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Snapshots of informal justice provision in Kaski, Panchthar and Dhanusha Districts, Nepal

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Acknowledgements

Acronyms

CMC	Community mediation committee	**PLC**	Paralegal committee
CPA	Comprehensive Peace Agreement	**SUSS**	Service to Underprivileged Sectors of Society
DFID	Department for International Development	**TAF**	The Asia Foundation
DRG	District Resource Group	**UNDP**	United Nations Development Programme
FGD	Focus group discussion	**UNICEF**	United Nations Children's Fund
IJM	Informal Justice Mechanisms	**UNOCHA**	United Nations Office for the Coordination of Humanitarian Affairs
JICA	Japan International Cooperation Agency		
JWAS	Janaki Women's Awareness Society	**VDC**	Village Development Committee
KII	Key informant interview	**WDO**	Women Development Office
LSGA	Local Self Governance Act	**WFP**	World Food Programme
MCMP	Madhesi Community Mediation Programme	**YCL**	Young Communist League
NGO	Non-governmental organisation		

Contents

Definitions

Anjuman A committee of three men from within the Muslim *Samaaj*, who are responsible for resolving a dispute within the Muslim community.

Arbitration Arbitration occurs when a third party to a dispute is granted formal or informal authority to resolve the dispute and decide the resolution on behalf of the disputants.

Tamudhi *Tamudhi* is a traditional system of dispute resolution in Gurung communities. Traditionally, the *tamudhi* is a group formed by the Gurung community to organise cultural functions and to involve members within their communities in group and dispute resolution activities. However, *tamudhi* practice has declined over the years, as the Maoist insurgency did not allow cultural and religious group activities.

Informal justice mechanisms Informal justice mechanisms (IJMs) are any non-state controlled process through which people provide justice, resolve grievances and disputes and in some cases promote peace. They include community-based informal systems of justice which have their roots in the cultural traditions of Nepal, as well as internationally supported dispute resolution mechanisms that derive their structure and operation from international standards for the provision of informal justice. While formal actors including the police, political parties and local authorities often play a role in resolving disputes through an informal approach that falls outside state laws, policies and frameworks, this report does not assess this type of involvement.

Internationally supported informal justice mechanisms For the purpose of this research, internationally supported IJMs are dispute resolution systems that are supported by the inter-national community and have been established and implemented by local and international non-governmental organisations (NGOs).

Maijan dewam *Maijan dewam* is a system of caste-based traditional dispute resolution in Madhesi communities in Dhanusha and neighbouring districts. Two caste leaders, a *maijan* and a *dewam*, oversee caste rituals for marriage and death and authenticate worship and ceremony through their presence and approval. Without the *maijan dewam*'s presence, cultural rituals lose their significance and are not considered valid by the greater community.

Mediation A dispute resolution system whereby a third party (usually a group of mediators) helps disputants reach a resolution on their own without enforcing, coercing, compelling, or pressuring them. The ultimate resolution is reached by the disputants themselves and not suggested or put forward by a third party.

Mukhiya A *mukhiya* is traditionally a position of cultural importance held by an influential Thakali elder who performs a variety of communal functions, particularly the observance and approval of marriages and the resolution of community disputes. The *mukhiya system* refers to the dispute resolution practices of the Thakali communities in the Mustang and Manang districts of Nepal, where the majority of the Thakali community resides.

Panchayat The term *panchayat* (council of five) was first used by King Mahendra to describe his system of local government. *Panchayat* historically referred to the administrative boundaries and local governments established under the king. The *panchayat* government had the authority to arbitrate disputes within the district and suffered from the same cultural biases as the Nepal state at that time. After the restoration of democracy in 1990, village *panchayats* were democratised and renamed 'Village Development Committees'. From 1990 until the

signing of the Comprehensive Peace Accord (CPA) in 2006, VDCs actively resolved disputes as they had under the *panchayat*, even though they did not necessarily have the state's mandate. During this time, *panchayats* were comprised of all locally relevant political parties that were present in the VDC. Now, even though local political parties hold no local government offices, they continue to resolve disputes as they have done historically in the *panchayat* system.

Pancha bhaladmi *Pancha bhaladmi* is a traditional informal justice system operating in areas of eastern Nepal. Traditionally, *pancha bhaladmi* were a fixed council of five elders from the community who would form in order to arbitrate disputes in their community. The committee was led by a *subba*, which was the historical title given to all *panchayat* leaders. Over the past 50 years, the *pancha bhaladmi* has changed significantly to include other authority figures and people within the community who are respected as impartial, fair, and educated.

Peacebuilding approach to justice A peacebuilding approach to justice seeks to ensure lasting resolutions through addressing issues relevant to a dispute relating to underlying causes of local and national conflict, the historical experiences of the disputants and divisions between groups. The term 'conflict transformation' can also be used to describe this kind of approach to justice provision.
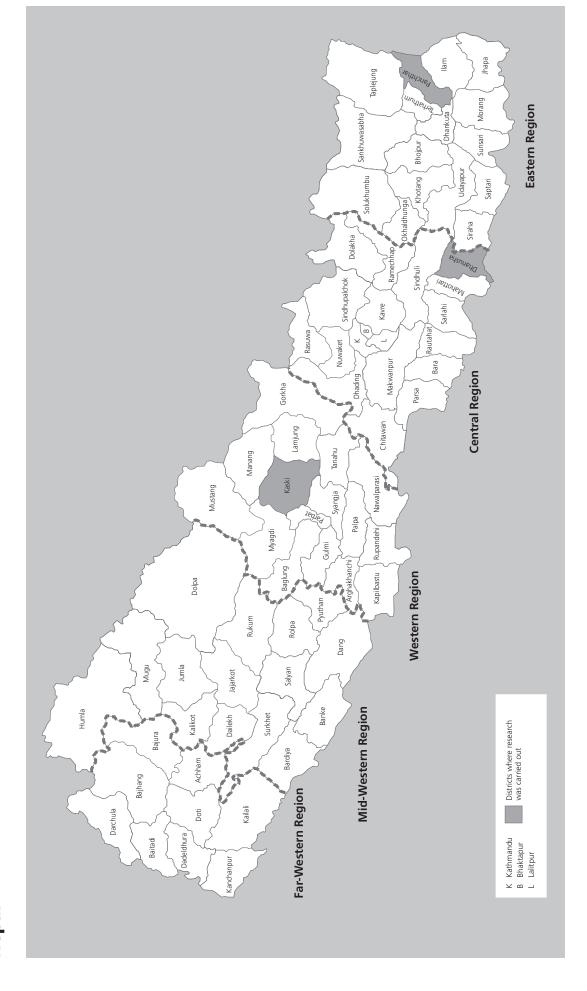
Reconciliatory approach to justice A reconciliatory approach to justice refers to the idea that parties involved in a civil or criminal case mutually agree on a solution that is acceptable to both sides, and is not based on the idea of there being a 'winner' and 'loser' or 'perpetrator' and 'victim'.

Retributive approach to justice A retributive approach to justice refers to the idea that perpetrators should be punished for committing a criminal or civil offence.

Samaaj A membership-based ethnic society. Since the end of the conflict in 2006, many ethnic groups have formed *samaajes* to obtain greater cultural and political recognition for their identities. As part of a growing drive in Nepal to have individual ethnic groups' customary laws recognised, many of these *samaajes* are actively providing dispute resolution services to members within their ethnic group, in accordance with their own customary laws. Due to the focus on customary law, *samaajes* often deal with intra-caste issues such as marriage and family-related disputes. However, some groups also deal with criminal cases, where they perceive that the formal justice sector to be lacking the capacity or resources to do so.

Traditional informal justice mechanisms Traditional IJMs are community-based informal systems of justice which have their roots in the cultural traditions of Nepal. Whether they are long-standing or were recently established, they are similar in that they are embedded within specific ethnic and/or caste cultural traditions and histories, and formed out of a shared set of communal values.

Village Development Committee Village Development Committees (VDCs) took over from *panchayats* in the 1990s and are the lower administrative part of the local development ministry. Each district has several VDCs, which are similar to municipalities but with greater public-government interaction and administration. There are 3,913 VDCs in Nepal and they are further divided into wards, the number of which depends on the population of the district. The purpose of VDCs is to organise communities structurally at a local level and create a partnership between the community and public sector for improved service delivery system. A VDC is an autonomous institution responsible for interacting with more centralised institutions of governance in Nepal. In doing so, VDCs are intended to give local communities an element of control and responsibility in development, to ensure proper utilisation and distribution of state funds and a greater interaction between government officials, NGOs and agencies.

Nepal

Eastern Region

Central Region

Western Region

Mid-Western Region

Far-Western Region

Taplejung
Panchthar
Ilam
Jhapa
Terhathum
Dhankuta
Morang
Sankhuwasabha
Bhojpur
Sunsari
Solukhumbu
Khotang
Udayapur
Saptari
Okhaldhunga
Dolakha
Ramechhap
Siraha
Sindhuli
Dhanusa
Mahottari
Sarlahi
Sindhupalchok
Kavre
Rautahat
Rasuwa
Nuwaket
K
B
L
Makwanpur
Bara
Dhading
Parsa
Gorkha
Chitawan
Lamjung
Tanahu
Manang
Nawalparasi
Mustang
Kaski
Syangja
Parbat
Palpa
Rupandehi
Myagdi
Gulmi
Baglung
Arghakhanchi
Kapilbastu
Dolpa
Pyuthan
Rukum
Rolpa
Dang
Jumla
Jajarkot
Salyan
Banke
Mugu
Kalikot
Dailekh
Surkhet
Humla
Bajura
Bardiya
Bajhang
Achham
Kailali
Darchula
Doti
Baitadi
Dadeldhura
Kanchanpur

Districts where research
was carried out

K   Kathmandu
B   Bhaktapur
L   Lalitpur

1

Introduction

1.1 Background

NEPAL'S JUSTICE SYSTEM is currently comprised of a complex matrix of formal and informal systems of justice. During the decade-long violent conflict between the state and the Maoist People's Liberation Army, in many areas traditional justice providers were replaced by either the Maoist People's Courts[1] under the People's Government[2], or the Royal Nepal Army. Since the end of the conflict and the signing of the Comprehensive Peace Agreement (CPA) in 2006[3], traditional justice mechanisms have re-emerged, creating a patchwork of ethnic and caste-based justice systems throughout Nepal. In addition, the international community has supported the establishment of 'new' informal justice mechanisms (IJMs) such as paralegal committees (PLCs) and community mediation committees (CMCs), in many parts of Nepal. The formal sector too has been reinstated as a provider of justice, also with support from the international community. In addition, ethno-political parties and political party youth wings have established their own parallel governance systems.

These different systems of justice often operate in isolation from one another, thus undermining their contribution to a holistic, comprehensive system of justice in Nepal. Exacerbating this problem, the country's ethnically diverse cultures possess a huge range of customary laws, dispute resolution mechanisms and land management systems which have so far proven difficult to integrate into a single national legal and judicial framework. There are currently no formal state guidelines defining the scope, mandate, and criteria for these different systems, nor providing a standardised definition of what 'mediation' constitutes. A national mediation bill was drafted in 2009 by the Ministry of Law and Justice, and passed in Parliament on 11 April 2011. However, at the time of writing the bill had yet to be approved by the President.

Despite the considerable number of informal and formal justice systems that currently exist in Nepal, previous research undertaken by Saferworld and partners has found that access to justice continues to be restricted for many people.[4] Nepal's geographic diversity, coupled with weak infrastructure, means that people are often unable – or cannot afford – to travel to the nearest police station or access other state services. Inadequate resources within the formal justice sector only exacerbate this problem and make the option of further decentralisation of services difficult.[5] In addition,

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1 Maoist People's Courts were disbanded with the signing of the CPA in 2006. The Maoist party now officially has no parallel state systems in operation; however, the Maoist Party and its affiliated organisations still informally resolve disputes across Nepal.

2 Parallel system of government established by the Maoist Party in the areas they controlled during the conflict

3 UN Office for the Coordination of Humanitarian Affairs (OCHA) and the World Food Programme (WFP), *Impact of the Conflict and Priorities for Assistance* (2007), available at www.un.org.np/reports/WFP+OCHA/2007/alternative-download-link_for-page1-12.pdf.

4 Antenna Foundation Nepal (AFN), Equal Access Nepal, Forum for Women, Law and Development, Institute for Human Rights and Communication Nepal, International Alert and Saferworld, *Security and justice in Nepal: District Assessment Findings*, (2010).

5 *Ibid*.

politicisation and corruption within the government in some cases seeps into state services and casts doubts over the impartiality of decisions, and discrimination against marginalised groups is also sometimes a concern.[6] Although informal justice systems, particularly traditional justice mechanisms, are based at the community level in remote areas where the formal sector is not present and therefore offer people living in these areas access to some form of justice, the accountability and effectiveness of these systems is often questionable. Many reportedly discriminate against marginalised groups, are politicised and corrupt, use arbitral methods of dispute resolution which perpetuate conflict dynamics, and operate outside of internationally recognised human rights norms and international and Nepali justice standards and frameworks.[7]

Comprehensive and in-depth information on the different informal justice systems that exist across each district of Nepal is not currently available. While the international community has recently conducted research into different traditional justice mechanisms in some districts,[8] more information is needed on how different IJMs in all districts co-ordinate with each other and the formal sector, how they function, their structure and operational processes, community perceptions towards them, to whom they provide justice (i.e. which groups in the community) and their transparency, inclusiveness and effectiveness.[9] This information is needed in order to inform policy and programming on informal justice and to better understand how it can connect with the formal sector and contribute to a broader system of justice.

To respond to this gap in information, Saferworld undertook initial research in three 'snapshot' districts: Kaski, Panchthar and Dhanusha.[10] The research sought to:

1. Map what informal justice actors actually exist at the district level and how they operate

2. Assess the effectiveness of the main informal justice mechanisms mapped

3. Provide initial recommendations for how the government, security and justice agencies, the international community and civil society can strengthen policy and programming on informal justice in Nepal, and strengthen the informal justice sector's contribution to a broader system of justice.

1.2 **Report structure**

The remainder of section 1 provides a summary of the methodology used in the research, and sets out the criteria used to assess the different informal justice mechanisms mapped. Sections 2, 3 and 4 provide mappings of the informal justice systems and assessment of the key IJMs in Kaski, Panchthar and Dhanusha respectively. Each district chapter maps the different informal justice providers that are currently active in each district, and that were specifically researched during the field work. This mapping covers geographical coverage, operating functions and processes, and the approach to and understanding of justice provision. Following on from the mapping section in each district chapter, an assessment of the informal justice systems identified in each district is provided, based on the assessment criteria outlined below. Where not enough information has been gathered during field research to provide a fully informed analysis, some initial analysis of these systems is given in the assessment section.

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6 Saferworld, *Treading Water? Security and Justice in Nepal in 2009*, (2010).

7 Saferworld, *Internal Mapping on Informal Justice Mechanisms in Nepal*, (2010). This mapping consisted of interviews with key actors working on the provision of justice in Kathmandu and in Jhapa, Kailali, Surkhet, Ilam, and Banke.

8 For example United Nations Development Programme (UNDP), *Access to Justice during the Armed Conflict in Nepal*, (2005) and DanidaHUGOU, *Analysis of Informal Justice Systems and Human Rights in Nepal*, (2008).

9 The need for this information was confirmed during consultations with the international community, civil society, and the government as part of research undertaken by Saferworld between September 2009 and March 2010 on the different actors working on informal justice in Nepal. *Op cit*, Saferworld, *Internal Mapping*, 2010.

10 Parallel to this research and in the same three districts, Saferworld also conducted research which focused explicitly on the international community's support to informal justice mechanisms. Recommendations for strengthening support were set out in Saferworld, *Justice should be blind, but is the international community's support to informal justice mechanisms in Nepal given blindly?* (2010).

Section 5 describes the main findings across all districts. The report concludes with recommendations targeted at the international community, government, security and justice providers and civil society for strengthening policy and programming on informal justice in these districts and at the national level, and for strengthening their contribution to a broader system of justice in Nepal.

<table>
<tr><td>1.3
Methodology</td><td></td></tr>
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1.3 Methodology

The information contained in this report is based on research undertaken in the districts of Kaski, Panchthar and Dhanusha in September and October 2010. These three districts were selected because of their geographic and demographic differences, and the presence of traditional justice mechanisms and internationally supported IJMs and other informal justice systems in each district.

In each district, Village Development Committees (VDCs) were selected on the basis of whether traditional justice systems, internationally supported IJMs and other informal justice systems were all present, in order to provide a detailed mapping of functioning IJMs as opposed to explicitly focusing on a particular mechanism. In addition, both VDCs with and without police posts were selected in each district in order to assess collaboration between formal and informal mechanisms.

The following research activities were undertaken:

a. Key informant interviews (KIIs) with providers of informal and formal justice

■ 45 interviews were conducted with providers of formal and informal justice at the district and VDC level across the three selected districts – including security and justice agencies (the police, courts, judiciary), political parties and youth wings, leaders from traditional justice systems, representatives from internationally supported IJMs, community-based organisations, local authorities and Local Peace Committees.

■ 14 interviews were conducted with other key stakeholders who are not directly involved in the provision of formal and informal justice – including social workers, teachers and civil society representatives at the district and VDC level across the three selected districts.

■ 13 interviews were also conduced with donors, I/NGOs and government bodies involved in the provision of informal justice in Kathmandu

b. Focus group discussions (FGDs) with users of justice systems

■ 18 focus group discussions were held with users of informal and formal justice systems at the VDC level across the three selected districts. Separate focus group discussions were held with youth, women, and groups of both men and women

c. One-to-one semi-structured interviews with users of justice systems

■ 34 one-to-one interviews were held with community members who have used particular informal and formal justice mechanisms across the three selected districts, in order to collect more information on how they function and to assess them. The community members selected for interview were identified through the focus group discussions.

IJM users consulted through both the focus group discussion and one-to-one semi-structured interviews were asked to reflect on the types of disputes in their area, how they are resolved by particular justice systems, their preferences and priorities in terms of dispute resolution, the positive and negative attributes of current formal and informal justice systems, and the history of dispute resolution and justice provision in their area. Justice providers consulted through key informant interviews were asked

more in-depth questions about how and to whom they provide justice, systems and processes in place, how they co-ordinate with the different systems, and how they understand conflict and justice within their communities.

A full list of interviews and focus group discussions is provided as annex 1.

1.4 Assessment criteria

This report does not seek to provide an evaluation of the informal justice systems outlined in this document. Rather it provides a detailed mapping of the different informal justice systems operating at the district level in Kaski, Panchthar and Dhanusha. This includes information on how they operate, their structure, to which groups they provide justice, their geographical coverage and how long they have been operating for. In addition, the report assesses key informal justice mechanisms in each district, based on the following four criteria:

a. Accessibility

This refers to the different characteristics that directly affect the ease or efficiency with which IJMs can be accessed by users, namely:

- The cost of using the informal justice system, in terms of paying fees and/or bribes
- The distances that users have to travel in order to access the informal justice system
- The length of the process and the amount of time which both users and providers are required to devote to it
- Other factors that are prohibitive to certain users, such as language and cultural differences.

b. Quality

Measuring the quality of different IJMs is complex given that people's interpretation of effective 'justice' is highly dependent on context and determined by a whole range of cultural and social values. Recognising that not all interpretations of justice are in line with human rights norms and values of inclusivity, accountability and transparency, and to ensure a standardised approach is taken,[11] the quality of IJMs was analysed based on the following set of criteria:

- **Quality of the mediation approach used.** The extent to which users choose voluntarily to participate in the process, and reach and agree to a resolution on their own through mediation without being pressured or coerced through arbitration. From Saferworld's experience, mediation is preferable to arbitration because the latter is more likely to undermine peacebuilding by exacerbating divisions between groups who feel they have decisions forced on them, possibly unfairly.

- **Non-discrimination against, and empowerment of, marginalised groups.** The extent to which systems are unbiased in the process of justice provision, and do not discriminate against users on the basis of gender, ethnicity, caste, age, sexual orientation, political associations, or any other affiliation. In addition, the extent to which the system empowers communities – and particularly women, lower castes and marginalised ethnic groups – to resolve conflicts and disputes and hold justice providers accountable.

- **Non-politicisation.** The extent to which outcomes are free from influence by political parties.

- **Compliance with national and international judicial codes of conduct.** IJMs will be assessed in terms of the extent to which the system focuses on civil disputes, and refrains from resolving criminal cases including rape[12] and murder, which should

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11 Ewa Wojkowska, *Doing Justice: How informal justice systems can contribute*, (UNDP Oslo Governance Centre, 2006), p 10.
12 The Marital Law (2001) and the Nepal Country Code state that marital rape, as well as extra-marital rape, is illegal.

be referred to the formal sector, as articulated in national and international justice policies.[13] In addition, whether IJMs use a retributive or reconciliatory approach to justice will be assessed. Saferworld's experience and expertise on conflict sensitivity (see below), suggests that a reconciliatory approach to justice is preferable to a retributive approach, as the latter can exacerbate tensions, create divisions between groups and deepen local conflict dynamics. A reconciliatory approach can be more sensitive, promote peacebuilding, and have a longer term impact by addressing the underlying causes of conflict.

■ **Compliance with internationally recognised human rights norms.** This entails measuring the extent to which IJMs refrain from use of physical punishment, promote the right to a fair trial and presumption of innocence, and enshrine principles of equality, freedom and fairness.

■ **Accountability, monitoring and evaluation.** The extent to which the systems are accountable to a legal code, operate in line with agreed international and government policies and frameworks, are monitored regularly and subject to a comprehensive review.

c. Integration and co-ordination

How well IJMs co-ordinate and integrate both with other informal justice systems and with formal justice systems. This is based on the assumption that integration and co-ordination of justice systems is positive as it ensures that they are working alongside other justice providers in the community to contribute to an overall system of justice, and not creating competition between justice providers.

d. Conflict sensitivity[14]

This means assessing IJMs' understanding of, and impact on, local and national conflict and power dynamics. Specifically, IJMs were assessed in terms of how they have exacerbated or sought to address the following drivers of conflict: the exclusion of marginalised groups, grievances between groups persisting from the national conflict, competition over access to natural resources, weak governance, politicisation, access to justice, and implementation of the CPA.

Assessing the IJMs' response to the exclusion of marginalised groups is particularly important in the Nepali context. Justice systems have historically been inaccessible to marginalised communities, or have discriminated against them as part of a greater pattern of social exclusion within Nepal. Researchers paid particular attention to disputes where gender, ethnicity, age and/or caste identities could have played an influential role, and asked a wide range of questions to determine how aware the local justice providers are of connections between local disputes and underlying causes of conflict. For internationally supported IJMs in particular, researchers focused on determining whether users and justice providers had been trained to address discrimination and promote inclusivity, and whether they are resolving disputes in an impartial manner.

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13 The 2006 Comprehensive Peace Agreement (CPA), and Article 16 of the 1991 Interim Constitution, as well as the International Covenant on Civil and Political Rights (ICCPR), all stipulate that exclusive power should be given to the state to execute judicial authority. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), under Article 2, stipulates that the state has the responsibility to eliminate all forms of discrimination against women, which includes ensuring they have fair access to justice.

14 Conflict-sensitivity entails 1) understanding local conflict dynamics; 2) analysing the potential effects of a project or programme on these conflict dynamics (and vice versa), as well as how the project will impact on different groups; and 3) ensuring that any actions undertaken do not aggravate conflict dynamics, avoid negative impacts and maximise positive effects. For more information on conflict sensitivity and the tools required to analyse the conflict context, see APFO, CECORE, CHA, FEWER, International Alert and Saferworld, *Conflict-sensitive approaches to development, humanitarian assistance and peacebuilding: A resource pack*, (2004).

2

Informal justice mechanisms in Kaski

2.1 District background

KASKI'S ETHNIC MINORITIES have historically been closely associated with the Nepali state and sit high in the caste hierarchy (particularly in comparison with Panchthar and Dhanusha). According to the 2001 census, Kaski's population is 45 percent Bahun/Chhetri and has a significant minority population of Gurung (18.14 percent), Thakuri (1.26 percent), Magar (6.18 percent), Newar (5.29 percent), and Dalit castes (less than 10 percent).[15] Because many of these ethnic groups were able to benefit from Gurkha employment and other economic opportunities, they are more organised in their demands for ethnic autonomy and representation.

There are numerous examples of ethnic communities forming *samaajes* (societies) in Kaski in order to lobby for their demands, namely for representation, communal rights and provisions, and affirmative action policies. Communities have even begun to register their traditional justice systems as national NGOs: the Tamudhi, a Gurung-based society described below, is one such example. Gurung, Chhetri, Thakali, Magar, Dalit, and Muslim *samaajes* were all found to be active in Kaski and provide dispute resolution mechanisms within their communities. These mechanisms are partially provided for ethno-political reasons and partially to fill a gap in justice provision; they represent different ethnic groups' desire for judicial reform and a justice system that is sensitive to their historical differences and cultural customs. Saferworld researchers found a wide range of Magar, Thakali and Gurung traditional justice mechanisms including *panchayats*, *mukhiyas*, and *tamudhis* actively in use in both urban and rural areas.

Kaski was comparatively unaffected by the civil war. Pokhara Municipality remained in the control of the Nepali government but the rural regions experienced frequent insecurity with "moderate impacts on livelihood".[16] Maoist People's Courts formed sporadically in Kaski during the conflict, but the Maoists did not establish formal parallel government systems anywhere in the district. During the conflict, the Maoists prevented people from practising their traditional IJMs and other cultural activities that were seen to be 'counter-revolutionary'. However, as Maoists mobilised people along ethnic lines, many ethnic groups developed an awareness of their communal rights and histories during and as a result of the conflict. This led to the rapid establishment of various *samaajes* in the post-conflict era.

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15 Intensive Study and Research Centre, *District and VDC Profile of Nepal – 2010, A Socio-economic Database of Nepal*, (2011), pp 470–471.
16 *Op cit*, UNOCHA and WFP.

During the conflict and in the late 1990s, both UNDP and later UNICEF and The Asia Foundation (TAF) began to implement informal justice programmes in Kaski. TAF began implementing community mediation committees (CMCs) with local partner Service to Underprivileged Sectors of Society (SUSS). UNDP started implementing Women Judicial Forums in partnership with Jeet Kaski. At the end of the conflict these were taken over by UNICEF and transformed into PLCs. Both the TAF and UNICEF programmes are mainly being implemented in accessible areas close to major roads although some CMCs and PLCs have also been established in remoter VDCs. Kaski has a better infrastructure than either Panchthar or Dhanusha, meaning that internationally supported IJMs are able to reach more remote areas.

As in Panchthar and Dhanusha, reliance upon the informal justice system reflects the perceived failure of the formal sector to respond efficiently, fairly and effectively to cases as a result of inadequate resources, infrastructure and weak capacities.[17] Police posts are primarily situated along main roads: posts in more remote areas were destroyed by the Maoists or abandoned during the insurgency. In many VDCs, such as Armala, there are currently no rebuilding efforts taking place nor plans to establish another police post.[18] A representative from the Kaski District Police attributed this to the resource constraints faced by the district police offices and lack of police presence at the VDC level.[19]

2.2 Mapping of key informal justice providers

2.2.1 Internationally supported informal justice mechanisms

Service to Underprivileged Sectors of Society (SUSS) Community Mediation Centres (TAF co-ordinated)

TAF currently works through five NGO partners to implement local-level dispute resolution mechanisms in 14 districts of Nepal. As of September 2010 the programme had successfully mediated over 14,500 disputes.[20] TAF's programme is closely integrated with VDCs in each district.[21]

In a 2005 strategic planning meeting TAF and the five partner NGOs, along with adviser John Paul Lederach, identified the need to better understand the evolution of community mediation practice. As a consequence of this meeting, in 2007 a partici-patory action research method was chosen to understand the impact that community mediation programmes can have on local communities. TAF subsequently refocused the project from an 'access to justice' and 'dispute resolution' programme to a 'conflict transformation'[22] programme, which requires people to think about the processes needed to change and transform conflict, how to recognise and encourage these processes, and how to build better relationships within communities and increase justice. TAF's 'interest-based' approach to mediation, focuses on the discovery, under-standing, and respect for the needs and interests of all parties involved in a dispute, and takes account of the larger national conflict dynamics,[23] thus seeking to operate in line with principles of conflict sensitivity.

17 FGD with male and female users from VDC with TAF CMCs and UNICEF PLCs but without police posts, Rupakot VDC, Kaski (27/09/10).

18 KII with police officer, Pokhara Municipality, Kaski (26/09/10).

19 *Ibid*.

20 The Asia Foundation, "Nepal Overview", available at http://asiafoundation.org/country/overview/nepal.

21 In early 2002, TAF supported the Ministry of Local Development in developing comprehensive plans for the pilot introduction of local-level dispute resolution under the 'Local Self Governance Act' (LSGA) 1999. The LSGA contains clauses that provide judicial rights to local government bodies covering alternative dispute resolution, but the LSGA provision for mediation has not been implemented because the Nepal Government has not published a notice in the Nepal Gazette to lift the embargo (clauses 33 and 101).The local elected bodies were dissolved in mid 2002 which posed special challenges for engaging local government in any substantive manner. As a result of this, TAF decided to work through NGO partners. The LSGA contains clauses that provide judicial rights to local government bodies covering alternative dispute resolution, but the LSGA provision for mediation has not been implemented because the Nepal Government has not published a notice in the Nepal Gazette to lift the embargo (also clauses 33 and 101).

22 Email exchange with TAF representative, 11/04/2011.

23 Dr Hamid Sharif, *Investments in alternative dispute resolution systems*, (TAF, 2005), available at http://jrn21.judiciary.gov.ph/forum_icsjr/ICSJR_TAF%20%28H.%20Sharif%29.pdf.

The first TAF co-ordinated CMCs in Kaski were established in 2004 by TAF's local implementing partner, Service to Underprivileged Sectors of Society (SUSS). SUSS CMCs are currently being implemented in seven VDCs and two municipalities.[24] The CMCs in Kaski roughly share the same model and operating modality as the CMCs being implemented by Pro-Public in Dhanusha, described in section 4.

Mediators are selected with the participation of the community. TAF has sought to recruit local traditional leaders as mediators and include them in the mediation training where ever possible, in order to strengthen integration and co-ordination between the CMC and the traditional justice mechanisms. Once selected, mediators then participate in an initial training lasting eight days, followed by a series of three-day refresher trainings and advanced trainings, as follows:

■ Eight-day training on mediation for 18 mediators selected by the community in each VDC

■ Eight-day training on mediation for nine mediators in each VDC; mediators are selected by the VDC Secretary and must represent each ward

■ Four-day advanced training on mediation for all mediators from each VDC who have participated in the trainings listed above, after approximately three to six months of intensive hands-on practice

■ Three-day refresher mediation training on conflict transformation and peacebuilding concepts for all mediators in each VDC

■ Four-day group conflict-resolution training for two mediators from each VDC who have the most competent understanding of the mediation, 'win-win' and 'interest-based' theories, and can therefore explain the training to other mediators in their VDC upon their return

■ One-day accounts training for a couple of selected mediators including the CMC co-ordinator

■ Two-day appreciative inquiry training to all mediators from each VDC

■ Four-day gender-based violence training to seven community mediators, who are nominated by the VDC members of the CMC

■ Ten-day performance art training for two mediators as nominated by the VDC members of the CMC. This training is delivered by Gurukul, a Kathmandu-based NGO that works on street and forum theatres.

The length and breadth of trainings provided reflect TAF's comprehensive approach to mediation practices but also illustrates their efforts to integrate a 'conflict transformation' or peacebuilding approach into their programming. In certain cases, VDC secretaries are selected to participate in the trainings.

Initially only 18 mediators are selected by the community, with more selected and trained according to need. Further follow-up trainings are then given to the mediators by TAF in order to build upon the 'conflict transformation' aspect of the programme and enhance its conflict sensitivity. After successive trainings, research found that three trained mediators were present in each ward.

The CMCs are also highly integrated into the VDCs' framework. Research confirmed that a list of CMC mediators for disputants to choose from is present in the offices of each VDC. Although the first point of contact for approaching CMCs for dispute resolution can be a mediator, it is required that disputants visit the VDC office to request a mediator via the VDC co-ordinator. The co-ordinator collects brief details about the case and then asks the disputant whom they would like to mediate the case. The co-ordinator then meets with the other disputant, notes down their side of the story, and asks them to appoint a different mediator. The two appointed mediators are

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24 Arbabijaya, Bharatpokhari, Dhampush, Dhikurpokhari, Hemja, Kristinachechaur, Rupakot VDCs and Lekhnath and Pokhara Municipalities.

then selected to resolve the case along with a third mediator whom the VDC believes to be impartial and effective.

Mediation sessions begin with an explanation of the entire process, including what mediation is and the role of the mediator. Then in the second phase, disputants sit side-by-side facing the mediators and take turns to retell the story of their dispute. In the third phase, the mediators ask both sides to state their understanding of the other's interests and perspectives. Finally, in phase four, disputants work together to create a solution that fits both parties' needs and interests. At the end of the process, if a resolution has been reached, both sides are given an agreement which is signed by the mediators and the disputants. If a resolution has not been reached, mediators will try the process again at a later time.

TAF has developed a highly specialised vocabulary for this process, which favours colloquial Nepali words over technical and professional jargon.[25] For example, disputants are referred to as 'parties' to discourage 'win-lose' approaches to disputes and promote the reconciliation process and a conflict transformation approach.[26]

The most common types of cases mediated by SUSS CMCs in Kaski are family and land disputes. Marital disputes were reported to be a key problem throughout Kaski due to the rise in polygamy. This was confirmed by other IJMs and actors in the formal sector during the research. Mediators reported that they had resolved several separation cases by helping the couple to agree on the division of assets, but in cases where the couple have a lot of assets, the case is often referred to formal courts. Mediators said that in divorce cases, the married couple usually preferred to resolve their issues within the CMCs and not file for official divorce with the VDC, either because of the social stigma or due to "paperwork hassle".[27] SUSS-trained community mediators also reported that they had resolved and mediated gender-based violence cases in a few instances, for example in Bharatpokhari VDC, where the disputants were unwilling to involve the police and courts. Otherwise criminal offences are usually referred to the formal sector, as there appeared to be a clear understanding within the CMCs on the distinction between civil and criminal cases and the need to refer all criminal cases to the police and courts in order to comply with international and Nepali policy and justice standards.[28]

UNICEF Paralegal Committees

UNDP first started implementing their women-focused PLC programme as an anti-trafficking programme in the late 1990s, when sex trafficking in Nepal was at its peak. The PLC programme now addresses issues including gender-based violence, domestic disputes, divorce, alimony, child support, child trafficking and child labour. Towards the end of the conflict, when trafficking became less of a priority issue, UNICEF in partnership with Women Development Offices (WDOs) took over the management of the programme from UNDP and reorganised the existing forums into the current PLCs in almost all of the original VDCs, as well as new ones. The programme is now set to expand from 713 PLCs in 23 districts to 1,300 across all of Nepal's 75 districts, through DFID's support and funding. Committee sizes, structures, and procedures in Kaski PLCs are designed to be the same as in Panchthar and Dhanusha (see sections 3 and 4).

UNICEF is currently implementing PLCs in 30 out of 45 VDCs[29] and two municipalities in Kaski. As such, they have a significant reach across the district. The PLCs in Kaski

25 Participatory action research undertaken by TAF in 2007 identified the following words to be appropriate for conveying key concepts around mediation: *kasaiko pakcha naline* (neutrality) *aadar* (respect), *samman* (honour), *dhairya* (patience), *surachit mahasus garnu* (feel secure), and *samaan byawahar* (equal behaviour or treatment).

26 KII with TAF representative, Kathmandu (11/04/2011).

27 FGD with TAF trained mediators, Rupakot VDC, Kaski (27/09/10).

28 FGD with TAF trained mediators, Bharatpokhari VDC, Kaski (30/09/10).

29 ArbaVijaya, Bhachok, BhadaureTamagi, BharatPokhari, Chapakot, Deurali, Dhampus, DhikurePokhari, Dhital, Ghachok, Hansapur, Kahun, Kalika, Kaskikot, Lahachok, Lumle, Machhapuchchhre, Mauja, Mijuredada, Nirmalpokhari, Pumdibhumdi, Puranchaur, Rupakot, Saimarang, Salyan, Sarangkot, Sildujure, Thumakodada, Thumki and Valam VDCs.

were initially established by UNDP as Women Judicial Forums in order to combat trafficking of women and children during the conflict. During this time, Jeet Kaski conducted initial trainings on mediation and various laws concerning trafficking, domestic violence, and gender-based violence.

The paralegal programme is broken into committees at different levels. Ward level committees are comprised of seven members, who receive a total of 18 days training delivered in three phases. VDC-level committees are comprised of 10–15 members: 13 members representing each ward in the VDC, one representative from the VDC Secretary's office and one representative health post and/or other important social actors within the VDCs. Reflecting the programme design, these committees comprise women from different groups in the community and must include women from marginalised groups. Initially, these committees receive a 16-day training on women's rights, Nepal's legal code, marriage and divorce laws, the formal sector responsibilities and systems for referring between the PLC programme and the formal sector. This qualifies them to resolve disputes and provide advice to women to support them to access the formal sector through education and referral, in addition to the initial three-day ward-level committee trainings. They also receive three-day[30] refresher mediation trainings. However interviewees explained that these refresher trainings happen irregularly due to resource constraints.[31]

At the district level, a 15-member committee called the District Resource Group (DRG) promotes women's access to the formal justice sector by counselling women on their legal options, ensuring that victims have taken the necessary steps to pursue legal action and supporting women currently undergoing court cases at the district level. For example, the PLCs inform women who have been a victim of rape that under Nepali law that they must have a medical examination and file a police report within a stipulated time or they will not be able to pursue legal action against the rapist. The DRG is also responsible for training VDC-level committees and overseeing their work. In Kaski, the VDC-level committees are supported and monitored by the DRG together with the WDO in Pokhara, which houses the DRGs. Monitoring reports are shared with UNICEF. The DRGs are comprised of social workers, activists, lawyers and local authorities where relevant. The exact composition of the DRGs varies by district, but in Kaski the DRG is comprised of five social workers and activists, five lawyers, and one representative from the WDO.

The ward-level committees are designed to be the first point of contact for women experiencing disputes and discrimination. The ward-level committees attempt to resolve cases themselves through mediation (unless the case is criminal in nature, in which case it should be immediately referred to the police, and the DRG will assist the person with legal support and other services). Disputants are educated on their basic rights and encouraged to come to a mutual understanding and respect for the other party's rights. Upon resolution of the dispute, they receive a signed paper agreement for that often states that the guilty party will not repeat their mistake again in the future. PLCs are not allowed to fine or punish disputants, but do make a disputant pay the other disputant's medical bills where necessary. If ward-level committees are unable to resolve the case, it is then referred to the VDC-level committee who will also attempt mediation. When a dispute is brought to the VDC-level committee, a committee member calls for a meeting to be held in either the VDC office or in any committee member's house. If that fails, then the case is referred to the police or district-level courts, depending on its nature.

Users and committee members reported that Kaski's PLCs mainly deal with sexual and gender-based violence, divorce settlements and family disputes. PLC members

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30 Note that in Kaski two VDC-level committees recently received a three-day training as opposed to the 18-day training received by VDC-level committees in Panchthar. This is because the PLCs in Kaski were established before those in Panchthar, meaning that VDC-committee members in Kaski already received the comprehensive 18-day training in the past and now receive refresher three-day trainings.

31 KII with WDO representative, Pokhara Municipality, Kaski (30/09/10).

interviewed in the different VDCs stated that alcohol and drug abuse are the greatest concerns to their personal safety, and the underlying cause of conflict in their communities.

It is important to recognise that although the PLCs do mediate and refer cases, and this aspect of the programme is the key focus of this report, their mandate is more broadly to raise awareness on children's and women's rights in order to 'break a culture of violence' and facilitate and promote access to justice. As such, their activities include:

1. Advocacy and awareness-raising at the community level on children's and women's rights

2. Early detection of at-risk women and children and provision of local solutions where possible

3. Case management through local mediation or referral to district-level authorities

4. Promotion of access to justice

5. Monitoring and reporting (submission of data regarding the number and type of cases recorded/managed/mediated/referred to the UNICEF's Women and Children Offices).

2.2.2 Traditional informal justice mechanisms

Tamudhi Nepal

Tamudhi is currently present in many parts of rural Kaski (as well as in other neighbouring districts). An example of this is the NGO Tamudhi Nepal, the stated primary purpose of which is to protect, preserve and promote Gurung (Tamu) culture and language. Tamudhi Nepal also provides dispute resolution to its community, and seeks to ensure that Gurung rights be guaranteed by the state and the new constitution, which is still in the process of being drafted. There are approximately 37 branches of Tamudhi Nepal across Nepal. In Kaski, Tahmudhi Nepal predominantly reaches Gurung communities in less remote areas that are accessible by road.

Tamudhi Nepal's dispute resolution services are provided in line with international human rights norms and reconciliatory approaches, and they have been trained in mediation techniques by SUSS within TAF's framework.[32] Tamudhi Nepal mainly works on financial, land, family and marital disputes, and in general does not resolve criminal cases.[33] They have also been called in to resolve disputes that are political in nature, for example in one instance, they were asked to join a committee of leaders of different political parties when a heated dispute arose between the Maoist-affiliated student union and Manipal Teaching Hospital in Kaski. Tamudhi Nepal was one of the key players in striking a compromise that resolved the dispute successfully.[34]

Thakali *samaaj*

In Kaski, as in other districts to which Thakali communities have migrated, a Thakali *samaaj* system has emerged as the main traditional justice system. The system is built upon the principles of, and has semi-formalised, the *mukhiya* system. The Thakali *samaaj*'s primary focus is the preservation and promotion of Thakali cultural history and custom, and it believes the *mukhiya* system to be a unique and important part of Thakali customary law and key to securing Thakali rights within a new Nepali state.

Historically, *mukhiyas* handled all types of cases, both criminal and civil. However, in 2007 the Thakali *samaaj*, like the *mukhiyas* in Mustang and Manang, placed restrictions on the system so that it only handles civil cases. Representatives from the Thakali *samaaj* reported that they had received mediation trainings from UNDP and therefore had the skills required to mediate in court or as part of court-referred mediation.

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32 KII with Tamudhi Nepal representative involved in justice provision, Pokhara Municipality, Kaski (29/09/10).

33 KII with Tamudhi Nepal district representatives involved in justice provision, Pokhara Municipality, Kaski (29/09/10).

34 KII with a police officer, Pokhara Municipality, Kaski (26/09/10).

However, they reported that they have not done so because they do not fully trust the formal sector, and feel that they still need more knowledge of mediation techniques and updated information about national laws. In addition, two Thakali *samaaj* members who had received the UNDP training were no longer living in Nepal. The Thakali *samaaj* limit their services to Thakali community members, as one of their key objectives is to preserve and protect Thakali culture. The Thakali *samaaj* predominantly serves Thakali communities based in urban areas in Kaski.

When a dispute arises within Thakali communities, disputants will request the president or vice-president (who are in some cases descendents and relatives of the *mukhiyas* in Manang and Mustang) of the Thakali *samaaj* to help them by presenting him with a bottle of local alcohol wrapped in a *khata* (a ceremonial shawl). The president or vice-president then calls both disputing parties and discusses the dispute with the heads of families, both male and female. The president and/or vice-president may also call on the disputants' family members and neighbours. After the president or vice-president has reached a decision, he or she[35] will arbitrate and decide which party is at fault. According to the Thakali *samaaj*, the guilty party may have to pay compensation but will never be physically punished or incarcerated.

Muslim *samaaj*

The Muslim community in Pokhara has also formed a *samaaj* to provide justice to its community based on Koranic law. The Muslim *samaaj* is limited to Pokhara Municipality and has only resolved cases within Pokhara's 3,000-strong Muslim community. Muslims will bring their disputes to the community's imam, who then calls an *anjuman* – a committee of three Muslim men from within the community, who are responsible for resolving the dispute.[36] The *anjuman* then listens to disputants and helps them resolve their issues. While the imam of the community reported that decisions were mediated, he also stated that disputants who did not adhere to the *anjuman*'s decision would be ostracised by the community.[37] This suggests that the *anjuman* is largely arbitral in nature.

The *anjuman* mainly resolve cases relating to marriage and disputes within and between families. The imam interviewed claimed that there was no domestic violence within the community, but if women had a problem in a marriage they would often take their family to meet their husband's family in order to resolve the issue.[38] The practice of reporting domestic violence to outsiders is considered to be culturally inappropriate within Muslim communities in Nepal.

Muslim *samaaj* feel that the state should provide the Muslim population of Nepal with specific laws that accommodate some of their cultural and religious practices.[39] For instance, child marriage is illegal in Nepali law but according to Muslim religious practice in Nepal, girls and boys can be married between the ages of 9–14.

2.2.3 **Other informal justice mechanisms**

Political-ethnic *samaajes*

Pokhara, as one of Nepal's most developed cities, is currently a centre for debate and discourse for many of Nepal's ethnic groups who trace their homelands to mid-western Nepal. There now exist in Pokhara alone separate *samaajes* for Gurungs, Thakalis, Chhetris, Dalits, Muslims, Magars, among others.

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35 Usually he although there are some women active in the Thakali *Samaaj* board of members.
36 KII with local imam, Pokhara Municipality, Kaski (24/09/10).
37 KII with local Muslim religious leader, Pokhara Municipality, Kaski (24/09/10).
38 FGD with male members, Muslim *samaaj*, Pokhara Municipality, Kaski (24/09/10).
39 FGD with male and female Muslim users in a municipality with multiple internationally supported IJMs, Pokhara Municipality, Kaski (24/09/10).

Some of these *samaajes*, like the NGO Tamudhi Nepal, have reformed their traditional dispute resolution systems in order to bring them in line with international justice standards, despite the fact that traditional customary law continues to play an influential role in the way in which disputes are adjudicated. Informants from these *samaajes* stressed their emphasis on "unbiased, voluntary, and mediated resolutions".[40] Other ethnic *samaajes*, such as the Thakali and Magar *samaajes*, have re-imagined their traditional justice mechanisms as 'traditional mediation' and like Tamudhi Nepal have received mediation trainings from various NGOs and international institutions, including UNDP and SUSS. There is also a growing drive to officially register these systems as NGOs or community-based organisations with the Nepali government as a way to push for greater autonomy and state recognition just as Tamudhi Nepal have done. Each group is primarily concerned with the advancement of their own ethno-political objectives. Reflecting their efforts to maintain cultural and ethnic autonomy, *samaajes* often resist collaborating with other *samaajes*, NGOs or internationally supported IJMs. For example, in one instance, a Thakali *samaaj* representative reported that his community was divided between "true" Thakali who supported the *samaaj* and used its services and others who "acted" Thakali. According to his account, the local SUSS CMC was run by those he considered "outside" of the Thakali community and was therefore only popular amongst their segment of the community.[41]

2.3 Assessment of key informal justice providers

2.3.1 Internationally supported informal justice mechanisms

SUSS Community Mediation Centres (TAF co-ordinated)

Accessibility

Most SUSS CMCs are situated within VDCs in close proximity to a major road. This means that they are predominantly accessible to communities that already have comparatively good access to the formal sector and other informal justice systems. However, there are some CMCs in more remote areas. Users reported that they preferred to take disputes to CMCs over the formal sector and other justice providers because they were procedurally quick, accessible and free of cost.[42]

The CMCs are largely integrated into the structure of the VDC, which heightens their accessibility. There is a central office in the VDC where disputants can go and ask for the CMC's assistance. This also allows for easy referral between the VDC secretary and the CMC; in Kaski, several VDC secretaries are trained mediators and participate in the CMC itself. The accessibility of the CMCs is strengthened by the fact that they provide mediation services for free and operate at the ward level, with two or more mediators in each ward. No users reported incidents of corruption or bribery in the CMC.

Quality

Research found that the CMCs are using a solid mediation approach. In comparison to other internationally supported and traditional IJMs in Kaski, SUSS mediators placed a greater emphasis on lasting reconciliation between disputants and exhibited an awareness of the distinction between a mediated settlement and an arbitrated one. This reflects the 'conflict transformation' or peacebuilding approach employed by TAF.

Research also found that CMCs are impartial and do not in general discriminate against marginalised groups. Even though in some cases mediators are affiliated with certain political parties or have previously been part of a traditional justice mechanism, the mediation process inherent in TAF co-ordinated CMCs prevents any particular bias from influencing the outcomes of dispute resolution. The disputants' right to

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40 KII with Tamudhi Nepal representative, Pokhara Municipality, Kaski (01/10/10).
41 KII with Thakali *samaaj* representative, Pokhara Municipality, Kaski (23/09/10).
42 FGD with male and female users from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).

choose one mediator to represent their case supports the impartiality of the process. The code of conduct of the mediators also prevents a mediator from participating in any mediation where there may be a conflict of interest, or where he/she may be affected by the outcome of the settlement. This means that the mediators themselves must have a minimum level of distance from the dispute in order to participate in its resolution. In addition, the presence of three mediators makes it more difficult for any one of them to pressure a disputant. The fact that dissatisfied disputants can leave the process at any time and seek help elsewhere ensures that the process is participatory and non-discriminatory. Mediators interviewed during the research were articulate and able to describe the process for resolving disputes in an unbiased and participatory fashion. If they do indeed follow this procedure, it should ensure users' ownership over the process.

Although CMCs were found to be inclusive, they sometimes lack diversity. Despite efforts during the selection process to encourage the community to nominate mediators that reflect the composition of the community – with particular emphasis on ensuring participation of women and members of marginalised and indigenous communities – interviews with mediators in Rupakot and Bharatpokhari VDCs highlighted that it was difficult to ensure and sustain the participation of mediators from marginalised groups. In some cases, mediators from marginalised groups were not respected or were not considered to be effective by other community members.[43] As a result, over time mediators from marginalised groups have been replaced by those who hold positions of social importance and leadership and are more respected by the wider community – particularly influential men.[44] While several women were originally trained as mediators when the CMCs in Rupakot and Bharatpokhari were established, other mediators reported that they had married and moved away.[45] The fact that mediators must be literate limits the participation of older women and marginalised groups.

However, some mediators and CMC users stated that because mediators included Bahuns, Chhetris, Gurungs and Magars, CMCs were already inclusive. They also stressed that a person's ability and qualifications should supersede the need for a more diverse mediating group.[46] This largely explains the large number of former Gurkhas participating as mediators. Because they had travelled outside of Nepal, community members felt that they were more qualified than others and would refrain from being biased because they were "worldly-wise".[47]

The CMCs appear to be largely free from politicisation. Mediators reported that political parties had co-ordinated with them on land distribution cases in the past, but that they did not allow political parties to interfere in mediations.[48] They also said that they have allowed political representatives to sit in on mediations and speak if requested, provided the dispute is political in nature.[49] While the presence of political officials alone may be coercive in certain situations, users did not report any significant political interference during mediations.

Saferworld research found that the CMCs in Kaski have a strong accountability and monitoring and evaluation system in place. Interviews with mediators and VDC staff illustrated that cases are well documented by the CMCs and are constantly re-evaluated by SUSS and shared confidentially amongst other mediators from other VDCs for the purposes of learning lessons and accountability.[50] SUSS district co-ordinators

43 FGD with TAF-trained mediators, Rupakot VDC, Kaski (27/09/10).

44 For example, there were no Dalits on the CMC in Rupakot VDC (which has eight female and 16 male members). In Bharatpokhari VDC, there was one Dalit on the CMC (which has 21 male and six female members). Data taken from *Demography of Mediators* (2011), internal TAF document.

45 FGDs with TAF-trained mediators, Rupakot VDC and Bharatpokhari VDC, Kaski (27/09/10 and 30/09/10).

46 FGD with TAF-trained mediators, Bharatpokhari VDC, Kaski (30/09/10).

47 FGD with male and female users from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).

48 KII with TAF mediator, Bharatpokhari VDC, Kaski (30/09/10).

49 FGD with TAF community mediators, Bharatpokhari VDC, Kaski (30/09/10).

50 KII with SUSS district co-ordinator, Pokhara Municipality, Kaski (1/09/10).

constantly monitor and evaluate community mediators of all VDCs. Oversight seems to be an important tool for TAF and SUSS, to enable improvements to the system and ensure that marginalised groups are not discriminated against.

Once criticism of the CMC model made by mediators in Kaski – and more often than those in Dhanusha – is that the length and requirements of the mediation process makes it difficult for mediators, who are volunteers, to support themselves. Many mediators believe that they should receive financial support for their work. It was not possible to establish during the research whether the mediators' contributions to the programme are limited by their financial situation.

Integration and co-ordination

SUSS CMCs are integrated within the VDC system and many of the VDC staff are trained mediators. This is perhaps the ideal level of integration since it strengthens collaboration between the informal and formal justice sectors and improves the formal system's capacity to resolve disputes whilst maintaining a necessary level of independence.

SUSS also successfully targeted and recruited traditional justice leaders as mediators in order to generate community ownership and buy-in to the CMC programme, at the same time as seeking to strengthen the accountability of the traditional justice mechanisms and to bring them more in line with international human rights norms and justice standards. As outlined above, SUSS has been involved in training leaders from different ethnic *samaajes* in Kaski, including those from the Gurung NGO Tamudhi Nepal.

Mediators also reported some level of co-operation with the formal sector. For example, they reported that on several occasions, they had formally mediated resolutions in court or at the request of the police. Mediators also illustrated awareness on the distinction between civil and criminal cases, and the need to refer criminal cases to the formal sector in order to comply with international and Nepali justice policies and standards. However, some members did state that co-ordination with the police and courts is not formalised or as consistent as they would like it to be, especially in comparison to the significant level of co-operation evident between the PLCs and the formal sector.[51]

In VDCs where both CMCs and PLCs were present, there seemed to be little if no co-ordination, formally or otherwise, between the two. On the whole, CMCs were found to be more popular with users.[52]

Conflict sensitivity

Overall, TAF-modelled CMCs have a high level of conflict sensitivity because of their 'conflict transformation' and reconciliatory approach, which takes into account relevant underlying causes of conflict, and seeks to promote a lasting resolution. Throughout a dispute, mediators recognise disputants' different needs, interests, and limitations. Disputing parties are encouraged to articulate their interests and develop solutions that are more satisfactory to both parties than those that could have been decided by outsiders. When settlements are discussed during mediations, marginalised disputants receive equal treatment and respect, which encourages them to express their concerns and determine what suits their best interests, regardless of social expectations rooted in caste-based power imbalances.

CMCs also displayed a level of sensitivity to the differences between disputants' local traditions and customs, which allowed them to find a mutually acceptable compromise between their traditions. In one case, a pregnant Dalit woman who was abandoned by her husband from a higher caste was granted alimony from the man's family even

51 KII with community mediator, Bharatpokhari VDC, Kaski (30/09/10).
52 FGD with male and female users from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).

though the family had opposed their marriage. In another case, a man was compelled to stay with a woman he was married to even though he made another woman pregnant; in this case, the man agreed to support the pregnant woman financially, and she accepted his marriage to another woman.

TAF's use of vernacular language to explain the mediation process promotes greater conflict transformation and sensitivity. A community mediator noted that the word 'disputant' is avoided in the mediation process because it suggests that the two sides' interests are in conflict with each other.[53] Another mediator pointed out that they do not use the terms 'victim' and 'perpetrator' in the mediation process and this helps community members understand that there is no presumed right and wrong in a mediation process and that every party is equally responsible for resolving conflicts.[54] This has helped to further strengthen the 'conflict transformation' or peacebuilding approach taken by the CMCs.

UNICEF Paralegal committees

Accessibility

PLCs have a wider coverage in Kaski than they do in Dhanusha and Panchthar (see following sections), and they also cover more areas of Kaski than does the TAF co-ordinated CMC programme. PLCs are present across 30 VDCs in areas that are accessible by road and more remote areas that do not have a significant formal sector presence. Those PLCs that are accessible by road are easily mobilised, monitored, and evaluated by the WDO and DRG. They are also well positioned along highways so that they can cover greater areas of the district. The presence of committees in every ward allows PLCs to have a strong presence throughout the entire VDC, with over 60 committee members per VDC. The PLCs in Kaski are particularly accessible to women in the community, who are able to access the PLC by visiting the house of any committee members. This allows PLCs to address issues privately. In addition, users reported that PLCs are accessible because their dispute resolution services are provided free of charge.[55]

Quality

Despite some committee members' political affiliations, users reported that political discrimination was not a problem during dispute resolutions. In addition, research found that PLCs do not discriminate on the basis of ethnicity, age, caste or political affiliation. PLCs are largely inclusive of women and children from different ethnic and caste groups.[56] This is predominantly because PLCs were designed to only deal with cases involving women and children, as a way of empowering these particular marginalised groups. However, some men interviewed during the research felt that the PLCs isolate men, and that the outcomes of PLC-facilitated mediations discriminated against men and deepened tensions between women and men.[57]

In many instances, users reported that their issues were satisfactorily resolved by the PLC. However, some users criticised the PLCs for using coercive tactics. Users reported that PLC resolutions usually involved "convincing" a disputant of their guilt and pressuring them to accept a certain resolution.[58] In one case, users reported that PLCs mobilised to destroy a local cannabis plantation because of drug problems in the area. Users felt that the coercive approach used by PLCs was strengthened by their linkages with the police, courts and local authorities, which meant that they have the authority to enforce decisions based on their own interpretation of their dispute.[59]

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53 KII with community mediator, Rupakot VDC, Kaski (27/09/10).
54 KII with community mediator, Rupakot VDC, Kaski (27/09/10).
55 FGD with male and female users from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).
56 *Ibid*.
57 FGD with male users from a VDC with TAF CMCs and UNICEF PLCs, Bharatpokhari VDC, Kaski (30/09/10).
58 FGD with male and female users from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).
59 FGD with male and female users from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).

In VDCs where both CMCs and PLCs are present, users said that they preferred to go to CMCs over PLCs because they believed that the CMC mediators were generally more effective in mediating agreements between disputants without using coercion or generating animosity. For example, in Rupakot and Bharatpokhari VDCs, PLCs were not as active as the CMCs. Users thought that this was because the PLCs were seen as more arbitrary and less participatory.[60]

Some users reported cases where the PLCs had used soft coercion to encourage users to resolve disputes with PLCs instead of other IJMs, particularly the TAF co-ordinated CMCs, which they openly competed with.[61] Users reported that PLC leaders would often threaten to manipulate their connections with the police and the WDO to have disputants arrested for various crimes unless they "voluntarily" agreed to come to the PLC and resolve the dispute.[62] However, it is difficult to determine when this constitutes coercion and when it is legitimate for PLCs to inform disputants that they have the right to pursue legal recourse, in order to address impunity and ensure that criminals are persecuted. Apart from a few incidents where PLCs had reportedly acted outside of their mandate and destroyed property or used soft coercion, PLCs demonstrated basic compliance with international human rights norms and justice standards. There were no reports of PLCs using any form of physical punishment.

Neither the users nor PLC members interviewed were able to describe in detail a step-by-step process for resolving disputes through a mediation approach.[63] They could occasionally describe concepts like 'win-win' but were unable to articulate how to reach a mediated resolution.[64] Although the DRG stated that during the three-day training, committee members were told resolutions must be "win-win, non-discriminatory, and unbiased", it appeared from the research that in practice, the approach being employed in dispute resolution within PLCs more closely resembled retributive justice than the reconciliatory approach used in the TAF CMCs programme. For example, a senior WDO official explained to PLC members and researchers that "if someone 'commits a crime' then that person has to lose and the 'victim' has to win".[65]

Both users and mediators associate the weakness of the mediation approach employed by the PLCs with inadequate training. They stated that three days' mediation training is not sufficient. These three-day trainings are only meant to be refresher trainings: what is missing are regular in-depth initial trainings that can be provided to new PLC members when those who participated in the initial stages of implementation have since moved away or lost interest, and have subsequently been replaced.

It is debatable from the outcomes of the research whether PLCs keep in line with national codes of justice by refraining from resolving criminal cases. On the one hand, the research identified a number of criminal cases that had been resolved by PLCs, relating to sexual and gender-based violence and polygamy.[66] On the other hand, there were multiple instances identified during the research where the PLC had referred rape and other criminal cases to the police and helped them to arrest the perpetrators. These cases successfully demonstrate how the effective use of PLC referral mechanisms can lead to criminals being held accountable within the formal sector. While there were often challenges faced with trying or punishing criminals within the formal sector, the PLCs were at least able to begin the process of promoting better law enforcement.

60 FGD with male and female users from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).
61 FGD with PLC members from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).
62 KII with a PLC member, Pumdibhumdi VDC, Kaski (26/09/10).
63 FGD with male and female users and PLC members from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).
64 FGD with PLC members from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).
65 KII with WDO representative, Pokhara Municipality, Kaski (30/09/10).
66 Data provided by the Women's Development Office on the number of cases dealt with by the PLC programme in Kaski up until August 2010, found that PLCs had recorded nine rape cases in total, and only referred four of these to the WDO and other formal actors, therefore presumably resolving the remaining five themselves.

However, in some cases where PLCs refer criminal cases to the police, and the police are unable to resolve the case, PLCs can do more to ensure that their referral mechanisms are being used to their full capacity, and that other formal actors play a role in resolving the case. Users described one case in Bharatpokhari VDC where the PLC had discovered an elderly *sadhu* (a Hindu mendicant) raping and molesting an infant. They reported the incident to the police and the man was arrested; however, he was released three days later because the police believed he was too old to be incarcerated and told the PLC that they did not have the infrastructure or resources to detain prisoners for a long period of time.[67] The PLC said they did not immediately report this case to the WDO or DRG, who may have been able to intervene and ensure the perpetrator was held and tried according to Nepali law.[68] A DRG representative reported that they try to ensure that criminals serve their sentences for rape and other offences by referring them to the formal sector, but that this is difficult because they lack the necessary resources and authority to follow up once the case has been referred.[69]

Accountability mechanisms for the PLCs are weak. The DRG is responsible for co-ordinating monitoring of the PLCs by recording the number of cases resolved and regularly visiting PLC members and disputants to discuss outcomes. However, the monitoring system appears to be more focused on recording numbers of cases resolved than assessing the quality of the dispute resolution service provided. For example one DRG member interviewed during the research shared a "success story" where a wife and husband had been separated for many years as a result of the wife having experienced years of domestic abuse. The DRG apparently "persuaded" the wife to return to the husband and the husband promised not to abuse the wife anymore.[70] This raises some serious questions about the quality of the monitoring and accountability systems in place in the PLC programme in Kaski. Just because a wife and husband have been reunited following years of domestic abuse does not constitute successful long-lasting dispute resolution. Although the PLC members said that neighbours had agreed to monitor the outcome of the case, this form of monitoring is very much dependent on the neighbours' interpretation of the situation. This highlights the need for the establishment of third-party accountability mechanisms in PLCs. This need is reinforced by the finding that PLCs have in some cases acted outside their mandates by using soft coercion and acting in ways that border on vigilantism and undermine the formal sector (i.e. by raiding and destroying locally distilled alcohol and marijuana crops).

Integration and co-ordination

Research found that PLCs had a much stronger level of collaboration with the formal sector than any other IJM in Kaski. PLC members reported that they were able to call the police and have people arrested based on their testimony.[71] PLCs are also well integrated into the VDC structure, with VDC secretaries and health post officials recruited as mediators in order to strengthen the formal sector's ability to address women's issues. PLC members and users cited many instances where they worked in co-ordination with the courts, police, WDO, and other formal actors through their referral system in order to ensure that criminals are held accountable by the state.

The PLCs' co-ordination with the formal sector in Kaski is both a strength and a weakness. On the one hand, co-ordination helps strengthen linkages between the formal and informal sector, which contributes towards the development of a joined-up system of justice in Nepal, and also builds the capacity of the formal sector to respond to criminal cases, particularly sexual and gender-based violence. On the other hand, co-ordination with the formal sector has had a negative impact on users' access to justice when PLCs have reportedly manipulated their connections with the formal sector in order to force dispute resolution outcomes.

67 FGD with PLC members from a VDC with UNICEF PLCs, Bharatpokhari VDC, Kaski (29/09/10).
68 FGD with PLC members from a VDC with TAF CMCs and UNICEF PLCs, Bharatpokhari VDC, Kaski (30/09/10).
69 KII with DRG representative, Pokhara Municipality, Kaski (30/09/10).
70 KII with DRG representative from a VDC with TAF CMCs and UNICEF PLCs, Bharatpokhari VDC, Kaski (30/09/10).
71 FGD with PLC members from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).

PLCs in Kaski did not appear to co-ordinate as well with other IJMs. Users reported during the research that PLC members sometimes pressured disputants to use PLCs over other IJMs, particularly TAF co-ordinated CMCs.[72] In districts where CMCs were present, PLC members openly expressed their annoyance that users preferred to use CMC services and were angry that they had a lesser role in dispute resolution.[73] Other users reported that in a few cases, PLC members would attempt to interfere when disputants went to CMCs.[74] Such competition amongst justice actors is obviously counter-productive and unhelpful. However, it should be noted that in several instances PLC members reported that they "co-ordinated with CMCs on disputes", although they could not describe in what way they had done so.[75] With regards to traditional justice systems, the research did not identify a significant level of co-ordination with PLCs.

Conflict sensitivity

PLCs in Kaski are not fully responding to the underlying causes of conflict through their approach, and lack the conflict sensitivity of the TAF co-ordinated CMC programme. Unlike the reconciliatory mediation-based approach employed by TAF, which seeks to address underlying causes of conflict and promote 'conflict transformation' and peacebuilding in the long term, the PLCs often use a 'win-lose' retributive approach to justice provision. It can be argued that this approach deepens divides between different individuals and groups and does not encourage peacebuilding in the long term. For example, some users argued that by discriminating against men in the dispute resolution process, the PLCs are exacerbating tensions between men and women in the community, as opposed to supporting long-term peacebuilding.[76]

In addition, the reported use of coercive tactics to pressurise and enforce particular outcomes only undermines community cohesion and exacerbates existing local conflict dynamics. For example, after they destroyed cannabis crops and distilled alcohol in Pumdibhumdi VDC, PLC members reportedly received death threats.[77] Instead of acting as law enforcers, the PLC members should have reported the case to the formal sector or sought to resolve the case within the community through mediation.

Additionally, considering the distrust with which many marginalised and rural communities view the formal sector,[78] the use of coercion by the PLCs through the threat of formal action only encourages people to see the formal sector as a tool for powerful groups to use against their rivals. The extent to which this is occurring is not clear and should be examined further.

However, the multi-party, caste and ethnic composition of the PLCs, which enables them to work harmoniously towards a unified end and encourages inter-ethnic co-operation in a district divided over ethnic politics, is very positive. It is also a potential entry point for strengthening the conflict sensitivity of the programme. The broader aim of the PLC programme to raise awareness on children's and women's rights in order to break a culture of violence is another potential entry point for strengthening the conflict sensitivity of the programme, especially if the underlying causes of violence can be addressed through this approach.

72 FGD with male and female users from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).
73 FGD with PLC members from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).
74 FGD with users from a VDC with TAF CMCs and UNICEF PLCs, Rupakot VDC, Kaski (27/09/10).
75 FGD with PLC members from a VDC with TAF CMCs and UNICEF PLCs, Bharatpokhari VDC, Kaski (30/09/10).
76 FGD with PLC members from a VDC with UNICEF PLCs, Pumdibhumdi VDC, Kaski (26/09/10).
77 FGD with PLC members from a VDC with TAF CMCs and UNICEF PLCs, Bharatpokhari VDC, Kaski (30/09/10).
78 *Op cit*, AFN et al (2010).

3

Informal justice mechanisms in Panchthar

3.1 District background

According to the 2001 census, Panchthar's population is 40 percent Limbu, 40 percent Bahun/Chhetri, 12 percent Bantwa, 13 percent Tamang, three percent Magar and one percent Gurung.[79] The provision of justice in Panchthar was not affected by the Maoist conflict to the same extent as in other areas, particularly the mid and far-western hills.[80] However, some users reported that the Maoist People's Courts had resolved disputes during the conflict, albeit in an informal and inconsistent manner. These 'courts' are no longer influential or operating today in Panchthar. Because of its geographic isolation, limited strategic significance, and low levels of Maoist activity during the conflict, the government's presence in Panchthar is minimal. Police posts are now entirely centred on a north-south road cutting through the district. Panchthar's more remote VDCs are four or more days' walk away from the district capital and the main road.

Since the end of the conflict, ethnically based Limbu political parties have emerged to replace centralised systems of governance in Panchthar. The main platform of these parties is the creation of a new federal Limbu state, called *Limbuwan*, with a high degree of autonomy. Part of the Limbuwan ethnic movement's drive for autonomy included the establishment of multiple parallel government structures – including dispute resolution systems – that upheld and recognised Limbuwan customary law and language. While negotiations between the main Limbuwan political parties and the state resulted in the termination of these systems in 2007–2008, many other smaller and fragmented Limbu political groups continue to operate and to provide dispute resolution services.

In addition to the informal justice systems described below – specifically the traditional community-based dispute resolution system *pancha bhaladmi*, and UNDP's and UNICEF's PLCs – there are two other relevant bodies operating in Panchthar. The Local Peace Committees[81] are mainly concerned with resolving disputes between political parties and/or politically motivated crimes. JICA is also implementing

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79 *Op cit*, Intensive Study and Research Centre, pp 470–471.
80 *Op cit*, UNOCHA and WFP.
81 The CPA contains provisions for the establishment of Local Peace Committees in each of the 75 district in Nepal, to be led by the Ministry of Peace and Reconstruction. These were designed to sustain peace by providing a common forum for people to locally implement national peace agreements.

mediation trainings on tea estates to help labour relations in Panchthar. The training focuses primarily on improving labour relations between tea farmers and factories and is not intended to resolve communal disputes. As this section focuses explicitly on mapping existing mechanisms for providing informal justice to communities, the Local Peace Committee and the JICA programmes are not included in the mapping and analysis sections of this report.

Reliance on the informal justice sector in Panchthar largely reflects the absence of an adequately resourced formal sector. Even in VDCs where police posts are present, the majority of community members interviewed expressed concern regarding the capacity of the police to provide justice, and a preference for informal systems. They felt that the formal sector is biased, corrupt, and inaccessible as a result of the difficult terrain and inadequate infrastructure and resources. However, some people, particularly in areas where police posts are present, did say that they actively use their services, that the police maintain a positive public profile, and that they work with informal justice systems in a positive way.

The most commonly reported disputes in Panchthar are fights as a result of drunken disorder, minor incidents of physical violence, domestic violence, rape, polygamy, and land or property-related civil disputes.

3.2 **Mapping of key informal justice providers**

3.2.1 **Internationally supported informal justice mechanisms**

UNICEF Paralegal committees

UNICEF has been operating its PLC programme in 19 of a total 41 VDCs in Panchthar since 2002.[82] This programme closely resembles the PLC programme described in the section above on Kaski, and is therefore only briefly summarised here. Although the PLC programme is standardised, Saferworld research did identify some variations in the way in which the PLCs are implemented across districts. Particularities of the Panchthar PLC model are highlighted where relevant.

Each ward has a committee comprising several members and in each VDC, there is a 15 person PLC made up of representatives from each ward-level committee. Unlike in Kaski, the research found that representatives from local interest groups were also present on the VDC-level committees. At the district level, PLCs are supported by the DRG formed of social activists and lawyers. The DRG is responsible for training PLCs, overseeing their work, and providing technical and legal support to women who have cases in the district courts. As in Kaski and Dhanusha, the programme design specifies that women from all castes and ethnic groups should be represented on PLCs, and users and PLC members confirmed this to be the case in Panchthar. Interviewees confirmed that, as in Kaski, ward-level committee members receive 18 days of training. However, three-day refresher trainings have not yet been delivered in Panchthar as the programme is much newer.

Ward-level committees were designed to be the first point of contact for women experiencing disputes and discrimination. These committees attempt to resolve cases themselves through mediation, and if they are unable to do so the case is 'passed up' to the appropriate level (VDC followed by district-level courts or the police). Criminal cases should be immediately referred to the police, and the DRG will assist the person with legal support and other services.

Most disputes handled by the PLCs in Panchthar relate to women rather than children, and women are reportedly almost always the ones to bring disputes to the PLC because it is run by women and deals specifically with their issues.

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82 Amarpur, Aurbote, Bharappa, Chowkmagu, Durdimba, Falaicha, Kurumba, Limba, Manjabung, Memeng, Nagi, Panchami, Pauwasartap, Phidim, Prangbung, Ravi, Sarangadanda, Shyambarumba and Suvang VDCs.

3.2.2 Traditional informal justice mechanisms

Pancha bhaladmi

Pancha bhaladmi is a traditional informal justice system operating in areas of eastern Nepal. *Pancha bhaladmi* takes a similar approach to the *panchayat* system but, unlike the *panchayat*, is more representative of different members of the community. Traditionally, *pancha bhaladmi* were a fixed council of five elders from the community who would form in order to arbitrate disputes in their community. In the 1960s, these individuals reportedly had a monopoly on arbitral authority within the community, which stemmed from their ability to collect land revenue and taxes on behalf of the state. The committee also had a leader, called a *subba*, which was the historical title given to all *panchayat* leaders. Over the past 50 years, the *pancha bhaladmi* has changed significantly to include other authority figures and people within the community who are respected as impartial, fair, and educated.

Modern *pancha bhaladmis* are temporarily formed committees of various sizes whose members include teachers, health-post employees, political party leaders, educated members of the community, and, as many users put it, "intellectuals".[83] Research found that *pancha bhaladmi* were in use in most parts of Panchthar, particularly in remote districts where there is neither a PLC nor formal sector presence. At the time of research, *pancha bhaladmi* were not regularly used in the district headquarters and along major highways where the police are present.

When a dispute occurs, a disputant will often go to the people in their community whom they believe most sympathetic to help them resolve their conflict. Alternatively, if the community is aware of a dispute, community members and the *pancha bhaladmi* will go to the disputants themselves to resolve the issue. Users stressed that the *pancha bhaladmi* was not formed of a set committee and that there was no leader that made final decisions. Several users mentioned that disputants' neighbours would often help form and serve on the *pancha bhaladmi* when a dispute occurred.

Users and committee members from previous *pancha bhaladmi* said that they dealt with all types of cases, the most common of which were disputes related to alcohol consumption. Committee members said that the *pancha bhaladmi* practiced media-tion, but seemed to be unfamiliar with the term's meaning. Users however suggested that they used arbitral approaches, as the *pancha bhaladmi* would listen to both sides of the dispute and then decide upon the guilty party and a necessary settlement.[84] *Pancha bhaladmi* often resolved more serious criminal offences with fines or in some cases with physical punishment. Users and informants reported that *pancha bhaladmi* regularly dealt with rape cases by setting compensation for the rape victims from the perpetrator. One community reported that beating guilty parties with wet stinging nettles was a common physical punishment for rape as well.[85] Only severe criminal cases are resolved with fines or physical punishment.

A traditional resolution process called *seer uthaune* was used in many communities to resolve smaller civil cases, especially in Limbu communities. Literally translated as 'to raise someone's head', *seer uthaune* brings disputants together in a social setting to share alcohol and food. Users and informants interviewed reported that the process depended on the case: sometimes the guilty party, sometimes both parties, and some-times the *pancha bhaladmi* would bring alcohol or food to share with everyone. The tradition emphasises the reunification and reconciliation of both parties after the dispute by restoring their pride or 'raising their heads'. The practice originates in the clan-kinship systems of various ethnic communities, where sharing alcohol and communal feasting is a sign of mutual trust and respect that helps reconcile disputants with each other and the greater community. One user claimed that *seer uthaune*

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83 FGD with male and female users from a VDC far from police posts and without internationally supported IJMs, Imbung VDC, Panchthar (24/09/10).
84 *Ibid*.
85 *Ibid*.

originated in Limbu communities and was most commonly practiced by Limbus, but all users in Panchthar expressed knowledge of and familiarity with the process.

3.3.3 Other informal justice mechanisms

Limbuwan political party systems

Limbu groups such as the Mansabadha Sangya Lumbuwan Rajya Parisad (Kumar Linden), Limbhuwan Mukti Morcha, and Limbuwan Volunteers (youth wing), reported that they play an active role in resolving disputes throughout Panchthar. However, the research found that these groups have limited reach and only play a role in dispute resolution in their district headquarters in Panchthar. One party representative said that Limbu political party leaders at the local VDC level refer cases that they cannot resolve themselves to the district-level party leaders. However, it seemed unlikely that this was commonplace across the district due to the remoteness of many of Panchthar's VDCs.[86]

The district-level Limbuwan courts operate similarly to the formal court system, but are much more expedient, lasting less than a week. Disputants come to file an application, often for a small fee of about 150 rupees, and then party representatives convene to listen to the disputants and arbitrate a decision. There seemed to be many problems in enforcing the party's decisions. One user said that she had visited multiple justice systems and all the Limbu political parties in an attempt to get her husband to pay for their child's education after he left her for another woman, and "They all said he should pay child support, but he never did. They have no power".[87] While party representatives said that their services were open to everyone in their communities, their courts are conducted in Limbu and only used by the Limbu community.

Youth groups (Young Communist League and Limbuwan Volunteers)

The Young Communist League (YCL) linked to the Maoist Party reported that they were actively resolving disputes across Panchthar. YCL members consulted during the research said that people would ask them to help resolve their disputes and that they dealt with all types of criminal and civil cases. A representative from the YCL said that they received around 20–22 cases a month in Phidim, the district capital, and another representative reported that the YCL and Limbuwan Volunteers were the most active youth groups providing justice in Panchthar.[88] The YCL has systematised their resolution process in a similar fashion to the Limbuwan Party System, but credit their popularity with the historical success of the Maoist People's Courts during the conflict. Disputants must first fill out an application in Phidim and pay a small application fee in order to have the YCL arbitrate their case. While the YCL representative said that they do not use physical force as a rule, they do use coercion and will threaten guilty parties in order to resolve cases if disputants refuse to comply with the YCL's decision.[89]

However, no users in surveyed VDCs described the YCL or other political youth groups as playing a significant role in dispute resolution. Youth group representatives reported that they were actively involved in resolving gender-based violence and criminal cases at the district level, but the YCL was not found to play a significant role in VDCs outside the district capital.[90] A youth group leader interviewed during the research commented that both political and non-political youth groups did not play a significant role in justice provision at the local level and that *pancha bhaladmi* and PLCs were the main IJMs operating within Panchthar. The number of cases reportedly resolved at the district level by the YCL is also questionable, since many users reported

86 KII with Limbu political party representative, Phidim Municipality, Panchthar (22/09/10).
87 One-to-one semi-structured interview with a user in a municipality with multiple IJMs, Phidim Municipality, Panchthar (26/09/10).
88 KII with YCL representative, Phidim Municipality, Panchthar (25/09/10).
89 *Ibid*.
90 KII with youth group representative, Phidim Municipality, Panchthar (28/09/10).

that people would often apply to several IJMs at one time, including youth wings and political party systems, with the hope that one of them would be able to resolve a decision in their favour.[91] It is therefore possible that the figures quoted by the YCL representative reflect the number of people contacting them per month and not the number of cases they actually resolve.

3.3 Assessment of key informal justice providers

3.3.1 Internationally supported informal justice mechanisms

UNICEF Paralegal committees

Accessibility

Overall, PLCs are highly accessible to users – particularly women – in VDCs where they are present, and have expediently dealt with disputes and cases. Having seven member committees in every ward allows users to access the programme quickly and allowed the committee to monitor disputes at the grassroots level. Users reported that the PLCs responded quickly to disputes and resolved conflicts within a few days. However, while there was a clearly designed system for referrals between ward, VDC and district-level committees, it did not seem to be used systematically. Although the first point of contact for users was often their ward-level committee, research found that the majority of disputes were first dealt with at the VDC level. Many PLC members said this was due in part to training, stating that VDC-level committees received better training than ward-level committees.

PLCs provide their services free of charge and researchers found no instances of PLCs taking bribes or fees for their services. While all of the PLCs surveyed were found to be actively resolving conflicts during the research, a UNICEF representative reported that only about 60 percent of the PLCs were actually functional and working as they should and the other 40 percent were not.[92]

Quality

PLCs are clearly filling a justice gap at the local level in Panchthar, specifically by addressing violence against women and providing gender-sensitive justice. PLC users feel that *pancha bhaladmis* and the formal sector do not effectively respond to their needs as a result of weak capacity, discrimination against women and/or inadequate resources.

A key success of the PLC programme is the empowerment women feel within their communities as a result of their engagement with the programme. Women in VDCs where PLCs are present stated that the PLC offices and gatherings were a chance for all women within the community, both committee and non-committee members, to meet and discuss issues that affect them, regardless of their caste or ethnic group.[93] Committee members were proud of their ability to help women in their community and users were very grateful for the support they had received. One PLC member, talking about the new PLC office that the women in the committee had built themselves, said that: "many people don't think women can do these things and didn't believe we could build this office. We didn't know in the beginning but we knew we could learn and we are proud of what we accomplished".[94] These sentiments demonstrate how women have begun to mobilise for positive change; this is perhaps the biggest success of the programme itself.

However, some users felt that the outcomes of cases involving women resolved by PLCs did not always protect their rights and provide them with justice in the longer

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91 One-to-one semi-structured interview with a user in a municipality with multiple IJMs, Phidim Municipality, Panchthar (26/09/10).
92 KII with UNICEF representative, Phidim Municipality, Panchthar (25/09/10).
93 FGD with women and committee members from a VDC with UNICEF PLCs, Chowkmagu VDC, Panchthar (25/09/10).
94 *Ibid*.

term. For example, some users reported cases where women who had experienced domestic violence and had been forced out of their homes were often pressured by the PLC to reconcile with their husbands.[95] Although these cases may be 'resolved' in the short term, there is no guarantee that domestic violence will not recommence in the future and that the underlying causes of violence have been dealt with.

Linked to this, the idea that they had received the best in a bad situation from the PLCs prevailed in many users' understandings of disputes in their communities.[96] Many felt that while the outcome was not ideal, at least they had received something to help them in their situation.[97] A number of key informants argued that victims received better justice through PLCs than through the formal sector, given the lack of a formal sector presence in rural areas, the difficulties of accessing the court system, and the social and cultural stigmas against victims, particularly female victims of sexual abuse. It is important to recognise this as an achievement in this context. It will take a longer time to develop perfect PLCs within the Nepali context, where social exclusion, patriarchy, politicisation, and corruption have been embedded within informal and formal justice systems for many years.

Users did however raise concerns that the use of social pressure to resolve cases some-times violated both the internationally recognised human right to a fair trial and presumption of innocence, and Nepali justice standards. Users reported that as many as 15 members could sit on a dispute resolution committee, and that a group of this size could exert social pressure on disputants to resolve cases in a particular way – as well as to shame community members into behaving in a certain way and not repeating their actions. Users reported that the PLC would convene committees in order to, as one PLC member described it, "listen to both sides of the dispute and decide who was wrong". The committee would then "convince one of the sides that they were wrong".[98] For example, a Dalit woman interviewed during the research reported that when her daughter was assaulted by three Limbu boys, she went to the PLC. The boys' families agreed to have the PLC resolve the case as long as it was kept confidential and did not leak out to the greater community. Over ten PLC members came to the case and repeatedly told the boys that what they did was wrong.[99]

The way in which this case was resolved resembles many others, and it seems that 'mediation' for PLCs is sometimes closer to arbitration, with social shame and guilt the prescribed punishments. Although the fundamental aim of this approach is to support and defend the victim and to restore justice, the ethics of using social pressure and shame as a punishment are unclear. On the one hand social pressure has been used internationally and throughout history to enforce certain constructive behavioural norms and prevent the risk of conflict within society. Saferworld research found that, in some circumstances, shaming the guilty party may be the only appropriate and culturally acceptable way to reform that person's behaviour and ensure that some level of justice is attained. On the other hand, it must be recognised that applying social pressure does not necessarily result in the reconciliation of two disputing parties and can lead to long-term social isolation because, for example, the norms that are being enforced may not be shared by all, be incompatible with human rights norms or may be set by a dominant group, for example male elders.

Research found that the PLCs were largely inclusive of marginalised groups. The committees themselves accurately represented all segments of the community and included a large number of women from ethnic and lower caste groups. This meant that marginalised groups felt comfortable approaching the PLCs. However, the opposing disputant was often a man or a member of a more dominant group in the

95 *Ibid*.
96 FGD with women users in a municipality with multiple IJMs, Phidim Municipality, Panchthar (26/09/10).
97 *Ibid*.
98 FGD with women and committee members from a VDC with UNICEF PLCs, Chowkmagu VDC, Panchthar (25/09/10).
99 One-to-one semi-structured interview with a user from a VDC with UNICEF PLCs, Chowkmagu VDC Panchthar (25/09/10).

community, particularly in domestic and sexual abuse cases, and would sometimes not be willing to co-operate with the PLCs.

PLC members, users, and informants said that criminal cases involving women, such as rape and gender-based violence, were often handled by PLCs themselves. The key concern with this is whether a mediation or social pressure approach is employed. Given findings outlined above regarding the use of social pressure, it is possible that a similar approach has been employed when dealing with these more serious criminal cases. However, like in Dhanusha, communities and PLCs said that they felt compelled to address these cases despite a lack of formal training and mandate to do so, because the formal sector does not have the interest, resources or capacity to effectively and efficiently respond to cases of this nature. This perception was validated in a statement made by a police representative that "97 percent of rape cases in Panchthar are fake".[100] In contrast, a representative from the WDO commented, "many people think that rape mostly occurs in the Terai, but they are wrong. There is more rape here than in the Terai".[101]

When interviewed, ward, VDC and district-level committee members raised concerns regarding the quality and frequency of the trainings, particularly for ward-level committee members. This raises further concerns as to whether PLC members have the requisite knowledge and capacity to be mediating cases. Some ward-level committee members said that they had not received training because the committee members had changed since the programme was launched, and initial training had not been offered.[102]

Integration and co-ordination

PLCs, as paralegals, are designed to have a high degree of co-ordination with the formal sector. At the district level, research found that the DRG was working closely with the courts and police in order to assist women who were trying to resolve their cases in the courts. However, there were sometimes problems in co-ordination between PLCs and the DRG itself. Since many PLCs work in isolated or more remote VDCs, criminal cases were sometimes not dealt with in co-ordination with the DRG, and not referred to the district-level court systems. Instead, they were dealt with within the community in conjunction with other justice providers, such as traditional justice systems.

Users and committee members interviewed during the research also reported that in many remote areas when disputes arose, *pancha bhaladmi* would convene alongside the PLC in order to resolve the case. Even though this was not an intended aim of the PLC programme, or included in its design, the successful integration of the PLCs with *pancha bhaladmi* has meant that women have been able to participate with confidence and knowledge in this traditional justice mechanism and assert their authority over communal issues, which they were unable to do before. As a result of this, women's social positions have been strengthened and the *pancha bhaladmi* has become more representative, fair and inclusive. In addition, this collaboration has eliminated unnecessary competition or division between the two systems and has improved the overall quality of dispute resolution mechanisms in these areas.

Conflict sensitivity

PLCs have positively contributed towards social change and the empowerment of women through raising awareness of women's and children's rights, thus challenging patriarchal and exclusive local power dynamics that have existed for many years.

At the same time, PLCs are also potentially contributing to the exclusion of marginalised groups in the community by seeking to exclusively empower women. This continues to be a key source of conflict at the local level. For example, one Dalit man

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100 KII with police representative, Phidim Municipality, Panchthar (22/09/10).

101 KII with WDO representative, Phidim Municipality, Panchthar (22/09/10).

102 FGD with women and committee members from a VDC with UNICEF PLCs, Chowkmagu VDC, Panchthar (25/09/10).

remarked that PLCs "did not care about Dalit issues only women's issues".[103] Empowering women and raising their level of awareness is only beneficial if this awareness is put towards the peaceful transformation of their society. Empowering women alone can make men feel threatened and create more gender tensions. Expanding PLCs to handle all types of discrimination and marginalisation within their community could lead to greater community-wide ownership of the programme, and encourage community members to see PLCs and women's empowerment as beneficial to the entire community instead of as a programme that fuels women's persecution of men. In addition, PLCs should establish mechanisms for peacefully interacting with men who both support and oppose them, so that women's empowerment does not become a source of conflict.

The use of social pressure and shame in PLCs to resolve cases could potentially aggravate tensions between groups, undermine lasting resolution and exacerbate conflict dynamics at the local level. However, as outlined above, social shame can be used to enforce certain behavioural norms that are built around principles of equality, respect and non-violence, which mitigates the risk of conflict within society.

3.3.2 Traditional informal justice mechanisms

Pancha bhaladmi

Accessibility

The *pancha bhaladmi* system is in operation at the community level throughout Panchthar, particularly in Limbu, Magar, and other indigenous ethnic communities. As the committees in *pancha bhaladmi* are temporarily formed to resolve a particular dispute, the system does not require any specific individuals to be present, which means it is adaptable to the type of dispute. The *pancha bhaladmi* system was found to be the quickest informal justice system in Panchthar due to this adaptability, as well as the fact that it is not confined by formal procedures and is locally based, meaning that disputes can be resolved immediately within the community.

Compensation in the form of alcohol or food often played an important role in the resolution process, but no respondent reported that the amount of compensation required was large enough to prohibit use of the system.

Quality

Women were often critical of *pancha bhaladmi* because the committee is usually formed of influential men within the community. Only in one community did users say that women would occasionally participate as committee members in their *pancha bhaladmis*. The criteria for participating as a committee member on *pancha bhaladmis* are education, wealth, and influential position, which means that higher castes often serve on *pancha bhaladmi* to the exclusion of poorer, marginalised communities members who "lack experience".[104] Members of the Dalit community clearly feel that the *pancha bhaladmi* system is exclusive and unfair.[105] However, the historical development of the system from an exclusive five-person hereditary committee to a loose group of community members suggests that it can continue to grow and change to strengthen inclusion in the long term, as marginalised groups become more empowered and educated and consequently more 'eligible' for participating in *pancha bhaladmi*.

Some users also criticised the *pancha bhaladmi* for being politically motivated. They reported that *pancha bhaladmis* are sometimes made up of political representatives, who take bribes and are susceptible to corruption.[106]

103 A one-to-one semi-structured interview with a user from a VDC with UNICEF PLCs, Chowkmagu VDC, Panchthar (25/09/10).
104 FGD with male and female users from a VDC far from police posts and without an internationally funded IJM, Imbung VDC, Panchthar (24/09/10).
105 A one-to-one semi-structured interview with a user from a VDC with UNICEF PLCs, Chowkmagu VDC, Panchthar (25/09/10).
106 KII with women's rights activist, Phidim Municipality, Panchthar (22/09/10).

Research highlighted that *pancha bhaladmi* do not operate in line with internationally recognised human rights norms and justice standards and are arbitral in nature, forcing decisions upon communities based on cultural and personal interpretations of disputes, as well as caste, ethnic, gender, political or economic alliances between disputants and committee members. Physical punishments were used, particularly for criminal cases, although this was not common. The finding that *pancha bhaladmi* are systematically resolving criminal cases, including rape, in remote areas is concerning given that these cases should be referred to the formal system.

Integration and co-ordination

There were many reports that *pancha bhaladmi* committees would work with PLCs, political parties, police, and other justice providers when resolving disputes. Interviews conducted with PLC members in remote areas revealed several instances where PLCs worked alongside or with the *pancha bhaladmi* when resolving a dispute. Other respondents reported that the police had worked with and "formally" legalised the dispute resolution process and its outcome. Police also helped ensure that *pancha bhaladmi* decisions were enforced by the disputants.

There were also many instances where local-level political leaders played dual roles as political representatives and *pancha bhaladmi* committee members. Because disputants sought out their own party leaders for help and because political leadership naturally fell to influential and socially powerful community members, party politics were influential within *pancha bhaladmis*, especially when it came to larger criminal cases. There were numerous instances where the police respected *pancha bhaladmi* decisions on criminal cases and refused to intervene, despite requests from communities to do so.[107] The collaboration between the formal sector and *pancha bhaladmi* could potentially be positive, so long as the *pancha bhaladmi* do not replace the formal sector in responding to criminal cases, and providing that the police monitor the activities of the *pancha bhaladmi*, and encourage them to use an appropriate mediation approach.

Conflict sensitivity

The *pancha bhaladmi* system perpetuates the exclusion of and discrimination against lower castes and marginalised groups. This only aggravates unresolved structural issues that underlie the national conflict. The use of alcohol in dispute resolution could also heighten tensions in an area where many believe alcohol abuse to be a huge factor behind communal disputes and domestic violence. That being said, *pancha bhaladmi* did accomplish a certain level of communal reconciliation between disputants where other systems did not. The practice of *seer uthaune*, which restores disputants' pride and self-esteem after justice has been provided, promotes lasting reconciliation in close-knit communities and demonstrates an understanding of the impact that even smaller conflicts can have on the social cohesion and wellbeing of a community.

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107 FGD with male and female users from a VDC near to a police post and without an internationally supported IJM, Chillingdin VDC, Panchthar (23/09/10).

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Informal justice mechanisms in Dhanusha

4.1 District background

ACCORDING TO THE 2001 CENSUS, Dhanusha's population is 90 percent Madhesi, five percent Bahun/Chhetri and the remaining five percent is comprised of minority Newar, Muslim, Magar and Tamang groups.[108] The central Terai, where Dhanusha is situated, was affected by the conflict, but to a lesser extent than the mid and far-western hills. However, in eastern Dhanusha the conflict led to high levels of insecurity and significantly disrupted the livelihoods of many rural populations, particularly during 2001–2002. The northern hill area of the district came under the control of the Maoist Party. In these areas, state justice providers and police were replaced by Maoist People's Courts under the People's Government,[109] meaning that government presence and people's access to the formal security and justice sector was effectively eliminated.

Informal justice systems were similarly disrupted. While the southern areas of the district remained outside of Maoist control, the Maoists forced many local landlords and other elites to leave rural areas and move to Janakpur, the district capital. This disrupted and even ended the *jamindar* system, an IJM whereby landlords acted as arbitrators in disputes. *Panchayats*, long-standing councils that also resolved disputes on an informal basis, were also disrupted by the Maoists' activities.

The signing of the CPA froze local governments and dismantled the elected *panchayats* until the ratification of the new constitution; in the interim VDC affairs are being handled by government employees, and coalitions of local party officials now form to handle disputes in Dhanusha. A range of informal justice mechanisms, including 'new' IJMs established by the international community, have now been established to provide to justice. These are outlined below.

Reliance on the informal justice sector in Dhanusha largely reflects the absence of an adequate and efficient formal sector in some areas. This can be attributed to a number of factors. Firstly, the Nepal Police and other formal security and justice actors are constrained by the lack of adequate resources required to efficiently reach populations in rural areas. The majority of police posts are based on major highways and roads, often making them inaccessible to the rural poor. Secondly, the formal sector is

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108 *Op cit*, Intensive Study and Research Centre, pp 470–471.
109 *Op cit*, OCHA and WFP.

perceived by many to be corrupt, expensive, and incapable of providing justice. One female survey respondent remarked, "every time we call the police they ask us to pay for petrol for their vehicles. They don't even ask for small amounts – they ask for thousands of rupees".[110] Dhanusha's high levels of poverty have therefore only encouraged the local population's reliance on the informal sector.

4.2 Mapping of key informal justice providers

4.2.1 Internationally supported informal justice mechanisms

Madhesi Community Mediation Programme (DFID funded)

DFID began funding the establishment of mediation centres in Nepal under its Enabling State Programme in 2001. In 2009 this programme began a second phase, which shifted support to the establishment of CMCs in Madhesi communities in six Terai districts, including Siraha, Sarlahi, Mahottari, Dhanusha, Rautahat, Saptari, through the Madhesi Community Mediation Programme (MCMP). The MCMP aims to respond to "the deprivation of people of Terai origin" highlighted through the Madhesi movement, and the impact of disruption and violence on communities.[111] At the time of research, MCMP had established CMCs in 15 out of a total 101 VDCs in Dhanusha.[112] These CMCs are mostly located in VDCs clustered around the district capital or those accessible by road. MCMP co-ordinators reported that these VDCs were selected as they were the ones most affected by the conflict.

To introduce the programme, MCMP first ran village orientation programmes and selected people to serve on CMCs. Recommendations were taken from the community before potential mediators were selected, and the programme was explained to traditional justice providers including elders, community leaders and religious leaders. Overall, 75 people within each VDC – 60 volunteers to serve on ward-level committees and 15 to serve on a VDC-level mediation committee – were provided with eight-day trainings. The programme design sets a quota to ensure that women and marginalised groups constitute one-third of committee members, and women represent 35 percent of the mediators in Dhanusha district. However, it was difficult to determine whether marginalised communities were adequately represented, and from a list of mediators in one VDC it appeared that people from higher castes constituted the majority of the mediation committee.[113]

Disputing parties are required to first bring their disputes to the CMC offices, which are staffed by MCMP local co-ordinators. (The CMC usually shares office space with other social service buildings, such as youth clubs and community centres.) The local co-ordinator is then responsible for assigning a mediating committee. MCMP local co-ordinators interviewed during the research stated that the mediators are selected for their perceived impartiality. Once the mediating committee has been assigned, they meet with both parties to mediate the case at the CMC office. When an agreement is reached between disputing parties, mediators write out an agreement contract – an informal document that summarises the agreement and is signed by both disputants.

The MCMP programme is based on a human rights and group-based mediation approach, whereby a committee mediates a resolution by instilling a shared under-standing of universal human rights in both disputants. When both disputants under-stand and affirm each other's rights, they can then reach a negotiated resolution. Committees are neither fixed nor permanent and vary in size depending on the magnitude of the case. It was clear from site visits that it was common to have large committees involved in mediating a dispute – sometimes more than ten.

110   One-to-one semi-structured interview with a user from a VDC far from police posts and without internationally supported IJMs, Raghunathpur VDC, Dhanusha (08/09/10).

111   DFID, *Enabling State Program Annual Report*, (2008), available at www.esp-nepal.org.np/downloads/final-ESP-annual-report-2008_27-may-09.pdf.

112   Bahedabella, Basbitti, Bashahiya, Bauharwa, Deodiha, Digambarpur, Godar, Hariharpur, Lavtoli, Lohna, Mukhiyapati Masharniya, Naktajhiji, Phulgama, Shantipur and Sinurjoda VDCs.

113   KII with MCMP representative, Janakpur Municipality, Dhanusha (05/09/10).

District-level MCMP co-ordinators reported that domestic violence, drunken disorder, land and property disputes, quarrels between neighbours, rape, and dowry-related disputes were the most common disputes or crimes brought to CMCs in Dhanusha. At the district level, most MCMP casework relates to small civil cases such as disputes over land and family/community quarrels.

Pro-Public Community Mediation Centres (TAF co-ordinated)

In Dhanusha, the TAF programme is being implemented in 15 out of 101 VDCs, mostly in VDCs accessible by road and those nearer to Janakpur, the district capital.[114] The TAF model is standardised across Nepal and research confirmed that the committee structure and trainings co-ordinated by Pro Public in Dhanusha are the same as those detailed in the Kaski chapter (section 2).

Pro-Public also uses the TAF designed 'interest-based' mediation process described in detail in section 2 on Kaski, as part of their broader programme which from 2007 took on a 'conflict transformation' approach to mediation. Disputants are welcomed by the mediators, they then sit side-by-side facing the mediators and go through a four-phase mediation process in order to create 'win-win resolutions'. Vernacular mediation vocabulary is also used.

Users and mediators in VDCs where TAF co-ordinated CMCs are present reported that land disputes, domestic fights and abuse, minor physical assault, livestock and property disputes, and minor theft were the most commonly occurring conflicts in their VDCs and those most commonly addressed by the TAF CMCs.

Janaki Women's Awareness Society (UNDP Paralegal Committees)

In 2009, the Janaki Women's Awareness Society (JWAS), with UNDP support, established PLCs in 10 VDCs across Dhanusha.[115] In January 2011, UNICEF signed an agreement with UNDP to gradually "take over" support for the 70 PLCs in Dhanusha, as part of their national programme.

This programme closely resembles the PLC programme described in section 2 on Kaski, and is therefore only briefly summarised here. Although the PLC programme is standardised, Saferworld did identify some variations in the way the PLCs are implemented across districts, which in Dhanusha may be reflective of the fact that the PLCs were initially set up by UNDP and had not yet been taken over by UNICEF at the time of research. Particularities of the Dhanusha PLC model are highlighted where relevant.

At the VDC level, JWAS forms 15-member committees consisting of one person from each ward. As in Kaski and Panchthar, these committees comprise women from different groups in the community and must include women from marginalised groups. At the district level, PLCs are supported by the DRG formed of social activists and lawyers. The DRG is responsible for training PLCs, overseeing their work, and providing technical and legal support to women who have cases in the district courts. The VDC-level committee members are given a 16-day training followed by three-day refresher trainings. Committee members can then provide advice to women to support them to access the formal sector.

According to Dhanusha DRG members, the VDC-level committees also sometimes mediate small civil cases rather then referring them to the formal system. In these cases, the VDC-level committees use a human rights-based mediation approach similar to that of the MCMP: disputants are educated on their basic rights and encouraged to come to a mutual understanding and respect for the other party's rights.

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114 Bandhi, Bengadabar, Bengashivapur, Devpura, Dhalkebar, Hariharpur, Kherakachari, Kurtha, Lagma, Mahuwa, Nagarain, Pushpalpur, Sabaila and Sapahi VDCs and Janakpur Municipality.

115 Mahendra Nagar, Laxmipur Bageba, Hariharpur, Kanakpatti, Tarapatti Sirfya, Daminiya, Gopalpur, Padeshwor, Shantipur, Dhanusha and Govindapur VDCs.

District-level committee members explained that VDC-level committees listen to each side's perspective and then arrange a compromise through a seven-step process. All committee members must be present during mediations, which may potentially raise concerns as to what extent disputants are convinced by the committee to resolve cases in a certain way. DRG members observed that the outcomes of mediations are largely influenced by the committee itself, and the committee's perceptions about and interpretations of the case, rather than by a shared understanding between the disputants.[116]

Committees in Dhanusha, like those in Kaski and Panchthar, are also encouraged to advocate for women's justice. In the past, PLCs in Dhanusha have organised protests and other events when the formal sector has failed to satisfactorily address high profile legal cases involving women. In one case, a man charged with rape was re-tried after the paralegal committee staged a large protest. During the retrial, the district-level committee demanded greater transparency and forced the police to release the case files and investigative documents. The accused was subsequently found guilty.

There appears to be limited co-ordination between the PLCs in Dhanusha and other formal and informal systems. Whereas in Kaski, PLCs are supported and monitored by the WDO in Pokhara, this is not the case in Dhanusha. VDC-level committee members reported that traditional leaders and political parties attempted to interfere with mediations and decisions. Political parties often attempted to extort money from disputants or sit in on the mediations and affect the decisions. According to the DRG members, the *maijan dewam* leaders (described below) were given a programme orientation, but they are not supportive and do not co-ordinate with the paralegal service because they disagree with their work.

The PLCs have clearly filled a gap in justice provision at the local level in Dhanusha, especially for women. District-level committee members said that many women came to them because other informal and formal justice providers were too expensive or did not listen to the concerns of women. VDC-level committee mediation services were mainly used by women to address women's issues, which is ideal for women who might face cultural stigmas surrounding sexual abuse.

It is clear that the PLC's public demands for transparency and better policing are helping to create a more transparent and impartial formal justice system in Dhanusha. However, DRG committee members reported that they had in the past used andolans[117] to pressure the government into retrying cases they believed were biased and unfair. While their efforts to challenge corruption in the formal sector are encouraging, the use of strikes does not promote peaceful approaches to conflict resolution in the Nepali context.[118]

4.2.2 Traditional community-based informal justice mechanisms

Maijan dewam

Maijan dewam is a system of caste-based traditional dispute resolution in Madhesi communities in Dhanusha and neighbouring districts. Two caste leaders, a *maijan* and a *dewam*, oversee caste rituals for marriage and death and authenticate worship and ceremony through their presence and approval. Without the *maijan dewam*'s presence, cultural rituals lose their significance and are not considered valid by the greater community. Communities will socially ostracise and exclude people who fail to obtain the *maijan dewam*'s approval for rituals and in daily life, and their disapproval carries a hereditary stigma that strips the family of their caste's identity and social status.

Historically, *maijan dewam* have played a role in resolving disputes within their communities. While this role seems to have diminished in some areas, it still exists, partic-

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116 KII with DRG committee member, Janakpur Municipality, Dhanusha (06/09/10).
117 *Andolan* (public strikes or protests also known as *bandhs*) involve the mass mobilisation of people in order to shut down business and roads in order to pressure the government, and are a tactic commonly used by various political and interests groups in Nepal.
118 KII with DRG committee member, Janakpur Municipality, Dhanusha (06/09/10).

ularly in remote areas that are isolated from the formal sector and from internationally supported IJMs. All ethnic Madhesi communities in surveyed VDCs reported that they still had *maijan dewam*. However, many users – particularly those located in the more remote areas – reported that they were no longer active in dispute resolution in their communities. VDCs with new internationally supported IJMs stated that their *maijan dewam* did not play a role in dispute resolution or dealt only with ritual issues and cultural disputes. On the other hand, respondents in VDCs without internationally supported IJMs reported that *maijan dewam* actively resolved a wide variety of disputes within their community, from small civil cases to larger criminal cases, including rape. *Maijan dewam* are more influential in cases where disputants are from their caste and when the cases are related to cultural issues pertaining to family, marriage and dowry.

Maijan dewam leaders are essentially arbitrators who listen to both sides and decide which is guilty. Within this system, dispute resolution is highly structured and ritualised according to caste and cultural beliefs. (A *maijan dewam* leader interviewed during the research reported that resolution traditionally took place over many days but that now verdicts are made more quickly.) Guilty parties are required to undergo a penance for their offence, which often requires preparing a feast for the other party, the *maijan dewam*, and sometimes the larger community. Traditionally, preparing a meal for someone was a sign of acceptance and hospitality, but the punishment also allows both parties to reconcile by sharing food while punishing the guilty party with the cost. Guilty parties are now only required to prepare a meal for the leaders and the other disputants. Nowadays, *maijan dewam* reported that they also form their verdicts based on the opinions and advice of other influential members of their community, such as intellectuals, political parties and the wealthy – indicating that the process has become increasingly politicised. This also suggests that the role of *maijan dewam* leaders in dispute resolution may now be only be symbolic and/or diminishing.

Other *ad hoc* traditional community-based dispute resolution systems

In more remote VDCs where neither the formal sector nor internationally supported NGOs are present, such as Bharatpur and Raghunathpur, communities sometimes form committees to address disputes themselves, including criminal cases. These groups consist of community leaders such as teachers, intellectuals, elites and political party leaders – particularly men from higher castes. While these committees lack a cultural system and organisation like the one found in *maijan dewam*, their operation is rooted in traditional cultural practices and beliefs surrounding various crimes. Informal groups are formed to arbitrate disputes, and arbitration usually takes place in a public setting, particularly if the case is criminal, including rape and other kinds of gender-based violence. Members of these informal dispute resolution groups inter-viewed during the research said that they only address cases which they believe to be serious and require action, and which they feel cannot be addressed through the formal sector due to its weak capacity and reach. They also prefer to deal internally with rape and other gender-based violence cases because of the shame associated with such crimes.

Informal community groups reportedly resolve disputes in ways which are often contrary to international human rights norms. Users from one community described a traditional punishment used by these groups where the perpetrator would be forced to smear their face with black tar or a similar substance and walk around the village in shame. In the event that a woman becomes pregnant as a result of being raped, the victim is often forced to marry the rapist. In some cases, users reported that the informal dispute resolution group had seized land from the rapist or made them pay the victim a settlement for their crime. While respondents said that sometimes these settlements were as small as several thousand rupees, many argued that this was better than the victim receiving nothing.

Many users acknowledged the problems associated with how rape is addressed within these informal systems, but thought that there were very few alternatives, given that perpetrators linked to political parties are usually let off through bribes, and pointing to the weak capacity of the police to address such cases. On the other hand, one respondent reported that "If a man rapes a woman one or two times, no one cares, but if it happens five to six times then the community may send that person to the police".[119]

4.2.3 Other informal justice mechanisms

Political party systems

The research found that local political parties are playing an informal and unstructured role in resolving disputes outside of the court system. Political parties generally resolve disputes through an arbitration committee-style process, and fine the guilty party. Now, even though local political parties hold no local government offices, they continue to resolve disputes as they have done historically in the *panchayat* system, sometimes working with intellectuals, elites, and other influential community members. If the conflict is between two disputants from different political parties, all locally relevant political parties convene to resolve the dispute, drawing upon political party hierarchy to decide which disputant is guilty. Users felt that political parties offered to resolve disputes because this would improve their standing in the community, generate media attention for higher profile cases, and help win votes.

Political parties were found to be playing a greater role in dispute resolution in VDCs which do not have a police post or internationally supported IJMs, for example in Raghunathpur and Bharatpur. In the absence of a formal sector in these areas, users stated that community members relied on their affiliations with various parties for protection and to gain access to justice.

Research also found that some community members actually preferred to use political parties for dispute resolution even if other justice systems were present. The main reason youth and other marginalised groups prefer to go to political parties is reportedly because they do not think other justice providers listen to their problems or disputes, and that in contrast to other justice systems, alliance with a political party transcends discrimination based on age, caste, gender and ethnicity. Young people stated that they preferred to go to political parties to seek justice because they listen to the views of youth and often have youth wings. In contrast, they felt that community leaders and traditional justice systems discriminate against them. In addition, some community members felt that they would get the best outcome from going to their own parties as opposed to other justice providers, informal and formal, as their political parties would likely seek the most beneficial outcome for them.

Some users stated that political parties would ensure that no action was taken against them either through the formal justice process or through other informal mechanisms, even in criminal cases such as rape. Users' confidence that political parties can control the actions of the formal justice sector regarding criminal cases provides a worrying indication of the politicisation of the formal sector taking place currently in Dhanusha, as elsewhere in Nepal.

119 FGD with male and female users in VDC far from police posts and without internationally supported IJMs, Bharatpur VDC, Dhanusha (09/09/10).

4.3 Assessment of key informal justice providers

4.3.1 Internationally supported informal justice mechanisms

Madhesi Community Mediation Programme (DFID funded)

Accessibility

Perhaps the greatest strength of the MCMP, like other internationally supported IJMs, is that their services are free and accessible to people within the VDC in which they are based. While a few users interviewed claimed that MCMP mediators took bribes or were corrupt,[120] a larger number of users praised the programme for being free. This was often cited as the primary reason people used MCMP as their main provider of justice. The programme's location within the VDC office also made it convenient and easy for users to access. On the other hand, because programme offices sometimes shared a building with other social services and NGOs, many users seemed confused about the programme's function and sometimes failed to understand that the mediation programme was separate from the office in which it was housed.

Quality

The MCMP appeared to have a significant level of community ownership. Even though the programme was designed by outsiders (i.e. DFID supported and initiated), users felt that MCMP was a community system, since it was staffed and run by locals. Communities largely believed that MCMP decisions constituted decisions by the community.

User satisfaction with the MCMP programme varied depending on the seriousness of the case. Users with small civil cases, such as disagreements between families and community members or small land disputes, reported that they were satisfied with the mediation services and the resolution – which usually consisted of a simple compromise between the two parties – and would use the services again in the future.

However, users raised a number of concerns regarding more serious cases. The MCMP programmes were sometimes discriminatory, excluded marginalised groups and therefore perpetuated unequal community-level power dynamics. One user's experience stands out as particularly revealing:

Recently, my mother and some men got into a fight in our family shop. She didn't like how rudely they were speaking and she told them to stop speaking in such a way in front of a woman. They then got angry and beat her so severely that she had to go to the hospital. I came from Janakpur where I live and work and filed a police report. The police then arrested the men for what they did. However, I then began to receive pressure from some community members to drop the charges, and they began to verbally harass my mother. Even the mediators from the MCMP programme pressured me to go to the police and have the men released. I eventually dropped charges at the police station and went to the mediation centre, where the mediators told me they would resolve the issue. The mediators did not listen to me because they were high caste, and instead were partial to the men who beat my mother. I received no compensation for her medical bills and they just told the men not to beat my mother again. This is not justice. I later found out that the men who beat my mother gave the mediators 500 rupees to pressure me to drop the charges.[121]

This user also reported that mediators in his local MCMP centre were predominantly from the majority caste in his community and that minority castes were not treated fairly in mediations. Instead, mediators were mostly partial to members of their own caste or to people from the same political parties. While this user's testimony was exceptional and represents only one person's point of view, it was not strongly contradicted by users in other VDCs. Saferworld researchers found that mediators in the MCMP programme who already held positions of authority in their community frequently spoke down to disputants, who were often poorer, less educated and from lower castes.

120 One-to-one semi-structured interview with a user from a VDC with a DFID CMC, Naktavij VDC, Dhanusha (07/09/10).
121 One-to-one semi-structured interview with a user from a VDC with a DFID CMC, Naktavij VDC, Dhanusha (07/09/10).

Further supporting this argument, Saferworld researchers found that decisions made by mediators in MCMP centres were heavily influenced and determined by mediators from dominant and higher caste groups in the community. This may be a result of the process used for selecting mediators: the MCMP first consults with locals about who is 'respected' within the community and who they think should receive the training to become a mediator. It is important to note that 'respected' community members are usually those with wealth, education, power, and authority in the community stemming either from their caste, ethnic group, gender, and/or or their affiliations with particular political parties or other influential groups. Therefore, selecting 'respected' community members has meant that the influential and wealthy have been predominantly selected as mediators in the programme. From field research, it was not possible to determine whether communities felt pressured when they suggested community members for training.

Although marginalised groups must constitute at least a third of mediators within a committee, when mediator groups were interviewed during the research, it was often the case that only one or two high caste males spoke on behalf of all mediators. This may be an indication of what takes place during a mediation process. This raises a broader question regarding the ability of internationally supported community mediation programmes to change existing unequal power dynamics at the local level and empower marginalised groups. The research found that the MCMP programme has faced obstacles in challenging and changing discrimination against marginalised groups, and has apparently become subject to the same discriminatory power dynamics, through assigning mediator positions to already dominant groups. It is therefore questionable whether the MCMP programme has managed to empower marginalised groups as it set out to do.

Users interviewed did not seem to have a strong sense of pride in their programme or in how their cases were resolved. Many appreciated having received assistance for free; however, as outlined above, there were a number of cases where people felt pressured within the system rather than empowered by it. Users from Naktavij VDC also reported the use of arbitral and retributive approaches to dispute resolution, which contradict the mediation-based approach that the programme was designed to cultivate. Disputants were sometimes pressurised to come to the mediation centre and told how to resolve their conflict. Users said that community members accepted these decisions because there was nowhere to complain or appeal.

MCMP mediators and users illustrated confusion over the meaning of and processes involved in 'mediation', thus further questioning the quality of mediation approaches employed. Many MCMP mediators interviewed during the research understood some of the principles of mediations such as 'win-win' and 'human rights', but were not necessarily able to break down mediation into a step-by-step process or explain how to achieve a 'win-win' resolution scenario. Users of MCMP centres expressed confusion over the programme itself and were hesitant to answer questions about it, especially if mediators were present. In Naktavij VDC, people who had used the CMC's services did not understand the word mediation and referred to the CMC as "the club" because the offices were based in a youth club. This may reflect a failure to raise users' awareness of the approach before they began their mediation or because mediators wanted to retain the power to 'convince' disputants of their resolutions for themselves. Many users interviewed said that mediators, not users, "resolved the case" and "made them agree".[122] Mediators themselves reported having "convinced" disputants of a certain resolution, suggesting that they exerted social pressure upon disputants to resolve cases in a certain way.[123]

In addition, the group mediation process used in the MCMP centres means that mediators often outnumber disputants when they mediate, making it easier to put

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122   One-to-one semi-structured interview with a user from a VDC with a DFID CMC, Naktavij VDC, Dhanusha (07/09/10).
123   KII with a DFID mediator, Naktavij VDC, Dhanusha (07/09/10).

social pressure on disputants. MCMP mediators interviewed reported that mediation committees worked together to convince users to resolve their cases but could not elaborate further, and individual mediators did not have defined roles on the committee. It is unclear whether mediators from marginalised groups were required to be present in every mediation session.

Neither users nor mediators said that physical punishments or detentions occurred in the MCMP programme. However, there were reports that MCMP mediation centres across Dhanusha regularly operated outside of national and international justice standards by handling criminal cases, predominantly rape. Although MCMP centres are prohibited from mediating criminal cases and are supposed to refer any criminal cases to the police, both users and mediators admitted on several occasions to dealing with criminal cases. When users were asked which cases they would bring to the mediation centre (and the difference between criminal and civil cases was explained to them where they didn't already understand), they often replied that they would come to the centres regardless of whether the case was criminal in nature. Both users and mediators explained that the police often did not have the capacity or resources to deal with many of the criminal cases reported to them, particularly rape. Mediators acknowledged that they were not formally supposed to deal with criminal cases and said that they therefore did not record them in their records, meaning that district co-ordinators are not likely to be aware of the frequency with which these cases occur. Also, because mediators address these cases 'off the record' and do not treat them as standard mediation cases, it is unclear whether they perceive their actions as a part of their MCMP responsibilities, or whether they are simply fulfilling their role as a community member who has the power to act on behalf of the victim (or the perpetrator).

It can be argued that the MCMP centres are playing a key role in addressing a gap in formal security provision. When respondents were asked why they came to the mediation centre, many replied that they did not have other options. They stated that the cost and corruption in the formal sector meant it was not a reliable form of justice, and other available systems, such as those provided by political parties and youth wings, posed similar problems.

The district MCMP office mainly seems to audit funding, caseloads, and the number of successful resolutions rather than to involve itself in individual cases or feedback on specific mediators. Considering the frequency with which mediators are handling criminal cases without the knowledge of the district headquarters, better oversight is definitely required. In addition, monitoring systems should focus not only on the number of cases resolved but the quality of dispute resolution, alignment with international and Nepali justice standards and human rights norms, and the impact of the MCMP on power dynamics at the local level. Users also need a way to appeal mediation outcomes and provide feedback to the district headquarters in cases where they feel that they are being discriminated against by a mediator. Users who criticised MCMP mediators were willing to discuss their problems with the programme but very worried about being overheard by local mediators and community members.

Integration and co-ordination

MCMP successfully integrated itself within the VDC by recruiting and training mediators from all wards. In a couple of cases field researchers found that mediators even hold dual roles as mediators and *maijan dewam* leaders, confirming MCMP reports that traditional leaders were actively recruited for their programme, in an effort to integrate traditional justice mechanisms with the MCMP. In these VDCs, traditional leaders no longer resolved cases solely involving members of their caste through the *maijan dewam* system, but as mediators on behalf of the MCMP centre. This could either confirm users' observations that *maijan dewam* leaders no longer resolved disputes and were only involved in cultural affairs, or it could suggest that *maijan dewam* leaders are good at adapting to a changing situation.

Mediators reported that political parties were a chronic problem and would compete with and interfere in mediations directly, especially if one of the disputants was affiliated to a political party. Before the mediation centres were established, users reported that political parties would often receive money, food, and other benefits from community members for dealing with cases. Now that the MCMP provides dispute resolution services for free, political parties have been reported to actively resist mediators in many cases. Some users and mediators reported that political leaders are often present at mediations and unfairly advocate for their party affiliates in a dispute.

Mediators reported that they co-operated with the formal security sector in an unsystematic fashion, which is perhaps due to the formal sector's weak capacity more than the programme itself. Notably, mediators stated that the Nepal Police regularly referred cases to the MCMP centres, and mediators would feel forced to address criminal cases when the police declined to act. They also reported several instances where the police would enforce mediation agreements between parties made through the MCMP centres. While the signed agreements given to disputants at the end of mediations are not legally binding, many mediators reported that the formal sector would honour those agreements and sometimes help enforce them if a disputant refused to comply with them. While this helped resolve many cases, it may have had a detrimental effect on the voluntary mediation process because it removed the authority of the user to decide on the resolution.

Conflict sensitivity

MCMP programmes have successfully increased communities' access to justice and dispute resolution services across Dhanusha, as well as promoting a generalised understanding of human rights for communities. During the research, users clearly demonstrated an understanding that everyone should be treated equally and should have fair access to impartial justice.

However, more work needs to be done to ensure that the MCMP's work does not aggravate underlying causes of conflict. Beyond a universal understanding of equality, users and mediators were unable to explain how to address ongoing structural causes of marginalisation and discrimination within their community. Human rights awareness is a huge step in the battle against social discrimination, but is only beneficial if oppressed and marginalised peoples also have access to peaceful, fair, and impartial mechanisms to resolve their grievances. Systems that purport to be 'blind' to discrimination often fail to address it because they do not take into account the differences between disputants that may have played an underlying role in the dispute. Enforcing and affirming human rights is definitely a necessary step, but equally important is allowing marginalised groups to recognise and reconcile their grievances with their communities. If marginalised groups feel pressured into a resolution, the immediate dispute may be resolved at the cost of lasting reconciliation between conflicted groups.

These problems might be in part due to DFID's programme being classified as part of its access-to-justice initiatives and not as part of a peacebuilding or conflict resolution programme. Failing to understand how justice and dispute resolution are connected to conflict dynamics and the historical marginalisation of various groups severely undermines the MCMP's chances of success. In the Terai, where chronic economic and social power disparities in Madhesi, Pahadi and Dalit communities are the source of many grievances, more work needs to be done to ensure that the MCMP is resolving disputes in a way that is sensitive to these factors. This links to more fundamental questions and dilemmas being faced in all internationally supported IJMs around how to empower marginalised communities whilst at the same time not disrupting social hierarchies and creating local conflict. While the MCMP programme has taken initial steps towards enforcing certain human rights norms, it may now need to consider the best strategies and procedures for addressing the underlying causes of marginalisation and discrimination in these communities. It should however be noted that the DFID

programme has only been being implemented since 2009: a longer period of time is needed to address these challenges and to accurately assess the longer-term conflict sensitivity of the programme.

Pro-Public Community Mediation Centres (TAF co-ordinated)

Accessibility

Pro-Public's CMCs received much praise for their accessibility. Users reported that mediators were available, and there were no reports that mediators took bribes or that users had to pay money for their services. Many users felt that the CMCs empowered the poor because they were free and removed economic factors when resolving disputes. Since many locals will go to their VDC secretary first for help with disputes, this made the mediation centres (which are situated in the VDCs' offices) accessible and naturally placed. Interestingly, while cost and ease of use were important factors for users in these districts, they more often cited other factors as an advantage, such as their ability to determine resolutions, before mentioning access issues.

One potential concern regarding the accessibility of the programme is that none of the CMCs were located in remote areas, meaning that communities which are the most isolated from other justice providers, including the formal sector, are not able to access the CMCs.

Quality

Generally, users were highly supportive of the programme and appreciated its presence within their communities. One older woman remarked, "I like to go and watch mediations take place sometimes because when I was younger we didn't have anything like this. I didn't ever think there would be something like this in our community".[124] Both men and women were found to be regularly using CMC services, and to be enthusiastic and proud about their programme. Mediators seemed to be happy to help their communities; however, they did note that TAF's process required a lot of their free time.[125]

Representatives from TAF and Pro-Public interviewed during the research reported that they established CMCs with a large degree of community participation and users interviewed confirmed that centres were established after their opinions and mediator recommendations had been taken into account. Interestingly, when users recounted cases that they had brought to the CMC, they retold how they themselves had resolved the case. Users were clear that they had resolved the conflict with the other party and that the mediator only facilitated the discussion. This demonstrates that users feel ownership over both the programme and the mediation process.

More so than the MCMP programme, the TAF programme illustrated a significant level of inclusion of marginalised groups. Pro-Public representatives interviewed as part of the research explained that they tried their best to encourage the community to nominate mediators to reflect the demographic composition of the community, with particular stress on the involvement of women, and members of marginalised and indigenous communities.[126] Some of the most outspoken proponents of Pro-Public's CMCs were women. Field visits demonstrated that female and lower caste users' comprehension and ownership over the process was equal to that of other demographic groups, and users shared similar feedback across all the surveyed VDCs. Many users felt the programme empowered the poor because it treated everyone the same. When asked whether users felt better after the CMC's mediation, one woman responded, "of course we feel better. We took time off from the fields and walked all this way to tell you how good the programme was because it has helped us so much. My sister [a

124 FGD with male and female users in VDC with a TAF CMC, Pushwalpur VDC, Dhanusha (09/09/10).
125 One-to-one semi-structured interview with a user from a VDC with a TAF CMC, Kurtha VDC, Dhanusha (07/09/10).
126 KII with representative from Pro-Public, Janakpur (10/09/10).

woman next to her] used to wear her veil like this before she participated in mediation at the centre, and now she shows her face with pride".[127]

Research confirmed that the TAF CMCs were using an 'interest-based' mediation programme, and unlike some other internationally supported IJMs, did not show signs of employing arbitral approaches. This is illustrated by the fact that users and mediators interviewed were successfully able to explain the mediation process, the role of the mediator, what a mediated settlement was, as well as other aspects of the process. This is likely to be a direct result of TAF's specific mediation vocabulary and use of vernacular language during trainings and mediations, which can easily be translated into local languages.[128] In addition, users did not report any use of force or 'convincing' of disputants to resolve the case in a certain way. Instead, users stated that their cases had been mediated with a high level of participation and the acceptance of both parties. The quality of the mediation employed in this programme may be reflective of the high standards of training received by mediators. Although the TAF co-ordinated CMCs have fewer mediators per VDC than the MCMP centres, TAF provides a more extensive training programme.

Users and mediators in VDCs where TAF CMCs are present drew a distinction between civil and criminal cases and explained that criminal cases would be referred to the police by mediators. Users said that they would not go to the CMC with criminal cases for this reason. Pro-Public's mediators and users were very clear that they did not handle rape cases or other criminal offences. When asked about criminal cases in their VDCs, users often said that there had been no criminal cases mediated by the Pro-Public CMCs that they could remember for several years, or if there had been they were unaware of them. Thus, from this perspective, the CMCs were found to be operating in line with international and Nepali justice policies and standards.

Pro-Public said they mainly monitored caseloads, the number of resolved cases, financial audits and individual cases. In addition, they reported that they co-ordinate lesson learning discussions between mediators where they reflect on particular cases and how they were resolved. TAF also gives refresher and advanced trainings and individual coaching to its mediators, as a means of monitoring and strengthening approaches to mediation. According to TAF representatives, Pro-Public together with all NGO partners maintain a computerised database to track, monitor, and evaluate the mediation process, and data is analysed on a regular basis to extract information on the type, frequency and location of disputes, disputant satisfaction levels and durability of settlements.[129]

However, during the research, no one identified a process or way for users to complain or provide feedback to Pro-Public's district offices in a systematic way. Establishing a means of monitoring individual mediators and providing better oversight might be necessary as the programme expands.

Integration and co-ordination

Pro-Public's CMCs were closely integrated with the formal sector via VDC secretariats. Because TAF originally planned for their programme to become the responsibility of the VDC, it is no surprise that the programme was systematically integrated within VDCs and the formal sector. While co-ordination on specific cases between the CMC and the formal sector was limited, a two-way referral system between the two systems is successfully operating, and is understood by both users and mediators. The VDC office and the police demonstrated faith and trust in the CMC programme, and regularly referred people to the programme before addressing civil disputes themselves. If the CMC was unable to mediate a case – for example if the case was criminal, or if disputants chose to resolve their case in the formal sector – mediators would pass on

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127 FGD with male and female users in VDC with a TAF CMC, Pushwalpur VDC, Dhanusha (09/09/10).

128 Academic Nepali relies heavily on the use of Sanskrit words and terms that are not used in vernacular.

129 KII with TAF Representative, Kathmandu (11/04/2011).

case details to the police and formal sector. Users said that police honoured the CMCs' mediated agreements, and some said that they helped enforce decisions according to the signed paper agreement given to the disputants by the mediator. Considering that many TAF mediators reported that enforcement of mediated decisions was often difficult and they had to remediate many cases because they were not enforced by disputing parties, developing and formalising co-ordination with the police at the users' consent may help provide more consistent enforcement. The weak enforcement of mediation outcomes may reflect poorly on the quality of the mediation, or may be illustrative of the voluntary and participative nature of the process.

Pro-Public district organisers and TAF's representative said that when the CMCs were established, *maijan dewam* were invited to participate as mediators and were given an orientation to the programme. This was done with the aim of strengthening co-ordination between the existing traditional justice mechanism and the new CMC programme, and ensuring that the CMC programme did not simply replace existing systems but sought to strengthen them. Despite these efforts, mediators said that there had been no formal co-operation between the two systems to date and that the traditional leaders had not participated in a significant way, in contrast to the MCMP programme, where in a couple of cases, *maijan dewam* leaders were also mediators on the programme. However, CMC mediators never mentioned *maijan dewam* as an obstacle in the process, and both users and mediators considered the *maijan dewams* to be primarily focused on resolving cultural disputes. One mediator said that the *maijan dewams* used to have a monopoly on dispute resolution but that since the CMC had been set up their role had diminished.

Some CMC mediators mentioned that political parties did try and interfere in the mediation, but both users and mediators said that these 'spoilers' were often unable to influence the process because they were not allowed to attend mediations. This is another major accomplishment of the TAF CMC programme, as all other internationally supported IJM providers reported having problems with political party interference. It may have been that the VDCs surveyed were not highly politicised; regardless, their ability to prevent political interference should be further investigated to determine whether their strategies can be applied to other systems and programmes.

Conflict sensitivity

Because TAF's mediation centres are now part of a larger peacebuilding process and take a 'conflict transformation' approach, mediators seem to have a much better understanding of how to procedurally address cases and disputes that are connected to broader national and regional conflict dynamics, as well as how to address underlying structural causes of discrimination and marginalisation. TAF's interest-based approach also encourages users to reach a mutual understanding of each other's histories and allows them to recognise their different needs and interests in the specific dispute, but also within the context of broader conflict dynamics. This highly structured process means that users can also replicate it outside of CMC-facilitated mediations. One woman said "I now have faith that I can resolve disputes when they happen. I first try to resolve the conflict myself the same way before I take the case to the mediation centre to resolve it".[130] This suggests that the impact of CMCs may well extend beyond the number of cases they mediate by providing users with a 'conflict transformation' or peacebuilding process for resolving grievances.

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130 FGD with male and female users from a VDC with a TAF CMC, Pushwalpur VDC, Dhanusha (09/09/10).

4.3.2 Traditional informal justice mechanisms

Maijan dewam (caste-based system)

Accessibility

Maijan dewam often only resolve disputes within Madheshi castes. This means that other communities in Dhanusha do not have access to this system. All Madheshi castes are aware of the existence of their *maijan dewam* and found them to be easily accessible, but *maijan dewam* were reported to have more influence and accessibility when dealing with intra-communal and intra-caste disputes than those involving different communities and castes. Some users reported that *maijan dewam* do not directly take money, but either one or both parties would have to provide them with food and alcohol when they resolved disputes. Many users believed these costs made them inaccessible to poorer members of the community.

Quality

Users interviewed during the research displayed a high level of dissatisfaction with the *maijan dewam* services. This could be a key reason behind the deterioration of their dispute resolution authority in VDCs where internationally supported IJMs are also present. Concerns regarding the arbitral approach employed in dispute resolution were also raised. Disputants face significant social discrimination and may be ostracised by the community if they fail to treat their *maijan dewam* with respect or abide by decisions. Hence, this system lacks the participation of users and forces decisions upon them.

Users also reported concern regarding the discriminatory nature of the *maijan dewam* system. Dispute resolution is predominantly determined by local caste and power hierarchies and therefore enforces historical patterns of marginalisation. The *maijan dewam* is largely comprised of dominant and powerful groups in the community, specifically higher caste men. As a position on the *maijan dewam* is inherited, members are unwilling to change traditional power hierarchies and include marginalised and less powerful groups in the system. Most users felt that their decision making was determined by caste hierarchy, where disputants from higher castes are treated favourably. A user explained that when a dispute occurs between two members of the same caste the *maijan dewam* will resolve the conflict based on their personal, political, caste and/or business alliances with each of the disputants. When disputes occur between people from different castes, the *maijan dewam* of both castes will meet to try and resolve the issue, but local power dynamics and hierarchy play a significant role in determining the guilty party and punishment, and the lower caste disputant is usually found guilty.

Another issue raised during interviews was the failure of the *maijan dewam* to act in line with established international human rights norms of the right to be presumed innocent and to a fair trial.[131] Many users complained that *maijan dewam* were often biased and felt that their decisions were based on bribery or personal inclinations. Users also reported that guilty parties faced physical punishments in more serious cases, particularly rape.

Despite these criticisms, some users were pleased that the *maijan dewam* were at least providing them with help, often for free. In addition, they appreciated their cultural sensitivity when dealing with disputes, which they felt was less evident in other internationally supported IJMs, which are not cultural, and caste specific. Although users did not have faith that *maijan dewam* would resolve disputes fairly, they did acknowledge their authority in dispute resolution.

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131 FGD with male and female users from a VDC far from police posts and without internationally supported IJMs, Bharatpur VDC, Dhanusha (09/09/10).

Integration and co-ordination

There is notable overlap between the *maijan dewam* system and the MCMP mediation programme described above. *Maijan dewam* leaders were found in some cases to be participating as mediators in the MCMP's CMCs, more so than in the TAF co-ordinated CMCs. Given that *maijan dewam* leaders have been found to operate in a discriminatory manner, the participation of *maijan dewam* leaders could raise questions regarding the quality of the MCMP programme.

Users also noted that community leaders held multiple positions of authority within different systems. For example, *maijan dewam* leaders may also be political party leaders, internationally supported community mediation committee members and/or representatives of community-based organisations at the same time, which sometimes made it difficult to determine the source of their arbitral authority. There were no reports that *maijan dewam* collaborated with the police or internationally supported IJMs when they resolved cases – particularly in more remote VDCs where other justice providers are not present – but there were reports that police had in the past respected the decisions they reached.

Conflict sensitivity

While *maijan dewam* reinforce some regional and national causes of conflict, such as discrimination and exclusion of marginalised groups, their reconciliation process is culturally sensitive and was acceptable to many users. Punishments were regarded as a means of reconciling two disputing parties in a culturally appropriate way (i.e. through food and alcohol) in order to prevent grudges and lasting damage to social cohesion. At the same time, the use of alcohol in dispute resolution could also heighten tensions, and users felt the system to be too discriminatory and partial to be truly reconciliatory or to address underlying causes of conflict. Despite this, the approach used in *maijan dewam* provides an insight into the value of drawing upon shared cultural values in the reconciliation process that heightens local ownership and buy-in, from which internationally supported IJMs could learn.

4.3.3 Other informal justice mechanisms

Political parties (formerly the *panchayat* system)

Accessibility

Since political parties have representatives across all VDCs and representatives are often based at the ward and community level, they are accessible to most communities in Dhanusha, including those in remote areas. They therefore reach a significantly greater proportion of the population in Dhanusha than do the internationally supported IJMs and the formal sector. However, users complained that political parties often required compensation for resolving their disputes, either by supporting their party, paying for their services, or providing them with amenities. Parties have often made arbitration decisions in favour of the disputant who paid them the most. While their services were therefore 'free', they were often prohibitively expensive to the more marginalised groups.

Quality

In general, users across all VDCs were critical of the role political parties played in dispute resolution, and the quality of the outcomes. Many people felt political parties could not be reliable justice providers because of their partiality and corruption.

The approach to dispute resolution taken by political parties is very far from being in line with human rights principles on the presumption of innocence and a fair trial, as well as with international and Nepali justice standards. Political parties often involved themselves in disputes whether both disputants wanted them to or not and would especially interfere to resolve larger disputes as a means of exerting authority.

Regardless of the type of case, their decisions were believed to be partial towards their supporters and largely unfair. Users often spoke about these cases in terms of 'win-lose', where the party who is found guilty 'loses the case'. Interestingly, users also separated the notion of 'winning' a dispute resolved by political parties from 'receiving justice' when talking about political parties, suggesting that the two are often distinct. In cases involving different political parties where different political party leaders convene to resolve the dispute, users said that the disputant from the stronger party usually 'wins' the dispute whether or not they are guilty. One person said that "only when both disputants are from the same party do they receive justice".[132]

The research found that political parties often play a key role in arbitrating criminal cases and protecting perpetrators from punishment in the formal sector for serious cases, including rape. They are therefore preventing justice from being realised through undermining and manipulating the role of the formal sector.

In addition, when highly sensitive cases are picked up by the media, political parties often publicly support the victims in order to win over support from marginalised communities. However, users felt that political parties were not sincerely concerned about the rights of the marginalised, and that more often than not, they perpetuated the exclusion of, and discrimination against, marginalised groups. In a few instances, political parties resolved disputes in favour of the marginalised disputant or pressurised the formal sector to take certain actions on behalf of marginalised communities. But users felt that the only people empowered by political parties are those able to buy the party's protection, i.e. wealthy and influential members of the community. The only exception is youth who can be mobilised to support the party's interests. Users said that party leaders and officials gain security and protection from those higher up in the party in exchange for support and votes at the local level, and community members likewise gain their local leader's support in exchange for their allegiance.

Integration and co-ordination

Political parties reportedly work with other political parties to resolve disputes if their resolution is in the interests of both parties. However, when disputants are from different political parties, these parties often advocate on behalf of their members and even fight with each other. Research found that parties mostly collaborate with other influential members in the community, usually those who are members of their own party, when they are arbitrating criminal cases. As outlined above, political parties also exert a significant amount of pressure on formal institutions and often manipulate district cases to the benefit of their members, thus collaborating with the formal sector in a corrupt and unstructured way. Political parties can influence the outcomes of the *maijan dewam* system when these traditional leaders are also politically involved. Political parties also reportedly challenge and disrupt the work of internationally supported IJMs, particularly the DFID supported MCMP, where users reported that political leaders sometimes attended mediations and exerted political pressure for particular outcomes.

Conflict sensitivity

Political parties and their dispute resolution processes deepen the structures of exclusion that originally led to the Nepali civil war. Not only were many users unsatisfied with how they resolved conflicts, but many times they seemed to aggravate people's grievances by being blatantly corrupt, strengthening the power of already dominant members of the community, and manipulating the formal sector. Many interviewees blamed political parties for the People's War as well as for other issues such as poverty, lack of education and unemployment, believing that political parties do not care about their constituents.

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132 *Ibid.*

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Synthesis of key research findings

THE RESEARCH WAS PRIMARILY INTENDED to provide a 'snapshot' overview of the informal justice situation in three districts of Nepal, in order to fill a gap in information needed for programming on justice at the district and national levels. A synthesis of key research findings is outlined below. While findings from this initial research cannot be automatically applied throughout Nepal, a number of shared findings have emerged in the three districts, which may be indicative of some common countrywide challenges. It is, however, important to recognise that implementation of internationally supported IJMs in these districts is relatively nascent, and real programme impacts will not necessarily be seen for some time.

5.1 Summary of mapping of informal justice mechanisms

The research identified a patchwork of different informal justice systems operating in each of the three districts. The level of co-operation and integration between these different informal justice systems, and between these informal justice systems and the formal sector, was found to vary depending on the specific system, as well as by location. In some cases, these informal justice systems are working in isolation from or even in competition with each other, thus undermining their contribution to a broader system of justice in Nepal. User preferences were determined by a combination of the following factors: which justice systems they perceived to be available and most easily accessible; which systems were likely to offer the best outcome as a result of their caste, gender, ethnicity, political and economic ties; and which system they perceived to be the most fair. In addition, some users stated that they had approached a number of justice systems simultaneously in order to secure the best outcome.

Traditional justice mechanisms are still operating in all of the districts visited by Saferworld researchers, particularly in remote VDCs that are more isolated from internationally supported IJMs and the formal sector. Political parties and associated youth wings are also playing a significant and semi-structured role as independent justice providers, particularly for youth and political party members in urban areas. Although the political parties and youth wings were found to be less popular than commonly claimed, their existence clearly illustrates the development of parallel government systems that threaten the autonomy and influence of the government, and the formal security and justice sector. In addition, political parties were found to be playing an influential role in the outcome of cases being resolved by traditional justice mechanisms

and the formal sector, and to a far lesser extent in internationally supported IJMs, especially the MCMP in Dhanusha.

Internationally supported IJMs are key stakeholders involved in the provision of informal justice in all districts visited. Wherever these IJMs are present, they were found to be the most significant justice providers in terms of members and caseload. In general, these programmes operate in less remote VDCs that are more easily accessible by road. A number of *ad hoc* community-led informal justice mechanisms were also identified, particularly in Dhanusha. These mechanisms are playing an informal role in dispute resolution, particularly of civil cases, although on a much smaller scale than the internationally supported programmes.

5.2 Issues around access to informal justice

In the more remote areas of all three districts, traditional justice mechanisms were found to be more accessible than internationally supported IJMs and the formal sector, thus filling a gap and providing justice where others are not. In Dhanusha and Panchthar, the parallel justice systems provided by political party and youth wings also filled this gap to some extent. In Panchthar and Dhanusha, internationally supported IJMs and police posts were primarily found in VDCs that are accessible by road and close to main towns.

However, traditional justice systems in Dhanusha and political parties and youth wings in Dhanusha and Panchthar districts were both criticised by users due to the fees and other costs associated with their dispute resolution services, which made them largely inaccessible to poorer members of the community. Internationally supported IJMs offer their services for free and were praised by users in all three districts for removing economic barriers to justice provision. Unlike traditional justice mechanisms, which frequently only provide justice to their specific caste and ethnic group, internationally supported IJMs are accessible to different caste and ethnic groups and able to resolve inter-caste and ethnic disputes. For this reason, in VDCs where both internationally supported IJMs and traditional justice mechanisms are present, research found that communities often prefer to take disputes to internationally supported IJMs. This is particularly the case in less remote VDCs in Dhanusha and Panchthar.

5.3 Quality of informal justice provision

5.3.1 Mediation versus arbitration

Apart from a small collection of Gurung, Thakali and Magar *samaajes* in Kaski that employ 'traditional mediation' and have received training on mediation approaches from SUSS (in connection with the TAF co-ordinated CMC programme) and UNDP, traditional justice mechanisms and political parties in all three districts were found to predominantly resolve disputes through arbitration. In general, justice providers favour wealthier, higher caste, and more socially powerful community members and interests.

All of the internationally supported IJMs assessed as part of the research have been designed to apply a mediation 'win-win' or 'reconciliatory' approach to resolving disputes. However, a 'win-lose' or retributive approach to justice was reportedly sometimes used in the DFID supported MCMP programme in Dhanusha and the UNDP/UNICEF supported PLC programmes. It is however important to recognise that mediation is only a small component of the PLCs, which focus more broadly on raising awareness on women's and children's rights. The approach used in the MCMP programme in Dhanusha in some cases bordered on arbitration, where users felt that the mediators "convinced" disputants to arrive at a particular outcome. Similarly, PLCs in Panchthar and Kaski were reportedly employing approaches that bordered on arbitration, where disputants were "pressured" and "convinced" or shamed socially

by committee members into reaching certain outcomes. Although social shame has been used internationally and throughout history to enforce certain constructive behavioural norms and prevent the risk of conflict within society, if the norms that are being enforced are not shared by all or are set by a dominant group, this social pressure can be isolating and exacerbate tensions and the risk of conflict.

The TAF co-ordinated CMCs in both Kaski and Dhanusha were found to employ a reconciliatory approach to dispute resolution. CMC users and mediators interviewed were successfully able to articulate the meaning of mediation and a 'win-win' approach, and to provide detailed information on the steps taken and process used in mediating disputes. As such, the TAF co-ordinated programmes operate most comprehensively in line with international justice and human rights norms. This can be attributed to the following factors:

- In the TAF programme, disputants are able to select a mediator to represent them, thus reducing the risk of bias, and ensuring their participation in the process.
- Only three mediators are allowed to be present during mediations. Having a greater number of mediators present enables greater pressure to be put on the disputants to 'convince' them of certain outcomes.
- In its mediation process and training materials, TAF uses language that avoids technical and professional jargon, helps to prevent discrimination based on misinterpretation, is sensitive and applicable to local languages, and appears to be well understood by users and mediators.
- TAF trainings on mediation involve a number of different trainings on relevant issues, and are provided on a regular basis to ensure that new recruits are adequately trained. In addition to providing refresher trainings, other internationally supported IJMs should also provide regular in-depth trainings on mediation to committee members after the programme has been established. This is critical for ensuring that committee members who are recruited onto the programme after the initial set-up period receive the same level of training on mediation as those who were recruited at the beginning of the programme.

5.3.2 Discrimination against marginalised groups

Some ethnic-based *samaajes* in Kaski have taken steps to include marginalised groups, especially the Gurung NGO Tamudhi Nepal. However, traditional justice mechanisms in general, particularly in Dhanusha and Panchthar, were found to systematically discriminate against marginalised groups – particularly women, the poor, lower castes and other ethnicities. Although political parties and youth wings sometimes supported disputants from marginalised groups that were members of their political party, this was usually done with the primary aim of generating media attention and votes. In general, political parties and youth wings in Panchthar and Dhanusha were found to discriminate against marginalised groups. As a result, both traditional justice systems and political parties/youth wings are effectively reinforcing the patterns of exclusion and marginalisation that originally led to the decade-long conflict in Nepal.

Internationally supported IJMs, particularly PLCs in Kaski and Panchthar, and TAF supported CMCs in Kaski and Dhanusha, have unquestionably empowered marginalised groups whose disputes they have helped resolve, as well as the people they have trained as committee members. Women in particular have been empowered through participating in these programmes.

However, internationally supported IJMs, particularly CMCs, have faced some challenges in addressing discrimination, despite policies designed to target these issues. The TAF programmes in Kaski and Dhanusha clearly encouraged the community to nominate mediators to reflect the composition of the community, with particular stress on ensuring participation of women, and members of marginalised and indigenous communities. However, in some CMCs in Kaski, some of the

mediators from marginalised groups have been replaced by mediators from more influential groups in the community, either when original mediators have moved away or because communities have greater trust in more influential mediators.

In Dhanusha, the TAF co-ordinated CMCs were found to be more inclusive than the MCMP programme, particularly in terms of empowering women. Although the MCMP programme set quotas for the participation of women and inclusion of marginalised groups as mediators, the more socially powerful mediators were able to exercise their authority to a much greater degree in mediations and were not necessarily challenged by marginalised communities.

From these findings, it can be argued that despite their best efforts, some internationally supported IJMs have faced challenges in changing unequal power relations at the local level, even becoming subject to the same power dynamics as traditional justice mechanisms through empowering already dominant groups as mediators. Yet these mediation programmes have also enabled women to voice their opinions and empowered marginalised ethnic groups to discuss issues that affect them with people who enjoy social power. This is a significant achievement given the complexity of the context and the relatively short timeframe during which these programmes have been being implemented. Either way, this highlights a common dilemma for internationally supported IJMs in Nepal: how to empower marginalised groups whilst at the same time not disrupting social hierarchies to the point that communities lose ownership over the project, and local conflict dynamics are exacerbated as a result.

Discrimination against certain groups in IJMs is sometimes linked to the involvement of political parties, reflecting the politicised nature of the justice sector in the current context in Nepal. Section 5.4 summarises the influence of political parties over different informal and formal justice systems outlined in this report.

5.3.3 Compliance with international human rights norms and justice standards

Most traditional justice mechanisms in all three districts were found to consistently breach international and national human rights norms and standards for justice, particularly the right to a fair trial and the presumption of innocence. Traditional justice mechanisms were found to use physical punishments, particularly in Dhanusha and Panchthar.

This was largely not the case for the internationally supported IJMs assessed here. However, concerns were raised during the research regarding the extent to which different IJMs are operating in line with national and international justice standards, policies and frameworks. The responsibility for resolving criminal cases lies with the Nepali state. Nonetheless, research found that both traditional justice mechanisms in all three districts as well as some internationally supported IJMs – particularly the DFID supported MCMP programme in Dhanusha and the PLCs in Kaski and Panchthar – are sometimes handling criminal cases, as opposed to referring them to the formal sector. The main reason given for doing so was the lack of capacity of the formal sector, although cultural sensitivities were also cited in the case of rape and gender-based violence. Only the TAF co-ordinated CMC programme was found to be systematically referring all criminal cases to the formal sector, although the PLCs do have a stronger system of referral to the formal sector than other internationally supported IJMs.

While it could be argued that the PLC and MCMP programmes are playing a key role in providing justice where the formal sector does not have the capacity to do so, particularly with regards to cases of gender-based violence, they have not been trained to resolve criminal cases and this ultimately further undermines the formal sector, not to mention being a violation of Nepali law.

5.3.4 Accountability, monitoring and evaluation

Research found that traditional justice systems in all three districts are not monitored and do not have accountability mechanisms in place. In the more remote areas, these systems operate without the involvement or knowledge of other informal and formal justice actors. In addition, the research highlighted a number of weaknesses in the accountability and monitoring and evaluation systems of internationally supported IJMs. The DFID supported MCMP programme in Dhanusha and the PLCs in Kaski and Panchthar were found to be focusing on the number of cases resolved, and less on the outcomes of cases, quality of the dispute resolution, impact of the process on local conflict dynamics, or integration with other informal and formal systems. Monitoring should not focus on whether a case has been resolved or not but whether it promotes lasting resolution, complies with international human rights norms, is linked to a broader system of justice and is gender- and conflict-sensitive.

The TAF co-ordinated CMC programmes in Dhanusha and Kaski was found to be better at monitoring the outcomes of cases. TAF, Pro-Public and SUSS conduct regular trainings, consultations and re-evaluations with users and mediators to reflect on cases and to ensure a standardised approach to mediation. However, like other internationally supported IJMs, the TAF co-ordinated CMC programme in these two districts lacks an effective complaints procedure whereby users can appeal the outcomes of cases, and register complaints about particular mediators or processes. This is critical to ensuring effective accountability and to regularly improving and updating a programme.

5.4 Integration and co-ordination between different justice systems

In the three districts researched, it was found that internationally supported IJMs have created alternative mechanisms that sometimes replace, sometimes overlap and some-times run parallel to traditional justice mechanisms.

For internationally supported IJMs to be successful in their aim to strengthen access to justice in Nepal, it is critical that they do not seek to simply 'replace' or fall into competition with traditional justice mechanisms, which are embedded within the cultural histories of many communities. Indeed, internationally supported IJMs can also learn from these traditional justice mechanisms regarding culturally sensitive approaches to dispute resolution. Collaboration between these two systems of justice is therefore critical, as long as the unsound practices found in traditional justice mechanisms do not infiltrate the internationally supported IJMs.

5.4.1 Co-ordination between traditional justice mechanisms and internationally supported IJMs

In some cases there is already a significant level of co-operation between traditional justice systems and internationally supported IJMs. For example, some *maijan dewam* leaders participate as mediators in the DFID supported MCMP programme in Dhanusha, and the PLC programme in Panchthar works extensively with the *pancha bhaladmi* system. However, these programmes need to ensure that mediation methods are not corrupted by the arbitral approaches of traditional justice actors. In Kaski, although the ethnic-based *samaajes* prefer to work in isolation from other justice systems in order to preserve their autonomy, a number of *samaajes* have received training in mediation from NGOs including SUSS through the TAF programme. This has supported the reform of these traditional justice mechanisms to better include and empower marginalised groups, and constitutes a successful approach to collaboration.

In Panchthar and Dhanusha, collaboration between these traditional justice mecha-nisms and internationally supported IJMs is stronger in less remote areas where both systems are present. In more remote areas, traditional justice mechanisms, as often the main or only justice provider operating, largely work in isolation from other formal and informal systems. In areas where both systems are present in Dhanusha, the role of the traditional justice mechanisms in resolving disputes appears to have been reduced and in some ways replaced by internationally supported CMCs, particularly the DFID supported MCMP programme. The traditional leaders now play a role as mediators in

this programme, and the role of *maijan dewam* has been reduced to a purely 'cultural' role. Where there is less co-operation between these two systems, for example with regards to the TAF co-ordinated CMC programme in Dhanusha, this does not necessarily present an obstacle to the activities of either justice actor. Hence, these two separate justice systems are operating alongside each other, and are not in direct competition.

5.4.2 Co-ordination between internationally supported IJMs and the formal sector

Collaboration is critical for ensuring that IJMs contribute to a broader system of justice and do not replace and undermine the autonomy of the formal sector, particularly with regards to dealing with criminal cases. Collaboration is also critical as these IJMs can play a role in building the capacity of the formal sector to respond to criminal cases and to mediate gender-based violence cases.[133] In recognition of this, most internationally supported IJMs have integrated a system of referral and collaboration with the formal sector into their programme design.

The TAF co-ordinated CMCs in Dhanusha and Kaski have established an effective two-way referral system with the VDCs: CMCs refer criminal cases to the VDCs and the VDCs refer civil cases to the CMCs. VDC staff expressed a high level of trust in the CMCs during research, and VDC staff are successfully integrated into and participate as mediators in the programme. This level of co-operation is significant enough to build the capacity of the VDC on mediation whilst allowing TAF a necessary level of independence. In addition, research found that the police are supporting the CMCs to enforce outcomes of disputes in Dhanusha, which is illustrative of a good working relationship between them.

PLCs are designed to have a high degree of co-ordination with the formal sector, which is a major strength of the programme. PLCs in Panchthar and Kaski were found to have established a stronger connection with the formal sector than other internationally supported IJMs. DRGs refer cases to the police and facilitate the process of cases through the courts. The PLCs are well integrated into the VDC structure where VDC representatives have been recruited as mediators on the committees. They also maintain a strong collaborative relationship with WDOs in each district. However, Saferworld researchers found that in some cases, particularly in Kaski, PLCs had manipulated their connections with the formal sector in order to influence the outcomes of dispute resolution.

5.4.3 Collaboration between the formal sector and traditional justice mechanisms

Saferworld research did not uncover a significant level of structured collaboration between the formal sector and traditional justice mechanisms, probably because the latter are most active in more isolated VDCs, particularly in Panchthar and Dhanusha, where the formal sector and internationally supported IJMs are less present. However, the formal sector and particularly the police do often respect the outcomes of dispute resolution led by these traditional justice mechanisms. In some cases, particularly amongst the *pancha bhaladmis* in Panchthar, they help to enforce these outcomes. Collaboration between the police and traditional justice systems can lead to strengthened public-police partnership at the community level. To ensure this, the police should play a role in monitoring the outcomes of these systems and helping to reform them.

133 The Nepal Domestic Violence Act (2009) stipulates that the police should play a greater role in mediation, especially of gender-based violence cases.

5.4.4 **Co-operation between internationally supported IJMs**

Saferworld research also did not uncover a significant level of co-operation between the different internationally supported IJMs assessed. Either they were found to work in isolation from each other although operating in the same district, for example in Dhanusha, or they explicitly compete with each other. In Kaski, research found that PLCs were directly competing with the TAF co-ordinated CMCs and in some cases, pressuring disputants into using the PLCs. This only undermines the contribution of internationally supported IJMs to a more joined-up and accessible system of justice in Nepal.

5.4.5 **Co-operation between political parties and other informal and formal justice systems**

Research confirmed that the influence of political parties over access to justice in Nepal, both formal and informal, is a worrying reality which reflects the politicisation of Nepal's economic, social, cultural and governance spheres. This is particularly concerning as politicisation of the informal and formal justice systems exacerbates social and political exclusion, which was a key factor underlying the decade-long conflict.

Research found that political parties are playing a significant role in influencing the outcomes of disputes dealt with by traditional justice mechanisms, particularly the *maijan dewam* in Dhanusha and the *pancha bhaladmi* in Panchthar. These traditional leaders are also often members of political parties, and the outcomes of disputes are influenced by disputants' association with particular parties. Political parties often manipulate the outcomes of cases being dealt with by the formal sector to the benefit of their party members.

However, we found that political parties have much less influence over internationally supported IJMs. Even though some of the mediators on the TAF co-ordinated CMCs and committee members on the PLCs in Kaski and Dhanusha were found to be associated with political parties at the VDC-level, users did not report any politicisation of the mediation outcomes. In contrast, users of the DFID supported MCMP programme stated that political parties often sit in on mediations and influence the outcomes. Lessons can therefore be drawn from the TAF co-ordinated CMC and PLC programmes on how to guard against politicisation of informal justice systems.

5.5 **Conflict sensitivity**

The practices employed by traditional justice mechanisms and political parties in the provision of justice exacerbate underlying causes of local and national conflict, particularly through the exclusion of marginalised groups. However, we found that traditional justice mechanisms are often more culturally sensitive than other IJMs, including internationally supported IJMs. For example, the cultural practices employed by some of the traditional justice mechanisms in dispute resolution have a positive impact on social cohesion as they promote mutual respect between disputants and reconciliation, such as the *seer uthaune* (the raising of disputants' heads) of the *pancha bhaladmi* in Panchthar. IJMs can learn from these traditional justice mechanisms particularly with regards to drawing upon shared cultural values in the reconciliation process.

The level of conflict sensitivity in the internationally supported IJMs is mixed. The DFID supported MCMP programme in Dhanusha and the PLCs in Kaski and Panchthar take an 'access to justice' approach, which focuses on providing justice to users, but does not systematically connect this with a broader peacebuilding approach to address the underlying causes of conflict and social exclusion. Although the PLCs explicitly seek to address the exclusion of women and promote their legal rights, by not being sensitive to the underlying reasons why women are excluded in the first place, the programme has in some cases exacerbated tensions between men and women. However, it is important to recognise that addressing underlying causes of

discrimination at the same time as maintaining community buy-in is extremely complex, and more time is needed for the internationally supported IJMs to overcome this challenge.

A number of lessons for how to do so can be drawn from the TAF co-ordinated CMC programme, which has successfully adopted a 'conflict transformation' and 'interest-based' approach to dispute resolution that seeks to develop a mutual understanding of disputants' histories during mediation and to address any underlying causes of conflict. As part of this, the approach refrains from using language that implies parties are at conflict with each other such as 'disputant', 'victim' and 'perpetrator'.

It was not possible to definitively assess the capacities of internationally supported IJMs to resolve ethnic and caste-related disputes. However, given the growing ethnicisation of politics and society, it is critical that informal justice providers are prepared to respond to the increased number of inter-ethnic disputes.

6

Initial key recommendations

IT IS NOT POSSIBLE to provide detailed recommendations for strengthening informal justice provision at the national level in Nepal on the basis of this research. However, the research was able to identify a number of common issues and challenges being experienced by different stakeholders in Kaski, Panchthar and Dhanusha districts. On the basis of these shared findings, a number of initial **district-focused** recommendations can be made for strengthening informal justice provision in Nepal, as well as for how this provision links to and supports the formal sector. These initial recommendations, which are targeted at government, local authorities, civil society, the international community and security and justice agencies, are outlined below.

Undertake more research on informal justice mechanisms at the district level. More district-level research should be undertaken to map and assess the different informal justice mechanisms, particularly traditional justice mechanisms that exist across all five regions of Nepal, in order to develop a comprehensive picture of the situation across the country. This remains a key constraint on district and national-level policy and programming on informal justice provision in Nepal.

Expand the coverage of internationally supported IJMs and police posts to more remote VDCs. Where internationally supported IJMs are present, they provide justice in a way that is more accessible, fair and accountable than that which is provided by traditional justice systems, and also by the formal sector in some cases. They should therefore be rolled out to cover more rural areas that are less accessible by road. In addition, greater support should be provided to district police to establish police posts in all VDCs, including those that are less accessible by road, so that communities in these areas are not solely reliant on traditional justice mechanisms. This will also help to strengthen police-community relations more broadly in Nepal.

Strengthen the mediation approach employed by internationally supported IJMs, drawing on lessons from the TAF co-ordinated CMC programme. Although all internationally supported IJMs are designed to employ a mediation and 'win-win' approach to justice, some of them are actually following a 'win-lose' approach, which borders on arbitration. The following needs to be done to ensure an effective approach to mediation:

- Ensure that in-depth trainings for mediators and committee members are delivered every year at all levels (ward, VDC and district), so that new mediators receive the level of training they need to properly understand the meaning of mediation and the process involved in effective mediation-based dispute resolution. Refresher trainings alone are not adequate for this purpose.

- Ensure that disputants can select their own mediator to represent them, which will strengthen their participation in – and ownership over – the process.

- Allow a maximum of three mediators in each dispute resolution process. Any more runs the risk that mediators may pressurise disputants into certain outcomes.

- Drawing upon lessons from TAF's CMC programme, informal justice systems should use vernacular language as opposed to academic Nepali to explain mediation, and during the mediation process.

Strengthen the mediation approach employed by traditional justice mechanisms. Traditional justice mechanisms continue to be key providers of justice in Nepal. This is particularly the case in more remote areas where other formal and informal justice mechanisms are not present, but also in less remote areas because of the cultural value given to them. It is therefore important that efforts are made to engage with and reform these traditional justice mechanisms at the same time as establishing and supporting new IJM mechanisms. Traditional justice mechanisms should be trained in 'win-win' and reconciliatory approaches to dispute resolution, and move away from the 'win-lose' and arbitral approaches currently employed. Reform of ethnic-based *samaajes* in Kaski to 'traditional mediation' mechanisms illustrates that efforts to reform traditional systems can reap positive outcomes.

Strengthen the conflict sensitivity of internationally supported IJMs. International support to informal justice providers should be based on a comprehensive analysis of conflict causes, actors and dynamics. Based on the outcomes of this analysis, programmes should be developed that avoid exacerbating divides between groups and in turn, local conflict dynamics, and instead seek to strengthen cohesion. Programmes should be context-specific and adaptable at the local level, even when they are part of a national-level programme. Drawing upon the successes of TAF's CMC programme, other internationally supported IJMs should better connect 'access to justice' programming with efforts to address underlying causes of conflict at the local and national levels. Traditional justice systems should also be trained to address underlying causes of conflict through dispute resolution. In particular:

- Supporting a 'win-win' mediation and reconciliatory approach to justice is critical for building trust in the community and addressing underlying causes of conflict. In contrast, a 'win-lose' outcome to dispute resolution exacerbates tensions between disputants and heightens the risk of renewed conflict.

- Drawing upon lessons from TAF's CMC programme, informal justice mechanisms should use conflict-sensitive language to reduce the risk of exacerbating tensions between disputants. In particular, language such as 'perpetrator', 'victim' and 'disputant' should be avoided as it implies that parties are at conflict with one another.

- Internationally supported IJMs could draw lessons from traditional justice mechanisms regarding the promotion of culturally sensitive approaches to dispute resolution that are based on shared cultural values. This will also help to ensure greater community ownership and buy-in.

- Internationally supported IJMs should seek to empower marginalised groups through supporting long-term changes in power dynamics at the community level as opposed to setting quotas for participation that, even if they are maintained, do not necessarily result in empowerment.

Strengthen the accountability of internationally supported informal justice systems. Accountability mechanisms need to be strengthened for all internationally supported IJMs. Monitoring and evaluation should focus less on the number of cases resolved and more on the outcomes of resolutions and the quality of justice provided, as well as the impact of the programme on broader conflict and power dynamics. The following specific activities are recommended:

- Establish user-monitoring groups in the community for monitoring the outcome of cases and the programme's impact on local conflict dynamics. This will ensure greater community ownership. It is critical that these community monitoring groups are trained in assessing the purpose and processes of IJMs, so that their monitoring is legitimate and not based solely on personal and cultural perceptions on particular issues.

- Establish a complaints procedure in all internationally supported IJMs, which allows users to dispute or appeal outcomes and complain about a particular mediator or process.

- The Mediation Bill currently awaiting ratification should make stronger provisions for greater regulation of mediation, and in turn, strengthen accountability over justice providers involved in mediation. Although this act has recognised community mediation, its rules and bylaws should better regulate community mediation, for example through setting minimum criteria for the selection of mediators, establishing a code of ethics for mediators, developing procedures for registering disputes and recording proceedings, and certifying mediated settlements. The rules and bylaws should also officially recognise the role that informal justice mechanisms play in mediation and provide guidance for ensuring that their operational procedures are unbiased and non-political. The Mediation Board should establish a framework for monitoring informal justice systems involved in mediation.

Strengthen the accountability of traditional justice systems. It is critical that the government and local authorities establish a system for monitoring the activities and outcomes of traditional justice systems. The police and local authorities should play a transparent and accountable oversight role in ensuring that they comply with human rights norms and principles relating to the right to a fair trial, presumption of innocence and restraint from the use of physical punishments, and refer all criminal cases to the formal sector as is required by Nepali law. This will strengthen the autonomy and capacity of the police, as well as their ownership over the justice sector more broadly.

Reduce the role that political parties are playing in justice provision. The role of political parties in justice provision should be replaced by the formal sector, internationally supported IJMs and traditional justice mechanisms where they are appropriate and accountable. For this to happen, the police and local authorities need to establish a system for monitoring and combating the interference of political parties in justice provision in their locality. For the police to do this well, it is essential that they are not politicised themselves. To combat this risk, the police should develop mechanisms for limiting the influence of political parties over the outcome of cases dealt with by the police, such as performance management systems and incentives based around non-politicisation. Civil society could play a key oversight role in monitoring the implementation of this police mechanism.

Assess possible ways of empowering marginalised groups whilst at the same time maintaining community ownership and legitimacy. Research identified that international community members engaged in the establishment of new IJMs face a key dilemma around how to ensure legitimacy and community ownership at the same time as addressing discrimination of marginalised groups which is often culturally accepted by majority groups. This is a complex issue and it is not possible at this stage, given the limitations of the research, to make solid recommendations for overcoming this challenge. However, the following can be undertaken as a starting point:

- Hold consultations with civil society, communities, relevant government ministries, local authorities, security and justice agencies and informal justice providers to discuss and agree on ways of addressing this issue.

■ Based on the consultation findings, pilot different approaches for addressing this issue in different districts, and draw lessons relevant to programming on informal justice at the district and national levels. These lessons are not only relevant to the establishment of new IJMs by the international community, but to the reform of traditional justice mechanisms and formal sector programming.

■ Raise public awareness about the peacebuilding benefits of empowering marginalised groups through dispute resolution. Awareness raising should predominantly target those who will likely be most resistant to change – for example, members of dominant ethnic and caste groups. Saferworld's previous experience has shown that such attitudinal change is most likely achieved by mobilising progressively minded opinion-formers and leaders from the target group to communicate appropriate messages to their peers. Awareness raising can employ a variety of media as deemed appropriate including radio, peer education, street drama and newspaper articles.

■ Avoid alienating influential groups in the process of empowering marginalised groups through involving the former in the programme, for example by including them in community consultations, monitoring groups, committees and advisory boards.

Strengthen co-ordination between different formal and informal justice systems so that they better contribute to a joined-up and more effective system of justice. Some internationally supported IJMs, traditional justice mechanisms and political parties are resolving criminal cases rather than referring them to the formal sector. It is critical that both informal and formal systems continue to operate and be supported by the international community, as it will take a number of years for the formal sector to reach the level of capacity and resources necessary to take over sole responsibility for effective justice provision throughout Nepal. However, it is also critical that these systems collaborate and contribute to a shared system of justice in Nepal. To achieve this, the following needs to be done:

■ Strengthen the capacity and resources of the formal sector to resolve criminal cases, particularly cases involving gender-based violence.

■ Strengthen systems of referral from informal justice systems to the formal sector. PLCs have a comprehensive system of referral to the formal sector through their DRGs who refer cases and then accompany and monitor them throughout the process. Similar referral mechanisms could be established in other internationally supported IJMs, in order to help monitor and improve the formal sector's response to criminal cases. Referral systems should also be established within traditional justice systems. This will help to reduce the number of criminal cases handled by IJMs.

■ Establish databases for recording referrals between the informal and formal sectors at the VDC and district level, which can then feed into monitoring and accountability mechanisms.

■ Strengthen collaboration between VDCs and informal justice systems. The TAF co-ordinated CMC programme and the PLC programme have effectively integrated into VDC structures, with VDC representatives being trained as mediators/PLC members. Co-operation with the VDCs is critical for building their capacity on mediation, strengthening their sense of ownership and oversight and ensuring greater sustainability of the programme. Collaboration between VDCs and traditional justice mechanisms should also be strengthened and civil society can play a role in facilitating this. This will also contribute towards ensuring greater oversight over traditional justice mechanisms.

■ Internationally supported IJMs as well as traditional systems should be trained in what constitutes a criminal case. This will ensure that they are referring the right type of cases.

■ Informal justice mechanisms operating at the district and VDC levels should establish a co-ordination committee, and develop standardised guidelines for collaborating with and referring to the formal sector. These committees could also serve as lesson-learning and information-sharing forums.

Strengthen collaboration between traditional justice mechanisms and internationally supported IJMs. To contribute to a broader system of justice in Nepal, it is critical that internationally supported IJMs do not compete with traditional justice mechanisms but seek to collaborate with them. All internationally supported IJMs have taken steps to inform and integrate traditional justice mechanisms into their programmes through training them as mediators, with varying levels of success and resistance. In cases where traditional systems are open to integration with these new mechanisms, efforts should be made to monitor the influence of traditional leaders over dispute resolution outcomes. In cases where traditional systems prefer to maintain their autonomy and operate independently, internationally supported IJMs should continue to inform and where possible train these traditional justice mechanisms on mediation and compliance with human rights norms and principles, and international and Nepal justice standards. Internationally supported IJMs should also attempt where possible to establish mechanisms for collaboration and informal sharing between the two systems.

Strengthen collaboration between internationally supported IJMs and the international community around informal justice provision more generally. To ensure that internationally supported IJMs contribute to a broader system of justice, it is critical that they avoid competing with each other. In VDCs where a number of these mechanisms are present, they should establish co-ordination committees for information sharing and agreeing upon modes for effective collaboration. Ideally, decisions about where to establish new mechanisms should be based upon a comprehensive assessment of where existing mechanisms are already operating and where there is greater need. Related to this is the need for greater co-ordination of the international community on informal justice provision, at the district and national levels.

Annex 1: Research timeline and activities

Kathmandu (19 September–4 October 2010)

■ 13 KIIs with donors, I/NGOs and government bodies in Kathmandu including UNICEF, TAF, JICA, USAID, UNDP, DANIDA, DFID, INSEC, CeLLRD, Forum for People's Protection of Rights, Ministry of Peace and Reconstruction, Nepal Bar Association and Supreme Court

Kaski (23 September–2 October 2010)

■ 23 KIIs with security and justice providers, leaders from traditional justice systems, political parties providing dispute resolution, civil society and representatives from internationally supported IJMs

■ One-to-one interviews with one female and one male users of different IJM systems

■ One FGD with female users of internationally supported IJMs close to police posts and far from traditional justice systems

■ One FGD with male and female users of internationally supported IJMs far from police posts and close to traditional justice systems

■ Two FGDs with male users of other informal justice mechanisms (specifically mother groups, youth groups and other community-based groups) far from police posts, internationally supported IJMs and traditional justice systems

■ One FGD with female users of other informal justice mechanisms (specifically mother groups, youth groups and other community-based groups) far from police posts, internationally supported IJMs and traditional justice systems

■ One FGD with male representatives from internationally supported IJMs far from police posts

■ One FGD with female representatives from internationally supported IJMs close to police posts

■ One FGD with male and female justice representatives from internationally supported IJMs close to police posts

Panchthar (21–30 September 2010)

■ 19 KIIs with security and justice providers, leaders from traditional justice systems, civil society, representatives from internationally supported IJMs, Local Peace Committee, political parties and youth wings

■ 17 one-to-one interviews with different users of IJMs (14 female and 3 male)

■ Three FGDs with female users of internationally supported IJMs close to police posts

■ Three FGDs with male and female users of internationally supported IJMs close to police posts

■ Two FGDs with male and female users of traditional justice mechanisms far from police posts

Dhanusha (4–16 September 2010)

- 17 KIIs with security and justice providers, leaders from traditional justice systems, civil society, representatives from internationally supported IJMs, Local Peace Committee, political parties and youth wings
- 15 one-to-one semi-structured interviews with users of different IJMs (six with female users and nine with male users)
- One FGD with female users of internationally supported IJMs close to police posts
- Two FGDs with male users of internationally supported IJMs close to police posts
- Two FGDs with male and female users of internationally supported IJMs close to police posts
- One FGD with male and female users of internationally supported IJMs far from police posts
- Two FGDs with male and female users of traditional justice mechanisms far from police posts and without internationally supported IJMs

Saferworld works to prevent and reduce violent conflict and promote co-operative approaches to security. We work with governments, international organisations and civil society to encourage and support effective policies and practices through advocacy, research and policy development and through supporting the actions of others.

COVER PHOTO: Female focus group discussion conducted as part of Saferworld's research on informal justice mechanisms in September 2010.
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