



A Just Alternative

*Providing access to justice through two decades
of Community Mediation Boards in Sri Lanka*

Michelle Gunawardana



“Mediation is exceptionally successful in Sri Lanka due to the extraordinary level of government commitment, the passion with which the officials of the Ministry of Justice drive and nurture the programme, the commitment of people who serve voluntarily as mediators, the comprehensive training and evaluation process, and the independent Mediation Boards Commission that ensures proper management of the process.”



*Mediators share
their experiences*

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The Asia Foundation



Ministry of Justice



**British
High Commission
Colombo**

A Message from the Secretary of the Ministry of Justice



From the germ of an idea in the late eighties to a full fledged and widely used mechanism for dispute resolution, the Community Mediation Boards programme of Sri Lanka has certainly come a long way.

The Ministry of Justice firmly believed in the value of this system from the inception, and over the years our enthusiasm has never waned. Today, the programme has gone far beyond its original objective of reducing the backlog of cases in the courts, to providing meaningful access to justice to communities across the country – from those in urban centres to those in the most remote rural villages. It is giving people a way of resolving their conflicts in an amicable fashion, helping to reduce enmity and preserve the dignity of all concerned.

As the recent comprehensive evaluation of the programme has revealed, mediation is now widely accepted by Sri Lankans from all walks of life as a practical, efficient, and cost-effective alternative to the courts system, and the track record of the Community Mediation Boards – the successful resolution of more than one million disputes over the past twenty years – speaks for itself.

The success of the programme is due in no small measure to the skill and dedication of the 7,000 volunteer mediators

“While taking great pride in the achievements of the Community Mediation Boards programme, we at the Ministry of Justice are keen to build on its success, and remain firmly committed to nurturing and improving the programme in the years ahead.”

across the country. We continue to be inspired by their work. We also owe a great debt of gratitude to The Asia Foundation and its donors, including the British High Commission, who have been our long-standing partners in developing the Community Mediation Boards, particularly through the role they have played in providing technical and financial support for the structured training of mediators. This has played a crucial role in helping to achieve the high level of efficacy we see today.

While taking great pride in the achievements of the Community Mediation Boards programme, we at the Ministry of Justice are keen to build on its success, and remain firmly committed to nurturing and improving the programme in the years ahead.

Suhada Gamalath
Secretary
Ministry of Justice
April 2011



Foreword

The Asia Foundation's involvement with the Community Mediation Boards programme of the Ministry of Justice goes back to 1990 when the Foundation's support was first sought by the Ministry. We have been involved since then in creating and strengthening the technical capacity of mediation trainers and the mediators themselves, with the generous support of donors such as USAID and, more recently, the British High Commission which supported the extension of the mediation boards to the East and then to the North. The Community Mediation Boards project is the foundation's longest-running programme of assistance in Sri Lanka and we are very proud of its achievements.

In recent years, mediation services in Sri Lanka have expanded rapidly in terms of both geographic reach and scope, and today, mediation is a popular and widely accepted form of alternative dispute resolution, providing timely and accessible justice to communities across the country.

Since 2004, the Foundation, with support from the British High Commission, has played a key role in assisting the Ministry of Justice to re-activate non-functioning Community Mediation Boards and establish new Boards in the Northern and Eastern Provinces, where the conflict had interrupted this important service to people and communities.

We have also enhanced local mediation training capacity through Sri Lanka's first-ever mediation training institute, the Centre for Mediation and Mediation Training, which the Foundation was instrumental in setting up. Most recently, the Foundation partnered with the Ministry to develop Trainer and Trainee manuals for mediation trainers, under the guidance of internationally renowned mediation expert Dr. Christopher Moore.

“The Community Mediation Boards of the Ministry of Justice is The Asia Foundation's longest-running programme of assistance in Sri Lanka and we are very proud of its achievements”

Mediation is exceptionally successful in Sri Lanka due to the extraordinary level of government commitment, the passion with which the officials at the Ministry of Justice drive and nurture the programme, the commitment of people who serve voluntarily as mediators, the comprehensive training process, and the independent Mediation Boards Commission that ensures proper management of the programme.

The success of the Community Mediation Boards programme is also evident by the fact that other countries – specifically China, Mongolia, and Nepal – have used the Sri Lankan model to develop their own systems of community mediation. The Foundation has facilitated engagement with these countries through its network of field offices and thereby helped to establish Sri Lanka's 'footprint' in mediation throughout Asia.

A recent evaluation of the programme generated significant evidence that Mediation Boards are having a positive effect on communities nationwide. Eight out of ten disputants and mediators surveyed indicated that mediation promotes peace and encourages co-existence. It is heartening to note that the overall findings also indicate a high level of satisfaction with mediation as an alternative dispute resolution system, across the board. Relatively new Community Mediation Boards have already played a role in making justice easily accessible to all communities living in the Eastern Province. We believe they can do the same for people living in the North.

The Foundation is now supporting the Ministry of Justice to take forward the recommendations emerging from the evaluation. In particular, we are helping to design a comprehensive monitoring and evaluation system which includes the use of data transmission using cell phones to expedite real time monitoring of the mediation programme.

On behalf of The Asia Foundation, I would like to congratulate the Ministry of Justice for establishing and sustaining this programme so successfully and for being ready and willing to share its success with other Asian countries. Special thanks and recognition go to the thousands of Mediation Board members who are present in almost every division of the country. They provide dedicated service to their communities without any remuneration and are the true, unsung heroes of the Community Mediation Boards programme.



Finally, I would like to thank the author of this book, Michelle Gunawardana, who has wonderfully captured the essence of the programme and its remarkable results.

This book is a tribute to an exceptionally successful programme of the Government of Sri Lanka, and offers some insights into the Sri Lankan Mediation Boards model, and the people who have driven and sustained it for the past twenty years.



Nilan Fernando

Country Representative - Sri Lanka
The Asia Foundation
April 2011

Introduction



A dusty road leads to a village school. One large hall, with groups of pastel-coloured wooden chairs facing a row of blackboards. It's a Saturday and children carrying musical instruments scamper across the playground for band practise under a tree in the far corner.

The most ordinary of settings. Except that a large banner strung up at the entrance to the hall, with the words "Mediation Board" printed on it, signals that what is about to take place there today is, in fact, quite extraordinary.

An elderly gentleman, flanked by eighteen attentive, neatly dressed men and women, stands up and calls the small crowd of people who have gathered in the hall to attention. He announces that the Mediation Board sitting is about to commence and asks everyone to spend a moment of silence in prayer. He then takes a few minutes to talk about the nature of disputes and gently exhorts all those who have brought their disputes to the Board to begin the process with an open mind, to keep in mind the value of their relationship with the other party, and to try their best to find a way to resolve their problems amicably and peaceably. However, he also stresses that the whole process is voluntary and that no one should feel pressured into making any decisions they



A school in Kaduwela, where a Mediation Board sitting takes place every Saturday.

are not comfortable with. He then explains in a few simple words how the Mediation Board functions and the role the mediators play in the process.

A few moments later, the first disputes are called and each three-member Board of mediators moves to a different area of the room. The disputants sit before the mediators and tell their stories. Petty quarrels between neighbours that have led to blows... fights over boundaries... domestic disputes... conflicts over business dealings or unpaid debts...

Many faces are troubled. Some are dark with anger. The hall is filled with the hum of voices, punctuated by an occasional raised voice or a sob as pent-up anger, frustration, or pain finds an outlet. Each session may take twenty minutes, or an hour-and-a-half. There is no time limit. In fact there are few rules of any sort, other than those required by common courtesy.



“I would really like to see more women mediators on our Boards. Particularly when we need to mediate domestic disputes, I can see that the women disputants talk more freely when there is a female mediator on the Board. When I constitute a Board to handle disputes like these, I always try to include at least one woman. But I know that in many areas there are so few women that this is not always possible, which is a pity.”

Mallika Bandula (Age 67)
Chairperson of the Kaduwela Mediation Board



Often, little headway is made during the first session and the disputants are asked to go home, think over the issues, consider alternative proposals that may be more acceptable to the other side and come back the following week.

After two or three sessions though, there is usually more understanding of the other point of view. Sometimes the conflicting parties are too intransigent or too bent on taking their battle to the courtroom to allow for a meaningful resolution. But in more than half the disputes mediated, an amicable settlement is reached and the disputing parties

Mrs. Bandula was among the first group of family court counsellors from the Ministry of Justice who were trained in mediation by Dr. Christopher Moore in 1989. She worked as a mediator trainer for the MOJ for thirteen years and, on retirement, helped set up the Centre for Mediation and Mediation Training, where she still works. In 2010, she volunteered her services as a mediator, and is now putting all her training and experience into practise, running the Kaduwela Board with brisk efficiency.

In over 300 ordinary settings like these around the country, more than 100,000 disputes are heard each year by 7,000 dedicated volunteers.

leave the process, if not as friends, then at least on civil terms; a weight lifted from their shoulders, and one less conflict to mar the harmony of the community.

To make this happen, mediators must be extraordinarily patient, friendly, calm, and kind, in addition to having the skill to draw out confidences, get to the root cause of the problem, find ways to get disputing parties to see each other's point of view, and then find an acceptable compromise. They must be respected and trusted by all those who come before them. They must also be willing to sacrifice a part of their weekend, week after week, to attend these sittings; a service for which they receive no financial remuneration.

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Occasionally a session ends with an embrace, and an emotional reconciliation between family members, neighbours, or business partners. For the mediators, and for all those who work tirelessly behind the scenes of the Community Mediation process, these are the moments that make it all worthwhile.

A brief history of mediation in Sri Lanka

The tradition of mediation as a form of dispute resolution is very much a part of Sri Lankan culture. It was recorded as early as 425 BC, during the reign of King Pandukabaya, when village councils known as *Gam Sabha* met to 'hear complaints and do justice among neighbours'. The councils, consisting of village elders, convened in a public place – often simply under a shady tree – to hear disputes involving petty thefts, boundary disputes, and a variety of minor offences that occurred in their villages. Although there may have been some element of adjudication in the process, the

main objective of the councils appears to have been to reach a just and amicable settlement of disputes, rather than to apportion blame and mete out punishment.

The *Gam Sabha* endured up to and through several centuries of Dutch and Portuguese colonisation, but disappeared from historical records with the more pervasive changes that occurred during British rule (1796 - 1948). The British did attempt to resuscitate the system to deal with local disputes by enacting the Village Communities



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Ordinance in 1871, and in 1945 the Rural Courts Ordinance gave these tribunals a formal position in the British judicial system. The effectiveness of these systems was, however, limited.

In 1958, the rural courts were replaced by Conciliation Boards, yet another incarnation of an alternative dispute resolution mechanism. The Boards however were not successful and not well accepted by the public. The Act was repealed in 1978.

A gathering of village elders in nineteenth century Ceylon



“I think the success of the present mediation system in Sri Lanka owes a lot to its beginnings, and the individuals who created it. It had an exceptional champion in the person of P. B. Herat, who was the force behind drafting the Act and getting it passed, and then picking the right people to follow through on it. These included Dhara Wijayatilake and Kamalini de Silva, who continued to maintain the vision, and drive and protect the model. It was also an inspired move to select ex-family counsellors as the first group of mediation trainers and to provide support to local boards. The mediation experience they brought with them made them perfect candidates for the role.”

Dr. Christopher Moore (Mediation expert)

Partner, CDR Associates, USA

Several factors contributed to the failure of the Conciliation Boards system. There was no structured training for panel members and no technical framework for actually addressing disputes. There was also the problem of the Boards having jurisdiction beyond the ability of the lay people who sat on the Boards, while the agreements entered into were legally binding. The point of greatest criticism however was the politicisation of the selection process and dubious quality of the men chosen as conciliators. This was considered the root of many of the abuses of the Boards’ powers (which included the power to issue summons) that occurred.

A brief history of mediation in Sri Lanka



The Asia Foundation has been working with the Ministry of Justice since the 1960s on a variety of programmes designed to improve the administration of justice.

It was clear, however, that an alternative mechanism for dispute resolution was still sorely needed. With the formal courts weighed down by their excessive case loads, there were inordinate delays and cases routinely dragged on for years. In 1985, the Ministry of Justice (MOJ) commissioned a study on court delays and the prevailing legal culture. Based on the finding of the study and extensive research into existing systems used elsewhere, the Ministry began to devise a new, non-litigative alternative to the courts. It was recognised that a meaningful alternative would also need to improve the quality of justice for those who used the system by reducing the delays, stress, and expense of litigation, increasing accessibility, improving awareness and confidence in the process and, ultimately producing an end result that would be accepted as being just. The committee involved was also particularly mindful to avoid the pitfalls encountered with the old Conciliation Boards.

The Asia Foundation has been working with the Ministry of Justice since the 1960s on a variety of programmes designed to improve the administration of justice. In the late eighties the Foundation supported the Ministry's new initiative by enabling the Secretary to the Ministry Dr. A.R.B. Amarasinghe (who was later elevated to the Supreme Court) and other officials who were instrumental in designing the new system to attend the first Asia Pacific Conference on Mediation. The Foundation also organised several observation tours to the United States.

The outcome was the creation of the Mediation Boards, established by Act No. 72 of 1988, under the administration of the Ministry of Justice, with the objective of facilitating the voluntary settlement of minor disputes using interest-based mediation.



The Kotte Mediation Board begins a mediation sitting.

In 1989, the Foundation engaged the services of international mediation experts Dr. Christopher Moore and Susan Wildau from CDR Associates in Colorado USA to develop the training material for the programme and train the first of Sri Lanka's mediation trainers, a group of twenty-five family court counsellors from the Ministry of Justice. These mediation trainers went on to train hundreds of mediators in the following years.

The first Community Mediation Boards of Sri Lanka were established in 1990.







“I wish more people knew about mediation and had a better understanding of its great potential to put an end to conflict. If they did, I’m sure they too would bring their issues to the Mediation Boards. Perhaps an introduction to the concept of mediation could be included in the school syllabus, so that the next generation will be able to derive the full benefit of the programme.”

Reginald Wanaguru (Age 67)
6 years service as a mediator

How it works

In interest-based mediation mediators guide disputing parties through a process that tries to get to the real issues at the root of the conflict, identify the needs or interests of the parties, and finally find a solution that is acceptable to both sides.

Interest-based mediation is a forward-looking process that does not try to determine guilt or innocence, or pass judgement on the rights or wrongs of past events. Instead, mediators guide disputing parties through a process that tries to get to the real issues at the root of the conflict, identify the needs or interests of the parties, and finally find a solution that is acceptable to both sides.

When Mr. Wanaguru retired from his job as a director in the Ministry of Policy Development and Implementation, he wanted to volunteer for some kind of social service activity. He felt that being a mediator was the most productive way he could serve his community.



“When you observe a Mediation Board at work, you can tell that the process itself is giving people a lot of relief. It gives an outlet for emotion; for venting of feeling; for simply having someone listen with empathy. You can really feel the pulse there. In many cases, the incident that brought a dispute to mediation is only a symptom of a much deeper issue, which is what the mediators will try to get the two parties to work on. That’s the kind of unique space that the Mediation Boards create, which is simply not available in a court of law.”

Ramani Jayasundere

Senior Technical Advisor, The Asia Foundation

In the Sri Lankan model, there is a deliberate disconnect between the formal courts system and the Mediation Boards. Lawyers and agents are not allowed to appear before the Board, and a settlement reached before a Mediation Board is not legally binding and cannot be enforced in a court of law. It is up to the mediators to try and ensure that a settlement is indeed a result of genuine consensus between the parties, and therefore likely to be honoured. If the terms of the settlement are violated, the aggrieved party may go before the Mediation Board once again. If mediation fails, the Board will issue a certificate of non-settlement and the disputants may then seek a legal remedy in court.

The Community Mediation Boards (CMB) system removes some of the main factors that deter people from seeking justice through the formal legal system. Access to the

How it works



“One of the major problems that hamper the success of Mediation Boards is the reluctance and refusal at times of the second party to come before the Board for discussions... However, considering that the spirit of mediation is very necessarily dependant totally on the will and commitment of the parties to settle an issue, it would be against the concept of mediation to introduce provision to compel attendance. We firmly believe that an increased confidence in the system alone can be the most effective method of resolving the issue.”

Dhara Wijayatilake

former Secretary, Ministry of Justice

Mediation Board is assured, the application process is simple, and the cost to an applicant is only the cost of a five rupee stamp.

Disputes may be brought to mediation directly by the disputing parties, or referred by the police or the courts. Under the provision of the Act, it is mandatory that certain categories of disputes (such as property or debt claims of less than Rs. 250,000 and those involving specified minor criminal offences such as hurt, trespass, intimidation, and misappropriation) are referred to mediation before they can be taken up in court. If a settlement is not reached, a non-settlement certificate issued by the Board must be produced in order to have the case heard in court. Disputes relating to assault, land, debts, and domestic disputes are among those most commonly mediated. Categories of disputes that cannot be brought to the Board include disputes involving testamentary, partition, adoption, divorce, and fundamental rights (which require official court documents), and certain categories of violent and serious crimes specified in the Act.



The bulk of the disputes heard by the Boards are voluntary – where the disputants have chosen mediation in preference to litigation.

Each dispute is heard by a Mediation Board consisting of three mediators selected from the local panel based on the preference of the disputants. In keeping with the spirit of mediation, appearance before a Mediation Board is voluntary and the mediators are not vested with the power to compel attendance. There are no regulatory procedures and the mediation sessions are conducted in informal, familiar surroundings such as the local school or temple. The Mediation Boards meet once a week, usually on weekends, and are required to resolve a dispute within thirty days of the Board being constituted.

Mr. Somadasa’s first experience of a Mediation Board was when he appeared before it as a disputant, while he was working as manager of a private business organisation. He was so impressed with the process that he resolved to volunteer as a mediator on retirement.



“Having experienced the Mediation Boards from both sides of the table, I continue to be amazed by this process. It is such a simple system, but the results are profound. The personal satisfaction we get as mediators when two parties (often relatives or neighbours) who come here ready to kill each other leave as friends, more than compensates us for the time and effort we put in.”

T. M. Somadasa (Age 68)
10 years service as a mediator

The mediators

The mediators are drawn from diverse disciplines and backgrounds and include teachers, engineers, surveyors, native physicians, government servants, and the clergy. The only criteria for selection are that they should be respected members of their community and possess the necessary qualities required to be a skillful mediator.



“The success of mediation depends greatly on the competence of Mediators. They can either inspire confidence in the system or drive away believers by the bad handling of issues.”

Kamalini De Silva
Additional Secretary, Ministry of Justice

More than any other single factor, it is the skill of the mediator that is key to the success of the mediation process. Given the fact that mediators serve in a purely honorary capacity, it is heartening to note that there is no shortage of civic-minded volunteers who are willing to commit so much of their time and effort to this voluntary service.

A panel of twelve to forty mediators is appointed to each Mediation Board area (which coincides with the administrative unit demarcated by the state known as the Divisional Secretary Division). In Sri Lanka, the term ‘Community Mediation Board’ denotes the fact that each Board is confined to a particular locality. The process becomes entrenched in the community as access to a Board is limited to the people in a particular community, and the Board itself comprises people from the same area.

In order to ensure total independence in the selection of mediators, the power to appoint, supervise, and exercise disciplinary control over mediators is vested in

Mr. Ranasinghe is a retired government servant, who previously worked in the Department of Town and Country Planning. As his many years of mediation service suggest, he sincerely believes in the great value of the mediation process, and he recalls his favourite cases with genuine joy.

Piyadasa Ranasinghe (Age 62)
13 years service as a mediator



“A lot depends on being able to establish a rapport between the mediators and the disputants. It’s a process of building trust. Sometimes it’s only at the third or fourth meeting that the truth comes out. It takes a lot of patience, but if a good settlement is reached, it’s ample reward... I think if more people really understood how the mediation process works, we would have many more turning to the Boards for help to resolve their disputes. More publicity is needed to educate the general public – perhaps through a TV spot or another tele-drama like the one aired many years ago.”

The mediators



“I think we in Sri Lanka should count ourselves lucky that we have such an amazing group of educated, experienced people who are willing to volunteer their services for the Community Mediation Boards. And it is also because these mediators are willing to work without remuneration and with only the most basic facilities that this service can be offered to people at such low cost. For a disputant, the total cost is only the cost of the five rupee stamp on their application form. For the government, the cost works out to about 520 rupees (US\$ 5) per dispute - a tiny fraction of the cost of even the simplest court case.”

A. K. D. D. Arandara

Assistant Secretary, Ministry of Justice



an independent commission consisting of five members appointed by the President, three of whom are required to be retired judges of the Supreme Court or Court of Appeal.

Mediators for a given Board must be nominated by a non-political organisation, a religious dignitary, a head of a school, a government official – typically the Divisional Secretary, or the chairperson of the Mediation Board. The mediators are drawn from diverse disciplines and backgrounds and include teachers, engineers, surveyors, native physicians, government servants, and the clergy. The only criteria for selection are that they should be respected members of their community and possess the necessary qualities required to be a skilful mediator. Being engaged in any political activity is cause for immediate disqualification.



“When we were designing the system in the late eighties, I felt it was very important that those who sought the position should not be motivated by money. I had no doubt that good people would come forward to serve their communities. The fact that the position was non-paying, and not vested with legal powers, had the additional benefit of making it less liable to attract political interference.”

P. B. Herat

former Secretary, Ministry of Justice

Once selected through an interview process, the prospective mediators are given a forty-hour training in mediation techniques and skills, during which the trainers also conduct an assessment of the candidate's aptitude. The mediators are officially appointed by the commission based on this assessment. At the completion of a three-year term, mediators who are nominated for reappointment must go through the interview, training, and evaluation process again.

The mediation trainers, who serve on the permanent cadre of the Ministry of Justice, also oversee the Mediation Boards, observing sittings to monitor the mediators and provide feedback, and assist the Boards to deal with administrative issues.

*Mediation Trainers of the
Ministry of Justice.*

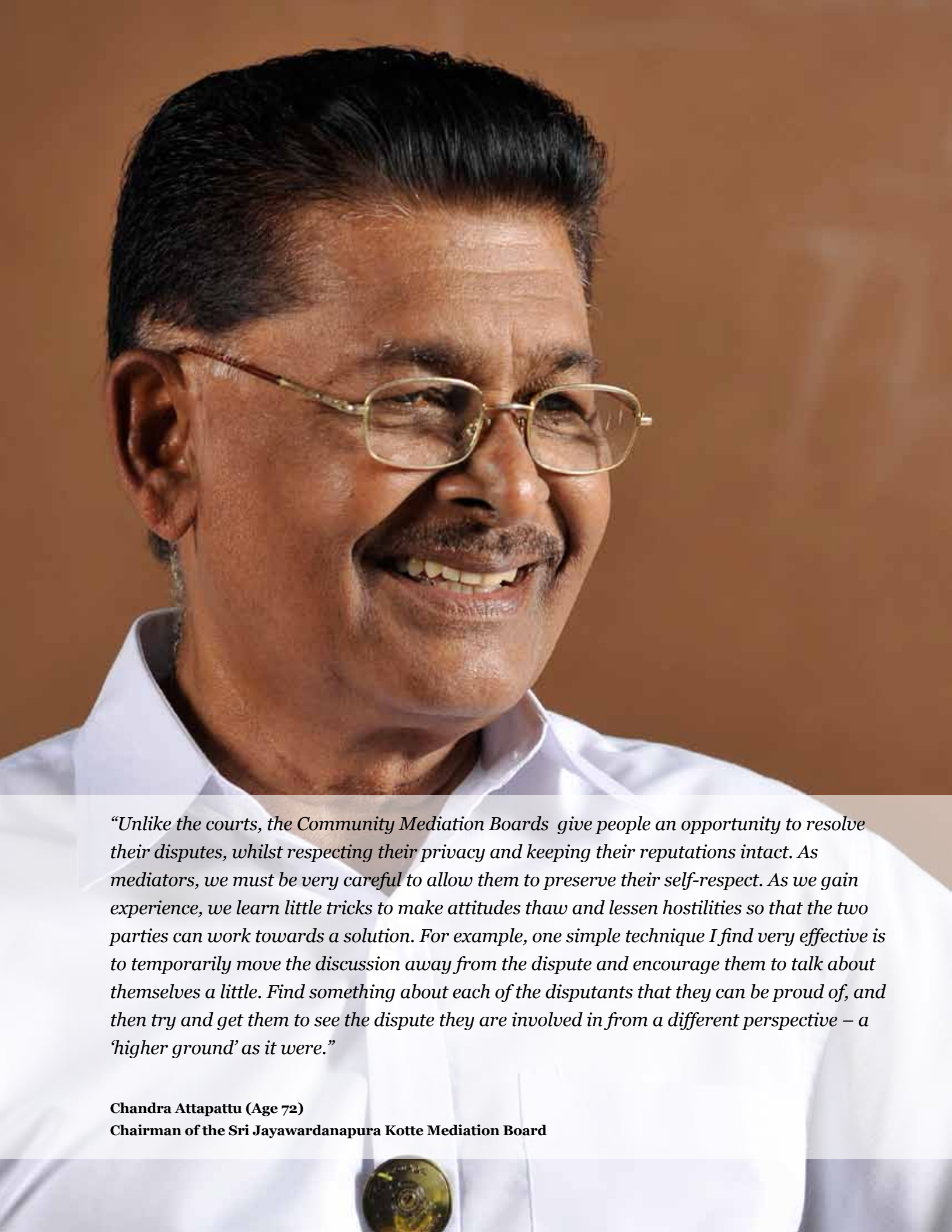


“The original training for the mediation programme was carefully designed to incorporate the elements our own cultural values, as well as the modern skills and techniques introduced by mediation experts Flaurie Storie and Dr. Christopher Moore. While we have gradually adapted and expanded on the original training material to improve specific skills with the continued guidance of Dr. Moore, the basics have not changed very much over the years, because at its heart it is a simple concept.”

M. Thirunavukarasu

*Mediation Trainer, Centre for Mediation and
Mediation Training*





“Unlike the courts, the Community Mediation Boards give people an opportunity to resolve their disputes, whilst respecting their privacy and keeping their reputations intact. As mediators, we must be very careful to allow them to preserve their self-respect. As we gain experience, we learn little tricks to make attitudes thaw and lessen hostilities so that the two parties can work towards a solution. For example, one simple technique I find very effective is to temporarily move the discussion away from the dispute and encourage them to talk about themselves a little. Find something about each of the disputants that they can be proud of, and then try and get them to see the dispute they are involved in from a different perspective – a ‘higher ground’ as it were.”

Chandra Attapattu (Age 72)
Chairman of the Sri Jayawardanapura Kotte Mediation Board

The Community Mediation Boards of today

There are now 302 Community Mediation Boards operating across the country. There are just over 7,000 trained mediators in the system, handling on average 112,000 disputes each year, with settlement rates ranging from 53 to 60 percent during the last fifteen years of operation.

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For many years, the Mediation Boards programme did not include areas in the Northern Province and some parts of the Eastern Provinces of the island due to the persistent

Prior to his retirement, Mr. Attapattu served for many years as the registrar of one of Colombo's largest schools, and later as a government Food and Price Controller. Both positions required that he represent the institutions he served in court, where he observed firsthand the stress that people underwent during the legal process.

“As far as I know, Sri Lanka now has the third largest dispute resolution system in the world, next to China and the Philippines.”

Dr. Christopher Moore

Partner, CDR Associates, USA

conflict in these areas. Since 2004, The Asia Foundation, with support from the British High Commission, has played a key role in assisting the Ministry of Justice to re-activate non-functioning Mediation Boards and establish new Mediations Boards in the Northern and Eastern Provinces where the conflict had interrupted this important service. Between 2004 and 2006, several Mediation Boards were

“Our vision for the Community Mediation Boards is that every community in the country, even those in the most rural or remote parts of Sri Lanka, should have a mediation board within close proximity – ideally within walking distance. And we are getting there!”

Kamalini de Silva

Additional Secretary, Ministry of Justice

The Community Mediation Boards of today

Community Mediation In Action

Nalini and her son lived in a hut on a small piece of land where they had grown a few fruit trees and a vegetable plot. When a businessman, Sivam, built a two-storied house next door, right up against the boundary of the two properties, the trees in Nalini's garden were damaged by the wall and the shadow cast by the new building badly affected her crop of vegetables. The mother and son were so angry at what they felt was the careless disregard shown by a wealthy businessman that they refused to let his workmen enter their property to plaster the outer side of the wall, and the battle lines were drawn.

After several months of stalemate, the dispute was brought before mediation. The two parties were so hostile toward one another that they could barely bring themselves to sit side by side. During several sessions of mediation the mediators managed to lessen the tension between the two, and eventually both parties agreed that while Sivam was well within his rights to build right up to the edge of his boundary, it was also true that his building had caused a poor family to lose part of their income.

Once this was accepted, finding a way to make amends was quite easy. Sivam made a compensation payment to Nalini, and built a new kitchen for her house. And he was allowed to complete his wall. Both parties felt good about the solution and once the plan had been put into action, a cordial, neighbourly relationship was established.

Names of disputants have been changed to protect their privacy



“From The Asia Foundation’s perspective, the partnership between the Foundation and the Ministry of Justice is remarkable in its success and longevity. We have supported the programme throughout its life of over twenty years, lobbying for funding from a variety of sources to maintain continuity, helping to identify key areas for improvement, and facilitating technical support.”

Dinesha Wikramanayake

*Team Leader, Local Governance Programme,
The Asia Foundation*

set up and reactivated in Jaffna, Trincomalee, Batticaloa, and Ampara, and at the time of writing sixteen more Boards in the Northern Province have been gazetted and are being established. This would mean that the programme will soon cover all 318 divisional secretary divisions (DSDs) in the country - a truly remarkable achievement. From time to time, the Government establishes new DSDs, to meet the needs of the population in a given area, and the Ministry is committed to establishing Mediation Boards in each of these new divisions.



One of the serious limitations faced by the MOJ has been the lack of Tamil-speaking trainers – an issue that the Ministry is now addressing. In the interim, The Asia Foundation supported the establishment of the Centre for Mediation and Mediation Training (CMMT), the first organisation of its kind in Sri Lanka, with Sinhalese, Tamil, and Muslim staff and tri-lingual (English, Sinhala, and Tamil) training capacity. Since 2004, the Centre has trained fourteen Tamil-speaking mediation trainers, and conducted residential workshops for 1,226 mediators.

Despite the success of the Mediation Boards, the legal community has remained wary, and some have expressed scepticism about the benefits of a programme they do not take part in. In a bid to change these attitudes, The Asia Foundation supported a series of mediation techniques workshops for 500 law students in 1996.

The programme elicited such a positive response that since then, all final-year students at the Sri Lanka Law College are required as part of their curriculum to participate in a three-day workshop that is geared to impart mediation skills to these aspiring lawyers. The programme also includes observation of actual mediation sessions to demonstrate the effectiveness of the process.

*A mediation training workshop
in Jaffna.*

The Community Mediation Boards of today

Community Mediation in Action

Five siblings, all *dhobis* (laundry-men) by trade, lived on a partitioned block of family land. The problem was that one brother's land lay parallel to the road while the other blocks of land were all perpendicular to the front block, with their only road access limited to a four-foot pathway across the front block. The owners of the rear blocks wanted this path widened to ten feet, which the owner of the road-front block refused to do. When the mediators were able to elicit the real reason for this refusal, it turned out that he simply did not want to reduce the extent of his land by widening the road. The solution: each of the owners from the rear plots would give a small portion of their land to the owner of the front block to compensate him for the land he was losing by widening the road; a plan that was cheerfully accepted by all parties.

In 2010, the MOJ and The Asia Foundation collaborated to carry out a comprehensive evaluation of the Community Mediation Boards programme. The evaluation included a nationwide poll of 1,097 people, and surveys of 435 disputants and 252 mediators, from eighteen Mediation Boards – two from each district – in addition to interviews with judges, police, local-level government officials, community leaders, and non-governmental organisations. Although the evaluation included two Boards from the Northern Province, the data collected from these areas was limited due to the special post-war situation there and the fact that the few operational Mediation Boards in the area were relatively new. As a result, the information gathered from the North was analysed separately.



The awareness poll suggested that 75 percent of the general public (in eight of the nine provinces) is aware of the Mediation Boards, most having heard about them from acquaintances. In the Northern Province however, awareness was less at 44 percent.

The data on gender, ethnicity, and age also clearly illustrated that people from all segments of the population use the Mediation Boards. However, only 15 percent of users surveyed were less than thirty years of age, and only 35 percent were women. This may be partly attributed to the fact that youth and women are less likely to come forward in certain types of disputes, such as land disputes where the head of the household would typically appear before the board. It may also have something to do with the profile of the mediators, who are mostly male and most often above the age of sixty. The MOJ has identified increasing the diversity among mediators as one of its priorities for the programme.

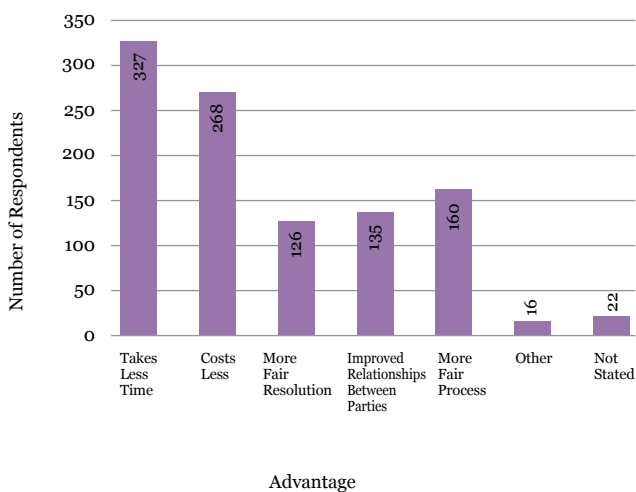


“Going forward, I would really like to see our mediators receiving more training. Because of limited funding and resources, we are only able to provide the training at the beginning of each mediator’s term of three years, with some additional training on special issues. I strongly feel all mediators should be given at least one day of training every six months, to reinforce the use of proper mediation techniques as well as to broaden their skills.”

Justice Hector Yapa

Chairman, Mediation Boards Commission

USER PERCEIVED ADVANTAGES OF MEDIATION



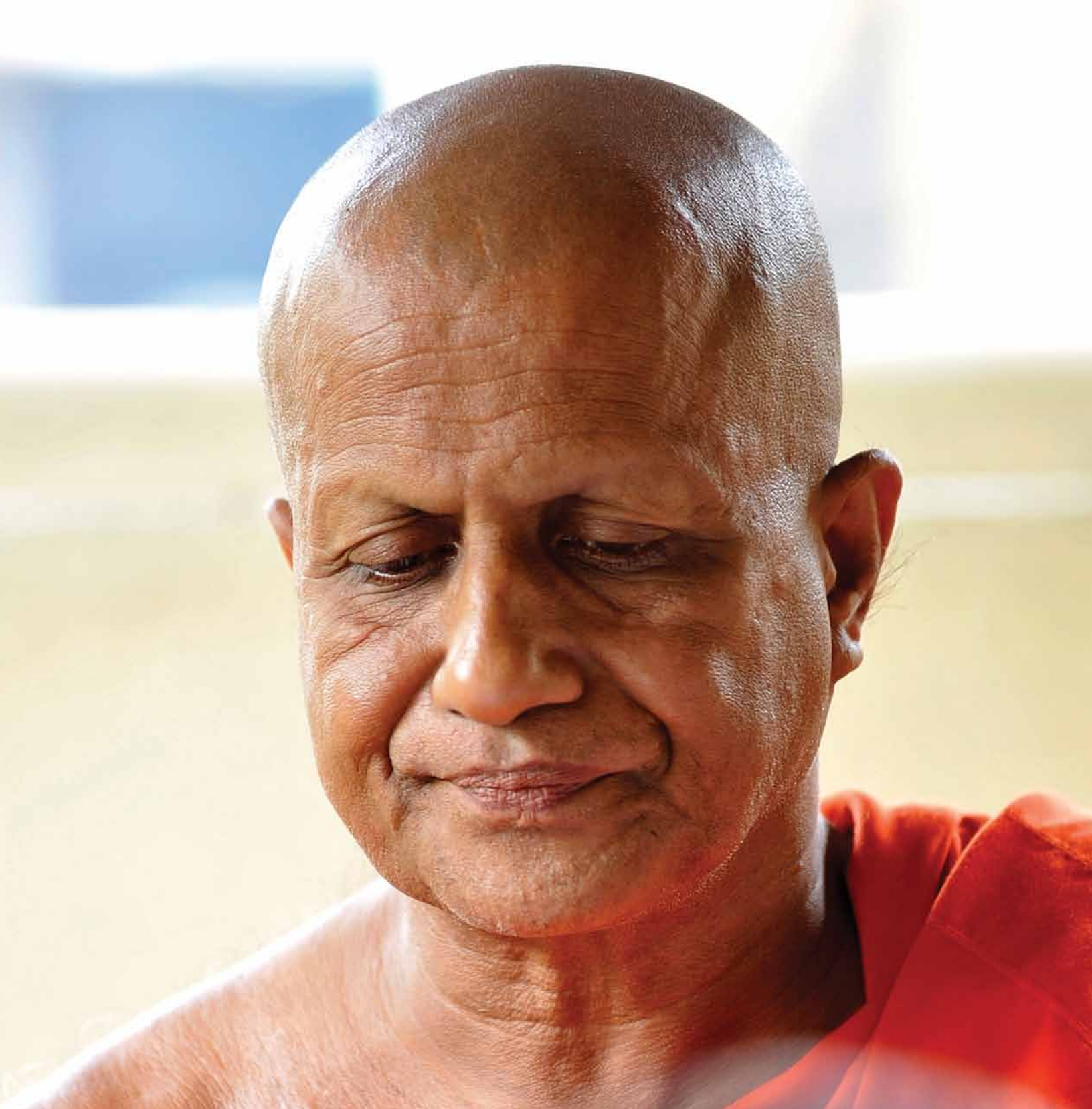
Data from the Evaluation of the Mediation Boards Programme conducted in 2010.

Community Mediation in Action

A young couple was referred to the Mediation Board. The woman, Sonali, complained of abuse but refused to elaborate on the type of abuse. She said that her husband, Lalith, earned well but did not look after her. She wanted a divorce. The man said he did provide for her: a house, money, gifts, holidays.

During mediation sessions, the mediators were able to draw Sonali out, and encourage her to talk about what was actually making her unhappy. She wanted to start a home industry but Lalith would not even listen to her. She felt neglected and marginalised. This was the abuse she felt although there was no physical abuse. Lalith realised that even though he provided for her, she wanted to earn and contribute to the family’s finances. He said she never really articulated what she wanted and why, and admitted that he never really made time to talk to her because he was busy and tired. The couple agreed to work on a solution: to talk more, and be more open about issues. Lalith said that an additional income would benefit their family and agreed to help his wife to start her own business.

Names of disputants have been changed to protect their privacy



“For the poorer people in our communities, the courts are simply unaffordable. Mediation is a free service. It gives these people access to a means of resolving their problems and, I believe, helps to create unity in society.”

Ven. Pethigamuwa Rahula Thero (Age 67)
7 years service as a mediator

“For an interest-based mediation system that is working well, a resolution rate of 50-60 percent is quite acceptable and in line with many other mediation services around the world. The success rate is often dependent on the types of cases being mediated, with some being higher or lower. Because of the voluntary nature of the process, and its reliance on mutual satisfaction of the parties involved, there will always be a significant number of disputes which cannot be resolved through mediation. I would be wary of very high resolution rates because to me it would suggest that mediators are pushing solutions on people, or making disputing parties feel compelled to settle.”

Dr. Christopher Moore

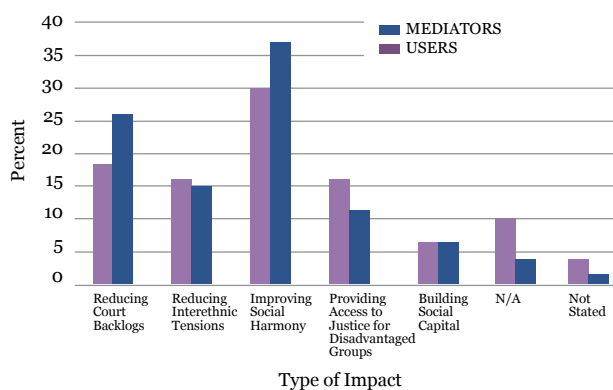
Partner, CRD Associate, USA

Among those users of mediation services, an overwhelming 90 percent were satisfied with the mediation process and eight out of ten indicated that they would take future conflicts before the Mediation Boards. High rates of satisfaction were also recorded among marginalised groups including women and minorities.

When users were asked to list the benefits of mediation, ‘faster resolution of disputes’, ‘costs less’, and ‘the process is more fair’ (all important aspects of access to justice), were

The Venerable Thero is chief priest of the Dharmasthrodaya Pirivena and deputy president of the children’s charity SOS. He says that in his experience, the Community Mediation Boards system works very well. He believes that older people generally make better mediators because they are looked up to in society.

PERCEIVED LARGER IMPACT ON MEDIATION



Data from the Evaluation of the Mediation Boards programme conducted in 2010.

“Having a lifetime of experienced in litigation, starting with twenty-one years as a prosecutor for the Attorney-General’s office and later serving as a judge in the Court of Appeal and in the Supreme Court, I have seen litigation from many angles. One of the major drawbacks of the system is that for every dispute that goes into litigation, there is a clear winner and clear loser and the animosity between the two parties is almost always heightened rather than mitigated by the process. It creates enemies and usually destroys any chance of the two parties repairing their relationship. This is in complete contrast to the outcome of a successful mediation, where both parties come away with a satisfactory solution to the issue. I think having access to mediation is a real boon to the people of Sri Lanka.”

Justice Hector Yapa

Chairman, Mediation Boards Commission

The Community Mediation Boards of today



“The UK is very happy to support such initiatives that contribute to the resolution of low level conflict and provide viable mechanisms for redress. This evaluation of the community mediation board programme is expected to help identify the gaps and strengthen the process, greatly increasing its impact. After hearing the presentation of the key findings and witnessing the commitment of the Ministry of Justice, I have no doubt that this objective would be achieved.”

Mark Gooding

Deputy British High Commissioner

the most common responses. Considering that the formal justice system can be expensive, involving long drawn out court battles, the evaluation suggests that Community Mediation Boards have been effective and efficient by typically resolving disputes within sixty days.

Since the objective of mediation is to allow disputing parties to resolve their issues between themselves, mediation is generally not seen to be subject to bias. In the survey, 86 percent of disputants stated that mediators never took sides, and less than 3 percent felt they had been negatively affected by bias.

Since the programme began, the Mediation Boards have heard more than two million disputes, and more than a million of them (approximately 53 percent) have been successfully settled.

Community Mediation in Action

Seela and Wimala lived in the same shanty town. They took part in a card game and Wimala, the loser, had to pay Seela her winnings. An ugly dispute ensued with angry words exchanged. The following day Wimala’s husband, Sunil, an electrician by trade, got caught up in the fight, which became physical. Though no one was injured, Seela’s thin gold chain was broken. Seela claimed one piece of the chain was lost and wanted Sunil to pay for its replacement. She estimated the cost at 2,000 rupees. Sunil and Wimala insisted that she picked up both pieces of the chain before their eyes, and was trying to play them out. Seela went to the police, and the dispute was referred to mediation.

Both parties were angry and Seela stated that if her demand was not met in full, she would go to court. The mediators asked the parties to consider a compromise, explaining that the cost of fighting a case in court would far exceed the 2,000 rupees, not to mention the considerable time they would have to spend in court. Seela said she didn’t care and was adamant that she wanted to teach Sunil a lesson. Sunil said that although he could certainly afford to pay the money, he would not, as a matter of principle, allow himself to be scammed. Neither was willing to consider any kind of compromise, and after a second fruitless session, where attitudes seemed to have hardened further, both parties still insisted that they wanted to take the matter up in court. With no avenue left for an amicable solution, a non-settlement certificate was issued.

Names of disputants have been changed to protect their privacy



“There are some key features of the Community Mediation Boards that I think have been instrumental in its success. Among these are: an open multi-stage selection process of mediator candidates and ultimately appointed mediator that has an emphasis on quality; a solid forty-hour training programme that includes experiential training with observation and coaching by trainers; and the constitution of three-member mediation boards, which serves not only to increase the breadth of its collective wisdom and skill, but also helps to prevent any form of strong-arming or corruption.”

Dr. Christopher Moore
Partner, CDR Associates, USA

Although it cannot be conclusively stated that all these disputes would have otherwise been taken to court, it is clear that mediation has provided a welcome alternative to the process of litigation.

The recent evaluation of the Community Mediation Boards also generated significant evidence that the Boards have positive effects on communities nationwide. 82 percent of disputants and 63 percent of mediators surveyed thought that the positive impact of mediation on the community

*Mediators relax before
a session begins.*

The Community Mediation Boards of today

Community Mediation in Action

Chaminda, a small-scale business entrepreneur, was a long-standing customer of one of the state banks. Among other transactions, he had an overdraft of 120,000 rupees, which he had gradually settled until it stood at 15,000 rupees. At this point he applied to the bank for a business loan of 200,000 rupees. To his annoyance, he was asked to produce all sorts of documentation pertaining to his business and financial position. When he applied to another bank for the same facility, he was able to obtain the loan with minimal effort. He immediately switched banks, leaving his overdraft unsettled. After months of unanswered correspondence, the bank referred the dispute to mediation.

Chaminda was quite frank with the mediators. “The only reason I didn’t settle is because I was so angry with the bank for giving me the run-around after doing business with them for so long.” The mediator smiled sympathetically but prodded him gently with, “You do realise that you are now holding on to money that belongs to the bank?” Chaminda smiled back a little sheepishly and nodded. The mediator asks Chaminda to confirm the statement submitted by the representative of the bank, which shows the original amount outstanding, on which interest of 20,000 has accrued. He acknowledged that it was correct. “Now, how can we sort this out?”, prompted the mediator. Chaminda thought for a moment and said, “I will settle the original overdraft in one lump sum payment, if the interest is waived”. The banker responded with: “We would be willing to waive all but 1,000 rupees of interest, if the payment is done within two weeks”. Chaminda readily agreed and signed a settlement certificate to that effect.

Names of disputants have been changed to protect their privacy

went beyond resolving individual disputes. In the North however, only 11 percent responded similarly, perhaps partly due to the fact that the programme is still quite new.

It is also encouraging to see financial institutions like banks and commercial institutions increasingly turning to the Mediation Boards to resolve non-payment of loans, even those above the current mandatory monetary limit. It turns out that both the banks and the defaulters are willing to appear before a mediator because both want an agreement for repayment based on terms the defaulter can afford.

In May 2003, Parliament unanimously passed the Mediation (Special Categories of Disputes) Bill. The bill provides for the Ministry of Justice to create Special Mediation Boards (SMBs) which are established for a specific period of time and confined to special categories of disputes or areas. In an important departure from the legislation for the Community Mediation Boards, the SMBs are also mandated to mediate disputes where one party is a state agency or its representative. The Minister of Justice is also empowered to prescribe the eligibility qualifications for the mediators selected for these boards, taking into consideration the expertise required for the particular category of dispute.

As it happened the first SMBs were created in 2005 in response to the issues that arose in the aftermath of the tsunami that devastated much of Sri Lanka’s coastline. While these special Mediation Boards were given a mandate to mediate any disputes which arose regarding land and

compensation, it was compulsory that there should be an attempt at settling through mediation any dispute below Rs. 500,000 in value, before it could be taken up in court. The mediators, who all had professional backgrounds, were given a six-day training programme that prepared them to handle the special types of disputes they would be required to mediate. The Asia Foundation provided assistance to set up the thirteen SMBs that operated in coastal areas affected by the disaster.

With the success of the Community Mediation Boards model, the techniques of mediation have been adopted to handle a wider variety of disputes, including some commercial disputes and in dispute resolution by Quazi Courts, judicial bodies that settle disputes within the Muslim community. The Asia Foundation supported the first-ever mediation skills training workshop for quazis in 2000, which the entire active cadre of fifty-three attended.

In recent years, Sri Lanka's Community Mediation Boards programme has attracted international recognition. Sri Lanka has hosted delegations from the governments of China, Mongolia, and Nepal who have studied the programme and then used elements of the Sri Lankan model to develop their own systems of community mediation.

Community Mediation In Action

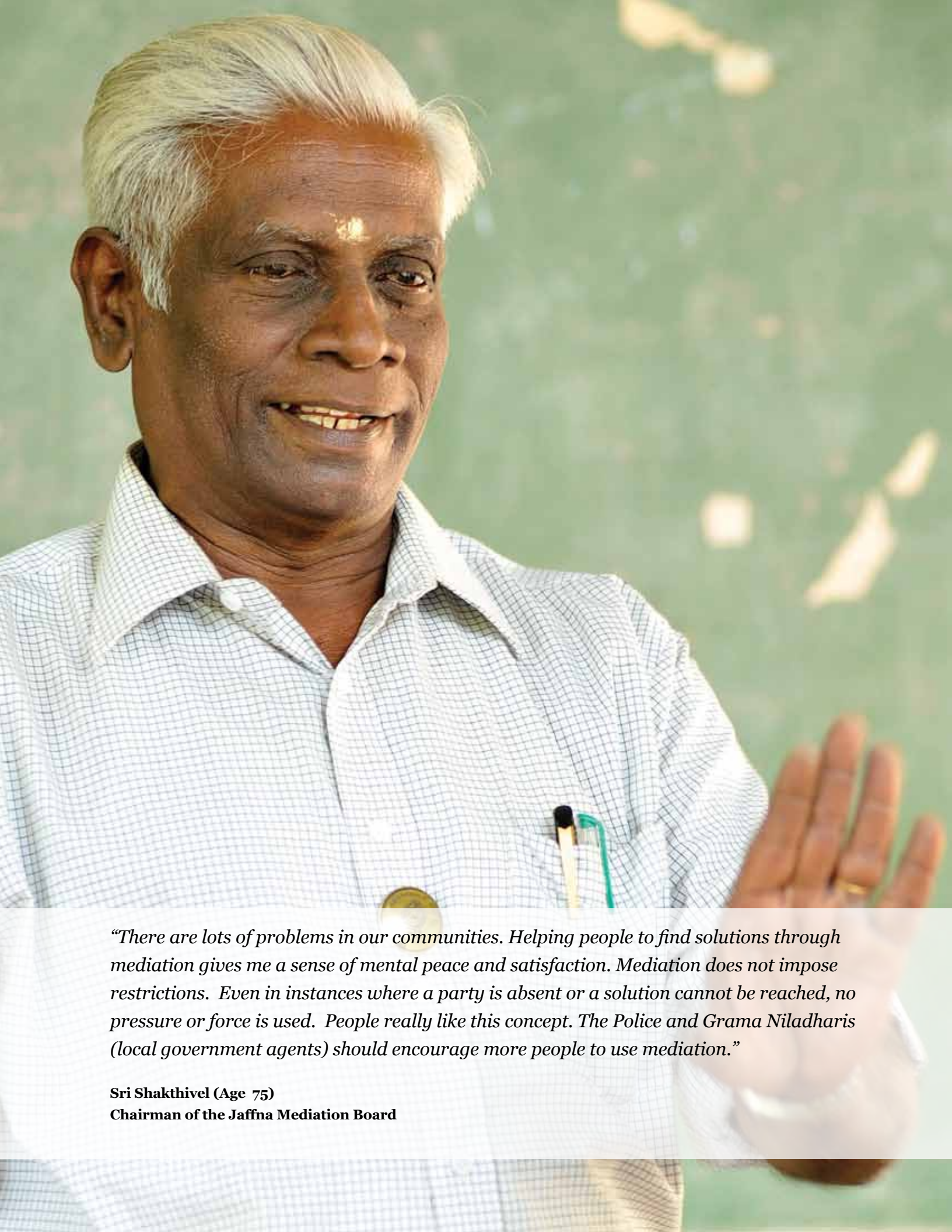
Athula wanted to take his mother, Soma to court. He had built his house on a piece of property that belonged to his mother, and although she had long promised to transfer it to him, had neglected to do so. And he was worried that she never would. They were no longer on talking terms. After receiving a complaint, the police referred the dispute to mediation. As soon as he sat down before the board, Athula said, "Don't waste your time. Just give me a non-settlement certificate and I will take this woman to court".

The mediators were not willing to let it go so easily though and decided to talk to Athula on his own. It turned out that Athula was the youngest of a poor family of seven and had always felt he was given the smallest share of everything. When his siblings got married, they were each gifted a portion of land by his mother. When it finally came to his turn, although his mother let him build his house, the land was never legally transferred to him. Now with a child of his own, the resentment he had nurtured from childhood had finally boiled over.

When the mediators conveyed this to Soma, she was shocked at all the pain that had been bottled up for so long, and insisted that she loved all her children equally. She said the only reason she had put off transferring this land was because she had wanted to collect some money to get the deeds prepared, rather than let Athula pay for it. She had not understood why it was causing so much heartache.

There was an emotional reconciliation between the two and the dispute was settled with Athula stating that he was happy to wait until his mother was ready to transfer the land. Four months later, Athula returned to the Mediation Board, all smiles to say that his mother had presented him with the deeds to his land, and to thank the mediators for their part in healing a long and painful rift.

Names of disputants have been changed to protect their privacy



“There are lots of problems in our communities. Helping people to find solutions through mediation gives me a sense of mental peace and satisfaction. Mediation does not impose restrictions. Even in instances where a party is absent or a solution cannot be reached, no pressure or force is used. People really like this concept. The Police and Grama Niladharis (local government agents) should encourage more people to use mediation.”

Sri Shakthivel (Age 75)
Chairman of the Jaffna Mediation Board

Going forward

In February 2011, the Sri Lankan parliament ratified an amendment to the Mediation Boards Act to increase the mandatory monetary limit of disputes to be taken to mediation from Rs. 25,000 to Rs. 250,000.

The amendment also allows for mediation in cases where minors (under the age of eighteen) have committed petty theft and the value of the stolen items is under Rs. 5,000.

While the ten-fold increase in the monetary limit is a clear indication of the general confidence in the system, it will also raise the profile of the Mediation Boards and significantly increase (perhaps even double) the number of disputes brought to mediation, thereby creating new challenges as well as opportunities for the system.

“With the latest amendment to the Act, we expect that the number of disputes handled by Mediation Boards each year could increase to as many as 300,000.”

A. K. D. D. Arandara

Assistant Secretary, Ministry of Justice

After thirty years of teaching in a government school, Mr. Shakthivel served as Assistant Director for Education for four years. He was nominated to the Mediation Board by the Jaffna District Secretary.

The MOJ has identified several key areas in which the programme needs to be strengthened in order to cope with the increase in the volume and complexity of disputes, and to remedy the shortcomings in the current system, as well as to generally improve the effectiveness and professionalism of the mediators.

Mediator training

The Ministry plans to add ten Sinhala-speaking and five Tamil-speaking mediation trainers to its permanent cadre within the next few months. Once it has improved its training capacity, the MOJ will need to start increasing the number of mediators serving in each Mediation Boards area. The responsibilities of trainers and the geographic areas they are expected to cover may also need to be further clarified, and logistical arrangements and facilities for mediation training improved.



Going forward

“We are very excited about the new clause in the Act that allows disputes involving children to be handled through mediation rather than the courts. This opens up a lot of potential. For example, if the mediation process can uncover the real issue that drove a child to steal in the first place, there would be a much better chance of putting an end to this behaviour, which is certainly something worth striving for.”

Kamalini de Silva

Additional Secretary, Ministry of Justice

In January this year, the MOJ published new mediation trainer and trainee manuals, developed with the support and collaboration of The Asia Foundation with funding from the British High Commission. The manuals, printed in Sinhala, Tamil, and English, include content on issues such as gender and diversity sensitivity, and will help standardise the process of mediation and training of mediators, and serve as a resource for knowledge and skill development.

In 2003 the Ministry, for the first time, included a component on gender sensitisation in the general mediation skills training programme. In 2009, the Ministry began conducting a series of special three-day training programmes for mediators on gender sensitisation and gender-based violence, which addressed topics such as family disputes and women’s rights. The training, which is helping to fill a long-felt void, is being supported by the local Non-Governmental Organization, Women in Need. Thirty-seven programmes have already been conducted and several more have been planned, with a view to covering all the Boards throughout the island by the end of 2011.

There is also a need to provide more specialised training in areas identified by the mediators themselves, which includes training on case management and time management.

The need for diversity

Fewer than 10 percent of mediators are under the age of forty-five, and female mediators number less than one hundred – only 14 percent of the total. And with almost eight out of ten mediators working in or having retired from the public sector, there appears to be a bias toward the selection of mediators with links to public office. There

“Overall, I’m very pleased with how the CMBs have grown over the past twenty years. The number of settlements they have achieved – over a million – is really quite remarkable, and the fact that the system has given the individual Boards a significant element of local control and really improved people’s access to justice – is very impressive. My only serious concern is the persistent failure to recruit a higher number of minority, women, and youth mediators.”

Dr. Christopher Moore

Partner, CDR Associates, USA

A teacher attached to a school in the Kotte area, Mr. Nandakumara was nominated to the Board by the local priest who saw his commitment to social service and felt he had the attributes required to be a good mediator.

Kapila Nandakumara (Age 43)

3 years of service as a mediator



“I get a lot of satisfaction from the time I put in as a mediator. I think having a mix of youth and experience on the Boards is ideal, because while people respect the life-experience that older mediators bring to the table, younger mediators may have a better understanding of the issues faced by today’s youth. I feel we need to have some sort of system in place to see that once an agreement is reached, it is implemented. I’m not sure how this can be done practically, but I think it would give people a greater confidence in the system.”



A banner announces the presence of a Mediation Board at a school in Jaffna.

is also a significantly lower proportion of Tamil mediators (5 percent) than in the population as a whole (Sri Lankan and Upcountry Tamils together make up approximately 18 percent of the population). While the number of Tamil mediators will increase with the establishment of more Boards in the Northern Province, more should be recruited, especially in the Central and Eastern Provinces and in multi-ethnic divisions in the South.

Most of today's mediators fall within a very narrow profile of 'males above sixty' – in keeping with the traditional 'respected elder' role, and perhaps a long-established mindset about those most suited for this kind of public role. In Sri Lankan society, retired men are also the most likely to be able to set aside the time required. While this profile has some merit, a better mix would strengthen the Boards by

adding different perspectives and a better understanding of specific issues faced by different population groups.

Mr. Chandrasena retired from government service as an officer of the Ministry of Housing. He says the general acceptance of mediation has steadily improved over the past ten years.

N. D. Chandrasena (age 69)
14 years of service as a mediator



“in some of the disputes I have mediated, the disputants sit down for their first session at absolute loggerheads, and several sessions later, leave the premises together, sharing the same vehicle. In others, for one reason or the other, the dispute cannot be resolved through mediation, but the two parties begin to understand each other better, and leave on better terms than when they arrived. In a few cases, one of the disputants will simply say, “Please give me a non-settlement certificate. I will not participate in any discussion”; and this almost always means that they have consulted a lawyer beforehand, who wants to handle the case, in court.”

Going forward

“Our mediation trainers play a very important role in the mediation programme. They are not only responsible for training, but also for supervising and advising the Boards. But, being government servants, the financial remuneration we are able to offer them is very limited, so we need to find other means to keep them motivated and enthusiastic about their jobs. One way we try to do this is by arranging good training programmes for them, including study tours to other countries and exposure to international experts, as and when funding is available.”

Kamalini de Silva

Additional Secretary, Ministry of Justice



One way of achieving this increase in diversity is to diversify the pool of people who are responsible for sending in nominations for mediators. It is not uncommon for the chairperson of a Mediation Board to nominate the entire Board for re-appointment, which effectively blocks any change to the status quo. Better diversity might be achieved by soliciting nominations from non-governmental and community-based organisations, and perhaps women’s organisations. Practically, this would mean that the notification calling for nominations would need to be more widely distributed and more widely publicised than it currently is.

In response to the recommendations of the recent evaluation of the Community Mediation Boards programme, which was conducted with the collaboration of The Asia Foundation, the Ministry of Justice has resolved to ensure that at least 30 percent of nominations accepted for each mediation board are women, and that 30 to 40 percent of nominees are between the ages of 30 and 45.

“On the positive side, the Ministry of Justice has integrated women’s issues into training, which is a very important step. On the negative, the Ministry still needs to do more to get more women on Mediation Boards, particularly because of the nature of many of the disputes that are brought to mediation. There is a general idea that women do not have the time to set aside for this, because of their domestic duties, but in fact there are many women, particularly in rural areas who would be more than willing to volunteer their services, if they are nominated. I feel it is up to the Ministry to ensure that those responsible for nominating candidates include more women.”

Ramani Jayasundere

Senior Technical Advisor, The Asia Foundation

The Chairman of the Kesbewa Mediation Board uses his mobile phone to submit an electronic report giving data on the disputes mediated by the board, as part of an ongoing pilot project.



Mediators at the Kesbewa Mediation Board prepare for a sitting.

Creating more awareness

Despite generally high levels of awareness regarding the existence of Community Mediation Boards, at the moment it is only those who have directly participated in mediation who really understand the process. It is widely felt that this lack of understanding is one of the reasons why a significant number of disputants (about one in ten) refuse to appear at mediation. Although there is a general consensus that this gap could be best addressed through media, particularly TV campaigns (similar to campaigns supported by The Asia Foundation during the early days of the programme), there is currently no funding available for such an initiative.

Managing information

Managing data and information on functioning Mediation Boards is another area in need of attention.

Currently, the chairperson of each mediator panel submits a monthly report giving the basic statistics of the disputes heard by the panel, but the information is very limited and not easily processed. For example, information on the types of disputes being mediated and whether they are voluntary or mandatory, is currently not captured.

The Asia Foundation recently helped the Ministry to design a process where the monthly reporting system is replaced by weekly electronic reports sent in by the chairpersons via mobile phones. The project is currently being piloted at two Boards in the Colombo District. Once the process is tested and refined based on feedback from its users, a system that will use this data to automatically populate a central database will be implemented. This is expected to make the evaluation and analysis of data for monitoring and strategic planning much easier.



Strengthening links with stakeholders

Other areas identified for development include strengthening the links with key government institutions and ironing out any ambiguities about the roles they are expected to play.

For example, the Mediation Boards have no formal connection with the police, even though in reality the police play an important role in referring disputes to mediation and even go beyond their mandate by helping the boards to contact disputants. It would clearly be useful for formal procedures to be established setting out the kind of information that should be sought and shared with them, and the role the police are expected to play when they become engaged in a particular dispute.

The Asia Foundation, with financing from the British High Commission, has supported the Ministry in its initiative to conduct a series of stakeholder programmes in each district, involving district judges, magistrates, police chiefs, and local government officials since 2006, in a bid to raise awareness and strengthen links between these parties and the local

“We hope that by introducing the concept of mediation to children, we will be able to impart an appreciation of its value to the next generation. And hopefully, some of them will be motivated to volunteer their services as mediators, and we will have a new generation of young mediators in the years ahead.”

A. K. D. D. Arandara

Assistant Secretary, Ministry of Justice

Mrs. Muralitharan was employed as a stenographer at the Mulaithivu Primary Courts until she married and gave up her job. She now works with a community-based organisation, the Women’s Rural Development Society. Until she was nominated as a mediator by a local government official, Mrs. Muralitharan knew little about the mediation process, but having been an active member of the Board for several years, she is now an enthusiastic proponent of the programme. At present, she is one of two women serving on the Jaffna Mediation Board.



“Our Board in Jaffna mediates in disputes involving quite a wide range of issues. Non-payment of debts, boundary disputes, issues with regard to sharing of wells, and family problems. One special type of dispute we have to deal with involves instances where people have settled on land that has been abandoned for many years by their owners, who had moved away to escape the long conflict. When the owners return to claim their property, the settlers sometimes refuse to leave, causing a serious dispute.”

Gowry Muralitharan (age 49)
4 years of service as a mediator

Mediation Boards. These programmes, which are facilitated by MOJ trainers, have proved to be quite effective, and are still ongoing.

Building for the future

One particularly innovative programme initiated by the Ministry of Justice introduces mediation techniques to school children. Mediation trainers train groups of school children and teachers and help each school to establish a 'mediation cell', and a functioning mediation panel to help resolve disputes between students through peer mediation. The panels, supervised by programme assistants from the MOJ, conduct various activities like school camps, leadership training programmes, competitions, and exhibitions related to mediation.

The Ministry is also considering the development of dispute resolution systems and procedures as a practical way of defusing tensions in local universities.

Promoting Community Mediation for more than two decades

The Community Mediation Boards programme set up through the Ministry of Justice has been one of the great success stories for the Sri Lankan justice system, and The Asia Foundation has been an enthusiastic partner in this process since its very inception. From the first mediation training programmes in the late eighties, to mediation skills training for members of Mediation Boards in the war-torn Eastern and Northern Provinces, to the establishment of

Special Mediation Boards for the mediation of disputes arising in the wake of the 2004 tsunami, to stakeholder workshops and major publicity campaigns, the Foundation's longstanding support spans across two decades and continues today.

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