectivist societies are notable. In individualist societies, the expectation is that informal justice practitioners, such as mediators, will be independent and neutral third parties unknown to the disputing parties, with no interest in the outcome of the dispute, and are the sole mediator (or perhaps comediator) in a mediation session. The content of the mediation session is not discussed by the mediators outside the confines of the mediation, for example, with other mediators or members of the public—known or unknown to the parties. In stark comparison, *sulha* practitioners in collectivist Bethlehem are known to the parties and indeed are sought out because of their esteemed reputation and network within the community. A disreputable party may be turned away from a *sulha* practitioner if the practitioner sees too great of a risk in working with them or does not trust that the party will commit to the process. *Sulha* practitioners do not gain from outcomes, but they are motivated to resolve the dispute in order to restore the community to preconflict levels of cooperation. The *jaha* (composed of multiple comediators) work together, during and outside of *sulha* sessions with parties, to resolve the dispute through dialogue with parties and with other *sulha* practitioners, extensive networking, and creative problem-solving.

“Insider-Partial” Mediators

Wehr and Lederach (1996) discuss the roles of mediators as “insider-partial” and “outsider-neutral” in the contexts of Central America and North America, respectively. In Western societies, the mediator as outsider-neutral is preferred because of the credibility gained by their externality to the dispute and their perceived neutrality because of their distance from each party. The role of *sulha* practitioners, however, is as influential “insider-partial” mediators who are known, respected, and seen as fair to the parties. The *sulha* practitioner’s credibility and authority rests on their high stature and reputation as well as their relationships with the parties. They are deeply trusted by parties, since the *sulha* practitioners know the parties, their extended families, their neighbors, their friends, their histories, and the context of the dispute. Because of this intimate knowledge and trust of the parties, the *sulha* practitioner is invested in the outcome of any dispute not only because of their reputation, but because the parties in conflict are their neighbors and friends.

Shuttle Negotiation Versus Face-to-Face Dialogue

In Western mediation practices, the process values an experience where parties hear the positions, interests, emotions, and opportunities for agreement directly from one another. Parties are expected to create their own solution, with a mediator facilitating that conversation—but not contributing to the substantive content of that conversation. In Palestinian *sulha*, however, the process requires *sulha* practitioners to act as shuttle negotiators or intermediaries between parties rather than facilitating face-to-face communication between parties. The onus is on the *sulha* practitioners or the *jaha* to diffuse the situation by ensuring the separation of the parties, being the recipients of the narratives and emotions of the parties in segregated sessions, and negotiating a settlement through addressing the needs of the parties and the community in a carefully crafted reconciliation agreement. The shuttle negotiation allows for greater reliance on the mediator, prevents potentially damaging emotional outbursts, and provides space for the *sulha* practitioner to engage in persuasive storytelling and relationship building without the fear of parties escalating the conflict.

Faith-Based Versus Secular Conflict Resolution Practices

In Bethlehem, *sulha* practitioners found deep inspiration and effectiveness in using faith traditions in influencing parties toward a heeding of a moral imperative for resolving conflict in a conservative, religious, collectivist society. As I detailed in my research (Saxon, 2018):

The influence of religion upon the work of conflict resolution in this environment is substantial, regardless of the religious background of the mediator. For some, conflict is brought about when there is a loss of connection with God. For others, religious faith is a driving force behind their work. The work of mediation within this society includes consultation with religious leaders, and at times reference to religious texts. (p. 98)

One mediator remarked: “One of the things that differentiate us from the West is that we are more related to religion. Religion does emphasize and encourage people, and has certain ethics, that encourages people to treat each other in a certain way” (as cited in Dyer, 2011).

This is in stark contrast with the secular and party-led practices of transformative mediation in the United States. While some Western practitioners

operate in a faith-based orientation, most mediators in both settlement-oriented and party-oriented processes work within secular environments, not least because many work within government-funded or court-led programs.

Social Justice

A broader goal of *sulha* is also toward addressing social injustice when resolving conflicts, in part due to the drive toward social justice relating to the occupation. As one *sulha* practitioner remarked, “Our struggle is not only against the occupation but it’s also the injustices among ourselves, which [are] impacted by the occupation” (as cited in Dyer, 2011). Bush and Folger (2012) assessed the opportunities and risks to using mediation in Western contexts to address concerns of justice, and illustrate that the field remains divided on the appropriateness and opportunities for mediation to strengthen the fabric of civil society. Bush and Folger (2012) outline that many of Western mediation’s social justice critics argue that mediation is a risky, inappropriate, or limited avenue to address social justice concerns (pp. 33–48). Yet, Bush and Folger (2012) conclude that party-driven “mediation offers opportunities for justice, rather than risks to justice—and equally important, it offers unique opportunities for strengthening the civility and engagement so essential to the civic health of our society” (p. 52). Social justice remains an undecided and risky venture for the mediator in Western contexts.

While I failed to uncover a theoretical basis for transformative mediation within a collectivist society, I succeeded in recognizing the value of the indigenous processes that exist. Through my research, I humbly discovered the unexpected: the wisdom in local practice. Given the numerous differences in ideology, conflict resolution practice, and culture, the question of how well would transformative mediation work in Palestine was answered, but the answer was more complex than I anticipated. I developed an openness and honesty at exploring new ideas and practices, with the caveat that these methods should be adapted to the realities that the population faces. There is room for *sulha* to continue to adapt and develop, in particular in including the voices and presence of women and youth as *sulha* practitioners as well as parties to the conflict. *Sharaf* politics dictate much of the appropriateness of gender and age in the public sphere, yet women continue to make gains politically, and including youth stresses their value in the resolution process.

Wi'am and others lead conflict resolution workshops tailored for women and youth, and it is a promising opportunity to promote inclusivity while adapting to the changing needs of society.

SUMMARY AND CONCLUSION

By listening to the stories of Palestinian conflict resolution practitioners, I became aware of the fragility of communities and the reasons behind the longevity of *sulha* mediation. Communities are not confined to regions, neighborhoods, religions, and ethnic groups, but they must be cultivated and given attention. *Sulha* is one of the many ways that Palestinian society retains its strength, its resilience, and its culture. *Sulha* adapted to fit the needs of the community through tumultuous times and rejected formal justice methods of occupying powers. *Sulha* was adapted to stay relevant and to reinforce the role of indigenous conflict resolution practice. Despite being centuries in the making, *sulha* continues to be adapted by practitioners in order to stay relevant for the communities in which it is employed. If Western models of conflict resolution are to thrive, they too need to be modified and tailored for their communities. While mediation is celebrated and debated for its utility and cost-effectiveness, Western practice stagnates in terms of creating a robust value for disputing parties. Purity within practice is practical for as long as the conditions of practice remain the same, but practice should be responsive and tailored to the changing needs of the communities in which they serve. A core lesson from my experience is that ideology is a powerful foundation for practice, and yet practice can innovate without sacrificing the values of practitioners. Conflict resolution in the West should continue to develop models to fit the communities in which they work, and to ensure that those practices are fit for purpose in an ever-evolving climate.

Western models can learn from Palestinian *sulha* by ensuring that when introducing conflict resolution models into communities, the suggestion is not to replace existing models of resolving conflict that communities use successfully. Western conflict resolution practice is not limited to particular ideologies and techniques, but can evolve to respond to the needs of communities and to adapt when models become outdated, irrelevant, or unnecessary. Western conflict resolution models have the capacity to continue to adapt as demands on services grow, and to respond to the political climate, changes in community norms and laws, demographic adjustments, and shifting values of society.

My intention in researching *sulha* was to address the question of whether transformative mediation could be appropriately introduced in a Middle East setting. By working in partnership with Wi'am, a community organization dedicated to conflict transformation in Bethlehem, I interviewed several practitioners of the traditional Arab process for peacemaking called *sulha*. My field research elicited the working ideology and orientations to conflict of Palestinian *sulha* practitioners, which allowed me to analyze the ideology, orientations, and practices of *sulha* in contrast with transformative mediation. Further, the findings of my research were dependent on consideration for the broader context where *sulha* is the preferred model for informal justice. Analyzing the ideologies and practices of informal justice and mediation practitioners provides a critical lens into the social and political realities in which conflict interveners work.

Sulha, as an ancient and indigenous conflict resolution process, has remained relevant and effective in addressing the modern needs in Palestinian communities because of its adaptiveness through an ever-changing political landscape. Organizations such as Wi'am are welcoming to outside practitioners, but as Zoughbi (as cited in Lederach & Jenner, 2002) asserted:

In any foreign country, you are always an outsider. No matter what your attitude and position regarding this conflict ... you are a foreigner. And no matter what you do, no matter what you represent, no matter what your ideology, philosophy, or principles, you can be a part of the struggle, but the struggle is not yours. (p. 152)

As an outsider, my partnership with Wi'am was one of learning and humility. I approached our cultural encounter with an openness that I was undeniably a student in this partnership, and the mediators of Wi'am were my teachers. I came away from the experience with a deeper appreciation for the cultural complexities that may prohibit a full integrative training partnership, as well as an openness to wisdom in cross-cultural contexts. Spilling *kahweh* on my trousers that first day at Wi'am was indeed good luck: it was through the cultural encounter of viewing problems in new ways that I was able to learn the vibrancy of *sulha* in a Palestinian context and consider valuable lessons for Western conflict resolution practices.

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CHAPTER 10

Mediation—Between Religion and Culture in the Saudi Context

Sharia Walker

INTRODUCTION

It was a hot Friday afternoon and about two weeks before the beginning of the holy month of Ramadan, when Muslims are expected to fast from dusk until dawn. That afternoon I had decided to go to the local mosque with my husband to attend the Friday sermon and congregational prayer. The *imam* went on at length about the virtues of forgiveness and reconciliation. He reminded Friday comers of the upcoming month of Ramadan, also known as “the month of mercy and forgiveness.” The imam encouraged people to extend a hand of reconciliation to those with whom they may have severed relations. He urged us to repair relationships and pursue God’s forgiveness by seeking forgiveness from, and extending forgiveness to, others. One of the main themes of Ramadan is for Muslims to restore their humanity by rebuilding relationships with God as well as with family, friends, foes, and the community. Muslims are reminded to pray to Allah for mercy and forgiveness, and also to emulate that expected mercy and

S. Walker (✉)

Islamic Development Bank, and Walker Consultancy, Jeddah, Saudi Arabia
e-mail: sharia@walkerconsultancy.com.sa

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T. P. d’Estrée, R. J. Parsons (eds.), *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building*, Rethinking Peace and Conflict Studies,

https://doi.org/10.1007/978-3-319-71102-7_10

forgiveness by acts of reconciliation. The sermon got me thinking about the work I do in mediation and conflict management in Saudi Arabia, and reminded me of the solid relationship between religious doctrine, religious traditions, and practices, and their influence on how people perceive conflict and its resolution in this context.

In 2013, I established a conflict management consultancy firm in Saudi Arabia, Walker Consultancy. As I began developing conflict management trainings with my American colleagues and mentors, we had lengthy discussions about how our trainings would be different than the ones conducted in the United States. One thing I knew for sure was that religion (i.e., Islam) would be at the heart of this diversity. In Saudi Arabia, Islamic law is the foundation of the legal system. The government has been gradually reforming and modernizing the legal system, which ultimately created a space to consider alternative dispute resolution (ADR) tools such as reconciliation, mediation, and arbitration as part of the Saudi legal system. I have been curious to examine the differences that I would inevitably face between the local perception of conflict and its resolution and the mediation and conflict management process which I had learned and practiced in the United States.

Lederach (1995) argues that social conflicts, meaning, and knowledge are ultimately rooted in culture (Lederach, 1995, p. 8), which to me means that the resolution of conflict is also rooted in understanding the culture. This chapter will investigate how Saudis, including myself, are developing conflict management trainings and applying mediation processes in ways that are authentic to us and our culture.

HISTORY OF SAUDI DISPUTE RESOLUTION AND CULTURAL APPROACHES

Make no mistake about it, no leader rules alone. (Bueno de Mesquita, Smith, Siverson, & Morrow, 2002, p. 44)

Nearly 100 years ago, the founding father of Saudi Arabia, King Abdulaziz Al Saud, united forces with the religious leader Muhammad bin Abdul Wahhab (the eponymous “Wahhabi”) to establish the Kingdom of Saudi Arabia. They successfully unified scattered Bedouin communities in central Arabia, the East Coast inhabited predominantly by the Shia community, and the West coast of the Hijaz, at the time ruled by the Ottoman Empire (Arebi, 1994). This enormous political achievement was mainly

possible due to the relationship between the political force of the Al Saud family and the religious force of Muhammad Abdul Wahhab's clan and warriors (Trofimov, 2007).

The influence of this historic relationship extends its authority to present social, economic, judicial, and political affairs in the Kingdom. The survival of today's Saudi leadership is primarily due to their most powerful constituent: the religious establishment. However, time and the force of modernity have strained this relationship, generating conflicting interests. The royal family strives to maintain power while fostering socioeconomic development, whereas the religious establishment also strives for power and seeks to preserve conservatism and a state that abides by Sharia law. Fisher et al. (2007) explain, "Conflicts arises from imbalances in ... relations—i.e., unequal social status, unequal wealth and access to resources, and unequal power" (Fisher et al., 2007, p. 4). The strained relations and unequal power between the parties play out on many fronts, including the judicial system and the attempts to overhaul it.

Religious and Cultural Context

It is safe to say that the culture of Saudi Arabia is religious and conservative, defined by its Islamic tradition. This means that religion is at the center of social habits, including beliefs, values, attitudes, and communication. "The socio-political mood in Saudi Arabia is currently heavily Islamic, as Islam serves to legitimize all activities" (Allen et al., 1996, p. 34). The significance of religion in Saudi Arabia stems from it being the birthplace of Islam. Furthermore, it houses the two holiest sites, Mecca and Medina, for the 1.7 billion Muslims worldwide (Overseas Ministries Study Center, 2015).

The manifestation of religion extends beyond the cultural realm into the political sphere. The title of the Saudi monarch is the Custodian of the Holy Mosques, and the Arabic inscription carried on the national flag reads "There is no god but Allah, Muhammad is His messenger." I would define the Saudi culture as one in which Islam is the primary "code of behavior and a way of life" (Winter & Chevrier, 2008).

Traditional Mechanisms of Dispute Resolution

Clearly, Islam governs both private and public matters and relations, including how to resolve disputes. For example, when two people are in a heated fight and a third person jumps in to intervene, it is customary for the third person to instruct the disputants: "Say there is no god but Allah!" or he

might say, “Praise and bless the prophet Mohammed!” This is meant as a way to divert the disputants’ aggression away from one another, and to prompt them to be mindful of the Islamic principles of peace. In another instance, where a discussion, a debate, or a negotiation between two people is at an impasse and perceptions are too far apart, and frustration kicks in, one party will usually attempt to calm the situation by telling the other, “Praise and glorify the prophet Mohammed,” to which the other is compelled immediately to respond, “All praise and blessings upon the prophet Mohammed!” This usually creates an opportunity for the parties to momentarily step aside from their position. These are examples of the central role that religion plays at the heart of interactions.

Sulh is the method of dispute resolution in Islam, and it is embraced in Saudi Arabia. *Sulh* can be loosely translated as making peace, conciliation, settlement, or mediation. *Sulh* has been promoted in the Quran and Prophetic statements (*hadith*) in a variety of contexts. The following are just a few examples:

And if two factions among the believers should fight, then make settlement between the two. (Quran 49:9)¹

And if you fear dissension between the two, send an arbitrator from his people and an arbitrator from her people. If they both desire reconciliation. (4:35)

And settlement is best. (4:128)

The Prophet Mohammed (peace be upon him) asked his companions: Shall I tell you what is better than voluntary fasting, praying and charity? His companions answered: Yes, O Messenger of Allah. The Prophet (peace be upon him) said: Reconciliation.

The above hadith is on the opening slide of our presentation for any workshop we conduct in Saudi Arabia. This is important because it legitimizes the training and validates the idea of mediation and conflict resolution as a practice that is not foreign to the Saudi and Islamic tradition.

Saudi Legal Reform That Led to Inclusion of Traditional Practice of Sulh

When the late King Abdullah Bin Abdul Aziz Al Saud ascended the throne in 2005, he was committed to diversifying the petroleum-based economy by inviting foreign investment. The hope was that this would reduce the high unemployment rates among the growing population of Saudi youth

(50 percent of the Saudi population is under age 25) and among Saudi women (Nereim, 2016). But for this to happen, there was a dire need for legal reform, especially in commercial law.

One of his main accomplishments that continues today is the overhaul of the legal system. This is not to say that there were no previous attempts at reforming and updating the Saudi legal system. Efforts made by King Abdullah's predecessors were thwarted by the religious establishment, "for whom maintaining a strict, conservative interpretation of Islamic law" was imperative (Murphy, 2010). Clerics feared that this reform would undermine their authority and Saudi Arabia's ultraconservative reading of Islamic law. According to Ibrahim al-Modaimeegh, a Riyadh-based Saudi lawyer, "the traditional establishment is by nature against these reforms. So it's going to take time to implement them" (Kechichian, 2009).

Nonetheless, not all attempts have been foiled. In May 1999 the traditional practice of *sulh* was introduced into the justice system for the first time. This was done in a Riyadh civil and commercial court, by setting up a bureau referred to as the Guidance and Reconciliation Office. This office was launched as a pilot, to examine the effectiveness of *sulh* as part of the justice system (Al-Qahtani, 2014).

However, it was Saudi Arabia's accession to the World Trade Organization (WTO) in 2005 (World Trade Organization, 2005) that propelled renewed efforts by King Abdullah to reform the legal system (Murphy, 2010). Joining the WTO stirred up a lot of local controversy, since not only did it interfere with the local economy, but it also altered the way Saudi Arabia interacted with the rest of the world: it changed the way Saudis did business with non-Saudis, and it reformed the laws that governed these interactions (WTO, 2005). Christopher Parlin, the American attorney who represented Saudi Arabia in its accession negotiations, described the impact of Saudi Arabia's accession: "The Saudis liberalized their markets and restructured their legal regimes. In short, they fostered a more open and balanced economy, one that will be infinitely more receptive to foreign participation than had been the case in the past" (Besheer, 2006).

This possible "openness" and "receptiveness to foreign participation" is exactly what concerned many Saudi conservatives. The former US Ambassador to the Kingdom, Robert Jordan, explains further: "We encountered a great deal of resistance among certain segments of the Saudi society. They had the impression that if they joined the WTO ... they would be required to import pork and alcohol. They would be required to allow the establishment of cinemas that would show pornographic materials in their society" (Besheer, 2006).

Therefore, it can be argued that Saudi Arabia's accession to the WTO, after 12 years of negotiation, was the nudge needed to create an opening to begin reforming the legal system, which ultimately created a space to consider ADR tools such as reconciliation, mediation, and arbitration as part of the Saudi legal system. Two years after ascending the throne, King Abdullah allocated some two billion dollars to reform the judicial system. While one of the main aims of these changes was to accelerate and advance economic reforms, they were also certain to have extensive ramifications, including advancements in civil liberties (Kechichian, 2009). The most outstanding changes that the reform addressed include:

- “Codify(ing) the largely unwritten Sharia regulations governing the kingdom’s criminal, civil and family courts in order to bring more clarity and uniformity to judicial rulings” (Murphy, 2010).
- In 2007, the courts were restructured. This meant that the monolithic Supreme Judicial Council was split in two, with one body for adjudicating appeals and a second for administering the judiciary. Furthermore, the number of appellate courts was increased from 2 to 13 (Murphy, 2010).
- In 2011, the Ministry of Justice proposed formalizing the traditional practice of *sulh* into the legal system. The Ministry published in the local Arabic newspaper, *Al-Riyadh*, an outline of what a formal reconciliation process would look like (Al-Jamaan, 2011).
- In 2012, a new Saudi arbitration law inspired by the UNCITRAL² Model Law brought a more inclusive “and independent approach which ... provides parties with greater discretion over the procedure of their arbitration” (Jones Day, 2012).
- In 2013, the Saudi Minister of Justice announced that the guidelines for setting up reconciliation and arbitration centers were nearly complete. He affirmed that incorporating reconciliation and arbitration as part of the legal system was part of King Abdullah’s initiative to reform the justice system, and noted that this particular reform would deal with the backlog of cases by reducing the load of cases judges have to hear (*Tawasul*, 2013).

Following the 2013 announcement by its Minister, the Saudi Ministry of Justice posted a 50-page Arabic document on its website; its title translates as “Mediation Ending in Mutual Agreement and Its Role in Resolving Disputes in the Kingdom of Saudi Arabia” (Al-Qahtani, 2014). The document explains the term *sulh* in both religious and legal aspects; it also differentiated

the term “mediation,” referred to as *wasata*, from the religiously based, traditional practice of *sulh*. Ultimately, the article explains that *sulh* is an Islamic term drawn from Sharia law, while *wasata*—mediation—is a legal and administrative term. In fact, the article further differentiates the two terms by explaining that the process of mediation is used when disputing parties do not reach an agreement, while the process is referred to as *sulh* when parties reach a settlement. Once that explanation is offered, the two terms *sulh* and *wasata* are used interchangeably throughout the document (Al-Qahtani, 2014). The Ministry of Justice began by establishing five offices or departments of reconciliation across the country. In the second phase, which is underway, the Ministry aims to establish many more reconciliation offices nationwide (Al-Okkash, 2014).

Sulh Process and Credentialing

I received an opportunity to view these processes firsthand. Late one night I received a text message from a friend, “Mona” (not her real name), asking me to come to court with her the following morning. It was September 2014, and she was filing for divorce from her husband of eight years. In the message, she sent me the location of the Court of Civil Affairs in Jeddah, and asked me to be there by 10:00 a.m. The next morning, I put on a black *abaya* and a black scarf that was long enough to veil my face: this was the dress code expected of any woman in court. Mona and I nervously lingered in the women’s waiting area, striking up small talk to keep ourselves occupied. Finally, she was called into the judge’s chamber, with her husband, while I waited outside. About 20 minutes later she walked out with a form from the judge requiring her and her husband to make an appointment at the *sulh* (reconciliation) department downstairs. After the judge had heard from both sides, he told them that he would make a judgment based on the recommendation of the *muslih* or “reconciliator.” *What a great opportunity for me!* I thought. This would undoubtedly provide me, a recently trained mediator, with firsthand insight into how the *sulh* process worked, and possibly a chance to interview the people who worked as *musliheen*.

My friend Mona and I made our way downstairs to the *musalaha wa muhakama* (reconciliation and arbitration) department. Much of what we had heard, through word of mouth, about this department was grim and uninviting to women, worrying us even more about the chances my friend had for winning her case. We were called into the office of the director of the department. We sat on a couch at the far end of the office as the director

spoke in a low voice to other people in his office. Mona and I looked at each other, not sure of what was happening. A few minutes passed as the group made their way out and the director called on my friend without ever making eye contact. He asked her about her case and why she was there, as he fixed his gaze on the notepad in front of him. Mona explained that the judge had referred her case to this department and she needed an appointment. Mona began explaining the reasons she was filing for divorce, and he seemed to be listening attentively. Once Mona was done he made notes on the paper in front of him and gave her an appointment for the next morning.

The next morning, I was fortunate enough to sit in during the caucus meetings with Mona. (A “caucus” is a private, separate meeting between the mediator and each party about the issue and the people involved.) As we arrived at the department the two mediators asked Mona and her husband into their office. I was not allowed in, as this was a private meeting only for the couple. I sat in the neon-lit corridor as I waited for them. A short while later, the door opened, and Mona walked out, her head high, and although her face was veiled, I could tell from the wrinkles at the outer edge of her eyes that she was smiling. She sat beside me and explained that they were now meeting with her husband separately, and would then do the same with her. I asked her how it went and what the mediators were like.

“They were very friendly, supportive, and unlike the judge, they made sure I was given ample time to share my perspective and feelings.” This was reassuring, and I asked her if she minded if I were to sit in on her separate meeting with them, which she agreed to. Soon after that, we found ourselves sitting on a big cream-colored sofa in the office of the *musliheen*. Both gentlemen looked at us in amazement and fascination. During the earlier meeting, my friend had explained to them that she was a counselor, and that I was a mediator, and that I had wanted to meet a *muslib* who might agree to be interviewed. I also wanted to learn more about how the *musliheen*—those working in the *sulh* department—were prepared for this position, and what that process looked like.

In April 2015, I interviewed a *muslib* who worked at the Court of Civil Affairs. He was fascinated that I had been a court mediator in the United States. I asked him if there were any vacancies, because I would like to apply; he replied apologetically that they did not hire women. “Omar” had been working as a court mediator for eight months. He had a bachelor degree in sociology, unlike most of his colleagues, “who either had no college degree or had a bachelor degree in Sharia or Islamic Law,” according to Omar. He further explained that he was in constant conflict with the department about

the need for *musliheen* to be qualified mediators, while they believed “that the *muslih* needs only to be a *mutawwa* [religious person], regardless of his qualification—or lack of it.” Furthermore, Omar elaborated that initially the department for reconciliation and arbitration was envisioned as “an entity separate from the court that would be managed and serviced by social science specialists, counselors, and psychologists,” that is to say, professionals rather than religious and clerical personnel.

Another source who works closely with the *sulh* departments on a national level told me that *musliheen* were not prepared at all for the position. He said that at the time the *sulh* departments had been established, they had not yet thought about who would or could work as a *muslih*. The decision was improvised and court administrative personnel of sound reputation and good standing found themselves being transferred to the *sulh* department, and carried new titles as *musliheen*. Both he and Omar confirmed that the *musliheen* were not trained as mediators, and that these mediators had undergone no professional preparation, training, or qualification. Instead, they relied on their religious insights and traditional “people skills” to mediate disputes.

What I have learned over the last few years is that the process of credentialing *musliheen* is evolving from a religious cultural practice into a formal legal profession. The guidelines issued by the Ministry of Justice (Al-Qahtani, 2014) outline the conditions of being recognized as a *muslih*. The *muslih* must be a Saudi, have a good reputation, be of good character, have relevant experience, and pass an interview (Al-Qahtani, 2014). These “credentialing” requirements appear to be subjective and generic requirements. They seem to be descriptions of personal traits, rather than professional requirements. For example, having a “good reputation” is listed as the second criterion for a mediator, or a *muslih*, just after being a Saudi citizen, and this is very much rooted in the structure of the tribal system. Traditionally, during intertribal disputes, the person who was chosen to mediate was required to be of “high reputation” and moral character. Thus far, there are no trainings or performance evaluations to certify a Saudi mediator or *muslih*. Texts that outline the qualifications of the *muslih* report that “they have sound knowledge in Islam, and social studies, and that they have learned from global expertise, by attending local and international conferences.” That being said, these articles also point out the need to design mediation training for the *muslih* to acquire specific skill sets needed for the mediation process.

Most recently, the current monarch, King Salman Bin Abdulaziz, has adopted what is known as “Saudi Arabia’s Vision 2030” as a roadmap for national development across ministries, institutions, and government entities. The main goal for the 2030 vision is to outline the general directions, policies, goals, and objectives of the Kingdom. Among the strategic objectives listed for the Ministry of Justice is limiting the flow of lawsuits to the courts; the key performance indicators (KPIs) for this objective are as follows: the percentage of cases transferred to reconciliation offices and the percentage of disputes resolved at the reconciliation offices. This is to say that the ADR process, and specifically mediation, is on the map of national development and is becoming part of the strategic planning that guides the functions of the Saudi justice system.

My personal experience observing the *sulh* process with my friend was positive in that it was inviting to women, but several years later, it is clear that there has been a complete lack of professional development of the practice of *sulh*. There exists neither an imported nor a homegrown *sulh* process. According to the *muslih* I interviewed, the *sulh* process is a somewhat ad hoc process in line with the personal understanding of religion and cultural practice of each individual *muslih*. Even at the national level, there is a narrow understanding of the scope of ADR, in which the arbitration component is more clearly developed than that of mediation or *sulh*. This has meant that at the level of the courts, there is no framework in place for the professional development of mediators. For the practice of *sulh* to become a reliable and effective element of the Saudi judicial system, I believe that the professional development of *sulh* by practitioners and the national development of ADR policies by policy makers must converge.

FROM “PEACEMAKER” TO MEDIATOR: A PERSONAL JOURNEY

Family Dynamics

I am a US-trained and credentialed mediator. I worked as a court mediator in San Diego’s Small Claims Court before moving back to Saudi Arabia, where I decided to continue my practice. The Saudi context is filled with cultural and religious features that have challenged not only my US-based training and experience, but also my personal understanding of conflict resolution.

I believe that the path that led me to the field of conflict resolution came about from the interdependence of my personal family role and the multicultural dynamics that I am a part of. Growing up, my role in the family was not unlike that of many middle children: the “peacemaker,” as my father called me. At the time, it seemed like the smart thing to do, since in my family, there was very little tolerance for opposing perspectives. I coped by accommodating others: I would step in to mediate and defuse angry disputes between my siblings, and I was co-opted to facilitate “shuttle negotiations” during my parents’ divorce process. For years I struggled with my internal clash of trying to be the rational, neutral party in a highly emotional situation, as was expected of me, which paradoxically meant silencing and disconnecting from my own emotions—a conundrum even for a seasoned conflict resolution practitioner. What I later learned was that this role demanded me to act like a neutral third party in a conflict where it was impossible to be impartial. As I grew into young adulthood, I began feeling more in control over the outcome of situations. Yet the challenge I was continuously confronted with was, when in disputes or engaging in a conflict situation, how could I stay true to myself by voicing my opinion while allowing space for the other(s) to share their perspective, and then move forward to have a collaborative exchange, a dialogue? I believe exploring answers to this dilemma is what landed me in the field of peace studies and conflict resolution. This predicament was not limited to my familial dynamics, but extended to the areas of culture, religion, and politics, especially as I studied diplomacy and international relations and learned about theories of competing interests and security.

Searching for a better way to interact with conflict, trying to understand root causes, attempting to comprehend the reasons people respond to conflict differently, and developing enough of an appreciation for conflict to remain engaged even when there is the apprehension of uncertainty and loss: all these dynamics piqued my intrigue and inquisitiveness. Prior to my academic and professional training in conflict resolution, my understanding about being a peacemaker, avoiding violence, and mediating was very limited. Although my gut feeling was that it was a proactive process, my experience with it, and therefore my opinion of it, was that it was a passive and “cowardly” approach. To my surprise, while undertaking my MA in Peace Studies at the Joan B. Kroc School of Peace Studies, University of San Diego (USD), I learned that the roles of peacemaker and mediator in resolving disputes are active ones. They require innovation, creativity, problem-solving, but also a methodic process. The tools of mediation, negotiation,

nonviolence, and peacemaking are anything but passive. I discovered that these approaches are about getting involved in the messy business of conflict, voicing your perspective, standing up to injustices, using effective communication tools, and taking risks by using unexpected nonviolent approaches. All of which I was uncomfortable with doing!

Upon my return home to Saudi Arabia, I cautiously began experimenting with my new communication skills. I remember during a heated argument with my younger brother, he hollered out, “I don’t know what type of peace program you’re studying, because now you’re just a trouble-maker!” It must have been strange for him to see me speaking up rather than walking away. I had hoped that my time at USD and the alternative approach to responding to conflict that I thought I had “mastered” would work immediately. However, this was just the beginning of my conflict resolution journey, in which most of all I was still learning about myself. I began taking an active role in the intense family confrontations, believing that having the will to foster dialogue would guide me through the conflict. Many times my attempts were a complete failure. I was unable to progress to the ideals of collaboration. I began to realize that although I had learned the principles and process of conflict resolution, I continued to carry a sense of insecurity and lack of trust toward my family. Hence, the first step toward collaborating was restoring family bonds of trust, compassion, and respect.

Cultural Dynamics

The second dynamic that intrigued me about resolving conflict is being part of multiple cultures, on the one hand, I am of biracial and binational parents, and at the same time, I am also a “third culture child” (Melles & Schwartz, 2013), my upbringing being in a culture different than that of either of my parents: the Saudi culture. This exposure to a variety of cultural norms, including behaviors, interactions, communication, expectations, relations, and perceptions, allowed me to become highly sensitive to differences of perceptions. I think this has enabled me to develop a multi-dimensional view of the world, and an appreciation of various worldviews (Lyttle, Barker, & Cornwell, 2011).

There is no single, particular moment or conflict that triggered this interest. Rather, it has been a journey in appreciating and honoring differences. Most difficult is making sense of the paradox of how the values of one cultural group can seem to be the exact opposite of the values of another

group, without either being right or wrong. For example, generally, those from a high-context culture such as Saudi Arabia might avoid a topic of confrontational disagreement, especially with family or close friends. Instead, people would diplomatically sidestep the dispute, highlighting that there is no “real” difference between their views, and drawing on religious rhetoric, such as “Allah knows best!” which would establish a level of consent and neutrality. This is done because preserving relationships and saving face take priority over being right. In such a case, if a more confrontational approach were taken, it might sever the relationship beyond repair. In contrast, someone from a low-context culture will use vivid and sometimes detached language in a conflict situation, and either side would make a point to clearly define their position to the other. The main focus is on the matter at hand rather than on the relationship between the disputants. After such an encounter, it might be normal for a relationship to resume (Useem, Useem, & Donoghue, 1963).

Lederach (1995) explores the value of paradoxes in comprehending conflict. He says, “A paradoxical approach suggests the energy of the [irreconcilable] ideas is enhanced if they are held together, like two sides of a coin” (p. 19). Ultimately, this perspective became especially useful when I formally entered the field of conflict resolution as a graduate student, in that I had learned how to intellectually and emotionally “hold together” differences that are present in conflict situations. I believe that developing the mental space to reconcile differences and being compassionate toward people’s differences by respecting their perspectives on the dispute are the essence of the work we do as conflict resolvers. Making sense of the competing cultural norms, values, and ways of interaction in high-context versus low-context cultures, collective versus individualistic cultures (relative to each other), was constantly frustrating. I found myself at times passionately defending an aspect of one culture and at other times fervently challenging it. The process of reconciling the paradoxes is a strenuous exercise in honing the power of reconciliation, which is an ongoing struggle. This is something I am able to appreciate in hindsight.

Transitioning from the academic realm of conflict resolution to the practical and professional role as a mediator, the challenges of my personal family role and cultural difference emerged vividly. This began as I worked toward receiving my mediation credentials from the National Conflict Resolution Center (NCRC) in San Diego. Most difficult was understanding my new formal role as a mediator. Hearing my formal voice as I introduced myself to disputants and established the ground rules filled me with

anxiety. My high-context culture voice spoke in my head: “Why would these people let you, a complete stranger, into their private space? Who are you to step into their conflict? How can they trust you when they don’t know you?” I also felt hypocritical about being a mediator. The voice of my personal family role accused me of pretense in my practice as a mediator. It filled me with self-doubt, saying things like: “How can you assist others to resolve their conflict when you can hardly resolve your own family disputes?” Eventually what I came to realize is that family disputes are in their very nature challenging to manage. The platforms are less controllable; it is less likely that I can lay the ground rules when I am a party to a conflict with a family member. I am not sure if one can ever fully master resolving conflicts to which they are a party.

Professional Training and Development

Before taking mediation training at USD, I had been under the mistaken impression that conflict resolution was about managing political conflict by utilizing international relations theories of competing interest, agendas, and security threats, but I had learned in the mediation workshop that conflict resolution is primarily about enhancing human relations and communications, and creating a safe space for people to hold crucial discussions.

I spent the following semester interning at Small Claims Court under the supervision of two skilled mediators and mentors, Ellen Scott and Ellen Michaels, who brought to life the theoretical and staged mediation processes I had learned during the workshop. What amazed me most was that despite the professionalism and structured nature of the process, it remained informal and thus was an empowering rather than an intimidating experience for the participants. Conflicts ranged from business and contract to domestic disputes.

Most importantly, my mentors encouraged me to jump in and take part in the mediation. I was uncertain how disputants would react to an intern who lacked not only professional experience, but also knowledge in the area of their specific dispute. Moreover, I felt uncomfortable being privy to their conflict, which in my cultural experience, in the Saudi setting, is a very private matter.

Mediation was often little known. We, the mediators, would stand in the corridors of the court and a few minutes before defendants and plaintiffs were called in, we would ask for their attention and introduce ourselves, explain what mediation was, its benefits, and how they could make use of this free service. Many were uncertain and hesitant. The disputants

who came before this court came from a variety of ethnic groups: Mexican, Somali, Asian, and others. Having a diverse group of mediators was helpful in this context: I noticed that the disputants seemed more at ease when they saw that I, one of the mediators, was from a background that was both local and international. It was interesting to see how grateful the parties were once the mediation ended. In most cases the disputants would reach an agreement, but even when they did not, they were always appreciative of the work we did. People felt a positive difference by the end of the mediation. The journey from anger, frustration, and a feeling of being stuck to openness and fluidity of communication was empowering.

My conversations with colleagues about cultural experiences got me thinking about what a training and credentialing program might look like back in Saudi Arabia. I became a credentialed mediator, requiring me to complete 20 hours of mediation experience, during which I would observe two and mediate six sessions. This was a rich experience, as it exposed me to an entire range of mediators, each with a unique style and approach, yet all had in common a tone that was professional yet empathetic, and this attitude usually seemed to transfer to the disputing parties.

This exposure further developed my confidence in mediating cases. The four most outstanding lessons I learned from the multitude of mediators I shadowed and mediated with were:

First, the importance of following a structured process and ensuring a smooth transition from one stage of mediation to the next, which include (1) opening statement, (2) issue identification, (3) exchange, (4) exploring issues, (5) agreement writing, and (6) closing. This structure is meant as a guide. Moving from one stage to the next helps disputants and mediators feel that the process has a beginning and an end, which is a potential resolution. It also provides a sense of achievement for the parties and the mediator. Even in a case where an agreement has not been reached, the disputants are congratulated for accomplishing a better level of insight about the conflict than they initially had.

Second, keep disputants forward thinking. When in conflict it is very easy to get stuck in the loop of who did what, and when. The rehashing of what happened can soon derail the mediation. Hence, mediators use specific techniques, including summarizing and paraphrasing, to move the process forward. They use open-ended questions and reframing to get parties thinking of possible solutions: what the outcome might look like, and what needs to be done to achieve the desirable result.

Third, deescalate emotional situations. Experienced mediators are skilled at deescalating the situation when emotions run high: they keep a genuine calmness in their tone of voice, their body language remains receptive, and eye contact is gentle yet firm. Usually, conversation resumes, but if emotions continue to escalate, they will suggest a break.

Fourth, avoid giving advice. This was a fundamental principle I learned early on, but initially, I was puzzled about what I would be doing, if not giving disputants advice; why would they seek my services, if not for advice? However, what I came to realize was that giving advice produced two impossible situations:

- If I were to advise disputants on their conflict, how would I do so in areas where I did not have specialized knowledge? Giving advice would require specialized knowledge in all areas in which disputes may arise, which is impossible.
- Giving advice would require that my recommendations be equally beneficial to both parties, which is challenging to guarantee. Therefore, advice giving would compromise our role as a neutral and impartial party.

I learned that essentially the mediators and the process of mediation communicated to disputants that conflict resolution is the responsibility of the disputant. The mediators' job is to guide the process, while the disputants' job is to resolve the content: their conflict. This was a revelation, because prior to this, I was concerned with "how on earth was *I* to resolve people's conflicts?" What I learned, and what disputants seemed to understand, was that this was a process to facilitate and untangle the knots of conflict. But the process was in need of their will and communication in order for it to be effective. I believe this was empowering to disputants because it gave them a level of authority over their problem.

My mediation experience at Small Claims Court and NCRC exposed me to a variety of mediation styles, although the six-stage mediation process remained the same. The process acted as a "mediator's handbook" to assist disputants to work through conflicts. It is this mediation experience and process I envisioned developing for mediators in Saudi Arabia.

TOWARD DEVELOPMENT OF A SAUDI CONFLICT MANAGEMENT AND MEDIATION SERVICE

I wanted to develop a similarly rigorous and well-rounded credentialing program upon my return to Saudi Arabia. I searched for programs or any existing standard accreditation guidelines for mediators in Saudi, but could not find any. The practice of mediation or *sulh* was only just taking shape as a recognized process within the Saudi judicial system.

With this in mind, I began a discussion with my San Diego mentors about what mediation training would look like in the Saudi context. I pitched them the idea of coming to Saudi Arabia to launch a mediation training program for Saudi women lawyers. Since they were not trainers themselves, they suggested Barbara Filner, the founding director (since retired) of NCRC's Training Institute. Barbara had some three decades of experience in mediation and training; more importantly, having grown up in India, lived and taught in Egypt, and done mediation trainings in Germany, she had the kind of multicultural experience and insight required to create and conduct training in the Saudi context. Her stated goal was to "demonstrate and refine techniques of communication and conflict resolution that have been demonstrated to be successful in other countries."

Ellen Michaels decided to join this venture because of her deep belief and confidence that "the process of mediation provides hope for a better world where dispute resolution focuses on caring and organized communication ... I also wanted to ... encourage others to learn and be as enthusiastic about this process as I am." Her aim in this pilot training program was "to provide a clear process for students to follow to allow them to be neutral third parties who had a path to follow in the midst of any effort to resolve a dispute proceeding through mediation."

In Saudi Arabia, a Need for Women Mediators

After winning third place in the Dell Social Initiative competition at USD, my colleagues and I landed a seed grant to fund our initiative to create a mediation program for Saudi women who were either lawyers or final-year law students, because at that time, women were not allowed to practice law in court settings. The idea was to train them to use mediation skills to help settle cases out of court.

Between the spring and summer semesters of 2012, I returned home to Saudi Arabia to conduct exploratory investigations into two possible projects: establishing a mediation credentialing program backed by the Ministry of Justice and conducting mediation trainings for lawyers. To further update myself on the changing landscape of the judicial system, I set up a few meetings with Saudi and non-Saudi lawyers working in Saudi Arabia in various areas of specialization.

At the time, women in Saudi Arabia still did not have the right to represent their clients in court (Naffee, 2013).³ Their role was limited to advisory and administrative functions. The male lawyers I met with about setting up a credentialed mediation program seemed to be supportive of the idea and said they thought it would be an important step for the field of ADR in Saudi Arabia. Furthermore, they added that this might be a less confrontational route toward women's active participation within the justice system. The goal, according to them, would be to gain the backing of the Ministry of Justice, thereby lending legitimacy and credibility to our work.

However, I felt that the kind smiles offered by these lawyers masked doubts about launching such a program, and my naivety about the difficulty of setting up such a program, specifically as a woman. Nevertheless, the lawyers were polite and said they would be happy to help in any way possible. Finally, during a meeting with "Ahmed," a distinguished lawyer who was also a family friend, he openly shared his reservations about the obstacles of setting up such a program, the primary one being the difficulties I would face as a woman at the forefront. He strongly advised me to appoint a man to be the face of this initiative, who would be the one to present it to the Ministry of Justice. In case I needed to meet face to face with individuals from the Ministry, I would have to dress all in black, be completely veiled, and speak only in Arabic. Furthermore, all my material must be in Arabic and framed in an Islamic context.

It was distressing to think that my gender could prevent me from beginning such a momentous initiative. The positive effect that such a program could have on the lives of thousands of individuals and families was potentially enormous, and for my gender to be the main obstacle was outrageous. On the other hand, I was upset with myself because if the price of such enormous change was stepping aside and looking for a male face for the project, then why could I not swallow my pride and do just that?

These were all big questions, and I knew we had not reached that point yet. However, I had no problem wearing black and a veil, Arabic is my native language, and I am a strong advocate of training the *musliheen* in

Arabic. Furthermore, the religious framework, I knew, was also essential. Nevertheless, I figured that at this point, my colleagues in the United States and I had a lot to do in terms of establishing the foundations: we had yet to design the trainings, culturally relevant simulation scenarios for the training, and a personalized manual, all of which we would do upon my return to San Diego in late June of 2012. I set my frustrations aside and decided to work on what I had control over, for the time being. I would revisit the other issues when the time came.

Before returning to San Diego, I decided to visit the first private all-women university, Dar Al-Hekma, of which I am an alumna. Dar Al-Hekma offered the first law program to women, and I thought that this might be a good place to begin introducing mediation training. Setting up mediation training for future female lawyers might build momentum for mediation, and create cohorts of lawyers who might be its supporters in the future. I met with the department head, who was a highly educated Russian woman. I laid out my aim of offering a mediation training program as part of the students' training as a first step toward creating a credentialing program. To my surprise, she was excited about it and explained to me what was needed to get such a program up and running.

The needed components seemed to come together at the right time: funding came from the Dell Social Initiative seed fund, and we signed a contract with Dar Al-Hekma. The experienced people I would need to undertake this mission were enthusiastic and ready to go. We arranged that Ellen Michaels and Barbara Filner would come to Saudi Arabia in 2013 for a few days to run the training program with me at Dar Al-Hekma. By the spring of 2013, we would be running the first mediation training program for approximately 40 senior female law students and a few lawyers. In preparation for this first training, however, we had to research the Saudi legal system. We met with a Saudi lawyer in San Diego to gain some background knowledge. We especially had to understand what the needs of these law students would be, and how best to adapt the training program to suit those requirements.

This training was the first of many to follow. It was a 12-hour introductory mediation training titled *Techniques and Strategies for Effective Mediators*, held over a three-day period. The opening quote in the participants' manuals and on the overhead projector was a saying by the Prophet Mohammed:

The Prophet Mohammed (peace be upon him) asked his companions: shall I tell you what is better than voluntary fasting, praying and charity? His companion answered, Yes, O Messenger of Allah. The Prophet (peace be upon him) said: Reconciliation.

Culturally Appropriate Training

My American colleagues and I had many discussions, and continue to have discussions, about how the training might be different than the US-based ones. The outcome of some of our lengthy conversations and reflections after trainings in regard to culture and religion led to some important observations, and these in turn resulted in specific adaptations of methods and materials.

Content

Dar Al-Hekma University is an English-language institution, and English is the language of business in other professional fields in which we would be providing our training, so we prepared the material in English. The manual and presentations we developed explained processes, listed tools, and described concepts. Generically, this was similar to what you might find in a training manual in the United States. However, we looked, for instance, where we could create a local (religious/cultural) undertone to the manual. Therefore, we added the hadiths of the Prophet Mohammed to the statements and teachings of peacemakers such as Mahatma Gandhi, Martin Luther King, Jr., and George J. Mitchell. Furthermore, the manual illustrated differences in cultural values in the workplace. This was another opportunity to compare and contrast cultural differences between Saudi experiences and others. We realized that as hard as we tried to highlight differences and thereby, from our perspective, respect cultural differences, 99 percent of the manual was what one might find at most mediation and conflict management trainings in the United States. This was not a drawback; on the contrary, it was an attribute because it communicated to participants the universality of the practice and values of mediation and conflict management.

Interestingly, the values and processes listed and explained in the manual seemed agreeable and universal enough so long as they stayed on the pages of the document. Yet when participants asked us to elaborate on concepts such as impartiality, avoiding giving advice, understanding does not mean agreeing, and so on, cultural differences began to emerge. Culture came

into play as participants interacted with their parts in simulated scenarios. As the role of that culture emerged during interaction, two issues emerged that brought about lengthy and intense discussions:

Advice Giving

“Avoid giving advice” was a principle that we highlighted during our training, just as had been done when I was trained in the United States. However, workshop participants in Saudi always seemed to challenge and resist this idea, as I had done when I was undergoing the mediation training in the United States. In 2013 we offered a training to a group of 35 women in leadership posts, who were interested in effectively managing disputes that their subordinates brought up to them. The participants were flabbergasted by the idea: “How will disputants know what to do if I don’t tell them?” “What use is our role if we don’t offer our insights and tell them what to do?” “Why would disputants come to us if we aren’t telling them what to do?”

Early in 2016, I was asked to conduct a workshop on “Conflict Management and Teambuilding” for a department in a company that had suffered an extreme breakdown in teamwork. The issue of giving advice surfaced again. Nadia, the assistant to the department head, questioned, “What do you mean, I shouldn’t give advice? Are you saying that even if I observe my colleague responding to a conflict in the *wrong* way I should keep silent and not advise her otherwise?”

The discussion of avoiding giving advice continued to come up regularly in the workshops. This got me thinking about why there seemed to be a great deal of passion and emotion attached to the acts of advising and making recommendations. A common reference in the Saudi culture is that we are “an advice-giving society.” The act of offering advice or counsel is encouraged, to the point of obligation. Various religious quotes are used to encourage people to offer advice as a means of helping, and this practice is seen as a virtuous deed. Culturally, problems, including conflicts, and their resolution are considered a group activity rather than an individual one. During times of difficulty, it is the obligation of the group to jointly deliberate and consult with others for possible options of resolutions. Nadia further explained, “I have many years of experience working in various industries, and have learned a lot about interpersonal relations. I believe I have a lot to share. I can’t imagine keeping silent and not helping, by withholding advice.” Giving advice is considered an act of kindness and support to the person involved in a conflict.

During another training later in 2016 for a group of male and female attorneys, we encountered the same resistance and responses to the standard of not giving advice. One lawyer, “Ali,” said, “Disputants perceive you as the expert, and therefore expect that you will give them your professional insight. I couldn’t imagine what they would think if I told them to ‘brainstorm ideas for a resolution!’” In high-context cultural settings, such as Saudi Arabia, added importance, respect, and value are given to one’s status. This status can be innate as a result of lineage, for example, a prominent tribal name, or acquired through what is seen as an esteemed and respected profession, such as becoming a physician, an engineer, a professor, or a lawyer. Ali explained further, “I feel it is important that they [disputants] get my opinion, as the expert on the issue. Parties don’t feel that their viewpoints are *competent* enough to be considered as part of an agreement process: that’s my job!” Withholding advice can be considered an act of being miserly. Additionally, one must remember the traditional role a *muslih* plays, as the wise person or the most knowledgeable person in the community that people turned to for insights, recommendations, and counsel about disputed issues. The expectation is that the *muslih* is able to shed light on matters disputants had neglected or had no knowledge of, or at least to provide perspective.

A few months after the training I reconnected with Ali and asked him about the advice-giving issue, and if he had tried withholding advice. “Disputants here in Saudi will find a way out of sharing their opinion about possible solutions,” he responded. He recounted that when he tried to encourage disputants to brainstorm ideas, they would shy away by asking him, “What have others done in situations similar to my own?” His conclusion was they did this as a face-saving mechanism, which leads us to the second of the two issues emerging from our Saudi trainings.

Saving Face

The expression in Arabic translates literally as “to save the face’s water,” and carries the meaning of “to save face.” The phrase refers to the sense of dignity and pride and the actions someone will take to secure their standing and their reputation in society. Furthermore, the behavior of society, the family unit, and accordingly individuals is based on Islamic notions of preserving dignity, honor, and self-respect. In a collective culture such as Saudi Arabia, people will go to great lengths to save face. Ali’s observation about saving face came up as he shared other responses of disputants when they attempted to save face. In most of the cases where he plays the role of

a mediator rather than of a lawyer, most of the time, disputants will not sit in the same room with each other, in order to save face. Ali usually ends up shuttling from one location to another, and he finds that his role is used by either or both parties to save face. Ali commented, “In our society, the element of arrogance is too high.” I believe that often arrogance or pride is mistaken for dignity.

Ali gave examples about how giving advice and saving face are intertwined: disputants will say things like, “I would not have agreed to the terms of the agreement if it had not been for Ali’s advice,” or, “This resolution was Ali’s recommendation, that’s why I agreed to it. I would not have agreed to it otherwise.” Ali believed that in offering advice he helped disputants save face, by offering reasonable terms to both parties when their pride otherwise might have held them back from reaching a resolution. This is something I had not considered prior to our discussion.

Lederach says that in “understanding conflict and developing appropriate modes of handling it will necessarily be rooted in, and must respect and draw from, the cultural knowledge of a people” (Lederach, 1995, p. 10). I believe that tapping into advice giving and accommodating, and creating instances and space for saving face are fundamentally part of what Schutz (1967) refers to as a social “bank of knowledge.” I realized that by challenging these practices, I was in effect challenging the very structure and foundations of a high-context collective society. I therefore modified my approach in training: once the mediation process had been demonstrated, I would encourage participants to talk about what advice giving might look like in a mediation process, when they would offer it, and how it might be adjusted from a statement to a question. Furthermore, we discussed appropriate opportunities to use it and instances where they might want to avoid doing so. We would have the same discussion about saving face, and what that might look like. Ultimately, what we wanted to do was find a methodology to acknowledge and honor crucial cultural aspects of conflict resolution and create opportunities to generate a conversation around them, rather than belittle these practices and sideline them.

EVOLVING AND ADAPTING: RECOGNIZING AND MEETING CHALLENGES

I have to admit that I had expected to face a major challenge in terms of the attitudes of potential clients. I anticipated that people would be suspicious of my intentions and aims when I pitched the idea of a “new” framework

for dispute resolution. Surprisingly, this suspicion did not come from clients or would-be clients. Rather, the impediment from this quarter was mainly a lack of awareness that these services even existed. Abundant information is accessible to Saudis about lawyers and their services. Most of the information is in regard to relevant legal options available, the reputations of various law firms, the most cost-efficient processes, and so on. Since 2012 arbitration has gained traction in the business community, and when ADR options are mentioned, “arbitration” is the only word that comes to mind. The ADR spectrum that should be available to the public is diverse, but most people do not know that they have a wide range of options, such as direct negotiation, facilitation, mediation, and conciliation, before the options of arbitration and litigation. In essence, Walker Consultancy has worked toward creating an awareness of these options among the public.

One of the first obstacles we encountered was the infamous and ever-present Saudi bureaucracy. Due to strict regulations governing the establishment of new businesses in Saudi Arabia, we found ourselves with few options when it came to setting up our agency. We could not list our program under “judicial services,” so Walker Consultancy was eventually licensed as a “private practice consultancy office” and listed under “educational services.”

There was no mechanism by which our office could interact directly with the public; for example, offering conflict management or mediation trainings open to the public would require retaining a license from the Technical and Vocational Training Corporation (TVTC). This corporation is run by three ministries, the Ministry of Labor and Social Affairs, the Ministry of Municipality and Rural Affairs, and the Ministry of Education, and is a bureaucratic beast that makes it nearly impossible to get a license. However, we found that if we kept our training services limited to within a company or organization and not in an “open to the public” forum, we would not need to be licensed or to receive special permits from any ministry. So in 2013 we began by taking our training services to the private sector, and we started with two sectors: health care and higher education. This was a pragmatic decision rather than an altruistic one: people in health-care services simply tended to be more receptive, informed, and up to date with the latest ideas, technology, and best practices. As for higher education, as an alumna and a former faculty member, I happened to have strong relations at Dar Al-Hekma, the private all-women university, so it was an obvious place to start.

For the first three years of its operation, Walker Consultancy's main clients were the "training and development" departments of hospitals and the human resources and continuing education departments of the university. Walker's first service, then, was to arrange and conduct conflict resolution and mediation workshops.

Interdepartmental and intradepartmental conflict resolution workshops were provided to hospital staff, frontline teams, technicians, and nurses. The workshops in essence taught participants a five-stage conflict management process we referred to as RADDs (Recognize that a problem exists, Acquire information on issues/people, Diagnose the situation together, Develop a treatment plan, Schedule a follow-up) and tools for effective communication represented by the acronym PARRQS (Paraphrase, Acknowledge, Reframe, Reassure, Question, Summarize). We designed exercises, clinically based simulations, and case studies for participants to engage in. On several occasions, Barbara and I tried to convince the training and development department of the hospital to involve upper management, physicians, and consultants in the training, and offered to design an executive-level conflict resolution training or mediation training program for them. We felt that as decision-makers, they were in the position to bring about change and set the tone for how conflict is managed. But the reply we always got, and continue to hear in spheres such as the automotive industry and real estate development, was that management say they are too busy and do not have the time. The training department later explained that there was too much resistance, and no one could force senior management to attend.

At the university, on the other hand, we were able to provide both conflict management and mediation training workshops. The mediation workshop was interdepartmental and, unlike in the hospitals, offered to personnel in positions of leadership, including vice deans, department heads, and program directors. The mediation workshop initially focused primarily on a mediation process we had borrowed from the NCRC (with permission). The conflict management workshop was intradepartmental and offered to the faculty members of entire departments. Interestingly, program directors who had taken the mediation workshop became very enthusiastic and felt that educating their faculty about the tools for effective conflict management would help reduce the level of conflict and improve strained relations within their departments. Having the backing of management seemed to propel the wheel of change and brought commitment to the program.

It was an expensive endeavor to bring my American cotrainers to Saudi Arabia once or twice a year for these workshops. However, it was an important investment in building and delivering a strong training program and in establishing credibility. These women brought with them decades of experience, not only in the field of conflict resolution but also in training methodology, and invaluable insights; moreover, they were well traveled and conversant in responding to cultural differences and sensitivities. For my part, I brought cultural knowledge which was crucial in transferring conflict resolution practice from a “Western” experience to a Middle Eastern one. Furthermore, this was also an important strategic step in that I wanted our clients to regard Walker Consultancy as a group of experts in the field who brought with them a wealth of knowledge and experience.

What we quickly noticed with our regular clientele was that training on its own was like a drop in a sea of conflict, and the effects of the trainings would quickly wash away in the face of the organizational culture, system, and policies. Therefore, our training programs became exceptional in more than just the uniqueness of the topic. As part of the training we created informal assessments to evaluate relationships, organizational culture, and how conflict was being managed. We would interview a handful of participants and directors prior to the training, and this would help us tailor the training material, exercises, and scenarios to common issues that came up during the assessment. Furthermore, 6–8 weeks after the workshop, we would conduct a follow-up session with participants. The sessions would be divided into three parts. First, we would conduct a brief revision of the conflict management process and tools. Then, we would hear from participants as a group if they had questions about specific conflict situation they were going through and wanted feedback on. Finally, we would do a few one-on-one sessions, much like conflict coaching sessions, with participants who needed feedback on more delicate matters. However, these additional services also meant that costs were running high, as it was expensive to plan and execute the services.

We attempted to duplicate the small successes we had had in the health-care and higher education sectors by expanding our services to other providers of products and services: health insurance, consumer products, automotive, family businesses, and real estate development. Our success in these areas was intermittent, which made it challenging to sustain ourselves as a business.

I was determined to seek out and make use of whatever avenues I could. Over time, a greater awareness of Walker Consultancy and our conflict management services has developed incrementally. I have welcomed the

interest generated and have gladly spoken about our work in print, via online magazines, and in online podcasts. We noticed early on that in order to reach an even wider spectrum of the Saudi population, we needed to present our work in Arabic. My assistant and I began translating all our material into Arabic. We reached out to local TV and radio and have weekly slots. However, interest and awareness generated have been slow to translate into increased business.

The oil price crash in Saudi Arabia in 2014 has exhausted the Saudi economy: ever since the bottom dropped out of the price of petroleum, we, like other small businesses, have felt the effects of budget cuts (Al-Kibsi et al., 2015). I did not want Walker Consultancy to be limited to providing training, but that is what was happening. I wanted to provide crucial services, such as mediation, conflict management evaluations, and consultancy and advisory services for organizations and individuals. So far, however, we have not been able to get to this point. We have not been able to build a context for our work, a space that fully understands and values conflict management services. People struggle to categorize us, saying things such as “So, are you life coaches, psychologists, or counselors?” and I realize that they have no existing context in which to place conflict management services.

As hinted at earlier, we are still struggling to find a way to interact directly with the Saudi legal system. The only existing conciliation services are as part of government structures, such as the civil courts, the Chamber of Commerce, and the Ministry of Labor. No such mechanism currently exists as part of the private sector. Eventually, we did find a nonprofit organization which had direct dealings with the judicial system and which seemed ready to work with Walker Consultancy. The “Harmony Centre for Family Development” (not its real name) was established to facilitate the work of family courts, particularly the divorce courts. Harmony Centre provides guidance and services to families going through divorce or dealing with child custody issues. When I met the chairman at a networking event and introduced my work to him, he was instantly intrigued and promptly put the director of the center in touch with me. I explained to them my vision of creating an accredited mediation training program for court mediators. I described to the director and the training director what the accreditation process would look like. It would be a three-stage process: an intensive workshop, followed by comediation and ending with a performance evaluation. They jumped at the idea and proposed that with their good relations with the Ministry of Justice, they were sure they would be able to push our agenda forward. The director explained his

enthusiasm for our prospective collaboration: “You will bring the most up-to-date Western knowledge, and we have the local knowledge and an established network.”

Unfortunately, our enthusiasm was short-lived. After several meetings, they explained that although they were very excited about the potential for this program, there was only one issue that concerned them. They apologetically inquired if we had a male Arabic-speaking mediation trainer, which I did not. The next question was, “Can you quickly train any Arabic-speaking man, perhaps an assistant? And then he could conduct the training.” I know they were trying to be helpful, but the absurdity of the request frustrated me even further. I defended the quality and standard of our work, and clarified my interest, that I could not compromise the quality of our training by just handing it over to any man who spoke Arabic. They pushed further and inquired if it were possible for me to conduct the training through closed-circuit television; that way I would be in one location and I would see and hear the male participants, while they would be in a different location and would only have audio of my voice. I further explained that the trainings are interactive and required the presence of a facilitator, and that for the time being, we could only offer female Arabic-speaking instructors. Finally, I suggested, “Why not frame it as ‘an Arabic-speaking American woman’ who will be conducting the workshop?” Sometimes in Saudi an exception is made for guests, or foreigners, to bypass social rules and restrictions that locals would not be allowed to get away with. It seemed this was the only option that the director was willing to go along with.

After weeks of following up with the Harmony team, I finally received a message from the director; he was both regretful and exasperated with the situation we seemed to be stuck in. He explained that after the court mediators and counselors learned that their organization was poised to hire a company that would be putting them in a classroom with an “American woman” trainer, some of them accepted the invitation to attend, while others declined it. However, those who had declined began circulating messages on Twitter, such as “Harmony Centre recruits American women?” This “misguided group,” as the director referred to them, clearly felt this was a potentially corrupting influence that might subvert the values of their society and culture, and they would not agree to it. The director went further to clarify his position, “Our reputation is

important, and although we as management—including the Chairman—have no problem with a female trainer, we cannot allow this group to compromise our efforts. My sincerest apologies.” This was just the latest in a long string of obstacles in our path, and it effectively froze our relationship with Harmony Centre.

One thing that started to become clearer to me was that contributing to positive social change is incremental. Furthermore, I began to understand the need to allow more time to fulfill my ambitious interest, which was to provide a credentialed program that met the international standards of training and preparation. The training director of an automotive company for which I had soon after begun providing conflict management training heard about my difficulties with Harmony Centre and offered his insight:

Sharia, at times you may have to compromise the nature of your training if you want to get ‘buy-in’ [from participants] and get a foot in the door. Perhaps the closed-circuit television option would deliver only 20 percent of the interaction you strive for, and that’s okay. I am certain that, in time, the value of their experience will override their concern with conservative traditions, and they will become more flexible about the issue of gender segregation.

A SAUDI MEDIATION MODEL

The mediation model in which we are training our Saudi clients is in its infant stage. Although still under exploration, the emerging framework seems to be shaping into more of a one-on-one conflict coaching model rather than the mediation process with both parties present. The mediation process I was trained to use in the United States that modeled transparency and openness seems, in the Saudi context, to be a method that is too revealing for disputants, leaving them feeling vulnerable. What I was hearing from participants such as lawyers and managers was that in most cases, having disputants sit face to face with the aim of resolving conflict was more likely to result in adverse outcomes. In contrast, a conflict coaching model provides participants with a set of skills—such as good listening, reframing, and asking open-ended questions—to be used as a stand-alone process or as part of the mediation process during separate meetings. This hybrid model, in essence, acknowledges and honors crucial cultural practices during conflict while simultaneously supporting people to engage constructively by utilizing effective conflict resolution skills, namely:

- *Advice giving*: This practice is framed as actively coaching by providing feedback, proposing insight, asking questions, and helping the disputant to consider the other's perspective.
- *Saving face*: The one-on-one conflict coaching model offers mediators process skills and structure. For disputants it provides a private space in which to consider the conflict in depth, acquire clarity about the issues, and explore options for resolution while avoiding the awkwardness or embarrassment that may arise in a face-to-face setting. This model helps preserve disputants' sense of dignity, and therefore allows them to focus on the conflict issue at hand.
- *Islamic values*: The emerging model is grounded in Islamic values, particularly that of reconciliation. It draws on religious texts that encourage the practice of *sulh* by members of the community. This is important because it further validates the practice of mediation as one that is not foreign to the Islamic tradition.

CLOSING REFLECTIONS

Due to the success of our course for their law students, Dar Al-Hekma asked us to come back to run a conflict resolution workshop for administrators and management staff at the university and for two other departments. This time, Barbara recommended that we come up with our own models and approaches. She explained that by making our own models, we would "own" them and have the complete right to use them the way we want; we would not have to deal with what might be proprietary information, or worry about possibly appropriating the intellectual property of others. Also, this has given us the freedom and creativity to develop specific models for each different industry, field, or environment that we work with in Saudi Arabia. For example, Ellen Scott, Barbara Filner, and I developed a conflict management model specifically for the workshop aimed at the university's top administrators and upper management: IDEA, which stands for "Identify issues, Develop a plan, Employ the plan, and Assess the plan." For the training program we ran for hospital staff and administrators, the model we came up with was called RADDs (described earlier), and this acronym was very similar to another acronym that hospitals were already familiar with, as it was used in the field of radiology, so it was easy for them to remember. We also developed our own model for the mediation process, which is slightly different from the one I had learned in the United States. Our mediation process is IOSDP

(Intake caucus, Opening remarks, Sharing perspectives, Dialogue, and Problem-solving). It began as an open forum in which all parties would take part, but over time, in response to feedback from the training participants, it has developed and been refined into more of a conflict coaching approach.

Both during the design of these programs and in carrying them out in their “host country” of Saudi Arabia, my American colleagues proved very flexible, and together we were able to come up with modifications to the training models that fit the local context. These included changing the details in role-plays and scenarios to make them relevant in terms of both situations and characterizations. In their evaluation of the pilot program afterward, my mentors noted that the Dar Al-Hekma students and faculty readily accepted the American trainers’ contributions and showed genuine interest: the students asked “penetrating questions” and “participated fully in the mock mediation sessions,” and did not appear to have any prejudice against being trained by “foreigners.” Moreover, one noted that she had been “charmed and surprised ... that students were eager to consider how to use the mediation steps they were taught in their relationships with family members and close friends.” In conclusion, they each felt they had not only imparted knowledge, but had learned from this experience as well. They emphasized two main lessons drawn from this experience: first, that differences of opinion and serious disputes are inevitable life experiences, and students had a genuine interest not only in learning effective communication skills and techniques, but also in considering how to apply such skills in all aspects of their lives. Second, that intercultural leadership in the planning and implementation of workshops makes them stronger and more interesting.

The process of modifying and developing our unique and locally based conflict management and mediation process is a continuous progression. Our process was born out of hours of developing a conflict management and mediation training manual, hours of examining the appropriateness and applicability of interactive exercises and simulations, dozens of actual trainings, and late night and early morning hours of debriefing after the trainings.

Since I started Walker Consultancy in late 2012/early 2013, I have searched for but did not find any local mediators or conflict resolution practitioners, although I did find Saudis studying these subjects in the United States and elsewhere. Over time, some of these Saudis, who had studied conflict resolution in the United States, and others who had done

mediation credentialing programs in the United States or in Britain returned to Saudi Arabia to begin their careers, though most of the time not in the area of conflict resolution or mediation. This has been greatly encouraging. In my view, the best way forward as a next step is creating a professional platform whose goals are twofold: (1) connecting mediators as a community of professionals—male and female—serving a variety of specialized conflict areas and (2) connecting those mediators with the communities that need their services. This platform would also create awareness about the multiple ADR options disputants can access before referring to arbitration and litigation. In essence, we have been working toward this goal. As a professional community (e.g., modeled on [Mediate.com](https://www.mEDIATE.com), but in Arabic and focused on the Saudi community), we need to create a space, a context, and a platform to generate knowledge, information, and the practice of mediation and conflict management that will result in clear, established policies for the practice of mediation and the development of an objective, standardized, credentialed program. In order to achieve this, we would have to form a community and support each other. This platform would also be a space in which to have conversations with mediators in other Middle Eastern countries and beyond, to learn from their experiences.

Recently, a female Saudi mediator reached out to me about creating such a platform for mediators and for people seeking mediation services. We are in the process of creating a website for this purpose, which will include a blog as a space to start a conversation and share experiences, and through which to describe and explain what mediation in Saudi Arabia looks like and what we envision it to look like as it develops. This would involve conversations among mediation practitioners, and between practitioners and the Saudi public. If we had such a community of practitioners, for example, I believe we could have handled the Harmony Centre situation effectively, as we could have satisfied their position (which was to maintain gender segregation in training their *musliheen*), their interest (which was pioneering in becoming the first institution in Saudi to provide a structured mediation process for the professional development of *musliheen*), and our interest (which was and remains delivering high-quality training and best practices for mediators) by providing them either with a male, Arabic-speaking, credentialed mediator, or possibly another culturally appropriate option. The evolution of a Saudi mediation process is very much a work in progress, which will continue to draw on.

NOTES

1. English rendition of all Qur'anic verses is the *Sabeeh International* translation, retrieved from <http://corpus.quran.com/translation.jsp>.
2. United Nations Commission on International Trade Law (UNCITRAL) is a division of the United Nations. Its Model Law “is designed to assist States in reforming and modernizing their laws on arbitral procedure so as to take into account the particular features and needs of international commercial arbitration” (UNCITRAL 2017; http://www.uncitral.org/uncitral/en/uncitral_texts/arbitration/1985Model_arbitration.html).
3. Women were granted the right to practice law in Saudi courts in 2013–2014 (Naffee, 2013; Khan, 2014).

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PART V

Building Systems to Embrace Culture



Dispute Resolution System Design and Mediation Capacity-Building: Partnering to Resolve Post-Conflict Disputes in Timor-Leste

Christopher Moore

DEVELOPING COLLABORATIVE PARTNERSHIPS TO PROMOTE PEACEBUILDING IN POST-CONFLICT SOCIETIES

Making a transition to a peaceful society after a major conflict with significant violence, loss of life and destruction of property is a daunting task. Sustaining the change can be even harder. National and local governments, civil society organizations and citizens in the conflict-affected country are often unable on their own to address the root and contributing causes of the conflict. The longer unresolved issues continue, the more likely the conflict may resurface, either in its earlier or new forms. Additionally, badly needed social, political and economic development can be seriously delayed or put on hold because of ongoing instability.

C. Moore (✉)
CDR Associates, Boulder, CO, USA
e-mail: cmoore@mediate.org

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building*,
Rethinking Peace and Conflict Studies,
https://doi.org/10.1007/978-3-319-71102-7_11

Post-conflict societies in transition to more peaceful ones, especially when failed or weak states are involved, often need significant assistance from external actors—international, national or non-governmental organizations (NGOs)—to help them design or redesign their institutions and build their capacities to implement needed change. Success of assistance is dependent on the situational and cultural appropriateness of the help provided, adequacy of resources, positive working relationships between the international actors and national or local parties, and the latter’s will and capacities to implement planned actions.

This chapter focuses on how international and national actors in Timor-Leste (East Timor) built an effective partnership to design and implement institutional changes and capacity-building to address a major issue common in many post-conflict countries, the resolution of housing, land and property (HLP) disputes.¹

The partnership involved a three-party collaboration between the Timor-Leste Ministry of Justice’s (MOJ) Land and Property Directorate (LPD) and two international NGOs, CDR Associates from the United States and the Indonesian Institute for Conflict Transformation (IICT) from Indonesia. The chapter explores how the partnership was developed, the joint work that was conducted, the dynamics between and among the partners, and lessons learned. First, however, it will be helpful to describe the socio-political situation in Timor-Leste prior to and at the time the partnership was formed.

THE CONTEXT FOR DISPUTE RESOLUTION ASSISTANCE IN TIMOR-LESTE

Timor is a small island located on the eastern end of the Indonesian archipelago and north of Australia. The island was settled approximately 40,000 years ago by several successive waves of immigrants (Ramos Horta, *n.d.*). The first were Veddo-Australoid people, similar to the Vedas of Sri Lanka, who arrived between 40,000 and 20,000 BC. The second wave arrived around 3000 BC. They were Melanesians similar to people in Papua New Guinea and several Pacific islands. After the arrival of this latter group, most Veddo-Australoid people migrated inland and resettled in isolated mountain valleys. The third wave of early immigrants arrived around 2500 BC and was composed of Proto-Malays from South China and Indonesia.

Timorese society, regardless of its ethnic composition, was organized into a number of small chiefdoms or princedoms scattered over the island's coastal areas and valleys. There was little mixing between groups, which resulted in a large number of languages on the island, many of which are unintelligible to those who are not members of the communities that speak them.

Land use by the different ethnic groups was managed and administered by a customary system in which rights were allocated to a kin group with traditional links to land settled by, cleared and used by their ancestors. Swidden agriculture, shifting cultivation or 'slash and burn', was the principal means for securing subsistence livelihoods, which also resulted in constant changes in land use by different families or groups.

The Portuguese first made contact with the island and its people more than 400 years ago, and subsequently established a trading post on the north coast at Oecusse around 1515. In 1769, the Portuguese founded the city of Dili, the current capital, and declared the island a Portuguese colony. In 1859, the island was divided into two political jurisdictions, with the west remaining a Dutch colony and the east Portuguese.

Portugal remained the colonial ruler of Timor-Leste until 1975, when a revolution in Portugal led to divestiture of its colonies. When Portuguese rule ended, competing independence factions in Timor-Leste began to fight with each other over political control of the island. Ultimately, the leftist Revolutionary Front for an Independent East Timor (FRETILIN) won the armed struggle and created the Democratic Republic of East Timor. Its victory, however, was short-lived. In December 1975, the Indonesian Army invaded the island, and in 1976, Timor-Leste was incorporated into Indonesia as its 27th province.

While Indonesia did try to gain the support of Timor-Leste's population for the annexation by improving the province's infrastructure, schools and hospitals, the military exercised heavy-handed rule and violently suppressed those who opposed it. During Indonesia's 21-year rule, the population was subjected to systematic extra-judicial killings, torture, massacres and starvation. Economically, the military and parties that migrated from other parts of Indonesia under the country's policy of *Transmigrasi*, a national program that moved landless people from densely populated islands to less populous ones, benefited more from Indonesian rule than did Timorese. For the most part, living standards for the local population did not significantly improve.

During both Portuguese and Indonesian colonial rule, land and property rights of Timorese were often revoked or land taken by corrupt procedures. Throughout the Indonesian occupation, many villages experienced forced resettlement or had to abandon their property due to violent conflict between resistance fighters and the military. Abandonment of land and property often led to seizure and reoccupation by people who were not the original customary users or owners.

Indonesia's annexation of Timor-Leste was never accepted by the majority of its population, Portugal or the international community. In 1999, after the Asian economic crisis toppled the Suharto government in Indonesia, the new Indonesian president, B.J. Habibie, reassessed the status of Timor-Leste Province, and in line with his new policy of democratization, decided that citizens of Timor-Leste should be allowed to decide whether to remain part of the country with a special autonomous status or to become independent.

A referendum, or Popular Consultation, conducted and supervised by the United Nations (UN) Mission in East Timor (NUAMET) was scheduled for August 1999. Prior to the plebiscite, the UN identified and registered 450,000 people in Timor-Leste deemed to be eligible voters, including 13,000 living outside of the province. Prior to the referendum, the Indonesian military trained and supported groups of pro-Indonesian Timorese militias that began to commit regular acts of violence to influence the local population to support autonomy rather than independence. The Indonesian government predicted and militias threatened mass violence if the Timorese voted to become independent.

The referendum was held on August 30, 1999, with close to 98% of Timor-Leste's eligible voters participating. About 78% supported independence. The Indonesian government accepted the results of the Popular Consultation, but its outcome in Timor-Leste sparked massive violence against persons and property by the pro-Indonesian militias supported by the Indonesian military, which either directly participated or stood aside and did not prevent harm from occurring. Additionally, paramilitary militias and Indonesian troops forced over 200,000 people into West Timor, where they were interned in camps.

On September 12, the Government of Indonesia announced that it would withdraw its soldiers from the island and allow the entry of an international peacekeeping force. On September 15, the UN Security Council called for an international military force to restore peace and security in Timor-Leste, and by the 20th, the first contingent of the UN peacekeeping force, composed mostly of Australian Defence Force personnel, entered

Dili. At the end of October, the UN passed a resolution establishing the United Nations Transitional Administration in East Timor (UNTAET) to administer the territory.

At the end of the violent conflict, Timor-Leste had experienced one of the highest degrees of population displacement and land and property rights manipulation or destruction of any country in the world. Approximately 1,400 civilians had died, roughly 450,000 were displaced and 70% of the country's buildings and infrastructure had been either damaged or destroyed (World Bank, Joint Assessment Mission (JAM), 1999).

Between 1999 and 2002, most of the displaced persons in Timor-Leste, and those who had fled to West Timor, had returned to their original communities, resettled in Dili or moved to other towns. Upon their return, however, many of the displaced encountered a number of serious problems. A significant number of their homes, businesses, land or property had been seriously damaged or destroyed, which meant they no longer had shelter or means to secure livelihoods. Additionally, many returnees discovered that if their land or property had not been destroyed, it was often illegally occupied by others, many of whom were also displaced persons.

The government also faced serious HLP problems.² A significant number of its buildings and land were illegally occupied by displaced persons. Many of them were fearful of returning to their original homes in the countryside or preferred to remain in urban areas because of greater security, access to international aid or the potential for future amenities (electricity and water) or work. Significant problems also existed for the government in the countryside, where customarily held land was also illegally occupied and use rights or ownership in a number of areas were contested.³ Additionally, some citizens of Timor-Leste and foreign parties, principally Portuguese and Indonesians, initiated legal HLP claims, either for restitution of their land or property or compensation for losses.⁴

UNTAET, which administered the new country between 1999 and its independence in May 2002, identified that 'the successful resolution of land and property disputes in East Timor constitutes one of the fundamental challenges facing the East Timorese community, the United Nations Transitional Administration in East Timor (UNTAET) and the East Timor Public Administration (ETPA)'. Sadly, at the time that UNTAET/ETPA began to explore how to address and resolve HLP disputes, many customary dispute resolution capacities in rural areas had been seriously disrupted or destroyed by the conflict. Many people with expertise were displaced and no longer lived in or were connected with their communities of origin.

Additionally, there were practically no government institutions or personnel in the country that could provide conflict management and resolution assistance to resolve almost any kind of dispute, either criminal or civil, including those over land or property. Government courts were either non-existent or dysfunctional due to lack of experienced judges or lawyers, almost all of which in the past had been Indonesians, or facilities and support services (Graydon, 2005). The Indonesian government agency charged with administering land affairs no longer existed and the building that housed all statutory land and property records had been burned to the ground during the post-consultation violence, with the loss of all documents. The few potential government dispute resolvers that did exist were not adequately prepared or trained to handle the magnitude, types and intensity of disputes over customary or statutory land and property that emerged after the violent conflict.

Finally, it was not clear what laws the government should apply when resolving HLP claims or disputes. Should the country use customary, Portuguese, Indonesian or new Timor-Leste laws that were still in the process of being developed?

Some of the issues that were especially important to resolve concerned HLP in urban and rural areas claimed under statutory law. Rapid recognition of legal ownership was needed so that owners would feel secure and be willing to invest in their property, foreign investors would be able to rent property from legal owners and a land market could develop that would help determine the best use of land. Other important issues to address included illegal occupation of government land and buildings, disputes in rural areas between communities and those that involved potential or actual violence. There was clearly a strong need to build a cadre of highly skilled people to assist citizens and the government to resolve land disputes.

To address the challenges described above, UNTAET/ETPA established a Land and Property Unit (LPU) mandated to take measures to resolve HLP issues and strengthen the capacity of its Timorese staff to settle these kinds of conflicts. By 2002, this function was turned over to the Government of Timor-Leste's MOJ and its LPD.

Initially, both the LPU's and LPD's efforts to resolve HLP issues focused on developing new policies and laws and re-creating records of property ownership. By 2002, however, it was clear that the LPD needed a direct mandate and capacity-building to provide dispute resolution services. The MOJ approved the new mandate, and with the help of the UN, sought technical assistance to provide needed services.

HISTORY AND DEVELOPMENT OF THE PARTNERSHIP AND PROJECT

The initiative of the MOJ and LPD was projected to build the capacity of the latter's staff to address and resolve a range of HLP and natural resource disputes resulting from Portuguese colonization and Indonesian occupation, and post-referendum violence. Expected beneficiaries were projected to be internally displaced persons, parties in ownership disputes over statutorily claimed urban land and plantations, customary communities and their members involved in complex and potentially violent rural land disputes, and former pro-independence and pro-autonomy actors.

The project was originally planned to be administered by UNTAET. However, due to the schedule for the transition to independence, the UN turned responsibility for project initiation, contracting and oversight to the Canadian International Development Agency (CIDA).

Initial Contacts and Requests by Clients for Assistance

First contacts between future project partners are critical for establishing the quality and dynamics of their working relationships. Commonly, the first contact between a 'client' and a 'consultant' is either through a contracting agency, in this case the UN and later CIDA, or directly by a client, such as the LPD. In this case, the UN published a request for a statement of interest and consultant qualifications to conduct a series of national and local workshops on non-judicial or 'alternative dispute resolution—ADR' procedures to assist disputants to voluntarily resolve HLP disputes. The UN projected two initial national workshops, two follow-up national workshops and seven district workshops, which would be conducted over a period of 12 months. Attendees were anticipated to be from government agencies and members of civil society.

Upon receiving the request, CDR had to decide if it wanted to pursue the consultancy. It had to make a decision on three questions: whether (1) the proposed approach proposed by the UN was viable and likely to achieve its identified goals, (2) the firm wanted to submit a proposal to do the project and (3) partnering with another NGO in the region would provide value-added to the prospective client and team, and would help win the contract. The answer to the first question was uncertain, as it was not clear that the design proposed by the UN would really result in producing highly qualified dispute resolvers who could deliver services.⁵ The answer

to the second question was a definite ‘yes’. CDR was interested in building national capacities in dispute resolution in post-conflict situations.

In addressing the third question, CDR weighed the benefits and costs of partnering with another organization, and determined that the benefits for the future client and CDR greatly outweighed any challenges that might arise in developing an intercultural collaboration. CDR’s staff immediately contacted IICT, and receiving an affirmative response to collaborate, proceeded to explore how to form a partnership and develop a joint statement of interest.

Relationships Between and Among Partners

Partnerships involve collaboration between two or more parties to establish long-term mutually beneficial relationships based on mutual trust, teamwork and shared resources that enable each partner to do what it does best. Partnerships can be formed by parties relatively or totally unknown to each other, or between or among individuals or groups with past or ongoing friendships or working relationships. The partners in the Timor-Leste project were of both types.

The UN staff member who made the first contact knew several of the partners of CDR Associates because of technical assistance they provided to the Organization of American States’ PROPAZ Program in Guatemala to help government officials and national NGOs to negotiate and implement components of national Peace Accords that ended that country’s 36-year civil war. The staff of the MOJ, LPD and CIDA did not know each other, nor did they know CDR or IICT.

In contrast to the absence of relationships between the MOJ, LPD and CIDA, the two international firms and consultants had long and positive working relationships and experience collaborating on dispute resolution projects in Indonesia.⁶ This experience significantly contributed to building and maintaining trust, positive working relationships and collaboration.

Models for Partnerships

There are several models for establishing working relationships, partnerships and partnering. The first is a traditional expert–client model, in which a consultant external to the client or their system has knowledge and skills needed by the latter, which they do not have. To a significant extent, this relationship is not equal in terms of the knowledge each partner brings to the endeavor. While the client may be the ‘boss’, the consultant is often the principal source of requisite knowledge.

A second model is a ‘complementary consultant–client relationship’. In this model, the consultant(s) and the client have complementary knowledge and skills required to effectively execute a project. While one of the parties may be ‘the lead’, generally the client, they both provide needed and relevant information and skills required for effective project visioning, design, planning and implementation. The client or other informants from the place where the project is being conducted provide local information, or ‘knowledge from here’, and the consultant provides ‘knowledge from away’ (Adler & Birkhoff, 2011). In this model, parties have more equal relationships, input and involvement in decision-making. The second model was implemented in the Timor-Leste project.

Collaborative Project Conceptualization and Development of the Proposal

When analyzing the UN’s proposed design and activities for the project, the international partners were concerned about whether they would really achieve the organization’s desired outcomes. They worried that the design would result only in building trainee awareness of non-judicial dispute resolution procedures but not the institutional capacity and skills needed to actually resolve disputes. Nevertheless, the partners sent in a statement of interest and waited for a response. They hoped that if selected to work on the project, they might be able to raise their concerns about its design and have some influence over how it would be implemented. After several months, UN staff contacted CDR and IICT, let them know that three acceptable proposals had been received and that they wanted to discuss how each candidate might approach the scope of work. At this time, CDR and IICT decided that they would suggest an alternative approach that would use a highly participatory and interactive adult learning process to (1) assist the LPD to design and implement a new land dispute resolution system, (2) train its staff to provide needed dispute resolution services and (3) build staff capacity to conduct future awareness and skill-building programs at national and district levels.⁷ The partners believed that this approach was more likely to meet the interests of both the UN and the MOJ, and help achieve their goals.⁸

An important component of preparing a proposal that involves partners is how they will describe their working relationship to a prospective client/partner. The description will strongly influence whether the client sees the partners as equals or one of them, commonly the most experienced individual or organization in the partnership or the one from a Western country,

as the leader. The possibility of a client perceiving consulting partners as not being equals is complicated by the fact that clients need to know which partner will be the lead for administrative and contracting purposes. To overcome this dynamic, CDR was designated as the lead agency for *administrative* and *financial* purposes, and both firms and their staff members were presented as equal partners in the design and execution of all project activities.

Shortly after the partners were interviewed, they were informed that their proposal had been accepted. Once a contract was signed, they proceeded to build their new partnership.

PROJECT PREPARATION

Preparation prior to the consultant partners' arrival in Timor-Leste involved reviewing primary documents provided by the LPD and research on Timor-Leste's history and culture. The partners also gathered previously developed training materials prepared for similar projects in other developing countries in the region, which they thought might be relevant in Timor-Leste.

Before examining how the partnership and project were conducted, it will be useful to explore how disputes, especially those related to HPL, have customarily been viewed and resolved in Timor-Leste (Hohe & Nixon, 2003; UNDP Timor-Leste, 2013). Even though formal statutory systems and procedures based on Western or Indonesian law have been practiced for hundreds of years in Timor-Leste, customary perspectives continue to influence how many Timorese conceptualize disputes, their causes and means to resolve them, and what constitutes acceptable outcomes (Kirk, 2014).

CUSTOMARY DISPUTE RESOLUTION IN TIMOR-LESTE

Understanding customary views about dispute resolution is important because if any new institutions, roles or procedures were to be introduced and considered, they would need to be grounded in, compatible with or complement local cultural, political, social, legal, economic and religious understandings. If proposed ideas or changes were too different from or seriously clashed with accepted local values, norms, procedures or practices, they would not be considered, much less accepted by targeted institutions, their staff or potential users.

The description below provides general details on how members of many customary communities in Timor-Leste have historically viewed and resolved disputes prior to and during Portuguese and Indonesian

times. Despite the disruption of many communities during the Indonesian occupation and post-referendum violence, many of these understandings and practices are still common in the country.

It should be noted that there is no unified system of customary law and dispute resolution procedures practiced in all customary communities in Timor-Leste. Nevertheless, there are some characteristics that are more or less common and formalized, even though there are significant variations in practice. Additionally, customary views and procedures are not static. They have in the past and will continue, into the future, to change and adapt to internal shifts of community members' perspectives and circumstances or external influences.

Dispute resolution in customary communities is strongly influenced by their members' broader socio-cosmic world view concerning how order was originally established in the universe, how it can and should be maintained and what constitutes appropriate relationships between and among individuals and community groups. Order in the world for most communities was and continues to be grounded in ancient customs given to a community by its ancestors. Members believe that knowing and following this order in all aspects of their lives ensures a balance in the cosmos, relationships with ancestors and ongoing community social relationships.

Blood kinship and family ties are the foundation of customary communities in Timor-Leste. They are also important components of peacemaking and peacekeeping mechanisms. Bonds are established by marriages, commonly between cousins from different 'houses', groups of people from the same ancestor and patrilineal or matrilineal lineage. Members of one 'house', its families and individuals are joined with those of another by the establishment of permanent 'wife-giver' and 'wife-taker' relationships, which are expected to last many generations. To establish and confirm these relationships, families, husbands and wives from each house, in the context of marriages, make promises about their affiliations and future relationships and exchange things of value—customarily prescribed goods such as cattle, buffaloes, money, gold, weavings and pigs. These exchanges symbolically represent the interhouse connection. Ongoing and future responsibilities and obligations of the involved houses and members are passed on orally, defined by customary practice and interpreted by specific community members in contact with each house's ancestors.

Houses are hierarchically ordered according to the sequence in which members' ancestors arrived and settled the community's land. Migration and opening of new land commonly result in the creation of new houses and settlements.

Customary communities in Timor-Leste, both in the past and many today, commonly have dual power structures, with sacred and secular components. Each sacred ‘house’ is headed by an elder who can interpret the order prescribed by its ancestors. He and other ritual authorities are responsible for conducting ceremonies and maintaining members’ relationships with the cosmos.

Complementing sacred ritual authorities are those with political responsibilities. They are in charge of overseeing community members’ relationships with each other and maintaining order in the secular and political world. The most prominent political authority is the *liurai*, who is also from a specific sacred house and subservient to and takes direction from sacred ritual authorities. Historically, *liurais* granted land to community members, conducted diplomacy between communities, delimited territorial borders with external parties and ensured community security.

Disputes in Timor-Leste customary communities are viewed in the context of the socio-cosmic, kinship and community relationships described above. Disputes occur when one or more community members violate the unwritten order prescribed by their ancestors or the social rules of the community. The result is often seen as an imbalance in the socio-cosmic system as well as in intergroup or interpersonal relationships. When harm is done, members of the community, as opposed to the individuals directly involved, are expected to take action to redress it. Collective community rights are prioritized over those of individuals.

In Timor-Leste the Tetum term for local justice is *lisan*. The concept includes social norms and morality, local law and the system of community governance. *Lisan* systems are highly diverse; however, there are three sets of laws or rules that are commonly used to make decisions and resolve disputes: (1) *Fetosan-umane*, a complex set of rules, rights and responsibilities that define relationships between a groom and bride’s family that are used to resolve disputes between and among family members; (2) spiritual rules that define parties’ relationships to the cosmic order and ancestors, and how spiritual and ritual leaders can lift curses imposed by an ancestor on an individual or group that has disrespected the ancestors’ values or rules; and (3) *suco* or village rules (UNDP Timor-Leste, 2013). Historically, customary laws were rarely written down or standardized. This commonly results in different outcomes based on contested issues, the parties and third parties involved, diverse interpretations of what the law prescribes and what constitutes local justice and a fair solution.⁹

There are a range of roles and responsibilities given to different community members to resolve disputes. *Liurais* often assign internal community legal and dispute resolution tasks to a *lian nain* (the ‘owner of the words’).¹⁰ These individuals knew their community’s history, marriage and kinship relations, the rules provided by ancestors and were recognized as authorities who can ‘speak the law’, describe correct ways to resolve differences, cite ancestral sanctions and witness settlements. *Lian nains* or other customary leaders are often assisted by ‘helpers’ authorized to receive reports about crimes or disputes and bring them to a *lian nain* or other recognized individuals to address and help resolve.

In some communities *lian nains* have had final authority to make decisions on contested issues. In others, they are required to take outcomes to either a *liurai* or a ritual authority for review and final approval.¹¹ In yet other communities they may serve as facilitators or mediators who conduct dispute resolution meetings—involving leaders of households, elders, other notables and the families and individuals involved—to negotiate settlements of disputes.

Conflicts among individuals are most frequent within families and generally are handled privately. The third party is commonly the family head who negotiates or mediates between involved parties, tries to reestablish harmony in their relationships and strives to develop a solution that will be satisfactory to the family’s ancestors.

If a dispute is between two different houses or their members, they, too, may be handled privately. The elders of each house may negotiate an agreement on issues in question. When disputes are between unrelated families or settlements, they are no longer a private matter. When this occurs, one or more parties may bring the contested issue to either the helper of a *lian nain*, other customary leader designated to convene meetings or a village chief (*chefe de suco*) for assistance. Meetings are commonly convened as soon as possible so that the dispute does not threaten peaceful relations in the community. Deliberations are held in a public space in the community, where a symbolic woven mat, a *biti boot*, is placed to indicate the venue for talks.

Participants in meetings commonly include disputants and their families, the *lian nan*, other ritual leaders (but not the highest one), as well as the local priest, *chefes de sucos*, *chefes de aldeias* (hamlet chiefs) and, in the past, warriors. If the dispute is over land, a community expert on land-holding will be involved. Additionally, members of a suco council or representatives of civil society may attend.

The objective of the meeting is to find a solution and build a consensus on an outcome that is in line with the cosmos and that the legal experts, village or hamlet officials and ritual authorities can accept. The meeting process commonly consists of a discussion among the customary legal authorities, with input from others who have relevant information or expertise on the issues in question. Often, much of the discussion in meetings is among the legal experts.

The roles of other participants in meetings are to make sure that disputants and other participants tell the truth, provide accurate information and ensure that it is considered, and guarantee that resulting decisions are within the purview of the decision-makers' authorities. *Chefe de sucos* or *chefe de aldeias* commonly serve as witnesses to proceedings, and provide input to ensure that any outcome or decision conforms to government law or regulations. Neither of them is involved in making final decisions.

Deliberations commonly involve extensive discussion and negotiations. The result is a consensus among the legal experts on a solution that is in harmony with all of the different aspects of the cosmos, and that is supported by other authorities and generally by involved disputants and their extended families. Settlements often involve either restitution or compensation for harm done. If punishments are to be imposed, they are determined by the legal authorities.

Resolutions also focus on restoring balance in the ancestor-ordained order and promotion of harmony and reconciliation between or among disputants and within the community. As in most small communities or villages, members cannot afford to have tensions continue that adversely affect the cohesion or survival of the group.

Reconciliation is often achieved and recognized by a ceremony (a *lulun biti*—to open and close the mat) conducted after the resolution of a dispute. The ritual demonstrates to the ancestors that the conflict has been resolved and confirms settlement by involved parties. During the ceremony both a meal and drinks are provided by one or more former disputants and shared with community authorities and other participants in the dispute resolution process. Commonly, former disputants make public promises and take an oath to abide by the terms of the settlement and agree that the dispute will not happen again. On occasion—especially if the dispute has been elevated to the *aldeia*, *suco*, subdistrict or district levels—agreements may be written down in a document called a *deklarasaun dame*, which describes the conflict, includes statements from each of the concerned parties, summarizes the outcome of the resolution

process and lists any compensation that has or will be paid. In some disputes involving groups, agreements have been codified as *suco*-level rules, commonly called *Tarabandu* laws. Originally conceived as records of community decisions on the management of community natural resources and the environment, many of these rules now cover a range of issues in a community's social life, including land issues.

The resolution of intercommunity conflicts, over land or political differences, is more difficult and can result in violent clashes between involved parties. These disputes may also be complicated by the lack of acceptable individuals or groups that can serve as intermediaries and build bridges between disputing parties. Parties' initiatives to resolve these types of disputes generally focus more on restoring the socio-cosmic order than on compensation. Disputants often seek to identify and affirm peaceful historical connections between involved parties, or establish new positive links by entering into a blood oath and becoming blood brothers or establishing kinship relationships through marriage.

If a voluntary settlement of contested issues cannot be reached—at the family, extended family, hamlet, village or, on rare occasions, subdistrict levels—disputing parties could take their case to a government court for a binding judicial ruling. This option, however, was in the past and is currently not common.

DEVELOPMENT OF THE PARTNERSHIP IN TIMOR-LESTE

Upon arrival in Timor-Leste, the consultant partners began building a partnership with the LPD. They convened multiple meetings over two-and-a-half days with the Director of the LPD, a number of its Dili-based staff and its UN and CIDA advisors. Meetings had both a substantive and a relationship-building focus.

During discussions, the team learned that in the past, several LPD staff members had been trained in family mediation and used these skills to mediate a number of disputes involving both customary and statutory land.¹² The staff members, however, noted that they still felt inexperienced and wanted more customized processes and specific substantive training focused on the resolution of HLP disputes. In addition to hearing about the mediation experience of Directorate staff, the team also learned that little progress had been made to formalize the LPD's system for delivering dispute resolution services, and that the agency wanted a component of the consultancy focused on dispute resolution system design.

After learning about the interest of LPD staff to engage in dispute resolution systems design, the consultants proposed a participatory co-learning and systems design process that included multiple ‘designshops’ and a number of kinds of simulations with coaching to train staff members in new procedures and skills directly applicable to the resolution of HLP disputes. Upon hearing about the participatory co-learning approach, the Director decided that all of his staff should attend both the systems design component of the program as well as the sessions focused on dispute resolution procedures and skills. He wanted to have everyone’s ideas and input so that the new system would have broad ownership and buy-in.¹³

Based on input from pre-workshop meetings, the international consultants made significant changes to the content and process used for future workshops and training. They maintained, however, their general teaching approach, which was a combination of elicitive and prescriptive teaching and learning, in which they would be the facilitators (Prescriptive-Elicitive Training, n.d.).

Elicitive teaching and learning is based on the assumption that participants engaged in a learning exercise in a specific setting—a culture, society, organization, community, clan, family, and so on—have significant, unique and valuable local knowledge to contribute about the subject being explored (Lederach, 1995). This information is generally culture specific. Elicitive education involves a process of co-learning in which participants, with the assistance of a facilitator, draw out each other’s knowledge, and articulate and organize it in a form that is usable for a desired purpose, in this case developing a new dispute resolution system and effective approaches, procedures, skills and strategies for addressing and settling HLP conflicts. Elicitive training/learning, at its best, empowers participants to develop their own insights and knowledge, and create approaches and procedures to resolve disputes that are their own, culturally appropriate, and widely applicable and acceptable to the parties for whom they are intended.

In contrast to elicitive teaching/learning, prescriptive education procedures are based on the assumption that there is a body of knowledge about a topic, in this case dispute resolution, which is somewhat universal, and that this knowledge is transferable and useful regardless of the situation or cultural context in which it is applied. An expert who has studied the topic and is knowledgeable organizes what he or she believes to be relevant and useful information—concepts, frameworks, approaches, procedures, strategies, techniques and skills—and presents it to learners. In this teaching/learning process, the trainer plays a significant role in determining participant needs and teaching procedures to be used. Trainers

often present procedures, demonstrate them using role-plays of simulated disputes and have participants engage in other simulations to practice applying the processes and skills that have been presented.

The facilitators chose to use a combination of elicitive and prescriptive approaches and procedures because they believed that neither process alone would result in the development of an effective and acceptable dispute resolution system or mediation procedures in Timor-Leste.

Workshop I

The first workshop was residential and held at a convent in a small coastal town on the north coast of Timor-Leste. A residential program was selected to help build positive working relationships among the LDP staff and their international partners, to avoid daily transportation problems of getting participants to the venue and to ensure that everyone would be present for all sessions. The workshop was attended by 24 LPD staff members, including the Director, all of his senior Dili-based staff and district-level staff working in the field, and a UN consultant. The first workshop had several components determined by LPD participants and the consultants, and these are described in Box 11.1.

Box 11.1 Workshop I—Goals and activities

1. Build a sense of team and forum for collaborative learning among LPD staff.
2. Conduct an analysis of types, causes and priorities of conflicts for which LPD staff would be expected to provide resolution assistance—the first step in dispute resolution systems design.
3. Identify culturally appropriate approaches and strategies that in the past had worked to resolve land and property disputes.
4. Introduce interest and positional negotiation approaches and procedures.
5. Begin the process of developing a new dispute resolution system.
6. Identify and explore Timor-Leste mediation approaches and procedures to address and resolve land and property disputes.
7. Introduce a prototype mediation process and compare and contrast it with that used in Timor-Leste to decode common local cultural patterns of dispute resolution.

The first day, after introductions in which participants shared personal experiences of successfully resolving disputes, they used an elicitive approach to identify and flip-chart major types of HLP conflicts trainees had encountered in the past, and would likely be expected to resolve in the future. These are presented in Table 11.1.

Participants also identified which disputes were important for the Directorate to resolve in the immediate future because of their potential impacts on social peace and economic development; and those that were common and repetitive. (The former are identified with a plus [+]; the latter with an asterisk [*], see Table 11.1.)¹⁴

Workshop participants then, again using an elicitive approach, identified major barriers to resolving HLP disputes. These are presented in Box 11.2.

Box 11.2 Major barriers to resolving HLP disputes

- Lack of clarity of land and property policies and laws
- Competing Portuguese and Indonesian land titles
- Lack of titles (due to loss or destruction during the post-consultation violence and the land registry building burning down)
- Absence of housing alternatives for people being asked to leave or being evicted from government or private land
- Lack of resources (building materials or land) to provide illegal occupants an alternative to continuing illegal occupations
- Lack of resources to compensate titleholders for loss of properties

Finally, participants identified a number of strategies that had worked in the past to address disputes they identified as a high priority, such as joint or alternating land use.

At the end of the first day, participants engaged in a simulated negotiation exercise that explored differences between positional and interest-based negotiation approaches and procedures. A hypothetical but culturally relevant simulation over property damage to crops by a free-ranging water buffalo was used to present and explore concepts.¹⁵

The second day of the workshop examined potential models for a new land and property dispute resolution system. As a catalyst for participants' thinking, workshop facilitators presented on flip charts a Continuum of

Table 11.1 Types of housing, land and property disputes to be addressed by the LPD in post-conflict Timor-Leste

<i>Dispute type</i>	<i>Examples of disputes</i>
Illegal or contested occupation of land and property (private, government and customary)*:	<ul style="list-style-type: none"> • Illegal occupation of homes • Process for certification of land occupied by a party that does not have a title* • Contested ownership between parties without titles • Competing titles (Portuguese and Indonesian titles) • Illegal sales of land or property by parties that do not own it* • Compensation for improvements made on land or property illegally occupied* • Compensation for use of land or property illegally occupied • Procedures for removing illegal occupants • Disputes over where people removed from land should go to live • Construction of permanent structures on land not owned by the party that has built the structures
Disputes over the use or access to natural resources on land ⁺	<ul style="list-style-type: none"> • Disputes within families about ownership and inheritance conflicts • Access to or use of water • Access to or use of sand on the beach or riverbeds for use in construction
Disputes over community-administered lands	<ul style="list-style-type: none"> • Ownership disputes regarding the coastal zone and beach • Boundary disputes* • Inheritance issues* • Use of rice fields or other land • Conflicts within clans over rights of land use or allocation • Conflicts between clans over rights of land use or allocation*

(continued)

Table 11.1 (continued)

<i>Dispute type</i>	<i>Examples of disputes</i>
Disputes between the government, individuals or groups over government lands	<ul style="list-style-type: none"> • Construction of illegal permanent structures on government land • Claims of illegal government seizure of private lands for housing or other purposes* • Illegal sales of government land or property by parties that do not own it* • Construction of government structures on private lands • Illegal occupation of government property or land • Citizen occupation of permanently or temporarily abandoned land or property, often previously owned by Portuguese or Indonesians • Disputes over land distributed to Timorese by the Indonesian government, which previous owners want to be returned to them • Inadequate compensation of previous land owners for land appropriated by the government • Ownership disputes between original title holders and current occupants
Disputes over land and property involving citizens of East Timor who have been living abroad†	
Disputes over land and property previously owned by foreigners	<ul style="list-style-type: none"> • Determination of compensation, if any, to be given to foreigners, principally Indonesians and Portuguese, for lost land or property; issues involving the valuation of land or property • Future land use* • Encroachment by plantations on private or customary lands
Disputes involving coffee plantation land and property	<ul style="list-style-type: none"> • Interface of rice fields with plantations • Illegal occupation of plantation lands by plantation workers • Titles for workers on plantations to plantation lands • Illegal sales of land or property by parties that do not own the land

Dispute Resolution Approaches and Procedures and examples of dispute resolution systems developed in Sri Lanka, the Philippines, and the United States (CDR Associates, 2008). The Continuum outlined a range of potential unassisted and assisted dispute resolution procedures which had been used in other cultures and countries to help resolve disputes (Table 11.2).

The flip charts on dispute resolution systems, an example of which is presented below for the Sri Lankan Ministry of Justice's Mediation Boards Programme (Fig. 11.1), illustrated systems developed in other countries' cultures that might be relevant for the Timor-Leste. They presented potential pathways and steps for the resolution of disputes (from initiation to settlement), models for service providers at different stages of the process, procedures used to settle differences and suggested time frames for various resolution activities. Participants in small groups used information presented in the Continuum and sample dispute resolution systems to develop preliminary suggestions and models for a possible Timor-Leste HLP dispute resolution system, which they wrote up on flip charts. Each group presented their model system to all participants, who then discussed both their positive and problematic aspects. The information and diagrams were given to the Directorate's management team for use in the development of a proposal for a new system, which would be brought back and presented to the staff at a future workshop.

The third and fourth days of the workshop focused on an introduction to the mediation process. Day 3 began with a simulation conducted twice to compare two third-party dispute resolution approaches: third-party decision-making procedures (using customary decision-making processes, arbitration or adjudication) and relationship building/and problem-solving assistance (using mediation). The exercise was used to explore differences in procedures and outcomes of the approaches and to elucidate Timorese cultural assumptions and norms concerning what constituted a conflict, and appropriate procedures and outcomes to resolve it. No information or advice was given on approaches, procedures to be used by participants playing roles of disputants or third parties or desirable outcomes. Following the simulation, participants engaged in a discussion of their experiences serving as the two kinds of third parties and disputants, both in the simulation and in real life. From the exercise, participants were able to understand differences between the two approaches and related procedures and likely outcomes of using each of them, and began to identify and articulate elements in Timor-Leste culture and practice that facilitated the resolution of differences. These are presented in Box 11.3. Note that

Table 11.2 Continuum of dispute resolution approaches and procedures

<i>Unassisted approaches</i>		<i>Assisted approaches</i>			<i>Binding decision-making assistance</i>
<i>Conflict regulation</i>		<i>Relationship assistance</i>	<i>Process assistance</i>	<i>Substantive assistance</i>	
<ul style="list-style-type: none"> • Conciliation • Information exchange • Collaborative problem-solving • Negotiation • Relationship building and social activities 	<ul style="list-style-type: none"> • Community peacekeeping • Police • Military • Truce agreements to prevent violence 	<ul style="list-style-type: none"> • Message carrier • Conciliation • Social activities • Customary relationship building • Peacebuilding/peacemaking rituals 	<ul style="list-style-type: none"> • Convening • Coaching • Training • Joint strategy design • Facilitation • Mediation • Advisory mediation • Evaluative mediation 	<ul style="list-style-type: none"> • Fact finder • Assessment by data expert • Non-binding arbitration • Dispute panel (non-binding) • Input or advice from a customary authority 	<ul style="list-style-type: none"> • Decision by a customary authority • Mediation-then-Arbitration (Med-Arb)/Arbitration-then-Mediation (Arb-Med) • Arbitration (by single arbitrator or panel) • Administrative law judge • Specialized tribunal • Court/judge

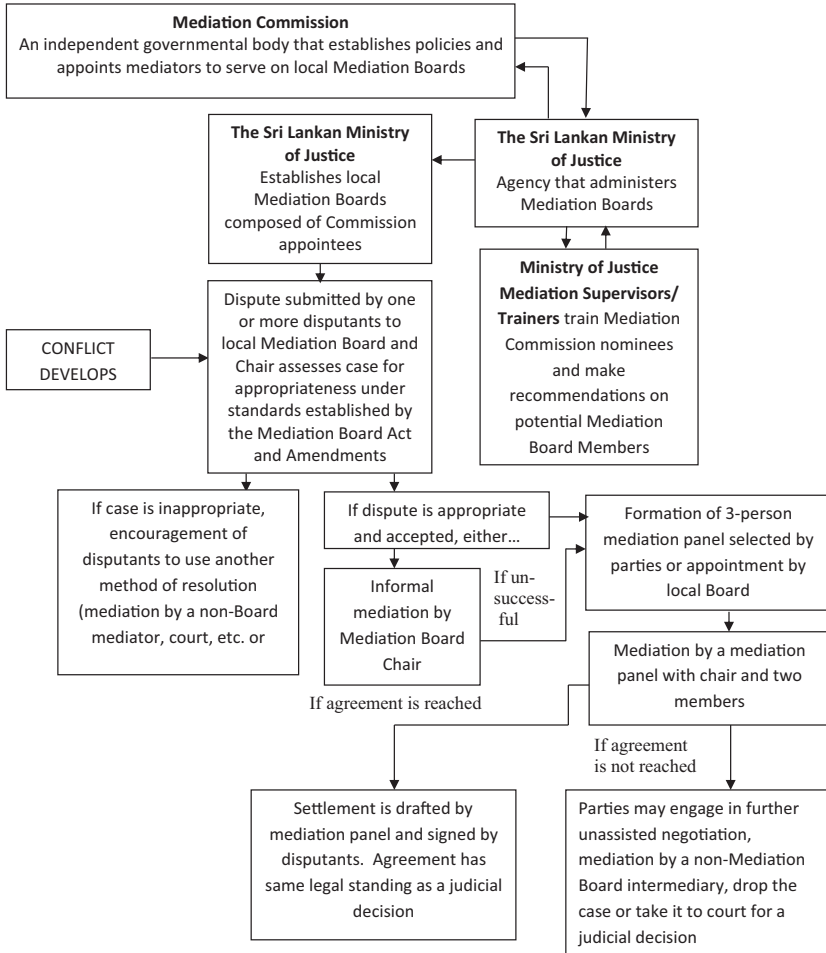


Fig. 11.1 Sample dispute resolution system: the Sri Lankan Ministry of Justice's Mediation Boards Programme

many of these elements are similar to those identified earlier in this chapter as components of Timor-Leste customary dispute resolution practices.

After exploring East Timorese methods of dispute resolution, the trainers presented a mediation framework (a 'road map'), sample stages of mediation and an outline of potential tasks to be accomplished in each

Box 11.3 Elements in Timor-Leste Culture and Practice that Facilitate Resolution of Disputes

- Involvement of ‘helpers’ to bring together relevant parties and convene a meeting.
- Involvement of multiple parties—political and lower-level ritual leaders, elders, extended family members of disputants and government officials—in dispute resolution activities.
- Engagement of acceptable third parties because of their customary political roles in communities, kinship relations or prior trustworthy relationships to one or more disputants.
- Input from experts, such as individuals or groups with authority and knowledge of the history of individuals, families, houses; or community occupation, and use and ownership of land.
- Importance of establishing positive interpersonal relationships between people serving as third parties and disputants prior to beginning a formal dispute resolution process.
- Involvement of traditional leaders or *chefes de sucos* and *chefes de aldeias* as sources for referrals to customary authorities who could resolve disputes, help generate potential settlement options, and serve as witnesses to ensure fairness of the process and its outcomes, and to guarantee congruity of settlements with government laws and rules.
- Provision of ample time for face-to-face discussions and for parties to talk and share their views.
- Provision of cooling-off periods to deescalate conflicts and develop assurances for the personal safety of disputants during the process.
- In-depth exploration of the causes of a dispute and parties’ needs and interests, and development of potential options for agreement in separate meetings, often held prior to beginning formal talks.
- Use of diverse forums and formats for deliberations—private meetings with parties, shuttling between them, meetings with just parties’ spokespeople or leaders, or large group meetings with the involvement of many community members.

(continued)

Box 11.3 (continued)

- Exploration of a range of settlement options, including restitution (return of contested land), compensation for losses or joint sharing/use of land or resources.
- Reliance on suggestions from an intermediary or other meeting participants when disputants were unable to agree on acceptable options on their own and/or conclusions or rulings of customary authorities.
- Intermediary and parties' analysis and exploration of the applicability of the law on eviction as a means to assess parties' Best Alternatives to a Negotiated Agreement ('BATNAs');
- Use of moral authority, sacred and ritual knowledge of customary leaders, stature and independence of external mediators (commonly from a government agency), and social pressure by community members to encourage agreement and future compliance.
- Writing down and signing of formal agreements.
- Utilization of customary reconciliation rituals—cutting off the head of a chicken, taking some of its blood and mixing it with *arak* (an alcoholic beverage), and toasting the agreement; spilling the blood of a chicken on the ground to seal an agreement on a border dispute; mutual exchanges of traditional gifts such as a bolt of cloth or a goat, and joint feasting on a caribou.

stage, and also a demonstration to show how the process might be conducted. After the demonstration, participants were asked about what they observed, whether the stages and tasks were the same or different from those practiced in Timor-Leste, and if different, how so and what was done in their culture to accomplish those stages and tasks. The trainers also shared their experiences studying, observing and practicing dispute resolution activities and mediation in a number of other countries and cultures, and legitimized that there was no one or a 'right way' to conduct the process.

After the simulations and demonstrations conducted by the Timorese and trainers, and follow-up discussions to elicit and consolidate insights, participants in the workshop strongly supported integration of elements of

traditional Timor-Leste methods and mediation procedures found to be effective in other parts of the world. They stated that they believed that this integration would help them to be more successful in the resolution of disputes.

Workshop II

The second workshop was also residential in nature and had a number of components—these are described in Box 11.4.

Box 11.4 Workshop II—Goals and activities

1. Presentations and practice sessions on procedures and strategies for mediation of multiparty conflicts.
2. A presentation on the present status of the development of laws and regulations on land and property in Timor-Leste.
3. An overview of the thinking of the leadership of the LPD on the future structure of the Directorate and a proposed system to provide dispute resolution services.

The session began with an exploration of diverse forms of multiparty disputes involving teams, coalitions, diverse constituencies and bureaucratic organizations (government agencies and the private sector), and some strategic considerations mediators needed to think through when designing strategies to address and resolve them. Subsequently, participants engaged in mediating a number of multiparty simulations based on fact patterns identified by participants in the first workshop. The first was a dispute over the vacation and resettlement of internally displaced persons living in a government school.

Toward the end of the second workshop, the UN advisor presented the work of the Directorate's management team on the design of the proposed dispute resolution system. Following the presentation, staff members engaged in a discussion and made recommendations for further refinements. They stressed the need for multiple referral sources and entry points to secure dispute resolution assistance, and the integration of some customary approaches and procedures with procedures that would be provided by the LDP. They also recommended that some HLP conflicts

should be handled by one staff member and others by co-mediators or through involvement of multiple intermediaries. They finally discussed whether an arbitration component of the system should be part of the LDP or an independent recourse mechanism.

Three other components of this workshop were: (1) a clinic that involved mediation strategy design exercises to develop options to resolve issues participants were facing in their work, (2) a presentation and discussion of how to conduct co-mediation or work as a member of a mediation team, and (3) a presentation and exercises to explore mediation ethics. The clinic provided an opportunity for participants to present difficult cases, analyze potential causes of impasses and get feedback from their peers and trainers on strategies to address them. This exercise provided both practical conflict resolution ideas and a model for peer consultation and strategy design that could be used in the future to develop more effective intervention strategies.

Workshop III

The third workshop had four components that are described in Box 11.5.

Box 11.5 Workshop III—Goals and activities

1. Introduction to the theory and process of third-party decision-making, or arbitration, and how it might fit into the Timor-Leste HLP dispute resolution system.
2. Presentations on the cadaster, the public register showing the details of ownership of real property in a district, and the process to register land.
3. Development of educational and promotional programs to educate potential referral sources and users on the dispute resolution services of the LPD.
4. Presentation of a three-day training-for-trainers module to prepare a group of LDP staff to present one-to-three-day mediation training programs to other LDP staff and local community leaders.

The module on arbitration introduced the procedure and explored how it might be incorporated into the new LPD process. One of the Indonesian partners, who was a lawyer and knowledgeable about arbitration, presented the module. Participants then engaged in two arbitration simulations based on real East Timorese land disputes.

During the next section of the workshop, participants explored how an awareness campaign could be conducted to educate the public about future national laws related to land and mediation services that would be provided by the LPD. They also discussed how local government officials and members of customary communities could be trained in mediation. Subsequently, twelve participants participated in a three-day training-for-trainers module to prepare to train others in mediation. The international trainers noted that this was one of the most difficult sessions for participants, as it required them to both learn and integrate their substantive and procedural knowledge about the process with new teaching skills.

Workshop IV

The final workshop had six components and these are described in Box 11.6.

Box 11.6 Workshop IV—Goals and activities

1. Presentations, exploration and practice of procedures and strategies for negotiation of multiparty disputes to prepare LPD staff to negotiate agreements on behalf of the government when the state is a party.
2. Presentations on and practice of communication skills for conflict resolvers.
3. A clinic for participants to discuss strategies for their current cases.
4. An examination of ethical issues LDP mediators and negotiators are likely to face and their appropriate responses, and a discussion of a model code of professional conduct for intermediaries.
5. An update on the development of the new system and identification of next steps in securing its approval by the MOJ and rolling it out to the broader Timor-Leste community;.
6. Evaluation of the fourth workshop and the entire four-session program

When disputes arise in Timor-Leste in which the government is a party—such as when citizens have illegally occupied government buildings or land, or the government (or previous governments) has illegally taken private property that is not its own—LPD staff members are expected to serve as negotiators for the government. The first half of Workshop IV focused on advocacy skills and interest-based negotiation approaches for the settlement of multiparty disputes where the government was a party. During this module, the trainers also elicited and presented a range of communication procedures and skills for conflict resolvers. Participants explored cultural norms concerning expression of emotions, how they should be handled, methods of asking questions, and framing and reframing procedures to address substantive issues in dispute.

The workshop continued with a conflict analysis and negotiation strategy design exercise on a real situation, in which internally displaced persons had occupied a school that the government wanted to reopen. The analysis identified the conflict's causes, contributing factors and a range of potential negotiation strategies that could be used to address them. Participants then engaged in several rounds of negotiations to apply and explore their negotiation strategies.

As in the second workshop, time was provided for clinics in which participants with especially difficult cases described them to their peers, analyzed their possible causes and explored alternative strategies to address them.

The session on ethics explored a variety of issues that commonly arise in the practice of mediation. Some of them included the transparency of the mediation process, different capacities of parties to represent and effectively advocate for their interests, prevention of coercion, protection of vulnerable parties (women and youth), ensuring parties' physical safety, impartiality of the intermediary, and gift-giving and bribery. Interspersed with discussion were quick-decision exercises or role-plays of potential issues or problems for participants to respond to. For example, in mediation, one of the parties brings a small offering of rice or food and gives it either privately or publicly to the mediator at the beginning of the meeting. Is the donation a culturally acceptable 'gift' given as a cultural sign of respect, or is it a 'bribe' to gain favor? Regardless, what might be an appropriate mediator response? Two options identified by participants was for the mediator to share the gift with all participants in the meeting, or say that he or she would give it to someone in need or to the community as his or her offering of caring and respect for their well-being.

While the Director, LPD staff and the UN advisor had discussed the potential forms of the new dispute resolution system in two earlier workshops, in the fourth, they moved toward significant closure on the design and clarified a variety of roles and components of system and its procedures. The proposed system is described in Fig. 11.2.

In the subsequent discussion workshop participants agreed on a number of recommendations to the MOJ for the new LDP dispute resolution system. These are described in Box 11.7. They included recommendations on how cases should be identified, who should be intermediaries, mediation procedures to be used, and recommendations on arbitration and an independent and permanent Land and Property Dispute Resolution Board (LPDRB) with authority to make binding legal decisions on issues involving private statutory, customary and government land. Workshop participants, however, including the Director of the LDP, recognized that their recommendations were subject to approval of the Minister of Justice.¹⁶

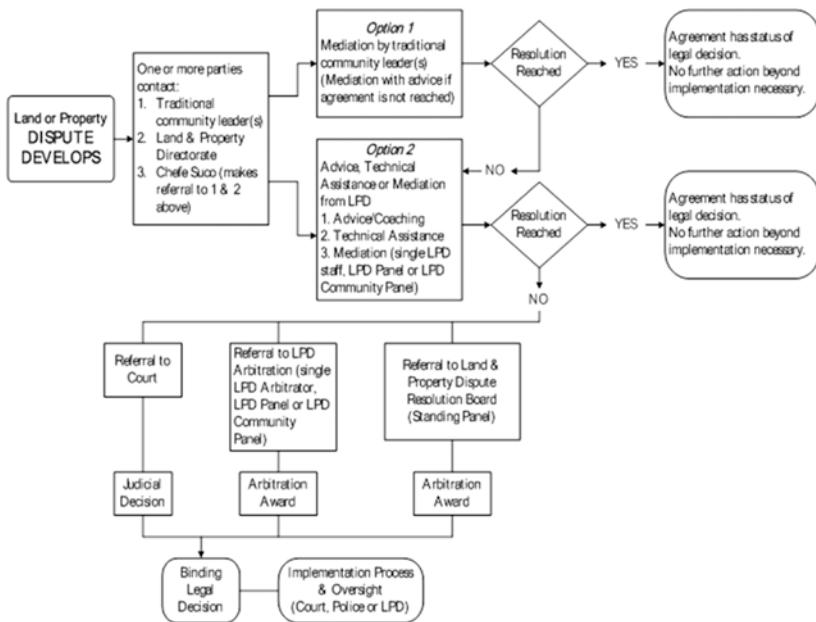


Fig. 11.2 Proposed Timor-Leste's housing, land and property dispute resolution system

Box 11.7 Recommendations for the new LDP dispute resolution system

- Utilize, as appropriate, the services of both traditional community leaders and LDP staff to resolve land and property disputes.
- Ensure and publicize multiple points of access to the system, including direct contact by one or more disputants with community ‘helpers’, leaders or national or provincial LPD staff, or referrals by *chefe de sucos* or other sources.
- *Chefe de sucos* should generally not be directly involved in resolution efforts to settle disputes, except as witnesses of the procedures and outcomes, and to verify that agreements comply with government laws and regulations, unless their assistance is specifically requested by customary community leaders, LDP staff or disputants.
- Customary leaders should be authorized to mediate disputes using traditional processes and assist parties to reach voluntary agreements. If, however, parties fail to reach agreement, these leaders should be authorized to make non-binding recommendations on how the conflict might be settled. If the parties accept the recommendation, the agreement should be considered to be binding. If, however, disputants do not accept the recommendation, they have the option of seeking resolution assistance from LDP staff.
- LDP staff should provide, subject to MOJ approval, four kinds of conflict resolution assistance: (1) advice and coaching of disputants on how to resolve differences on their own, (2) mediation by either a sole LDP staff member or a team of LDP staff, (3) mediation by a mediation panel composed of LDP staff and community members, or (4) binding arbitration by an LDP staff member or a Land and Property Dispute Resolution Board (LPDRB).
- The LPDRB, the details of which remain to be determined, should be an independent permanent standing arbitration board under the jurisdiction of the LPD or the MOJ, and authorized to make legally binding decisions regarding

(continued)

Box 11.7 (continued)

land and property disputes brought before it by citizens or government entities. It should be authorized to hear cases involving (1) private property, and (2) property owned by the government.

- The Board should be composed of a number of members appointed by a qualified government entity. Board members should be selected from respected national and community leaders, have some expertise in land and property issues, and be appointed in adequate numbers to allow them to form multiple three-person panels to hear cases. Board panels should hear cases in Dili and in other regions or provinces.
- Decisions by LDP arbitrators and the LPDRB should be binding and have the same standing and force of law as judicial decisions by government courts.
- The choice of which dispute resolution process to use should be left to the parties.

Workshop IV concluded with an evaluation of that session and the series of four workshops, after which a senior official from the MOJ, CIDA's representative and the Director of the LPD closed the seminar and handed out certificates of completion to participants.

ISSUES IN PARTNERS' WORKING RELATIONSHIPS AND PROJECT IMPLEMENTATION

In general, all partners—the LPD staff, IICT and CDR—were very pleased with the partnership, their working relationships and the outcome of the workshops. All of the partners had been involved in visioning and conceptualizing the initiative, collaborating and drawing on complementary knowledge to develop the new dispute resolution system and its component procedures. There were, however, as in any project, several issues that developed that needed to be addressed. These occurred in the area of financial arrangements, in balancing and utilizing different team members' strengths and weaknesses, providing interpretation and translation, coordinating staff who would work on the project, securing public recognition

of the international partners who had participated in the project, and in the limits of authority of the LPD and its director to implement all proposed elements of the new system.

CDR and IICT did not have any difficulty reaching agreements on financial arrangements on this project. Finances and payment for work, however, can be a source of tension between partners or with clients. When a project is being staffed by practitioners from diverse countries and funded by an international donor, each may have different expectations for what consultants should be paid. Those from developed countries often expect to be paid their established daily or monthly rates, which are often significantly larger than those for consultants from developing countries or the country where the work is to be performed. Additionally, many international funders have different rates for international consultants and local staff, even if the work performed is essentially the same.

CDR's and IICT's daily rates were significantly different based on the track record and past charges of staff from each of the organizations and on variations in the cost of living in the United States and Indonesia. CDR's staff members were concerned that differences between rates might affect how the client would perceive the value and contributions made by each of the organizations or result in tensions between the two firms over payment for similar types and amounts of work. To address this issue, CDR and IICT staff discussed each of their concerns and significantly raised IICT's daily rate to a level that was acceptable to both that organization and the client.

Determining how to best utilize partners' strengths and address their weaknesses was another area that had to be addressed. Differences in the partners' experience in dispute resolution systems design have already been mentioned. This was also the case for arbitration, where the Indonesian partners had more expertise. Early discussions between the international partners and identification of each one's strengths enabled them to develop training agendas that allowed each of them to present on topics where they had the most expertise and experience. The discussions also helped to balance the number, duration and types of presentations conducted by each partner.

Another difference was the partners' language capacities, which affected opportunities for relationship building with the Timor-Leste partner and facilitation of discussions and presentation of information. All of the Timorese understood and spoke *Bahasa Indonesia*, the language of Indonesia. None of them spoke English. The Indonesian partners were

able to do all of their presentations in *Bahasa*. The US staff could only speak English and thus needed to use an interpreter. Some sessions, even where the English-speaking staff had more substantive and procedural expertise, were assigned to the Indonesian staff, both for efficiency and time management. Additionally, the Indonesian trainers and sole interpreter for the project, who was also Indonesian, had to translate all training materials, both prior to and during workshops, which on occasion was burdensome. Ideally, there should have been two interpreters, who could have alternated in providing interpretation and translation of materials during the workshop.

Determination of which staff members from each organization would work on the project, and when, was another topic that needed to be addressed. The partners decided early on that one staff member from each organization would be a trainer in all workshops to ensure continuity of relationships and coordination of content. As there was only one woman on the partners' team, and it was important to have some gender balance, she was involved in all sessions. On occasion two people from one of the organizations were also asked to participate to provide expertise on specific topics and to coach negotiation and mediation simulations.

Another staffing issue arose when one CDR staff member wanted a specific IICT colleague with expertise on human rights and the resolution of natural resource dispute to participate in one of the workshops. He wrote to his Indonesian colleague a number of times over a period of months, asking him to participate but never received an answer. Finally, the CDR staff member decided to write a fairly strong and direct e-mail, asking why he had not received any replies. Luckily, he vetted the e-mail with his other IICT colleague, who informed him that the way the message was worded was too direct and judgmental. She suggested that she talk with her colleague and find out why he was not responding. As it turned out, the reasons were related to security and the concern that the Timorese might not welcome an Indonesian, as he believed that feelings were running high in some parts of Timor-Leste against Indonesian nationals because of the past occupation and violent separation of the countries. Once the colleague's concerns were identified, he was assured that it was safe to come, and that the LPD staff would welcome his engagement. He ultimately came and his participation was very well received.

Many governments are sensitive about the involvement of international consultants in their internal affairs. This situation arose at the end of the four workshops during the ceremony to present LPD staff members with

certificates of participation. A senior official from the MOJ, the Director of the LPD and each of the lead trainers from CDR and IICT were to make closing comments. The senior Ministry official, however, adamantly opposed any Indonesian speaking at the ceremony. For a brief moment, it looked like an 'international incident' was in the offing, but it was avoided when the Indonesian partner graciously agreed that the CDR staff person would speak for both of the international partners, acknowledge their equal involvement and thank the government, LPD and IICT for each of their contributions to the successful collaboration and partnership.¹⁷

The final area where there were issues, but not in the partnership itself, concerned the outcome of recommendations by the LPD to the Minister of Justice on its new dispute resolution system and later internal decisions by the Directorate. At the time of the dispute systems design and capacity-building workshops, the serving Minister of Justice had a strong bias toward judicial settlement of land and property disputes. She was reticent to fully support and implement non-judicial dispute resolution procedures that involved binding third-party decisions. While she ultimately accepted that some mechanisms beyond customary procedures were needed to help disputants reach voluntary agreements, she strongly felt that disputes that could not be settled by either unassisted or assisted negotiations using mediation should be taken to a government court for a judicial decision. She did not support the use of either arbitration or a dispute panel under or independent of the LPD. The result of this decision was that many disputes that were not voluntarily settled languished for years due to the lack of courts, the extensive time required to train lawyers and judges, and a high backlog of cases.

Another change from the LPD recommendations was that most mediations were handled by solo LPD mediators rather than by co-mediators or teams of intermediaries composed of LPD staff and customary authorities.

Most disputes in rural areas where land use and ownership remained under customary tenure and that involved a smaller number of parties continued to be handled by customary authorities and procedures. While the LPD has assisted in the resolution of some rural disputes, it focused primarily on conflicts that involved privately or customarily held land in urban areas, government land and property, complex land issues within or between customary communities or those with the potential for violence. With these areas of focus, the LPD has had significant success in HLP dispute resolution.

LESSONS LEARNED

Partners in this collaboration to enhance dispute resolution capacities in Timor-Leste—both the international consultants and the LPD—learned a number of valuable lessons related to implementation of partnerships in general and of this type in particular. They include:

Establish initial and continuing relationships characterized by trust and respect: It is important for partners to spend an extended period of time in informal and structured conversations, both at the beginning of the new partnership and throughout its implementation. Discussions should focus on clarification of expectations regarding roles and responsibilities, financial arrangements, the fair division of labor and how the partnership is currently working or will work in the future. If tensions develop, it is important to address them as soon as possible.

Be sensitive to and respond appropriately to cultural differences: Partners need to be aware of cultural differences in communication and problem-solving procedures and styles, and respond in appropriate ways. When partners are from direct-and-indirect-dealing cultures, have different expectations for how to raise or address tensions, and where face-saving and face-giving are important, partners may want to use intermediaries from either within or outside of the partnership to engage in productive conversations and problem-solving. Failure to accommodate and respond effectively to cultural differences can create unnecessary problems between partners and difficulties in project implementation.

Use knowledge from 'here' and 'away' effectively: Partners from diverse cultures with different dispute resolution expertise, experience and skills can make significant contributions to the success of a project. Partners need to actively solicit and apply information from each of them to achieve the maximum benefits from an intercultural partnership. A blend of local knowledge and information from afar can help partners develop a more suitable design for a new dispute resolution system, make appropriate enhancements to an existing one and create more culturally acceptable and implementable dispute resolution procedures. However, when using local understandings and information from away, care should be taken to avoid overreliance on either source of knowledge. While eliciting local information about conflicts and how they have or could be resolved, its unquestioning adoption and implementation in

either a new system or procedures can reinforce problematic norms, practices and outcomes. For example, local dispute resolution approaches and procedures may not include safeguards that protect human rights. Additionally, they may maintain and reinforce unjust power structures and relations between dispute resolvers and parties, be subject to corruption or result in discriminatory treatment of women, minorities or other vulnerable groups. Uncritical employment of local practices can also result in the use of dispute resolution procedures—such as positional negotiation, inappropriate or uninformed advice-giving, or biased decision-making—which are less effective than interest-based processes for developing more satisfactory and mutually beneficial outcomes.

Similar to the use of local wisdom, knowledge from away can have both beneficial and problematic aspects. Information from other cultures and countries about conflict resolution systems and practices can expand the awareness and knowledge of local partners concerning options for how disputes have been successfully resolved elsewhere and might better be handled in their local context. Knowledge from away, however, if uncritically presented and advocated by an external partner and adopted without question by a local counterpart, can result in significant acceptability and implementation problems. If information from away does not complement or is not compatible with valued elements and practices of a local culture or is not relevant for the local context, it is eventually likely to be rejected both by the local partner and by the disputants for whom it is intended.

Extensive care needs to be taken to ensure the appropriate balance between knowledge from here and away so that an acceptable and implementable outcome is achieved. Determining the value of each kind of knowledge and how it will be used is best achieved by a genuine, in-depth dialogue between local and external partners.

Solicit information on partners' interests and strengths and balance roles and responsibilities: A powerful and successful partnership should recognize the interests and preferences of all partners on how they will participate in a new initiative, and identify and appropriately utilize each of their strengths, expertise and potential contributions. Effective identification of each partner's strengths and decisions on how to best to deploy them can best be achieved by early and ongoing structured discussions to identify specific substantive, procedural, relationship or cultural expertise or language abilities each partner brings and can contribute.

Promote collaborative coordination: Collaboration should be promoted and practiced by all partners—both local and international—in all aspects of project planning and implementation. Joint engagement should include, but not be limited to, project visualization and conception, proposal development, staffing decisions, materials development, agenda design, conduct of facilitated meetings or training programs, and development of future activities.

Anticipate the unexpected: International partnerships—because of cultural differences, work styles, experience and expertise between and among partners—always encounter unexpected issues or problems that need to be addressed and resolved. At the same time, they also provide opportunities which, if handled well, can result in establishing successful relationships, effective project implementation and social change. Partners should anticipate that interpersonal or intergroup differences will arise, and be open to addressing and responding to them. Partners should also expect that there will be structural issues that may inhibit or prevent an initiative from being implemented in exactly the way it was planned. Cultural influences, organizational structures or authorities with different views may result in significant changes in the final design or implementation of a project. While some of these factors may pose barriers to implementation, others may provide opportunities for new, creative and more culturally appropriate responses to conflict and its resolution.

NOTES

1. Cohen (2013) is a highly useful reference on establishing partnerships to promote peacebuilding.
2. Land in Timor-Leste is held either customarily and administered under customary law, or under a statutory legal system in which owners hold private titles. Statutory land was historically held by Portuguese colonists, Indonesians during the Indonesian occupancy, some citizens of Timor-Leste or by people of mixed race. After independence, the government determined that land could not be owned by foreigners and had to develop a law that detailed how land would be owned and whether any compensation for loss by foreign owners would be paid.
3. Tensions also remained between pro-independence and pro-autonomy actors, some of which were related to HLP issues.
4. At this time, there were four categories of potential claimants: (1) customary occupants of land (commonly held by a community), (2) those claiming land under Portuguese title, (3) those claiming land under Indonesian title and (4) current occupants of land.

5. Generally, conducting training for large groups of people without a strong institutional base and strategic plan that details how procedures and skills learned will be coordinated and applied to on-the-ground problems is neither effective for capacity-building nor service delivery.
6. In the past, CDR staff had been hired by GTZ, the German government's technical assistance agency, to work with the Indonesian Center for Environmental Law, an Indonesian NGO that is the sister organization of ICCT, to provide dispute resolution training for staff of Indonesian government agencies and NGOs during the time of the Suharto regime. After this initial working experience, CDR and ICEL/ICCT became partners in the presentation of many training programs in Indonesia.
7. Trainees were to be LPD staff, all of whom were citizens of Timor-Leste and many of which had attended university in Indonesia and studied land planning, management or administration.
8. For several years prior to being contacted by the UN for assistance in Timor-Leste, CDR staff had been providing dispute resolution systems design assistance and experimenting with conducting 'designshops'—highly participatory collaborative meetings in which clients participate directly with consultants to better understand the conflicts they want to resolve and jointly develop institutions, procedures and personnel capacities to address and settle them.
9. Similar flexibility in the application of diverse standards and criteria to guide decision-making and the ability of parties to craft customized solutions based on issues in dispute and disputants is also common in Western mediation practice.
10. Other names for these individuals, depending on the communities in which they are members, are *gase ubun*, *bei* or *nauzuf*.
11. During colonial times, subdistrict heads (*chefes de sucos*) or hamlet chiefs (*chefes de aldeias*) were often appointed from families that historically provided customary political authorities. *Chefes* were involved in dispute resolution activities and performed functions similar to the *liurai*, witnessing and, in some cases, making decisions. They did not, however, provide customary information on kinship or family ties or rules of the ancestors.
12. Prior to the CDR/ICCT consultation, an Australian NGO conducted a brief mediation training program attended by some LDP staff members. The seminar presented a facilitative mediation approach and used Western family disputes as case studies and simulations. LPD staff noted that while this training did introduce them to mediation, it did not provide adequate information on approaches, procedures and strategies to effectively mediate HLP disputes in the cultural context of Timor-Leste.
13. Involving multiple levels or all of an organization's staff in dispute resolution systems design is fairly unusual in cultures with more hierarchical orientations. The Director's openness to broad staff participation was

- exemplary. Additionally, he participated throughout the workshop as a peer with his other staff members and encouraged active and vocal participation.
14. Priority was determined by participants' assessments of whether there was a significant potential for positive broad social impacts if the kind of dispute was settled, and the potential contribution of resolutions to increased social peace and probable enhancement of economic development. The two categories of cases that were seen by the group to be of the highest priority to address and settle were illegal occupations of private and government land, and public access to natural resources.
 15. Simulations used early in workshops generally focus on issues that participants are likely to be familiar with or ones that they can imagine happening in their social context. The topics selected, however, are not situations that they will become so engaged in and 'hooked' on the content that they will not be able to learn about the process. The goal of early simulations is to explore concepts and a range of approaches and procedures commonly used in collaborative problem-solving. Those approaches and procedures that participants believe may be appropriate for use in their context are then further explored, and adopted, adapted or used to develop entirely new culturally appropriate methods before being applied to real-life problems.
 16. Ultimately, the Minister of Justice approved the majority of recommendations for the new system, with the exception of the arbitration and LPDRB components, because she wanted unresolved cases to be sent to government courts. Implementation of her decision, however, was severely constrained by the fact that few government courts were in existence or functional due to lack of trained judges, lawyers, facilities or resources. For this reason, there were a number of HLP cases that could not be settled until the country's courts became more functional.
 17. Interestingly, the senior Ministry official made a long closing speech in Portuguese, the newly adopted language of Timor-Leste, which was spoken primarily by Timor-Leste officials who had left the country during the Indonesian occupation. Portuguese was spoken by only a small minority of Timorese, and by very few LPD staff members who were participants in the workshops.

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PART VI

Comparative Analysis, Lessons
Learned, and Reflections



Patterns of Encounter and Integration: Navigating Culture in Conflict Resolution Capacity-Building

Tamra Pearson d'Estrée and Ruth J. Parsons

Our introductory chapter to this volume described a new and timely fourth wave of research and practice in conflict resolution capacity-building, one that considers how cultural solutions to the age-old problem of resolving conflict evolve and interact with other cultures' adaptations and solutions to produce fresh innovative and adaptive hybrids, and recognizes the value and contributions from many sources. We could consider this a form of phenomenological pragmatism: how are societies and communities *actually* experiencing conflicts in their contexts and responding to their unique forms of conflict with innovative and continually evolving practices, rather than adhering to some form of ideal (or ideological) process? We see communities and societies aching for new solutions: Trinidad struggling with gang and narco violence and layers of oppression; Guatemala faced with vigilantism, dysfunctional government–community relations, and legacies of civil war violence; rapidly reforming post-Soviet Georgia faced with a vacuum of accessible and legitimate disputing venues; and Kenyan pastoralist

T. P. d'Estrée (✉) • R. J. Parsons

Conflict Resolution Institute, University of Denver, Denver, CO, USA

e-mail: tdestree@du.edu

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T. P. d'Estrée, R. J. Parsons (eds.), *Cultural Encounters and Emergent Practices in Conflict Resolution Capacity-Building*, Rethinking Peace and Conflict Studies,

https://doi.org/10.1007/978-3-319-71102-7_12

communities facing increased intergroup violence amid decaying traditional influence structures. In these communities, neither law and order institutional frameworks nor customary conflict resolution approaches were sufficient to address these new challenges. So they searched for innovation: they turned to partnering with others whose communities had similarly struggled to find new approaches when faced with less than effective existing mechanisms for resolving disputes.

Mediation forms the core of most of these approaches, as a simultaneously new and ancient form of returning the power and responsibility of resolution to the parties themselves. With the push for democratic reforms and increased citizen participation, and globalization increasing the international trading of not only goods and labor but also ideas, mediation represented an opportunity for empowerment and local agency. Its malleability and lack of rigid protocols, though based on common underlying principles, meant it could be tailored to fit new contexts. However, as Menkel-Meadow (1996) notes, with institutionalization came increased bureaucratization of form, and many initial encounters with mediation lessons brought from the West resulted in rejection of rigid and 'universal' (and often Anglo-cultured) techniques and training that did not fit new contexts. Calls were made for more mutual learning, for the recognition of embedded assumptions, and for the consideration of conflict resolution wisdom in all forms as new solutions were crafted (Lederach, 1995; Avruch & Black, 1991).

This volume has attempted to gather together examples of such cultural encounters in conflict resolution capacity-building. How do models of conflict resolution change and interact within new cultural settings? What kind of hybrids and blending result? What are the contexts that have given rise to the need for new models? Is each evolved approach unique to its context, or are there similarities or patterns in how hybridized models develop, and what results from this? How are these new approaches received, and what new challenges do they face? Are there common lessons for project implementation and effective partnerships? We close with thoughts on new directions for attention for all who seek to foster collaborative partnerships and catalyze conflict resolution innovation.

COMMON CONTEXTS FOR THE EMERGENCE OF NEW APPROACHES

Settings that are incubators of change may have common characteristics. The contexts of our cases had a few salient commonalities, such as transitions requiring innovation, internal and external pressure for reforms and

'progress,' yet a concern for respecting tradition, a time where cultural categories and etic dichotomies were breaking down, and a corresponding time of fluidity but also anxiety and uncertainty. Several contexts had mixed prior experiences with alternative dispute resolution (ADR), which in turn influenced the shape of new approaches sought.

Transition requiring innovation. Several cases of conflict resolution innovation had contexts of political transition and social upheaval. In Guatemala, the peace accords needed a mechanism for bringing peace to the streets, villages, and countryside, where violent means and delegitimized government institutions had previously produced coercive solutions. War and displacement in Timor-Leste had disrupted traditional community-based processes and reduced the number of intermediaries. In Georgia, the transition from Soviet rule to post-Soviet reformers had been brash and unforgiving, with lack of faith in existing judicial avenues for seeking redress or resolving disputes. Saudi Arabia was undergoing liberalization, albeit with pushback from traditional clerical elite. Nepal had endured an insurgency and jolting political transitions alternating with reforms, leaving government unstable enough that non-governmental organizations (NGOs) became a more logical home for innovations in conflict management. In contexts such as these, people are particularly open to social innovations that might provide novel solutions to existing social challenges or problems that have not been addressed effectively by market approaches or state services (Westley, 2008). Benefits are sought not only for individuals but also for communities as new channels for empowerment are sought.

Pressure for reforms and 'progress,' while also respecting traditions. Several of our cases revealed the influence of both internal and external calls for reform. Often these internal and external calls were related. Saudi Arabia had desired and had just gained accession to the World Trade Organization, with attendant needs for business dispute resolution mechanisms such as arbitration. The Arab Spring, which had begun in Tunisia with an internal call for reform, became a region-wide clamor for increased democratic means for individual and group self-determination. Often the terms of peace accords contained requirements for revised and expanded approaches to resolving intergroup disputes, such as those contained in the Esquipulas II accords in Guatemala.

However, these movements for change also came with countermovements, or at least calls for retaining and respecting values and practices associated with the heart of each community's identity. Religious leaders resisted new approaches proposed by Saudi reformers. Embracing things 'Georgian' was important for post-Soviet Georgia. Innovations associated solely with reform, without acknowledging the validity of the national or group identity, risked severe backlash or at least undermining. Walking a fine line between offering new alternatives and yet reinforcing shared values and symbols became an important challenge for almost all of these projects.

Transitions and cultural shifts. These times of transition also represent a time where cultural categories and etic dichotomies were breaking down. As countries were increasingly influenced by international norms, values, and practices—political, but also economic and social—evolution of standard practices occurred, and cultural meaning-making frameworks lost coherence. In many of the contexts for these cases, locals would express unease with time-worn cultural categorizations and assumed modes of operating. From Trinidad to Kenya, from North Africa to Georgia, modern and traditional life coexisted, making for the need for a kind of 'biculturality' and code-shifting as one moved from one arena to another with different norms and expectations. These changes were perpetuated by a desire for and exposure to more international and institutional approaches to new problems and expectations. These contextual characteristics meant that a more flexible form of conflict resolution such as mediation could allow for the variance necessary to adapt to new types of problems and conflicts, and support parties in seeking solutions through their own agency and creativity. Partners sought innovations to address new challenges and facilitate less violent and disruptive change.

Norm diffusion and local adaptation. Acceptance and integration of ideas and norms 'from afar' may hinge on the degree to which those ideas and norms can actually be localized, that is, made congruent with local beliefs and practices (Acharya, 2004). Cultural match or congruence between international and local norms leads to more rapid diffusion of new values and practices. This does not have to be a static process of 'fit,' but rather a "dynamic process of *matchmaking*" (2004, p. 243), where local proponents of norms use 'framing' and 'grafting' to bring the norms into congruence. Framing makes an international norm also

local by using language to frame and interpret issues within current discourse. Grafting involves the incremental transference of an international norm by associating it with a preexisting local norm on the same issue with a similar injunction.

However, norm localization can go beyond framing and grafting to reconstituting the international norm to reinforce a preexisting local normative order. Acharya defines *localization* as “the active construction (through discourse, framing, grafting, and cultural selection) of foreign ideas by local actors, which results in the former developing significant congruence with local beliefs and practices” (p. 245). Such localization may be more likely to happen when crises call into question current ‘rules of the game,’ during larger systemic change, when local norm advocates need a form of reinforcement, or when norm usefulness has been demonstrated elsewhere regionally or internationally (Finnemore & Sikkink, 1999). Several of the cases in this volume reflect this strategic adaptation of norms and practices to both align with international norms and reflect convergence with local norms and practices.

Prior encounters with western ADR and mediation. One aspect of such transitions was a country’s past experience with training in ADR and mediation. In many of the partnerships, North Africa, Guatemala, Trinidad, Nepal, and Republic of Georgia, for example, previous training efforts had been instrumental in establishing conflict resolution programs and systems, but with mixed efforts to adapt and contextualize those methods with the culture. In Guatemala, early training programs conducted by outside organizations had introduced US concepts, but with case examples and strategies which did not readily apply to that context. And even though Western approaches had been introduced in both Trinidad and Tobago and the Republic of Georgia, both the University of the West Indies and Tbilisi State University sought to establish locally based credentialed training geared more specifically toward local culture.

Therefore, several of these projects had to revisit the current models in use and focus on what might be more culturally relevant and useful strategies. Some settings also had strong existing traditions that themselves merited reinforcing. In these settings, more elicitive methods were needed to deconstruct current practices. In other settings, more prescriptive approaches were requested from partners in order to bring new approaches to persisting problems.

BALANCING ELICITIVE AND PRESCRIPTIVE APPROACHES TO TRAINING

Influenced by partnership type and project goals, partners engaged in various approaches to training and other forms of capacity-building. As illustrated throughout this volume, Lederach's (1995) conceptual continuum for training runs from prescriptive training, which transfers knowledge in one direction, often in the form of methods, frames, and procedures that are presumed to be universally applicable, to elicitive training, a two-way education process of eliciting local wisdom and practices and shaping these for better and more effective use. Most training falls somewhere along this continuum, determined both by the inclination of the outside trainers or consultants and by the needs of the local partners or clients seeking revised approaches. As identified above, most contexts in these cases called for both clarification and validation of culturally resonant processes, as well as a pressing need for new approaches informed by outside innovations and options.

These varying partnerships spanned the range of prescriptive and elicitive methodology use. In cases where local entities asked for specific knowledge and expertise, beginning with prescriptive methods seemed to be both natural and perceived as necessary; for example, in the North African projects, Hawke and Jebiril had the explicit task of 'transferring' basic conflict resolution knowledge to youth who were completely unfamiliar with the content, which signaled the merit of transfer over discovery.

In other cases, selection of prescriptive and elicitive methods differed depending upon the content of materials and where the expertise in the partnership lay or, as Moore elaborates, the knowledge from 'here' and from 'away' (Adler & Birkhoff, 2011). In Nepal, Trinidad and Tobago, and the Republic of Georgia, although initial trainings were more prescriptively delivered, customary cultural practices needed to be 'elicited,' and in Nepal, documented as revised training materials, which reflected successful practice. Research projects as well as input from local participants led to articulation of cultural approaches and needs, and practices that best fit the context.

Moore used elicitive methods in Timor-Leste to draw out from participants who had experience as mediators the important local cultural, political, social, legal, economic, and religious understandings and asked them to weigh the prescriptive training package he introduced in view of those customary practices. Similarly, in Guatemala, the nature of training by both outside partners and Propaz itself was a combination of elicitive and prescriptive methods, to train local people to function as mediator and negotiator between government and locals.

Reactions to the use of Elicitive methods. Though elicitive methods reinforce the value of local cultural approaches and focus on unearthing the most useful local wisdom, all participants do not share the view that local knowledge is what is most desirable. Some local participants in Trinidad and Tobago objected to the elicitive approach and the notion that Western frameworks needed to be adapted in order to be relevant. They proposed that while Trinidad and Tobago had its own culture, it was at the same time a highly Westernized society, accustomed to learning from and adapting several Western approaches in many fields, and that the interest-based universal approach to conflict resolution could be adapted and applied in its context. In the Republic of Georgia, elicitive methods faltered in the face of a level of amnesia surrounding traditions that had been neglected during the Soviet period. Georgian partners were unsure of the relevance of historical or surviving traditional practices to modern dispute resolution systems, though the desire to make mediation ‘their own’ was at the same time also strong.

While Nepali partners initially gave primary weight to outside approaches, training in participatory action research (PAR) methods in order to identify local practices ultimately encouraged a sense of self-confidence in Nepali partners and mediators and a recognition of the legitimacy of local knowledge. It also reinforced the notion that experience and context could and should inform practice and approach, and increased their ability to notice change. This same dynamic of recognizing the value of the local as a result of using more elicitive approaches sometimes itself happened to outside trainers, as Saxon reports in her realization of the value of Palestinian historic practices of *sulha*, and Hawke and Jebril witnessed when North African youth were given more agency.

Finding out ‘what is the local?’ Several methods were used to elicit the needs and current approaches and practices in local contexts. In Trinidad and Tobago, Nepal, the Republic of Georgia, and Kenya, project participants conducted research to ferret out what is in place, what works, what is preferred. The research project in Kenya investigated why the previously successful program of peace caravans was so clearly effective. It identified different dimensions to the conflict resolution methods already being done locally, engaging with participants to find out what would be helpful for their communities, and working together to integrate existing practices with what is more commonly used in global practice.

In Nepal, operating from the premise that local experience should inform practice, local mediator researchers used PAR to learn more about important local norms and practices, and to find language that captured the concepts as opposed to mediation jargon, not understandable by most. They observed closely how citizens and local mediators understood and talked about key concepts, in order to find the language most suitable for the level of participation and engagement the program sought to foster. These approaches and procedures were captured in revised training manuals.

Central to Moore's elicitation approach was the use of 'designshops.' These collaborative, highly participatory workshops allow for the outside 'consultants' to learn from the local 'clients' more about the conflicts they want to resolve, and then also for them to jointly develop the institutions, procedures, and personnel capacities that will be most responsive and enduring.

Ervin and Lechoe insightfully wondered who is in the best position to attain local information, insiders or outsiders. In conducting research on local experiences, they suggest that in some contexts, the social pressures inherent in the social interaction of interviewing may mean that maybe a true outsider would be better to conduct the surveys, not someone from the same cultural context. This might allow respondents to protect their relationships and social capital, and improve the gathering of accurate data. The authors proposed that a survey team of insider/outsider could take on an intermediary and support role with the respondent to allay fears, translate into the local language, and preserve and perhaps even strengthen relationships.

In the Saudi Arabia and Palestine projects, interviews were used to understand customary practices of current conflict resolution strategies among mediators as well as more general cultural principles in conflict settlement, such as advice-giving and face-saving. Walker also used interviews with participants after mediation trainings to determine which practices were and were not being put into practice. These interviews allowed her to alter the emphasis in her trainings. Saxon determined through her interviews that Palestinian practices were not only resolving community disputes, but also serving vital functions of resistance to the degradation of the Israeli occupation. 'The local' in this case was much more than merely cultural techniques for resolving conflict, but an essential component of identity preservation and empowerment for Palestinians.

Both knowledge from 'here' and 'away' (Adler & Birkhoff, 2011) thus appeared useful for creating effective strategies for conflict resolution. Understanding the cultural underpinnings of these essential concepts gives rise to the potential of hybridized models.

THE EMERGENCE OF HYBRID APPROACHES AND PRACTICES

Throughout this book, we have discussed the formation of hybrids. As Mac Ginty (2011) discusses, the notion of hybridity has a biological origin, where hybrid plants are engineered to have enhanced survival traits. However, also imbued in the concept is the historical baggage of colonialism, where ‘crossing boundaries’ amid the mission of ‘civilizing’ others and being oneself also changed represented degradation: “The notion of the hybrid, or some interstitial space between two entities, suggested that boundaries were porous and therefore questioned the basis of the separation and superior-inferior relationship that formed many of the foundation stones of the social and political order” (Mac Ginty, 2011, p. 71). Hybridizing is seen to be both adaptive and potentially threatening to existing orders. More modern discussions of hybridity typically focus on the assertion of international norms and practices, which may be adopted or resisted to varying degrees by people and communities in new settings, but ultimately involve *negotiations*—of actors, structures, and norms—at multiple levels of society. No ‘pure’ local or international form exists, since globalizing has been occurring throughout the past. These chapters provide rich examples where actors actively engaging with alternative norms and practices cultivated new hybrids. Areas of practice and process emerged which were clearly a mixing of different approaches and cultural preferences.

These chapters report the process of mixing different adopted mediation approaches with perhaps fluid customary practices already in place. Mediation has been defined in varying ways in the literature, with a few common threads, including the use of an intermediary who does not show bias toward any one party, the focus on finding a mutually agreeable solution rather than one that is coerced, and an emphasis on decision-making by the parties themselves. The larger system changes implied and endorsed by mediation include expanded democratic processes, self-determination, non-hierarchical relations, inclusion, and collaborative rather than adversarial strategies. However, within these parameters, the ways that mediation and related processes are expressed within different cultural contexts are rich and varied and represent strategic adaptation. Hybrid approaches may use newer adopted practices for some aspects while retaining traditional norms and behaviors for other dimensions. We also see hybridizing *within* certain practices which connect both traditional and imported norms and behaviors. Several examples emerged of local and imported norms and practices interacting with each other.

Prioritizing relational concerns. In Western cultures, mediation has famously been characterized as focused on seeking the satisfaction of individual interests, though in a non-exclusive (or non-zero-sum¹) way (Bush & Folger, 2004; Pruitt & Kim, 2004). One of the most striking contrasts that emerge from the cultural contexts in these chapters is how different the goals (or at least the prioritization of goals) for the process of mediation are from this Western focus on individual satisfaction. This difference in focus remained, in spite of integration with other Western practices. In case after case, it is made clear that restoring relationships is the first priority. In Palestine, this defines mediation success. In Georgia, this is one of the primary reasons to turn to mediation, to maintain or restore relations and to avoid the acrimony of a more public process. In Nepal and Saudi Arabia, advice-giving by mediators leans toward relationship obligations and repair. Mediation serves as a vehicle for reinforcement of community norms, such as community harmony. In Timor-Leste, harmony and reconciliation restore balance in the socio-cosmic order.

Status and reputation are also preserved by mediation. Georgians use mediation to avoid the publicity and reputational damage of a court case. Saudis and Palestinians rely on private, separate meetings with mediators to allow for face-saving as people confront difficulties and shift positions. Preservation of dignity and respect for both self and others is a priority.

For many cultures, social networks are the currency of survival, the social capital that allows them to function in meeting their needs and advancing their agendas. In Kenya, mediation training created networks of those wanting to advance peace instead of competition or rustling or raiding. North African youth who participated in trainings founded or reinforced youth organizing networks. In Timor-Leste, customary practices preserve and restore balance to extended family and clan networks, which hybrid dispute resolution processes had to incorporate. In Guatemala, Propaz focused on bringing more conflict resolution processes to the public square and social settings, involving whole communities in solutions. These varied views of mediation's purposes create a hybrid concept of alternative and expanded goals for mediation intervention.

Varying third-party roles and norms. Intermediaries facilitate mutual learning among the parties with the goal of reducing conflict and restoring the community fabric. However, the shape of the roles they take on and the corresponding expected behaviors and responsibilities may differ

substantially. Moore (2003) outlines several types of mediators: social network mediator, benevolent mediator, administrative/managerial mediator, vested interest mediator, and independent mediator. These mediator roles differ along several dimensions, namely the nature of their ongoing relationships with the parties, their goals for the process, their investment (or lack thereof) in a particular solution, their impartiality, their authority or influence, the leverage they can or may assert, and their involvement in longer-term implementation.

Near-unanimous consensus appeared on the preference for a network mediator (Moore, 2003) or ‘inside-partial’ approach rather than ‘outside-neutral’ (Wehr & Lederach, 1991). This suggests that rather than neutrality, the mediator role may be based on relationship (*confianza*) and trust between disputants that would not be broken during facilitation, and that an impartial process need not include an unknown outsider. For example, centers in Nepal utilized a three-mediator panel chosen partially by the disputants, from known community people who are a mix of caste, gender, class, and ethnicity, and are embedded neighbors within a network of primary and extended family relationships. This approach to mediation adds strength to the capacity to relate to, engage with, and understand the concerns of the disputants. Likewise, in Kenya, intermediary teams were formed across ethnic groups, either through cross-group networks of professionals or from cohorts trained together in conflict resolution. In Guatemala’s Propaz, locally known citizens are trained to become conflict resolution and dialogue facilitators in their communities. In Palestine, *sulha* mediators are influential insider-partials. Disputants in Trinidad voiced a solid preference for a mediator who is known and trusted by both parties to conduct a fair process, and to give advice and not simply be a non-directive facilitator.

We found that third parties in our cases also convened public conversations between parties (Guatemala), networked with their counterparts in opposing groups (Kenya), coached disputing parties separately (Saudi Arabia, Palestine), and mediated intraparty tensions (India). In many of these locations, as in the West, mediators also engaged in increasing the conflict resolution skills of the individual parties. While classic institutional models of mediation may restrict mediator activity to narrowly defined roles, we found these hybrid approaches to reframe these roles to meet needs of the context.

Facilitating problem-solving with advice-giving. Advice-giving by the mediator was another local norm frequently encountered in these projects. More authoritative third-party roles assume that the intermediary will decide, or at least advise on a solution (Gulliver, 1979). This is to be contrasted with Western mediation, where alternative norms suggest restraint on the part of the mediator, opting instead for encouraging the parties' agency to develop their own joint solution (see Chap. 1, this volume). Many of these projects wrestled with the ideal combination of restraint versus advice-giving. In Nepal, mediator teams of three were encouraged to suspend judgment and conceive of their role as creating space for the parties to create their own solution. In Saudi Arabia, Walker found that the cultural pressures to lend help in the form of advice made it difficult to withhold this; however, she found that party agency could be encouraged if the advice came framed as questions rather than as statements, and advice came in coaching or caucusing sessions when the parties were not together. Many contexts maintained advice-giving: the suggested model emerging from the Trinidad and Tobago project contains a definitive role of coaching and advice-giving; in the Palestinian *sulha* framework described by Saxon, advice-giving is a central role of the mediators. Training in the East Timor project emphasized skill development among the local customary mediators in the areas of advice-giving and coaching, as well as process assistance in order to help parties reach their own agreements.

Lederach and Thapa report that when their action researchers observed advice-giving in mediation, it was from a harmony-driven impulse. The Nepali relational context encourages people to compromise and get along, induced in particular when living in subsistence settings, where going it alone is not possible either personally or culturally. Relationships are needed to survive; however the need to maintain harmony can cover significant injustices. In evolving their practices, it was recognized that Nepalese mediators conceived of the change not so much as suspending advice-giving but rather as suspending judgment in order to allow the disputants to make their own decisions. This became central to their community mediation approach. They note that in English, this may be called 'neutrality,' though it might be better conceived of as 'the self-discipline of not judging or recommending a solution' while still providing a space to attend to ever-important relationships. This hybrid notion expands the role of the third party from the classic Western institutional approach.

Oral agreements supplemented by written agreements. Most high-context cultures depend on a common understanding of referents to infer meaning, making written agreements superfluous and a call for them to indicate mistrust. Collectivist cultures are used to depending on relationships and community bonds to secure agreements: your word is your reputation, which is your bond. To sully your reputation by breaking your word is to undermine your acceptability with the very community that protects you and gives you life. By contrast, low-context cultures find it desirable to write things down to avoid mistaken inferences or contextual variations in interpretation. Unwillingness to write things down is seen as an indicator of mistrust. This cultural clash has been considered an aspect of past analyses of failed intercultural conflict resolution efforts (Cohen, 1991).

Interestingly, several of the contexts in these chapters included a not-so-easy mixing of these two cultural approaches. Pressures produced by modernization, international norm diffusion, and uncertainties produced by increasingly diverse cultural mixes have eroded the ability to focus on one's word and reputation as sufficient to guarantee a sealed agreement. While tradition might suggest that a handshake and verbal assent were sufficient and showed respect, Georgian mediators found that they now also needed to ask parties for a written agreement. Yet these written agreements were still often followed up by relationally focused investment in the form of a drink or dinner together afterward. Apparently, this hybrid practice was less of a blending, and more of a reinforcement through using two different cultural approaches to sealing an agreement.

Traditional practices within formal court systems. This blending is found not only in many of these cases, but within Western judicial systems as well. Court practices in many of these countries were imposed by Western colonial powers, or at least were modeled on Western court practices. In these settings, as in the West, these court practices did not fit well with certain kinds of disputes, particularly if solutions involved mending relations or going beyond narrow questions of law posed by the case. Communities found that allowing more traditional practices that were designed to restore community were often more successful and mediation was a natural fit. In East Timor, customary leaders were still the first step within the land and property dispute system that progressed to more formal mediation and arbitration options offered by the Land and

Property Directorate (LPD) and ultimately the Land and Property Dispute Resolution Board (LPDRB). In Georgia and Trinidad and Tobago, family courts found that owing to its flexibility and focus on relationships, mediation was a better cultural fit as a process, while outcomes are still approved and sanctioned by the court.

ASPIRATIONAL MODELS OF MEDIATION

We set out to explore and articulate hybrid cultural ‘models’ of mediation. However, we found the notion of ‘models’ to be a slippery one. In common parlance, model can mean anything from a representation, to an example to follow or imitate, or to a particular version of something. The word is commonly used interchangeably with ‘approach,’ ‘framework,’ or ‘perspective.’ As we reviewed these cases and chapters, we found rich information on the characteristics of conflict resolution and mediation in specific cultures and contexts, and even behaviors and values and characteristics integrated enough that we might call them an ‘approach.’ However, the notion of a ‘model’ was more difficult to define, much less identify. For the sake of our analysis here, we have decided that a framework or approach rises to the level of a model when it (a) describes how mediation and thus mediation training *should* be done, and (b) integrates specific behaviors that express and serve a few underlying principles or values. Existing models of integrative negotiation and facilitative mediation are similar in this way. Mediation and other forms of conflict resolution may follow a certain general pattern, but their application and performance will vary from case to case. Even the application of law has this variability (Black, 1984). Thus, descriptive models may be less useful than prescriptive models for guiding practice, ones that are evolved in light of feedback through reflective practice (Schön, 1983). In the cases below, we summarize not how mediation may *currently* be done, but how the authors implicitly or explicitly suggest it *should* be done as a best fit for their context, and a way to best utilize its benefits. Thus, these are aspirational models toward which those in that particular context may strive.

Some chapter authors also present models for research or intervention, such as Lederach and Thapa, Ervin and Lechoe, and Moore. This section focuses on models for mediation practice. Models involve what are the goals and purposes of mediation, who is the mediator, what is the role and goals of the mediator, activities within mediation, and important structural elements.

Nepali Model of Community Mediation

The model of mediation being sought in Nepal is one which follows the natural cultural impulse to restore community harmony, but also seeks to offer protection to human rights, particularly in situations of power imbalance between the parties. As such, mediators will use not only an interest-based mediation model to constructively address competing needs and interests, but also transformative mediation aspects of empowerment and recognition. Mediators may resort to techniques of evaluative mediation, where provision of information on rights is needed.

Mediators operate in panels of three, where each of the parties selects a mediator from a photo list of diverse mediators, and the mediation program coordinator chooses the third. Thus, the third party forms a 'balanced' third party (Kelman, 1986; Ury, 2000) of inside-partials (Wehr & Lederach, 1991) embedded in the social networks of the parties. Mediator training includes not just learning how to restrict advice-giving and 'simply giving disputants a solution' but learning rather to 'suspend judgment' to allow parties to jointly develop their own solution. Mediator training also includes interest-based negotiation, as well as knowledge about human rights and gender-based violence, and how to address power imbalances and social justice through mediation. Mediators learn concepts using Nepali languages and idioms, to highlight and reinforce the way mediation approaches fit in with a Nepali worldview and Nepali values.

A Mediation Model for Trinidad and Tobago

Research on the unique needs of Trinbagonians and their culture, as well as their history of violence and exploitation, suggests that successful mediation will have important aspects of education and empowerment. As above with Nepal, the goals of mediation are both to restore relationships and, ideally, to safeguard rights from exploitation. Mediators are known and trusted by both parties, and are socially networked with parties and thus able to use influence to guide parties to new ways of constructive conflict engagement.

The mediator role has large elements of conflict coaching. Mediators ideally will not only use interest-based techniques to allow parties to seek negotiated solutions, but also seek to educate parties, encourage their self-reflection, and improve their agency and ability to move from the 'stuckness' produced by violence and trauma. Mediators will ideally address power differences upfront and address them through deeper listening,

preserving dignity, validating rights, and amplifying voice. Transformative mediation techniques helpful in empowering parties are giving the parties topic control, and repeating rather than reframing their language. Mediators also use techniques from insight mediation, such as coaching parties to discover their own 'personal baggage' they may be bringing into the conflict, such as underlying perceived threats to values and habitual responses.

Guatemala: The Propaz Approach

One of the most articulated approaches comes from Guatemala and Fundacion Propaz. They resist the notion of one formal model, and argue instead for an evolving and adaptive approach designed in specific ways for specific contexts, using Argyris' (1976) notion of 'double-loop learning' to continually improve. The incredible culture and language diversity in Guatemala means that each venture must be tailored to work locally. Time horizons are medium to long term, avoiding quick fixes and short-term solutions. This approach focuses on training a critical mass of people in conflict resolution and conflict transformation who are capable of bridging the gap between the state and civil society. The emphasis is on building local capacity and then transferring to local hands. Peacebuilding is done in public spaces, where diverse groups are brought into engagement either through training or through dialogue opportunities.

A model for conflict resolution can be seen in the Propaz 'Lens' used to analyze and determine how to work in each conflict context. The four components of changing attitudes, building skills, forming relationships, and linking to structures are all essential activities. Depending on the most salient identified need, one of these components will be chosen to focus on first. Local capacity will then be built and supported in activities to first address that need, and then to link to the other critical components in turn.

Evolving a Georgian Model

Georgians continue to evolve an effective model for the Georgian context. Mediation provides a way to restore relationships, which is its primary selling point, but also a face-saving way to handle conflicts outside of the public eye, as an alternative to more public and formal court processes. Mediation occurs outside of court, but has evolved to now have the imprimatur of the court on solutions reached, in order to assist in their implementability and sustainability.

In the small and networked country of Georgia, mediators are social network mediators; however, they also are moving toward professional status. Thus, mediators are no longer only older men, but can be women and young professionals. Credibility is determined by education, training, and respect in the community. Mediators are trained to manage additional characteristics: the heightened emotionality of conflict parties in Georgia, looping conversations that attend to relationship and community, and working with a long time horizon, where mediations may take several sessions. Satisfaction with mediation may come not from reaching a concrete solution, but from parties having the opportunity to air grievances, tell their stories, and demonstrate their own competence. Trust building is central to maintain solutions, and may involve moral and religious elements.

The Kenyan Pastoralist Model

Building on the original Peace Caravan model successfully developed in Laringo and modified to fit other pastoralist communities, a flexible model for mediation and peacebuilding in Kenyan pastoralist communities can be discerned. Ervin and Lechoe stress the essential nature of its flexibility and emergent quality, in that it will develop in each community differently in response to uniqueness of both time and place. However, common components do exist. Third parties, though not playing a classic mediator role, would be considered grassroots insider mediators. They are those with respect from the communities, either those from the communities who have become 'professionals' in larger cities, and thus may bear new norms and perspectives, but who maintain ties and influence in their communities, or those who have received additional training and been networked through the Peace Guardians program. Where in the past, conflict may have been managed either through male elders or through male warriors, through the Peace Guardians program, women have also been included, and young warriors and elders have received peacebuilding tools and values. New leadership for peace has been established. These networks form the core of those that bring conflicting parties and communities together.

Peace Guardian mediators build and nurture extensive networks. These are used to elicit solutions and methods from the community and also to build consensus for solutions and encourage peaceful rather than violent or conflict norms. Essential are also the building of cross-community bonds. Mediators do their work in cross-community and gender-inclusive teams, which model interethnic cooperation and gender inclusion. Mediators invite government officials, whose support may be needed.

However, rather than hold meetings in the *baraza*, often seen to be co-opted by government, they are events of listening and learning held deep in the remote villages themselves.

Evolving a North African Mediation Culture

North Africa has rich traditions of mediation emerging from “a culture that advocates unsolicited third-party intervention, prioritizes community harmony over the fulfillment of individual interests, and seeks solutions based on shared tradition and religion” (Hawke & Jebril, this volume). On the wave of recent reforms and a modernizing and internationalist agenda has ridden work to incorporate the benefits of ‘a culture of mediation,’ which “seeks the peaceful settlement of disputes and grievances, transforms relationships, processes, and standards of accountability, inclusivity, and fairness.” While the former practices excluded youth, the latter practices have often excluded North African community traditions and values. At issue is the central paradox that while traditions of hierarchy and control may seemingly provide stability, the accompanying exclusion inherently over time results in instability. Hybridizing proves to be an inevitable but dynamic dialectic.

An evolving North African mediation model is less about processes for resolving disputes per se, and more about inclusive collective decision-making and processes for community reconciliation and growth. It recognizes the need for strengthening cultural values of collective, community and religion, while embedding it within a larger conversation about inclusion, validation, and empowerment. Amid socially networked and authoritative mediation traditions that reinforce community norms, space is made for the contributions and voice of youth and others who have been marginalized. Credibility and professionalism become as important as age, status, or gender. New practices provide platforms for youth leadership development, skill-building, networking, and community action, while also being supported by traditional political and religious decision-making networks and structures who see it as in their interest to constructively integrate a new generation. Mediation ‘culture’ and techniques blend with related collectivist values to create constructive social change.

Palestinian Sulha Mediation

A Palestinian model of mediation similarly seems to navigate between tradition and modernization, all the while providing an opportunity for agency and self-determination within oppressive structures of occupation.

Its form is both stable and able to evolve to address current needs. *Sulha* is practiced, as it has been for centuries, as a form of shuttle diplomacy. Mediators are insider-partial and social network mediators, and often work from a faith base. As being a mediator is considered an honor, mediators are not paid. Mediators on the *islah* committee listen to the stories of the parties and renarrate these, absorbing the emotion and reframing for collective responsibility for making things right. They facilitate a truce period, possibly money exchange, and a public reconciliation ceremony.

In evolving to meet new needs of Palestinian society, *islah* committees traditionally led by established mediators and heads of families now include young politically active individuals from different political factions. Positions on *islah* committees are no longer inherited, but rather filled based on an individual's successful relations within a community or a political structure. As *sulha* mediation continues to evolve to meet current needs, it is able to provide a stable structure within Palestinian society that has endured through various colonizers and occupying forces.

A Saudi Mediation Model

As in North Africa and Palestine, mediation in Saudi Arabia is grounded in religious values, namely Islamic values of reconciliation. As mediation is well equipped to serve this goal, it fits naturally within cultural models. While traditional Saudi third-party practices may have relied on more third-party decision-maker models such as arbitration or adjudication, evolving practices include processes for the primary parties to jointly arrive at a decision through mediation. However, rather than bringing parties together for face-to-face negotiations, parties are visited by the mediator separately, as in the *sulh* tradition. New notions of 'conflict coaching' have resonated with traditional advice-giving norms and obligations, and have evolved to focus on providing feedback, proposing insight, asking questions, and helping the disputant to consider the other's perspective. Coaching parties separately allows for face-saving and the preservation of dignity so that they can focus on the conflict issues at hand. Such mediators are less 'socially networked' with the parties than traditional *sulh* practitioners, and resemble more closely 'independent' mediators sought on the basis of credentials and training.

As part of the modernization agenda, mediation and arbitration have been incorporated in the commercial sector, the family sector, and so on. These mediators are more akin to Moore's (2003) 'administrative mediators' with more authority and ability to monitor solutions and their

compliance. Official *musliheen* in the court system remain to be men, lacking mediation training, though of sound reputation, good character, and relevant experience; however, wider circles of women and men are receiving training, including women lawyers. Mediator networks enable mediators from varying backgrounds to develop professional communities of practice. As Saudi women continue to surmount gender barriers, the ground is being laid for when they may also become official mediators.

Competing Models in India

As in Trinidad, North Africa, and Palestine, India has struggled with conflict management approaches put in place or reinforced by colonizers, who had their own agendas for these systems. Traditional, colonial, and modern disputing systems and processes coexist in an uneasy and often dysfunctional competition. In India, multiple disputing systems may be accessed, and parties make strategic choices about in which arenas they may be most likely to succeed. Regional and local variation brings further complexity. Hybridizing could be said to have occurred in the development of the *Panchayati Raj*, when traditional *panchayat* processes were co-opted by the British as a mechanism to avoid regional control by vesting it in localized bodies protected by British law. No hybrid model seems to have yet evolved with modern mediation components.

Designing a Timorese Dispute Resolution System

By contrast, these multiple layers of disputing practices seem to have been successfully integrated in Timor-Leste, as least in one arena—land and property law—through the use of a very deliberate process of design. Disputants have access to either customary leaders or the LPD to help them resolve their disputes, and ideally the choice of which dispute resolution process to use is left to the parties themselves. Customary leaders may first use mediation, and if that does not produce success, they then make recommendations, as in arbitration. Assistance can be sought from LPD staff, either in the form of conflict coaching, mediation, or arbitration, or arbitration by the LPDRB, a standing board able to convene three-person panels. Decisions through any of these channels are binding and have the force of law.

Mediation and other dispute resolution practices within this system for land and property disputes have systemic rigor and official legal support, and also retain many important cultural elements. ‘Helpers’ are

used to bring parties together and convene meetings. Referrals come through traditional leaders. Multiple parties are involved in the dispute resolution process: political and lower-level ritual leaders, elders, extended family members of disputants, and government officials. Acceptable third parties are those with customary political roles in communities, kinship relations, or prior trustworthy relationships to one or more disputants. Establishing a positive interpersonal relationship between the third party and the disputants is still a critical first step. Adequate time is provided for discussion and for parties to fully share their views, and provision is made for cooling-off periods if needed. Diverse forums may be used for deliberation, from private meetings to shuttle diplomacy to community meetings. The moral authority of customary leaders, stature of external mediators, and social pressure by community members are used to encourage parties to reach and abide by agreements. Agreements are formalized by writing them down, and then sealed through traditional reconciliation rituals.

Empowerment for Capacity-Building

Multilevel empowerment emerges as a common theme in these models. For new social innovations to stick, change must bring not only new tools but also new attitudes toward those tools, and a system for incorporating the use of those tools to meet outstanding needs. Most of the projects described in the chapters in this volume began with capacity-building goals not only in the sense of conflict resolution skills and knowledge, and new attitudes toward new approaches and ways of framing conflict, but also in increasing the capacity of the existing social structures to maintain and adapt with this innovation. Such multilevel changes are the basis of increased empowerment, evidenced by processes and structures left in place after an intervention is finished.

Empowerment is defined as gaining skills and capacities to act on behalf of self and others, and involves not only acquisition of new attitudes, knowledge, and skills, but the opportunity to try out those skills by taking on meaningful roles in a socio-political change process (Parsons, 1999). A collaborative milieu with power-sharing relationships helps to move a process from 'power over' to 'power with,' and enables participants to gain power to negotiate for their needs and rights and to take responsibility and leadership toward meeting those needs. These partnerships described in this volume evidence the efforts and challenges of developing egalitarian and

collaborative relationships, but also point out the critical outcomes associated with such an effort. New learning is the foundation of empowerment development. It includes developing local skill and capacity, both on the part of those trained to intervene as mediators or facilitators in conflict and peacebuilding and on the part of the disputants themselves—meaning that all participants' knowledge and skill capacity are enhanced. As Moore (Chap. 11, this volume) suggested, “elicitive training/learning, at its best, empowers participants to develop their own insights and knowledge, and create approaches and procedures to resolve disputes that are their own, culturally appropriate, and widely applicable and acceptable to the parties for whom they are intended.” Use of elicitive approaches in many of the projects were geared toward amplifying voices of the local participants, which in nearly all cases resulted in modifications, or the complete reworking of the conflict resolution processes initially brought by international partners.

Empowerment development occurs at the personal level (micro) in greater self-awareness and self-acceptance, and increased self-esteem; at the interpersonal level (meso), in knowledge and skills to work collaboratively with others; and at the socio-political level (macro), in joining with others to work for change (Parsons & East, 2013). Engagement at all three levels is necessary for sustainable capacity-building activity, and growth at any level feeds and prompts the other. This multilevel approach is evident in many of these projects. For example, the emergent peacebuilding design in Kenya created grassroots participation in designing, implementing, and learning from culturally sensitive and adaptive methods in order to increase the number of peace guardians who had the skills and motivation to work and teach others to shun violence in their communities. Staff supported the volunteer leaders in continuous communication, learning of new skills, and adaptation to emergent realities in the field. The project established strong networks and participation of insider mediators from the ground, eliciting solutions that came from the people and building local capacity for ownership and self-organization. Results included enhancing the community's capacity to sustainably generate solutions and outcomes and take ownership of the effort.

Another example of a multilevel empowerment process as its base can be seen in Propaz's focus on returning power to disempowered populations. Combating the theme that imbalance of power prohibits democratic participation (much of the war was perpetuated by socio-economic disparities and histories of structural inequality), Propaz attempts transformation of attitudes, skills, process, and structure. Transformation begins at the personal

level with attitudes dealing with emotions and deep prejudices between the various ethnic groups. Knowledge and skills at the meso level are the key to beginning inroads toward the development of specific processes and structure. Skill development such as listening, problem-solving, conducting group discussion, reframing, and partializing problems creates attitude change and provides opportunity for relationships, which lay the ground work for understanding process and structural change in local community and regional attitudes, and larger macro structures.

In Nepal, Lederach and Thapa's local PAR team explored Lederach's (2003) arenas of change that represent empowerment outcomes: they looked for personal, relational, structural, and cultural change in various communities where mediation services had been offered as evidence of success of their mediation programs. In the end, through the PAR process, the researchers learned that they could develop ideas about how things work from their own experience, and created their own theories and ideas and frameworks, and made their own manual from their own language and their own experiences.

Some projects focused on the personal or micro level of empowerment. For example, youth empowerment was a goal in the mediation training programs initiated in Morocco and Tunisia, in response to their need for inclusion. These programs rested on the belief that a synthesis of conflict resolution and civic engagement trainings would leverage the capacity of young people to avert any violent futures predicted for them or their communities and help build positive civic engagement and leadership in youth. And respondents in research studies conducted in Trinidad and Tobago recognized their own lack of power in negotiation and identified the need not to simply have a resolution process available, but to also learn, grow, gain confidence and skills, become better problem solvers, and stand up for their rights. Power brokering involves the use of small steps such as deeper listening, preserving dignity, validating rights, and amplifying voice (Parsons & East, 2013) to create new perceptions of relationships with authority and build a sense of power within structures and relationships.

Other projects focused on the structural change aspect of empowerment. In Moore's East Timor project, skill development training, advice, and coaching by conflict resolution staff were oriented toward providing disputants with strategies and skills to resolve disputes on their own, deemphasizing local chiefs' roles unless their assistance is specifically requested by customary community leaders, LDP staff, or disputants. Increasing self-capacity was enhanced by the creation of a structure for conflict resolution

that gives citizens choices and transparent processes for resolving disputes rather than total reliance on the traditional hierarchical structures. In the Republic of Georgia project, goals included ultimate structural changes by increasing the capacity of the Georgian business, government, education, and social services sectors to resolve disputes. Legal and policy changes included court mediation law, initiation of victim–offender restorative justice programs, resolution processes in the tax service, labor disputes, debt collection, and health-care insurance dispute resolution.

Some projects in this volume aimed to work through existing institutions to build new capacities (Trinidad and Tobago, Georgia, Timor-Leste, Nepal), while others aimed to create new organizations to sustain the new approaches (North Africa, Kenya, Guatemala). These multilevel empowerment processes are thought to be critical to sustainable peace (Lederach, 1995), and facilitate the localization of innovations.

CHALLENGES

Adapting to challenges is a normal part of project implementation. Anticipating possible challenges allows for contingency planning and a recognition that flexibility must be itself part of the planning. While each project may face unique difficulties, those that occur across projects are worth noting.

Gaining Local Acceptance and Integrating into Systems

Almost every partnership project and attempt to introduce conflict resolution innovation was met with some form of resistance, or at least suspicion. Lewin (1951) early on documented how social change inevitably evokes counterforces. The mistrust may be inherent in any change, or can be directed toward sources believed to be outsiders or unwelcome insiders such as government. In Saudi Arabia, there was general resistance to approaches deemed to be Western, or part of a modernizing or secularizing agenda, including new practices introduced by the government. In Guatemala, heightened distrust of government and any authority meant that Propaz's work had to be fiercely local.

Government offices also expressed reluctance and had to be won over. In Georgia, existing courts, judicial officers, and parliamentarians were not ready and had little incentive for considering new approaches, and only certain quarters of the public showed interest in considering unfamiliar

innovations. In Trinidad and Tobago, the training programs developed were not initially sanctioned by the Mediation Board, possibly because the training was different from the ADR programs the Board had endorsed in the past, and possibly because mediation was being opened up to a broader spectrum of the population, which may have represented competition to existing trainers who had links to the Board. In Timor-Leste, the Ministry of Justice was reluctant to accept non-judicial settlement of land and property disputes, with the result that many disputes that were not voluntarily settled through negotiations languished in the courts. Certain innovations were compromised, such as mediation teams.

Working with Partners

Even with the most collegial of partnerships, challenges are ever present due to differences in language, currencies, time frames, and other cultural practices. These require relationship building and negotiations.

Financial arrangements. Projects staffed by practitioners from different countries may face different expectations about what trainers and consultants should be paid. Those from developed countries may expect their normal hourly or daily rate, which may be significantly higher than the rate for consultants from developing countries or in the host country. International funders often have different rates for international consultants and local staff, even if the same work is performed. In the Timor-Leste case, these differences presented challenges to the team of trainers from different countries. Even mundane transactions can present difficulties. In pastoralist Kenya, managing receipts in a cash society proved particularly challenging and time-consuming.

Distorting economies. In the Kenya case, authors speculated that motivations of the initial network of local peacebuilding professionals in the region that served as their model may have been distorted by the large stipends they were paid by the prior Peace Caravans project. Many were no longer personally connected to the communities they were talking to, and were suspected of being ‘more interested in showing up for payments than for building peace,’ which seems to have impacted the caravans’ effectiveness. Subsequent efforts reframed how they handled support.

Trade-offs in choosing partners. Both hosting and consulting parties may face trade-offs in their choice of partners. Choices may be constrained by donor requirements, organizational resources, time constraints for

projects, and the need to fit into oversimplified project frames. Though ideally partners may be selected based on complementary interests or as a result of assessed community needs, the nature of meeting funder deadlines may privilege organizations that can mobilize rapidly. Selection processes may be less than transparent or competitive. In the North Africa case, authors questioned how much youth organizations formed as a network of partners were actually interested in conflict resolution or just free skills training, and whether “the topics of the trainings were secondary to other perks in the partnership including otherwise unavailable regional youth forums, long weekends in hotels, and national youth gatherings.” With their larger commitment to the topic in question, it also raised doubts about these new organizations’ ability to sustain related activity beyond the funding period.

Internal struggles within partners. In Trinidad and Tobago, the initial arrangements for the partnership were made by university administrators without the inclusion of the faculty who would be involved, which made buy-in and implementation initially difficult. In Kenya, the local partner organization had internal power struggles as well as disagreements about how funding should be managed and spent. Despite repeated attempts to mediate the issues, this organization could not continue in a management role and had to be replaced by a new local administering group. Being brought in as an external consultant to a business–community dispute within India meant also doing internal conflict resolution within the party that was hosting the training.

Coping with Contexts

Adapting to violent conflict contexts. Many challenges emerged from the contexts themselves. In Georgia, the war and its aftermath were one of the central challenges requiring creative responses. Programs had to be altered or put on hold to deal with the influx of internally displaced people with critical basic needs. In Kenya, intertribal violence had escalated just as the project was submitted, and approaches used earlier with professionals across communities were not working in the same way. Flexibility of funders was needed to adapt to these changing conditions.

Developing momentum in the absence of catalyzing tragedy. In pastoralist Kenya, the first peace caravans in one region were an impassioned response to a great tragedy. Nairobi-based pastoralist professionals from the stricken region mobilized themselves with the minor support of a Member of

Parliament. It was more difficult motivating people to cross boundaries and work together in another region of enduring pain and fear from endemic violence but where no catalyzing tragedy had occurred. Here the invited international NGO had to act as catalyst and facilitator.

Transferring lessons across contexts. In pastoralist Kenya, a model used successfully in one area did not necessarily translate to another area at another time. In Guatemala, Propaz learned that it had to develop customized approaches in each local context. One should extrapolate that if caution must be had in transferring activities and projects across regions within the same country, then even more caution must be had in transferring across countries and cultures.

Logistical Challenges

Several authors described logistical challenges they encountered, which made effective implementation difficult. For example, in India, translation and communication issues were a factor. Many training concepts did not translate readily in either direction. Contrasting communication styles and time assumptions also created frustration, with tensions over whether to focus on the task at hand or create time for storytelling and voicing grievances. The Kenyan pastoralist project wrestled with organizing the volunteers who made up both the international project team and the local partners, realizing the need for greater paid in-country staff support, particularly to address extensive funder monitoring and evaluation requirements. Bureaucratic obstacles in Saudi Arabia created hurdles for setting up mediation trainings, and made it difficult to sustain this work as a business.

Getting the Word Out

In countries where mediation services were new and case referrals were desired, challenges were faced in raising awareness and offering services. The Georgian Mediation Clinic found it initially difficult to attract cases to the clinic for it to serve as a training clinic. Much of the public was unfamiliar with the process as it was being offered, and was used to only the two poles of either resolving disputes informally or taking them to court. Funding had not been solicited for accompanying advertising or developing a business plan for revenue generation. Similarly, in Saudi Arabia, people were unaware of the wide range of ADR options that they had available

to them. In both cases, awareness raising came through offering trainings to potential users and sources of referrals, who then knew the benefits that mediation could provide.

Values, Cultural Shifts, and Ethical Dilemmas

Laue and Cormick (1978) once wrote that no one intervening in a community is ever 'neutral,' and to claim or believe such is to not understand the workings of power dynamics within a system. Intervention either will change the power dynamics or will reinforce the existing power structures. Several of our authors faced challenges stemming from a recognition of this dynamic that *any* change has implications for the power relations within the system.

Maintaining a neutral stance. In the Guatemala case, Propaz began as an outgrowth of activities by regional and national government entities during the peace process. As Propaz emerged as a local organization, the national government wanted it to be a government institution. This would have reinforced existing power relations, disempowering local communities, which arguably had contributed to the civil war. Propaz fought to remain an intermediary between government and communities, connected to both. Though the organization frames it as a 'neutral stance,' it supported a fundamental change in the way that government and communities interacted. Similarly, Propaz sometimes found itself faced with needing to increase the symmetry or balance of disputing parties, which was not always well received by the party with more power.

Upending established hierarchies. In several countries, it was not specifically the conflict resolution training, but who was being trained that aroused reluctance and even resistance. In India, Nepal, Kenya, North Africa, and Saudi Arabia, training was given to 'new' leaders such as women, youth, and those of lower castes.

Increasing the skills of women, youth, and those of marginalized castes or ethnic groups often meant increasing their leadership role, or at least potential, which challenged established hierarchies. In Kenya, women were given opportunities for input, but decisions were still made by only men. In Palestine, *sulha* processes were run only by men. In Saudi Arabia, even though women are trained as lawyers and professionals, official *musliheen* conciliators are only men. Trainings were desired, but trainers needed to be

men. In India, women were not involved except for the outside trainer, and even training members of a lower caste and supporting their elected leadership role met with resistance by those used to being in control. Many cases found it difficult to involve women in non-traditional roles.

In North Africa, Kenya, and Guatemala, youth were traditionally excluded from decision-making, and even from the community itself, adding to low self-esteem and increased violence. A central challenge to these projects was to have youth learn to feel an integral and valued part of the community. Addressing this involved not only training but also networking the youth with each other and with government and other leaders to build trust and encourage their being taken seriously by their communities in a constructive way.

In Trinidad and Tobago, where mediation had been the province of lawyers, non-lawyers were now receiving training. In Timor-Leste and Georgia, non-judicial settlements could now be achieved. These potential shifts in local power dynamics made resistance understandable, and required gradual and persistent integration and persuasion.

Challenges were faced by well-qualified younger mediators and leaders in several places. In Georgia, a challenge was to have people used to mediation by older men, be willing to have cases mediated by women and younger people with both experience and credentials but lacking this traditional marker of wisdom. In Palestine, recent progress was made to no longer restrict *sulha* positions to older heads of households, but also to use politically active and respected younger men.

*Pressure for Reforms and ‘Progress,’
While Also Respecting Traditions*

An overarching theme across many of the cases was the challenge of balancing desires of a community for reform, coupled with a countervailing desire to preserve traditions and identity and often a suspicion of outside influences. This predictable but paradoxical dynamic meant that reforms and new ideas were more successful if they could be linked to traditions or at least traits identified with the existing group identity. These countervailing forces gave rise to the hybridity we have seen across cases: including younger mediators but sealing the solution with ancient rituals, developing inclusive third parties while utilizing culturally grounded metaphors and language, and encouraging parties rather than intermediaries to make

joint decisions but retaining reformed aspects of honored traditional advice-giving. Ancient archetypes become role models for modern and hybrid versions of mediations.

LESSONS LEARNED

The collective wisdom accumulated across these projects provides useful information on lessons learned.

Creating sustainable change involves giving people new ways of thinking about and resolving conflicts, but it also involves change in communities and systems in which people are embedded. By offering training to potential supporters one creates better awareness of the processes being developed and cultivates future partners among groups such as government officials, police, judges, and other potential users of conflict resolution services. Particularly in fragile states, reinforcing government institutions is also important, as they are needed for large-scale systemic change. If governments see these processes as complementary and meeting needs, they will see them less as competition. At the same time, it is also important to use these capacity-building efforts to restore the authority and agency of local leaders that may have been undermined by a hegemonic central government. Ultimately, transferring the work to local groups is critical; creating local capacity to continue the work cannot be overstressed.

Several of our authors stressed the importance of translating into the local language and culture. This included everything from translating materials, to avoiding jargon and finding local metaphors, to identifying local exemplars and case studies. Lederach and Thapa suggest the use of PAR to build practice from experience and legitimize local knowledge. Hawke and Jebil recommend the endogenous development of training materials to reflect culture, language, and religion, including case studies and training examples. Trainings of imported knowledge can include a discussion of cultural variances and non-universality in these tools. The authors also recommend including local exemplars of peacebuilding identities: stories of moral exemplars, local history, and customs that a third party can draw upon.

A few lessons centered on the process of blending local and imported wisdom and approaches. This blending or hybridizing of approaches can result in the most suitable design for conflict resolution procedures and systems, enhancing existing systems and creating culturally acceptable and implementable procedures. Connecting to existing cultural analogs

and precedents can make this integration more likely. As reviewed above, the localization process involves local proponents of these approaches working to bring them into congruence with local norms and practices through an active process of framing and grafting (Acharya 2004). All new ideas and practices should be explored for possible use with the caveat that these methods should be adapted to the realities that the population faces.

Regular reflection and learning through evaluation practices are important for organizational growth. Propaz stressed that this practice establishes the foundation from which the organization can grow and build, and advises organizations to document everything. Initial assessments are important to understand both needs and cultural assets. Methods such as PAR can involve practitioners in the data-gathering process, and increase their appreciation for local experience as well sensitize people to notice change. However, the grants process and monitoring and evaluation can also create constraints if adequate staffing is not allotted for, or if the focus of design or evaluation on certain objectives, such as skill-building, restricts the ability to see and cultivate other positive outcomes, such as relationships and social capital development. To avoid the distortion of 'what gets measured gets done,' methods should be used that allow for emergent and unanticipated outcomes. It is helpful to have supportive funders that allow for flexibility in the face of difficult and changing conditions.

In fact, flexibility and adaptability are essential. One can expect the implementation plan to change in the face of likely structural issues. One should be prepared to adjust to fit local and ever-evolving needs. Time should be allowed for the emergence of adaptive approaches for that context. Reflection for adaptation can also use the input and wisdom of the community. Regular and inclusive debriefings held in the Kenyan pastoralist project allowed for updating approaches and generating adaptive responses. Flexible funding can support timely responses to new and unanticipated needs. Sensitive use of resources can also reduce some of the distortions and negative impact of outside intervention. Ervin and Lechoe learned that rather than paying for participation, it can be less distorting to local economies to use funds instead "to remove barriers to participation."

Several lessons learned revolved around the value of diversity and inclusive participation. Involving diverse participants in creating a network of diverse and multiethnic peacebuilders can model intergroup and inclusive collaboration. Local trainers and outside consultants often partnered to counter the forces of marginalization. Diversity in the participant group increases quality and sustainability: Lederach and Thapa note that it is of

value to reflect true diversity of community, and if this diverse group is large enough, it can be the 'critical yeast' (Lederach, 2005), constituting a new formation that can create space within that community for change in social relationships. Participants also note the personal value of forming new relationships with those from diverse groups. Iyer and Hoben note that while project definition and time frame may make it difficult to push for social justice and inclusion within the project time frame itself, providing inclusive training can support movement toward such changes.

For many, the creation of these networks may be as important as gaining new information and learning new skills. New networks can create and reinforce wider value-based social networks that provide a sense of identity and inclusion around social responsibility, empathy, community, and respect for human dignity. And again reflecting cultural priorities, the conflict resolution process itself may focus on relationship preservation as the primary goal. Saxon observes that what that 'relationship' is may differ depending on cultural worldview.

Several authors reinforced lessons learned around partnerships. Training teams should be diverse to model inclusiveness and equal participation. Time should be spent cultivating the partner relationship and establishing relationships characterized by trust and respect. Relationship cultivation should ideally begin before projects develop, rather than in response to the need to submit a proposal. Extended time should be spent on conversations at the beginning, and continue throughout implementation. Preferably this should be 'face time,' in person or by video call. Partners also should be aware of potential cultural differences in communication and problem-solving procedures and styles. Partners can have discussions to identify each one's strengths, and jointly develop training agendas so that each partner can present on their area of expertise. Collaboration should be designed into both project planning and implementation.

CONFLICT RESOLUTION'S FOURTH WAVE: LOCALIZATION, EMPOWERMENT, AND MUTUAL LEARNING

While the examples in this volume represent creative approaches to local dilemmas and sometimes even social crises, at the same time, these efforts at adaptation and adoption reveal certain patterns that we believe exemplify the fourth wave of conflict resolution capacity-building. This fourth wave focuses on making global trends locally relevant, partnering in learning as well as doing, and empowering individuals and communities with the agency to resolve conflicts.

Marrying Global and Local Innovation

The interaction of local and international conflict resolution norms and practices creates a crucible of social innovation. A multilevel, empowerment-based process of learning discussed above provides opportunities for local participants to localize new norms and approaches. These chapters provide rich examples where actors who were actively engaging with alternative norms and practices cultivated new hybrids. Areas of practice and process emerged that were clearly a mixing of different approaches and cultural preferences. Acceptance and integration of ideas and norms ‘from away’ hinge on the degree to which those ideas and norms can actually be localized, that is, made congruent with local beliefs and practices (Acharya, 2004).

The norm diffusion and localization process had been described as a negotiation or ‘matchmaking’ process (Acharya, 2004; Mac Ginty, 2011), where global norms and practices diffuse more rapidly when they are actively shaped to blend with local counterparts. Local proponents of the outside norms and practices engage in framing them in terms of local narratives or graft them on to similar local norms. This framework may help us to understand why prior waves of conflict resolution capacity-building may have been less successful and produced mixed and less sustainable results. Earlier, first wave (see Chap. 1), attempts to import alternative conflict resolution norms and practices into new settings assumed that their universal validity would allow for their use in unmodified form. Local proponents may have been lacking, or they may have found it difficult to connect new messages with existing cultural narratives and values, especially if they were already framed as universally valid. Second-wave attempts to accompany these norms and practices with cultural addenda to add ‘sensitivity’ merely made their inconsistency more obvious. Without norm localization, convergence with culture was hampered, and practices were seen as foreign and mismatched.

Elicitive approaches to training and capacity-building can facilitate the marriage of local and global norms in a way that best supports the needs of the local context. The elicitive process can open up mutual learning about helpful and less desirable norms and practices, allowing for innovation and hybridizing. By using elicitive practices, projects in this volume were able to collaboratively work to identify existing cultural norms and practices that were important to retain (community, relationships, networks, face) and those which local innovators wished to replace with international norms (inclusivity, skill rather than age-based criteria, more agency to parties for decision-making, formal training for mediators and facilitators). Projects in

this volume that were less able to be elicitive because of contract demands for outside expertise (North Africa, India) were able to reflect on how this may have cost them in terms of sustainable change integrated with context and culture, and what remained to be done in future efforts.

Opening Space for Learning and Empowerment

Elicitive approaches empower participants to cultivate insight and reflectiveness, and to develop their own procedures and processes that are locally appropriate. These processes in turn will be more likely to be acceptable and disseminate more rapidly and widely. Localization and empowerment are mutually reinforcing. Using elicitive approaches amplified the voices of local participants, resulting in modifications and adaptations to innovations brought by international partners. As outlined above, empowerment development occurs at multiple levels: the personal, the interpersonal, and the socio-political level (Parsons & East, 2013), allowing for increased self-esteem and self-awareness, increased ability to work with others for effectiveness and access, and increased motivation and capacity to connect with others and create system change. Sustainable capacity-building includes engagement at all three levels, which themselves are mutually reinforcing.

New learning supports empowerment development. Skills and capacities are developed both on the part of those trained to intervene as mediators or facilitators in conflict and peace building and among the disputants themselves; thus, the capacities and skills of all participants are enhanced.

Less recognized but equally important is the fact that elicitive practices allow for *mutual* learning. In addition to consciously eliciting local norms and practices and bringing them into the discussion to blend with outside ideas and form innovative hybrids, elicitive methods *value* both outside and local knowledge. As cross-cultural partners interact and share norms and practices, insights and innovations should be spreading in both directions. Learning goes both ways. The interaction will involve not only learning what fits 'here' but also what one can take back 'away.'

Saxon observed how her learning in Palestine caused her to reflect on the need to be more adaptive back in her home context. Transporters of new approaches may still be guilty of a 'one-size-fits-all' attitude at home in their own setting. We can overlook opportunities right under our noses to be elicitive and learn from the diversity around us. We need to learn to ask good questions about the norms and assumptions at the root of our

models and practices. What might it look like in Western contexts if we were to try prioritizing preserving relationships rather than satisfying interests? Or if we framed the establishment of networks as aiding our sanity and survival?

In sum, localization of norms and practices provides for adaptation to local contexts and more successful integration, though explicit awareness of this process may be lacking. Hybridizing occurs naturally as new forms and innovations take shape. Elicitive processes open the door to awareness, and to more conscious mutual learning of adaptive and useful practices to increase the capacity for constructive conflict resolution, both in Western societies with more institutional practices in place and in non-Western cultures, which strive to create their own approaches using both customary practices and newer international practices. Such tools and their integration into larger system change allow for multilevel empowerment development, increasing the capacity for individuals and communities to achieve constructive and non-violent change.

NOTE

1. The notion of zero-sum and non-zero-sum solutions originally comes from game theory (von Neumann & Morgenstern, 1944). In a zero-sum game, each outcome sums to zero; thus, any gain of one party stems from the loss of another. Solutions create winners and losers. In non-zero-sum situations, parties do not gain at another's expense but rather benefit from different interests and preference orderings, and can 'expand the pie' ('win-win').

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Towards the Fourth Wave of Conflict Resolution Practice

Kevin Avruch

LOOKING FOR CULTURE

The fact that I have become recognized, as Tamra d’Estrée and Ruth Parsons generously put it, as one of several “pioneers” in acknowledging and arguing for the “necessity of culture in conflict resolution” is largely a matter of being in a certain place at a certain time. The place was George Mason University at a time (the early 1980s) when a group of visionary and true (not accidental!) pioneers imagined what an academic, degree-granting, research *and practice* program in conflict analysis and resolution would look like, and managed to sell the then-president of the university on supporting the idea. The first MS degree in conflict resolution in the world welcomed its first class in 1981, followed by the PhD in 1988 (Avruch, 2013 recounts this in greater detail). Faculty then set about gathering what material (or professional experience) existed in the field of “conflict resolution” with which to cobble together successive curricula into a coherent course of postgraduate study. For my George Mason colleague Peter Black

K. Avruch (✉)

School for Conflict Analysis and Resolution, George Mason University,
Arlington, VA, USA

e-mail: kavruch@gmu.edu

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T. P. d’Estrée, R. J. Parsons (eds.), *Cultural Encounters
and Emergent Practices in Conflict Resolution Capacity-Building*,
Rethinking Peace and Conflict Studies,

https://doi.org/10.1007/978-3-319-71102-7_13

and for me, both of us new to the emergent field and sitting on the faculty advisory board designing the program, this curriculum- and program-building exercise was revealing. Most of the extant “conflict resolution” literature came from negotiation theory (behavioral economics/game theory, labor–management relations, and latterly social psychology), or international relations (IR) (“how wars end”; nation–state power–politics out of Morgenthau; or the odd, usually self-congratulatory, diplomat’s memoir). Law itself provided next to nothing. In fact, as alternative dispute resolution (ADR), and mediation, developed, it was framed partially in reaction to the alleged overly litigious, adversarial, soul-destroying nature of legal procedure and the retributive nature of legal “justice” (Menkel-Meadow, 1996). ADR, and mediation in particular, promised something better. To this extent, law was the enemy. Thus, given the academic disciplines and limited experience of practitioners which informed the field early on, what “the literature” (and most conflict resolution practice insofar as it was documented) revealed to Peter Black and me, among other things, was the lack of attention to “non-Western” sources with regard to local knowledge and practice: to *culture*, in a word. That this was revealed to us was unsurprising, given our own disciplinary backgrounds. We were anthropologists and ethnographers who had worked in other cultures: Peter in Micronesia and Avruch in North Africa and the Middle East. Much as the IR scholars swam in a sea of power, and the game theoreticians (economists and others) in one of utilities and preferences, we were socialized and conditioned to look out for the ways in which such ideas as power and preference, among others, were not universally understood as *given*, but rather socially constructed and variously interpretable. We were sensitive to the nuance of the local, context and difference.

In contrast, important, foundational texts in the field of the 1960s and 1970s, to which we were introduced, tended toward assertions of the universal. Schelling (1960) and Boulding (1962) proposed general theories of conflict in systems or game theory terms; Deutsch (1973) and Rubin and Brown (1975) proposed universal social psychologies of interpersonal conflict or negotiation; and Walton and McKersie (1965) limited their investigation to labor–management disputes. Two works a decade or so later were especially central to our curriculum and conception of the field: Roger Fisher and William Ury’s *Getting to Yes* (1981) and John Burton’s *Deviance, Terrorism and War* (1979). *Getting to Yes* proved influential far beyond Mason’s developing curriculum, or even conflict resolution narrowly defined. It established the notion of interest-based negotiation as in

some way the standard practice of the field, and through its conceptual merits and the not-inconsiderable prestige of Harvard's Program on Negotiation, it became widely diffused in workshops and trainings worldwide. One measure of its influence is how many alternative conceptions of mediation—so-called transformational, narrative, insightful—developed self-consciously as critiques or alternatives to interest-based negotiation/mediation. In any case, in *Getting to Yes* (in its first, 1981 edition particularly), the potential importance of cultural difference was at best obscured. (Perhaps more subtly, it also lacked attention to *difference* based on gender and social class, and in turn on the effects of asymmetries of power among parties.)

John Burton's work, less widely known than Fisher and Ury's, was even more influential locally insofar as Burton joined the faculty in the mid-1980s and brought with him his theory of conflict, and suppressed and unfulfilled basic human needs, and his methodology for conflict resolution: the analytical or interactive problem-solving workshop. Burton took these needs (4, 7, or 9, the number changed) as *given*, baked into the sociobiology of *Homo sapiens*. The contrast with *Getting to Yes* and interest-based mode of conflict resolution was striking (Avruch & Black, 1990). Fisher assumed that an underlying rationality among parties, if only surface impediments—positions, emotions, bias errors, defective communication—could be resolved. Assuming that interests (utilities) were accurately identified and prioritized by one party and appropriately communicated to the other party, there were several mechanisms for achieving mutual gains, epitomized by the “win-win” (Pareto-optimal) solution. While *Getting to Yes* was framed primarily as a two-party negotiation, the implication for the role of a potential third party was evident: this person, a mediator, helped parties navigate the treacherous riptides of emotion, bias, and stuck-on positionality, and then facilitated a purified (interest-focused) communication between them. Burton's conception of basic human needs assumed rather the opposite: not fungible interests, but intrinsic, immutable, and imperious needs dominated behavior. These needs underlie and ultimately trump interests. They are ontological, the bedrock of the person. Therefore, they are non-negotiable, not susceptible to the rational, give-and-take of principled bargaining. Under the domination of needs, the “best alternative to a negotiated agreement” (Fisher and Ury's BATNA) is, in effect, to resort to struggle, up to and including “deviance, terrorism, and war.” This is how Burton defined “deep-rooted” conflict, and how he distinguished interest-based approaches—perfectly adequate for

commercial, labor–management, and similar types of *disputes*—and by extension mediation and all other varieties of ADR, from his own understanding of social *conflict*. (For analyses of the state of basic human needs approaches in the field today, see Avruch & Mitchell, 2013.)

However dissimilar their approaches (and worldviews!), both Fisher and Burton elided culture: Fisher in favor of the power of universal rational calculation (who would not prefer win-win to win-lose, or lose-lose?) and Burton favoring the not-quite-fully rational power of universal (biogenetic or ontological), precultural human needs.

PROPOSING A CULTURAL TURN

Coming to conflict resolution (that accident of time and place) from anthropology and the experience of ethnography, Black and I believed that both approaches were inadequate, equally as theories of conflict etiology and, by extension, as stipulating methodologies for conflict resolution: interest-based or analytical interactive problem-solving. We embarked on a number of critical and more or less programmatic statements arguing for the importance of culture as *constitutive* of human experience and social life, and not epiphenomenal or incidental: see Avruch and Black (1987, 1990, 1991, 1993). Beyond such programmatic statements, we edited a volume that brought together a number of ethnographic case studies to demonstrate ways in which conflicts were differently understood, pursued, managed, or resolved in other cultural settings (Avruch, Black, & Scimecca, 1991). In 1998, after a year’s fellowship in the US Institute of Peace (USIP), I published *Culture and Conflict Resolution*, in which, while addressing some critics of culture—and its misappropriation by others sympathetic to it—I argued for ways that a more nuanced and less mechanical conception of culture could help us understand deep-rooted conflict and approaches to resolution. Central to my argument was the idea of taking local or indigenous understandings of conflict, *ethnoconflict theory*, and of local modalities of conflict management or resolution, *ethmopraxes*, seriously, rather than ignoring or, perhaps worse, dismissing them as quaint, irrelevant—or primitive. I was not alone in proposing this cultural turn. I was already joining John Paul Lederach (who had contributed a chapter to Avruch, Black & Scimecca 1991; see Lederach, 1991) on the importance of attention to the local or “grassroots” and, by way of an ethnographic sensibility, joining him as well in advocating for practitioners the virtues of “elicitive,” as compared with “prescriptive,” methods of

third-party training or intervention (Lederach, 1995). Taken together, this work on the importance of culture (context) for understanding conflict and, with Lederach, its implication for critiquing the wholesale transfer of Western (mainly North American) modalities of conflict resolution (mainly mediation) to diverse other cultures—what d’Estrée and Parsons rightfully call “the first wave”—likely have underwritten what modest claim to pioneering status they have accorded me.

THE FOUR WAVES

d’Estrée and Parsons identify four waves of research, theory, and practice on how one does conflict resolution in other places. The first wave reflects the critical reaction to the near-absence of attention paid to culture, context, and difference: Have Process, Will Travel; everyone negotiates the same way, speak English louder and slower; the primal drivers of behavior are immutable and universal, focus on them. In the second wave, culture and difference are acknowledged, and the search is for objective and trans-cultural (*etic*) descriptors. Some of these include high versus low context (Ting-Toomey, 2001), high versus low power distance (Hofstede, 1990), monochronic versus polychronic (Hall, 1976), and individualist versus collectivist (Triandis, 1972). Especially when formulated by scholars in communication or business, the *etic* approach is very much practical and practice oriented; that is, as Stephen Weiss once put it, if you are a businessperson going off to negotiate with “the Romans” (and you are from Indiana), what do you need to know about their negotiating “style” in order to conclude “the deal” (Weiss, 1994)? In this vein, USIP sponsored a series of monographs on the negotiating *styles* of Koreans, Germans, Chinese, Japanese, and Russians, among others, all aimed to enlighten and prepare American diplomats, trade negotiators, and other specialists. Much of this work relied on the sorts of *etic* descriptors mentioned above, but most also supplemented these with the sorts of country-specific (and national characterful) insights that old hands—retired ambassadors, for example—could provide. The classic, synthesizing analysis in this genre (of “elite negotiation”), also sponsored and published by USIP, is Ray Cohen’s *Negotiating Across Cultures* (1991, revised 1997).

As d’Estrée and Parsons note, a third wave of research, reacting to the simplifying tendencies of *etic* approaches to describing cultural difference followed. In this third wave, studies aimed to provide detailed, richly descriptive, and contextualized—essentially ethnographic (*emic*)—portrayals of local, indigenous understandings of conflict and modes of

conflict resolution. It is worth noting, if briefly, that this concentration on “the local” was part of a larger undertaking to move away from elite (whether Western or indigenous) sources of authority, and closer to the voices that often went unheard. Feminist writings pioneered this movement, as did postcolonial theorists, who demanded that the “subaltern” be allowed to speak (Spivak, 1988). James Scott trenchantly demonstrated that locals (peasants) often said things in hidden texts that were not identical, often subversive, to the things said to outsiders—and outsiders included indigenous elites (Scott, 1985). Moving to peacebuilding, as part of the ongoing critique of “the liberal peace” as something imposed by the West for its own strategic reasons, scholars such as Oliver Richmond argued that we must pay attention not just to the local (civil society elites), but also to what he calls the *local-local*, “that which lies beneath the often artificial and externalized ‘civil society’” (Richmond, 2011, p. 13). Following Scott, he calls this the “infrapolitics” of peacebuilding, and urges we understand local meanings of peace by way of the deeply contextualized criteria of “the everyday.” Following Richmond, important empirical and comparative research on what they call “everyday indicators of peace” by Roger MacGinty and Pamina Firchow compares “top-down and bottom-up narratives of peace and conflict,” revealing key metrics for what peace looks like for the local-locals, on the ground, in the village or township. These metrics are different from those routinely featured in various peace indices, utilized by international development or conflict resolution organizations, and relied upon by funders in project monitoring and evaluation (M&E) (MacGinty & Firchow, 2016).

THE FOURTH WAVE

In effect, third-wave research on culture and conflict resolution delivered on what Black and I meant in 1991 when calling for elucidations of *ethno*-conflict theories and *ethno*praxes. In suggesting the fourth wave of research, the present volume goes further, building upon what Lederach argued was the necessity to attend to the grassroots in building peace (Lederach, 1997). In these chapters, d’Estrée and Parsons collect fourth-wave work that sets out to describe what it takes *meaningfully* to bring ADR and conflict resolution to another cultural setting. As the authors of these chapters demonstrate, the intention is neither, as trainers or practitioners, to apply Western or North American models to these culturally

diverse sites, nor even, now enlightened by third-wave emic knowledge but still “the experts,” to fashion *on behalf* of the locals a culturally specific, a bespoke set of ADR or mediation techniques. Rather, the goal is to work as partner and collaborator, colearners and cocreators, self-consciously elicitive and often subscribing to the method and the ethic (and it *is* an ethic, one of inclusion) of “participatory action” research and practice (Reason & Bradbury, 2008; Chevalier & Buckles, 2013; Flyvbjerg, 2001). Working collaboratively and productively (not to say, *respectfully*) in another culture entails a willingness to learn, something that can turn analyst and expert into apprentice and student. Seen in this way, and revealed in many of the chapters in this volume, one effect of this is to transform the nature of agency, and the relations of power, between the indigenous insider and cultural outsider. Now, any consideration of culture as context encompasses more than attention to communicative efficiency and cultural styles. With power and agency at the table, the work of conflict resolution in another culture is inherently political. The *technic* of practice is now answerable to an ethics of practice (Brigg, 2008), and our understanding of the cultural context in which we do our work is accountable to acknowledging the pretext(s) for why we do it in the first place (Avruch, 2012). When it all works in this way, the trainer is also trained, and the practitioner practiced upon (Avruch, 2009).

Individually and collectively, these chapters describe a variety of ways in which the demands of understanding cultural contexts (one’s own as well the other’s!), fashioning collaboration and partnership, negotiating relations of power, all the while satisfying the requirements of donor and funders’ M&E regimes, are part and parcel of fourth-wave work. The chapters vary along a number of dimensions. In some cases, Western ADR is, initially and at the local-local level, virtually unknown (Nepal, India, Kenya) or (by some) actively distrusted and resisted (Saudi Arabia). In other cases, it is indigenous or traditional forms that are, at least by local elites in universities, slightly suspect (as in Trinidad and Tobago: “[W]e are already ‘modern’”). Some practitioners can operate collaboratively with the benefit of strong ties to university programs (Georgia, Trinidad and Tobago) or to local and respected non-governmental organizations (Guatemala). Some come to the field and the project as experienced practitioners (John Paul Lederach in Nepal, or Chris Moore, for example), and from well-established conflict resolution consultancies (CDR in Timor-Leste, SFCG in North Africa); others significantly less so. Some cases report on long-standing projects, others on one-offs (India). And, of

course, the cultural and social contexts in which these practitioners do their work vary from case to case. Some work in the aftermath of extreme mass violence (Guatemala, Timor-Leste) or ongoing social unrest (Kenya), occupation (Palestine), or drug- and gang-related criminality (Trinidad and Tobago). For all the ways in which these chapters are different, some common and compelling themes unite them.

EMERGENT THEMES IN FOURTH-WAVE PRACTICE

Relations of Power and Empowerment

Of all the themes, relations of power and empowerment is perhaps the most important. I have already referred generally to what may be called the “reversal of figure and ground” that occurs when training in conflict resolution is approached in a participatory and collaborative manner, as a matter for colearning and cocreation. What warrants emphasis is how this is empowering for the local partners, and that this local empowerment is the key to true *capacity*-building. If one measure of capacity is what is left in the field after the foreign experts have departed, then it is the case that anything the locals had an equal hand in creating is more likely to be used, and to endure. This is a question of ownership—in fact, pride of ownership.

But fourth-wave practice transforms relations of power in other, perhaps even more consequential ways. Consider *Getting to Yes*, the epitome of interest-based negotiation (and by extension, interest-based mediation) theory and practice. The underlying theory is derived from utilities-maximizing, cost-benefit comparing, rational choice-oriented decision-making (BATNA; Avruch & Black, 1990). It is important, therefore, to get past rationality-toxic emotions, to “separate the people from the problem” (Fisher & Ury, 1981). This assumes that in all cultures, everywhere, the people or “person” is an individuated agent or actor, acting in *his/her* own, best self-interest. While economists argue (by fiat or first principles) that this psychology is universal—self-evident—there is some room for disagreement, for other constructions of self or subjectivity that are, broadly speaking, cultural. Some of these come from feminist theorizing (start with Gilligan, 1982, but go on to a by now much larger and often critical literature on women’s moral experience and feminist ethics). Some comes from investigations on subjectivities of class (Bourdieu, 1984) and, increasingly, some from inquiry into the permutations and interpenetrations of social identities formed through multiple subjectivities: gender, sexuality, race, class, culture, and

ethnicity, which nowadays are referred to as “intersectionality” (start here with bell hooks, 1984). Compared with these, the theoretical assumptions undergirding *Getting to Yes* appear to many to be based essentially on the taken-for-granted experience of predominantly male, white, middle-class, and North American actors. As I wrote in *Culture and Conflict Resolution*, it is a theory derived from what anthropologists call a “folk model – the privileged folks in this case” (Avruch, 1998, p. 79). And that is the point. In terms described here, a particular class and gendered ethnotheory is raised to ethnopraxis—or vice versa. But by virtue of its *imposition* on others as the standard model, it becomes a practice wherein the practitioner enjoys, over others, all the benefits of home court, which is to say political advantage (see Kochman, 1981 for a classic depiction of this dynamic in African American–white negotiation; see also Avruch, 1998, pp. 78–79).

It is precisely this imposition that fourth-wave, elicitive, collaborative, and participatory practice subverts and transforms, by decentering the authority of the standard model. As an example, consider the importance, noted by many in these chapters, of having locals translate standard ADR/mediation manuals, simulations, or role-plays into the indigenous vernacular. This is not simply a matter of making the training more “efficient.” The act of translating the training material into the local language is a way of inviting, demanding *their* (re)interpretation of it: for every translation is an interpretation. Translation empowers the locals to take *command* of the material in their own tongue. It is intrinsically empowering. Reciprocally, having now, in effect, to learn anew the once-familiar ADR/mediation concepts in the discursive universe of someone else, the outside expert (if truly participative) has to cede the full “command” home-court advantage that working in one’s own language automatically and un-self-consciously confers.

The Bigger Picture

Something striking comes through many of these chapters: It is not merely introducing mediation, as *technic*, that is, for the authors, the point of these projects, but the notion of building a broader and deeper *culture* of mediation, and by extension cultures of non-violence and peace, which become goals related to a bigger picture. One sees this expressed in several chapters: Guatemala, Trinidad and Tobago, Kenya, Georgia, Morocco/Tunisia, and Nepal, among them. A practice built upon participatory principles is especially open to this, as the trainer or outside specialist by definition is *listening* to what the locals need and want, and what they want,

often living within structures of inequality and through everyday violence and insecurity, is usually something greater than technic. The extent to which the outsider can successfully navigate an articulation to a bigger picture depends on a number of factors, some of them constraints. One factor is the breadth of vision, experience, and commitment of the practitioner. Take one example: It is hard to imagine a better, more empathetic listener in our field than John Paul Lederach. With his colleague Preeti Thapa, their project is first framed (and funded—stand-by) as an “access to justice” initiative in which mediation is taught so that disenfranchised villagers can settle local disputes without recourse to a distant and intimidating Nepali legal system. As the project developed, while remaining true to the goal of training in mediation, the idea of *justice*, and what it meant, expanded. Justice entailed building community solidarity, enhancing cooperation and mutual respect, socially transforming relations, and addressing issues of exclusion.

Another factor in moving to the bigger picture has to do with how supple specialists are in conceiving the role of “mediator,” or third-party roles in general. Jim Laue wrote about different conceptions of third-party roles—significantly under the rubric of ethics—some time ago (Laue & Cormick, 1978). More recently, Bernie Mayer urged conflict resolutionists to move beyond a preoccupation with neutrality into other sorts of roles—as advisors, advocates, conflict coaches, and so on (Mayer, 2004). In several chapters one can see this expanding conception of mediator roles and project goals occurring in the margins, as the work matures, developing beyond the project’s formal proposal. Participatory action research and practice (if done truly) are susceptible to this, what colleagues in the military derisively call “mission creep.” This sort of creep can be welcomed by us as responsive to local needs and context, seen as one arc of a virtuous circle.

What of constraints? I mentioned funding—and mission creep. I wrote earlier that local or everyday indicators of peace can differ from those “metrics” that peace indices feature or funders use in monitoring and evaluating the projects they support (MacGinty & Firchow, 2016). We should attend to this possible disconnect between project and funder in fourth-wave practice. For example, every initiative or project starts, or ought to start, guided by a coherent theory of change. Funders reasonably require this. But fourth-wave research and practice must be open to theories of change *that change*, responsive to local needs. These theories emerge cocrafted, a consequence of the elicitive and participatory nature

of what we do. As they emerge, the concern is, will our funders follow? A carefully crafted project focused and funded on, say, alternative access to the formal legal system may run into M&E trouble if it ends up, in the funder's view, "straying" into community building and women and youth empowerment. Funders need training in fourth-wave practice, too.

The Tension Between Harmony and Justice

This is an enduring tension in our field, informing different points of view around the distinction between conflict management and transformation, or human rights and transitional justice, for example. The chapters on Nepal and India strongly feature this. I admire the frankness that Pushpa Iyer and Merrick Hoben demonstrate in their chapter. As a part "local" herself (and an activist for social justice in her native Gujarat), Iyer understands all too well the context of class and caste that fuels village conflicts. The authors are *tasked* by the donor (the World Bank), in effect, to achieve enough local "harmony" such that a large World Bank dam project can proceed without having to deal with disruptive, locally generated turbulence. One way to do this is to support the long-standing hierarchy that favors upper caste over lower caste in the village *panchayat*. Recently, however, leadership of the *panchayat* passed to a lower-caste individual, who set about favoring lower-caste interests at the expense of traditional higher-caste ones—and thereby fomenting just the sort of local conflict the World Bank hired Iyer and Hoben to "resolve." As experts, they knew what the donor wanted them to do. They also knew what the representatives of the traditional power structure of the village wanted them to do. (*Beware of which "locals" you choose to empower!*) And here was their dilemma. They observed that it was a case where social justice goals clashed with conflict resolution. Moreover, the short-term and one-off nature of their engagement meant they did not have the time even to "push the social justice agenda" they were morally and politically drawn to in the first place. Thus, they modestly call their chapter a depiction of project "failure." I disagree. If it is a failure, it is one that teaches us something about the ethics of practice and the ethical dilemmas of third-party work in the fourth wave (as Laue understood decades ago).

What is the general lesson here? It is that, on the one hand, as impresarios of resolution, "harmony" is what we aim to achieve—but pay attention to who gets to define harmony. (*Beware of which "locals" you choose to empower!*) It is the recognition that indigenous or "traditional" understandings and practices of conflict resolution are strongly conservative.

They support existing hierarchies such as caste or other forms of inequality. It is unsurprising that so many of these chapters describe projects that focus on empowering women and youth, who are often excluded or marginalized in the name of “tradition.” Experienced practitioners recognize this, and within the mandate of their project, they seek to mitigate as well as accommodate it. Chris Moore, for example (Timor-Leste), points out that, in these cases, sometimes balancing “away” (prescriptive) knowledge with “local” (elicitive) knowledge is called for. In such cases, interest-based processes may be fairer and more inclusive. Moore called on them as one component of a comprehensive fourth-wave toolkit.

There is a broader lesson here. Do not romanticize indigeneity and the local. What appears as “traditional” is more likely, after decades or even generations of colonial impact and influence (as in India, North Africa, Georgia, etc.), at best, a reconstructed and reconstituted “neo-tradition.” Such neo-traditions inevitably favor the sociological status quo. If our goal is social justice, we inevitably end up supporting change. We can hardly avoid becoming advocates or even facilitators of the sorts of conflict we are otherwise expected to manage or resolve. Neutrality is off the table.

FINAL REFLECTIONS: TOWARD HYBRIDITY

Several of the authors make the point that participatory action research and fourth-wave practice is inherently “hybrid.” I agree, but add: so is most of modern life. The origins of ADR itself can be traced, at least in part, to a movement to reform US judicial practice that included some reformers from within the legal profession who read some ethnography—James Gibbs on the Kpelle moot comes to mind (Gibbs, 1963)—“and thought they found the perfect template for their reform: conflict resolution in ‘tribal societies’” (Avruch & Black, 1996, pp. 50–51, referring particularly to Danzig, 1973). As a social movement, ADR began in hybridity, a romantic vision of dispute resolution in communitarian “tribal” life. It is hard to imagine a significant social or cultural formation, from democracy to gastronomy and jazz, that is not legitimately hybrid (until hybridity shades into “cultural appropriation” and our wrists get slapped). But it is the case that modernity, whatever we call that follows it, and globalization have made cultural practices such as conflict resolution both emergent and frangible—the other side of hybridity. It is the frangibility of conflict resolution in these times that concerns us. This is a topic taken up mostly by colleagues debating the merits of the so-called liberal

peace, a debate wherein calls for hybridity are also featured (Richmond, 2011). “Conflict resolution” or “transformation” are incorporated (colonized, even) in the now-wider, state-of-the-art term—peacebuilding. Peacebuilding functions at a higher level of abstraction—and ambition—than most of the more modest projects described in this volume, even as many of them point toward the bigger picture and larger goals. For this reason, it invites cautions less apparent in these chapters. Peacebuilding aims at deep structural change in the societies that are the objects of its interventions, and its critics pointedly ask: structural change of what sort, on whose behalf? This, it seems to me, are the critical questions we need to ask ourselves, at whatever level we work. They are the fundamental questions that animate an ethics of practice, in the fourth wave and whatever waves may follow.¹

NOTE

1. I learned a lot from these authors and colleagues, and I write with gratitude in recognizing how the work that I (and others!) began decades ago to make culture, context, and difference relevant for our field has matured into the varieties of research, theory, and, above all, practice, represented here.

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