The Institute of Ismaili Studies

"REFLECTIVE LEARNINGS FROM THE TRAINING PROGRAMMES

OF THE ISMAILI MUSLIM CONCILIATION AND ARBITRATION BOARDS, GLOBALLY"

Paper presented at the 5th International conference of the World Mediation Forum in Crans-Montana, Switzerland on Thursday 8th September, 2005 by Mohamed M. Keshavjee[1], LLM (London) and Tony Whatling[2] M. Sc. CQSW. MCFM

In this paper, the authors highlight the reflective learnings gained from cross-cultural training programmes in mediation conducted in 10 countries of the world. The training programmes, held under the aegis of the National Conciliation and Arbitration Boards (NCABs) of the various Ismaili Muslim communities worldwide, are implemented in local settings, with the help of local people and often, in the languages of the people, themselves. They incorporate indigenous, cultural, legal and ethical norms and combine these with state-of-the-art mediation principles and best practices, utilising role-plays and pedagogies that are sensitive to the contexts of the trainees. The programmes are conceptualised with the help of the NCABs and include hypothetical fact-sets that resonate actual field experiences on which the trainees do the role-playing.

The training programmes, which started off in the United Kingdom in 2000, have undergone changes, as the roll outs move from one country to another. New dimensions, highlighting the concept of greater relationality, called for ongoing re-designing. "Community sculpt", as the authors refer to greater stakeholder participation, indicates that in various cultures, if one does not include critical stakeholders as part of the solution, they become part of the problem.

This paper shows how an international Muslim community, spread over some 25 countries of the world, has adapted a basic training programme by combining judiciously the best of their religious, cultural and historical traditions with contemporary mediation principles and best practices. All this is done within the framework of the laws of the various countries in which members of the community reside. It shows how the judiciaries of those countries are beginning to recognise the NCABs as bona fide bodies and are referring matters back to them for resolution, within the framework of the ethical norms and principles set up for their effective operation.

---

[1] Mohamed M. Keshavjee is a Barrister-at-Law from Gray's Inn, London and an Advocate of the High Court of Kenya. Since 2000, he has been responsible for conceptualising and implementing all training programmes for the National Conciliation and Arbitration Boards of the Ismaili Muslim Community internationally and is presently a doctoral candidate at the University of London concentrating on Alternative Dispute Resolution and Muslim societies in the 'diaspora.'

[2] Tony Whatling is the lead trainer in family mediation globally for all the NCAB programmes.

Historical Background

The Shi'a Imami Ismaili Muslims, generally known as the Ismailis, belong to the Shi'a branch of Islam, of which the Sunnis comprise the other branch. The Ismailis live in over 25 countries of the world, mainly in South and Central Asia, Africa, Europe and North America.

Ismailis affirm the fundamental Islamic testimony of Truth, the *Shahada*, that there is no deity but Allah and that Muhammad (Peace of Allah be upon him) is His Messenger. They believe that Muhammad was the last and final Prophet of Allah and that the Holy Qur'an, Allah's final message to mankind, was revealed through him.

In common with other Shi'a Muslims, the Ismailis affirm that after the Prophet's death, Ali b. Abi Talib (d.661), the Prophet's cousin and son-in-law, became the first Imam – the spiritual leader of the Muslim community and that this spiritual leadership – known as Imamat – continues thereafter by heredity through Ali and his wife Fatima, the Prophet's daughter. Succession to the Imamat, according to Shi'a doctrine and tradition, is by way of *nass* or designation. It is the absolute prerogative of the Imam of the time to appoint his successor from amongst any of his male descendants, whether they be sons or remoter issue. His Highness Prince Karim Aga Khan is the hereditary 49th Imam of the Shi'a Imami Ismaili Muslims. Born in Switzerland on the 13th December 1936, he succeeded his grandfather, Sir Sultan Mohamed Shah Aga Khan, as Imam of the Ismaili Muslims, on July 11th, 1957 at the age of 20.

Spiritual allegiance to the Imam of the time and adherence to the Shi'a Imami Ismaili persuasion of Islam, according to the guidance of the Imam, have engendered in the Ismaili Community an ethos of unity, self reliance and a common identity. In a number of countries where they live, the Ismailis have evolved a well defined institutional framework through which they have made far reaching progress in the educational, health, housing and economic spheres, establishing schools, hospitals, health centres housing societies and a variety of social, cultural and economic development institutions for the common good of all, regardless of their race or religion.

It was the present Aga Khan's grandfather, Sir Sultan Mohamed Shah Aga Khan (d. 1957), who laid the foundation of the community's institutional structures, building on the Muslim tradition of a communitarian ethic on the one hand, and responsible individual conscience, with freedom to negotiate one's own moral commitment and destiny, on the other, in order to create new organisational structures as a way forward into the twentieth and twenty first centuries.

In 1905, he ordained the first Ismaili Constitution for the social governance of the community in eastern Africa. This, itself, was a very important step, among others, towards the modernisation of the Ismaili community. It gave the community a form of administration comprising a hierarchy of councils at the local, national and regional levels. It also set out rules of personal law in such matters as marriage, divorce and inheritance as well as guidelines for mutual operation and support among the Ismailis and their interface with other communities. Similar Constitutions were promulgated across

the Indian subcontinent. All of them were periodically revised to meet the community's emerging need and circumstances.

This tradition has continued under the leadership of his successor, the present Imam who, from the 1970's, extended the practice to other regions of the world, including the United States, Canada, and several European countries as well as East and South Asia, the Gulf, Syria, Iran and Afghanistan, after a process of consultations within each respective constituency. In 1986, the present Aga Khan promulgated a single constitution that, for the first time, brought under one aegis, the social governance of the worldwide Ismaili community, with built in flexibility to account for diverse circumstances of different regions. Served by volunteers appointed by, and accountable to, the Imam, the Constitution functions as an enabler to harness the best in individual creativity within an ethos of group responsibility in order to promote the common weal. Like its predecessors, the global Ismaili Constitution is founded on each Ismaili's spiritual allegiance to the Imam of the time, which is separate from the secular allegiance which Ismailis owe as individual citizens to their respective national entities. While the Constitution serves primarily the social governance needs of the Ismaili community, its provisions for encouraging amicable resolution of disputes through impartial conciliation, mediation and arbitration, are being increasingly used, in some countries, by non-Ismailis.

It is under the provisions of the Ismaili Constitution that the Conciliation and Arbitrations Boards of the Ismaili Community operate. These boards exist in Afghanistan, Canada, France, India, Iran, Kenya, Madagascar, Pakistan, Portugal, Syria, Tanzania, Uganda, the United Kingdom and the USA.

Under the Constitution promulgated in 1986, provision is made for a National Conciliation and Arbitration Board (NCAB) for each of the territories specified in the Constitution. Submission to the jurisdiction of the Board is made entirely on a voluntary basis and the Boards are made up of trusted individuals, mainly volunteers, from various fields of endeavour from within the Ismaili Community. The Board's main task is to assist in the conciliation process between parties in differences or disputes arising from commercial, business or other civil matters, including those relating to matrimony, children of a marriage, matrimonial property and testate and intestate succession.

The Boards also act as an arbitration and judicial body and accordingly hear and adjudicate upon commercial, business and other civil liability matters and domestic and family matters.

The informing ethos of all these boards are the principles of negotiated settlement (*sulh*) and forgiveness embodied in the Holy Qur'an, the Sunnah (tradition) of the Prophet (P.B.U.H.) the guidance of the earlier Imams and the teaching and guidance of the present, 49th Imam. The Boards always operate within the laws of the various countries in which they function.

In keeping with the guidance of the present Imam, an international training programme was launched in England in 2000 with a view to upgrading the skills and proficiencies of

the volunteers that make up the Conciliation and Arbitration system of the Shi'a Imami Ismaili Muslims[3].

Mediation training programmes have since been held in East Africa, India, Pakistan, Syria, Portugal, Canada, U.S.A, UK and Afghanistan. These training programmes have been conducted with input from various specialists on law, economics, counselling, ADR, and Islamic jurisprudence.

An important aspect of the training programmes is to ensure a balance between the lived wisdom of the various communities, the basic ethical framework of Islam which emphasizes care, compassion and consideration and the principles of contemporary ADR practice. This is done by involving the NCABS in the designing of the training programmes, with a view to trying to understand their specific needs within the socio-juridical contexts in which they function and drawing upon those traditions which actually work within those contexts. The training programmes highlight the Islamic concept of negotiated settlement (*sulh*) and draw upon the guidance of the present Imam, who often exhorts in his Farman's (guidance to the Community) the value of family unity, the need for compromise and greater understanding in the situation of conflict and the value of post conflictual support to help individuals "bandage their wounds". The programmes celebrate the various NCABS' existing processes and practices and are conceptualized to ensure a balance between a "top down", inductive approach and a "bottom up", deductive one (JP Lederach). They are predicated on the principles of a jointly constructed pedagogy with an approach to learning based on a genuine partnership.

Trained lawyers, with a background on the laws of the country sit on a panel to explain the interface between the laws of the land and the ADR processes used in the CAB system. A specialist on Islamic jurisprudence and its conflict of laws aspect often wraps up the training programmes on the last day to ensure that the participants leave with an understanding of how their own legal systems and processes interrelate with the ADR processes in their respective juridical contexts.

The Training Programme Content and Objectives

The training programme being followed globally was designed by the lead trainer Tony Whatling as a five day foundation training programme in Family Mediation. The content of the programme is largely consistent with the curriculum and training methods required by the UK College of Mediators of its Approved Training Bodies, [for further details see www.ukcfm.co.uk]. It aims to equip participants with an ability to define mediation, its principles and values, and to understand how it differs from other forms of intervention. Utilising a range of teaching and learning methods including lecture, trainer demonstration, video tape, small and large group exercises and role-play, it takes participants through the key stages of mediation from engaging with the parties to

---

[3] For a further background see Keshavjee. M. 'Arbitration and Mediation in the Shia Ismaili Muslim Community'. Paper presented at the 4th International Conference of the World Mediation Forum in Argentina, May 2003. See also the website of the Institute of Ismaili Studies - http://www.iis.ac.uk

outcome agreement. Additional issues addressed include, understanding and practice of the wide range of mediator skills and strategies, screening for safe practice, [i.e. domestic and child abuse], managing high conflict, emotion, impasse and mediating with finance and property issues.

Lectures on the Islamic ethical dimensions with regard to conflict conceptualisation, management and resolution are built into the programme.

Programme Evaluation

Participants' responses to the programme are monitored daily by means of an individual feedback/evaluation form. These forms are scrutinised at the end of each day by the training faculty members so as to monitor, on a day by day basis, the extent to which the teaching/learning process is meeting the needs of group members. Groups tend to be characterised by such a high level of enthusiasm and commitment that is rarely possible to answer all the questions raised by the end of each day. This was a source of annoyance for some participants who felt frustrated that their questions were not taken up; that perhaps the trainer had given greater priority order to another trainee or that not enough time was being allocated to questions generally. Consequently, we devised a process by which all unanswered questions are either raised on the evaluation form or written on a slip of paper and handed to the training team. The team is then able to start the next day by responding to general issues raised in the evaluation forms and also to questions left over from the previous day. More often than not, some 15-20 written questions actually reduce down to about 3 or 4 common issues.

Some Early Learning Discoveries for the Lead Trainer

What quickly became apparent from the first UK programme delivery was that the original training team, not surprisingly, had designed and delivered a very familiar model of mediation, i.e. an individualist, problem solving, settlement seeking, Western cultural model of mediation. Some effort had been made to gather some basic information about the Ismaili history and Islamic cultural contexts and traditions. However, what was not appreciated was the extent to which the non Western collectivist/communitarian cultural context needed to be reflected in the mediation model being presented. Paul Kimmel, ['Culture and Conflict' in Morton Deusch *The Handbook of Conflict Resolution*, Jossey-Bass 2000 p. 453], refers to such a phenomenon in writing about communication between people of diverse cultural backgrounds. He refers to the importance of individuals from different cultures coming '....to understand their basic cultural differences and create commonality in their interaction which facilitates communication and problem solving,' without which, '....misunderstanding and breakdown in international meetings may result from the often unconscious expectations that negotiators, mediators and educators bring to these encounters from their own cultures-expectations that are not shared by their counterparts from other cultures.'

Whilst Kimmel's work is focussed more on inter-cultural conflict and negotiation, rather

than training programmes, his reference to facilitating 'communication and problem solving' is equally valid, since so much of the process of education and training could be said to be concerned with 'communication and problem solving' i.e. as educators and students attempt to communicate effectively with each other, in the exchange of ideas and concepts. Often, in the process, they discover blockages in understanding or resistance to new ideas and need to engage in problem solving techniques in efforts to arrive at a satisfactory level of mutual understanding.

Examples of Reflective Learning for Trainers

One example of the cultural differences picked up early on from group discussion was concerned with how many more people within the community group would have concerns about, and perhaps quite literally vested interests in, what would happen to a couple involved in mediation. Mediators working in a Western, post-industrial, nuclear family context are used to recognising the importance of 'significant others', e.g. parents, brothers and sisters, friends and perhaps new partners, all holding partisan views and opinions that may be important to the mediator to enquire about, if, they are not to risk sabotaging any agreements created between the two parties in the mediation room; in the words of Eldridge Cleaver 'If you are not part of the solution, you are part of the problem'. However, within the non-western cultural group, this 'Greek Chorus' of opinion and concerns is likely to involve many more 'stakeholders' and significant community sub-groups.

To test out this difference hypothesis, the trainer devised a group exercise that firstly invites the group to imagine a couple from their community sitting in the mediation office, then to brainstorm a list recorded on a flip-chart, of just how many of these people/stakeholder groups there might be. The resulting lists invariably number up to ten or twelve sub-groups and include for example, parents of the couple, grand-parents, children, siblings, friends/peers, community elders, religious leaders and support groups, employers, teachers etc. These stakeholders are then convened as sub-groups, and positioned in the room in the form of a living sculpture, standing in spacial proximity according to their familial or community role closeness or distance from the couple. Each group is then asked to discuss their partisan perspectives and to produce flip-charts of sorts of questions and concerns they might have about what will happen in the mediation process. The sub-groups then report on the results of this exercise and the posters are pinned up for the duration of the programme as a visible reminder of the communitarian concerns and potential influence on what happens to any agreements made in mediation. Concerns are commonly both general and specific to each groups' perspective. For example, most groups have questions and concerns about the extent to which mediation will be fair, competent, equitable, legally binding and in the best interest of children etc. Examples of specific group questions though are, for extended family members, elders and religious leaders, concerns about whether adequate attention will be paid as to whether the marriage can be saved, whether the community has in some way failed this couple, whether the couple are aware of the range of support and counselling services available within the community. Parents and grandparents may have concerns about financial loans, investments, land rights, property given to the couple towards house purchase or business start-up funds and whether these may be lost, or perhaps be regarded

as joint marital assets. It is very common for such financial arrangements not to be formally contracted or documented, so there is consequently little that can be done to provide verification of claims on the assets. Employers may be concerned about the physical and psychological health of the employee and the extent to which he/she will be able to concentrate on duties in the workplace and/or repay a loan, given perhaps to help buy a car or house. This community sculpt can be seen to achieve a range of objectives over and above efforts to ensure context and applicability. For example, it focuses the attention of each learner, not just in terms of greater validation to the theoretical concepts being explored through direct experience but also as a living representative of the faith community. The trainer, from a different culture, working in this style is engaged with participants both as an educator and learner through an inductive process that is culturally and contextually grounded. Through this process, questions and possible doubts as to relevance and applicability that will inevitably be evolving in the mind of group participants can be surfaced at an early point in the process, rather than building up over a number of days. This community 'sculpting' is not a one-off activity but can be usefully repeated on subsequent days. The sub-groups can be reconvened and asked to review their initial concerns over time and in the light of new learning, through the trainer demonstrations and role-play. It is inevitably reassuring to find that these 'community audits' show a steady reduction in concerns and a consequent rise in confidence that mediation is appropriate and worthy of consideration to resolve disputes in this community context.

Another example of the way in which the programme responded inductively to contextual concerns was towards the second day of training in Karachi when a representative of a group from the Northern mountainous region of Pakistan, whilst reporting very favourably on his learning overall, nevertheless commented that he felt it was unlikely to work with disputes in his region. He explained that disputes there were usually inextricably interwoven with complex intergenerational and inter-community issues, over and above the marital dispute i.e. extended family involvement in livestock ownership, inheritance of land, grazing rights and *Mahr*, (Dowry). All parties to the dispute would normally expect to make representation to the designated arbitrator, who in turn, would be expected to determine the settlement. It seemed that no amount of debate would serve to convince these regional representatives and so the trainers decided to follow the proverb 'The proof of the pudding is in the eating.'

The group concerned were invited to prepare overnight a case study that was typical of their region, for role-play the next day. They were also invited to designate participants who would role-play the parties in dispute and co-mediators who would have the availability of the trainer team as consultants. Happily for all concerned, the complex role-play scenario achieved a very constructive settlement for disputants, the trainee mediators and the whole group of participants. Despite the time involved in facilitating this activity and disruption to the programme plan, there seemed little doubt that this opportunity to test out the learning in such a direct contextual experience had a substantial impact on the credibility of the programme; mediation had not only worked but had been seen to work. Such was the success of this cultural context activity that it has become a built in feature of the training programme.

Another issue that surfaced in this first delivery of the new training package in Pakistan was that of the historical cultural expectations by the disputants of the mediator. It was expressed quite simply by a participant who said that if, having heard all parties to the dispute, he did not deliver a settlement decision, there was a real risk that he would be judged to have failed in his dispute resolution role, the process would not be respected. Clearly, this historical process, rooted in long-standing natural justice systems was much closer to what we would understand as arbitration. Interestingly, this theme emerged subsequently in Syria and more recently, last year, in Afghanistan by trainee mediators who hoped to be mediating in the mountain regions of Afghan Badakhshan. This 'new reality' issue raises an ethical dilemma for the trainer, who, in effect, stands at the crossroads between, on the one hand, a clearly defined set of 'irreducible principles' that characterise what mediation is, and on the other, a cross cultural context which may be understandably reluctant to embrace such apparently radical shifts. A recurring question here is how far one can bend and adapt these fundamental principles in the interests of adapting to the cultural context before they are so far distorted that they no longer represent mediation? One tempting solution is to adopt a pedagogical stance and state that 'this is how the world is now, because I say it is, and therefore you should do as I say'. The inherent politeness of the participants, combined with their deeply rooted respect for teachers and education, would probably have resulted in short term acquiescence but, of course, the problem would not have gone away. A potentially better response was to acknowledge the problem and as any good mediator would, explore problem solving options. The best option found by the trainer so far has been to recommend that the mediator guides the disputants through all stages of the mediation process including a rigorous 'option development' stage, by which time the 'ideal' (disputant) preferred settlement terms are patently obvious and then to present an opinion on the settlement package. Is this appropriate? Is it still within the ethical framework of what we call mediation? Should we encourage its explicit identification as 'med/arb'?

In terms of cross-cultural training, Ledarach concludes 'Training is not the transfer of knowledge, but rather its creation. We would aim to create an atmosphere in which participants' own know-how about conflict is raised to an explicit level and can be used as a basis for constructing appropriate intervention models for the problems they face in their context. The model is not transferred; it is created. It is not prescriptive; it is elicitive. This is an especially important notion in cross-cultural settings, but also in one's own culture, [John Paul Lederach, in David Augsburger 'Mediation across cultures' 1992 - 37/38].

Conclusion

This paper has attempted to summarise the evolution and development of a mediation training process that is open to a systemic process of reflective learning and change. The importance of this reflective process is crucial if intellectually discriminating recipients of training are to experience something that is believable and applicable. We have been constantly surprised how in different countries groups have moved quickly within one or two days of critical analysis to a more genuine adoption of this 'new reality'. Once the argument and challenge has been openly facilitated and explored and participants

experience the ethical value base of mediation in the training practice context, there is a remarkable surge of knowledge and skill development with trainees demonstrating surprisingly high levels of competence in role-play. We have noticed that this switching of constructs from the 'old ways' to the 'new' can be more of a struggle for some older participants. Younger learners often then assume a role alongside trainers in helping to enact the new values in practice, for example non-directiveness or judgmentality, during role-play. This style of training approach is described by Donald Schon, who states 'this is a pattern of reflection-in-action which I have called "reflective conversation with the situation" [p268]. Earlier, he asserts, '.......I begin with the assumption that competent practitioners usually know more than they can say. They inhabit a kind of knowing-in-practice, most of which is tacit. Nevertheless starting with protocols of actual performance, it is possible to construct and test models of knowing. Indeed practitioners themselves often reveal a capacity for reflection on their intuitive knowing in the midst of action and sometimes use this capacity to cope with the unique, uncertain, and conflicted situations of practice'. [p. viii], [Donald A. Schon 1983] 'The Reflective Practitioner, How Professionals Think in Action'.

The inter cultural mediation trainer, John Paul Lederach, comments on how 'As we move in and out of a variety of contexts and cultures, our "trainer talk" can become an obstacle. I must remain open to new more appropriate "language". In Panama, after my first day of training, someone said that mediators were like "guides" leading people through complexities. The image stuck. By the end of the week, we almost never spoke of "mediators" and "mediation" but rather of "guides" and the process of "guiding". Language is not merely a process of communicating, but is an essential feature of the conflict experience' [Lederach 1988b 10 op. cit.].

This training programme will continue to be open 'as we move in and out of a variety of contexts and cultures' and we intend to monitor carefully the risk that our 'trainer talk' does not become an obstacle as we seek to 'guide' those who will be faced with the complex task of returning to their regions and attempting to 'guide' those in conflict within their community.

The NCABs are constantly open to learning new ideas and are willing to try them out, provided they resonate with the ethical and cultural values that the Ismaili community espouses worldwide and that these training programmes can contribute to the ADR discourse globally. In various countries, in Asia and Africa, and more recently North America, the disputes involving Ismaili Muslims are progressively being referred back to the Ismaili NCABs by the civil courts of their countries. In Canada where the ADR discourse is at present very prominent, with regard to how various faith communities can resolve their own family disputes within the framework of communitarian values and ethics, the ADR system of the Ismaili community is seen as a system, among others, that seems to be working well.