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**WORKING POLITICALLY IN PRACTICE SERIES
– CASE STUDY NO. 9 –**

BUILDING JUSTICE AND PEACE FROM BELOW?
SUPPORTING COMMUNITY DISPUTE RESOLUTION IN ASIA

October 2016   *Craig Valters*

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OCTOBER 2016   CRAIG VALTERS

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Foreword

For several decades, The Asia Foundation has been implementing development programs through a highly responsive, politically informed, iterative 'searching' model of assistance. Variations of this approach have been an important element in the Foundation's work going back to its founding in 1954. While each program varies, this model is broadly characterized by a heavy emphasis on contextual knowledge and relationships, combined with multiple small, nuanced and carefully targeted interventions working closely with local partners. This stands in sharp contrast to the conventional, pre-planned 'projectized' approach that has long been the standard in the development industry. Especially in cases where a development problem may seem to be politically intractable, an approach that focuses on building relationships and expanding knowledge of the landscape of interests and influence, while retaining the flexibility to adjust program strategy and tactics as new information or unexpected opportunities become available, is more likely to yield good results.

The Asia Foundation's Working Politically in Practice Series has allowed the Foundation to share what it has learnt from its efforts to test iterative and politically-informed approaches to programming across Asia. This series was initially launched under the Australian Government Department of Foreign Affairs and Trade – The Asia Foundation Partnership (DFAT-TAF Partnership), as a way to share learning from The Asia Foundation's work under the Partnership to trial iterative, politically informed approaches to programming across Asia. More recently, The Asia Foundation has expanded this series to capture lessons from other programs being implemented by The Foundation across the region. This includes support from the UK Government through the Programme Partnership Arrangement which aims to improve state-society relations to support peace and stability in countries and subnational regions affected by protracted conflict and fragility.

This ninth paper in the series, *Building Justice and Peace from Below? Supporting Community Dispute Resolution in Asia*, critiques typical donor statebuilding and peacebuilding interventions for the following shortcomings: being disconnected with reality, being state-centric, focusing on form rather than function, relying overly on decontextualized 'best practice', and adopting short timeframes in search of quick wins. Community dispute resolution interventions offer a promising alternative. The paper provides a bird's eye view of The Asia Foundation's thinking and practice in community dispute resolution in the Philippines, Sri Lanka and Nepal. In doing so, it looks at how a program may (or may not) contribute to access to justice, improving social relations, and conflict reduction. The paper finds that many of the assumptions underlying these programs are also problematic. It offers five key areas for practitioners to reflect on. These insights will be of particular interest to practitioners seeking to build more effective and impactful community dispute resolution programs.

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Acknowledgements

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Contents

Acronyms

ADR	Alternative Dispute Resolution
CAB	Comprehensive Agreement on the Bangsamoro
CSO	Civil Society Organization
DDD	Doing Development Differently
DFID	United Kingdom's Department for International Development
DSD	Divisional Secretariat Division
INGO	International Nongovernmental Organization
JSRP	Justice and Security Research Program
LGSA	Local Self-Government Act
LTTE	Liberation Tigers of Tamil Eelam
MILF	Moro Islamic Liberation Front
M&E	Monitoring and evaluation
INGO	International nongovernmental organization
NGO	Nongovernmental organization
PDIA	Problem Driven Iterative Adaptation
RRUC	Regional Reconciliation and Unification Commission
TWP	Thinking and Working Politically
UNHRC	United Nations Human Rights Council
UNYPAD	United Youth for Peace and Development
USAID	United States Agency for International Development
VDC	Village Development Committee

Summary

What is community dispute resolution and why do it?

• **Community dispute resolution is typically a forum in which community leaders seek to facilitate a negotiated resolution to a dispute or conflict.** These forums have diverse set-ups, with community members, nongovernmental organizations (NGOs), and the state taking the lead in different contexts.

• **International actors have at least three main reasons for working at the community level through dispute resolution mechanisms:** to provide access to justice, improve social relations, and reduce disputes, particularly if they may influence a wider conflict.

• **Community dispute resolution tends to be relatively accessible, legitimate, and inexpensive compared to formal courts.** International donors and NGOs, including The Asia Foundation, have increasingly recognized the need for such forums in developing and conflict-affected countries.

• **The Asia Foundation has supported different forms of community dispute resolution in Nepal, the Philippines, and Sri Lanka.** In Nepal and Sri Lanka they support interest-based 'community mediation', whereas in the Philippines they support local civil society groups to facilitate dispute and conflict resolution more informally. These programs have diverse aims and assumptions. In Nepal, the primary focus is on access to justice and improving social relations. In the Philippines, the primary focus is on conflict reduction. In Sri Lanka, the primary focus is on improving access to justice.

What can be achieved through community dispute resolution?

• **Community dispute resolution forums can provide a valuable service.** Community dispute resolution can support the effective management of disputes and attempt to rebuild fractured interpersonal relationships. This can translate into resolving small-scale community disputes regarding land, assaults, or loans, which may be of particular importance in conflict-affected communities.

• **The process by which disputes are resolved is important to users of community dispute resolution.** Disputants tend to in part assess the quality of the service on the basis of whether they have had an opportunity to fully voice their grievances. A more open and respectful process is encouraged by interest-based mediation, which is practiced in Nepal and Sri Lanka.

• **Interpersonal forms of community dispute resolution are unlikely to tackle post-conflict grievances and prevent a resurgence of wider violence.** Community dispute resolution may provide a mechanism by which some disputes can be peacefully resolved, although these rarely add up to addressing the underlying causes of injustice, violence, and conflict in communities.

What difference do ways of working make?

• **Notable program successes have been built on long-term approaches**. This has allowed for trusting and respectful relationships with key counterparts to be built, through interventions that are locally legitimate. It has often been underpinned by a patient and cautious approach to scaling-up that takes into account the changing context over time.

• **Employing staff with specific expertise can be important, but perhaps less so than commitment to the issues at stake and capacity for critical self-reflection.** This is required in order to work strategically in highly complex and politicized environments.

• **For research and M&E findings to influence ongoing learning and decision-making in programs, they will often need to be relevant and timely.** In the three programs studied there are some good examples of this, yet it remains the case that many decisions are taken on the basis of practitioners' experience. This is not a bad thing. Practitioner experience tends to be undervalued by donors and researchers. Yet this also needs to be checked by external critique.

Rethinking community dispute resolution

• **The theory and practice of community mediation are not as closely aligned as is sometimes assumed.** A focus on the procedural and technical aspects of community mediation sometimes means that these programs may give insufficient attention to how messy dispute resolution processes can be in reality.

• **Community dispute resolution interventions need to match their design with an appropriate level of ambition for impact.** Practitioners engaging in dispute and conflict resolution programs tend to feel their work contributes to a greater good—such as improving social harmony and conflict reduction—but evidence from these three cases suggests that is only likely to be possible when programs are deliberately targeted at a higher level.

• **Community dispute resolution programs often make important trade-offs, which are not made explicit.** For example, does including marginalized groups as mediators limit the efficacy of the process? Does it subject those groups to possible risks in the community? Making such issues explicit can help practitioners assess how to attempt to shift power relations in an ethical way.

• **Theories of change for community dispute resolution could be more robust, but this requires serious engagement from researchers.** We need practitioners to be specific in their theories of change, but researchers also need to embrace more creative approaches to evidence to avoid defaulting to unrealistic standards of proof that shut down legitimate hypotheses and debate.

1. Introduction

In the aftermath of war, international actors often engage in statebuilding and peacebuilding efforts in the hope of preventing a country reverting to war, to deal with past abuses, and to build for the future. This paper is one of three looking at how The Asia Foundation, an international nongovernmental organization (INGO) with significant justice and conflict programs across the region, engages with such processes.[1] The aim is to learn from the programs in ways that contribute to broader thinking and debates on how international donors and INGOs can be most effective in supporting statebuilding and peacebuilding.

Some of the more promising international interventions support community dispute resolution. This may range from support to customary justice, alternative dispute resolution (ADR), NGO-led mediation, paralegals, and legal aid or village courts (Harper 2011). Donors typically support these processes with one or more of three broad aims: providing access to justice, improving social relations, and reducing conflict.[2] Donor programs are, however, often criticized for their lack of focus on local realities, for being state-centric,

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for being focused on form rather than function, for relying overly on technical imported ideas, and for adopting short timeframes as they look for quick wins (Desai et al. 2012; Denney and Kirwen 2015; Albrecht and Kyed 2011).[3]

The Asia Foundation has long recognized that, particularly in the absence of a well-functioning formal justice system, there is a need to look to informal or semi-formal community forums. Drawing on the programs in Nepal, the Philippines, and Sri Lanka, this paper sets out to make a critical assessment of the role that community dispute resolution programs can play in providing access to justice, improving social relations, and reducing conflict. It first compares the Foundation's theories of change, and supporting broader theories, with what has been achieved in practice, before analyzing how its ways of working on these issues have influenced its effectiveness in achieving desired outcomes.

This paper is grounded in the following research questions:

1. What are the aims and underlying assumptions of the community dispute resolution programs in Nepal, Sri Lanka, and the Philippines?
2. What can evidence on the programs' outcomes tell us about the validity of these aims and assumptions?
3. How have The Asia Foundation's ways of working influenced outcomes in people's lives?
4. How can findings on the aims, assumptions, and ways of working inform program adjustments for The Asia Foundation, other INGOs, and donors?

Overall, I argue for the need to seriously rethink many of the assumptions embedded in the thinking and practice of community dispute resolution. I encourage practitioners, donors and researchers to critically reflect on five key areas: theory and practice, design and impact, trade offs, evidence, and ways of working. In doing so, my hope is that we can build more realistic theories of change to support more effective development programs.

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1. The other papers will analyze The Asia Foundation's approach to supporting peace processes (Denney and Barron 2015) and community policing (Denney 2016). The papers are supported through The Asia Foundation's Programme Partnership Arrangement with the UK's Department for International Development (DFID).
2. Other justifications include acting as a mechanism for reconciliation after violent conflict, promoting the rule of law or contributing to "good governance".
3. There are growing calls across the development industry—in terms of rhetoric if not yet in practice—to address similar recognized and pervasive failings in all sectors (Andrews 2012; Booth and Unsworth 2014; Faustino and Booth 2014; Ramalingam et al. 2014; Wild et al. 2015). Among others, these attempts include problem-driven iterative adaptation (PDIA), thinking and working politically (TWP), politically smart and locally led development, doing development differently (DDD), and adaptive programming.

Table 1: The design of The Asia Foundation's community dispute resolution programs

Nepal	Sri Lanka	Philippines (Mindanao)
Community mediation	**Community mediation**	**Dispute/conflict resolution**
- State law, NGO-led system - Interest-based mediation - All civil and minor criminal cases - Promoting diversity of mediators including women and Dalits	- Quasi-state system - Interest-based mediation - Minor civil and criminal cases - Promoting diversity of mediators including women and Tamil speakers	- Targeted ad hoc approach - Collective enforcement - More serious crimes including murder - Hybrid ideas of justice, often customary - No promotion of diversity

1.1 THE ASIA FOUNDATION'S COMMUNITY DISPUTE RESOLUTION PROGRAMS

The community mediation programs in Nepal and Sri Lanka seek to create formal dispute resolution forums drawing on existing informal community practices and hierarchies, in part by including new procedures and normative guidelines for mediators and disputants. In the Philippines, there is a more ad hoc process whereby local civil society organizations (CSOs) seek to focus on disputes with the potential to escalate – and to bring community members and elites together to try to resolve them (see Table 1).

In *Nepal,* community mediation was sanctioned under the 1999 Local Self-Government Act (LGSA), and has recently been included in the Nepal Constitution of 2015. Mediation structures are embedded in local (Village Development Committee – VDC) government structures. Disputants can directly file a case at the mediation centers or contact a mediator, who files a case on their behalf. Mediators are community volunteers, whose training is largely supported by NGOs. The Asia Foundation has developed various trainings and guidelines over the years. Since 2012, Asia Foundation-supported mediation has taken place in 114 of Nepal's total 3,915 VDCs and 58 municipalities (Stein 2013). In May 2016, a further 370 mediation locations were established. These deal with a wide range of interpersonal and criminal cases, but do not address certain criminal issues, such as murder or rape, or crimes against the state. Following the end of Nepal's ten-year civil war in 2006[4] the Foundation developed peacebuilding training for mediators. In 2013, it started action research and subsequent training for mediators on multi-stakeholder disputes. The latter is not discussed in this paper at length since these efforts are in their infancy and have not yet been independently researched.

In *Sri Lanka,* the community mediation program began as part of a collaboration between the Ministry of Justice and The Asia Foundation.[5] Since the Mediation Boards Act of 1988, mediation boards have become widely used across the country.[6] By January 2016, there were 329 mediation boards throughout Sri Lanka, with nearly 8,500 active mediators. The mediators tend to be drawn from the local community elite, although they are not allowed to be involved in electoral politics. The cases brought to the boards tend to be on issues of assault, land disputes, family disputes, and financial issues.[7] From 1983 to 2009, Sri Lanka suffered a separatist conflict between the state and the Liberation Tigers of Tamil Eelam (LTTE).[8] The mediation boards did not operate in LTTE areas in the north and east of the country during that time but have begun to expand in those areas, with The Asia Foundation's support, since 2006. The Asia Foundation has consistently supported training for both women and men, with a specific focus on increasing the number of women mediators. The Asia Foundation focused on disaster and conflict-related issues through 'special mediation boards' after the 2004 Indian Ocean tsunami. More recently, special mediation boards have been initiated for land issues, with a specific mandate to tackle post-war issues as part of the state's commitment to the United Nations Human Rights Commission (UNHRC).

In *the Philippines,* since 2008 The Asia Foundation has been supporting networks of local people in the region of Mindanao, who are mobilized if a conflict threatens to escalate. The subnational conflict in this region has evolved in various ways over the last 46 years, leading to violent competition for power at the local level (Parks et al. 2013).[9] One such form of conflict has been termed *rido,* which commonly involves recurrent cycles of violence between warring clans (Torres 2014).

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4. As outlined in Stein (2013: 10), the "war began as an insurgency, when the Communist Party of Nepal (Maoist) mobilized many poor, rural, and other marginalized groups to fight against the 'Hindu kingdom' and demand a republican constitution. Though initially considered a marginal security threat by the central Nepalese government, over time this insurgency and the government's retaliation resulted in significant human rights violations, with more than 13,000 reported fatalities and 1,300 missing." For more information on Nepal's civil war and its aftermath, see Thapa (2012), De Sales (2007), OHCHR (2012), and Von Einsidel et al. (2012)

5. The Ministry of Justice is responsible for the central administration of the boards, mediation training, and performance monitoring – although often the Foundation provides funds and brings in external experts for the latter two.

6. Mediation Boards (Amendment) Act, No. 15 1997; Mediation Boards (Amendment) Act, Mediation (Special Categories of Disputes) Act, No. 21 of 2003; Mediation Boards (Amendment) Act, No. 7 2011.

7. There has been significant recent growth in commercial disputes due to a change in the amount of money the boards can deal with.

8. More information on the conflict and its aftermath can be found in Höglund and Orjuela (2011), Goodhand (2011), Centre for Policy Alternatives (2012), and International Crisis Group (2011).

9. For more information on the conflict and its relationship with *rido,* see Torres (2014).

Drawing on traditional dispute resolution practices, community members act as facilitators between disputing parties in a *rido.* It is rare for NGO staff to formally mediate any dialogue, as they generally work in a low profile way, discussing the potential for some form of reconciliation between the conflicting parties. There is then often a *kanduli*, a celebration symbolizing the end of the dispute, where the conflicting parties sign a peace agreement in front of witnesses (Adam et al. 2014a).[10] These rulings are enforced by the power of local elites, as well as the social and symbolic power of the *kanduli*. More recently, The

Asia Foundation has supported its partners' mediation attempts only if a *rido* has the potential to derail the ongoing peace process.[11] It should be noted that the Philippines program is qualitatively unlike the other programs in terms of aims, assumptions, design, and context. It is better thought of as an informal dispute or conflict resolution program, rather than a 'community mediation' program (see section 2.1). It can still be compared to the programs in Nepal and Sri Lanka, but for certain issues such as access to justice, but for certain topics such as access to justice, the issues raised are different.

Table 2: The context of The Asia Foundation's community dispute resolution programs

Nepal	Sri Lanka	Philippines (Mindanao)
- Fractured political context - Civil war ended in 2006 - 2015 earthquake - Ongoing decentralization process - Rich traditions of dispute resolution - New constitution and 2011 law gives mediation legal grounding	- Quasi-authoritarian - Civil war ended in 2009 - 2004 tsunami - 2015 electoral change - Relatively stable context - Rich traditions of dispute resolution - Strong legal framework for mediation	- Contested state legitimacy - Ongoing subnational conflict and ongoing violence - Peace process but not fully implemented - Rich traditions of dispute resolution - Subject to natural disasters - Diverse informal and formal justice systems

1.2 METHODS

I draw mainly on past research undertaken as part of a collaboration between the Justice and Security Research Program (JSRP) and The Asia Foundation. By July 2016, 19 papers had been published through this collaboration, in which researchers have investigated The Asia Foundation's theories of change for different country programs.[12] This paper specifically draws on work from Nepal (Stein 2013; Stein and Suykens 2014; Suykens and Stein 2014; Khanal and Thapa 2014), the Philippines (Adam et al. 2014a; Adam et al. 2014b; Adam and Vanden Boer 2015), and Sri Lanka (Valters 2013; Jayasundere and Valters 2014). The primary research in these papers has been qualitative, based on extensive interviews with program staff, partners, and local communities between 2012 and 2014. Importantly, JSRP researchers took part in a longer-term engagement in country offices (typically three months), which facilitated an in-depth review of internal documentation as well as setting the ground for mutual learning between researchers and practitioners. Building on this model, in writing this paper I spent eight weeks with The Asia Foundation's

Bangkok office. Visits were made to the Philippines and Sri Lanka in November 2015 during which workshops and some interviews were conducted to build on existing research.[13]

1.3 STRUCTURE

I first outline what community dispute resolution is and why it might be appropriate in conflict-affected countries. I then go on to compare and contrast The Asia Foundation's aims, assumptions, and approaches to community mediation in Nepal and Sri Lanka, and to conflict resolution in the Philippines. I examine whether the Foundation has managed to achieve its intended outcomes in each context, and use the three cases to explore the validity of common assumptions in the theory and practice of community mediation and dispute resolution more generally. I then proceed to analyze The Asia Foundation's ways of working, assessing what role it plays in program outcomes. I conclude by arguing for five ways we might rethink community dispute resolution theory and practice.

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10. The Philippines office works to mitigate local-level disputes as part of a broader approach to conflict resolution in the Mindanao region, involving interventions dealing with community preparation, capacity-building, barangay development planning, community-security sector engagement, and conflict resolution itself. It is officially involved in the peace process through the International Contact Group and the Third Party Monitoring Team (The Asia Foundation 2012).

11. In October 2012, the government and Moro Islamic Liberation Front (MILF) signed the Framework Agreement on the Bangsamoro, which signaled a commitment to create a new political entity in Muslim Mindanao. The Comprehensive Agreement on the Bangsamoro (CAB) was then signed between the Government of the Philippines and the MILF on 27 March 2014, but is currently held up in parliament. The recent surprise election of President Rodrigo Duterte has caused some consternation on this issue, although at this early stage he appears to be supporting peace talks and the previous deals made with the Muslim separatis (Rood 2016).

12. A full list of papers is available here: http://blogs.lse.ac.uk/jsrp/research/theories-of-change-in-practice/

13. A trip was not made to Nepal due to concerns about the ability to travel during the fuel blockage which began in September 2015. Three phone interviews, with the country representative and field staff, were conducted instead.

2. What is community dispute resolution and why do it in conflict-affected societies?

2.1 COMMUNITY DISPUTE RESOLUTION, COMMUNITY MEDIATION, AND CONFLICT RESOLUTION

In this paper I focus on dispute resolution within and between communities,[14] which in Nepal and Sri Lanka is called community mediation because of the specific professionalized methods used.[15]

The purpose of community mediation is to enable the parties to negotiate and arrive at a mutually agreeable settlement, on the assumption that this may make the settlement more sustainable.

At its most basic, mediation is a process in which a third party, supposedly neutral, assists in resolving a dispute between two or more other parties (Honeyman and Yawanarajah 2003). Some authors use mediation in a much broader sense, encapsulating a negotiation of different belief systems and worldviews, but this simple definition suffices for the purposes of this paper (Marc et al. 2013).[16] Community mediation arose as a specific practice in United States during the 1970s, but has since expanded theoretically, professionally, and geographically (Valters 2013).[17] Most theorists argue that the purpose of community mediation is to enable the parties to negotiate and arrive at a mutually agreeable settlement, on the assumption that this may make the settlement more sustainable (Bush and Folger 1995; Moore 2014). The vast majority of societies in Asia and elsewhere have some form of indigenous dispute resolution practices at the community level. Aid-supported dispute resolution often homogenizes differences under the banner of 'community mediation', in part due to its positive connotations.

The interventions in the Philippines better fit the language of dispute and conflict resolution. The field of conflict resolution contains a messy mix of terminology,[18] which is compounded by the fact that it is often unclear which level of conflict is being discussed. Theorists and practitioners use it to describe a huge range of human interaction, violent or not (Carayannis et al. 2014). Often, the term conflict is used to

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14.   The term 'community' can be problematic in development discourses. It is vague and it is often unclear what kinds of people could be grouped under the term. It implies uniformity where the reality of community (say relations in a specific village) may be heterogeneous. It is used in relation to development programs in part because of its positive connotations: a move away from top-down thinking, empowering, etc. But this can misunderstand that communities are subject to various inequalities and power dynamics, which can be exacerbated by aid programs.

15.   Mediation can take a range of forms beyond 'community mediation', with different practices in different regions of the world, from the individual to the community to national or regional-level negotiations.

16.   Marc et al. (2013: 150), in relation to work on social cohesion, state, "The term 'mediation' is used here to refer to the practice of helping groups with different values and understandings of the world, and which operate according to different intersubjective meaning systems, to be able to interact and undertake common projects. That role includes conflict resolution but is not limited to it."

17.   Mediation models derived from Western theory have been exported all over the world as 'best practice', typically with international experts aiding country governments to develop quasi-state mediation forums. Indeed, on that basis Asian scholars have often chosen to build upon Western theories to analyze different forms of mediation practices in their own country contexts (Jahan 2009; Jayasundere 2013). Prominent scholars in this field acknowledge, however, that some form of mediation has existed in most societies for generations, understood at its most basic as a process in which a third party neutral assists in resolving a dispute between two or more other parties (Woolford and Ratner 2008; Moore 2014).

18.   There are numerous debates over terminology in the field of conflict resolution. For example, some argue that conflict 'transformation' is more appropriate, since this recognizes the inevitability of conflict and how it can be transitioned into more positive outcomes (Lederach 2003). These distinctions are not engaged with in depth in this paper, although it is recognized that some degree of conflict is both inevitable and has the potential to be transformative.

denote everything from non-violent disagreements to civil wars. This paper makes a distinction between disputes and conflict (Stein 2013; Moore 2014). For our purposes, a dispute includes non-violent and violent (but not deadly) confrontation between individuals, or within and between small group(s). The term conflict refers to wider, often violent, confrontations within and between individuals and groups, including the use of deadly force. Where the term conflict implies broader escalation of violence, such as a subnational conflict in the Philippines, it will be made explicit.

There is a real need for critical thinking and to establish sound evidence bases in these areas. Many practitioners engaged with different forms of dispute resolution and conflict resolution feel that their work contributes to a greater good. Project aims in the field in general tend to be rather abstract and aspirational, such as "creating a peaceful atmosphere" (Church and Shouldice 2006: 6). It tends to be assumed that any broader impact on society is a positive one, tied to the affirmative nature of the practice and the political economy of aid organizations (Mosse 2011). These assumptions tend to be based on practitioners' own interactions and perceptions. While these are an under-acknowledged source of knowledge, we also need to recognize the potential for positive bias. This paper provides a critical challenge to practitioners' assumptions about the potential for their practice to lead to a greater good, while also highlighting the importance of their perceptions in understanding what is being achieved.

2.2 WHY DO COMMUNITY DISPUTE RESOLUTION?

In the aftermath of war, those affected are likely to have numerous needs. International actors could have at least three reasons for working at the community level through dispute resolution mechanisms: to provide access to justice, improve social relations, and reduce disputes, particularly if they may influence a wider conflict. Different actors may aim to provide access to justice, improve social relations, or reduce conflict to different degrees in their programs. These aims can overlap and interact: for example, the resolution of a dispute through access to a form of justice may prevent it from escalating, potentially fracturing social relationships and leading to future

violence. The unpredictability and complexity of social change means that these are not proven trajectories and the assumptions must therefore be critically examined. Here we focus predominantly on post-war situations, although some of what follows may be relevant for many legally plural contexts.

Access to justice
First, *long-running conflict may disrupt or transform any existing justice institutions.* It may even lead to the creation of new norms and forms of justice that appear inappropriate once conflict ends. Typically, there are increased pressures as people struggle with long-running land disputes linked to displacement and continue to deal with ongoing and various forms of violence. Equally, people's 'ordinary' justice needs may be exacerbated, with an increase in loan defaults, common assaults, theft, or heightened domestic violence. Top-down rule of law approaches, in which courthouses are built or judges trained, have been roundly criticized for being an ineffective way to tackle the above problems (Golub 2003; Domingo and O'Neil 2014).[19] The growing literature on community dispute resolution suggests that they often provide a more accessible, legitimate, and cost-effective form of 'justice' for the vast majority of people in conflict-affected contexts (Isser 2011; Albrecht and Kyed 2011; Wojkowska 2006). This may particularly be the case for marginalized groups—those who may be discriminated against or excluded from political social and economic processes on the basis of their identity or location—who often find it more difficult than others to access and use dispute resolution forums.[20]

Social relations
Second, *communities' social relations may have been deeply fractured by the dynamics of war,* which deepen or transform divisions based on gender, caste, class, ethnicity, politics, and more (Marc et al. 2013).[21] Here, social relations is used as an overarching term to cover the various aspects of social capital, social cohesion, and social harmony. There is clear evidence that perceptions of inequality within and between groups can drive conflict and undermine cohesive social relations (Stewart et al. 2008). Dispute and conflict resolution theory and practice puts a strong emphasis on the importance of building better interpersonal and intergroup relations, in order to overcome long-running perceptions of inequality and local grievances

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19. Legal empowerment, a concept and practice that emerged in the early 2000s, has a similar starting point but is more explicitly normatively driven (Golub 2003): "explicitly interested in the agency and priorities of marginalised people, and understanding how they can use the law to advance their interests" (Domingo and O'Neil 2014: 4).

20. They often suffer from 'intersectional inequalities', in which different factors compound the issues they face. For example, it is too simple to argue that "women" are marginalized. It is likely that there are some elite women who have considerable power in many societies, while there are also poor and/or lower-caste women who are relatively marginalized.

21. For example, conflict-affected societies are often said to have reduced social capital, understood as "features of social organization, such as networks, norms, and social trust that facilitate coordination and cooperation for mutual benefit" (Putnam 1995: 66; Goodhand et al. 2000)

(Moore 2014). Donors may support dispute resolution with differing levels of ambition, from tackling local disputes within and between neighbors and families for the good of the 'community', to redressing power inequalities related to gender, caste, ethnicity, and politics associated with peace and war-time divisions.

Reducing conflict

Third, post-war transitions are often characterized by *ongoing forms of violence, injustice, and insecurity,* not least because the political, social, and economic dynamics of war often continue into peacetime (Cramer 2006; Keen 2008; Berdal and Zaum 2012). Much of the literature and debate on international responses to this has revolved around critiques and counter-critiques of the 'liberal peace', which have failed to acknowledge the ways in which communities themselves contribute to both war-making and peacebuilding (Berdal and Zaum 2013; Bloomfield et al. 2006; MacGinty 2013; Donais 2012; Peace Direct 2012; Denney and Barron 2015). International actors support community peacebuilding in numerous ways, usually through various forms of civil society initiatives, including those focused on socio-economic recovery, civic education, and dispute resolution (Haider 2009). While there needs to be careful contextual disaggregation of how such factors unfold during war and in its aftermath,[22] a relationship between local disputes and broader dynamics of conflict is often the way in which international actors justify their focus on community dispute resolution.

2.3 THE ASIA FOUNDATION'S THEORIES OF CHANGE FOR COMMUNITY DISPUTE RESOLUTION

These programs attempt to improve access to justice, improve social relations, and reduce disputes and conflict to different degrees. These have been elaborated in lengthy theories of change, most recently as part of DFID Programme Partnership Arrangement funding.[23] The evolution of these theories is outlined in Annex 1. This paper focuses primarily on theories-in-use – those that the Foundation genuinely believes guide its programs and represent what they can realistically achieve.

In Nepal, the primary focus is on community mediation providing access to justice and improving social relations.

The recent theory of change argues that with the "expansion of mediation services in rural Nepal, there will be a steady improvement in access to justice for local communities." Furthermore, it is "expected that the provision of community mediation services will contribute to improvements in social harmony at the local level." In the longer term and more indirectly, "it is expected that by improving the level of engagement between local governance actors the expanded mediation program will contribute to broader peace building efforts" (The Asia Foundation 2015a).

In the Philippines, the primary focus is on dispute and conflict resolution and reduction. The theory of change argues that through "supporting hybrid or mixed systems that combine formal and informal approaches to managing conflicts", they will "allow the different systems to draw strength from one another, strengthen the conflict resolution process, reduce violence, and eventually draw the informal working systems into the ambit of mainstream formal governance structures" (The Asia Foundation 2013). The program is also based on the hypothesis that local disputes can escalate and shape broader narratives of and prospects of resolving the larger violent conflict.[24]

In Sri Lanka, the primary focus is on community mediation improving access to justice. The most recent theory of change suggests that the aim is to "help people to resolve a range of disputes efficiently, effectively and peacefully", and also hypothesizes that "trust and harmony will also increase between those affected by (or involved in) the dispute" and that through these processes, "the risk of disputes escalating is minimized" (The Asia Foundation 2015b).

Despite the programs' different priorities, I analyze each of these programs in relation to providing access to justice, improving social relations, and reducing conflict. While not all of these aims are currently explicit in each program, they are each relevant areas of inquiry. The country offices either have explicitly linked their programs to these aims in the past, or their activities are relevant to these aims (see Annex 1). The paper does not seek to evaluate the success of the programs. Rather, the hope is that by comparing and contrasting them, lessons can emerge to guide future policy and practice.

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22.   Kalyvas (2006) offers such an analysis in relation to civil wars.
23.   More information on the Programme Partnership Arrangement can be found here: https://www.gov.uk/guidance/programme-partnership-arrangements-ppas
24.   Drawn from discussions from the program team and available literature.

3. The Asia Foundation's approach: from theory to practice

In this section I compare the Foundation's aims with what has been achieved in practice. In each subsection I outline the main underlying theories for these aims and the extent to which they are supported by the respective country offices, before showing how they have played out in reality.

Overall, the evidence suggests that consistent long-term engagement with dispute resolution mechanisms can result in increased access to justice, but the exact nature of that access—and indeed the form of justice—needs critical scrutiny. Practitioners need

to acknowledge and mitigate a number of potential tensions when engaging in community dispute resolution, such as the possibility of reinforcing unequal power relations in local communities. Broader outcomes on social relations and community conflict are possible, but often only with a careful approach that is consciously designed to achieve such impacts. The Asia Foundation has implicitly acknowledged this, through supporting 'special mediation boards' on tsunami- and land-related issues in Sri Lanka and multi-stakeholder mediation in Nepal. I provide a summary of the findings of this section in Table 3.

Table 3: What has been achieved?

	Nepal	Sri Lanka	Philippines (Mindanao)
Access to justice	**Main focus** - Efficient dispute resolution - Easy to access - Limited coverage - Moderate institutionalization - Efforts to include female/Dalit mediators	**Main focus** - Efficient dispute resolution - Moderate access - Wide coverage - Institutionalized - Efforts to include female mediators	- Pragmatic conflict resolution - Access less relevant - Degree of elite capture - Not institutionalized, but strong partner capacity - Limited inclusion
Improving social relations	**Main focus** - Can build interpersonal relations - Aim of neutrality difficult but valuable - May support wider community harmony, but this is contested	- Can build interpersonal relations - Aim of neutrality difficult but valuable - Can improve relationships of those affected by the dispute	- Can build inter-clan relationships - Less focus on neutrality, more on authority - Ceremonies (kanduli) may repair but also reinforce community relations
Conflict reduction	- Can prevent small-scale escalation of disputes - Role in wider conflict dynamics implausible - Multi-stakeholder and group mediation plausibly affects broader dynamics	- Can prevent small-scale escalation of disputes - No role in wider conflict dynamics - Land mediation boards plausibly help resolve post-war issues	**Main focus** - Can manage low-level conflict and prevent escalation - Clear role in wider conflict dynamics

3.1 PROVIDING ACCESS TO JUSTICE

In community dispute resolution, attempts to improve access to justice tend to involve a focus on access itself, the quality of justice, and the participation of marginalized groups. Improving access may include making forums geographically accessible, quick, and inexpensive; expanding services to areas with limited access; institutionalizing the forums; and building on existing practices in project locations. Efforts may be made to improve the quality of justice by introducing procedures that emphasize mutual respect and compromise; and introducing particular normative goals to mediators, often in relation to human rights and gender equality. The participation of marginalized groups is often encouraged through awareness-raising, training, and quotas (Harper 2011; Wojkowska 2006).

The Asia Foundation's programs have sought to provide access to justice to different degrees, using a range of methods. From their inception, improving access to justice has been a core goal of The Asia Foundation's community mediation programs in Nepal and Sri Lanka. Its program in the Philippines is predominantly framed in terms of conflict resolution, but it also plays a role in how justice is delivered.

Overall, it is clear that at a basic level, a broad long-term program engaged in community dispute resolution can increase communities' access to a more formal dispute resolution mechanisms. In both Nepal and Sri Lanka the number of disputes brought to mediation speaks for itself, but it should not be assumed that community members regard this justice as benevolent, or that there are no potential trade-offs in seeking to use these forums as a means to include marginalized groups. Program managers also need to be aware of how interventions may interact with and reinforce existing community power structures.

Providing access
There are several ways in which community dispute resolution might be thought to help provide access to justice. This can include efficient dispute resolution, the reach of such forums, how far they are institutionalized, and how they interact with existing dispute resolution systems.

Efficient dispute resolution

In the cases of Sri Lanka and Nepal, it is clear that community mediation is an efficient way to resolve many disputes. Both systems are part of an attempt to devolve justice to the community level, both avoiding the need to go to the courts and also formalizing a route to the broader legal system. In both, everyone can afford to lodge a case.[25] In Sri Lanka, there is little doubt that the mediation boards do provide access to a form of justice that is accessible, quick, and inexpensive. The boards have processed more than 2.5 million disputes since their inception and it is obvious why: the cost of an application is a 5 rupee stamp, the mediation boards cover most of the country, the process is quicker than court proceedings[26] and is often preferred because of its focus on reconciliation rather than retribution. In Sri Lanka and Nepal, the Foundation can point to thousands of 'settled' disputes through the processes it supports.

A high rate of resolution is not necessarily a good thing, however. As found in a recent study in the Northern Province in Sri Lanka, incentivizing a focus on resolving as many cases as possible can lead to mediators imposing their will on a situation in a manner which subverts "the very spirit and purpose of community-based mediation" (Munas and Lokuge 2016: 9). The Ministry of Justice and The Asia Foundation in Sri Lanka have acknowledged this, but have relatively little need for concern, since their resolution rate is typically between 50 and 60 percent. The resolution rate in Nepal is much higher: in the year 2014-15, for example, a total of 2,095 cases were registered in the program of which 96.7 percent were resolved. Moreover, the resolution rates in both countries are self-reported by local mediators and partners – which means that more could be done to understand if disputes are 'resolved' and whether the resolutions are sustained over time. The JSRP-Asia Foundation research did not investigate these issues in depth and clearly a higher resolution rate could be a result of a huge number of factors, including the skill of the mediators.

In the Philippines, the number of disputes resolved is naturally far lower, since the aim is to target specific cases of *rido* that have either been persistent for some time or have the potential to affect the peace process in the country. Interviews with local NGOs suggest that it sometimes takes numerous meetings, endless networking, and a degree of manipulation to get all disputing parties to a point where they will negotiate.[27] To get to this point costs nothing for anyone other than the NGOs and their donors, but it can take considerable time and resources. One NGO member who is also a sultan in his village said that

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25.   In Nepal it is free. In Sri Lanka there is a token charge of a 5 rupee stamp.
26.   In a 2010 evaluation it was estimated that 33 percent of cases are disposed within 30–60 days, and that 99 percent of disputes are resolved within a year (Siriwardhana 2011: 9).
27.   Focus group with local civil society group in Cotabato City, Mindanao, December 2015. Notes on file with the author.

often he has to pay some of the "blood money" in order to help end a dispute.[28] The 'output' number of cases resolved in the Philippines is of little relevance; more important is the nature of the settlement and whether it has prevented an escalation into further violence.

Program reach and physical access

In Sri Lanka, a state-led approach has resulted in a steady expansion, which means that there are mediation boards in the vast majority of the 331 divisional secretariat divisions (DSDs) across the country. The DSDs are administrative subunits, but are not the lowest form of formal administration. This means that for some disputants, they are located in divisional centers, which are hard to reach, since they can be up to 50 kilometers from where they live. The model is relatively well entrenched, following over 25 years of practice. This has been supported through a remarkable continuity of staffing both in the Sri Lankan Ministry of Justice and The Asia Foundation (see also section 4).

In Nepal, mediation operates at the lowest administrative level, within the VDCs. This means that geographically the mediation centers in Nepal may be easier to access than in Sri Lanka, but they lack the overall reach that has been gained through Sri Lanka's broader approach. They cover 504 of Nepal's total 3,276 VDCs. There are many reasons for this: nationwide expansion in Nepal would face far bigger geographical challenges than Sri Lanka, given its topography. There is also a competitive NGO environment regarding community mediation in Nepal, which can make standardization and coordination harder. On the other hand, the fact that numerous other NGOs, many of whom are The Asia Foundation's partners, are conducting similar community mediation expands the overall reach of dispute resolution services in the country.

Program institutionalization

Across the three programs, there is an assumption (which is also common among international actors) that these forums need to be gradually formalized or institutionalized. This is often understood in The Asia Foundation to mean closer links to the state in order to provide a form of sustainability. Comparing the Sri Lanka program with Nepal demonstrates the possible pathways to scaling up state-led dispute resolution and attempting to expand an NGO-led system.

While covering less ground, the Nepal program also shows how an NGO-led approach can lead to the development of expertise in both INGOs and local partners which can support future implementation if the state adopts it at a later date. For example, due to The Asia Foundation's long-term presence and expertise in community mediation, its training materials and mediation approach have been replicated across the country. Program staff estimate that 90 percent of the standardized training materials used by the Mediation Council[29] are taken from their own work. The Mediation Act was enacted in 2011 and ratified for implementation in April 2014. The Asia Foundation was directly involved in providing technical support to the Ministry of Law on this. To amplify the voices of practitioners in policymaking it involved a network of community mediators in this process.

The Nepali law provides for three forms of community mediation: traditional, NGO-led, and local government-led. This forces NGOs to register with the local government VDCs and gives the mediation decisions legal significance, which then ties this form of community mediation to the national formal justice system. The Act lays out the process that mediators are meant to follow. Importantly, after supporting them for three to five years, the Foundation hands mediation forums over to local government, along with a small fund. Community Mediators Societies have been established in the 12 phased-out districts, who then monitor these forums to ensure they still function. This is a promising approach. However, there has not been any independent research to assess how and in what way these forums are functioning (Stein 2013).

In the Philippines, the approach to conflict resolution is not aiming to achieve institutionalization, at least not beyond building the capacities of local peacebuilding organizations. As detailed in Adam et al. (2014a), the "flexible coalition approach" above all prioritizes a quick resolution of conflict. This means that the "local champions" with whom they work can come from a range of sources, including the local executive, state army, rebel groups, and traditional or religious authorities. The Asia Foundation's partners play a convening role that depends on the organizational and local context. This fits with the overall theory of change for this program, which argues this approach allows different systems to draw strength from one another. Adam et al. (2014a: 36), however, have argued this approach's "flexibility risks jeopardizing the long-term sustainability of the coalition approach." This

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28.   Focus group with local civil society group in Cotabato City, Mindanao, December 2015. Notes on file with the author.
29.   The Mediation Council's role is set out in the Mediation Act (2011). They are "performing the function of regular reform, modification, regulations and control of the mediation procedure…" The sitting council includes senior legal representatives and experienced mediators.

approach is obviously different, principally because of the violent context in which it operates, although it also represents a different long-term model: to build the capacity of CSOs to conduct dispute resolution themselves rather than relying on the state.

None of this suggests that any scaled-up form of community mediation looks the same within and across these countries: individual forums may differ in their level of access, type of justice delivered, and effectiveness. While this paper cannot explore these differences in depth, the existing research often notes differences in mediators' roles, types of disputes, resolution rates, amongst other things (Stein 2013; Valters 2013; Adam et al. 2014a).

Building on existing dispute resolution mechanisms

International interventions are typically premised on the assumption that there are no adequate existing dispute resolution forums. Indeed, in Nepal, Aitkin (2010: 4) argues that donor practice generally has been premised on the implicit or explicit assumption that conflict creates a "vacuum of justice", when in fact since the conflict certain traditional forms of resolving disputes have actually gained influence. This negates a basic fact concerning community dispute resolution, community mediation, and conflict resolution the world over, which is that these take place against the backdrop of wider socio-political histories and existing forms of dispute resolution, whether they are formal, customary, religious, or other.

In all three countries, the programs have aimed to blend existing mechanisms and forums with new approaches. In Nepal, historically there has been a local-level mechanism of *gāun panchayat*, whereby elders, social workers, and political activists resolve disputes in open spaces. The extent to which this still operates after the conflict is likely to differ across the country (Suykens and Stein 2008; Upreti 2008). The Asia Foundation's Nepali mediation model drew on the legitimacy of such forums, and sought to provide a new service based on the "impending disappearance" of *gāun panchayat* (Suykens and Stein 2014: 4).

More broadly, while it is important to acknowledge what is similar to traditional justice approaches, this can sometimes be at the cost of being frank about what is new or imported from other contexts. As Woolford and Ratner note, there is a common tendency to "reach back into diverse cultural milieu, and to claim a definite continuity between justice practices in […] small scale communities and modern forms of mediation" (Woolford and Ratner 2008: 40). In Sri Lanka, there are

historical records up to the British rule of Gam Sabha, a practice where village elders used to "hear complaints and do justice among neighbors" (Gunawardana 2011). However, despite this history, it would be a mistake to directly link mediation boards to that tradition, since the interest-based professionalized approach was new to the country when it was introduced (Valters 2013).[30] In Nepal, there is also the interest-based method, but there has been a clearer emphasis over time on creating a hybrid model that draws on local understandings of dispute resolution (Lederach and Thapa 2010).

In the Philippines, local NGOs pragmatically draw upon existing cultures of dispute resolution, so their approach varies depending upon the area in which they are working and the kinds of disputes they deal with. One NGO supported by The Asia Foundation uses *Maranao*[31] traditional institutions to resolve *ridos.* It has mapped the genealogy of different clans across the region in which it works, and then uses the newly discovered family ties and established authority of key community figures to try to bring a *rido* to a settlement. This kind of practice has been shown to have resolved numerous disputes, but also reinforces long-standing power relations in these communities (Adam and Vanden Boer 2015). These three different models of engagement demonstrate the need for deep contextual knowledge and appropriate engagement strategies with existing dispute resolution systems.

Quality of justice delivered

Improving access to justice raises the key question of the form of justice that is being provided. This raises further questions about disputant satisfaction, mediator neutrality, whether local understandings of justice are taken into account, and whether and how disputants 'forum shop'.

Disputant satisfaction

In Nepal, The Asia Foundation's monitoring data suggests that between 90 and 95 percent of disputants are "very satisfied" with the resolution of their disputes (The Asia Foundation 2015a). In Nepal and Sri Lanka, the interest-based model emphasizes creating the space for disputants to speak. During research on women's experiences of community mediation in Sri Lanka, over 80 questionnaires were distributed. The vast majority of respondents emphasized sentiments such as mediators "talked peacefully", "they talked calmly without bias", "they treated both parties equally", and "they talked to both parties similarly" (Jayasundere and Valters 2014: 14). In the Philippines, since it is a more ad hoc process,

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30. Indeed, in some areas of the North and East, the LTTE used to provide dispute resolution services, although they were different in nature to the mediation boards (Centre for Policy Alternatives 2003).
31. According to Adam and Vanden Boer (2015: 12), "the term 'Maranao' does not solely capture the people living in the provincial capital Marawi but refers to an ethnic group, which originates from a region around lake Lanao and which is mainly situated in the provinces of Lanao del Sur and Lanao del Norte."

there is no broad data on disputant satisfaction. As detailed by Adam et al. (2014a: 29), however, there are numerous case studies of resolved *ridos*, which have previously had major violent ramifications on the communities involved. In Sri Lanka, recent research in the north of the country has also suggested that people see the mediation process itself, which gives a space to talk and heal, as an important component of access to justice (Munas and Lokuge 2016). Research findings in each of these three countries indicate the importance of the dispute resolution process to disputant satisfaction, particularly when that process opens up space to discuss long-running grievances.

The role of mediator neutrality

Where mediators employ personal bias—for example by discriminating on ethnic or religious lines—it is clear that a disputant is placed at a considerable disadvantage.[32] Nepal and Sri Lanka use the interest-based method of community mediation whereby mediators are encouraged to act neutrally and not be biased towards one party. The quality of justice in part depends on how seriously mediators take this.[33] In the messy reality of the mediation process, implicit and explicit bias will often creep in. The mediator often needs to be respected in the community in order to successfully facilitate the resolution of a dispute; some mediation programs may pragmatically defer to whoever in the community has the best chance of securing an agreement to a dispute. This happens to some degree in Nepal and Sri Lanka but it comes out more clearly in relation to the more ad hoc mediation in the Philippines, where there is a strong emphasis on putting an end to often violent clan conflicts.

However, the *performance* of neutrality is important. In Nepal, Suykens and Stein (2014: 1) note that despite "clear reasons for mediators to act in a biased way, there are also incentives for them to act neutrally", such as to preserve their sense of authority and respect in the community. In Sri Lanka, mediator appeals to neutrality, despite continued discrimination against women, have led to reconciliatory approaches that take greater account of women's needs for justice (Jayasundere and Valters 2014).

Local understandings of justice

The interest-based method of mediation employed in Nepal and Sri Lanka places emphasis on securing agreements through mutual consent, which is understood to be mutually beneficial to the disputants. In Sri Lanka and Nepal, this tends to align well with a preference for some form of reconciliation by the mediators and community members on such issues (Stein 2013; Valters 2013). In Sri Lanka, in majority-Buddhist areas and majority-Muslim areas, mediation sessions often start with Buddhist and Islamic prayers respectively. The values associated with these religions clearly play a role in the kind of settlements that are facilitated. This can have positive implications, since they often encourage forgiveness and reconciliation.

However, the form of justice that most resonates for local people might be something that Western donors find uncomfortable, such as violent punishments or emphasizing the need to keep families together for the purposes of a woman's livelihood or broader social harmony in the case of domestic violence. In reality, outsiders can only do so much to challenge certain social norms. Indeed, while contested, there are often situations in which the victims of domestic violence—usually women—do not necessarily regard separation as the only and most desirable outcome. Thus, international support for community forms of dispute resolution inevitably means endorsing justice outcomes that some donor agencies might find unpalatable.

Forum shopping and belief fluidity

The vast majority of developing and conflict-affected countries have legal pluralism (Tamanaha 2008). In such contexts, disputants might 'forum shop' using whichever justice institution they perceive works in their favor. A disputant's use of a forum may depend upon its perceived power in relation to another forum. Marginalized groups can use this to seek better outcomes, but elites may also manipulate these options. This means that a mediator's knowledge of other justice forums is important for the outcomes for disputants. For example, in research in Sri Lanka's Northern province, groups working on women's rights have criticized the mediation boards for not being mandated to provide follow-up or counseling services to women suffering domestic violence (Munas and Lokuge 2016: 10). This means that mediators can seek (in good faith) to resolve issues of domestic violence when there may be more beneficial ways of doing so elsewhere. This shows the importance of understanding the full range of justice options disputants might engage with, and seeking to open up opportunities for more equitable services.

The flexibility of local approaches to mediation can allow for better outcomes for disputants. In the Philippines, given that *rido* often revolves around retaliatory

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32. Munas and Lokuge (2016: 29) detail an example of racial bias in the Northern province in Sri Lanka: "Other thing is when they are inquiring they should not speak racially. Once he asked me whether I am a Muslim. I told him 'it's irrelevant to the case so just start the inquiry'. They should remove these types of people and appoint new people."

33. Many theorists and practitioners make a distinction between neutrality and impartiality, acknowledging that the latter is attainable while the former is not.

killings, it raises the issue of the appropriate form of justice for such a serious crime. The perspective of The Asia Foundation's partners tends to be primarily pragmatic—they aim to find a way to end the *rido*—but underpinned by conflict resolution theory and practice which emphasizes non-violent means of resolution. However, interviews with The Asia Foundation's partners in the Philippines demonstrated how disputants negotiate their own belief systems as part of such a process – what we might call belief fluidity. As the head of one local NGO outlined, in the case of murder, the punishment under Sharia

The flexibility of local approaches to mediation can allow for better outcomes for disputants.

law is death, whereas under various traditional understandings blood money (or "cleansing of the soul") may be preferred, among other options.[34] Perhaps it goes without saying that the accused party will prefer the latter, but for a *rido* to be resolved in this manner suggests a fluidity of belief systems that it is important to understand and work with in order to secure more just outcomes. This also counters any implicit idea that there is a static 'traditional' or 'customary' set of rules; the reality is of continual negotiated change, albeit often gradual.

Participation of marginalized groups

At the heart of access to justice is the idea that marginalized groups obtain better justice outcomes (Wojkowska 2006). Attempts to make this happen tend to include supporting their participation as mediators, in the hope this will have knock-on effects for disputants. Where this is not attempted, it raises the issue of elite capture.

Participation as mediators

To different degrees, The Asia Foundation in Nepal and Sri Lanka has sought to increase the representation of different groups as mediators. In Sri Lanka, there has been a clear focus on expanding mediation to help marginalized groups. This has resulted in a number of initiatives, including funding training for female mediators, facilitating the setting up of an organization to train Tamil mediators, and supporting the expansion of the mediation boards in the North and East provinces. The number of female mediators remains relatively low, at an estimated 18% of the total nation-wide. The Ministry of Justice has made an informal commitment to 30% of mediators being women, but

this has not been formalized through a quota system (Jayasundere and Valters 2014).

In Nepal, mediators receive training with the specific aim with of helping them be more inclusive of marginalized groups, and effort are made to balance mediator panels according to gender, caste, and ethnicity.[35] For example, Dalits constitute around 9 percent of mediators in mediation supported by The Asia Foundation.[36] This can be an empowering process for such mediators. Stein (2013: 26) notes that during interviews in Nepal, "mediators repeatedly expressed feeling 'powerless' and 'invisible' prior to becoming mediators and more respected by their families and surrounding communities after they began resolving disputes." This is in part possible because of The Asia Foundation's clear focus and drive in the NGO-led system of Nepal, which has been harder to achieve in the state-led system in Sri Lanka.

Impact on disputes

In both Nepal and Sri Lanka, interviews with mediators and disputants suggested that if a case was facilitated by someone similar to the disputants, it would make them feel more comfortable and confident of a better outcome (Valters 2013; Stein 2013). To date, however, there is only limited evidence to suggest this has indeed led to better outcomes (Jayasundere and Valters 2013). It is plausible, however, that there is a need to strike a balance between inclusion and the legitimacy of mediators to facilitate a resolution. Such a balance needs to be acknowledged and trade-offs mitigated wherever possible. While there is no evidence to suggest this is the case in these programs, it is generally accepted that empowerment processes are not a zero-sum game (O'Neil and Domingo 2016). Research from other South Asian contexts, such as Bangladesh, suggests that women's growing public role in community dispute resolution can lead to considerable verbal and sometimes physical threats and violence (Valters and Jahan 2016). This is a problematic area that researchers and The Asia Foundation have yet to examine in depth.

Elite capture

Far from supporting marginalized groups, some dispute resolution processes may reinforce elite capture. As outlined by Adam and Vanden Boer's (2015: 34) question in the Philippines: "Against the background of the elite-based and violent socio-political context wherein TAF [The Asia Foundation] is intervening in Mindanao

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34.   Focus group with local civil society group in Cotabato City, Mindanao, December 2015. Notes on file with the author.

35.   According to program staff, creating socially inclusive mediation panels is also a way to build community trust and confidence in the mediation service. Personal correspondence via email. Notes on file with the author.

36.   Other marginalized groups in Nepal include Madhesis, Janajatis, and Tharus.

… Is there a line to be drawn in working with elite coalitions with some highly illiberal and authoritarian credentials?" Specifically in relation to the province of Lanao del Sur, Adam and Vanden Boer (2015: 25) argue that the dispute resolution process, "confirms existing power relations, and reinforces the position of elected politicians." The possible ramifications of elite capture are perhaps more pronounced in conflict-affected areas, as playing a role in dispute resolution processes may ironically reinforce the power of those with a capacity for violence.

Across diverse contexts, it is clear that mediators may gain social status, or more nefariously expand patronage networks and exploit disputants for their own gain. At the least, as was demonstrated in Nepal, some mediators may use their role to shore up their social status, for example as a legitimate authority figure in the community (Suykens and Stein 2014). We should be wary of viewing "elites" as a homogeneous group. There will often be community leaders who will support more equitable dispute resolution, whether for their own or others' gain, who NGOs will need to work with to achieve change.

3.2 IMPROVING SOCIAL RELATIONS

It is in the nature of dispute and conflict resolution programs to "try to effect changes in intangible areas such as perceptions, trust, attitudes, levels of cooperation and relationships" (Church and Shouldice 2003: 5). This is premised on approaches to community dispute resolution that emphasize compromise, negotiation, and mutual respect. First, it is commonly assumed that community dispute resolution can do this in relationships between disputants and affected parties. Second, and more ambitiously, it is assumed that these benefits will "transfer" in some way to others, influencing the wider community beyond the disputants or mediators (Church and Shouldice 2006: 25).

The Asia Foundation has aimed to improve social relations to different degrees in its programs: in Sri Lanka, it currently argues that community mediation builds interpersonal relations (Valters 2013); in Nepal, it has suggested the program builds social harmony and has defended this in recent papers (Stein 2013; Khanal and Thapa 2014); in the Philippines, the focus is directly on conflict resolution but in practice a large part of that is rebuilding relations between disputing parties (Adam and Vanden Boer 2015).

Overall, it is clear that community dispute resolution can offer a space for improving interpersonal relationships, although that is not guaranteed, particularly in long-running or violent disputes. The mediators and disputants desire to get a settlement can mean the improved relationship is secondary. Efforts to resolve disputes could possibly improve social relations in the wider community through some 'transfer' effect, but this is both tough to prove and often implausible given the various other factors that influence social relations.

Interpersonal relations
The building of interpersonal relationships depends upon the model of dispute resolution, how that relates to the personal and social context of the dispute, and whether a resolution takes priority over the relationship.

Model of dispute resolution

Where a strong interest-based method takes root in mediation training, it appears to have a substantial impact on practice. Basic changes to how these justice processes unfold—for example, allowing both disputants time to state their case regardless of status—goes some way to creating space for mutual voice and agreement. Research in Nepal and Sri Lanka demonstrates how Foundation-supported mediation appears to have been an effective way to repair relationships (Stein 2013; Valters 2013). In Sri Lanka, an evaluation showed that in "multiple cases disputes between neighbors or family members, which had even escalated to the point of physical violence, had been resolved, and both parties to the disputes cited cordial and sometimes even friendly relationships" (Siriwardhana 2011: 12).

The process of mediation is commonly contrasted with how a court functions. A mediator in Galle in Sri Lanka stated: "In court, judgment is based on the incident, not the root cause … if a drunken assault goes to court the person is remanded and the two become enemies, but here [at the mediation board] they can talk and they can reconcile." In all three countries in this study (as is the case in many other places), the prospect of going to court is daunting. From a relationship perspective, it is commonly stated that formal courts, based on Western or colonial laws, often promote a win-lose settlement, rather than the win-win of mediation. There is clearly some truth in this. The common preference for traditional or local

resolution systems across countries at different stages of development is based in part on a rejection of this adversarial process, in part due to the perceived damage it can do to community life (Albrecht and Kyed 2011).

Personal and social context of the dispute

Community dispute resolution cannot work miracles, however, and many disputes will be too intractable to resolve—or the dispute may be resolved while the relationship remains broken. In many contexts—including those of Nepal, the Philippines, and Sri Lanka—taking disputes into the public sphere is something of a last resort. In Sri Lanka it was suggested that often the mediators put the greatest emphasis on resolving the dispute, which means they just get a "good enough" settlement in the relational aspects of it (Valters 2013).[37] Furthermore, the specific dispute resolution process is only one process through which disputes are negotiated and understood. Once parties leave mediation, a host of other factors inevitably affect how the dispute unfolds, not least the will of other family members or close community members. In reality, many of the relevant parties will attend mediation sessions, but this increases the difficulty associated with changing everyone's behavior: in many cases it would be naïve to believe that a one-off process of mediation (or even multiple sessions) can repair relationships which may have been fractured for many years. This is the case regarding small-scale disputes over property or family issues in Nepal and Sri Lanka, but particularly so in the long-running clan conflicts in the Philippines.[38]

Resolution and relationships

In mediation theory, it is commonly argued that agreements are more likely to hold if both parties freely negotiate and come to a mutual understanding (Moore 2014). However, particularly in resolving violent conflicts, mediators may prioritize reaching an agreement over a genuine improvement in social relations. During a focus group discussion with NGOs working on conflict mitigation in Cotabato City in the Philippines, it was argued that while mediation was to the extent possible conducted in such a spirit, sometimes the practice was closer to arbitration.[39] This reflects the reality of social hierarchies. Although perhaps it would be preferable to reach a mutually agreed solution, in order to stop a cycle of violence it may be that a firmer hand is deemed necessary.

The disputants may often prefer this to ensure the other party keeps their word. In the Philippines, one community leader stated that some people believe that a sultan may curse them if they break a covenant.[40] Such observations illustrate that belief systems may reinforce the idea that conflict is ended by decree, not agreement, and that an improved relationship is not a given.

Community relations

Community relations could be improved through dispute resolution tackling big social issues or more indirectly through influencing social norms and practices.

Direct improvements

The lesson that clearly emerges from these three programs is that having an impact in the community will often require tackling community issues, such as around public land or natural resources. For example, the Sri Lanka program is consciously aiming for interpersonal outcomes and hence does not focus on communal issues. Owing to this, community mediation commonly takes place between individuals rather than broad groups. The majority of disputes are between close family members or community members. The issues addressed by the mediation boards tend to be relatively small in terms of their community impact, in part because more substantive community disputes—for example a land dispute that is heavily politicized—are unlikely to use this mechanism since mediators do not have the authority to guide the case. Christopher Moore, who had a major role in designing the process of mediation in Sri Lanka, argues that a mediation program seeking to improve inter-ethnic harmony would look specifically at group inter-ethnic conflicts, with mediators trained in techniques for that purpose (Valters 2013). Each of The Asia Foundation offices have implicitly acknowledged that tackling community issues requires targeted interventions, through modifying or creating new programs to address such issues (see below).

Indirect improvements

The Nepal program shows how there could plausibly be more diffuse impacts on the community. For example, Stein (2013) and Khanal and Thapa (2014) suggest that certain norms regarding respect and equal treatment start with mediators and disperse into the community due to their willingness to engage

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37. As discussed with Dr. Christopher Moore via email, March 2013.
38. The growth of commercial disputes in Sri Lanka has led to many cases between individuals and finance institutions within community mediation, which makes mediation more transactional than relational. In this case a relationship is less relevant. Indeed, one can question the relevance of an interest-based mediation process to commercial transactions between an individual and a financial institution.
39. Focus group with local civil society group in Cotabato City, Mindanao, December 2015. Notes on file with the author.
40. Focus group with local civil society group in Cotabato City, Mindanao, December 2015. Notes on file with the author.

in dialogue with disputing parties. As community representatives of some kind, their actions could have a demonstration effect by showing that disputes can be resolved in a peaceful manner. Equally, the Nepal office has argued that mediation contributes to building a culture of peacebuilding in target communities, in part through training community leaders in peacebuilding practices (Khanal and Thapa 2014). Building capacities and structures with a focus on promoting peacebuilding aligns with the idea that it is important to build "infrastructures for peace" (Richmond 2012). Surmond and Sharma (2012: 81) suggest as much in Nepal, arguing that The Asia Foundation's approach is "peacebuilding from the bottom-up, for example when it addresses inequality and discrimination, issues that motivated the political conflict in Nepal in 1996 and continue to be pressing." However, it may be too optimistic to assume that after training and ongoing mediation practice, these mediators *necessarily* embody peacebuilding norms. As argued earlier, mediators may engage in dispute resolution for diverse reasons, which can include personal prestige and power. This is an area worthy of further research, for example, through a life history approach, which allows us to understand the impact of training and mediation practice within mediators' broader life trajectories.

Where dispute resolution systems seek to resolve disputes at a higher level, the possible effects of preventing further escalation may be more discernible.

As mentioned above, the resolution of a long-running *rido* in the Philippines is often followed by a kanduli (community celebration). These celebrations tend to involve a large number of community members, including figures of authority and are often emotional affairs in which disputing parties commit to preventing a future *rido*. The symbolism of this process in a public space is likely to be important in securing a sustainable outcome, but also has the potential to signal a shift in community relations, particularly between the warring families.[41] It is difficult, however, to understand whether such impacts are simply tough to discern, implausible, or are simply not happening. Regardless, in considering the potential of such programs to building a culture of peace in a community, it is important to recognize the complexity of efforts to build, maintain, or improve

social relations, since these relations are also affected by a range of political, social, and economic processes outside the scope of dispute resolution forums.

3.3 REDUCING CONFLICT

In community dispute resolution, donors and practitioners often hypothesize that there is a relationship between disputes at the local level and wider violent conflict in communities and beyond. DFID (2010) has argued that building conflict resolution mechanisms is a key part of successful statebuilding and peacebuilding. There are three assumptions common in such arguments: that community dispute and conflict resolution prevents escalation; that it can help tackle post-conflict disputes and grievances; and that it can help support peacebuilding during violent conflict and peace processes.

Each of The Asia Foundation's programs seeks to resolve disputes and assumes that at times this will prevent disputes escalating into something more serious. In Sri Lanka, community mediation does not aim to tackle specific post-conflict disputes and grievances, whereas in Nepal, it is hypothesized that it does. In the Philippines, the aim is very much to ensure that conflict resolution prevents violent escalation, including in ways that affect the broader peace process.

Overall, we can reasonably assume that some disputes may escalate without intervention by some form of local dispute resolution, particularly long-running disagreements concerning land, family or violent disputes. However, if the aim is to deal with specific post-conflict grievances, this needs to be reflected in the design of community mediation, which would then focus on such disputes with the appropriate mandate and mediators. Resolving disputes between groups at the local level during active conflict can prevent them spilling into the wider conflict, as shown in the Philippines.

Preventing escalation
Whether community dispute resolution prevents escalation depends on whether it can secure lasting agreements, and whether the disputes it is dealing with typically escalate in the first place.

To prevent escalation, 'resolved' disputes need to stay resolved. The formal 'resolution' of a dispute reveals little about whether this is sustained over the longer

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41.   The difficulty here is finding adequate ways of understanding phenomena that move beyond the rather damaging idea that only randomized control trials, or indeed social science research itself, have the answers. Taking practitioners' experience seriously as a form of "evidence" is an important step (Khanal and Thapa 2014).

term, which would be an important step in preventing its escalation. In Sri Lanka, mediators are legally mandated to bring the disputants to "an amicable settlement and to remove [...] the real cause of grievance between them."[42] Interest-based mediation theory suggests that a sustained settlement is more likely where disputants feel their substantive, procedural, or relational interests are being met – which is a key part of the five-day mediator training in Sri Lanka. One strength and weakness of community mediation, however, is that it relies on negotiation and agreement by disputing parties. Where there are major power imbalances, there may be little incentive for the more powerful party to agree to an unwelcome outcome, meaning that disputes can easily remain unresolved – and in turn have the potential to escalate. The existing evidence for the long-term sustainability of mediated disputes in the study countries is limited since there is no systematic post-dispute tracking. In Nepal, Stein (2013) suggests that the resolution of disputes through mediation prevents disputes escalating and recurring, demonstrated through answers in citizen report cards. Broadly speaking, however, it is difficult to establish whether these programs have prevented disputes escalating into community, regional or even national conflicts because of the problem of being able to account for the absence of a phenomenon.

Most of the disputes mediated in Nepal and Sri Lanka are civil and minor criminal cases. The majority of the time, these are unlikely to escalate beyond the close knit family or community members involved. Some disputes may escalate in some sense, for example leading to murder or wider violence, but have limited potential to spark broader conflict. This might change in the case of particularly volatile issues. For example in Nepal, the Philippines, and Sri Lanka, disputes over contentious issues such as land boundaries can escalate into broader conflicts between families and even communities (Valters 2013; Stein 2013; Adam et al. 2013). In this respect, it may be plausibly argued that at some level community mediation often prevents a dispute from escalating, but typically only when it deals with particularly contentious issues. However, the more contentious an issue is, the more difficulty a local community volunteer will likely have in facilitating an amicable and mutually agreeable settlement. The mediator may not have the necessary authority, mandate, or skills to make this

happen. As such, there is a need for caution regarding hypotheses and their underlying assumptions about the preventative impacts of interpersonal dispute resolution on community-level conflicts and beyond.

Post-conflict disputes and grievances

Community dispute resolution may be supported in order to tackle specific post-conflict grievances that are perceived as a risk to future stability.

The Nepal and Sri Lanka teams acknowledge the need for a different approach to tackle broader conflict issues. In Nepal, The Asia Foundation is increasingly supporting multi-stakeholder mediation, whereby mediators engage with more complex disputes, involving numerous groups. This was developed as a response to perceived increases of community confrontation and conflict in the context of Nepal's fragmented politics and a proposed restructuring of the state. The Asia Foundation argues that as the process of settling claims and counter-claims on identity and sharing of natural resources unfold, "the need to understand the 'other' and to find common ground for peaceful coexistence among communities is rising."[43] Multi-stakeholder issues include those around public land, natural resource (forest and water), development disputes (hydropower and transmission lines), and post-earthquake recovery and reconstruction-related disputes. While these attempts are in their infancy, and were not researched in depth for this project, initial reports from The Asia Foundation suggest they have greater potential for community and regional conflict reduction.

Similarly, in Sri Lanka, The Asia Foundation is in the process of supporting the creation of Special Mediation Boards for land disputes. These will be state-sanctioned boards, with specially trained mediators, more legal authority than the current mediation boards, and with the possibility of the state as a disputant.[44] These attempts in Nepal and Sri Lanka may then play a bigger role in tackling post-conflict disputes and grievances, building on the programs' previous expertise. However, once more, the relationship between facilitating a resolution of these issues and conflict reduction cannot be assumed. Not all of these disputes will be part of struggles over conflict grievances of identity and resources; they may be longstanding bureaucratic issues requiring a collective problem-solving approach. This means their

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42.   Section 10 of the Mediation Boards Act.
43.   Email correspondence with Nepal program staff, July 2016. Notes on file with the author.
44.   This has particular relevance in the North and the East where the state, including the army, has occupied large swathes of land.

resolution may be important to people's lives, but cannot always framed as a conflict reduction attempt. For example, while land disputes are a typical 'post-conflict' issue, these arise at very different levels such as interpersonal, family, within and between communities, and between groups and the state. Again, it is notable that community mediation typically relies on volunteer community members. Where these higher level disputes are politically complex—for example if the state (or its army) is responsible for displacing citizens—the disputes will likely be too hot for community volunteers to handle.

Disputes during active conflict and peace processes
In the Philippines, The Asia Foundation has consistently tackled *ridos* when they feels they have the potential to escalate. This has included pro-active responses to those that are simmering before an election period. In the book, *Rido*: *Clan Feuding and Conflict Management in Mindanao*, a range of case studies are detailed in which interventions, including those

funded by The Asia Foundation, have prevented the continuation of long-running disputes (Torres 2014). Such cases often involve clan feuds that have gone on for decades, with violent reprisals and counter-reprisals spanning generations. The Asia Foundation's partners in *Cotabato* City outlined numerous high-profile cases they had recently helped resolve.[45] More recently in the Philippines, The Asia Foundation has supported *rido* interventions only when it believes the dispute has the potential to upset the ongoing peace process. According to a wealth of research on the topic, "there have been many armed confrontations involving insurgent groups and the military that were actually triggered by a local *rido*" (Torres 2014: 4). In this respect, The Asia Foundation's partners in the Philippines, in tandem with various other community initiatives, may well have contributed to preventing an upset to the ongoing peace process.[46] Any such claims can be made only on the basis of the long-term, research-oriented approach The Asia Foundation has taken.

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45. Taken from two separate focus groups with a local civil society group in Cotabato City, Mindanao, December 2015. Notes on file with the author.

46. There is currently a greater recognition of the interrelationship between local and national conflicts in the context of civil war (Kalyvas 2006). Boege argues that "only if sustainable solutions can be achieved in the local context can it be expected that solutions on a larger—national or transnational—scale also can be achieved" (Boege 2006: 443).

4.The Asia Foundation: ways of thinking and working

Some commentators, donors, and practitioners are increasingly arguing for development practitioners to work in ways that promote a carefully calibrated political approach, learning continuously, adapting accordingly and focusing on locally defined problems

Notable program successes have been built on long-term, trusting, and respectful relationships.

(Andrews 2012; Booth and Unsworth 2014; Carothers and de Gramont 2013; Faustino and Booth 2014; Ramalingam et al. 2014; Wild et al. 2015). This is in contrast to a technical blueprint approach, which sees development interventions as closed and controllable acts, based on outsiders' solutions (Booth 2015; Therkildsen 1988).

In this section, I address the question of how The Asia Foundation's ways of working have influenced the outcomes of its community dispute resolution programs. This will be analyzed through the three lenses of program relationships, staff and organizational culture, and information and knowledge. As is clear from Table 4 below, there are many similarities in The Asia Foundation's approach, which in part are defined by the way the organization works across Asia.

In what follows I outline how notable program successes have been built on long-term, trusting, and respectful relationships. Such an approach has allowed for a gradual scaling-up. Employing expert staff can be important, but perhaps less so than commitment to the issues at stake and the capacity for critical self-reflection. This is what is required in order to work strategically in highly complex and politicized environments. These examples also show the value of practitioners' knowledge, but also that research and M&E need to be linked to decision-making processes to directly influence programs.

Table 4: The Asia Foundation's ways of working

	Nepal	Sri Lanka	Philippines (Mindanao)
Overall approach	- Technical - Access to justice - Transformative vision - Growing sustainability	- Technical - Access to justice - Gradual vision - Sustainable	- Conflict-sensitive - Conflict resolution - Short term vision - Proactive but less sustainable
Program relationships	- INGO led-model with local partners - Competitive NGOs - Medium-sized role for donors - Works with state bodies on broader institutional change	- Quasi-state model - Monopoly on mediation - Limited role for donors - Works with Ministry of Justice for broader change in mediation practice	- Leading mediation INGO - Local partner model - Limited role for donors - Works with state and civil society as part of the peace process
Staff and organizational culture	- Long-term presence - Local/national staff - Big personalities shape theory and practice	- Long-term presence - Local/national staff - Big personalities shape theory and practice	- Long-term presence - Local/national staff - Partners' research shapes theory and practice
Information and knowledge	- Medium role for research - Strong practitioner knowledge - M&E has some influence	- Medium role for research - Strong practitioner knowledge - M&E has limited influence	- Major role for research - Strong practitioner knowledge - M&E has limited influence

4.1 PROGRAM RELATIONSHIPS

The ways in which a program relates to the state, donors, implementing partners, and local communities will have a huge influence on how it works.[47] The three programs reflect different approaches to engaging with these different actors. Broadly speaking, The Asia Foundation tends to work closely with the state in each country context. This is perhaps necessary to maintain country offices and their ongoing programs over the long-term, but it also helps shapes their role in advocating (or not) for progressive changes in relation to community dispute resolution.

In Sri Lanka, The Asia Foundation has placed a high value on building a relationship with the Ministry of Justice over several decades. Somewhat serendipitously, there has been a remarkable consistency of actors and interests within both the Ministry of Justice and The Asia Foundation since the program's inception in 1988, which has allowed a sense of trust and shared understanding to develop. The expansion in access to a reasonable quality of service is directly underpinned by this steady relationship. This may also have been due to a lack of competition from other NGOs in this area. This close relationship may have prevented The Asia Foundation from pushing boundaries with the Ministry. Funding for projects to increase the number of female mediators comes exclusively from The Asia Foundation, as does training for Tamil mediators, who are clearly vital in Tamil-speaking areas. The latter did come at the request of the Ministry of Justice, but based more on practical need than a focus on diversity and minority rights. As yet, the Sri Lanka office has not found a way to use its deep knowledge of the sector and political relationships to convince the state to take full ownership of such issues.[48]

In the Philippines, The Asia Foundation's approach demonstrates the value of working with local partners over the longer term. It has drawn on local partners' knowledge and networks to generate research findings and has ensured that these partners then put their findings into conflict resolution practice. Perhaps the best example of this is United Youth for Peace and Development (UNYPAD), which was one of the

first NGOs to receive funding for *rido* resolution in 2005. Since then, The Asia Foundation has supported training for UNYPAD, which has gone on to train others in conflict mitigation, including the various security forces in the region. This kind of ongoing relationship requires long-term commitment to an issue and specific context, with the knowledge and information that this can help develop.[49] Ultimately, in this case, it enabled disputes to be resolved by experienced local community members who understood the specific dynamics of the disputes.[50]

The relationships between a program's funders and The Asia Foundation country offices also shape how programs are implemented and their subsequent outcomes. Broadly speaking, decisions on what to work on in a given context are set both by the politics and trends of the aid industry, as well by as those in the recipient country. It seems, however, that donor funding or ambitions have largely not changed the specific activities of The Asia Foundation's programs. Rather, the programs have been led by country offices, which have used funding to match their own program aims. The funding and contracting mechanisms that donors use to manage their working relationships with country program staff also affect how programs function. In Nepal, the long-term approach of the McConnell Foundation helped to address emerging research and training needs. The DFID Programme Partnership Arrangement, which started funding all three programs in 2011, provides flexibility, which has led to the offices funding more research and M&E to reflect on their aims and assumptions, not least through the creation of theories of change and their subsequent analysis through the JSRP–Asia Foundation research.

The three case studies discussed above indicate that there is no right constellation of actors that a program should seek to engage with, but that these choices will have important consequences as time goes on. These choices are both strategic and moral: for example, decisions have to be made on whether to support a historically oppressive state if it attempts to build dispute resolution mechanisms. What is increasingly emerging in broader development thinking and practice is that attempts to achieve reforms and

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47.   There are many other important relationships that this paper does not have the space to explore, including other development interventions.

48.   Although it should be noted that The Asia Foundation has played a role in convincing the government to take over funding for the training of police in Tamil language.

49.   The local ownership and legitimacy of these interventions has been essential to their effectiveness, which gives reason for caution regarding internationally-led interventions at this level (Donais 2009; Richmond 2012).

50.   The Philippines example also shows the potential difficulties of attempts to institutionalize a state-led conflict resolution mechanism during active conflict. The office supported the Regional Reconciliation and Unification Commission (RRUC), through which an inventory of *rido* cases was made in the region and interventions were made in some of them. It has operational limitations, however, due largely to the fact that it was created under the Office of the Regional Governor (meaning it has no separate charter) and has limited resources (both funds and personnel).

improve service delivery need, as far as possible, to be locally led (Booth 2016). Who counts as 'local' is important here. This will inevitably be project-specific to a degree. However, given how often development programs tend to impose top-down visions of change, there is a need to always return to the communities who are intended to benefit. Their understandings and desires for change tend to be the most hidden and under-solicited in development programming. According to program staff in Nepal, decisions have been informed principally by community mediators.[51]

More broadly, the way that program staff learn and adapt their decision-making usually depends on interactions between the state, donors and local partners, with communities themselves left outside the system. Working with local communities becomes a much stronger imperative where the inclination of the state is far from developmental. This raises questions about how a country's political settlement determines what aid programs can realistically achieve (Kelsall 2016).

4.2 STAFF AND ORGANIZATIONAL CULTURE

The staff that organizations employ and the culture within which they work can greatly influence program outcomes. Individuals approach their work with different knowledge and understandings of change (Eyben et al. 2008; World Bank 2015). It is common across The Asia Foundation to employ staff on long-term contracts so that they can develop specific expertise in their area of work. The organizational culture in the offices differs considerably, however, reflecting differences in skill sets, leadership, and country context. The leadership role played by country representatives in The Asia Foundation tends to play a big role in determining the trajectory of thinking and practice of the office. In particular, long-serving country representatives can help to cultivate a team with a sense of intellectual curiosity that is willing to critically reflect on their thinking and practice. This works both ways: if a country representative is relatively new, or is unwilling to think critically about change, then it is hard to see how project teams will do so. Project teams also require an in-depth knowledge of the problems that the program is trying to address (whether from the outset or developed over the course of its implementation) in order that their technical input is in line with contextual realities. For example, in Sri Lanka, one staff member who provides technical support to the mediation program has a doctorate on community mediation and domestic violence, while a regular consultant is a lawyer with considerable experience

in designing training manuals and engaging with the Ministry of Justice.

Perhaps most important is that program managers and country representatives seek to encourage a willingness (and provide an enabling environment) to critically reflect with their teams. Probably the best example of this was the regular strategic reflection sessions held in the Philippines office, one of which I attended. During this, they analyzed major contextual changes and assessed the impact they might have on their programs, and how they might be adjusted. Such practices, combined with a flexible approach to activities, enable their programs to be responsive to contextual changes. This could involve an increase in *rido* in a specific region, which could be targeted for interventions, to broader political shifts with the potential to spark local-level violence. In Nepal, The Asia Foundation reacted rapidly in the aftermath of the 2015 earthquake to expand mediation to hotspots where there were likely to be contested claims regarding land and property. Such rapid action can take place only when the staff are able to critically reflect on what is required and empowered to act on their knowledge appropriately.

Many donor organizations and social scientists often fail to account for how knowledge can be developed and nurtured over time through practitioners' lived experiences.

Outside expertise has played a major role in shaping The Asia Foundation's programs, particularly in Nepal and Sri Lanka. In Sri Lanka, the Ministry of Justice and The Asia Foundation's understanding of mediation has been influenced by Christopher Moore of CDR Associates, who has been involved since 1988. Moore is a highly experienced mediation professional who has supported the expansion of these services in many countries worldwide (Moore 2014). CDR Associates was key in introducing the 'interest-based' process. Moore continues to help devise and provide training for the Mediator Trainers (who in turn train the mediators), most recently in relation to how to mediate commercial disputes. Similarly, the thinking of leading peacebuilding practitioner John Paul Lederach increasingly began to play in role in how mediation in Nepal was both framed and practiced, with peacebuilding-oriented training developed on the basis of action research (Lederach and Thapa 2010).

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51.   Interview with Nepal program staff, December 2015. Notes on file with the author.

This shows how the kinds of aims and assumptions held in these mediation programs do not emerge from nothing, but draw on various worldviews, ideologies, and practices espoused by particular individuals. This can be beneficial to programs, for example, by embedding ideas of neutrality in mediation practice, but can also at times lead to a dogmatic defense of certain assumptions about community mediation or conflict transformation that do not hold up in the messy reality of their practice.

4.3 INFORMATION AND KNOWLEDGE

The strong recent emphasis on developing 'evidence' by donors, particularly DFID, has raised a number of questions about how information can be generated and used in different ways (Cartwright and Hardie 2012).[52] There are three forms of information and knowledge that have influenced The Asia Foundation's thinking and practice to different degrees: practitioners' experience, research (led both internally and externally), and M&E. As noted by Rich (2008), different forms of information will lead to different forms of action (or indeed inaction). These three program examples make clear that many decisions on program direction are taken on the basis of practitioners' experience rather than formal processes of M&E or research, but that is not necessarily a bad thing.

It is notable that many donor organizations and social scientists often fail to account for how knowledge can be developed and nurtured over time through practitioners' lived experiences. As suggested by staff from Nepal, "practice-based views on what constitutes evidence is often more relaxed and broad"

(Varughese and Khanal 2014). In all three countries, The Asia Foundation staff tend to have long-term affiliations with a program and sometimes expert knowledge of the specific change processes they seek to affect. This knowledge has allowed for an iterative process of program development, with limited loss of institutional memory. If one accepts that for many people, 'learning by doing' is an effective way to build knowledge, then it is valuable to use practitioners' knowledge (Valters et al. 2016). Staff will also make decisions on the basis of their relationships with other key counterparts, as indicated above.

Clearly, there are dangers in relying on practitioners' experience, since it will be often be subject to a degree of positive bias. This experience will also mean much less if staff are not regularly immersed in project locations with those who implement programs. Equally, the acknowledgement that programs can have unintended impacts means looking not only for positive impact but also for negative processes of change that may arise, which may not be immediately obvious to those who are looking for evidence of positive change. These tensions perhaps explain the differences in understanding which emerged as part of the collaboration between JSRP and The Asia Foundation in Nepal (Stein 2013; Thapa and Khanal 2014). In research conducted by JSRP, Stein (2013) questioned the evidence base for the office's social harmony theory of change. The office responded with a largely theoretical piece that provided little further empirical evidence but drew on its own understandings and experiences of the change processes on the basis of community mediation (Thapa and Khanal 2014).

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52.   It is unclear exactly what constitutes evidence; how it can support or challenge different kinds of hypotheses about change; and the extent to which information is currently used to construct policy-based evidence rather than the other way around. This also raises questions about how a program can iteratively adapt to contextual changes, including those created by a program.

Research is perhaps best placed to influence a program's outcomes if it is embedded in program planning and decision-making. Through a genuine iteration between research *and* practice, knowledge concerning *rido* in the Philippines has grown and interventions have become more focused and context-specific.[53] In Nepal, action research has been used as part of a process to shift program thinking and practice and has recently been used again to help design the methodology for multi-stakeholder mediation (Lederach and Thapa 2010).

It is important to note that developing useful research is not solely the responsibility of the implementing organization: strong, integrated research in these contexts has been possible only thanks to donors with medium- to long-term program funding commitments that can house and build on a research foundation.[54]

Research that is more academic and theoretical appears to have had a less tangible impact on thinking and practice in these programs, including that of the JSRP-Asia Foundation collaboration. Its lack of influence on programming is likely to be due to a number of reasons: theories of change were investigated in which the staff were not always fully invested; the focus of studies was sometimes on higher-level outcomes whose connection with practice was hazy; it may not have been sufficiently operationally focused; and the research process was not planned around specific moments in the program cycle where a change in direction might have been possible. Reflections from the program teams suggest, however, that there are less tangible benefits, such as encouraging longer-term critical reflection on their assumptions and reframing their program communications.

Monitoring and evaluation data in these programs has had a mixed effect on program direction. There are examples where some robust yet simple reporting has influenced programs. In Nepal, indicators that captured the 'kind of dispute' being registered in the program told the team that an increasing number of domestic violence disputes were being registered, and the program subsequently provided gender and domestic violence training to its mediators. Similarly, program monitoring showed ever more group disputes being registered, leading the team to introduce multi-stakeholder and group mediation training.[55] In Sri Lanka, M&E data has been used by the country office to engage the Ministry of Justice in discussions about program impact. As part of DFID Programme Partnership Arrangement funding, projects developed baselines that were monitored over the five years of programing. However, these did little to influence program decision-making and revealed little about the quality of the justice process, its sustainability, wider contextual change and more. These examples show the value of having appropriate monitoring criteria aligned with a program team that has the space to use it to learn and adapt their programs.

The Asia Foundation's regional office in Bangkok took the initiative to focus on broader outcomes through its use of theories of change and contribution analysis. Drawing on different forms of analysis has allowed program staff to develop their knowledge, although in many cases this has not led to direct changes in practice. This is for a number of reasons: theories of change at times felt too theoretical and abstract, or weighted towards what a donor wanted to hear, rather than reflecting a genuine unpacking of the project team's aims and assumptions about how change happens. Part of the problem may be that the teams updated these annually for project reporting, rather than used them more iteratively as a way to reflect on their programs.

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53. The Philippines office also regularly commissions local surveys through the Social Weather Stations that ask about public perceptions of the peace process, public satisfaction with government institutions and non-state actors, and perceptions of local issues, among others things. These surveys are also used to influence the decision-making in Asia Foundation programs.

54. Thanks to Preeti Thapa for this point.

55. Thanks to Preeti Thapa for this point.

5. Conclusions: rethinking community dispute resolution

I have attempted to provide a bird's eye view of The Asia Foundation's thinking and practice in community dispute resolution across the three countries, while seeking to pull out key details or nuances which can offer insights into this kind of programing more broadly. In doing so, it has outlined a range of hypotheses in relation to how a program may (or may not) contribute to access to justice, improving social relations, and conflict reduction. These hypotheses need to be critically interrogated in the diverse contexts in which community dispute resolution takes place. The aim of outlining these hypotheses is not to encourage off the shelf theories of change to be developed and used. Rather, it is the opposite: critical appraisal of the different layers of assumptions in these different contexts has shown that the devil is often in the detail.

It became clear that community dispute resolution programs can support the effective management of disputes and attempt to rebuild fractured relationships at the interpersonal level. This depends very much on the approach of the mediators, their standing in the community, and the nature of the dispute, amongst other things. Effective dispute resolution can translate into resolving small-scale community disputes regarding family issues, land, assaults, or loans. This is often a valuable service in itself in conflict-affected communities, which international donors and INGOs sometimes forget as they superimpose ambitious theories of change onto these community forums. Community dispute resolution may provide a mechanism by which some disputes can be peacefully resolved, although these may not always add up to addressing the underlying causes of injustice, violence, and conflict in communities. This will often require more targeted higher-level approaches.

In what follows, I provide conclusions in relation to five key areas that have emerged throughout this paper: theory and practice, design and impact, trade-offs, evidence, and ways of working. Within each, I raise questions to both provoke critical reflections on the programs, but also to guide future research in this area.

5.1 THEORY AND PRACTICE

Community mediation, at least as it is discussed in Nepal and Sri Lanka, is a rather procedural and technical endeavor. There is a vast body of academic literature on different models and practices, some of which informs these programs. Much of it, however, is based on Western examples. A good example is the focus on neutrality and impartiality. While mediators may have a sophisticated understanding of these concepts, the reality is that a degree of personal and social coercion is inevitable in some cases. Disputants may desire this, even if this goes against the theory. While there will be good examples of best practice being used in country case studies, there are also wider examples in external studies which suggest a more nuanced picture (Stein 2013; Stein and Suykens 2014; Suykens and Stein 2014; Munas and Lokuge 2016; Adam et al. 2014a). A focus on the procedural and technical aspects of community mediation means that these programs can appear to overlook how messy these processes can be in reality.

5.2 DESIGN AND IMPACT

Community dispute resolution programs are more likely to be successful in addressing post-conflict issues when they are focused on these specific issues. For example, in the aftermath of war, it can be seductive to believe that broad-based community mediation programs can deal with post-conflict grievances and prevent a resurgence of violence. In Nepal and Sri Lanka, it is more likely that community mediation provides a valuable service, which those in conflict and non-conflict affected areas need to support their day-to-day lives. This can have all sorts of benefits for local people, even if these do not fit Western ideas about what is required in post-conflict settings. Claims about the ability of relational gains to transfer to the wider community from interpersonal community mediation are often rather fanciful: achieving this is likely to require a transformative mediation approach to target specific issues which run along social fault lines, such as ethnicity, caste,

class, or gender. During times of active conflict, as has been experienced in the Philippines, more ad hoc and specific dispute resolution efforts at the community level may prevent the escalation of violence, but this requires deep contextual knowledge, long-term relationships with local partners, and an overtly pragmatic approach. It also requires the capacity to respond to rapidly changing dynamics that can result in unexpected twists and turns in experiences of injustice and conflict. Finally, these examples show that international actors with hopes of scaling-up dispute resolution programs need to invest over the long term.

5.3 TRADE-OFFS

I have highlighted a number of trade-offs and tensions. For each of these, there is probably no right answer *per se*. But making these trade-offs explicit is key in terms of doing no harm, and also assessing the level of risk to which a project exposes people. Making

While less tangible impacts are possible, there is a need for new and more reflective ways of understanding these.

these explicit can also raise the question of whether there really is a trade-off or whether it is more a question of balance, and how that balance might be struck in an ethical way. For example, there may be a balance to be struck between inclusion of mediators from marginalized groups and mediation efficacy,

which needs greater acknowledgement. Too little is known about whether more inclusive mediator arrangements improve the outcomes for disputants. Equally, there may be trade-offs between supporting one community dispute resolution mechanism rather than another. One may be more locally embedded and legitimate but employ understandings of justice that are alien to Western observers. While terms such as 'inclusion' and 'elite capture' are often far too one-dimensional to capture the messy reality of the social processes here, they do highlight important concerns for development practitioners to focus on.

5.4 EVIDENCE

Many practitioners engaged in dispute and conflict resolution feel that the work they do contributes to a greater good. They are probably often right. However, while less tangible impacts are possible,

there is a need for new and more reflective ways of understanding these that account for the respective benefits and limitations of social science research and practitioners' experience as sources of knowledge. This may require recognizing that often, particularly for broader social change, it makes sense to operate on a principle of plausibility rather than proof (Rigterink and Schomerus 2016). For example, how might we assess whether a program has stopped a dispute escalating? This involves asking what is the issue at hand? Does this issue tend to be sustained over time? If it 'escalates' what does that mean in this context? We need practitioners to be specific in their theories of change; but researchers also need to find more creative ways to answer these questions to avoid defaulting to unrealistic standards of proof that shut down legitimate debate.

5.5 DIFFERENT WAYS OF WORKING

This research has reiterated the importance of taking a long-term, politically smart, locally-led approach. The factors outlined in relation to ways of working often interrelate: for example, the way in which different forms of information are used is often set by a team and organizational culture, but also in part through political relationships. Taking a long-term approach to capacity-building in the Philippines has allowed for more iterative and localized decision-making on conflict matters. But a long-term approach has also allowed considerable expertise and knowledge to be built in each country office. The relationships between the three elements raise interesting questions: if individual personalities shape how a program unfolds, how can we ensure that programs are still locally led? If research fails to support program thinking, how can we build better models of practitioner-research collaboration? If program thinking is shaped by long-term institutional history and organizational culture, what does that mean for the role of M&E in decision-making?

5.6 CONCLUSION

I have sought to provide a detailed examination of community dispute resolution programs. Drawing on numerous in-depth qualitative case studies, I suggested that practitioners need to pay much closer attention to a range of assumptions about how they unfold in practice. Given the findings of this paper, it would be naïve to think that future programs will change simply on the basis of this analysis and recommendations. Typically,

recommendations for new program approaches are disconnected from what we know about how aid organizations actually work on a day to day basis: they underplay the importance of political context, relationship building, and how different forms of information are really used. This often renders recommendations rather hopeful at best and useless at worst. I do not pretend to have all the answers. But I do hope this research offers findings which support critical reflection on program theories of change and ways of working.

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Annex 1: The evolution of The Asia Foundation's Theories of Change

The Asia Foundation has outlined theories of change for each of the programs discussed in this paper. Outlining these theories aimed to make explicit the rationale for the programs and offer the opportunity for critical reflection (Valters 2014). These aims and hypotheses are not static but have evolved over time. Looking at that evolution tells us something about how responsive program thinking is to contextual change. It also tells us something about how underpinning donor ideas and ideologies may find their way into theories of change, in part because that helps development organizations to secure funding (Mosse 2004).

Nepal

In Nepal, community mediation started from an 'access to justice' perspective, but over time began to be framed as a peacebuilding program. This in part reflects the changing context. The initial program was started in 2001 during the civil war. The initial assumption was that without adequate means to resolve disputes locally, local disputes would escalate and feed into the wider conflict. When Nepal's long civil war ended in 2006, The Asia Foundation broadened the emphasis of the program to include a peacebuilding framing. As Stein (2013) outlines, "the Foundation's implicit Theory of Change for community mediation shifted to more closely align with the goals of conflict transformation", and later came to be framed as aiming to improve social harmony and state-society relations (Lederach and Thapa 2010; Khanal and Thapa 2014). This was also tied to the Foundation's increased engagement with the prominent peacebuilding scholar John Paul Lederach (2003), an advisor to one of its funders, the McConnell Foundation. This culminated in an action research project which highlighted how mediation has moved on somewhat from its initial internationalist framing as 'interest-based', since it was interpreted and transformed through local Nepali culture (Lederach and Thapa 2010).

The Philippines

In the Philippines, The Asia Foundation's current conflict resolution theory and practice has developed through the iteration between research and practice over many years. In 2002, The Asia Foundation conducted a study which highlighted the fact that many perceived *rido* as the most imminent threat to their daily lives (Dayag-Laylo 2004). Based on this research, The Foundation received funding from USAID to set up a Conflict Management Unit, which sought to better understand the causes of *rido* and to design strategic interventions to prevent the escalation of conflict accordingly. In 2005, extensive research was conducted, together with partner organizations, into the causes and consequences of *rido*. This was to become a seminal piece of work for the Foundation as well as others in the field of conflict management. It found that the most successful conflict mitigation mechanisms had incorporated traditional mechanisms for conflict resolution within formal government structures, which set the ground for the Foundation to promote formal-informal collaboration as central to its conflict mitigation strategy. This is part of a broader 'coalition approach', whereby it supports "a broader network of civil society organizations and respected community-based leaders that can quickly, and in varying constellations, respond to outbreaks of hostilities" (Adam et al. 2014a: 22).

Sri Lanka

The Asia Foundation's programs started from an 'access to justice' perspective and have largely continued on that path for over 25 years. For the Ministry of Justice, the stated aim has always been to reduce court delays and provide a form of access to justice to people across the country. The Asia Foundation has largely aligned with that, arguing in early project documents that the aim of the program was first to reduce the number of cases going to the

backlogged courts and second, to provide 'access to justice' by developing an "informal, easily accessible and affordable dispute resolution system" that is "efficient and effective" (The Asia Foundation 1997). The Asia Foundation's aims and assumptions have been based on an interest-based mediation model,[56] which is to some extent imported, but has gained some degree of acceptance and credibility in the country. Over the years, the program's explicit aims were adapted, partly in relation to changing context, but also due to an important issue for donors – including conflict resolution writ large. Since the end of the war in 2009, The Asia Foundation has hypothesized that the mediation boards can improve social harmony and state-society relations, but has since recognized that these claims were over-ambitious.

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56. The country-specific guidance indicates it is "a process in which parties identify their needs and develop mutually satisfactory solutions to satisfy them" (Moore et al. 2011: 21).

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