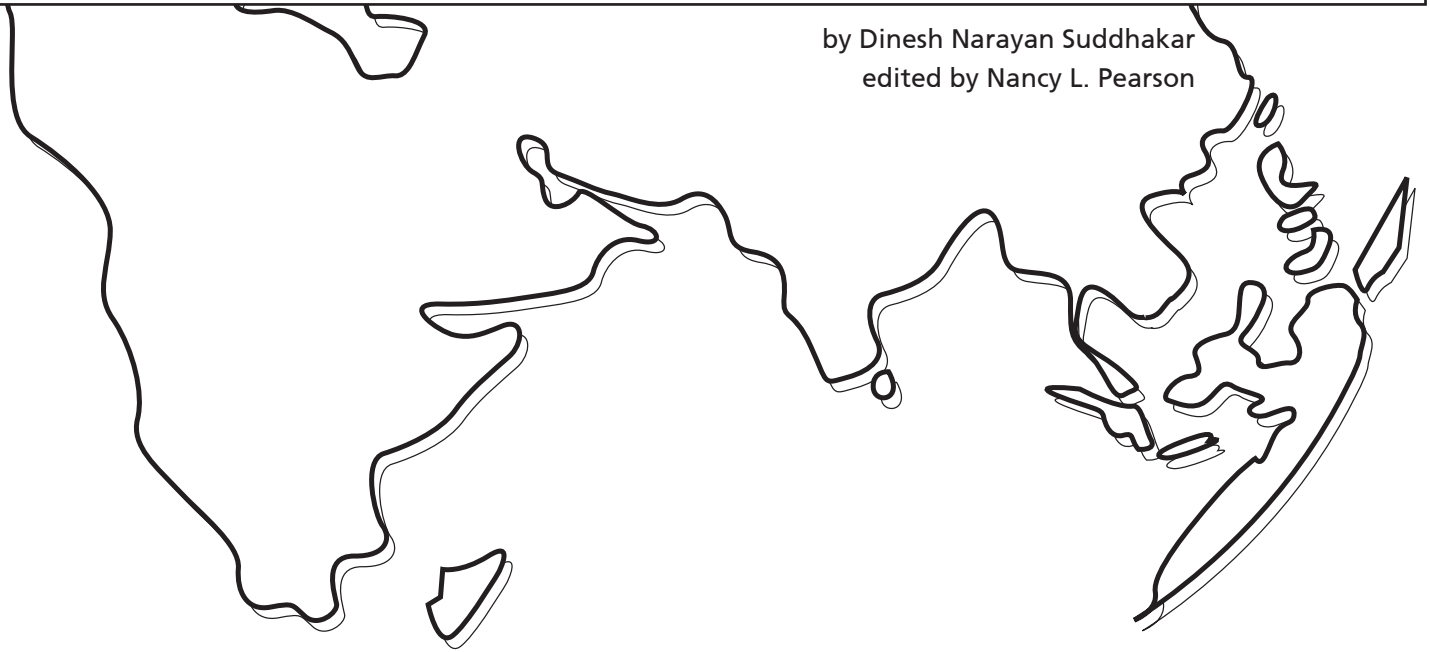


Access to Justice:

Creating local level, citizen action mediation bodies to ensure human rights

by Dinesh Narayan Suddhakar
edited by Nancy L. Pearson



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Organizational Information Centre for Victims of Torture, Nepal (CVICT)

CVICT was established in 1990 and registered as a nonprofit and non-government organization in Nepal. Since its formation, its efforts have centred on the rehabilitation of torture victims as well as the prevention of torture.

CVICT has diligently rehabilitated victims of torture in Nepal over the last 15 years. Its emphasis on psychosocial services along with medical treatment helps victims, as well as their families, return to normal life.

CVICT's goals are to restore human dignity, end impunity, and work towards eradicating torture from Nepal. For people suffering from consequences of torture and other forms of organized violence it provides holistic services to address a person's physical, mental, spiritual and social well-being, and help restore the social fabric in the family and community.

In addition, CVICT activities attempt to prevent torture and other human rights abuses or forms of organized violence. These activities include advocacy, legal aid, fact finding, community mediation, awareness programmes, campaigning and networking with line agencies, plus national and international communities.



Dinesh Narayan Suddhakar

Dinesh Narayan Suddhakar comes from Bhaktapur, Kathmandu, Nepal. He completed his Master's Degree in Population Studies at Tribhuvan University in Kathmandu. He joined the Centre for Victims of Torture (CVICT) in Nepal in 2002 and currently serves as the Coordinator for Reports and Database Administration. In addition, he is a lecturer in Population Studies in the Graduate College at Tribhuvan University-Bhaktapur Multiple College. He holds memberships in the Population Association of Nepal and the Subject Committee in the School of Applied Human Sciences affiliated with Purbanchal University in Kathmandu.

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May 2006

Dear Friend,

Welcome to the New Tactics in Human Rights Tactical Notebook Series! In each notebook a human rights practitioner describes an innovative tactic that was used successfully in advancing human rights. The authors are part of the broad and diverse human rights movement including non-government and government perspectives, educators, law enforcement personnel, truth and reconciliation processes, women's rights and mental health advocates. They have both adapted and pioneered tactics that have contributed to human rights in their home countries. In addition, they have utilized tactics that when adapted can be applied in other countries and other situations to address a variety of issues.

Each notebook contains detailed information on how the author and his or her organization achieved what they did. We want to inspire other human rights practitioners to think tactically – and to broaden the realm of tactics considered to effectively advance human rights.

This notebook will discuss how the Centre for Victims of Torture (CVICT) in Nepal instituted a tactic to circumvent the problem of police abuse through a process of rights-based community mediation. This community mediation process was piloted in three districts of the country. CVICT adapted the general community mediation process to meet the specific needs of women through instituting Women's Peace Committees. The tactic trains local people as mediators and resources to their communities on basic laws and human rights. In addition, it has served as a vehicle to empower women to become community leaders, addressing their individual and collective needs. The tactic can be especially helpful to those seeking to expand access to justice for people without other means of bringing complaints against the powerful and wealthy in their communities.

The entire series of Tactical Notebooks is available online at www.newtactics.org. Additional notebooks are already available and others will continue to be added over time. On our web site you will also find other tools, including a searchable database of tactics, a discussion forum for human rights practitioners and information about our workshops and symposium. To subscribe to the New Tactics newsletter, please send an e-mail to: newtactics@cvt.org

The New Tactics in Human Rights Project is an international initiative led by a diverse group of organizations and practitioners from around the world. The project is coordinated by the Center for Victims of Torture (CVT) and grew out of our experiences as a creator of new tactics and as a treatment center that also advocates for the protection of human rights from a unique position—one of healing and reclaiming civic leadership.

We hope that you will find these notebooks informational and thought provoking.

Sincerely,

Nancy L. Pearson
New Tactics Training Manager

Introduction

A group of people gather in the village as a mediation session is about to be offered by mediators trained by the Centre for Victims of Torture (CVICT). They are known in the village as 'volunteers.' People stop to watch and listen to the session which deals with a dispute. A mediator welcomes people and introduces guidelines for the session. The reporting party, who requested the mediation, reveals the problem and clarifies the reason for mediation. Then, the session hears from the other party in the dispute. Each side came with their own supporters who offer their ideas and suggestions. Generally, after a long discussion where the parties and the community offer solutions, the first and the second parties come to a mutual agreement. Both parties sign the agreement paper and shake hands in front of the gathering. One of the mediators, generally, the Chair, closes the session with words of thanks to all who attended. A dispute has been successfully settled without the police or expenses from lawyers, courts, and judges. Everybody returns to their daily lives with added peace and harmony.

Such scenes are becoming common in villages in three districts in Eastern Nepal – Ilam, Jhapa and Saptari. These practices have indirectly strengthened the “we together” feeling among the community. Community mediation committees have settled hundreds of cases without prejudice and prevented many cases from going to the formal judicial forums, thereby saving people money and time. Plus, harmonious relations between disputing parties have been restored. An additional benefit has been the prevention of ill-treatment and torture—psychological and physical—by police and other officers in the formal judicial forum. Most significantly, these mediation committees provide easy access to justice, especially to the poor, women and marginalised in the community.

In 2001 CVICT initially began its work with “Human Rights and Mediation Committees (HRMCs)” made up of men and women—with a mediation system that ensures at least 25 percent women plus some representation for disadvantaged populations. The tactic changed with the creation of **Women Peace Committees (WPCs)**, which are run by women. This enables women to raise issues they felt uncomfortable sharing in mixed company. Both the HRMCs and the WPCs are improving access to justice and shifting the dynamics of power in the three districts.

In the three districts there are currently 90 HRMCs and 90 WPCs at the Village Development Committee level and 810 HRMCs at the ward level. The WPCs have served approximately **8,000** women who have been included in awareness building programmes and **4,865** women who received basic training on human rights, basic laws and mediation skills. From those who received that training, **1,993** women currently work as volunteers. A total of **964** disputes—out of **1,273**—were successfully settled. In addition, legal aid was provided to 24 women



A women mediator addressing the mediation session, Saptari District

to pursue 28 cases in the formal court system. To date, there are **5,670 grassroots trained male and female mediators** in 90 Village Development Committees in the three districts. These people, who make up the community mediators, are provided basic training on human rights, basic laws, mediation skills and dispute processing which help them to handle mediation sessions that assist members of their community to resolve their own local disputes. **Up to now, both committee types have successfully settled 3,107 out of 3,939 community level disputes.**

Evidence of the success of the HMRCs and WPCs is the allocation of annual funds by the government’s Village Development Committees. This is vital to sustain the programme. Perhaps more significant is a public recognition of the HRMCs and WPCs by the formal justice forums, (i.e. court, district administration, police, etc.). Names of mediators are listed by the district court in its notice board. In addition, positive response has come from police and requests have come from other Village Development Committees to institute the programme.

This notebook will discuss the general community mediation tactic as well as the adaptation to add WPCs. The tactic can be helpful to expand access to justice for people without other means of bringing complaints against the powerful and wealthy in their communities. The tactic also trains local people as mediators or resources on basic laws and human rights. More specifically it empowers women to become leaders and address their individual or collective needs.

There is a lot of expense in court cases. Court fee, lawyer fee, transportation cost, food cost, etc. have created lots of problems to the general people. Therefore, people used to sit quiet under domination. As we see now the mediation activities in the village has helped remarkably to police the administration. We highly value the effective volunteer work of the mediators in the villages. There used to be and still is a practice to report to police even for normal disputes and quarrels. But we have found that there is a vast reduction in reporting dispute cases to police from the places where this programme is running. We take it very positively. So that our rural police unit also helps the mediation programme. If this programme can be expanded, it helps reduce the load of police and the administration significantly. The normal communal disputes settled within the community are very positive matters.

—Mr. Nabin Adhikari,
Superintendent of Police,
Saptari District

Background: The origin of community mediation committees

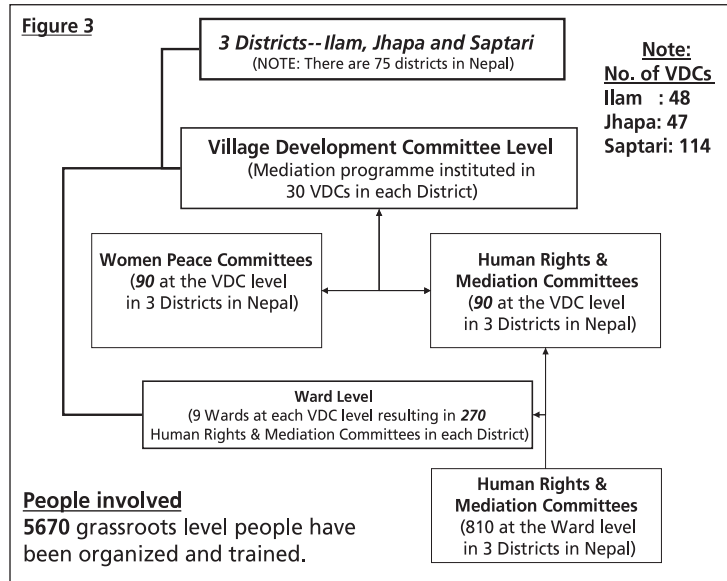
The Centre for Victims of Torture (CVICT) has worked in the field of torture, human rights and penal reform and realized a need to target both eradication of torture at the community level and the building of human rights awareness instead of merely trying to improve the penal system. As a result, the concept of community mediation to deliver social justice at the local level emerged as a tactic.

CVICT in Nepal has created the system to settle local, non-criminal disputes. This has been a highly innovative prevention tactic to keep people from being beaten or tortured into giving confessions. Or from even needing to bring their complaints to the police at all. It has provided access to justice for poor, women and disadvantaged minorities.

CVICT initially conducted basic research on the types of disputes occurring in communities. While many community people believed their only option was dealing with the police, in reality, CVICT found many conflicts could be solved without police intervention. As a result, CVICT developed a training course for community leaders, specifically targeting the participation of women and marginalised groups—such as Dalits, the untouchable caste—to settle disputes using a rights-based community mediation method. Local community members are appointed and trained to be volunteer mediators. The community mediation process is made available for non-criminal disputes open to anyone without regard to age, sex, class, or social caste. The mediators invite the parties to discuss possible agreement options. In general, solutions emerge from the parties and the community itself. A particularly helpful feature in the CVICT model empowers mediators to decide if further investigation or legal action is necessary. This has caused the privileged to be willing to engage in the mediation process because the disadvantaged have a strong advocate.



There are a total of 75 districts in Nepal. The three shaded districts in the lower right side of the map indicate the three districts where the community mediation programme is currently being used (Ilam, Jhapa and Saptari).



The Community Mediation Project began as a three-year pilot project in March 2001. It has since become a major undertaking of CVICT. It began in three districts of Nepal¹—Ilam, Jhapa and Saptari—with assistance from the Department for International Development (DFID)-Enabling State Programme (ESP), Nepal.

The involvement and coordination with community people and local NGOs became the major tactic of this project. Because the pilot has been so successful, the Community Mediation Project has been extended for three years—until May 2007.

The long-term strategy aims to improve the delivery of and access to justice to all, especially women, the poor, and the marginalised.

Other important objectives are to create community awareness of human rights and basic laws, and boost leadership skills. This will enable community people to know, exercise and protect their rights.

In the pilot period, CVICT's Community Mediation Project was implemented in 15 Village Development Committees (VDCs) in each of three districts (See Figure 2). A total of 45 Human Rights and Mediation Committees (HRMCs) were formed at the VDC level and 405 at the ward level. However, it became clear that some of the problems of women could best be resolved among women themselves without men present. As a result, **Women Peace Committees (WPCs)** were created and women run them. The WPCs have made it possible for women to raise issues and concerns they felt unable to bring forward in mixed gender company.

As the project gained momentum, 45 WPCs were established in these districts. Since 2004, an additional 15 HRMCs and WPCs were developed at the VDC level for a total of 30 each. To date, this has

¹ Please see figure 1: Community Mediation Project Districts, including distribution of all 75 districts of Nepal

resulted in 810 HRMCs at the ward level and 90 HRMCs and 90 WPCs at the VDC level. (See Figure 2)

Since mid-2001, the HRMC committees have been fully engaged in dispute settlements; the WPCs followed in late 2002. The VDC and Ward level HRMCs and WPCs are now familiar organizations in the community as evidenced by the significant increase in case registrations within each committee. The mediation's rights-based approach, easy access, familiar volunteers and neutral facilitations have caused this increase. These features have attracted the poor, women and other marginalised people to use mediation committees. Along with dispute settlements, the mediation committee maintains records of mediated cases following the agreement between the disputants. Mediators will not, however, record cases if the disputants decline documentation.

The Status of Women in Nepal

The number of women in Nepal is slightly more than half of the population of 11.6 million according to the 2001 national census (50.05 percent)². (See Figure 3) However, women have been kept from sharing the same rights, resources or opportunities as men resulting in a the poor status of women in the country. Generally, the status of women is measured by the degree of freedom they enjoy in terms of mobility, choice in marriage issues, basic rights and their input in household and community decision making. In Nepal, the vast majority of women are denied basic rights and essential opportunities. Several studies reveal that in most cultural groups, women's access to current resources (education, training, etc.) to traditional or newly created assets (land, machines, employment), or to a role in decision making (marriage, home affairs, etc) has been severely limited. Nonetheless, the status of women varies widely depending on the cultural group to which they belong. Typically, as in many other developing countries, women are dominated.

Legally, the 1991 Constitution of the Kingdom of Nepal provides equality to women by stating that all citizens are to be given equal protection under the law. It states that no discrimination shall be made against any citizen in access to public services on the basis of caste, religion, race, sex, tribe, etc.³ The Constitution has also provided

the special provision for women and disadvantaged people for their protection and advancement.

Nepal also signed the United Nations Convention on the Elimination of Discrimination Against Women (CEDAW).

Recently, there is a growing awareness of the importance of women's rights. Nepal's government has adopted

policies and plans to protect and promote women's rights. It has strengthened the Ministry of Women and the National Women Council to assist and support women's rights and women's organizations. It has developed a strategy to increase opportunities for women in education, employment, health, and public administration etc.

and also developed pro-active policies to enhance women's roles in development activities. However, the implementation level is very poor. Discrimination continues in all aspects of women's lives --- the family, the community, politics and government administration. The civil service and many development programmes are not in general gender sensitized. Women also have limited access to health, education, employment, parental and property rights.

The patriarchal culture and lack of women's voices at the policy making level are two major threats to raising the status of women.⁴ The United Nations Development Program UNDP in its Nepal Human Development Report 2002 clearly stated that despite policies and legislation to address access, equity and empowerment issues, weaker sections of society have inadequate access to resources and decision making at the local governance level. Except in a few cases, their inclusion in participatory arrangements—such as users' committees, community based organizations and government organizations—is also generally cosmetic.⁵ Women and the disadvantaged are neither aware of their rights, nor are they in a position to exercise them because of extreme poverty and domination. Thus, the constitutional provision and government policies have never been sufficient to eliminate this discrimination which stems from religious beliefs and socio-cultural traditions. In summary, women face difficulties in getting justice, either legally or socially.

Figure 3: General Indicators, Neapl 2001
Source: 2001 National Pop. Census

Administrative Division:	
Development Regions:	5
Zones:	14
Districts:	75
Village Dev. Com. (VDCs):	3,913
Urban area (Municipalities):	58

Total Pop: 23,151,423
Male: 11,563,921
Female: 11,587,502
Pop. Density: 157 persons/sq.k.m.
Urban Pop: 14.2 %
Human Dev. Index (HDI): 0.466
Literacy (%): 54 (M-65 / F-43)

Life Expectancy: 59.5 years
Land Area: 147,181 Sq.k.m.
Capital: Kathmandu

Source: Centre Bureau of Statistics, 2002
National Population Census, 2001

We have tremendous numbers of dispute cases.

Political orientation or politicizing the issues has even added more flame to them. In such situations, local dispute settlement tactic is an effective way of social justice delivery. Our country, where there is lots of transportation and communication difficulties, large numbers of people are illiterate, for such situations community mediation is more effective.

It is even more beneficial to poor, women and disadvantaged groups of people.

Mr. Ananda Raj Pokharel,
Chief District Officer,
Saptari District

² Central Bureau of Statistics, 2002, *Population Census in Nepal 2001, National Report*, Kathmandu: National Planning Commission, HMG.

³ His Majesty's Government (HMG), Ministry of Law, Justice and Parliamentary Affairs, 1991, *the Constitution of the Kingdom of Nepal 2047 (1991)*, Kathmandu: Law Books Management Board.

⁴ Shrestha, Surya et. al. 1999, *Governance Assessment in Nepal*, Lalitpur: Nepal Administration Staff College, Management Guidance Department.

Dispute Settlement Practice in Nepal

FORMAL FORUMS

The formal justice system in Nepal is inaccessible to many people and in particular to the poor, women and disadvantaged people. Many rural people are separated from the system by long distances (geographical, social and economic), tedious formal procedures, and high costs. Despite laws and the constitution, various state agencies are not bound by conventions of fairness and efficiency. The judicial system, the police and the penal system are grossly inefficient and, in many respects, inhumane. The system is biased towards the powerful—those with money, position, education or other privileges.⁶

Although the judicial system appears powerful in the constitution, given the biases mentioned above, overall public perception is not positive. The people's main concerns lie in the inefficiency of the court, its corruption, poor management, politics, and other socio-economic factors. In sum, the court has been highly inefficient in the fast delivery of justice. The lengthy, complex procedures and high expenses (e.g. lawyer's fees, transportation, etc.) make the court system inaccessible to many people. It is estimated that only about 15 per cent of all disputes reach the courts in Nepal.⁷ In addition, there is poor legal aid for the poor.

The poor have tried to cope with this disparity by using quasi-judicial agencies, such as the district administration office, district forest office, land reform office, land revenue office, and the police. These agencies solve disputes related to their specific authority. Corruption, nonetheless, is rampant in all agencies and a bias exists towards those with power and money. As a result, attitudes towards these agencies are also not positive, but people use them to gain legitimacy for their complaints.

The police situation deserves special mention. People do not possess a positive attitude toward police and typically bypass them because they lack faith in what they can do. In rural areas torture and sexual assault (even rape) at the hands of the police is quite common. The problem is compounded because major difficulties arise when confronting police brutality. Despite these perceptions and realities, people primarily go to the police to report disputes and expect justice or settlement. To their credit, police have settled many disputes either under general policing or community policing, however, this is against the law and their police mandate. Therefore, even when they have provided this service, it is a kind of misuse of power. Chances are high that a forced settlement was reached favouring those with power and money.

INFORMAL FORUMS

Informal forums for resolving disputes have long been used and follow traditional and modern practices. Traditional dispute management in Nepal involves kin groups, lineage councils, village heads, religious meetings, and other local forums. The priority of these systems is usually to maintain social order. This has a long history and the practice still continues.

These systems continue to play an important role in many parts of Nepal, because it is often impractical for



Women mediators are caucusing about a case, Saptari District

ordinary people to approach the court for their petty grievances. As a result, village, community, religious and political leaders manage disputes in rural Nepal and people believe they are more effective than the formal forum.

These forums possess weaknesses as they are because they are often forceful and do not care about the rights of the disputants or basic human rights. The dispute managers are not trained to settle cases with a win-win outcome leaving many disputants feeling dissatisfied.

As an alternative, the CVICT community mediation process, which provides knowledge and training on human rights, basic laws, mediation skills to settle disputes, offers community people a chance to seek outcomes that meet the needs of both parties.⁸

Key Features of the Community Mediation Tactic

The foundation of the community mediation tactic is a participatory, rights-based approach to education and awareness building. For those in conflict, this helps them to make their own informed choices and is designed to uplift the status of disadvantaged groups.

One great asset is that it is a volunteer based programme in which all people are welcome, regardless of background. This welcoming attitude has proved to be highly effective to motivate people to participate. Women are especially encouraged to be involved—both in the HRMCs as well as the WPCs. The mediation programme has been established with a type of "reservation system." For example, each HRMC has a minimum of 25% women and reasonable participation of marginalised groups depending upon the composition of the local community. The WPCs are totally composed of and run by women.

⁵ UNDR, 2003, *Nepal Human Development Report 2002*, Lalitpur, Kathmandu: UNDP/Nepal.

⁶ Shrestha, Surya et. al., 1999, *Governance Assessment in Nepal*, Lalitpur: Nepal Administration Staff College, Management Guidance Department.

⁷ Chhetri, R.B. and S.P. Kattel, 2004. *Dispute Resolution in Nepal – A Socio-Cultural Perspective*, Kathmandu: Centre for Victims of Torture (CVICT).

⁸ Chhetri, R.B. and S.P. Kattel, 2004. *Dispute Resolution in Nepal – A Socio-Cultural Perspective*, Kathmandu: Centre for Victims of Torture (CVICT).

Story of Mrs. C

Mrs. C, a literate woman, was the youngest daughter-in-law of the family residing in Jhapa district. She had no children and her husband was working in Saudi Arabia.

Mr. B, a businessman in the local bazaar, used to travel to India frequently but nobody had any idea about the purpose of his visit. One day, Mr. B met Mrs. C in the market and convinced her that he will find her a suitable job. The next day, Mrs. C disappeared from the house. It took no time for the news to spread over village. Two villagers came to Mrs. C's house and informed the family that they saw her getting into the jeep with Mr. B at the local bazaar.

On the same day, Mrs. C's father-in-law went to the VDC and filed a case. The VDC chairman formed an investigation committee chaired by HRMC chairman about the disappearance of Mrs. C. However, Mrs. C appeared in the village a few days later. There were already many rumours about her, as our society is very serious about purity and chastity of a woman. Her husband's family were very angry with her and would not let her come inside the house. When she was not able to enter the house she went to the VDC where she talked to the vice-chairman of HRMC. She explained her story in detail--how she was sold into a brothel in Siliguri, a town in India, and how she escaped.

The vice chairman of HRMC along with other HRMC members went to Mrs. C's house. Mrs. C requested her husband's family members to accept her but the issue of purity was raised by her husband's relatives and still restricted her from the house. HRMC members, along with other villagers, arranged a mediation session in front of her house. After a heated discussion, a resolution was found and the family agreed to take her back. In this way, HRMC members were able to resettle Mrs. C back in her home.

After some research, CVICT identified the need for informal community level practices and systems. Village Development Committees (VDCs) are managing institutions that were already in place. Our tactic utilizes the VDC structure to support local dispute settlement. Their involvement in the formal justice delivery forums also increases safety, security, and access to justice for rural people, most especially women, the poor, and the disadvantaged. CVICT works with NGO partners at the district level to set up each HRMC and WPC at the local level.

CVICT's project supports volunteer dispute managers at the local level and at the VDC level through capacity building trainings and on-going supervisory support to NGO district partners. Initially, CVICT worked with these partners to train about 100 people in each VDC.

Emergence of the Women Peace Committee (WPC)

The concept of the WPC emerged during the community mediation programme's implementation period. After about a year and following our first evaluation, the community mediation project team realized the necessity for a separate committee to deal specifically with women's

disputes. Due to the need for confidentiality, some issues were difficult to deal with in the mixed-gender general mediation session. Moreover, in many cases, women felt uncomfortable in presenting their issues or simply did not bring up the real issue during the session, particularly before male mediators. The mediators often could not proceed with such cases. Therefore, CVICT, after consultation with NGOs and community people (including mediators), decided to form separate committees for women to concentrate on their issues, and also to work as a pressure group in the community.

The WPCs can settle all disputes but focuses on women-related disputes. This practice has provided women a real place to put forth any issue freely and frankly and it has permitted women mediators to have real participation in decision-making. This has led to a growing identification and recognition of women's roles outside their homes by husbands, family and society.

The aim of the WPC is to provide women easy access to justice. In Nepal, where illiteracy among women is high, they are economically dependent on men and have very limited access to resources. An additional barrier the WPC helps to overcome is the need for women to gain approval from men to participate in decision making processes. The WPCs have sought to uplift the status of women and strongly advocate for women's rights and general human rights.

Like the HRMCs, the WPCs organize women, provide training, raise awareness of basic rights, and provide a venue to settle their disputes among themselves. In this way, these mediation committees provide the women an opportunity to organize and consolidate their struggle, to advocate for and obtain their rights and justice. One very positive outcome has been the development of new leadership roles for women with empowerment support in socio-culture, economic and legal spheres.

Steps in Implementing the Tactic SELECTION OF THE TARGET POPULATION AND AREA

In the pilot phase of the programme (2001-2004), three districts, **Ilam, Jhapa** and **Saptari** of Eastern Nepal, were selected and within those districts 45 Village Development Committees (VDCs) were selected. After about a year, separate committees for women were formed. After the successful completion of the pilot, the programme was extended for three more years and 15 VDCs in each district were added.

The kinds of the disputes handled by the Women Peace Committee (WPC):

- *Fighting, quarrels and verbal assault*
- *Other domestic violence*
- *Property related (partition & rights)*
- *Marriage and divorce related*
- *Discrimination (gender, caste, etc.)*
- *Economic transactions*
- *Land/boundary related*

RATIONALE FOR SELECTING THE THREE DISTRICTS

For the pilot project, we selected the three districts in the Eastern Development Region in Nepal. We came to the conclusion that these three districts represent the overall scenario of Nepal in terms of geographical composition, origin of people, caste structure and number of dispute cases, etc. We also chose areas least affected by the insurgency going on in Nepal.

The Eastern Development Region of Nepal has three zones and 16 total districts. The zones represent different ecological regions (Mountain, Hill and Plain). Our project districts, more or less represent that diversity.

GENERAL PROFILE:⁹

Ilam is in the hill region, an almost homogenous society of typical hill people. There were fewer disputes, court cases, and other formal forums. The district produces tea, milk and other cash crops and is economically sound. The partner NGO is well established and influential in human rights issues.

Jhapa is in the plains region with a mix of hill and plains people. It witnesses a moderate number of disputes, and court cases and formal forums. Its economy falls in the mid-range by Nepal standards. The partner NGO is also one of the most influential human rights based organizations.

Saptari also lies in the plains region and plains people dominate the population. It sees a large number of disputes, and court cases, and formal forums. Many people there are poor and marginalised and discrimination is prevalent. The local NGO was formed with the help of CVICT which motivated people in rights based advocacy to serve the mediation programme.



Local people gathered at the awareness programme, Jhapa District

Ilam

Total Population: 282,806; Urban Pop: 5.74 %, Literacy: 66.23 both, 74.10 male, 58.23 female
Human Development Index: 0.380
Municipality: 1
Village Dev. Committee (VDC): 48

Jhapa

Total Population: 688,109; Urban Pop: 13.03 %
Literacy: 66.93 both, 75.35 male, 58.65 female
Human Development Index: 0.421
Municipalities: 3
Village Dev. Committee (VDC): 47

Saptari

Total Population: 570,282; Urban Pop: 5.32%,
Literacy: 49.28 both, 62.76 male, 35.18 female
Human Development Index: 0.374
Municipality: 1
Village Dev. Committee (VDC): 114

FORMATION PROCESS OF WPCS AT THE DISTRICT LEVEL

CVICT organized a multi-party meeting—political, social and cultural—to build awareness among the locals, and women in particular, for the programme.

1) Mass/Multiparty Meeting

We corresponded with and approached local groups (political parties, social organizations, cultural organizations, community based organizations, youth groups, etc.), women's groups (mothers' groups, women's cooperatives, etc.), and minority and marginalised representatives to attend the meeting. We also requested the presence of Ward Committees

and some local influential persons, who, in turn could convey the message to other local people. Our goal was to build awareness of human rights, basic laws and mediation activities.

At the meeting, we stated the purpose and agenda. Then we explained community mediation and the dispute settlement process along with its advantages and limitations. Then, we discussed mediation committees and volunteer mediators along with procedural matters, such as the scope of committee work and its legitimacy, the formation process, and criteria and selection of members.

2) Village Development Committee (VDC)/Ward Level Interaction Programme

After the multiparty meeting, we organized a separate VDC and/or ward level interaction programme to form the mediation committees and assign mediators. We explained basic requirements for the committees and the mediators to this group. We told them about the work and the benefits (such as new experiences and the possibility of enhanced public reputation and exposure.

3) Selecting the mediators

We then asked the gathered community to select their candidates. They held their own discussion before presenting candidates with the understanding that CVICT would not protest their choices.

The scenes of mediation sessions are new for us. Wherever I have a chance to see the session I found that the session has settled the cases as a court. I take this as an effective way to solve the dispute. The mediators have worked patiently from the beginning to the end without affecting both parties and keeping them cool and calm. I found the work of mediators very impressive. This programme is run in 15 VDCs of Jhapa district I wish it could extend to all VDCs of the district and moreover all 4,000 VDCs in the country. This will strengthen the social justice delivery system. In future, I think that this training should be provided to local government officers.

— Mr. Khaga Pd. Nepal,
Local Development Officer,
Jhapa District

⁹ Sharma, Hari Bhakta et.al. (ed.), 2002, *District Demographic Profile of Nepal*, Kathmandu: Informal Sector Research and Study Center.



Trainees of the mediators training entertaining in between, Ilam District

Those selected became mediators after receiving training. They also selected one person to participate at the Village Development Committee (VDC) level. An additional five to seven were selected for the ward level committee, and typically the VDC mediator chaired the ward level committee. CVICT then announced the candidates to the people and asked if there was any disagreement regarding those selected. Finally, VDC/CVICT/ and Partner NGO made the formal announcement. CVICT neither selects the mediators nor intervenes in the process of selection. The feeling of ownership by the community and the opportunity to volunteer is important to the programme.

Because the people become active in the formation of the committee and selection of mediators, they are more committed to participate in the public meeting and training (e.g. to be an activist against discrimination on the basis of gender, caste, religion, occupation, etc.) The process has received high marks by the entire community and these volunteers are more obliged to follow through.

4) Role of CVICT and the Partner NGO

The community people select the mediators and construct the committees while CVICT and the partner NGO provide facilitation, monitoring, management and technical support.

Once the community people have provided us with their candidates, we fix the date and venue for training with consent of those selected, and develop training on human rights, basic laws and mediation skills and processes. Training lasts 40 to 48 hours over six days and is residential based. Two times a year, we provide refresher training (20 to 24 hours) over three days. That training takes place after committees have been working about 6 months and allows volunteers to share their learning experiences and refresh their knowledge.

After the first training we certify them so they can begin to volunteer as mediators. CVICT forwards the list of trained mediators to the Court, District Administration Office and District Police Office along with VDCs and

Ward Committees so they can be used as resources in the community.

General Impact REDUCED VIOLENCE AGAINST WOMEN AND INCREASED WOMEN'S PARTICIPATION IN SOCIAL AND COMMUNAL ACTIVITIES

This change is verified more on an anecdotal basis rather than on quantitative data. It is quite difficult to track quantitative data on such issues. Moreover, we have not been able to conduct any post-pilot or midpoint surveys at this time. However, the community has observed and commented on reduced violence. In public interaction programmes, workshops and meetings, people have admired the mediation programme saying that it has reduced

domestic or communal disputes, and has been able to settle other cases locally.

Women themselves state they have less fighting in the family. Their husbands and family members have begun to treat them well, especially those who had previously bad experiences. Family members are helping them in household activities as far as practicable. Even if minor quarrelling and other disputes occur, they have tried to solve these themselves through discussion. Most of the women have said that their husbands have almost left the practice of beating them and have instead begun to help in domestic work.

REDUCED DISCRIMINATION BETWEEN MEN AND WOMEN

This outcome is illustrated by women's active participation in various activities including decision-making in mediation sessions, awareness raising activities, and training. Many of the women, in addition to their traditional roles in the house and society, now have become an integral part of society and community development.

Similarly, women who were behind the veil before have begun to emerge and participate in community activities along with men. In fact, the men are encouraging them

General statistics on the number of cases registered in the three district courts where CVICT's mediation programme has been operating are as follows:

4 years back – before CMP implementation:

	Before CMP 2001	With CMP 2004
Saptari	31,942	22,363
Jhapa	2,512	1,592
Ilam	492	175

Source: CMP Baseline Survey, 2004

CMP Annual Report 2004

to participate in social and communal activities and the mediation committees.

REDUCED DISPUTE CASES IN THE COMMUNITY, DISTRICT COURTS AND OTHER RELATED INSTITUTIONS

Even though some quantitative data exists, we rely on the comments of the community and mediators. They have certainly perceived that there are now fewer disputes in their localities. A better indicator is the revelation that people choose to go first to the mediation committee for settlement rather than the police or court.

Data clearly shows a reduction in cases. However what factors are behind this is not known. However, court officials, police, and local lawyers, believe that the community mediation programme has made a significant contribution.

Steps of the Mediation Session

The general procedure (from case registration to finalization) is as follows:

1. Register the case – written or oral
2. Case Analysis (mediation or referral)
3. Contact to the second party (opponent)
4. Fix session (date, time and venue)
5. In the session:
 - a. Mediator welcomes the disputants
 - b. Each person introduces himself
 - c. Oath taking by the mediators (expression of neutrality)
 - d. Ground rules setting – i.e. about speaking, asking, etc.
 - e. Case presentation by the first and second parties
 - f. Mediators summarize issues
 - i. Present advantages and disadvantages of mediation session and court
 - ii. Clear questions about the legal provision of the cases
 - iii. Ask both parties where they would like to go (mediation session or court)
 - g. Seek consensus from both parties- “Yes or No”
 - h. Facilitate to determine which solution is the best
 - i. Explain the probable impacts of the option
 - j. Identify terms and conditions and tally with the law
 - k. If accepted, prepare agreement paper and have both parties sign, along with witnesses and mediators
 - l. Integrate the disputants parties according to social norms
6. Conclude session and express thanks to all

Perhaps most significantly, community people are very positive about the programme. They run it as their own programme. Some have an emotional attachment to it and this will help sustain the programme.

Key aspects of the model that have made it successful

VOLUNTEER BASED

People’s ownership calls

for people’s real participation and sustainability of any programme. We strongly believe that the community mediation programme will be sustained because it is popular and was developed as the community’s own. People show interest and are active. The true spirit of this model is its volunteer base. Beyond the volunteer part, CVICT initially arranged for basic expenses for stationery and other logistics. Even this support is phased out and we try to seek funding for this from local government. We have lobbied the Village Development and District Development Committees for their support to run and sustain this programme. As a result, VDCs now allocate a separate annual budget for the community mediation programme. It is significant, yet we believe we must continue to lobby for funds.

Initially we complained to our husbands about every small incident and quarrel in the neighbourhood and in the community, which became the key issue of our husbands’ quarrel and later on big issues of dispute with others. But now as we were aware, we left complaining and try to solve the cases ourselves so that the quarrels and disputes reduced remarkably. In addition, now we learned mediation skills and process so that if any dispute happened in the neighbourhood we went there to resolve them so that we did not need to go to police or court.

After the programme and training, we became more aware of the issues and our rights and causes of the origin of disputes.

—Female mediator

RIGHTS-BASED APPROACH

Developing and teaching community mediation with a rights based approach was consciously chosen in order to address the general lack of a human rights culture and practice in Nepal. The training process provides mediators with 1) a basic knowledge and understanding of general human rights; 2) rights provided by law in Nepal. These provide the foundation for addressing discrimination, abuses and violations of rights within the community itself and beyond. CVICT and the community provide close monitoring to ensure that mediators adhere to rights based approach. While other models of mediation in Asia use “neutral facilitation” such as in Bangladesh, Sri Lanka and the Philippines, the rights based approach in Nepal provides an added dimension for the community to know, advocate and act upon their rights. The community appreciates the rights based framework as evidenced by sincere participation in the process. Moreover there is growing interest from other VDCs and districts in Nepal to institute the programme.

The women of the Women Peace Committee and those who have participated in the programme say they have become more aware following the training and imple-

mentation of the programme. With other community programmes only men and some influential women benefited. Many do not recall another programme targeting all women without discrimination.

Actual Outcomes: Women Peace Committee (WPCs) – March 2001 to September 2005

By the end of September 2005, a total of 90 WPCs were set up in the three project districts. During the process of setting up the WPCs, approximately 8,000 women have been included in awareness building programmes and 4,865 women have actually received basic training on human rights, basic laws and mediation skills. From those who received training, 1,993 women are currently working as volunteer mediators. A total of 964 disputes (out of 1,273) were successfully settled. Legal aid was provided to 24 women to pursue 28 cases in the formal court system.

Transferring the Tactic KEY CHALLENGES IN IMPLEMENTING THE TACTIC

It is difficult to organize women from poor and marginalised groups to make them aware of the issues

We really made an effort with the difficult task of bringing women out of the domestic sphere. Although we had an advantage in the three districts because we could mobilize trained women mediators, many women were reluctant to join. Initially, illiterate women feared sitting side by side with so-called educated, high class/status women during awareness and training. However, we succeeded in persuading the reluctant to participate. When they discovered that their educated counterparts were also unaware of basic rights, laws, and mediation,

Many disputes of the village can be solved in the village. But as we do not have proper ways of settling the disputes therefore the cases go to police and court. But the experience of community mediation programme at 15 VDCs in Ilam district is different. As this programme helps to settle the local disputes, it has become very effective and popular. As local and normal disputes are settled locally therefore there is less pressure to the formal forum and so they can spend their time on severe and criminal cases. And due to such dispute settlement practices at the local level, we feel that dispute cases are reducing in the court and police.

Mr. Geeta Pd. Timilsina, Under-Attorney Officer, Appellate Court, Ilam District

that helped. We were able to stress that the main point is sitting together and participation, for which we conducted awareness and an interaction programme as well as motivation and follow up activities.

For this purpose, we arranged several programmes to teach the community, especially women, about their rights—both human rights and women’s rights—and the potential opportunities they would gain.

Most importantly, we worked tirelessly to convince husbands and family members of the value of incorporating rights into daily life. Both CVICT and the partner NGO made on-going visits and follow-up in order to motivate them.

Difficulty in establishing social inclusion or acceptability even among women from different caste and class due to caste discrimination in the community
In Nepal, it is tricky to bring people from all classes and castes together at a particular meeting, especially in rural areas. CVICT believed that without participation of people of all backgrounds, none of the community-based programmes could be successful. We truly sought to address social inclusion and the need to eliminate any form of discrimination.

Significantly, mediation sessions model the concept of inclusion. The parties in dispute are seated at the “same level” regardless of class, caste, gender, etc. This sends a powerful message to everyone.

Table 1. Distribution of cases by nature appeared to WPC, Mar. 2001 –Sep. 2005

Types of Disputes	DISTRICTS			
	Ilam	Jhapa	Saptari	Total
Fighting, quarrelling and verbal assault	131	311	218	660
Property related (partition & rights)	50	89	51	190
Economic transaction	25	34	46	105
Land/boundary related	9	61	58	128
Domestic violence	15	66	39	120
Discrimination (gender, caste, etc.)	12	14	12	38
Marriage and divorce related	5	15	12	32
TOTAL	247	590	436	1273

Source: CMP, Project Management Office

Table 2. Distribution of the Disputes in WPCs by districts, Sep. 2005

Name of the District	Total registered cases in WPCs	Total Resolved Cases	Cases Running
Ilam	247	222	25
Jhapa	590	491	99
Saptari	436	251	185
TOTAL	1273	964	328

Source: CMP, Project Management Office

In order to introduce these basic concepts of inclusion, we arranged public, interactive meetings to build public awareness about it. At the meetings, local government authorities, influential political, social and community leaders, teachers, students, and local people from so-called upper and lower class and caste were invited to speak. These people told about legal, social, religious, and ethnic perspectives related to class and caste discrimination. Secondly, we organized or supported many small communal social activities, such as a tea programme, a reforestation programme, and the like. These activities influenced the local people in a remarkable way. We have observed a reduced level of discrimination. For example, people now buy and accept the milk and dairy products from so-called lower caste.¹⁰ There are many such cases in the districts and VDCs where the project has been implemented (See "Milk in Ilam District" example) In a number of shops run by so called upper caste/class, so called lower caste/class people can now buy goods, drink tea, etc.

Lack of available time for women due to domestic work

We have had to take into account women's household work and family roles, which we have given top priority. Otherwise, women cannot participate. Therefore, we identify appropriate days and times and prepare our plans accordingly and this has reduced absenteeism and increased the opportunity for their participation.

We arranged meetings, trainings and any other programmes on the days and times best suited to the majority of the women.

Earlier we used to have the veil over us and did not have any choice. It was out of our imagination that we could be at any meeting or programme anywhere. We even did not think of this. But as now CMP [Community Mediation Programme] is run here, we, women have got such opportunity. We now have got the chance and place to talk about our issues and solve them ourselves within us. Thus nowadays, we self talk and communicate about mediation and human rights. This programme has become more effective for us.

– Ms. Geeta Dev, women mediator, Saptari District

For example, a general meeting was held on a holiday during the day. Daylong trainings or programmes are scheduled on days outside the rainy season, or during planting and harvesting periods. Most

importantly, we urge husbands and families to help with domestic or other work to give women time to participate. This participation broadens their overall inclusion in public life.

Women are often enthusiastic, hard working and persistent participants in social or community mobilization efforts and in mediation sessions. Activities prove to be an empowering experience, especially in areas where women are rarely encouraged to leave the domestic

Milk in Ilam District

In Ilam district, the society is a homogenous type and Hindu caste dominated. Discrimination regarding caste status is present. Ilam is also one of the major milk producing districts in Nepal and has several milk collection centres, both government and private established. In such centres, the so-called lower caste people could not approach and sell their milk as the centres would not accept it. After the Community Mediation Project (CMP) was established there, CMP advocates for human rights and the rights of marginalised people organized a discussion where people from all castes and class sat and talked together.

The awareness programme, training and mediation activities have largely reduced the feeling of discrimination on the basis of sex, caste, class, etc. among the people. This has positively influenced the relation of the community people. One example is that some collection centres had begun to accept milk from so-called lower caste people. The message went out over the district and spontaneously, the management committees in all collection centres have decided to collect the milk without any discrimination. This has benefited all but especially the marginalised and so-called low caste people. This practice has also influenced the daily lives, activities and behaviour of the people regarding discrimination issues.

sphere. They often push for the concerns of the poor first. However, focused support for the individual is also necessary to substantially improve a woman's development. The active presence of women in dispute settle

ment and decision-making concretely reflects they possess capabilities and potential. In practice this has created a landmark establishment of the recognition of women's status in the community and highlights the opportunities for their further development. This is a great change for a traditional community.

Using existing structures for support

We found that implementing mediation activities through Village Development Committees (VDCs) already in place, was highly beneficial and provided necessary legitimacy for community acceptance. In Nepal, the VDCs have social, moral, as well as community obligations to the people. The mediation programme also provides benefits to the VDCs as the new societal structure fostered by the programme serves as a preventive measure in the community, not only settling disputes, but also preventing them.

Limitations of the mediation process

Criminal, violent and other state related cases are out of the scope of the committee. In addition, the mediation committee deals with only minor cases of domestic violence such as general beating, verbal abuse, etc. Bigger cases, usually criminal, are sent to court or the police.

¹⁰ In Nepal, there is a social tradition that so-called high caste people do not accept water, milk, and the like and other foods touched by so called low caste people (known as Dalits).



Discussion among women mediators.

The decisions are non-binding and voluntary. The decision or agreement does not carry compulsive obligations to either party in the dispute. There is also an advantage to this as there is always the option to pursue other solutions if the agreement is not satisfactory to one of the parties, for example, taking the case to court.

Conclusion

For others considering adopting this tactic, it will of course be necessary to assess the socio-cultural and legal systems of your country. Nonetheless, some important aspects of the tactic that we considered essential for success are:

1. Ensuring that it is carried out with a rights based approach
2. Impartiality of mediators: free of any affiliations (e.g., political, religious, etc.)
3. Access to the local governance system
4. Community structures that are more or less close that provide an investment in such a mediation process
5. Networking and coordination with formal judicial forums, socio-cultural organizations and the like to build integration of the mediation process into the fabric of community life.



A dispute is settled and concluded with a handshake.

Since local disputes are settled locally in the village, I found that this programme is very relevant and effective in the context of rural part of Nepal. In the rural society, mostly people are poor and as there will be lots of expenses in cases and moreover there will be life long negative relation between the disputants. And, as this mediation is here for remedy for this, it will provide great benefit especially to poor and underprivileged people.

*Mr. Bhup Nath Sharma,
Local Development Officer,
Saptari District*

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