

ADR in the Eyes of the Community: Community Dispute Resolution Programs/ Community Justice Programs

A New Paradigm Case for Community-Based Mediation Service Centres in Kenya

Presented by:

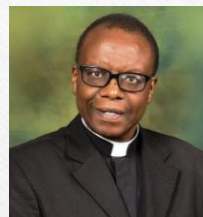
WASILIANAHUB Convenor Wangari Kabiru, 5R Group Writers Mediators Co-Chair Emerald Midega,
CUEA Director for Post Graduate Studies Rev. Fr. Peter Gichure

During the: Utatuzi Center Virtual ADR Week

Thursday, 20th May 2021 | 11.00 AM

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Conflict Transformation

Adjudication→ Arbitration→ Conflict Management→ Conflict Resolution→ Mediation→ Conflict Transformation





Conflict transformation aims at addressing structural and social root causes by challenging injustices and restoring human relations and it deals with ethnical and value-based dimensions.



Whereas conflict transformation involves transforming the relationships that support violence, conflict management approaches seek to merely manage and contain conflict, and conflict resolution approaches seek to move conflict parties away from zero-sum positions towards positive outcomes, often with the help of external actors

According to Berghof Foundation, conflict transformation means:

A generic, comprehensive term referring to actions and processes seeking to alter the various characteristics and manifestations of violent conflict by addressing the root causes of a particular conflict over the long term.



It aims to transform negative destructive conflict into positive constructive conflict and deals with structural, behavioural and attitudinal aspects of conflict. The term refers to both the process and the completion of the process.



Conflict transformation theory and practice, and process/es, comprise:

1. Mapping the conflict formation: all parties, all goals, and all issues;
2. Bringing in forgotten parties with important stakes in the conflict;
3. Having highly empathic dialogues with all parties singly;
4. Each conflict worker may specialize on one conflict party;
5. In these dialogues identifying acceptable goals in all parties;
6. Bringing in forgotten goals that may open new perspectives;
7. Arriving at overarching goals acceptable to all parties;

Conflict transformation theory and practice, and process/es, comprise:
CONT...

8. Arriving at short, evocative, goal-formulations;
9. Helping define the tasks for all parties with that goal in mind;
 - disembedding the conflict from where it was,
 - embedding it elsewhere,
 - bringing in forgotten parties, goals;
10. Verifying how realizing that goal would realize parties' goals;
11. Helping parties meet at the table for self-sustaining process;
12. Withdrawing from the conflict, go on to the next, being on call.

- Conflict should not be regarded as an isolated event that can be resolved or managed, but as an integral part of society's on-going evolution and development;
- Conflict should not be understood solely as an inherently negative and destructive occurrence, but rather as a potentially positive and productive force for change if harnessed constructively;

Conflict transformation goes beyond merely seeking to contain and manage conflict, instead seeking to transform the root causes of a particular conflict

- Conflict transformation is a long-term, gradual and complex process, requiring sustained engagement and interaction;

Conflict transformation is not just an approach and set of techniques, but a way of thinking about and understanding conflict itself

International Case Studies



A New Paradigm Case for Community-Based Mediation Service
Centres in Kenya
People-Centred



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- They are known by various names: Community Mediation Programs, Community Conflict Resolution Programs, and Neighbourhood Justice Centres Community Dispute Resolution (CDR) Programs . All of them apply informal processes, usually mediation, to help the parties solve their problem out of court.
- **Community Mediation Service Centres have various models;**
 1. New Zealand (Statute)
 2. India (Court/Private)
 3. Uganda (Private/Court-connected)
 4. UK/Scotland (Statute)
 5. Nepal (Traditional)
 6. Singapore (Ministry of Law)
 7. USA - National Association for Community Mediation (NAFCM)

COUNTRY CASE STUDIES

New Zealand

Background; **1984** Community Mediation Service set up under statute. Experienced good resolution rate, low referral rate and low caseload.

Services/ Disputes for Mediation; focused on relationship of the parties, community and Interpersonal relationship, ongoing contact.

Success; Problems evaluating success. Found correlation between success and foundation ideologies;

- Service delivery / satisfaction story, Social transformation / social justice story, Personal growth / transformation story

Funding; Problems identifying success has lead to funding shortages in New Zealand.

RATIONALE

The goal of the community dispute resolution movement is to teach people to resolve conflict by cooperation, negotiation and mediation, thereby empowering the participants, relieving court caseloads and preventing escalation of disputes.

India

Kerala Community Mediation Volunteer Program

- Kerala High Court

RATIONALE

- **Increase social capital**

Value of resources and relationships

Actors, relationships and social structures

- **Restore value system in society**

People's Mediation Centres (PMCs)

- People's Mediation Centres (PMCs), a joint initiative of Indian Institute of Arbitration & Mediation (IIAM, non-profit/ADR services/International Mediation Institute - IMI certification) and the People's Mediation Society (PMS).
- Community members sign **"Pledge to Mediate"** and open a **PeaceGate Time Bank Account**/ become member of PMS.
- Critical mass in a locality, then a PMS is opened.
- Launched 2018. 25,000 people pledged. 5 PMCs established in Kerala on 17th July.

Uganda

Background; West Nile Mediation Centre Arua - Uganda. Arua District is in the rural Northern Region of Uganda. Established by a team of Mediators and Lawyers in 2017, by October the centre had handled 48 court-annexed mediations.

Model design; Conduct private mediation, Court-Connected; Referred mediation files handled by Accredited Mediators.

Funding; They have multiple programs focused as *A centre for Justice and Human Rights in Uganda*, Donor funding and fees for services.

Services/ Disputes for Mediation – Mainly land related disputes.

Technology; Social media platforms – Facebook and Twitter.

A centre for Justice and Human Rights in Uganda

UK/ Scotland

Services/ Disputes for Mediation; In Scotland alone, thousands of neighbour disputes have been handled by mediators, most involving two sets of neighbours, but some involving whole neighbourhoods of fifty to a hundred or more households.

Funding; Local authorities and other agencies, charitable grants and a growing reliance on self-generated income provide the main income streams for neighbour mediation services.

Community mediation has its own code of best practice developed by the umbrella body
Mediation UK

Nepal

Background; 1990 New constitution- remained silent on village mediation and failed to address the issue of how to connect village mediation or adjudication to the formal system. 1999 - the Government passed the Local Self-Governance Act (LSGA) However, the clauses of LSGA that gave judicial power to the Village Development Committees (VDCs) were never implemented. May 15th 2011 - Mediation Act enacted. 2014 - Mediation Regulations flowing from the Act were passed . 2014 - National Plan of Action (NPA) 2013-2018 was drafted in the same year.

Model design & Funding; Hybrid process driven by Ministry of Local Development with Mediation Centres run by Donors and NGO's

Services/ Disputes for Mediation; VDCs were formally authorized to hear and decide cases relating to a range of matters including land disputes, forced labour, trespassing, and paupers.

This model allowed the citizens of Nepal, majorly a rural country to have an option to the Traditional Dispute Mechanisms where disputes were mainly adjudicated by the elite.



Singapore

Background; March 1996 Minister for Law* sets up inter-agency Committee, **May 1996** The Committee on Alternative Dispute Resolution formed, **July 1997** Committee Report, **January 1998** The Community Mediation Centre (CMC) opened its doors to the Singapore public

Model design & Funding; Government Singapore Ministry of Law under The Community Mediation Unit.

Services/ Disputes for Mediation; Relational, Community and Social Disputes, Self Manage Conflicts (Video), Mediation (Mediators Portal), E- services.

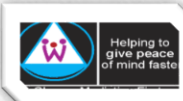
Fees; Free to about \$5

Certification; Accredited by the Singapore International Mediation Institute.

Technology; Connected to the Government's services platform SingPass ID, Telephone call-in enquiry line.

Mediation reflects important aspects of our Asian tradition and culture that are worthy of preservation





USA (NAFCM)

National Association For Community Mediation

Background; Founded in 1994

Model design; Membership association of peacemakers who employ the practices and values of community mediation, is to help these peacemakers to create safe spaces for the transformation of conflict

Funding; Levels of membership from \$50 to +350, Donor funding e.g. JAMS Foundation-Grant Program

Services to members; Virtual Library, cloud based case load manager, run webinars, mini program

The Nine Hallmarks of Community Mediation; In 1992, a group of community mediation centre leaders identified a set of guiding principles that define the practice of community mediation.

NAFCM's vision is that community mediation leads to community mobilization (both individually and collectively).

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People-Centred



THE OPPORTUNITY

- **Low-cost way of resolving disputes**
 - Save on family incomes
 - Relief on National and County tax expenditure
- **Triage system for the problems within the community**
 - So that they do not escalate
 - Keep most disputes from going to court
 - Strategy for mental health for community members
- **Provide additional services**
 - Improve the community and its image (PR)
 - Mediation training to elders, women and youth
 - Specialised training to accommodate special needs
 - Other partnerships and services
- **Language sensitivity**
 - Culture, Norms and Nuances
- **Academia linkage**
 - Research implementation
 - Internships and Externships



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CONSIDERATIONS

- **Model design;** to suit different regions
- **Funding mix;** Government, Donor, Private
- **Technology**
 - Innovation - Leaving nobody behind
- **Conflict Transformation Practitioners**
 - Requisite skills & attributes
 - Self organisation and mobilisation
- **Integration with existing mechanisms**
 - Norms and values
 - Traditional mechanisms
 - Religious
 - Local Administration
 - Alternative Justice Systems(AJS Policy 2020) Kenya
 - Courts/Judiciary
- **Partnerships and linkages**
 - Academia
 - Local businesses and business Associations
 - Churches, Mosques, Temples & Religious places





About WASILIANAHUB

“Huduma ya Mpatanishi Mteule.”

Professional Mediators are a breath of fresh air of trust and a new vision of hope.

@WASILIANAHUB | Enriching Lives: Build Better.

WASILIANAHUB is creating a society in which all people have access to use neutral options in resolving conflict and the ability to achieve sustainable outcomes that enrich lives. A community of professional mediators dedicated to increasing the understanding and use of professional mediation by building Africa's largest portal of mediators, starting off from Kenya. We are enriching lives; relationship building, resource efficiency, public image and peace.

www.wasilianahubmediators.co.ke

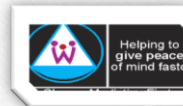
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To join The E-Mailing list for news and meetup events;
KEMENET - Kenya Mediators WApp Group;
and KEMENET Telegram Channel, send an email to:
wasilianahubmediatorsafrica@gmail.com.
- Kupata huduma ya mpatanishi mteule (verified and accessible mediators), tembelea **MARC - The Digital Mediation Manager:**
www.wasilianahubmediators.co.ke.
- **To learn about CUEA** and The CUEA Center for Social Justice and Ethics (CSJE) visit: **www.cuea.edu**.



**CALM | WISE | KIND Mediators
across 47 Counties in Kenya**



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