

JSRP Paper 4

*Theories in Practice Series*

# COMMUNITY MEDIATION AND SOCIAL HARMONY IN SRI LANKA

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**May 2013**

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### **Theories of Change in Practice**

The Justice and Security Research Programme and The Asia Foundation are currently collaborating on a research project exploring Theory of Change approaches to international development practice. The project was launched in April 2012 and involves staff from both organisations. The research and outputs from the collaboration aim to provide a basis for development organisations to produce more empirically-grounded theories of how change happens, leading to improved development programming. This collaboration between a research consortium and an NGO should also allow for a better exchange between wider social science research findings and the specific knowledge generated by field practice.

## Acronyms

**ADR**

Alternative Dispute Resolution

**CMMT**

Centre for Mediation and Mediation Trainers

**DFID**

Department for International Development

**DSD**

Divisional Secretariat Division

**GN**

Grama Niladhari

**JSRP**

Justice and Security Research Programme

**LTTE**

Liberation Tigers of Tamil Eelam

**MoJ**

Ministry of Justice

**NGO**

Non-governmental organisation

**The Foundation**

The Asia Foundation

**UPFA**

United People's Freedom Alliance

## **Executive Summary**

### **Scope and purpose**

- The major analytical focus of this paper is one claim within The Asia Foundation's Theory of Change for mediation boards in Sri Lanka: that they can improve social harmony.
- It draws on analysis of the Sri Lankan context, the history of theories and practice of the mediation boards and existing and new empirical data.
- The main section of this paper reflects on the reasoning and evidence for three hypotheses of what 'improving social harmony' can mean: resolving disputes and preventing dispute escalation, improving community relationships and improving inter-ethnic harmony.
- It also provides reflections on the use of Theories of Change in international development, both as a practitioner tool and entry-point into programme research.

### **Methodology**

- Partly based on desk research which analysed inter-disciplinary academic and practitioner literature, as well as evaluative material and past and present programme documentation.
- Primary research in Colombo consisted of semi-structured key informant interviews; research in programme locations took place mainly in the North and East and included observation of the boards, interviews and focus group discussions with key informants.

### **Key findings**

- Analysis of the history of the Foundation's implicit and explicit theories shows a gap between the external policy goals and actual programme practice of mediation boards.
- This draws out a broader problem in development, where expansive claims about impact can be part of short-term opportunistic narratives rather than long-term programme aims.
- The current evidence base for the social harmony claim is weak, based on suspect survey data and broader, ideological narratives about the 'larger impact' of mediation boards.
- There is an assumption that interpersonal effects within mediation translate to intra- and inter-group impacts, but it's unclear how, particularly considering the design limitations of the boards and the (at times heavily war-affected) context in which they operate.
- Research suggests the boards play a positive role by resolving disputes in an amicable, cheap and quick way, particularly in contrast to the courts.
- Research indicates some potential difficulties for poorer or already marginalised disputants getting equitable outcomes from mediation.

### **Implications for further research/policy implications**

- There should be a renewed focus on justice issues in the Foundation's Theories of Change, research and programming. The positive aspects of mediation boards should not prevent a full analysis of people's access to and experience of mediation.
- Greater in-depth research on disputant experiences and community perceptions of the boards could provide insight into any broader impacts they may have.
- Practitioners should not gather evidence to validate policy narratives; new research should be used for planning interventions and building narratives from end-user experiences.
- Theories of Change could be a useful approach in development thinking and practice, but they need to be more realistic and transparent, which may be difficult given the sensitivity of aid programming and the apparent need to sell programmes to donors and governments.

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# 1. Introduction

## Theories of Change and Community Mediation

Increasingly, international development NGOs are creating ‘Theories of Change’ to explain ‘how and why’ their interventions work.<sup>1</sup> Theories of Change commonly take the form of a written document, although the concept can also be employed as part of a reflective approach to development thinking.<sup>2</sup> The recent rapid expansion of these theories is in part due to increased donor pressure to include the written articulation of them in monitoring and evaluation, although some organisations use the concept voluntarily. However the concept is used, it is commonly understood as a way to draw out implicit and explicit ‘assumptions’ about how change will occur as the result of an intervention.<sup>3</sup> It appears to represent an increased desire for organisations to be able to plan, describe, explore, monitor and evaluate change in a way that reflects a complex and systemic understanding of development.<sup>4</sup> This desire stems at least in part from the ‘results agenda’: Theories of Change are seen as a way to plausibly demonstrate the impact of development interventions.

However, the concept has been criticised for being simply another development ‘buzzword’.<sup>5</sup> Since it is drawn from a management tool-box paradigm, it may well be vulnerable to the same critiques as the logical framework, encouraging a simplistic linear understanding of change processes. One further problem is that the need for organisations to ‘sell’ a programme to donors may encourage Theories of Change which are not honest, accurate and transparent accounts of how change happens.<sup>6</sup> Furthermore, similar previous initiatives such as ‘drivers of change’ – which aimed to analyse the agents, institutions and structures of power driving change – have ‘remained peripheral to mainstream aid negotiations’.<sup>7</sup> The

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<sup>1</sup> The author currently works as a researcher for the Justice and Security Research Programme, based at LSE. Thanks go to many people at the LSE and The Asia Foundation for their support during research and the write-up process. Particular thanks to those who reviewed and commented on this paper. These include Ramani Jayasundere, David Lewis (LSE), Rajesh Venugopal (LSE), Mareike Schomerus (LSE), Henry Radice (LSE), Danielle Stein (LSE), Sunil Bastian, Christopher Moore (CDR Associates), Matthew Arnold (TAF), Kirsten Bishop (TAF), Dinesha de Silva Wikramanayake (TAF), Gita Sabharwal (TAF). The contents of this paper remain the sole responsibility of the author.

For one of the earliest discussions of Theories of Change see Weiss, C.H. (1995). ‘Nothing as Practical as Good Theory: Exploring Theory-Based Evaluation for Comprehensive Community Initiatives for Children and Families’ in J. Connell, A. Kubisch, L. Schorr and C. Weiss (Eds.) *New Approaches to Evaluating Community Initiatives: Concepts, Methods and Contexts*. New York: Aspen Institute (65-92).

<sup>2</sup> In Stein and Valters (2012) we proposed that Theory of Change approaches can be understood across a continuum. At the far left end is a very technical understanding of Theory of Change representing its use as a precise planning tool; in the middle is ‘Theory of Change thinking’, understood as a less formal, often implicit use as a ‘way of thinking’ about how a project is expected to work; on the right side is a ‘political literacy’ approach, allowing practitioners to respond to unpredictable events. Stein, D. and Valters, C. (2012). ‘Understanding ‘Theory of Change’ in International Development: A Review of Existing Knowledge’, *JSRP Paper 1*, the Justice and Security Research Programme and The Asia Foundation.

<sup>3</sup> For examples see Rogers, P. J. (2012). *Introduction to impact evaluation. Impact Evaluations Notes*, March(1). OECD Development Assistance Committee. (2008). *Guidance on Evaluation Conflict Prevention and Peacebuilding Activities*, Paris; Bill and Melinda Gates Foundation. (2011). *The Strategy Lifecycle: A Guide*. Available at

<http://www.gatesfoundation.org/about/Documents/The%20Strategy%20Lifecycle.pdf>.

<sup>4</sup> James, Cathy. (2011). *Theory of Change Review: A report commissioned by Comic Relief*. London, p. 4.

<sup>5</sup> See Green, D. (2012). ‘From Poverty to Power’ blog. Available at <http://www.oxfamblogs.org/fp2p/>

<sup>6</sup> Stein and Valters. (2012), p. 15

<sup>7</sup> Mosse, David. (2011). ‘Introduction: The Anthropology of Expertise and Professionals in International Development’, in David Mosse (ed.). *Adventures in Aidland: The Anthropology of Professionals in International Development*, New York: Bergham Books, p.6

approach organisations take to Theories of Change may well be defined by their existing approach to development: more technical organisations will use it as a rigid tool for describing change, while more reflective organisations will use it to expand their ‘political literacy’. Therefore, while potentially useful for those who take it seriously (or have the resources to take it seriously), it is currently unclear whether it is a way to open up the ‘black box of unknowing between development policy and its effects’.<sup>8</sup>

Despite these issues and tensions, if aid organisations use Theories of Change to genuinely attempt to understand change processes in a way that reflects a complex and systemic understanding of development, it would be a very positive step. Clearly articulated Theories of Change provide an opportunity to critically appraise (and possibly revise and strengthen) the reasoning and evidence used to support aid programming. They can also be used to help inform research that is relevant to the work NGOs do; research that builds evidence to improve and adapt Theories of Change to make them more effective.

The major analytical focus of this *Theories in Practice* paper is the strengths and weaknesses of one of The Asia Foundation’s (the Foundation) theories in relation to their support for ‘Community Mediation’ in Sri Lanka. This paper represents a first step in applying a Theory of Change approach to programme research and was written in close collaboration with a parallel exploration of Foundation-supported community mediation in Nepal.<sup>9</sup> Given the criticisms discussed above, this paper also contributes to the ongoing debates about the concept of Theory of Change itself.

The Government of Sri Lanka introduced a Community Mediation Boards Programme in 1990 under the administration of the Ministry of Justice (MoJ). This programme has been supported since then by the Foundation, which has played a role in its development as a country-wide form of alternative dispute resolution (ADR). This programme provides a state-supported but community-implemented alternative to the court for certain civil and criminal cases.

The Foundation’s current Theory of Change for mediation boards details three main claims:

- 1. Access to Justice:** ‘By supporting the Ministry of Justice in re-establishing and strengthening community-implemented, interest-based Community Mediation Boards in the conflict-affected regions of Sri Lanka, access to a local-level justice system will increase. This will help people to resolve a range of disputes efficiently, effectively and peacefully.’

This core claim of the Foundation links directly to main role of the mediation boards: dispute resolution. As such, it underpins the more elaborate theories that follow.

- 2. Social harmony:** ‘Over time, intra-(and in some cases, inter-) community trust and harmony will also increase as tensions caused by minor disputes are reduced, communication within (and in some cases between) communities is improved, and the risk of disputes escalating is minimized.’

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<sup>8</sup> Mosse, David. (2004). ‘Is Good Policy Unimplementable? Reflection on the Ethnography of Aid Policy and Practice’. *Development and Change*, 35(4), p.641

<sup>9</sup> Stein, Danielle. (2013). ‘Community Mediation and Social Harmony in Nepal’, *JSRP Paper 5*, London: the Justice and Security Research Programme and The Asia Foundation.

The term ‘community trust and harmony’ is used interchangeably with ‘social harmony’ in the wider Theory of Change and neither are explicitly defined.<sup>10</sup> This paper adopts the term ‘social harmony’ based on discussions with Foundation staff demonstrating there is no significant difference implied in their use.<sup>11</sup>

- 3. State-society relations:** ‘In the longer term, if the community mediation services are effective, state-society relations will also improve as community feelings of disillusionment and dissatisfaction with the state diminish, and state actors increasingly perceive communities as partners in service delivery.’

According to the United Kingdom’s Department for International Development (DFID), state-society relationships can be defined as ‘interactions between state institutions and societal groups to negotiate how public authority is exercised and how it can be influenced by people’.<sup>12</sup> In the context of mediation boards in Sri Lanka, the Foundation appear to have interpreted ‘improving state-society relations’ to mean improving community perceptions of the state in heavily war-affected regions, and building links between the state and local community actors.<sup>13</sup>

### **Defining social harmony**

The main focus of this paper is the second claim, that mediation boards improve social harmony. This focus was taken for a number of reasons: the Foundation staff expressed an interest in exploring this element of the Theory of Change further, particularly due to the perceived success of the Foundation’s Nepal office in making such a claim regarding mediation;<sup>14</sup> a full exploration of each element of the theory was thought to be beyond the scope of this project; and the concept of (social) harmony is often used in mediation but rarely explored on a wider scale, meaning this analysis could be useful for other practitioners aiming to examine the potential broader impacts of mediation programmes.

Social harmony is a complicated concept to analyse: a literature search across various academic disciplines indicated that it is rarely explicitly defined. It tends to have broad implications; one well-cited article uses the term in conjunction with ‘community cohesion’, ‘inter-group empathy and mutual respect’ and ‘peaceful coexistence.’<sup>15</sup> No academic papers were found that defined or discussed social harmony in Sri Lanka directly.

Yet in the current Sri Lankan context, it is clearly an ideological term. Broadly speaking, the term social harmony fits within the current government’s post-war narrative of national unity

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<sup>10</sup> The Asia Foundation. (2012a). TAF Sri Lanka PPA Year 1 Annual Component Report. PPA Component 4: Local-level justice in Northern and Eastern Sri Lanka’. Unpublished document.

<sup>11</sup> Furthermore, ‘community’ is understood as a bounded, exclusionary concept, while ‘social harmony’ can apply to groups on a number of levels, but often implies something larger. Given the various levels of impact implied by the Foundation’s theory of change, social harmony is a more logical phrase to use.

<sup>12</sup> DfID. (2010). *Building Peaceful States and Societies: DfID Practice Paper*. London, p.15

<sup>13</sup> Developed from discussions with Foundation staff and an analysis of the Foundation’s theory of change. While this paper will not explore these claims in depth, given their centrality to current DfID and The Asia Foundation major strategic framings they would benefit from further analysis.

<sup>14</sup> Explored in Stein, Danielle. (2013), ‘Community Mediation and Social Harmony in Nepal’, *JSRP paper 5*, the Justice and Security Research Programme and The Asia Foundation.

<sup>15</sup> Bannister, Jon and O’Sullivan, Anthony. (2013). ‘Civility, Community Cohesion and Antisocial Behaviour: Policy and Social Harmony’, *Journal of Social Policy*, 42, pp 91-110



and social integration in Sri Lanka. In the report of the Lessons Learned and Reconciliation Commission of November 2011, the terms ‘harmony’, ‘disharmony’, ‘community harmony’, ‘communal harmony’, ‘ethnic harmony’, ‘religious harmony’ and ‘social harmony’ are commonly used in tandem with those such as ‘unity’ and ‘national reconciliation’.<sup>16</sup> A variety of government and international donor initiatives apparently aim to foster social harmony, for example through education<sup>17</sup> or language rights programmes.<sup>18</sup> A recent policy framework published by the Sri Lankan Ministry of National Languages and Social Integration provides one of few explicit definitions of social harmony, as ‘peaceful interaction among members of social groups.’<sup>19</sup>

The term ‘harmony’ commonly appears in mediation literature. For example, in a recent comprehensive review of existing mediation research, Wall and Dunne argue that since mediators in a ‘collectivistic culture are more likely to believe that conflict is harmful, they will emphasize harmony more frequently than will their counterparts in more individualistic cultures’.<sup>20</sup> Indeed, the same authors argue that mediation is popular in Buddhist and Confucian communities since these societies ‘value social harmony’. Furthermore, the idea that attaining ‘harmony’ between disputants potentially means sustaining unequal relationships has raised questions about the kind of justice mediation provides. Commentators have drawn out both sides of the argument: ‘harmony ideology’, as Davidheiser calls it, may help maintain inequalities, but also provide a means ‘by which disputants can redress and enact change’.<sup>21</sup>

The Asia Foundation in Sri Lanka unfortunately does not explicitly define social harmony in the Theory of Change, but their overall understanding(s) of the term appears broad and varied between staff members. An interview with one staff member indicated that in the ‘context of the community mediation boards, this would mean people within a particular divisional secretariat division (DSD) living peacefully in mutual trust.’<sup>22</sup> However, as internal focus groups at the Foundation confirmed, this appears to have strong intra and inter-ethnic group implications.<sup>23</sup> This vague approach aligns with its often broad use across various academic disciplines.

These understandings and those within the Theory of Change are analysed in section five, yet it is important to initially note that a rigorous and evidence-based theory is unlikely to be built upon such unsteady conceptual foundations. There are two fundamental issues here: firstly, how has the Foundation arrived at such a concept? While social harmony could be described in the abstract, presumably a strong use of it would be drawn from a historical

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<sup>16</sup> Report of the Commission of Inquiry on Lessons Learnt and Reconciliation. (2011). Available at <http://slembassyusa.org/downloads/LLRC-REPORT.pdf>.

<sup>17</sup> ‘Social harmony’ programmes have been conducted and funded by the Sri Lankan Government and the World Bank. Details available at <http://www.sab.ac.lk/irque/irque.htm>

<sup>18</sup> See a programme entitled ‘Sri Lanka – Governance for Peace through Language’ funded by the Canadian International Development Agency and the Sri Lankan government. Details available at <http://www.olbi.uottawa.ca/acdi.php>

<sup>19</sup> Sri Lankan Ministry of National Languages and Education. (2012). *National Policy Framework for Social Integration*. Available at <http://lanintegmin.gov.lk/national-policy-framework-for-social-integration/>

<sup>20</sup> Wall, J. A., & Dunne, T. C. (2012). ‘Mediation Research: A Current Review’. *Negotiation Journal*, (April), 217-244.

<sup>21</sup> Davidheiser, M. (2006). ‘Harmony, Peacemaking and Power: Controlling Processes in African Mediation’, *Conflict Resolution Quarterly*, 23(3), p.281.

<sup>22</sup> Obtained through an email survey conducted with the Foundation programme staff. 31/10/2012/

<sup>23</sup> # 65 Focus group discussion with the Foundation Programme staff, Colombo. 02/11/2012/

analysis of what it can mean in Sri Lanka.<sup>24</sup> Secondly, given the lack of clear definition, the concept is open to interpretation. Within and between which kinds of ‘community’ is harmony being achieved? Does improving harmony mean sacrificing individual rights to community interests? For example, if women are subject to patriarchal norms in a community, stabilising their relationships with abusive men could consolidate injustice. These issues immediately bring to the fore the importance of establishing a firm conceptual basis for claims made about community mediation and in Theories of Change more broadly.

### **Structure of the paper**

Firstly, this paper will outline its methods and challenges, followed by an introduction to the community mediation boards programme in Sri Lanka, along with the country and case study location context. Secondly, this paper will document and analyse the history of the development of the programme and its surrounding implicit and explicit Theories of Change. This will allow for both case-specific and broad reflections on the relationship between theories and programming decisions in international development. Thirdly, the reasoning and evidence for the social harmony claim will be analysed. Based on explicit and implicit understandings of social harmony used by the Foundation, three hypotheses for what ‘improving social harmony’ can mean are proposed and critically appraised: resolving disputes and preventing their escalation; improving community relationships; and improving inter-ethnic harmony. This analysis ends with reflections on the importance of context when making broad claims about the relationship between mediation boards and social harmony. The concluding section outlines problems and possibilities for the Foundation’s theory, with an emphasis on how these issues may affect development practitioners who are thinking about how change happens.

## **2. Methodology**

This paper is based on three months of research in Sri Lanka, preceded by a desk review of literature on Theory of Change approaches in international development.<sup>25</sup> The approach to examining the social harmony theory was partly based on desk research which analysed a range of relevant inter-disciplinary academic and practitioner material, as well as evaluative material and (some unpublished) past and present programme documentation for the boards, provided by the Foundation. It was also based on the generation of primary empirical data. Primary research in Colombo consisted of semi-structured interviews with Foundation staff, implementing partners,<sup>26</sup> mediation specialists, non-governmental organisations (NGOs) and local academics. Primary research in programme locations largely focused on DSDs in the Northern and Eastern Provinces since the Foundation’s current Theory of Change specifically targets those regions. Research in the districts of Batticaloa, Trincomalee, Jaffna and Kilinochchi combined observation of the mediation boards with interviews and focus group discussions with mediators, community members, local government officials and community based organisations (CBOs).<sup>27</sup> Further limited observation of mediation boards and interviews with mediators took place in the districts of Colombo and Galle in order to provide

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<sup>24</sup> Thanks go to Sunil Bastian for this point.

<sup>25</sup> Stein, D. and Valters, C. (2012), ). ‘Understanding ‘Theory of Change’ in International Development: A Review of Existing Knowledge’. *JSRP Paper 1*, the Justice and Security Research Programme and The Asia Foundation. London

<sup>26</sup> Centre for Mediation and Mediation Training, Viluthu and Sarvodaya.

<sup>27</sup> See Annex 2 for further breakdown of primary research.

an initial insight into the workings of the boards and to provide a point of comparison as these areas were not as severely affected by the war.

<b>Breakdown of Respondents in Mediation Sites</b>				
Cohort	Hours	People	Male	Female
Mediators	14	67	54	13
Disputants	5	8	4	4
Local government	3	7	4	3
Community organisations	6	7	3	4
Community Members	5.5	31	7	24
Civil Society	3	4	1	3
Observation of Mediation	16	-	-	-
Total	52.5	124	73	51

### **Challenges and limitations**

As much as possible primary research findings were triangulated with multiple actors, however, as is commonly the case with programme-based research, the research for this paper relied to some extent on those close to the programme such as Foundation staff and mediators, who may have exaggerated successes and downplayed shortcomings. Furthermore, the amount of time spent in project locations was restricted and the site selection itself was dependent on approval by the MoJ. This means that these primary research findings are limited and potentially represent one discrete view of their impact. Furthermore, the lack of available country-specific literature on mediation in Sri Lanka means this paper's analysis of existing evidence draws largely on the only major evaluation of the boards, conducted in 2011. It also uses information gathered through unpublished qualitative case studies of four mediation boards in the Northern Province conducted by the University of Colombo in 2012.<sup>28</sup>

### **Using and analysing evidence**

A further set of concerns is drawn from a range of debates that have developed along with the increased drive to use evidence to inform, develop and refine policy and practice in international development. At face value it is clear why this increased drive is desirable: 'who would want policy or practice not to be based on evidence?'<sup>29</sup> Having good data and knowledge on which to base policies and practice is clearly positive. But if one accepts the importance of evidence in planning and supporting different interventions (and in turn supporting Theories of Change), a decision needs to be made on how to assess its validity. However, there does not appear to be a firm starting point: we lack consensus on what exactly constitutes 'evidence'; what different pieces of evidence say about a hypothesis and

<sup>28</sup> University of Colombo. (2012). *Qualitative Survey on New Community Mediation Boards in the Northern Province*. Unpublished document.

<sup>29</sup> Hammersley, Martin. (2005). 'Is the evidence-based practice movement doing more good than harm?' *Evidence and Policy*. Vol 1(1), p.86

with what strength they speak; and how to evaluate a hypothesis in the light of all the available evidence.<sup>30</sup>

Perhaps we can say that more and better evidence of all kinds might help organisations make better Theories of Change; there does at least seem to be some consensus that a strong body of evidence will often include findings from multiple methods and perspectives gathered over a long period of time.<sup>31</sup> But this leaves open the question of which evidence is most appropriate, or provides a stronger case, for different kinds of claims. Using a scale which always privileges certain kinds of evidence (for example randomised control trials) does not provide the answer: surely while certain kinds of evidence will be useful to support specific kinds of claims, they may well be useless for others. This becomes more complex in the world's more difficult places, where progress is not easily measured, and the goals are often 'soft' and weakly-defined, like improving 'social harmony'.

It should also be noted that the apparent common-sense appeal to get and use the best evidence available belies underlying complexities relating to how evidence is constructed and used in political and ideological ways.<sup>32</sup> It may often be the case that evidence is generated to validate certain policy narratives rather than as a foundation for planning interventions and building such narratives. Such issues should not imply that what counts as good evidence is an entirely subjective matter; but they should encourage a reflective approach to evidence. The approach of this paper is to recognise from the start that it is not possible to prove or disprove a claim that mediation boards improve a complex social phenomenon such as social harmony. Equally, claims of what are 'strong' or 'weak' evidence made in this paper are this author's interpretation based upon his own perspective on what 'counts' as good evidence. Importantly, therefore, this paper relies not just on an analysis of existing evidence and new primary data, but on whether the reasoning underpinning the claim of social harmony is sound, given the design of the mediation boards and the social context in which they operate.

### 3. Community Mediation Boards in Sri Lanka

#### What is community mediation?

Mediation, at its most basic level, is a process in which a third-party neutral assists in resolving a dispute between two or more other parties.<sup>33</sup> 'Community mediation' first arose in North America in the 1970's as 'a response to dissatisfaction with formal administration of justice' and on the basis of greater demand for group recognition and autonomy.<sup>34</sup> The practice of community mediation has since expanded theoretically, professionally and geographically, with academics and practitioners subscribing to different models of mediation in a range of country contexts, including conflict-affected regions of the world.

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<sup>30</sup> Cartwright, N., Howick, J. and Goldfinch, A. (2008) 'Evidence-based policy: where is our theory of evidence?' LSE Centre for the Philosophy of Natural and Social Science Technical Report 07/07, p. 15

<sup>31</sup> See OECD Development Assistance Committee. (2008).

<sup>32</sup> Du Toit A (2012) 'Making sense of "evidence": Notes on the discursive politics of research and pro-poor policy making', *Working Paper 21*. PLAAS, UWC: Bellville, p. 2. For an excellent debate on evidence and evidence based policy see three blog posts and their comments on Duncan Green's From Poverty to Power Blog. The first of these posts can be found here: <http://www.oxfamblogs.org/fp2p/?p=13344>

<sup>33</sup> Honeyman, Christopher and Nita Yawanarajah. "Mediation." *Beyond Intractability*. Eds. Guy Burgess and Heidi Burgess. Conflict Information Consortium, University of Colorado, Boulder. Posted: September 2003 <<http://www.beyondintractability.org/bi-essay/mediation>>.

<sup>34</sup> Woolford, A. and Ratner, R. S. (2008). *Informal Reckonings. Conflict Resolution in Mediation, Restorative Justice and Reparations*. Routledge: Oxford:Routledge, p 43

While different models of mediation can overlap, their differences are often rooted in the differing goals of the service. For example, while ‘interest-based’ mediation advocates tend to emphasise the relative efficiency and cost effective nature of mediation in contrast to the courts, ‘transformative’ mediation advocates aim for more substantive individual and societal transformation.<sup>35</sup>

As of January 2013, there are 309 community mediation boards in Sri Lanka and over 7000 mediators.<sup>36</sup> The boards follow the interest-based method, which the country specific guidance indicates is ‘a process in which parties identify their needs and develop mutually satisfactory solutions to satisfy them’.<sup>37</sup> These boards are coordinated by the state, mandated by law, but implemented by community members. The mediators of the boards are all volunteers and required to be resident in that community: the ‘community’, in this sense, means one of the DSDs, a set of 328 administrative sub-units of the 25 districts island-wide. The system of mediation relies heavily upon these volunteers, not only to give their time, but to command sufficient respect in their community that they can ably facilitate the mutual resolution of a dispute. Since 1991, these community mediation boards have mediated more than 2 million disputes.<sup>38</sup>

The boards were integrated into the justice system following the Mediation Boards Act of 1988.<sup>39</sup> Through this act and subsequent amendments to it,<sup>40</sup> the mediation boards are mandated to hear a specific yet wide range of disputes. These are both civil and criminal in nature, many of which mandatorily must come to the board and result in non-settlement before they can be formally processed in court.<sup>41</sup> An evaluation in 2011 highlighted that the most common disputes seen by mediation boards were based on assault and loan cases, closely followed by land issues.<sup>42</sup> Land disputes tend to be based on ‘inheritance, subdivision between family members, competition between possible owners, validity of titles, boundary disputes, encroachment issues, land access, and property damage by livestock.’<sup>43</sup> In heavily war-affected areas, there tends to be a disproportionate amount of land issues due to large scale and long term displacement and resettlement issues.<sup>44</sup> There has also been a recent increase in the number of commercial related disputes being brought to the boards, particularly from financial institutions, due to an increase of the mandatory monetary limit of disputes that can be taken to mediation from Rs. 25,000 to Rs. 250,000.<sup>45</sup>

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<sup>35</sup> Ibid, p.49.

<sup>36</sup> See Annex 1 for a map of Sri Lanka and the mediation board locations.

<sup>37</sup> Moore, C.W., Jayasundere, R. and Thirunavukarasu, M. (2011) *The Mediation Process*, Community Mediation Programme. Ministry of Justice, p.21

<sup>38</sup> Siriwardhana, C. (2011). *Evaluation of the Community Mediation Boards in Sri Lanka*. Ministry of Justice and The Asia Foundation. January 2011, p 1

<sup>39</sup> Mediation Boards Act, No. 72 of 1988

<sup>40</sup> Mediation Boards (Amendment) Act, No. 15 1997; Mediation Boards (Amendment) Act, Mediation (Special Categories of Disputes) Act, No. 21 of 2003; Mediation Boards (Amendment) Act, No. 7 2011.

<sup>41</sup> Schedule 3 of the Mediation Boards Act lists offences where parties must necessarily go to the Mediation Board.

<sup>42</sup> See Siriwardhana, C. (2011), p.3

<sup>43</sup> Moore, Christopher W. (2005). *Situation Assessment on the Feasibility of Enhancing Existing or Designing New Land and Property Dispute Resolution Systems or Mechanisms in Sri Lanka*. The Asia Foundation, p.1

<sup>44</sup> For example, in Jaffna land disputes mediators have estimated that between 50-70% of disputes are land based, rising to 90% in some boards. The Asia Foundation (2012a).

<sup>45</sup> Internal MoJ reports received for the first 6 months of 2012 suggest that now over half of the disputes that come to the boards are financial transactions.

## The Sri Lankan context

The main contextual factor for the emergence and continued existence of the mediation boards is the inaccessibility of Sri Lanka's court system. While in the post-war period Sri Lanka has become a middle-income country, it is clear that development is still uneven, with 'pockets of poverty' remaining island-wide.<sup>46</sup> Yet court cases in Sri Lanka can take many years and are often very expensive, considerably limiting access to the courts for the poor. Furthermore, relative to mediation boards, the courts are often geographically inaccessible.<sup>47</sup> For these reasons, while some cases come to mediation mandatorily, it is commonly understood that mediation boards are a mechanism for the poor.<sup>48</sup>

It is important to also consider the political, social and cultural factors that affect access to and perceptions of justice in Sri Lanka. The current national political discourse, which is ever-present in Sri Lankan media,<sup>49</sup> remains heavily focused on the outcome of the recent civil war and the model of reconciliation and development being imposed in the post-war period. The Sri Lankan government's military victory over the Liberation Tigers of Tamil Eelam (LTTE) in May 2009 marked the end of twenty-six years of brutal internal armed conflict. Much of the fighting took place in the North and East of the country, where Tamils were disproportionately affected by the violence and the ensuing underdevelopment.<sup>50</sup> As Goodhand has highlighted, the end of the war has been marked by increased political centralisation and regime consolidation of the United People's Freedom Alliance (UPFA).<sup>51</sup> There remain considerable grievances among the population relating to the asymmetrical effects of the war and current concerns about the post-war model of reconciliation and macro-level economic development, particularly in the Northern and Eastern Provinces.<sup>52</sup>

While ethnic divides inevitably occupy much discussion of Sri Lanka, considerable caste-based discrimination remains a source of social injustice across the different ethnic groups.<sup>53</sup> Furthermore, International Crisis Group indicate that gender-based discrimination and violence occurs across Sri Lanka, with many groups raising specific concerns about the position of female-headed households in areas heavily affected by the war.<sup>54</sup> Such issues will

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<sup>46</sup> The World Bank. (2012). Sri Lanka Overview. Available at <http://www.worldbank.org/en/country/srilanka/overview>, accessed 10/11/2012.

<sup>47</sup> For government views on court delays see Sunday Observer. (2012). 'Laws' delays – a major concern – Justice Ministry Secretary', *Sunday Observer*, 29 January 2012, available at <http://www.sundayobserver.lk/2012/01/29/fea06.asp>, accessed 12/10/2012

<sup>48</sup> Dias, N. (2003). 'Mediation Boards: An Evaluation'. Daily News. Available at <http://www.dailynews.lk/2003/08/22/fea01.html>

<sup>49</sup> This discourse is dominated by a largely Sinhalese nationalist perspective. Reporters Without Borders have ranked Sri Lanka 162<sup>nd</sup> out of 179 countries for press freedom. See Reporters Without Borders. (2013). Press Freedom Index 2013. Available online <http://en.rsf.org/press-freedom-index-2013.1054.html>

<sup>50</sup> Höglund, K. & Orjuela, C. (2011): Winning the peace: conflict prevention after a victor's peace in Sri Lanka, *Contemporary Social Science: Journal of the Academy of Social Sciences*, 6 (1) p.20

<sup>51</sup> Goodhand, J. (2011). 'Consolidation and Militarization of the Post-War Regime', *Asian Survey*, Vol. 52(1) (January/February 2012)

<sup>52</sup> Advocacy groups have expressed concern that the government is using a post-war emphasis on economic development to 'consolidate peace rather than to substantively address issues of democracy, a political solution, human rights and accountability', Centre for Policy Alternatives. (2012). *Short-Term Benchmarks for Peace and Reconciliation in Post-War Sri Lanka*. Colombo. May 2012. Available at [http://www.sangam.org/2012/05/CPA\\_Benchmarks.pdf](http://www.sangam.org/2012/05/CPA_Benchmarks.pdf).

<sup>53</sup> Indian Institute of Dalit Studies. (2009). *Caste-based Discrimination and Social Justice in Sri Lanka: An Overview*, p.6. Available at <http://dalitstudies.org.in/wp/0906.pdf> p. 6. Accessed 01/11/2012.

<sup>54</sup> International Crisis Group. (2011). 'Women's Insecurity in the North and East'. *Asia Report* 217, 20 December 2011.

clearly influence the extent and nature of marginalised group's engagements with justice mechanisms.

In areas in the North and the East which have seen large-scale violence, local-level law and justice was often provided by groups other than the state, such as village councils, religious leaders, NGOs or the LTTE.<sup>55</sup> The end of the war led to the elimination of LTTE structures and the gradual reduction of donor funds being used to support NGOs in Sri Lanka, meaning their justice mechanisms were largely lost. The government has re-established justice mechanisms in these regions through the police and courts, while a military presence remains in the North and some parts of the East.<sup>56</sup> The reestablishment or extension of mediation boards to heavily war-affected regions provides a new avenue of justice provision in these areas. As is the case across the country, once established, the mediation boards will often co-exist (and sometimes compete) with other more informal dispute resolution mechanisms, provided by local government actors, NGOs, religious leaders and kinship networks. The existence of these other mechanisms may well affect the use, perception and impact of the mediation boards.

### **The context in case study locations**

**Manmunai Pattu** is a DSD within **Batticaloa district**, in the **Eastern Province**. There are roughly 25% Muslims in this DSD, with the rest of the population largely Tamil. This area is quite politically charged and there remain tensions over boundary demarcations between Muslim and Tamil groups. Despite this, local interviews highlighted that there is now very little ethnic tension at the ground level between these groups. The mediation board began in 2005. There are 24 mediators including six Muslim men, five Tamil women and thirteen Tamil men. The main cases dealt with by this board are based on money transactions, family disputes, border demarcation issues and loan repayment cases.

**Nallur** is a DSD within **Jaffna district** in the **Northern Province**, which covers both urban and rural areas. Jaffna city was re-captured from the LTTE in 1995, but remains almost entirely Tamil. Many local people highlighted that the end of the war – and specifically the re-opening of the A9 road which connects the North to the rest of the country – has led to a growth of problematic social issues such as alcoholism and domestic violence. This board was established in 2005 and was the first mediation board in the North. There are 24 mediators, 2 of which are women. In the period from January to September of 2012 around half of the disputes came from land cases, with money transactions being the next most common dispute.

**Karachchi** is the only DSD that has a mediation board within **Kilinochchi district**, in the **Northern Province**. Kilinochchi was a key LTTE stronghold for many years and this continues to shape the experiences of the local Sri Lankan Tamils in the area. Local interviews suggested that significant social issues have arisen in the post-war context: continued military involvement in civil administration, illicit brewing of alcohol, sexual violence against women, gang issues and major problems for citizens in securing land, housing and income generation. The board was established in March 2012 and consists of 19

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<sup>55</sup> Centre for Policy Alternatives. (2003). *Informal Dispute Resolution in the North East and Puttalam*. Colombo, p. 9

<sup>56</sup> Centre for Policy Alternatives. (2012), *Short-Term Benchmarks for Peace and Reconciliation in Post-War Sri Lanka*. Colombo.

men and one woman. The mediation board deals mainly with land issues, often linked to displacement and resettlement through war.

**Kuchchaveli** is a largely rural DSD with the district of **Trincomalee**, in the **Eastern Province**. The vast majority of people living in Kuchchaveli are in the fishing industry and are very poor. The people in this area suffered from a great deal of displacement due to the war. This area is roughly 65% Muslim, with the majority of the rest of the population being Tamils. Many local people highlight that this composition has not typically resulted in ethnic tensions in the area: these different groups have lived together for several generations and many have family ties across groups. The mediation board started in July 2009. It has 15 members, all of which are male Muslims and primarily deals with issues regarding land and money transactions.

Limited additional research was conducted in **Sri Jayawardenapura Kotte** and **Padukka** DSDs in **Colombo district**, in the **Western Province**, as well as in **Elpitya** DSD in the district of **Galle**.

#### **4. A History of Theories and Practice**

The purpose of the following section is to examine how mediation boards started, how they have changed and the role of the Foundation's theories and underpinning ideas in influencing that change. A Theory of Change approach is taken, which means attempting to draw out the implicit and explicit assumptions and theories about how change happens that the Foundation have held over time. However, a full analysis demands considering the central role of the MoJ as well as the influence of major donors.

#### **Alternative Dispute Resolution in Sri Lanka**

According to a recent Foundation publication, Sri Lanka has a rich tradition of mediation as a form of ADR, which is one of the reasons for its popularity and acceptance today.<sup>57</sup> For example, in the practice of *Gam Sabha*, village elders used to 'hear complaints and do justice among neighbours'.<sup>58</sup> Over time, various alternatives to the formal court system have also been used in Sri Lanka. The mediation boards of today emerged in direct response to the perceived failings of the 'conciliation boards', which were repealed in 1978 after being widely understood to be politically corrupted bodies.<sup>59</sup> However, the idea that any previous 'versions' of the mediation boards performed 'mediation' is contested by those close to the mediation programme; since these mechanisms were often closer to a form of arbitration.<sup>60</sup> As Woolford and Ratner indicate, there is often an unfortunate tendency to 'reach back into diverse cultural milieux, and to claim a definite continuity between justice practices in [...] small scale communities and modern forms of mediation'.<sup>61</sup> The term 'mediation' now

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<sup>57</sup> Gunawardana, M. (2012). p. 10

<sup>58</sup> Gunawardana, M. (2012). p. 10. Much like the mediation boards of today, they would hear disputes on petty thefts, land disputes and a number of minor offences that occurred in the community. Historical records for such a practice exist up until the British rule of Sri Lanka.

<sup>59</sup> Zoysa, N. (2006). Community Mediation: Law and Its Implementation in Sri Lanka. *Forum of International Development Studies*, 32 (December), p. 222.

<sup>60</sup> As discussed in #14 Interview with M. Thirunavukarasu, Co-author of Mediation Training Manual, 27/08/2012. Notes on file with author. Also discussed in # 62 Interview with Ramani Jayasundere, Technical Advisor, The Asia Foundation. 13/10/2012. Notes on file with the author.

<sup>61</sup> Woolford, A. and Ratner, R. S. (2008), p.40.



encapsulates a range of professional practices; while Sri Lanka may have a history of ADR, the interest-based professionalised approach was new to the country when it was introduced.

### **The Ministry of Justice role and perspective**

At the inception of the programme in 1989, MoJ staff decided upon the general institutional framework, while the MoJ, legal experts and staff from CDR Associates, a US-based organisation that specialise in mediation and conflict resolution, collaborated to clarify the specific interest-based process of mediation.<sup>62</sup> The MoJ is currently responsible for the central administration of the mediation boards programme along with mediator training and performance monitoring. However, significant power is also given to the independent Mediation Boards Commission, which appoints and dismisses mediators.<sup>63</sup> The MoJ's original intentions for the boards were unambiguous: to clear the court backlog by providing an alternative to expensive and time consuming litigation,<sup>64</sup> and to do so with an alternative that should be quick, cheap, community-led and free from politicisation.<sup>65</sup> Today, said Justice Secretary Mrs. Kamalini de Silva, 'the core principles are still the same'.<sup>66</sup>

The scope of the mediation boards was deliberately limited by the MoJ, partly due to the actual and potential resistance by the Sri Lanka Bar Association.<sup>67</sup> From the MoJ's perspective, notable changes to the boards since the boards' inception include their gradual expansion, most recently to the North and East of the country, as well as steps taken to professionalise the service, with ongoing improvement of the training, monitoring and evaluation.<sup>68</sup> Special Mediation Boards were used in 2005 to adjudicate Tsunami-related disputes, demonstrating a belief that the process of mediation could be used to address specific major problems.<sup>69</sup> For the MoJ, the gradual geographical and professional development of the boards has led to them to provide 'meaningful' access to justice.<sup>70</sup> However, they do not identify mediation boards as improving social harmony or state-society relations, which form a significant part of the Foundation's current Theory of Change.

### **The Asia Foundation role and perspective**

The Foundation's role is to support the core work of the MoJ. Often their work is implemented by local partners. Their support for the programme has focused on creating and strengthening the technical capacity of mediators. Through partnership with the MoJ, their activities have also included establishing a permanent cadre of mediator trainers within the Ministry and strengthening their technical skills through periodic refresher and specialised trainings; promoting increased female nominations for mediators; and helping set up the

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<sup>62</sup> CDR Associates. (2001). *Developing and Sustaining Conflict Management Systems as Instruments of Governance. The United Nations Department of Economic and Social Affairs*. This document provides additional information on the inception and development of the mediation boards.

<sup>63</sup> The current mediation boards are understood to be apolitical since mediators cannot be government officials and are appointed by an 'independent' Mediation Boards Commission which is also directly responsible for disciplining and managing mediators. See Siriwardhana, C. (2011), p. 33

<sup>64</sup> Zoysa, N. (2006), p. 223

<sup>65</sup> # 64 Interview with Mrs Kamalini de Silva, Justice Secretary, Ministry of Justice. Colombo. 26/10/2012. Notes on file with author.

<sup>66</sup> # 64 Interview with Mrs Kamalini de Silva, Justice Secretary, Ministry of Justice.

<sup>67</sup> As discussed via email with Christopher Moore, March 2013. Notes on file with author.

<sup>68</sup> # 64 Interview with Mrs Kamalini de Silva, Justice Secretary, Ministry of Justice.

<sup>69</sup> These boards were set up under the Special Mediation Boards Act of 2005. They have a different mandate – for example state parties could come to the board.

<sup>70</sup> Gamalath, Suhada, Secretary, Ministry of Justice, cited in Gunawardana, M. (2012), p 2

Centre for Mediation and Mediation Training (CMMT) which trains Tamil mediators. More recently, they have been supporting the establishment and reactivation of boards in war-affected areas, while also aiming to improve the monitoring and evaluation of the boards by introducing weekly electronic reporting via SMS.

The Foundation's rationales for supporting the mediation boards have been framed in different ways over the years, both explicitly and implicitly. The early principles behind the Foundation's engagement were clearly aligned with those of the MoJ at the time:<sup>71</sup> firstly, to reduce the number of cases going to the severely backlogged courts and secondly, to provide 'access to justice' by developing an 'informal, easily accessible and affordable dispute resolution system' that is 'efficient and effective'.<sup>72</sup> While these principles have remained constant – often understood under an 'access to justice' framing – in external project documents and donor reporting, the overarching rationales for their support appear broader, aspirational and related to the context and strategic donor frameworks.

These changing narratives of the Foundation draw out lessons for understanding the relationship between policy and practice which are discussed below. Yet, firstly, it is important to highlight that since any specific programming for wider goals would need to be accepted and most likely implemented by the MoJ – whose rationales and mandate for the boards remains within an access to justice framing – the wider effects of mediation highlighted by the Foundation may have to result not from direct programming but from indirect and unforeseen processes and events. The role of the Foundation here can be contrasted with their mediation programme in Nepal, where the Foundation and their implementing partners have direct control of all mediation locations until they decide to transfer them to the government, which usually takes about three years.<sup>73</sup>

There have been some ways in which the Foundation has affected the impact of the programme beyond directly supporting the MoJ. For example, they played a role in funding the creation of CMMT, which has been training Tamil-speaking mediators in the Northern and Eastern provinces in the absence of MoJ trainers. Supporting CMMT is consistent with one of the early rationales of the Foundation of providing access to a form of justice to marginalised groups. Yet it may also demonstrate a difference in priorities between the Foundation and the MoJ, which appear to stem from fundamental ideas about the purpose of the programme: while Tamil-speaking mediators are essential if the intention is to target marginalised groups, this may be less of a priority if aiming to reduce backlogs in areas with established court systems.

### **The relationship between policy and practice**

Broadly speaking, it appears as if the Foundation's high-level narratives on mediation have sometimes acted as a space for wider changes in donor and organisational thinking to be played out, rather than as guide to practice. For example, while the early framing for the Foundation's support for mediation boards was that they were a mechanism *to address citizens' grievances, specifically for politically marginalised and socially disadvantaged groups*, this took different forms: a USAID grant between 1998 and 2002 funded mediation

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<sup>71</sup> The earliest full Foundation document available to the author was 1997, although work began on mediation boards as early as 1989.

<sup>72</sup> The Asia Foundation. (1997). Citizens' Participation (CIPART) Project. Unpublished document.

<sup>73</sup> The Asia Foundation. (2012b). *TAF Nepal PPA Year 1 Annual Component Report . PPA Component 4: Community Dispute Resolution*. Unpublished document.

as a ‘human rights initiative’, aiming to empower different groups to achieve community-level justice.<sup>74</sup> But this was also considered as part of institution building in non-conflict affected areas,<sup>75</sup> to make state institutions more responsive to citizens’ grievances. Over time, the Foundation’s emphasis moved from *addressing marginalised group grievances* to a related but broader theme of *conflict mitigation*. The full abrogation of the ceasefire in 2008 coincided with the Foundation’s renewed focus on the need for justice programming that addressed the ‘drivers of conflict’ by building responsive institutions.<sup>76</sup> Yet a focus also developed on the specific role of mediation boards in conflict contexts: the Foundation claimed that by ‘lowering the prevailing level of conflict, and the potential for future conflict, the boards also provide a valuable service at the community level, particularly in conflict-prone areas’.<sup>77</sup>

The growth of these narratives escalated with the end of the war in 2009, which coincided with a move in the Foundation’s broader framing from *conflict mitigation* to *conflict prevention*, on the basis of the re-activation and establishment of mediation boards in the war-affected Northern and Eastern Provinces. The claim of social harmony first emerged during this time, and appears to have originated in part from its suitability to fit within a donor conflict prevention paradigm, as well as a post-war state narrative of national unity and social cohesion.<sup>78</sup> The Foundation’s recent Theory of Change consolidated this narrative through arguing that over time, the establishment of mediation boards could lead to improved community trust and harmony between different ethnic or religious groups in the Eastern Province. Finally, this Theory of Change also argued that ‘in the longer term, if the community mediation services are effective, state-society relations will also improve as community feelings of disillusionment and dissatisfaction with the state diminish, and state actors increasingly perceive communities as partners in service delivery’. Improving ‘state-society relations’ is a major DFID strategic focus guiding the funding offered by their Programme Partnership Agreements, which support community mediation.<sup>79</sup>

These changes in the overarching framing of mediation boards demonstrate how these narratives (and in turn Theories of Change) may be ‘mobilising metaphors’, telling us more about how the relationship between aid donors and receiving organisations functions than how mediation operates and has wider impacts.<sup>80</sup> In interviews, Foundation staff made clear that regardless of theories that suggest further impacts of mediation, providing access to justice has always been the main driver of the programme, for themselves and the MoJ.<sup>81</sup> This indicates how there may be an external framing of a project by the Foundation to donors and the government, while there could be a different internal understanding among programme staff. At a basic level, it’s clear that there are considerable donor and

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<sup>74</sup> The purpose of this initiative was to ensure ‘citizens are able to use the law to secure their rights and resolve disputes’, The Asia Foundation. (2002). *Human Rights Initiative: Final Report*. USAID Cooperative Agreement, January 1, 1998 – March 31, 2002. Unpublished document.

<sup>75</sup> # 62 Interview with Ramani Jayasundere, Technical Advisor, The Asia Foundation.

<sup>76</sup> The Asia Foundation. (2008). *Final Access to Justice (A2J) Program Proposal. Phase 3*. Submitted to the British High Commission in June 2008. Unpublished document.

<sup>77</sup> Ibid.

<sup>78</sup> # 21 Interview with Nilan Fernando. Country Representative. The Asia Foundation. 05/09/2012.

<sup>79</sup> See DFID. (2010). For information on the PPA agreement, see The Asia Foundation, Program Partnership in Fragile and Conflict-Affected Areas, Available at <http://asiafoundation.org/resources/pdfs/PPA2012fourpagerfinal.pdf>

<sup>80</sup> Mosse, David. (2004), p.663.

<sup>81</sup> # 62 Interview with Ramani Jayasundere, 13/10/2012. # 21 Interview with Nilan Fernando, Country Representative, The Asia Foundation.

government pressures to fit within their narratives in order to operate in a country. Broad policy ideas, such as ‘improving social harmony’ are socially appropriate: as David Mosse highlights, these terms can ‘submerge ideological differences, allowing compromise, room for manoeuvre or multiple criteria of success, thus winning supporters by mediating different understandings of development’.<sup>82</sup> It’s also important to recognise how personnel changes within an organisation such as the Foundation may affect the choice and direction of specific policy ideas and narratives, both due to a loss of institutional memory and the different perceptions of international development individuals bring to their role.

Of course, uncertainty about the motivations for making certain claims should not be confused as proof that wider effects are not happening; perhaps a particular macro focus may allow practitioners, through monitoring and evaluation, to pick out wider effects that were not considered previously. It’s also true that there is a genuine interest among some donors and practitioners to try and understand what kind of higher-level, longer-term contributory impacts aid programmes may be having to social change; something that analytical tools like Theories of Change may be able to help plan, describe, explore, monitor and evaluate. Furthermore, perhaps it is not surprising that programme staff do not articulate these higher-level theories as part of the programme goals, since they may be more focused on expected results and outcomes in the short to medium term.

However, problematically, if such theories change with funding cycles, this indicates that they may not be genuine longer-term goals (or independently articulated unexpected effects) but relatively opportunistic short-term narratives. The way this functions is common knowledge in development: both donors and NGOs know the ‘rules of the game’, where donors expect conformity to current narratives, and organisations and their implementing partners know to frame their work in that language in order to secure funding. This is not a dynamic solely between donors and aid organisations; donors are also under considerable pressure to justify their aid budgets to their governments and citizens, which can encourage a difficult (and sometimes contradictory) balancing act between needing to demonstrate ‘results’ as well as aim for macro-level impacts. Yet this is problematic for the concept of Theories of Change and its related research, since a focus on such high-level narratives may prevent theories from being an accurate, honest and transparent account of an intervention’s contribution to change. Despite these concerns, this paper’s focus on the Foundation’s current Theory of Change provides a valuable opportunity to critically appraise, revise and strengthen the reasoning and evidence used to support mediation boards in Sri Lanka. It also provides fresh evidence to improve and adapt the Theory of Change to make it a more effective approach to thinking about how change happens.

## **5. Analysis of the Social Harmony Theory**

This section aims to analyse the reasoning and evidence that supports or challenges the Foundation’s social harmony claim. As detailed in the introduction to this paper, the Foundation does not provide an explicit definition of social harmony. Much like in academic and general use,<sup>83</sup> the Foundation’s understanding appears vague. This aligns with the way the Foundation came to use the term: alongside the contextual reasons outlined in the

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<sup>82</sup> Mosse, David. (2011), p.11

<sup>83</sup> Bannister, Jon and O’Sullivan, Anthony. (2013); Sri Lankan Ministry of National Languages and Education. (2012).

previous section, it appears to have emerged in part as a way of simply describing the ‘larger impact’ that the Foundation feels the boards achieve.<sup>84</sup> It is clear that like justice, social harmony is a contested term whose meaning may depend on who is using it; therefore its use needs to be contextually understood. Yet as Hedeem’s useful study indicates, the effects of mediation on society are difficult to research and correspondingly under-researched.<sup>85</sup> This is certainly true on both counts with the social harmony claim; the imprecision with which the term is used appears to have encouraged a vague evidence base to support it.

The existing evidence for the claim relies on the findings of the only full evaluation undertaken since the boards’ inception, which the MoJ and the Foundation published in 2011.<sup>86</sup> However, this is insufficient for two key reasons: firstly, the evidence relies upon the responses of mediators and disputants. As the Centre for Policy Alternatives found in relation to informal justice arrangements in Sri Lanka, ‘reliance on testimonies of select individuals directly involved limits one’s understanding of the community’s overall perception of the mechanisms’.<sup>87</sup> In this way, it also fails to account for the potential biases of those close to the programme. Secondly, data that directly supports the social harmony claim is based on multiple-choice surveys about perceptions of the mediation boards. This is problematic since it’s unlikely that survey respondents would have a clear and unified conception of what ‘social harmony’ means. Given that the term was translated from English into Sinhala and Tamil for the purposes of the survey, analysis needs to be done to see if there are translation issues which could lead to it having different implications for different people. Regardless, the findings of a limited survey do not provide any of the necessary conceptual clarity or detailed research that could substantiate a claim that social harmony is being improved.

These initial observations highlight the need to break down what improving social harmony might mean into more tangible goals, and critically reflect on the reasoning and evidence for such goals. The following three hypotheses are drawn from the Foundation’s Theory of Change and interviews with Foundation staff:

1. Improving social harmony means *resolving disputes and preventing dispute escalation*
2. Improving social harmony means *improving community relationships*
3. Improving social harmony means *improving inter-ethnic harmony*

While these hypotheses interrelate and overlap, analysing them individually aims to draw a broad picture of the strengths and weaknesses of the Foundation’s social harmony claim. Using a Theory of Change approach, this also involves critically appraising the assumptions which underpin each hypothesis.<sup>88</sup> This section ends with reflections on the importance of social context when trying to understand the impact the boards may have on social harmony.

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<sup>84</sup> Siriwardhana, C. (2011), p 1

<sup>85</sup> Hedeem, T. (2004). ‘The Evolution and Evaluation of Community Mediation: Limited Research Suggests Unlimited Progress’. *Conflict Resolution Quarterly*, 22(1), p. 127

<sup>86</sup> Siriwardhana, C. (2011).

<sup>87</sup> See Centre for Policy Alternatives. (2003), p.25

<sup>88</sup> Identifying and questioning assumptions is generally seen as central to the process of articulating a ToC. CARE indicates that there can be various types of assumptions related to the underlying causes of the problem to be addressed, the role of each assumption in the change process, and the broader operational context of a programme. See CARE International UK. (2012). *Defining Theories of Change*. January, London.

## **Resolving disputes and preventing dispute escalation**

One way of conceptualising that mediation boards improve social harmony is to understand them as resolving disputes and preventing their escalation. This understanding of the social harmony claim is drawn directly from the Foundation's Theory of Change. Broadly speaking, this aligns with an understanding of social harmony as a state of peaceful co-existence, although only at the interpersonal level between disputants. Yet it is also largely aligned with the Foundation's original and consistent rationale for supporting the boards: promoting access to justice.

### *Evidence discussion: resolving disputes*

It is clear that mediation boards resolve a considerable number of disputes. The boards have processed more than two million disputes since their inception and available resolution rates are consistently around 60 per cent.<sup>89</sup> It quickly becomes clear why they are a popular method of dispute resolution when contrasted with the courts: they are less expensive, since there are no legal fees. The cost of an application is a 5 rupee Sri Lankan stamp, which is affordable for the majority of people.<sup>90</sup> There are currently 309 boards for 328 DSDs, making mediation a relatively accessible justice mechanism. It is also quicker than court proceedings: from complaint to either settlement or referral to the courts, it is approximated that 33 per cent of cases are disposed within 30-60 days, with 99 per cent of disputes within a year.<sup>91</sup> In this way, it is clear that mediation boards increase access to a form of justice in Sri Lanka.

Although the boards do resolve many disputes, there are some gaps in data which mean it's not possible to get the full picture. Prior to 2012, boards only had to report on total numbers of disputes received and whether they were settled. While greater information was requested from the boards for reporting in 2012, all boards are not sending reports, which distorts overall figures on the amount and type of disputes resolved.<sup>92</sup> These reports in themselves are also limited since they do not allow for comparison between type of dispute and settlement rate. This information could provide basic data on which kinds of disputes mediation is most successfully settling, which in turn could encourage issue specific training.

A key issue is whether mediated agreements are sustained over the long-term. Mediators are legally mandated to bring the disputants to 'an amicable settlement and to remove [...] the real cause of grievance between them'.<sup>93</sup> Where the process is successfully completed – where the 'root cause' of the dispute is tackled and people feel that their substantive, procedural or relational interests are being met – experts indicate that the settlement is more likely to be sustained.<sup>94</sup> However, the existing evidence for the long-term sustainability of mediated disputes is very limited since there is no systematic post-dispute tracking. It is therefore difficult to know whether a dispute once resolved remains so. Research conducted for the 2011 evaluation indicates that out of 29 case studies, 19 settlements had been maintained.<sup>95</sup> This sample is not conclusive but demonstrates that while some resolutions may hold, some will not.

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<sup>89</sup> The Asia Foundation. (2012a); Siriwardhana, C. (2011), p.1.

<sup>90</sup> Currently the equivalent of 2.4 pence in the United Kingdom.

<sup>91</sup> Siriwardhana, C. (2011), p.9.

<sup>92</sup> Based on internal reporting gathered by the Ministry of Justice in the first half of 2012.

<sup>93</sup> Section 10 of the Mediation Boards Act.

<sup>94</sup> According to the most recent mediation training manual, participants' interests are normally substantive, procedural or psychological/relationship-based. See Moore, Christopher W, Jayasundere, R. and Thirunavukarasu, M. (2011).

<sup>95</sup> Siriwardhana, C. (2011), p. 8

Furthermore, while mediation resolves many disputes, there ‘is currently no comparative data in relation to community access to community based (traditional and/or informal) dispute resolution processes’.<sup>96</sup> Interviews with different state and non-state actors across the regions visited indicated that mediation boards are one of many forms of dispute resolution, and not necessarily the most popular: people may use the police, courts, local CBOs, NGOs, local kinship networks or religious and community leaders.<sup>97</sup> There is little research on why people choose different mechanisms for their justice needs in Sri Lanka. However, a 2003 study by the Centre for Policy Alternatives on informal justice in the North East and Puttalam finds that people will go to the mechanism ‘they believe will solve the dispute and is most likely to favour their side’.<sup>98</sup> This does not mean mediation boards cannot be said to be making a meaningful contribution to dispute reduction, but that ascertaining that it does so comparatively better or worse than other mechanisms is not currently possible.

*Evidence discussion: preventing dispute escalation*

The Foundation’s Theory of Change also explicitly argues that ‘community trust and harmony will improve...as the risk of disputes escalating is minimized’.<sup>99</sup> This is a plausible claim: for example, a dispute over a boundary demarcation between two individuals could eventually escalate and lead to violence. Mediation could prevent this by facilitating the settlement of the dispute and eliminating the cause for further grievance between the parties. It is also plausible that mediation could prevent the escalation of a dispute to a group level, particularly when the dispute affects family members or other local community members. During primary research, community members often claimed a minor dispute in a close-knit rural area can easily escalate. In Batticaloa for example, a Muslim school principal remarked, ‘rural life is made up of mutual relationships between members...breaking the relationship is bad for wider cultural integrity’.<sup>100</sup>

However, the existing evidence base for such a claim does not currently extend beyond the hypothetical assumptions of mediators and disputants. Providing evidence that mediation prevents the escalation of a dispute would certainly be difficult, since this may require knowledge of what would happen in the absence of mediation. One possibility is to conduct further case studies which looked at both mediated and non-mediated disputes in a DSD, and track whether the different disputes escalated or not. The non-mediated disputes for study could be those eligible and called for mediation, but where the disputant parties did not both attend.<sup>101</sup> Alternatively, historical research could be conducted in particular localities before and after mediation boards started functioning. Equally, ethnographic research in specific localities to see how the ‘ripple effects’ of disputes differ where mediation boards exist and where they do not could be conducted, which could also be part of a useful mapping exercise of other alternative dispute resolution mechanisms and their relative use.<sup>102</sup> Also, while this was not specifically highlighted by the Foundation, further such research may indicate whether mediation has a ‘demonstration effect’, where the resolution of disputes has a reassuring influence on other community members.

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<sup>96</sup> The Asia Foundation. (2012a).

<sup>97</sup> No detailed mapping was conducted for this study so such findings are not conclusive.

<sup>98</sup> Centre for Policy Alternatives. (2003), p .17

<sup>99</sup> The Asia Foundation. (2012a).

<sup>100</sup> # 41 Interview with Community Member, Manmunai Pattu, Batticaloa District, 02/10/2012

<sup>101</sup> There may be a huge range of variables which influence whether disputes escalate or not. This would make the selection of cases important; but also perhaps mean that strong conclusions are unlikely to be possible either way.

<sup>102</sup> Centre for Policy Alternatives. (2003), p.25

### *Rethinking assumptions*

This hypothesis appears to imply one of two assumptions regarding what improving social harmony means. Firstly, there could be an assumption that resolving an interpersonal dispute provides some kind of collective benefit to society. However, this may be problematic since we do not know the nature of this ‘collective benefit’; and it’s also possible that the benefits of the settlements may be relatively atomised among those at the mediation sessions. Currently, as Neves highlights in relation to mediation in Brazil, any assumptions about wider effects need to be carefully qualified, since it may be that ‘collective impact requires collective targets and not just accumulation of individual effects’.<sup>103</sup> Alternatively, one could assume the resolution of individual interpersonal disputes alone is enough to improve social harmony; yet this seems to be a very limited understanding of what improving social harmony means, given its broad connotations. These assumptions raise doubts about whether this hypothesis is conceptually adequate. This does not apply to the dispute escalation claim, where it is plausible that settlements prevent wider disharmony, but this also involves assumptions about the likely escalation of non-mediated conflicts.

### *Summary*

It is plausible that the mediation boards resolve a considerable amount of disputes taking place in a DSD, although little is known about which kinds of disputes they most effectively resolve or whether disputes are resolved sustainably. Furthermore, it’s also plausible (but tough to get strong evidence) that it prevents the escalation of disputes where the resolution is sustained. This hypothesis indicates some success in the boards providing access to a form of justice; however it is unclear whether resolving disputes and preventing them from escalating is an adequate conceptual understanding of improving social harmony.

## **Improving community relationships**

The Foundation’s Theory of Change indicates mediation improves interpersonal relationships where the dispute takes place, as well as, over time, relationships within (and in some cases between) communities.<sup>104</sup> The latter is a more expansive conception of what improving social harmony means, aligning with the more ambitious understanding in academia and general use.

### *Evidence discussion: interpersonal relationships*

The taught method and actual process of mediation in Sri Lanka has a relationship-building component. Mediation experts argue that even if the relationship is not the main cause for the dispute, ‘the relationship is always a factor’. They stress that, ‘the emphasis placed on relationships will be critical to making the resolution amicable, but also for making the settlement sustainable’.<sup>105</sup> This is especially true if the parties are going to have any ongoing relationship through family, work or community relationships. Case studies conducted for the 2011 evaluation indicate that in ‘multiple cases disputes between neighbours or family members, which had even escalated to the point of physical violence, had been resolved, and both parties to the disputes cited cordial and sometimes even friendly relationships’.<sup>106</sup>

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<sup>103</sup> Neves, T. (2009). Practice Note: Community Mediation as Social Intervention. *Conflict Resolution Quarterly*, 26(4), p. 490.

<sup>104</sup> The Asia Foundation. (2012).

<sup>105</sup> # 63 Interview with Christopher Moore, Partner, CDR Associates.

<sup>106</sup> Siriwardhana, C. (2011), p. 12



During primary research, mediators, former disputants and local community members often saw mediation as a way to not ‘break the relationship’ of disputing parties.<sup>107</sup> One mediator from Galle district claimed that the ‘basic aim [of mediation] is to rebuild friendship that was broken’.<sup>108</sup> A mediator from the same district highlighted how mediation boards affect relationships in contrast to the court system:

In court, judgement is based on the incident, not the root cause...if a drunken assault goes to court the person is remanded and the two become enemies, but here [at the mediation board] they can talk and they can reconcile.<sup>109</sup>

The Secretary of the Ministry of Justice has highlighted that Sri Lanka is a litigious society; the very purpose of taking someone to court may well be ‘to embarrass them’.<sup>110</sup> Equally, going to the courts and police may well create a social stigma for people.<sup>111</sup> Mediation therefore provides a useful avenue of dispute resolution for those who do not wish to suffer the personal, interpersonal and wider social ramifications of a court case.

Yet mediation boards do not always succeed in repairing relationships. For example, a disputant in Trincomalee claimed that while his dispute was resolved, his opponent still perceived that he had lost the case – but just in a way that was cheaper and quicker than the court – which meant they still do not have a positive relationship now.<sup>112</sup> Furthermore, it is also important to recognise the complexity of improving relationships given the involvement of relatives or other individuals in dispute dynamics, both inside and outside the session. Beyond these dynamics, there could be a wide range of neighbourhood and wider community pressures and influences that shape how relationships are built and sustained.<sup>113</sup> Given the limited in-depth research with disputants and the lack of post-dispute tracking, there is little information available on the nature of the relationships that are changed by mediation and whether they are sustained beyond the mediation process. However, it’s important to remember that the aim of the boards is to settle the dispute: this means that they may just try to resolve procedural and substantive issues in disputes, and get a ‘good enough’ settlement in the relationship area.<sup>114</sup>

#### *Evidence discussion: community relationships*

The Foundation also argues the boards, over time, improve communication and lessen tension within (and in some cases between) communities.<sup>115</sup> This understanding is important since it implies a move from mediation having a direct impact on individuals who come to mediation, to an indirect and longer-term impact within (and in some cases between) groups or communities. This claim could align with theories of social capital, whose advocates often reference the importance of ‘trust, norms [of reciprocity] and networks [of civil engagement]

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<sup>107</sup> # 27 Interview with President of local CBO, Kuchchaveli, Trincomalee. 27/09/2012; # 39 Interview with two former disputants, Manmunai Pattu, Batticaloa District. 01/10/2012; # 13 Observation of Community Mediation Board, Sri Jayawardenapura Kotte. Colombo. 25/08/2012.; # 36 Interview with former disputant, Manmunai Pattu, Batticaloa District, 30/09/2012.

<sup>108</sup> # 20 Focus Group with mediators, Elypitya, Galle District, 01/09/2012

<sup>109</sup> # 20 Focus Group with mediators, Elypitya, Galle District, 01/09/2012

<sup>110</sup> # 64 Interview with Mrs Kamalini de Silva, Justice Secretary, Ministry of Justice

<sup>111</sup> # 13 Focus group with mediators, Sri Jayawardenapura Kotte, Colombo, 25/08/2012.

<sup>112</sup> # 32 Interview with former disputant, Kuchaveli, Trincomalee District, 28/09/2012.

<sup>113</sup> # 13 Observation of Mediation Board, Sri Jayawardenapura Kotte, Colombo. 25/09/2012; # 30 Focus Group discussion with Mediators, Kuchaveli, Trincomalee District. 27/09/2012.

<sup>114</sup> As discussed with Christopher Moore via email, March 2013.

<sup>115</sup> The Asia Foundation. (2012a).

that can improve society by facilitating co-ordinated actions'.<sup>116</sup> Scholars often differentiate between *bonding* social capital within homogenous groups and *bridging* social capital, which takes place between different groups.<sup>117</sup> However social capital has come under significant criticism in academic literature and is only one of many ways of looking at social relations.<sup>118</sup> For the purposes of this paper, it is at least important to recognise the complexity of hoping to maintain, build or improve social relations over time through encouraging trust, reciprocity and civil engagement, since these relations are also affected by a range of political, social and economic processes, among others.<sup>119</sup>

Unfortunately, it's unclear what level of 'community' impact is being claimed. The mediation boards are bounded by administrative DSDs, which people do not include in their community identity. Rather, 'community' often appears to imply 'village' or Grama Niladhari (GN) administrative divisions.<sup>120</sup> Amongst 328 DSDs island-wide, there are a total of 14,022 GN divisions.<sup>121</sup> The consequence of this vagueness is that we cannot know which groups the impacts of mediation are said to be within and between. There is an indication in the Theory of Change that communities are understood as homogenous ethnic or religious groups, when it states 'In the North, this impact is expected to affect dynamics *within* communities, whereas in the East, where diverse religious and ethnic communities live in closer proximity, the results could be wider'. However this point is not expanded upon, meaning if ethnic or religious harmony *is* the goal (this is the focus of the next hypothesis), we cannot be clear at what level.<sup>122</sup>

Any community-level effects of mediation may be limited by the design of the boards. According to the Mediation Boards Act 1988, disputants are individuals, not groups.<sup>123</sup> In practice, there are often more than two disputants at the mediation session, including spouses or other family members. These sessions take place in a public space – for example in a school – but the individual acts of mediation tend to be semi-public, with mediators moving into different spaces of the location to give relative privacy to the dispute. Furthermore, according to the 2011 evaluation, 72 per cent of disputes were between those already close in their communities, such as neighbours (37 per cent), relatives (22 per cent) and immediate family members (13 per cent).<sup>124</sup> This may mean that where group relations are repaired or built, they are largely restricted to such groups. That said, local social relations in villages may well be built upon close and interrelated interactions and relationships, and given that some people in disputes live in communities from which they are not likely to leave, it may be important to try and improve relationships. Yet as noted above, mediation boards may just aim to repair the relationship enough for a settlement to hold. In circumstances where

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<sup>116</sup> Putnam, R. (1993). *Making Democracy Work: Civic Traditions in Modern Italy*, Princeton, NJ; Princeton University Press, p.167 quoted in Lewis D. and Kanji, N. (2009). *Non-governmental Organisations and Development*, London:Routledge, p. 62

<sup>117</sup> Ibid.

<sup>118</sup> Haynes, Paul. (2009). 'Before Going Any Further With Social Capital: Eight Key Criticisms To Address'. *NGENIO (CSIC-UPV) Working Paper Series 2009/02*.

<sup>119</sup> Goodhand, J., Hulme, D. and Lewer, N. (2000), 'Social Capital and the Political Economy of Violence: A Case Study of Sri Lanka'. *Disasters*, 24: 390–406. doi: 10.1111/1467-7717.00155

<sup>120</sup> Internal discussions at the Foundation also made clear that people may identify a sense of community in many other ways: for example, geographically (urban/rural), politically, culturally or ethnically.

<sup>121</sup> Details of each DSD can be found at District and Divisional Secretariats Portal. Available at <http://www.ds.gov.lk/>

<sup>122</sup> The importance and difficulty of knowing to which 'level' a theory of change should apply is discussed in Stein, D. and Valters, C. (2012).

<sup>123</sup> Mediation Boards Act 1988

<sup>124</sup> Siriwardhana, C. (2011), p.11

disputes arise between people who were previously unknown to each other, or perhaps from other villages in the DSD, it is possible there could a broader impact – but providing empirical data for this is difficult given that the localities where disputants originate from are not currently documented.

Further possible design limitations come from Sri Lanka’s interest-based mediation method. While the distinctions between mediation practices may be quite blurred – particularly given that social and cultural norms will influence how mediators act – proponents of interest-based mediation tend to focus on the pragmatic goal of reducing court delays, as opposed to any wider transformative social effect.<sup>125</sup> Bush and Folger argue that any approach to mediation which aims at producing settlements is distinct from ‘transformative mediation’ which relies on ‘different assumptions about conflict resolution and human nature’.<sup>126</sup> Even if improving social harmony is understood as a secondary and longer-term effect of mediation, it may be that the interest-based design inhibits the chances of such impacts. Regardless, it may be the case that the often messy reality of mediation sessions – whereby conformity to particular models by both mediators and disputants is not guaranteed – militates against achieving grand designs for the community.

Overwhelmingly, interviews with mediators, former disputants and leaders and locals in the communities indicated that mediation boards can reconcile divided parties, but many respondents felt that claims of wider community impacts may be too strong.<sup>127</sup> For example, one local government official in Jaffna argued that while many people in his village were largely aware of the mediation board, it ‘does not have a wide impact...it’s not making an impact on village tranquility’.<sup>128</sup> As highlighted previously, such statements are not a sufficient measure of whether social harmony has improved in any given locality; it is most likely impossible to prove or disprove such a claim. But the available counter-evidence, drawn from the 2011 evaluation, is very weak. As discussed, the direct evidence base for improvements in ‘social harmony’ relies upon multiple choice survey data. The evaluation did use a range of other research methods, including key informant interviews with local government officials and community leaders and 29 case studies of mediated disputes. However, this qualitative work is not used to give any depth to the social harmony argument on a wider scale. For example, through the case studies it is shown that ‘parties to the disputes cited cordial and sometimes even friendly relationships developing after mediation’ or ‘observers felt that escalation had clearly been avoided’.<sup>129</sup> These are positive findings which reinforce the feeling that mediation can sometimes help repair broken relationships and prevent dispute escalation, but this empirical data stops far short of giving any substance to the idea that mediation will have long-term impacts on wider social harmony, which remains a speculative and largely unsubstantiated claim.

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<sup>125</sup> While it is hoped that mediation provides disputants with the ‘empathy and flexibility necessary to reach a compromise’, its fundamental goal is reaching a settlement. Woolford, A. and Ratner, R. S. (2008). P. 49

<sup>126</sup> Bush, R and Folger, J. (2005). *The Promise of Mediation: The Transformative Approach to Conflict*. Revised Edition, San Francisco: Jossey-Bass, p.228

<sup>127</sup> # 20 Focus Group with mediators, Elypitya, Galle District, 01/09/2012; # 36 Interview with ex-disputants, Manmunai Pattu, Batticaloa District. 01/10/2012; # 49 Focus Group with Mediators, Nallur, Jaffna. 05/10/2012; # 44 Interview with Ms Saroja Sivachandran, Director, Centre for Women and Development, Jaffna. 04/10/2012

<sup>128</sup> # 54 Interview with Grama Niladhari, Nallur, Jaffna, 06/10/2012.

<sup>129</sup> Siriwardhana, C. (2011), p. 12

### *Rethinking assumptions*

This hypothesis contains at least two major assumptions about how change happens. Firstly, the community level claim assumes that ‘over time’ individual and interpersonal impacts indirectly translate to broader social harmony, but it is unclear how. This hypothesis implies a steady linear accumulation of settlements and relationships into some kind of whole which can affect ‘communities’.<sup>130</sup> But this appears to consider social harmony purely through the prism of mediation, which obscures a broader understanding of the complexity of hoping to maintain, build or improve social relations amidst the social forces which could contribute to harmony or disharmony in any given locality (which is the focus of the latter part of this section). Importantly, the impact over time that is expected to occur through the expansion of mediation boards to the North and East is ‘based on experience elsewhere in the country’.<sup>131</sup> As has been argued, the empirical data that supports this claim is weak.

Secondly, there is an implicit assumption that rebuilding relationships leads to positive outcomes. This cannot be assumed: as Davidheiser highlights, it is necessary to take into account ‘the problem of power and inequality’.<sup>132</sup> As Lederach and Thapa note in relation to community mediation in Nepal, if an emphasis on social harmony is equated with ‘staying in relationships’, mediation may stabilise asymmetrical power relationships.<sup>133</sup> Improving social harmony may be in the interests of the community, but not that of the individual; it is clear that how these interests are balanced raises important questions of justice which need to be thought through in a revised Theory of Change.

### *Summary*

The above discussion indicates that mediation boards can play a useful role in reconciling disputing parties, particularly in contrast to the court, although this requires more in-depth research to see if relationships are sustained over the long term. However, if ‘community’ impacts are to be argued for, it needs to be clarified exactly what ‘community’ is being discussed and whether these effects are both within and between groups. Finally, while this hypothesis appears to align more closely with what is commonly understood by social harmony, it raises questions about potential design limitations of the boards and whether an emphasis on harmony within mediation can lead to unjust outcomes.

## **Improving inter-ethnic harmony**

It is implied in the Foundation’s Theory of Change that mediation could improve inter-ethnic harmony. For example, it is argued that: ‘over time, intra-(and in some cases, inter-) community trust and harmony will also increase...’ [this author’s emphasis]. This is qualified to mean ethnic or religious groups in the Eastern Province when it is argued that: ‘In the North, this impact is expected to affect dynamics within communities, whereas in the East, where diverse religious and ethnic communities live in closer proximity, the results could be wider’. While many of the DSDs in Sri Lanka are largely mono-ethnic, in the Eastern Province there are several DSDs with a mix of Tamils, Muslims and Sinhalese.<sup>134</sup> There are also now active mediation boards in some mixed ethnicity DSDs in the Northern Province,

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<sup>130</sup> In CARE (2012) it is argued that ‘Theories of change can inadvertently encourage an overly linear approach’. CARE. (2012), p. 9

<sup>131</sup> The Asia Foundation. (2012a).

<sup>132</sup> Davidheiser (2006), p. 294

<sup>133</sup> This was observed in Lederach, J and Thapa, P. (2012). *Staying True in Nepal: Understanding Community Mediation through Action Research*. The Asia Foundation, p.15

<sup>134</sup> Details of each DSD can be found at District and Divisional Secretariats Portal. Available at <http://www.ds.gov.lk/>

but they were not functioning at the time of the Foundation writing the Theory of Change. The broad language used in the Theory of Change, such as ‘over time’, ‘in some cases’ and ‘results could be wider’ demonstrates that this is a vague and speculative claim, in need of further investigation. The following analysis draws mainly on primary research in the DSDs of Manmunai Pattu and Kuchchaveli, within Batticaloa and Trincomalee respectively, areas largely populated by Muslims and Tamils.<sup>135</sup>

While Muslims and Tamils have long had social and economic ties in the Eastern Province, decades of war and the political and social disruption that has accompanied it have often led to inter-communal violence and tensions. While the end of the war in 2009 has lessened the extent of direct violence faced by people in the region, tensions may still exist. For example, in the ‘jigsaw’ of Muslim and Tamil settlements on the east coast, Muslims often live in densely populated areas, which can lead to contestation over land with neighbouring Tamil communities.<sup>136</sup> Land encroachments can lead to an escalation of group tensions to the point of communal violence,<sup>137</sup> particularly if they become embroiled in local ‘boundary politics’.<sup>138</sup> Focus groups in Manmunai Pattu highlighted such issues were an ongoing problem in Batticaloa district.<sup>139</sup>

### *Evidence discussion*

These kinds of disputes could potentially come to the mediation boards, so long as they were between individuals. Furthermore, various interviewees highlighted that group inter-ethnic tensions that develop do often stem from seemingly smaller interpersonal boundary disputes on private properties.<sup>140</sup> Given these dynamics, two questions arise: do these inter-ethnic disputes come to the boards, and if so, are the boards able to settle them? Problematically, there is no data on the number of inter-ethnic complaints coming to mixed-ethnicity DSDs with mediation boards.<sup>141</sup> In fact, aside from the qualitative research study by the University of Colombo based on the new boards in the Northern Province (which does provide a useful comparative source of data), there is a lack of data available to engage with the relationship between mediation boards and inter-ethnic harmony. The points made below therefore are not conclusive and further research in multiple mixed-ethnic DSDs would be useful.

Firstly, it appears that the ethnic diversity of mediators has an impact on disputant willingness to use the boards. In the mixed-ethnic DSD of Kuchchaveli in Trincomalee (roughly Tamils 35 per cent and Muslims 65 per cent), there was an all Muslim mediation board. In one focus group, six Tamil men expressed discontent about this, arguing they could

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<sup>135</sup> Ethnicity in Sri Lanka is not solely linked to either religion or language. It should be noted that Muslims in Sri Lanka comprise different ethnicities, yet are still commonly referred to as a singular ethnic group. See McGilvray, D.B. (1998). ‘Arabs, Moors and Muslims: Sri Lankan Muslim ethnicity in regional perspective’. *Contributions to Indian Sociology*. Vol 32(2), pp. 432-483. For a collection of essays on the intrinsic instabilities of ethnic formation in Sri Lanka, see Jeganathan, Pradeep and Qadri Ismail (eds.). 1995. *Unmaking the Nation: The Politics of Identity and History in Modern Sri Lanka*. Colombo, Sri Lanka: Social Scientist Association.

<sup>136</sup> Goodhand, J., Klem, B., and Cooke, B. (2009). ‘Religion, Conflict and Boundary Politics in Sri Lanka’. *European Journal of Development Research*, 21(5), p.691

<sup>137</sup> Fonseka, B and Raheem, M (2010). *Land in the Eastern Province: Politics, Policy and Conflict*. Centre for Policy Alternatives. Colombo. May 2010, p.8

<sup>138</sup> Goodhand, J., Klem, B., & Cooke, B. (2009).

<sup>139</sup> #43 Focus Group with community members, Manmunai Pattu, Batticaloa District, 02/10/2012.

<sup>140</sup> # 65 Focus group discussion with the Foundation Programme staff. Colombo. 02/11/2012.

<sup>141</sup> See Siriwardhana, C. (2011), p. 12. As the 2011 evaluation states, ‘there is limited evidence of cases between people of different ethnic groups.’

not be expected to attend a board in which they were not adequately represented.<sup>142</sup> Comparatively, a board in Batticaloa with a proportionately mixed-ethnic set of mediators receives disputes from both Tamils and Muslims.<sup>143</sup>

Secondly, research with these two boards indicates that even where there is diversity of mediators, inter-ethnic disputes seem unlikely to come to the board. Even in mixed ethnicity DSDs, different ethnic groups tend to live in separate village communities. Since disputes that come to mediation are largely family or neighbourhood based, this decreases the likelihood of mixed-ethnic disputes coming to the board. Focus groups with mediators in the Eastern Province outlined that though inter-ethnic disputes could still come, it will largely be when ethnicity is not a relevant factor in the dispute.<sup>144</sup> The University of Colombo research in the North provided similar findings: during a study of the mediation board in Mannar (a highly ethnically politicised area of Sri Lanka), 2 out of 54 cases were inter-ethnic, both of which were loan cases without communal ramifications.<sup>145</sup> These kinds of disputants may be already intertwined through years of communal living, family ties or economic arrangements.

Thirdly, focus groups with mediators in Batticaloa indicated that even if contentious inter-ethnic disputes were to come to the board, the mediators may be unable or unwilling to deal with them. Mediators fear reprisals from disputants if it is perceived that the dispute has not gone their way. The historical and current tensions and violence associated with land disputes, for example, lead mediators to be wary of the future effects of their involvement. They will also unlikely be able to resolve the dispute if two parties are simply being especially dogmatic, as may well be the case in ethnically-charged cases.<sup>146</sup> Again, University of Colombo research corroborates this finding from the Northern perspective, arguing that mediators in Mannar and Kilinochchi are unwilling to deal with inter-communal issues, due to fear of reprisals outside of the session.<sup>147</sup> It appears that the more the dispute is already rooted in some kind of inter-ethnic tension, the less likely it is to be dealt with by the boards.<sup>148</sup>

Finally, mediators in Batticaloa indicated that disputants will often seek those more powerful political actors who may be able to resolve these disputes for them authoritatively, rather than go to the mediation boards.<sup>149</sup> This is in line with the argument of Goodhand, Klem and Cooke, who indicate how inter-ethnic disharmony at the community level tends to be controlled, exaggerated and exacerbated as local political actors ‘choreograph’ issues and cast them as defining a national narrative.<sup>150</sup> A community member from a focus group in Batticaloa reinforced this understanding by stating:

[during the war] people were induced to work against different groups. Riots were induced by political actors. [But] people now understand that it's not the grassroots who cause these things.<sup>151</sup>

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<sup>142</sup> # 31 Focus Group with Community Members in Kuchchaveli Divisional Secretariat, Trincomalee District. 28/09/2012.

<sup>143</sup> # 34 Observation of Mediation Board, Manmunai Pattu, Batticaloa District. 30/09/2012.

<sup>144</sup> # 34 Focus Group discussion with Mediators, Manmunai Pattu, Batticaloa District. 30/09/2012.

<sup>145</sup> University of Colombo. (2012).

<sup>146</sup> # 34 Focus Group discussion with Mediators, Manmunai Pattu, Batticaloa District. 30/09/2012.

<sup>147</sup> University of Colombo. (2012).

<sup>148</sup> Notwithstanding those disputes that mandatorily come to the board.

<sup>149</sup> # 34 Focus Group discussion with Mediators, Manmunai Pattu, Batticaloa District. 30/09/2012.

<sup>150</sup> Goodhand, J., Klem, B., & Cooke, B. (2009), p. 686.

<sup>151</sup> #43 Focus Group with community members, Manmunai Pattu, Batticaloa District, 02/10/2012.

Disputants may not only look to these local political actors to resolve inter-ethnic issues, but also engage with other dispute resolution options in the DSD which may appear more appropriate. For example, referencing a recent act of violence against women in Batticaloa, two local Tamil women described how religious leaders from neighbouring communities came together to discuss apprehending the offender and the subsequent punishment.<sup>152</sup>

### *Rethinking assumptions*

This entire hypothesis is unconvincing since it relies on the idea that mediation can prevent the escalation of inter-ethnic disputes simply because the boards operate in multi-ethnic DSDs. Given that inter-ethnic disputes do not seem to be regularly resolved by the boards, an accumulative effect ‘over time’ seems unlikely. Rethinking this hypothesis means questioning the link between the purpose of the boards (resolving interpersonal disputes) and the kind of wider change the Foundation hopes to achieve (inter-ethnic harmony). Marc Howard Ross provides a range of ‘Theories of Practice’ regarding ethnic conflict resolution,<sup>153</sup> which could provide a useful framing for alternative programmes with broader purposes and goals than the current mediation boards. Christopher Moore, who had a major role in designing the process of mediation in Sri Lanka, argues that a mediation programme seeking to improve inter-ethnic harmony would look specifically at group inter-ethnic conflicts, with mediators trained in techniques for that purpose.<sup>154</sup>

Furthermore, one assumption of this hypothesis (which also applies more broadly to the Theory of Change) is that the impact of mediation must come directly from the resolution of disputes themselves. One interesting possibility is that having different ethnicity mediators in the same board in itself could help form interpersonal relationships with mediators across ethnic divides; this in turn could give a demonstration effect to others in the community that these groups can work together. The first element would obviously require DSDs which have multi-ethnic populations to have that demographic reflected in the mediation board. This could then be researched through in-depth interviews and focus groups with mediators. However, this hypothesis must not be assumed to be true; for example, it may be that those selected as mediators already have inter-ethnic bonds due to their existing role in within and across their respective groups. Furthermore, as highlighted in the board studied in Trincomalee, the opposite indirect impact is also possible, whereby mono-ethnic mediation boards in mixed ethnicity DSDs generate resentment in groups who perceive themselves to be marginalised.<sup>155</sup>

### *Summary*

It appears that the boards are not well placed to resolve inter-ethnic disputes: many boards are mono-cultural, there is reluctance of members of a minority group to take their case to a board without representation of their ethnic group, many groups live separately and may have little interface or contact, the boards are not currently mandated to take group disputes, the mediators have limited capacity and experience to handle these types of cases, and there are fears or considerable risks for them if they get involved in hot, politically-charged

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<sup>152</sup> # 39 Interview with ex-disputants, Manmunai Pattu, Batticaloa District. 01/10/2012.

<sup>153</sup> Ross, M.H. (2000). ‘Creating the conditions for peacemaking: theories of practice in ethnic conflict resolution’, *Ethnic and Racial Studies*, 23:6, pp1002-1034

<sup>154</sup> # 63 Interview with Christopher Moore, Partner, CDR Associates.

<sup>155</sup> # 31 Focus Group with Community Members in Kuchchaveli Divisional Secretariat, Trincomalee District. 28/09/2012.

issues.<sup>156</sup> Given these constraints, it appears unlikely that mediation boards can improve inter-ethnic harmony, apart from in rare and simplistic interpersonal cases.

### **Understanding mediation boards and social harmony in context**

Briefly looking at the role of mediation in light of post-war grievances and broad social injustice highlights the importance of context when making claims regarding social harmony. This section demonstrates that there could be a range of political, social and cultural factors which disrupt as well as encourage social harmony, which makes claims of its improvement complicated.

#### *Post-war problems*

Many of the mediation boards established in the Northern and Eastern provinces in the post-war period may exist alongside challenging political, social and communal problems.<sup>157</sup> In each of the four districts in the North and East, several community members highlighted that following the war there has been a rise in alcoholism and domestic and sexual violence.<sup>158</sup> Specifically in Kilinochchi, focus groups indicated people's ability to secure housing or a stable income, military and political corruption, sexual violence against women and tensions related to post-war economic development.<sup>159</sup> This led one community member to state that 'there is no proper mechanism to get justice and security in this region'.<sup>160</sup> The extent to which mediation boards are understood to play a significant role in communities has to be contextualised against such grievances.

The design of mediation boards limits the extent to which they can tackle such wider problems. Firstly, state parties acting in an official capacity cannot come to the board, meaning any disputes involving them cannot be mediated. Secondly, only interpersonal disputes can come to the boards, ruling out tackling wider group tensions in the community. Thirdly, the boards are designed to deal with 'negotiable'<sup>161</sup> issues, meaning disputes that are rooted in deeper grievances or social divisions are unlikely to be settled. Fourthly, the boards are only mandated to deal with a specific set of civil and criminal cases, meaning many of the problems cited above do not come within their mandate. The notion that the boards can make a tangible improvement on social harmony in these areas therefore appears implausible. Correspondingly, civil society representatives emphasised that they are perceived as a minor mechanism in the context of broader sources of disharmony in these areas.<sup>162</sup>

It could be argued that the role mediation plays dealing with large amounts of land disputes – for example in Jaffna and Kilinochchi – may demonstrate a way they could have a larger impact. The land issue in Sri Lanka is a major problem to say the least, since it 'is closely tied

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<sup>156</sup> Thanks go to Christopher Moore for highlighting these issues with such clarity.

<sup>157</sup> Many of the recent problems in these areas are documented by International Crisis Group. See International Crisis Group. (2011). *Women's Insecurity in the North and East*; International Crisis Group. (2012). *Sri Lanka's North I: The Denial of Minority Rights*. Asia Report 219, 16 Mar 2012; International Crisis Group. (2012). *Sri Lanka's North II: Rebuilding under the Military*. Asia Report 220. 16 Mar 2012.

<sup>158</sup> # 61 Focus Group Discussion with Community Members, Karachchi, Kilinochchi District, 08/10/2012; # 52 Focus Group with Members of Women's Self-Help Group, Nallur, Jaffna. 05/10/2012.

<sup>159</sup> Highlighted in the research by University of Colombo. (2012).

<sup>160</sup> # 61 Focus group discussion with community members, Karachchi, Kilinochchi, 08/10/2012

<sup>161</sup> # 14 Interview with M. Thirunavukarasu, Co-author of Mediation Training Manual; # 44 Interview with Ms Saroja Sivachandran, Director, Centre for Women and Development, Jaffna. 04/10/2012.

<sup>162</sup> # 61 Focus Group Discussion with Community Members, Karachchi, Kilinochchi District, 08/10/2012; # 44 Interview with Ms Saroja Sivachandran, Director, Centre for Women and Development, Jaffna. 04/10/2012.



to the war and ethno-political conflict'.<sup>163</sup> Complicating factors include 'the nature of the land, scale of displacement and destruction, socio-economic features and political history...'.<sup>164</sup> Observation of the board in Kilinochchi demonstrated that the land issues they encounter are not always small boundary matters, but related to a multi-generational process of displacement and resettlement in the region.<sup>165</sup> For example, in one case a disputant was displaced from Kilinochchi in 1995 and went to live with relatives in a village ten kilometres away. When she came back to claim the land in 2010, she found that a family had occupied it from 1995 when they were displaced from Jaffna. Neither disputant had official land deeds.

The problem is, as mediators in Kilinochchi highlighted, 'it is often not appropriate' for such land disputes to come to the board and 'many cases get abandoned...particularly if there is political influence'.<sup>166</sup> The sustainability of decisions made in such circumstances is unclear, even if boards are able to offer relatively quick solutions for disputants. Furthermore, mediators are not given legal training, which may have ramifications when they facilitate land disputes which require legal codification. This is further complicated when issues related to state lands come to the boards, given that state actors cannot attend the boards in an official capacity.<sup>167</sup> These points indicate the difficulties and design limitations of mediation tackling the most complicated land issues which could affect social harmony on a larger scale.

### *Social injustice*

The boards will inevitably encounter manifestations of social injustice and resulting power imbalances along gender, ethnicity, caste and class lines within the mediation process. Whether these are understood as sources of disharmony, or indeed simply central questions of justice, it needs to be asked whether mediation can tackle them. There is considerable debate in academic literature regarding how mediators deal with such power imbalances, often led by US scholars, particularly since the expansion of mediation into other continents is often based upon US mediation principles and relevant power imbalances. Cohen shows how mediation has been criticised for replacing public concerns for rights with more 'implicit and privatized standards of social conformity – 'interests' – to resolve disputes'.<sup>168</sup> Through this shift, various scholars argue that mediation has the potential to 'embody the inequalities embedded in social norms...without accountability to the state or explicit standards of justice'.<sup>169</sup>

Given the central role of the mediator in facilitating the outcome of mediation, negative dynamics and hierarchies could be mitigated by improving mediator diversity and training.<sup>170</sup> Yet, despite recent limited improvements in these areas, women are underrepresented as mediators.<sup>171</sup> Ethnic disparities are a major concern as the MoJ has failed to appoint Tamil speaking mediation trainers, and there is an enduring lack of mediator diversity in many

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<sup>163</sup> See Fonseka, B and Raheem, M. (2011). *Land Issues in the Northern Province: Post-War Politics, Policy and Practice*. Centre for Policy Alternatives. Colombo. December 2011, p11. Similarly, for the Eastern Province see Fonseka, B and Raheem, M (2010). *Land in the Eastern Province: Politics, Policy and Conflict*.

<sup>164</sup> Fonseka, B and Raheem, M. (2011), p.11

<sup>165</sup> # 55 Observation of Karachchi Mediation Board, Kilinochchi District, 07/10/2012.

<sup>166</sup> # 55 Focus group with mediators of Karachchi Mediation Board, Kilinochchi District, 07/10/2012

<sup>167</sup> # 61 Focus group discussion with community members, Karachchi, Kilinochchi District, 08/10/2012

<sup>168</sup> Cohen, A. J. (2006). 'Debating the Globalization of U.S. Mediation: Politics, Power and Practice in Nepal'. *Harvard Negotiation Law Review*, p.305

<sup>169</sup> For overview of debates see Cohen, A. (2006), p.305

<sup>170</sup> This model is attempted to some extent in Nepal by the Foundation. The Asia Foundation. (2012b).

<sup>171</sup> Siriwardhana, C. (2011), p .20

mixed-ethnicity areas.<sup>172</sup> There is no available information on whether different caste and class groups are mediators, however given the general characteristics of those appointed, it would appear unlikely.<sup>173</sup> Equally, although there is training on the importance of mitigating power imbalances and some limited gender sensitivity training, specific guidance on caste, class or ethnicity is absent.

In Sri Lanka, only limited research exists on how such power imbalances are borne out in practice. The 2011 evaluation indicated that the procedural structure of mediation, where disputants retain autonomy on the extent of their participation and the outcome, appears to lead to the perception that it is a fair institution.<sup>174</sup> Yet as demonstrated previously, survey responses indicating satisfaction with the process may be unable to give a full picture. Furthermore, as Wojkowska indicates, ‘preference for the informal justice system should not be interpreted as meaning that the system always produces fair and appropriate outcomes, or protects the rights of women or minority groups’.<sup>175</sup>

One of the more controversial issues that can be mediated is domestic violence. In-depth research on the issue in Sri Lanka concludes that while the mediation of domestic violence disputes does not constitute an overt form of oppression of women, it is also not a site of empowerment that facilitates women’s equality.<sup>176</sup> Observation of a mediation board in Colombo highlighted the complexity of such cases: a woman wished to leave her husband because he was physically and verbally abusing her. Yet it became clear that if she left her husband she would be economically disadvantaged and socially ostracised. In this case, one of the mediators attempted to promote family harmony as a way to resolve the issue.<sup>177</sup> This example demonstrates the complexity of the issues, but also indicates that ‘social harmony’ can be used as a way of maintaining abusive relationships - a finding that has implications for how generally women might experience the mediation process.

How caste dynamics interact with the mediation process is not covered anywhere in the existing literature, although in the Northern and Eastern provinces community members highlighted that caste remained a pervasive social issue. A Catholic Priest in Batticaloa emphasised that mediation boards were important since they allow anyone to come and discuss a dispute. However, he also noted that mediators ‘are reluctant to talk about caste...even though it is a major source of interpersonal problems’.<sup>178</sup> In terms of class, it has been argued that mediation boards cater to poorer members of society;<sup>179</sup> but the extent to which this facilitates just outcomes for them has not been researched extensively. One mediator identified that the growth of disputes between individuals and financial institutions

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<sup>172</sup> The 2011 evaluation points out a considerable disparity in the percentage of population that is Tamil or Muslim and the percentage of mediators who are Tamil or Muslim in the Hill country area of Sri Lanka. See Siriwardhana, C. (2011), p.20

<sup>173</sup> These are not identified in the 2011 evaluation as causes for concern.

<sup>174</sup> Siriwardhana, C. (2011), p. 9.

<sup>175</sup> Wojkowska, E. (2006). *Doing Justice: How informal justice systems can contribute*. UNDP. December 2006, p. 41

<sup>176</sup> Jayasundere, R. (2013). *Mediating Domestic Violence Disputes in the Community Mediation Boards in Sri Lanka: Issues of Women’s Equality and Equity*. PhD Thesis. University of Colombo. Unpublished. Notes on file with author.

<sup>177</sup> # 13 Observation of Mediation Board, Sri Jayawardenapura Kotte, Colombo, 25/06/2012.

<sup>178</sup> # 37 Interview with Catholic Priest, Manmunai Pattu, Batticaloa, 01/10/2012.

<sup>179</sup> Dias, N. (2003).

put them in a difficult situation since ‘these are often an injustice on the poor in society but there is nothing we can do to help them’.<sup>180</sup>

The issues highlighted above make clear that mediation boards’ relationship with social injustice is complicated; and because of that, even at interpersonal level, claims of harmony are not easy to establish. Does this also mean that mediation boards cannot play a role in wider social change? The interest-based mediation method, while aiming to get to the ‘root cause’ of disputes, does not appear to be designed to challenge wider social norms and power imbalances along the lines of gender, ethnicity, caste and class on a wide scale.<sup>181</sup> As Neves argues, ‘interpersonal conflict mediations have their own place and relevance... [but] mediating conflict between individuals seems to have limited, and hazy, consequences for social change and collective empowerment.’<sup>182</sup> Li-on notes that community mediation’s focus on disputes as problems of interpersonal communication, rather than as social conflicts, along with its stress on ‘neutrality’ and ‘individualism’, may prevent ‘it from addressing group interests, thereby preventing social and political transformation’.<sup>183</sup>

These arguments can obscure one way in which mediation could lead to empowerment and limited social change: through the appointment of (and subsequent relationships between) mediators themselves. This could work in two ways: through challenging unjust norms (such as patriarchy) with mediators through training, or through promoting and training marginalised or disadvantaged groups as mediators, as the Foundation’s mediation programme in Nepal does with Dalit women.<sup>184</sup> However the current lack of diversity within the mediators – not just in terms of gender but other sections and cross-sections of society – challenges the idea that mediation is currently a site of empowerment for mediators in Sri Lanka. Changing this would require significant political will, as well as local community acceptance of such change. The latter highlights that such empowerment processes may well invite contestation and conflict, which need to be contextually understood to decide whether such processes can work.

### *Summary*

The lack of available research means drawing firm conclusions regarding mediation boards’ relationship with post-war problems is impossible; yet these initial reflections indicate that perhaps claims regarding the impact of mediation boards require more modesty. Furthermore, the complexities of building interpersonal harmony – particularly in the context of power imbalances – may well make it difficult to establish social harmony claims. These complexities also indicate that the relationship between social harmony and social injustice needs to be analysed.

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<sup>180</sup> # 23 Focus group with Mediators, Padukka, Colombo District.

<sup>181</sup> Center for Democracy and Governance. (1998). *Alternative Dispute Resolution: Practitioners Guide*, p. 22 Available at [http://transition.usaid.gov/our\\_work/democracy\\_and\\_governance/publications/pdfs/pnacb895.pdf](http://transition.usaid.gov/our_work/democracy_and_governance/publications/pdfs/pnacb895.pdf)

<sup>182</sup> Neves. (2009). p.489

<sup>183</sup> Li-on, L. (2009). ‘The Politics of Community Mediation: A Study of Community Mediation in Israel’.

*Conflict Resolution Quarterly*, 26(4), p. 456.

<sup>184</sup> For a discussion of this see Stein, D. (2013).

## 6. Problems and Possibilities in Taking the Theory Forward

The findings of this paper point to substantial problems in taking the social harmony claim forward. When the theory has been broken down into more tangible hypotheses, major conceptual and empirical limitations have been exposed. Given the apparently speculative and long-term nature of this element of the Theory of Change, perhaps it is not surprising that this paper found little existing evidence to support it. Yet the doubts raised about the theory in this paper are based on a range of factors beyond analysis of existing empirical data and new primary research, ranging from questions about how such claims come to be made in the first place, to observations regarding the design limitations of the boards and social context in which they operate. Drawing on these points, this final section provides some broader reflections on thinking about how change happens. It also briefly considers the role of the mediation boards from an access to justice standpoint. Finally, this paper argues that the boards could practically benefit from a more realistic and programme-relevant approach to Theories of Change.

### Thinking about how change happens

Five overlapping and recurring themes have become clear which can inform broader efforts to understand how change happens:

Firstly, there is a need for *conceptual clarity*. This paper has outlined a range of hypotheses for what ‘improving social harmony’ can mean, each of which were implied by the Foundation’s Theory of Change. Substantial conceptual problems remain with establishing the exact nature of ‘social harmony’ being aimed for, which suggests that the term may be too ambiguous to be useful. If the claim of social harmony is to be maintained, then the question first needs to be asked ‘what does improving social harmony mean?’ A failure to answer these questions allows for a variety of interpretations, which may not accurately describe the intended impact of a programme.

Secondly, the *level of expected impact* needs to be clarified. This paper has consistently identified a disjuncture between the design of the boards and the apparently collective goal of social harmony. If the effects of mediation at the interpersonal level are said to spread into the community, greater clarity on the stages, links and relationships in the change process are required. Rather vague goals are common in conflict resolution theories, with practitioners often seeking to improve inter-community harmony.<sup>185</sup> The problem with this is not just its lack of clarity and unlikelihood of success. By setting the bar too high, it can also lead to a focus on apparent failures of interventions rather than successes.<sup>186</sup> Existing assumptions about how change happens could be challenged or strengthened through engagement with social science literature, as well as greater research which foregrounds the perspective of the communities mediation boards are situated within.<sup>187</sup>

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<sup>185</sup> Church, Cheyanne and Shouldice, Julie. (2003). ‘The Evaluation of Conflict Resolution Interventions, Part II: Emerging Practice and Theory’. *INCORE International Conflict Research*, p.6

<sup>186</sup> Church, Cheyanne and Shouldice, Julie. (2003), p 6

<sup>187</sup> Church, Cheyanne and Shouldice, Julie. (2003); Shapiro, Ilana (2005; 2006); Ross, Marc Howard. (2000). ‘Creating the conditions for peacemaking: theories of practice in ethnic conflict resolution’, *Ethnic and Racial Studies*, 23(6) pp1002-1034. For an excellent set of articles on social change and conflict transformation see Bloomfield, David, Fischer, Martina & Schmelzle, Beatrix (eds.) (2006). *Social Change and Conflict Transformation*. Berghof Handbook Dialogue Series, No. 5.

Thirdly, the *wider social context* must be taken into account. The majority of interviewees perceived mediation boards as a useful mechanism for resolving disputes and reconciling parties. Yet when the mediation boards were discussed with local people in relation to wider community harmony or the causes of disharmony in the community, they were not perceived to be particularly relevant. Of course, the qualitative research conducted for this paper has its own limitations. But in the context of the broader analysis conducted in this paper, it is argued that claims of wider-scale improvements in social harmony cannot be substantiated. As one mediation expert identified, ‘mediation has its limitations and it should do...all conflicts cannot be resolved by mediation’.<sup>188</sup> This indicates a need for a wider context and power analysis which takes into account the limitations of the intervention.<sup>189</sup>

Fourthly, a debate on *how evidence is used* to support such claims is needed. As identified throughout this paper, the existing evidence base for the social harmony claim is too general to be meaningful. The debates regarding evidence and evidence-based policy remain an important consideration: through the history section, this paper has identified how high-level claims about the impact of the mediation boards may well reflect the organisational and donor narratives at the time – and that this may lead to misrepresentations of what a programme can achieve. If this is the case, it is important that evidence is not generated to suit specific strategic narratives, but to better understand the impact the programme is having on the people it aims to help. Indeed, such evidence should be the foundation upon which rigorous Theories of Change are built.

Fifthly, the *purpose of Theories of Change* for the Foundation (as well as for donors and other NGOs) needs to be appraised. If Theories of Change are to be rigorous and realistic understandings of how change happens, then aspirational and longer-term goals need to be distinguished from those that can be empirically grounded in evidence. Development practitioners will often believe they are working towards a higher goal, which is natural in an industry where people often aim to help others. This is also demanded by the nature of policy debate about foreign aid in donor countries, where aid has to be legitimised through lofty goals. But this may encourage Theories of Change to become a superficial means of analysis that serve to justify current trends and sustain programmes. It is important that the Theories of Change approach aims to avoid the ‘etiquette of the aid business’,<sup>190</sup> by being a rigorous, honest, self-reflective approach to understanding how change happens. This also has an impact on research undertaken through the Theories of Change, which if driven by superficial theories, will inescapably call for greater clarity, analysis and use of rigorous evidence every time.

### **What is the role of the mediation boards?**

This paper’s focus on the social harmony element of the theory may have obscured important areas for reflection closer to the core of the programme’s role: providing access to justice. Yet through the lens of each social harmony hypothesis, some initial reflections on this aspect can be provided which can help inform a more grounded and realistic Theory of Change.

Mediation boards do provide a form of justice which is relatively accessible, quick and cheap, particularly in contrast to the courts. Court cases are renowned in Sri Lanka for being

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<sup>188</sup> #14 Interview with M. Thirunavukarasu, Co-author of Mediation Training Manual.

<sup>189</sup> Stein and Valters. (2012).

<sup>190</sup> Mosse, David. (2011), p.6; Booth, David. (2005). ‘Missing Links in the Politics of Development: Learning from the PRSP Experiment’. *ODI Working Paper 256*. London: Overseas Development Institute, p.1

expensive and drawn out, which greatly impedes access to justice, particularly for the poor. Without recourse to justice, disputes can simmer and become entrenched, both between the parties, and sometimes deeper in the surrounding locality. Where disputes arise, mediation's non-adversarial approach (in contrast to the courts) may be able to play a useful relationship repairing role, largely between individuals, families, neighbours and households. As this paper has reiterated, the long term settlement of disputes and the relationships that may be repaired are not a given and will depend upon the individual dynamics of the dispute and the intricacy of social pressures that surround them. Yet promoting such an approach in a society that is deeply litigious may be an important contribution for the MoJ and Foundation to make to people's experiences of justice.

However, that mediation boards are quicker, more accessible and less adversarial than the courts should not prevent an analysis of the nature of justice being provided. This paper, for its part, has demonstrated a wide range of debates on such issues, and highlighted the importance of placing power imbalances at the centre of justice analysis. It needs to be asked who may be excluded from accessing the boards, how different groups – specifically those most likely to be marginalised from and within justice mechanisms – experience the process, and whether these experiences are compatible with justice and equality.<sup>191</sup> Asking such questions is essential to ensure mediation boards do not reflect or reinforce existing inequalities in Sri Lanka, particularly along the lines of gender, class, caste and ethnicity. Two practical issues of importance here are mediator diversity and training, since they will greatly affect whether disputants can get fair and unbiased outcomes. But it is also important to question whether certain kinds of disputes, for example those involving gender based violence, are compatible with a system which relies upon negotiation between the parties.

## **Conclusion**

Broadly speaking, this study suggests that community mediation benefits those it provides a service to, particularly since it encourages disputes to be resolved in a way that promotes understanding and reconciliation. However the claim that community mediation improves social harmony requires mediation to have effects beyond the scope of what can reasonably be expected. Perhaps through studies such as this one, which has looked at the impact of the boards through this specific lens, an effective Theory of Change could be developed which does not include the vague concept of social harmony, but instead builds on more constructive concepts such as access to justice and equality. To this end, this paper has suggested that further research on how different forms of social injustice affect mediation boards would be an important conceptual and practical step. Taking on these issues could allow mediation boards, with some time and work, and in their own limited way, to play a role in the peace and reconciliation efforts much needed in Sri Lanka in the coming years.

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<sup>191</sup> See Wojkowska, E. (2006), p.31

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# Annex 1: Map of Community Mediation Boards Sri Lanka



## Annex 2: Breakdown of Primary Research

Number of Respondents: Primary Research in the Northern and Eastern Provinces (27/09/2012 – 09/10/2012)				
Location	Batticaloa	Jaffna	Kilinochchi	Trincomalee
Observation of Mediation Board	1	0	1	0
Mediators	7	6	8	3
Disputants	3	2	2	1
Local government	2	3	1	1
Community-based organisation	1	1	2	3
Civil Society	2	2	0	0
Community Members	5	15	7	6

Number of Respondents: Primary Research in Districts of Colombo and Galle		
Location	Colombo	Galle
Observation of Mediation Board	2	1
Mediators	28	13

Number of Respondents: Interviews based from Colombo	
The Asia Foundation Staff	5
Academics	3
Implementing Partners	3
NGOs	4
Mediation experts	3
Government officials	2



This publication is an output of a research programme funded by UK aid from the UK Government. However, the views expressed do not necessarily reflect the UK Government's official policies



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The Justice and Security Research Programme is an international consortium of research partners, undertaking work on end-user experiences of justice and security in conflict-affected areas. The London School of Economics and Political Science is the lead organisation and is working in partnership with:

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