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# Nation Building through Mediation: The Mongolia Experience

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*At the grass-roots level, dispute resolution, namely mediation, can be used as an agent for social change. The project in Mongolia is an example where the mediation process is designed to strengthen Mongolian families and build a nation with more tolerance by understanding the psychology behind conflict, thereby enabling individual needs to be better addressed within the framework of the law. By addressing the source of problems that lead to social ills, such as domestic violence, the individual needs of the parties can be respectively better managed in a preventive capacity. Although we appreciate that mediation is not a cure-all for all social ills, it goes a long way to assisting most parties to make considered decisions that they can live with and to be better informed about their legal rights and entitlements, thereby improving not just their own lives but also that of the society in which they live.*

This article indicates the scope that dispute resolution (and mediation in particular) can have to become an agent for social change. We will see how the experiences we had in Mongolia have assisted the Mongolian organisations that we dealt with to strengthen their work with Mongolian families and by default to also strengthen their civil society.

The project began three years ago in March 2017, when I accompanied my brother, Konstantin Pavlidis, to Mongolia during a documentary he was making about the life of Lama Natsagdorj, a key Lama in Mongolia. The documentary called, “The Wisdom Keepers” won an award and was a follow-up on one that had been successfully completed in Australia about Max Dulumunmun Harrison, an Elder of the Yuin People,<sup>1</sup> who was also a traditional keeper of the Wisdom of the Ancients.

As both cultures were first-nation people there were similarities to be drawn especially about their traditional links to the land and the knowledge/wisdom they gained from that. I was also fascinated about how first-nation cultures resolved their internal disputes before the advent of any external influence and how they resolve their relational issues – both economic and personal – now, after external influences.

Having explained my interest to Lama Natsagdorj he suggested that I should meet Professor Namjil from Ulaanbaatar University. That meeting with Professor Namjil set the course of action for the next three years. Initially Professor Namjil asked if I could accompany him to Erdenet city, a mining town about 300 kilometres from Ulaanbaatar, to address a group of 150 men who had requested his assistance about how best to look after their children now that they were left widowed or divorced and were either disabled or unemployed or both. Professor Namjil said that he had never before had such a request and the fact that the men were sufficiently well organised to approach him made him committed to assist them.

Professor Namjil mentioned that it was not uncommon in Mongolia for women to be better educated than the men due to their nomadic tradition where boys were kept behind to assist with the movement of the Ger<sup>2</sup> during the different seasons, but women could be sent away to gain their education as a means of

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<sup>1</sup> Yuin Elder Uncle Max “Dulumunmun” Harrison is an initiated Yuin man. His teachings have been passed down to him by five masters of Aboriginal Lore. Uncle Max led the opening Traditional Ceremony for Sydney 2011 and 2012 Australia Day Celebrations and is well respected all along the South Coast of New South Wales through his work as a community Elder in his native Yuin country. Uncle Max has been on the National Board of Elders, released several books on Aboriginal culture, and is a recognised teacher of the University of Wollongong.

<sup>2</sup> A Ger is the traditional home of nomadic Mongolians. It is a portable, round tent covered with skins or felt and used as a dwelling by several distinct nomadic groups in the steppes of Central Asia. The roof structure is often self-supporting, but large Gers may have interior posts supporting the crown.



assisting the overall welfare of the family. He mentioned that in recent years this was causing a problem in society in cases where the men felt that their traditional skills of horsemanship and herding were no longer useful in an urban setting, causing a feeling of disempowerment which led to depression and in many cases, alcohol abuse and domestic violence particularly in the mining towns where unemployment was also a problem. As the women were better educated and thus more confident than the men, they would separate from their husbands, and sometimes separate from their children, to travel to wherever there were better jobs. This behaviour caused a very high divorce rate in recent years due to the lack of personal and cultural skills to address the underlying issues.

At first, I was rather daunted by Professor Namjil's request and suggested that a better option would be that I return to Australia, put together a team of Australian mediators with whom I could return to Mongolia to conduct a comprehensive needs analysis about the best way forward. Professor Namjil agreed, and by August 2017, I had recruited a group of four facilitators/mediators, namely, Mary Walker, Laurence Boule, Jennifer Scott and Helen Miedzinski. I also asked Jennifer's husband, Ian Scott, who is an international director of Rotary, to join us and thanked him for doing so as Ian was very largely responsible for securing the Rotary funding for our training program in July 2019. We are especially grateful to Rotary for the excellence in translations of the written and oral work of our program.

In addition, I recruited two rapporteurs namely Andrew Wong and Jessica Walker who recorded the attendance and outcomes of all the meetings held during our needs analysis in March 2018. Their reports made it possible to complete the application for funding in 2019 via Rotary without which we would not have secured any funding. Including myself, this made a delegation of eight, all of whom had very particular expertise and were international speakers prepared to pay their own way to assist pro bono, in this very important project.

So, in March 2018, all eight of us, known as the Mongolian delegation, ventured into the freezing temperatures of Mongolia for two weeks to conduct our needs analysis. We were delighted to be warmed by the wonderful hospitality, generosity of spirit and willingness to learn of the Mongolian organisations that we met. The two major organisations that requested assistance along with the men from Erdenet city, were the Judicial Council of Mongolia and the National Family, Youth and Child Development Authority.

The Judicial Council of Mongolia is the official government organisation through which the training and accreditation of mediators in Mongolia, occurs. The director of mediation for the Judicial Council, Ichinkorglou Ragchaa, who calls herself Ichu, was the first to recognise and set in motion the need for further training of the Judicial Council mediators, especially in relation to Family Law matters. The National Family, Youth and Child Development Authority, on the other hand, is also a government department of psychologists, social workers and administrators working with Mongolian families on a grass-roots level, who also recognised the need to train their members in mediation and conflict resolution skills.

Our needs analysis in 2018 revealed that training mediators in Mongolia has only occurred during the last five years and that the whole process of introducing mediation in Mongolia is less than ten years old. The method of training was originally provided through the Japan International Cooperation Agency (JICA) which is the traditional facilitation model and has been quite successful for commercial matters and labour law matters where the mediator receives a percentage of the proceeds for matters that reach agreement. Unfortunately, having only reached a success rate of 12% in March 2018, the JICA model was not very successful for Family Law matters and did not address the very large problem with domestic violence and alcohol abuse among the mining towns.

Both organisations – the Judicial Council and the National Family, Youth and Child Development Authority – therefore recognised that the problem of dealing with the types of issues expressed by the Erdenet men needed a different approach; but both organisations were equally constrained by their own statements of duties which made co-operation between the two somewhat strained at times, as is the case in any country where organisations work in silos alone.

Another outcome of our needs analysis in 2018 was to recognise that part of the lack of success in family law matters was the fact that there is no Mongolian word for “mediation”, the closest being,

“reconciliation”. This gave the mediators of the Judicial Council and the psychologist/social workers of the National Authority, the impression that the aim of mediation was to reconcile the parties so that they did not divorce. We realised therefore that this interpretation also had to be addressed as part of our training program for 2019.

A major part of developing our training program, therefore, came from the request by the Judicial Council’s Director of Mediation, Icho, to come to Australia in August 2018 with two of her regional mediators: one close to the border of China, Mungo; and the other, close to Erdenet city, Elbeck.

Icho stated that she and her team had conducted a lot of research worldwide into family law issues to see how countries were rated and was very pleased to inform us that despite all the difficulties we notice in Australia with our family law system, Australia has a Gold Star rating for its family law on a worldwide scale. She therefore wanted to know how Australia dealt with its family law problems, and to find out, she organised a stay at my home in Sydney for eight days in August 2018. During that time, Helen Miedzinski organised a series of meetings with Family Law Courts and Family Relations Centres.

Our needs analysis in 2018 and Icho’s visit provided a background template on which we began to build our training program which we aimed to deliver in July 2019. The date for the training was chosen at Icho’s request to coincide with Naadam, Mongolia’s most significant festival of the year. Coincidentally, the Australian National Mediation Conference, a biannual event, was also being held in April 2019 in Canberra; and when Ulji, the Head of the National Youth, Family and Child Development Authority (the Authority) found this out she agreed to come to Australia for two weeks to address the Australian National Mediation conference about Mongolian family law. Ulji attended with three of her assistants: Saana who was responsible for organising the men from Erdenet and persuaded them to contact Professor Namjil; Padma, a psychologist who was in charge of making submissions to the relevant Minister for changes to the Mongolian Family Law system; and Enkhtuya, their interpreter.

So, after two Mongolian delegations visited Australia, one in August 2018 from the Judicial Council and one in April 2019 from the Authority, we finally put together a workbook based on my doctorate in Law which I completed in 2015 and published in 2018 called the *RE-Constructionist Model of Mediation: Making Sense of Loss*.<sup>3</sup> My doctorate was about the significance of educating the parties about empathy and relational responsibility in an intake process in mediation. It was based on the Information Session used by the Mediation Unit in the Sydney Registry of the Family Court in the early 1990s that was put together by Di Gibson, who was then in charge of that Mediation Unit.

Being a psychologist, Di recognised the significance of acknowledging loss and the impact of ongoing grief (over a loss) on the decision-making capacity of the parties in family law matters. She realised that unless the loss was acknowledged, the parties would not be ready to move forward with any agreement that would be satisfactory. With permission, I modified the original Information Session of the Family Court to include a normative approach. I have used the modified version successfully for the last 25 years in all manner of mediations, to build relational responsibilities between disputing parties. It was therefore recognised as part of our needs analysis that teaching this model to the mediators of the Judicial Council, psychologists and social workers of the National Authority would be the best way to meet their current needs.

The idea was to share the information from Psychology about the Normative Information Session (NIS) during the intake process in family law matters, which the Judicial Council and the National Authority could then adapt, adopt or otherwise modify to suit their ongoing needs. Information about conflict resolution and conflict management skills were also added mainly by Jennifer Scott to form a very comprehensive workbook which was over 70 pages long and which was then translated into Mongolian with the assistance of Rotary funding for which we can again thank both Jennifer and her husband, Ian.

The whole training program lasted nine days – four days with the Authority and then five days with the Judicial Council. The training was delivered by the original four mediator/trainers that I had recruited along with myself, working in unison with each other. As educators, we used a variety of teaching methods

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<sup>3</sup> *RE-Constructionist Model of Mediation: Making Sense of Loss* (Honeysett Press, 2018); Reviewed by Dr Lola Akin Ojelabi in 30 ADRJ 80.

such as role plays, live panel discussions, a take-home exam and exercises where difficult Mongolian family law matters were discussed as case studies in detail in small groups and as class activities. Using exercises such as the DISC model about different communication styles and the Transactional Analysis Model about empathy building, etc, also ensured that the learning was very experiential.

We were extremely pleased to be told via feedback at the end of our training that the different training methods and the different styles of presentation by each of the five trainers added to the whole learning experience of the groups, like how each finger contributes to the working of the hand, despite its difference from the others.

## **BUT WHAT ABOUT THE MEN FROM ERDENET?**

To my great satisfaction, the training day for the 22 men who were transported with Rotary's assistance from Erdenet city to Ulaanbaatar (which was almost one-third of the 150 who originally requested assistance) was very successful. The training was conducted by Laurence Boulle and two men from Ulaanbaatar, one of whom runs a radio program with which the men are very familiar, and the other who is very much involved in Rotary and has developed an online support system to assist families with autistic children.

Through sharing stories together without the presence of women, the men understood the significance of fatherhood not only individually, as fathers with their own children, but also collectively as a guiding principle to the development of a nation. They appreciated that the more they could develop and utilise their own guiding principles for what it means to be a father in modern day Mongolia the more they can develop their own personal and cultural identity from being a man/father in a nomadic culture to being a man/father in an urbanised culture.

The fact that they realised that they still hold responsibility for the relations they foster within their respective families and with each of their family members means that they felt empowered to make decisions that could benefit themselves and their children despite their obvious loss of their original identity as herdsman. They acknowledged that the loss of their identity from nomadic to urban culture and the loss of their personal link to the land contributed to their sense of depression and uncontrolled anger, which led to incidents of domestic violence and alcohol abuse. But they also realised that with the ongoing support from the social workers and psychologists from the Authority and with the support of Professor Namjil and the two Mongolian men involved in their training, they could now go back to Erdenet and encourage the remaining men to similarly self-empower.

The fact also that there was a plan made by Professor Namjil who introduced the training day for the men, to review what is happening in Erdenet in September 2019, and to begin the development of a Family Relations Centre where men can gather to support and assist each other with their respective problems, gave enormous hope and built great enthusiasm among the men for a better future. Professor Namjil also gave an undertaking to support the men's projects and where possible to encourage his social work and psychology students from Ulaanbaatar University to work with the men as part of their training, where they could build permanent mechanisms into the future for ongoing support such as men's sheds; and where they could reconsider the value of not just educating the girls as was the traditional practice, but also now consider educating the boys.

In short then, there were three parts to this training. The first was based around training the Authority members in basic mediation skills *not* as mediators but as facilitators to better understand how to let the parties make their own decisions instead of their traditional approach to give advice in relation to staying married. The second training was with the men from Erdenet, the main reason for the project in the first place, which was very satisfactorily conducted without the presence of women but with enough ongoing support to continue their self-empowerment process. The last was the training with the Judicial Council where we trained all 44 of the mediators of Mongolia and some of their family law judges in the intake process for family law using the NIS method, which focuses on developing empathy and relational responsibility between the parties in dispute.

The premise for the whole training program was based on the Geneva Convention for the Rights of the Child, that is, that each child has the right to have a good relationship with its mother and to have a

good relationship with its father. With that premise in mind the men in Erdenet were able to understand that despite being separated or divorced, they still had a responsibility, as did their ex-wives, to remain parents to their children and that meant that they still had a significant role as fathers to provide guidance to their children and have a good relationship with them. In other words, they had the responsibility to determine their own identity and what form that identity would take as fathers to their children.

By using the NIS in the mediation process, the mediators of the Judicial Council were able to better understand the needs of the parties in dispute in relation to acknowledging the extent of their loss and assist them with their readiness to move forward to create stronger Mongolian families, and thus a stronger civil society with which to build a nation of their choice.

The Authority, on the other hand, recognised that their focus had to change from being an advisory body to becoming a body that teaches Mongolian families how to better use conflict resolution and conflict management skills. The Authority was also given the task of making recommendations to the Minister for Families about developing a separate Family Court as Australia has done; and recognises that better training of their psychologists and social workers is needed to use conflict management and conflict resolution skills with their clients.

Next year, 2020, will be the year when Mongolians hold elections and the whole year will be largely dedicated to that process. Part of their election process will be to hold discussions about the recommendations for a separate Family Court. Since our training, both the Authority and the Judicial Council have recognised that despite all the difficulties of having a separate Family Court they believe that the benefits outweigh the disadvantages.

During their stay in Australia, both the National Authority and the Judicial Council delegations were introduced by Helen Miedzinski to the Greater Sydney Family Law Pathway Network. Briefly, the purpose of the Network is to collaborate among the groups in Sydney dealing with family law issues via a government grant.

When asked in Mongolia how best the Mongolian government could assist this project, it was suggested that perhaps a similar government invitation to both organisations, that is, to the Judicial Council and the National Family Youth and Child Development Authority, with a grant of funds, could be a start to educate the Mongolian public at large about the mediation process and about the Geneva Convention on the child's right to maintain a good relationship with both parents.

The Greater Sydney Family Law Pathway Network, of which Helen is the current President, has been a wonderful inspiration and a means of networking that has greatly benefited the family dispute resolution industry in Sydney. We believed that such a network may similarly benefit Mongolia in years to come when they develop their own version. Such a joint project funded by the Mongolian government could assist the organisations involved in family law to continue with their current statements of duties and also enable them to co-operate as joint members of a project designed to strengthen Mongolian families and build a nation with more tolerance through the mediation process.

For now, there are plans for a Mongolian delegation comprising of Professor Namjil from Ulaanbaatar University, Ichu from the Judicial Council and Ulji from the National Authority, to attend the next National Mediation Conference in Alice Springs, Australia in September 2021. This will be the first international First Nations Conference for Mediators and we are all looking forward to learning from the wisdom of our first nations cultures as they develop their own identity in an increasingly globalised world.

Given that Mongolia is one of the few First Nations People who govern their own country and have done so as a democracy for about 30 years following Perestroika<sup>4</sup> after Russian rule (which lasted about 70 years), they are still very keen to refine their system to one that best suits their national identity in a globalised world. Similarly, we are very keen to learn from them what criteria in civil society they consider to be fundamental to the development of a modern nation with limited resources that can survive and thrive in a fast-moving, technological and globalised world.

<sup>4</sup> **Perestroika** (/ˌpɛrəˈstrɔɪkə/; **Russian**: Перестройка, IPA: [pʲɪrʲɪˈstrojka] (listen)) was a political movement for reformation within the Communist Party of the **Soviet Union** during the 1980s and is widely associated with **Soviet** leader Mikhail **Gorbachev** and his glasnost (meaning "openness") policy reform.

A conference such as the one planned for the National Mediation Conference in Alice Springs in 2021 enables such learning to be shared and given the excitement of our Mongolian parties to attend that conference, it seems that this project will continue and that there will be further chapters to this story to be continued.