

**A GUIDE**

to

**COMMUNITY MEDIATION PROGRAMME**

**AND**

**MEDIATION BOARDS  
OF SRI LANKA**

**Ministry of Justice Law Reform and National Integration**

**2003**

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## ABOUT THIS GUIDE

This Guide was created to provide information regarding the Community Mediation Programme which serves the citizens of Sri Lanka.

The Mediation Boards Act of 1988 and its Amendment of 1997 provides the legal framework for the operation of the Mediation Boards. This Guide articulates how mediation is conceptualized by the Programme based on key sections of the Act. It also articulates other key aspects of the Community Mediation Programme including the roles and responsibilities of the Mediation Boards Commission, the Ministry of Justice, the Mediation Boards and Mediators. The Guide also contains newly developed information including a Code of Conduct for mediators and an Information Sheet to be given to all potential parties.

The Guide was developed largely from information generated by a cross section grouping of representatives from the Mediation Boards Commission, the Ministry of Justice, the cadre of trainers, chairpersons and mediators from Mediation Boards.

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## INTRODUCTION TO MEDIATION IN SRI LANKA

Sri Lanka has had a long and rich history of third parties assisting others in dispute. Third party assistance has ranged from Village Councils as early as 425 BC to Rural Courts in 1856 to Conciliation Boards introduced in 1958.

Mediation was introduced in the late 1980's as a response to the need to provide an alternative to the prevailing dispute resolution mechanisms, which are primarily adversarial. It was hoped that this alternative would be more meaningful in the resolution of minor disputes in communities and would relieve courts of some case overload.

Mediation stands in marked contrast to an adjudicatory/litigation process that is adversarial in nature and places much of the responsibility outside the parties themselves. Mediation provides an alternative dispute resolution process that is informal and voluntary and one that leads to cooperation with parties the decision-maker. Underlying principles of interest-based mediation, the form of mediation adopted by the Community Mediation Programme, include self-determination, collaboration, transparency and reparative and restorative justice.

## DESCRIPTION OF THE COMMUNITY MEDIATION PROGRAMME

The Community Mediation Programme is a dispute resolution system that provides efficient, cost effective and informal access to justice.

Mediation was initiated in Sri Lanka in its present form by the enactment of the **Mediation Boards Act No. 72 of 1988**. The Act provides the legal framework for institutionalizing Mediation Boards, which are empowered to resolve by the process of mediation, all disputes referred to it including referrals from the courts. A large number of the disputes handled by the Boards relate to community disputes, civil and criminal in nature. Further, the banking system has increasingly been referring issues regarding debts as well.

A Commission appointed by the President under the Act appoints mediators who have been vested with the responsibility to provide mediation services for certain criminal and civil matters, where the State, a public officer or the Attorney General is not involved as a party. The Mediation Boards issue certificates of settlement and non settlement depending on the outcome which the parties have been able to achieve. A certificate of non settlement from a Mediation Board is necessary for a Court of first instance to entertain any action in relation to movable or immovable property, debt, damage or demand which does not exceed Rs.25, 000/- in value, and offences specified in the second schedule to the Act.

The Ministry of Justice is responsible for the implementation of the Act. Housed within the Ministry is a cadre of trainers who is charged with preparing mediators to carry out their responsibilities.

The mediation process provides a mechanism to settle disputes in the area where the dispute originated, and for disputes to be settled by their peers in the community. Thus, Mediation Boards are or will soon be found throughout the island. Mediation Boards, headed by a Chairperson, operate on a voluntary basis with panels of three meditating a given dispute.

## COMMUNITY MEDIATION PROGRAMME'S DEFINITION OF MEDIATION

Mediation is a voluntary, assisted-negotiation process, facilitated by an impartial and neutral third party with no authoritative decision making power, that seeks an accepted amicable settlement through the equitable participation of all concerned parties, that is aimed at removing the root causes of the dispute and restoring relationships where appropriate.

The Mediation process is not -

- ▲ a court hearing.
- ▲ a process to determine the guilt or innocence of parties.
- ▲ a process of determining who is wrong or right.
- ▲ A process that requires witnesses.

## UNDERSTANDING MEDIATION AS PER THE MEDIATION BOARDS ACT

**Section 10** of the Mediation Boards Act states that:

The duty of the Mediation Board shall be, by all **lawful means**, to endeavour to bring the disputants to **an amicable settlement** and to **remove**, with **their consent** and **wherever practicable**, the **real cause of grievance** between them so as **to prevent a recurrence** of the dispute or offence ...

### LAWFUL MEANS

- That which is done by lawful means; not by threat - mental or physical, inducement, force, intimidation nor any other unlawful measures.

### AMICABLE SETTLEMENT

- A consensus decision by the parties themselves to bring about a settlement to the dispute.
- A settlement made in agreement with each other, without influence from the panel of mediators.
- For this, parties must cooperate and try to understand each other's problems, needs, concerns, fears, desires and related issues.
- For this, the mediators' role is to help the parties to reach understanding about the issues and interests at hand.

### REMOVE THE REAL CAUSE OF GRIEVANCE

- Removal of the presenting issue through a process of helping the parties to move beyond the surface issues and obstacles to the underlying causes of the dispute and to develop an understanding of each other's perspective. Interests, concerns and fears of parties need to be articulated and acknowledged.

### WITH THE CONSENT OF THE PARTIES

Both parties to the mediation must willingly agree to a settlement (if any) by listening and understanding the grievance of the other party and without being forced or induced. They must also want to deal with more than the surface issue.

### WHEREVER PRACTICABLE

- Parties must be supported to reach a settlement when practicable and must be guided to seek alternatives to settle grievances if they so require. In an instance of non settlement, non settlement must be recorded without delay.

### TO PREVENT A RECURRENCE

- A decision reached must be for the well being of both parties and mutual trust must be established to remove all root causes of grievances.



## **GOAL**

### **OF THE COMMUNITY MEDIATION PROGRAMME**

The provision of a satisfactory alternative dispute resolution mechanism for the people of Sri Lanka.

#### **The PURPOSE of Mediation**

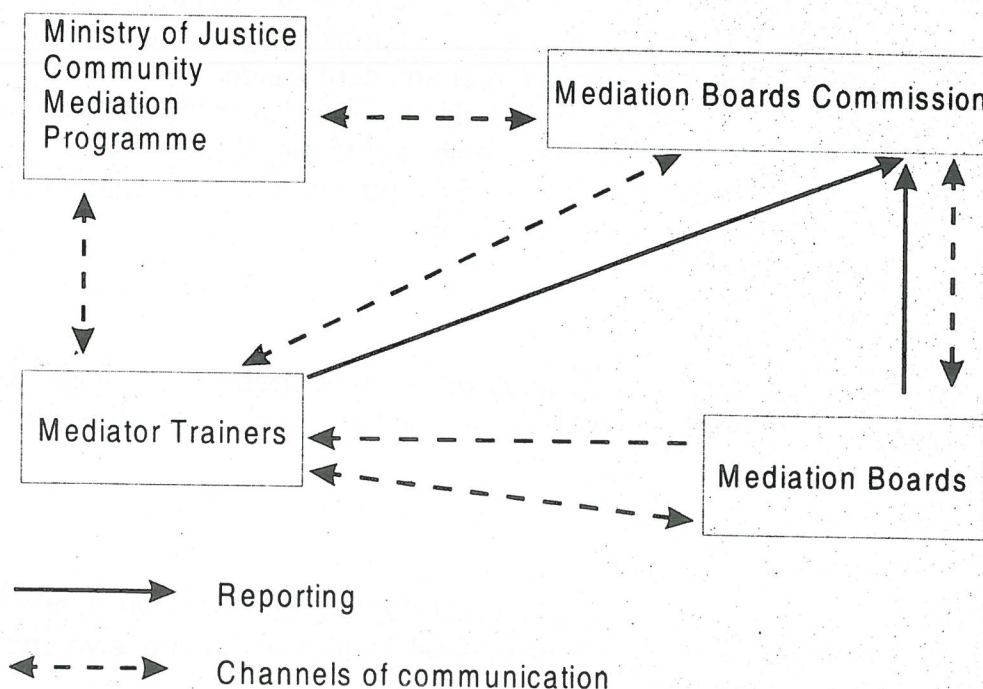
To provide an alternative dispute resolution system that –

- o is informal
  - o builds on traditional methods of the past
  - o is cost effective
  - o provides for the settlement of disputes in the area where the dispute originated
  - o provides for the settlement of disputes by peers
  - o empowers parties to resolve their disputes on their own and becomes a mutually satisfying process where both parties feel that they have gained
  - o provides for parties to be open and forthcoming, respecting the right of strategic openness, to build trust and confidence
  - o provides for a process which helps to understand the needs, concerns and fears of other disputants which led to the dispute
  - o assists the parties to move from the past to the future without the need to assign guilt and/or right and wrong.
- 
- \* To divert from courts of law, disputes which do not need to be judged in terms of legal rights, allowing more concentration by the courts on grave issues where legal rights are the focus.
  
  - \* To provide a more meaningful method of dispute resolution which seeks to eliminate the weakness of the adversarial system i.e. inexpensive and speedy resolution.

## ORGANIZATIONAL CHART

The responsibility for the implementation of the Mediation Act and for the mediation services provided by trained, volunteer community members rests with the following:

- The Mediation Boards Commission
- The Ministry of Justice (Designated Officials and Cadre of Trainers)
- The Mediation Boards (Chairpersons and Mediators)



## ROLES AND RESPONSIBILITIES

### Mediation Boards Commission

As defined in section 3 of the Mediation Boards Act in relation to mediators -

- \* Appoint, transfer and dismiss mediators
  - \* Supervise mediators
  - \* Issue directions as may be necessary
- 
- Study feedback of chairpersons, and general public and ensure efficient functioning of Boards by regular monitoring and taking remedial measures.
  - Constitute Mediation Boards, reconstitute boards every three years.
  - Appoint chairpersons of Boards.
  - Advise the Ministry of Justice regarding mediation matters, particularly training, awareness and policies.
  - Meet with chairpersons and mediators whenever possible.
  - Get feedback on Boards and take remedial measures whenever necessary.
  - Provide the necessary books, printed forms and stationery, funds for postage to Mediation Boards Chairpersons.

## ROLES AND RESPONSIBILITIES

### Ministry of Justice Community Mediation Programme

- Decide on policy regarding mediation in Sri Lanka and specifically to the Community Mediation Programme.
  - Implement the Community Mediation Programme.
  - Monitor the implementation of the Mediation Programme and introduce law reform where necessary.
  - Provide necessary facilities to the Commission to discharge its functions.
  - Decide criteria for selection of Mediator Trainers.
  - Train Mediators.
  - Design and develop mediation training programmes.
  - Proclaim new Mediation Board areas by Gazette Notification.
  - Issue instructions to Mediator Trainers, issue transfer orders to Mediator Trainers and carry out disciplinary actions with regard to Mediator Trainers.
  - Recommend trainers for appointment to the Public Service Commission.
  - Conduct awareness programmes on mediation.
  - Provide finances for the implementation of the Community Mediation Programme (obtaining financial allocations from the Treasury).
- Provide logistics.

## **ROLES AND RESPONSIBILITIES**

### **Mediator Trainers**

- Conduct the preliminary training programme for persons selected to be appointed as Mediators and submit a report in respect of each trainee on the aptitude knowledge and skills of such Trainee to function as a Mediator.
- Conduct awareness programmes for the public, schools, Grama Niladharis, law students and other stake holders.
- Coordinate with relevant institutions like the Courts, Police and government administrative officers.
- Organize and conduct the five day mediation training programmes and the advanced training programmes.
- Observe mediation sessions and coach Mediators in further development of techniques and skills.
- Report on petitions referred by the Mediation Boards Commission.
- Participate in interviews to recruit Mediators.
- Keep abreast of developments in the mediation field.
- Assist in monitoring and evaluation of the Mediation programme.

## **ROLES AND RESPONSIBILITIES**

### **Mediation Board Chairpersons**

- Give leadership to the Mediators on the panel.
- Facilitate, guide and assist Mediators.
- Ensure that the process of mediation is carried out within the parameters of the Mediation Boards Act.
- Ensure that facilities are provided.
- Record field visits.
- Coordinate with the Mediation Boards Commission with regard to reports.
- Coordinate with the AGA with regard to facilities, payments and records.
- Submit statistical data required by the Ministry of Justice and Mediation Boards Commission.
- File documents in order.

## ROLES AND RESPONSIBILITIES

### Mediators

- Conduct mediations in line with Section 10 of the Act and the CMP definition of mediation.
- Conduct the Mediation as instructed by Trainers and in doing so:
  - \* Explain the process of mediation to the parties
  - \* Be impartial
  - \* Actively listen to view points of both parties
  - \* Be courteous to all parties
  - \* Afford adequate opportunity to all parties to be heard
  - \* Guide parties to explain their issues and identify their interests
  - \* Guide parties to resolve the dispute amicably
  - \* Complete the process within thirty days in dealing with offences
  - \* Complete the process within sixty days in dealing with other disputes.
- Maintain confidentiality in respect of all evidence given, documents submitted and of any other matter revealed or discussed at the Mediation session.
- Assist in writing a mutually acceptable agreement specifically outlining the terms of resolution.
- Issue certificates promptly.
- Inform the Mediation Boards Commission if there is a change of address or change in status.
- Attend meetings regularly and punctually.
- Cooperate with the chair.
- Cooperate and coordinate with other Mediators.
- Communicate with other Mediators.
- Collect and organize the required documents.
- Identify and set up a place for Mediations & meetings.
- Organize Mediation sessions.
- Create awareness, observe and provide guidance wherever necessary (privately) to Mediators.
- Organize field visits.
- File documents in order.

## WHAT IS 'SUCCESS' IN MEDIATION ?

A successful mediation is one:

- Which comes to a settlement that is mutually acceptable to both parties;
- Which prevents the recurrence of causes to the dispute through the influence of other parties;
- Where the relationship between parties is restored where appropriate;
- Where long standing conflicts have been resolved.
- Where all stakeholders are content with the settlement.
- Which has been settled fairly, wisely, and efficiently

## STANDARDS OF PRACTICE

Standards of practice are necessary for the Community Mediation Programme in order to:

- Inspire confidence among the parties that come to mediation
- Create confidence and trust in the process of mediation
- Ensure that mediations are conducted in an impartial and confidential manner
- Remove all conflicts of interest.
- Ensure that the parties are satisfied with the handling of the process.

The following standards of practice are adopted by the Community Mediation Programme:

- Mediators must have knowledge of and competence in the mediation process in addition to personal attributes and life experiences in dealing with disputes and conflicts.
- Mediators must assure confidentiality of proceedings and maintain confidentiality of the parties' discussions.
- Mediators must conduct the mediation in an impartial manner. If the Mediator is unable to do, the Mediator must withdraw from the mediation.
- Mediators must encourage mutual respect among the parties and demonstrate respect for all parties and co mediators.
- Mediators must work with the parties to assist them in coming to a mutually acceptable settlement.
- Mediators must accept that the parties are attending the mediation voluntarily and have the right to terminate the mediation.
- Mediators must be of exemplary character.



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## CODE OF CONDUCT

A Code of Conduct for Mediators is essential –

- To establish an understanding of how Mediators are expected to conduct themselves during mediations.
- To move the field of mediation towards professionalism.
- To ensure the observance of the Code in order that the concept of Mediation is not prejudiced by the possible misconduct of Mediators.

CMP Mediators shall:

- Follow the mediation process and conduct the process in a manner consistent with the principle of self-determination
- Facilitate parties to arrive at a solution or decision taken by themselves
- Be neutral in regards to all parties (not demonstrate side-taking)
- Be impartial; be free from conflict of interest with regard to the issues of the dispute and the parties to the dispute.
- Maintain confidentiality as per the expectations of the parties
- Avoid concerns with the vested interests of parties
- Withdraw from mediations for which they are ill suited.
- Avoid mediating in disputes in which there is a personal interest or where there could be a perception of a personal interest.
- Be polite and courteous.
- Be patient and afford parties ample opportunity to discuss their concerns.
- Be assertive in focusing and refocusing the process when necessary..
- Avoid wasting of time by having the discussion stray from the agreed upon issues..

CMP Mediators shall not:

- Provide legal advice
- Make decisions for parties
- Place personal interest on or benefit from the terms of settlement of the dispute
- Be dictatorial in approach.
- Coerce threaten, induce, force, intimidate or use any other unlawful measures to push parties into agreement
- Make judgments or discriminate based on social differences (sex, ethnicity, class, caste, religion, education or other)
- Take payments or compensation in any form.

## ATTRIBUTES AND QUALITIES OF MEDIATORS

Mediators should –

- Be neutral and impartial
- Be able to give opportunity for equitable voice
- Be able to understand the dispute
- Maintain confidentiality
- Communicate effectively
- Inspire confidence in parties
- Be sensitive to social diversity (gender, ethnicity, religious class, caste) and their implications for people
- Be able to understand subtle power imbalances in society (gender, class, race etc.).
- Be able to identify, accept and detach one's self from personal and private values which may influence issues under consideration
- Show patience
- Have integrity
- Be mature
- Be empathetic
- Be analytical
- Self-reflect and work to improve
- Assist parties to negotiate including being a “check on reality”
- Assist parties to resolve a dispute in reasonable amount of time or,
- Record non settlement without delay

## SELECTION CRITERIA FOR MEDIATORS

### Guidelines in selecting Mediators

- Persons to be selected as Mediators must be nominated.
- Mediators must represent geographical areas based on residence.
- Mediators must represent an ethnic balance reflecting the population in each distinct area
- Sincere attempts including removal of barriers must be made to obtain a gender balance.
- A mix of age groups needs to be given full consideration.
- Government servants serving in a particular area must be given the opportunity of being appointed as a mediator in such area of service.

### Further, potential mediators should –

- Believe in the concept of mediation.
- Be of sound behaviour.
- Be open and flexible.
- Be acceptable to the community.
- Be fair thinking and balanced.
- Be able to physically carry out the required responsibilities.
- Be non political.
- Be fluent in language of the area.
- Have sound communication skills - verbally and written.
- Have the capacity to contend with complex factual material placed before mediation.
- Have a sense of service to others and to the community.

## ASSESSMENT CRITERIA FOR EVALUATION OF POTENTIAL MEDIATORS

### Key issues to look at in assessing “to-be” Mediators

A potential mediator should portray the following ATTRIBUTES:

- Ability to listen actively
- Willingness to look beyond personal values and ideas and accept diverse viewpoints
- Ability to be objective
- Willingness to cooperate with others (parties, Mediation Board members)
- Display Patience
- Inspire confidence and trust
- Demonstrate respect for others
- Demonstrate empathy

A potential mediator should have KNOWLEDGE on:

- The 5 step mediation process
- Negotiation techniques
- Communication processes
- Conflict and the nature of conflict
- What is mediation
- The role of the mediator
- The role of the mediation panel
- The role of the mediator Chairperson

To effectively MANAGE THE MEDIATION PROCESS, a potential Mediator must show that he/she can :

- Follow the 5 step mediation process
- Help parties to move from positions to interests
- Help parties to get to understanding
- Help parties to overcome dead-lock situations, whenever encountered.
- Help invent creative options for settlement.
- Track progress for the parties

A potential mediator should have the following COMMUNICATION SKILLS AND MEDIATION TECHNIQUES:

- Effective listening
  - \* Five tools & attending
- Defining issues
- Questioning
- Probing
- Analyzing conflict
- Reframing
- Manage the emotional climate
- Caucus when appropriate
- Use silence effectively
- Non defensive response

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## THE FIVE DAY MEDIATION TRAINING PROGRAMME

### Topics

Simplified Act - highlighting the main features relating to mediators  
Notion of service to others and community (taken from principles of social work)  
Theoretical Foundations of Mediation  
Alternative Dispute Resolution

The nature of conflict  
Analyzing conflict  
Interest-based negotiation

Principles of mediation  
Mediation and the mediation process  
Moving from position to interests  
Qualities and attributes of a mediator  
Role of the mediator  
Managing the emotional climate

Communication process, skills and strategies

Measures for changing attitudes  
Gender sensitization and gender integration throughout the programme

The work of the Mediation Boards  
Roles of the mediation panel/chairperson  
CMP Code of Conduct for mediators

Discussion on problems faced by mediators in the Mediation Boards

### Methodological Approach

Principles of Adult Education  
Elicitive and Iterative Approaches  
Cooperative Learning  
Experiential & Participatory

### Methodological Technologies

Role plays and simulations  
Brainstorming  
Demonstration and practice  
Handouts and reference reading material  
Lecturettes

## TRAINER OF MEDIATORS

A Trainer of Mediators should -

- Have knowledge of conflict, negotiation, and mediation
- Have a sound ability in the basic skills, strategies, and process of mediation
- Have expertise in adult learning and in training methodologies
- Have good communication skills
- Be approachable and open to others
- Have capacity to demonstrate patience, empathy and respect for others
- Be willing to look beyond personal values and ideas and accept diverse viewpoints
- Have coordination and leadership skills
- Be expertly proficient in Sinhala or Tamil

Selection of Trainer of Mediators should be based on -

- Personal attributes as outlined above
- Enjoys working with people and being of service to others
- Willing to embrace the concept of cooperative means of resolving disputes
- Has experience or is willing to gain experience in mediation
- Has some background in teaching and learning
- Believes in life-long learning









