



Evaluation of the Community
Mediation Boards Program
in Sri Lanka

January 2011



Ministry of Justice

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I. Executive Summary

Background

Since 1991, The Ministry of Justice's Community Mediation Boards (CMB) program has been creating and managing Mediation Boards throughout the country. Comprised of non-political, volunteer mediators selected by a Mediation Boards Commission (MBC), these boards have become an important part of the Sri Lankan justice system, and a significant mechanism for promoting social harmony and easing social tensions. 300 Mediation Boards are now functioning in Sri Lanka, handling an average of 112,000 cases every year with annual settlement rates between 54 to 70 percent. Despite this significant role, this report marks the first comprehensive evaluation of the CMB program in 20 years of operation. This evaluation was carried out through collaboration between the Ministry of Justice and The Asia Foundation, and took place from November 2009 through May 2010.

The Impact of Mediation

The CMB program was planned to generate several different outcomes and impacts including the effective resolution of disputes, a reduction in case backlogs in the court system, improvements in social harmony and improved access to justice. This evaluation has found that the program has achieved progress in meeting several objectives. Analysis of the effectiveness and usage of the Mediation Boards found that most community members in areas with active boards are aware of the Mediation Boards and users showed high levels of satisfaction (90%), which reflects a strong record of settlement. So it is clear that Mediation Boards have functioned well and generated settlements that met user expectations.

Analyzing the effect of the CMB program on state court case loads remains a challenge because of a lack of data. What we can say about the effect of mediation on the justice system is that since 1991 more than 2 million individual cases have been mediated, and 60% of them have been resolved, providing a quick and effective alternative method for resolving disputes.

Considering the role of mediation in improving access to justice, survey results show that a substantial number of mediation users find the system to be faster and cheaper than the courts. Some users also view mediation as fairer than the courts. Overall, 80% of users surveyed prefer to use mediation over the courts. Mediation Boards also generate high rates of satisfaction among marginalized population groups including women, minorities and the unemployed.

Community members and mediators also believe that mediation improves social harmony. 82% of disputants and 63% of mediators surveyed think that mediation has a larger impact on the community, beyond resolving individual disputes, and 90% of mediation users surveyed find that mediation helps disputants to understand the other side's point of view. A high percentage of disputants find that their relationships to their adversaries improve through the process. Case studies largely confirmed these conclusions.

Findings on Mediation in Practice

Overall Findings

- 1. Interest Based Mediation has been successful in the Sri Lankan context** – Survey findings demonstrate that the process of interest-based mediation is used to good effect at most Boards studied. General satisfaction with the process among users was clearly indicated and disputes are settled at a high rate within the expected time limits.
- 2. Mediation is largely successful across Sri Lanka** – While the study did not specifically focus on analysis of mediation performance across different provinces, findings did indicate that high levels of satisfaction were present across the country. The North was analysed somewhat separately given the disruptions to most Mediation Boards for security reasons in recent years. In the North there were similar rates of satisfaction among mediation users but less awareness and understanding of the potential impact of the Boards among the population. Across the country, including the North, the prospects for Mediation Boards to continue developing seem to be very promising.

Institutional Findings

- 3. Oversight and strategic planning can be strengthened further** - Mediation has been a success, but there remain concerns about oversight and management of the institutions. Problems areas include weak financial reporting on the CMB program and the lack of capacity to manage and use the information gathered through the rigorous monitoring systems in place. At the Mediation Board level mediators also desire more training on managing time, cases and the operations of the Boards.
- 4. Linkages within government institutions, especially the police, need to be reviewed** – Linkages with the police are very strong, but are happening outside formal policies or regulations, while links to government and the courts remain weak in many areas contrary to the expectations of the Mediation Act. At the District and GN levels local officials were uncertain that mediation was beneficial to them and were not referring cases or assisting with communication. Some judges also described mediation in either a negative or uninterested light. The police, however, seem to work closely with the Mediation Boards, but there are no formal guidelines for those interactions.

Program Management Findings

- 5. More opportunities to focus on diversity are present** – Increasing diversity within the program remains a challenge. Diversity among mediators is lacking and an inability to hire Tamil speaking mediator trainers has persisted. The nomination and final selection processes might be seen as contributing to these challenges. In general it was found, however, that all communities are satisfied with the mediation services being provided.
- 6. National strategy needs to learn from local practice** – Some procedures and processes, at various levels, are not carried out precisely as envisaged. Underlying causes of changes in practice seem largely to be a combination of time and efficiency issues, but insufficient oversight and management could also play a role. There is little evidence that changes have significantly impacted the effectiveness of mediation, but the inconsistencies need to be identified and understood.

- 7. More in-depth training desired for Mediators** – The quality of training was clear, and the initial five day course seems to prepare mediators well for carrying out their duties. However, both mediators and trainers expressed a strong interest in opportunities to focus on additional topics such as mediation of assault cases and land disputes, diversity, human rights and management of a Mediation Board. The delivery of advanced trainings was also identified as an area for improvement.

Case Findings

- 8. Assault and land disputes are the most common types of disputes** – According to the results of the user survey on mediation, assault was the most common type of dispute mediated, followed by land disputes and then disagreements relating to loans. These figures roughly correspond to official police statistics on minor complaints. Assault and land issues are also the most challenging to generate settlements for according to mediators because of complex legal issues these cases raise.
- 9. Instalment payment settlements pose a unique challenge** – One of the key legal ambiguities is the definition of a settled case; this issue is particularly relevant when dealing with settlements based on payments by instalment. Instalment cases pose a unique problem since even after a settlement is reached, the case is not really “settled” until all instalments have been paid. This creates problems in complying with the statutory time limit for mediation.
- 10. Compliance appears to be strong, but remains difficult to measure** - The conduct of case studies gave some indication of compliance levels, but there are no official statistics on compliance.

Recommendations

Six broad recommendations were developed to strengthen the Mediation Boards moving forward.

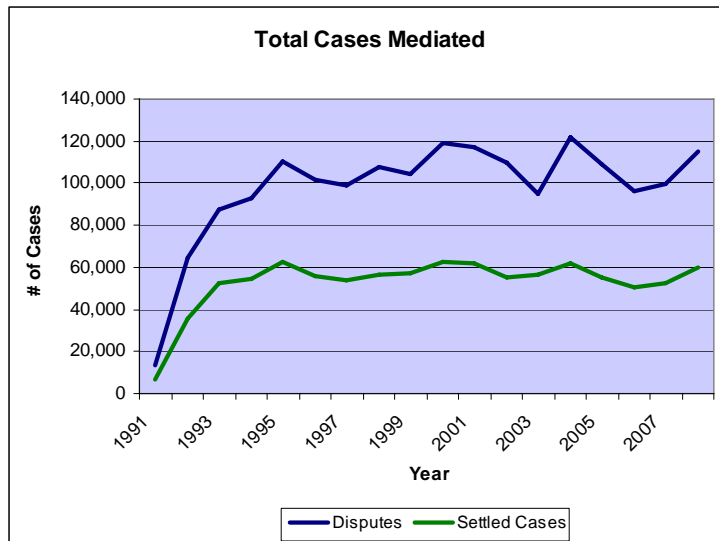
- 1. Increase focus on promoting diversity** - The Ministry of Justice has plans to increase diversity among mediators and mediator trainers, but these plans have not been rigorously applied. To a similar end, it is also important that the pool of people nominating mediators is expanded, especially to include women & representatives of NGOs and CBOs.
- 2. Add new components to mediation training and upgrade training facilities** - Additional training subjects that might be of benefit include addressing cases of assault and domestic violence, resolving land disputes, diversity sensitisation, and effective case and duty management.
- 3. Clarify and make more efficient engagements with government institutions (police, judiciary, and local officials)** - Further developing the linkages with key government institutions can strengthen the CMB program. The most immediate need is to address the current ambiguities and practical aspects of the official policy regarding the relationship between the Boards and the police.
- 4. Re-visit Mediation Act** - Over time Boards have changed and evolved based on practical needs and expectations. Procedures are not always followed according to the exact content of the Mediation Act. The Act might be revisited in light of the changes and adjusted to reflect processes that have developed organically or to allow more flexibility. Certain legal grey areas also require attention.
- 5. Strengthen M&E activities** - Challenges with managing data and information, planning strategically and tracking compliance are all closely related to the topics of monitoring and evaluation. The CMB program seems to be working hard to monitor its activities, but the efforts expended fall short of their potential impact due to information gaps and limited analysis and use of that data.

II. Introduction

BACKGROUND

The Community Mediation Boards Program (CMB program) was introduced to Sri Lanka in 1991 under the administration of the Ministry of Justice (MoJ). The core of this program is comprised of Mediation Boards spread throughout the country made up of non-political appointees from the local communities being served. Governed by the Mediation Boards Act No. 72 of 1988, and the subsequent amendments Act. No. 15 of 1997 and Act No. 21 of 2003, the CMB program aims to facilitate the voluntary settlement of minor disputes by using interest-based mediation.¹ The objectives of this program are twofold; first, to reduce the case load burden on the courts, and second, to improve access to justice by providing efficient and effective remedies for local disputes. In addition to these more direct effects of successful mediation, the process can also have a broader impact on society. Seeking mutually agreed upon solutions can ease tensions caused by minor disputes, improve communication within a community, and prevent conflict from escalating.

Within the Sri Lankan system there are both mandatory and voluntary mediation cases. Mandatory disputes are legally required to go to mediation prior to being heard by a court. These include property or debt claims of less than Rs. 25,000,² and other offences listed in Section 7 of the Mediation Boards Act (including assault, trespassing, criminal intimidation etc.) as well as certain types of land and domestic disputes that do not require an official court document, such as a divorce certificate or land



partition, to be issued. Mandatory disputes are not required to be settled through mediation, but they need a non-settlement certificate from a Mediation Board in order to be heard in court. The bulk of disputes are voluntary, which means they could be brought to court, but instead are either brought directly to the Mediation Boards or referred with the consent of both parties by the police, courts or public officials.

The current Mediation Boards system is not the first form of alternative dispute resolution sponsored by the government, but it has perhaps been the most successful effort to date. Over the last 20 years, it has grown steadily while largely avoiding the pitfalls of politicization. In just

¹ Interest-based mediation is a form of alternative dispute resolution where a neutral third party facilitates disputants to arrive at a settlement based on their interests and needs.

² Since the completion of the study this amount has been increased from Rs. 25,000 to Rs. 250,000.

under two decades, 300 Mediation Boards³ have been established across the country, handling on average 112,000 cases per year with settlement rates ranging from 54 to 70 percent in every year of operation.⁴ There are plans to reestablish 16 Mediation Boards in the North. While these plans for expansion move forward, however, the performance of the program has never been comprehensively evaluated. Given the envisioned role of mediation for the future, and the experience gained through approximately 20 years of operation, the timing was ripe for a comprehensive evaluation of the program to gather lessons learned and to make concrete recommendations for strengthening program performance.

This report presents the results of an evaluation carried out through collaboration between the MoJ and The Asia Foundation (TAF). TAF has been supporting the CMB program since 1989, with a strong emphasis on the training of mediators. Data collection was overseen by an advisory committee consisting of representatives from the MoJ and TAF as well as several independent experts, and took place from November 2009 through May 2010. This evaluation aims to present a comprehensive picture of mediation throughout Sri Lanka from the perspective of the users of mediation services, the mediators themselves, and other stakeholders such as judges, police, local officials and civil society. The evaluation identified the strengths, ongoing challenges and overall impact of the CMB program.

This report presents in full the findings of this study. Following a brief introduction to the program and the evaluation methodology used, findings will be presented in three distinct sections: an overarching evaluation of program impact; a discussion on the key findings of the evaluation; and a final section offering recommendations for strengthening the program going forward.

Evaluation Methodology

The evaluation collected both quantitative and qualitative information on 18 selected Mediation Boards, two from each of the country's nine Provinces. The evaluation included two boards in the Northern Province, but data collection from these boards was limited due to the special post-war situation in the North. There are few operational Mediation Boards in the North and the ones that are functioning tend to be relatively new. For this reason, information gathered in the Northern Province has been analyzed separately and so specific findings for the North have been treated as distinct data sets. For this reason, unless otherwise indicated, the statistics and graphs presented in this report refer only to the 16 boards studied in locations outside of the North and findings on the North are introduced separately. The final number of boards reviewed provides a statistically sound sample size according to factors such as the overall number of mediators, numbers of disputes mediated in 2008 and the population of the country. Within each province, data on the ethnic make-up and average monthly caseload were used to select specific boards for data collection.

³ At the time this study started there were only 297 Mediation Boards functioning, but 3 more have been created in the North.

⁴ *Summary of the Mediation Boards Statistical Report – 2010*, Ministry of Justice. A settlement rate of 70% was recorded only in the first year of Mediation Boards. Since then the figure has not risen above 67%.

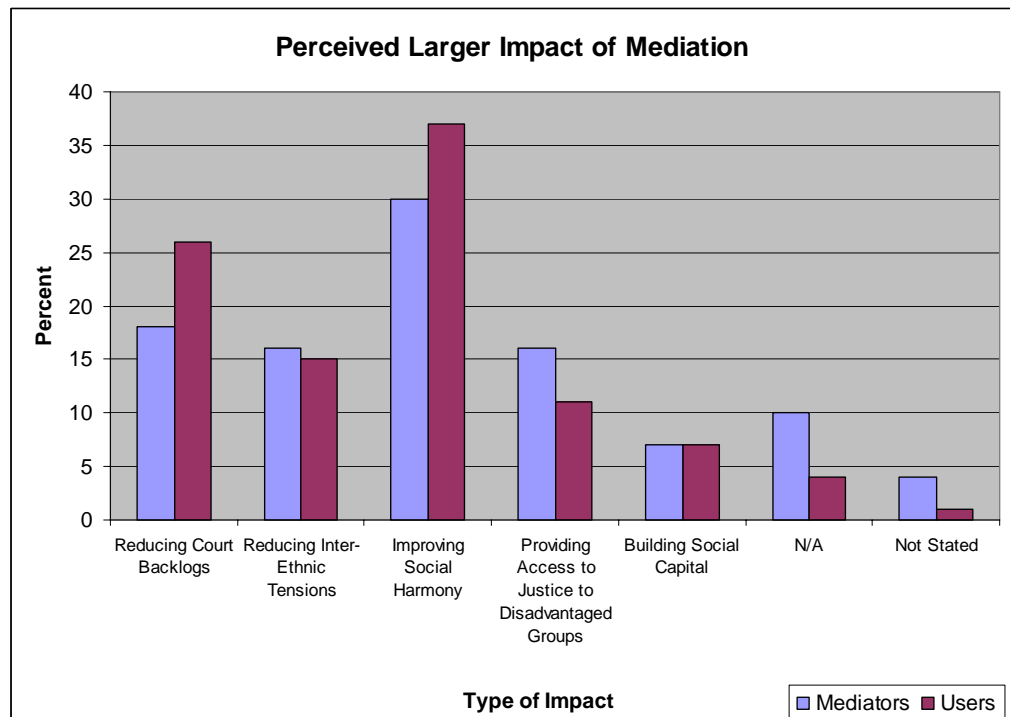
Diverse methods for data and information collection and verification were used throughout the evaluation, including the following:

- 1. User perception survey** – On the basis of 120,000 disputes in 2008 and with a target margin of error of 6%, the user perception survey was administered to 435 disputants.
- 2. Survey of mediators** – Using a baseline of approximately 7,000 active mediators, 252 mediators were surveyed (a margin of error of 6%).
- 3. Awareness poll** – Using a nationwide population of 20 million, the awareness poll was administered to 1097 people for a margin of error of 3%.
- 4. Key informant interviews** – Judges, police, local-level government officials, community leaders/NGOs were interviewed.
- 5. Case studies** – 29 in-depth interviews with disputants from concluded disputes were carried out.
- 6. Focus group discussions with mediator trainers**
- 7. Observations of Mediation Boards in session**
- 8. Documentation review**
- 9. In-depth interviews with relevant Ministry and Commission officials**

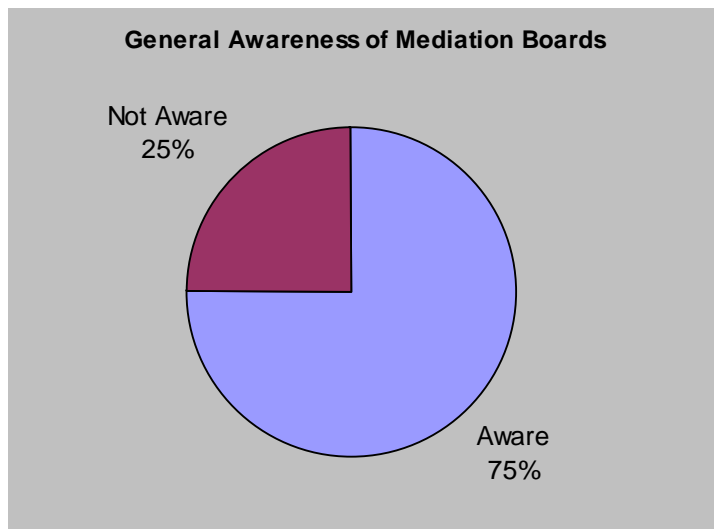
The evaluation commenced in November 2009 with an inception period to design the research methodology. This was a collaborative process involving TAF, the MoJ and the lead consultant for the evaluation. Thereafter, four field researchers were commissioned to carry out the key informant interviews, observations of selected Mediation Boards, and information gathering and collation based on available documentation. Twenty five Program Assistants from the MoJ administered the user questionnaire and conducted the case studies. Initial analysis of the data was undertaken by two of the field researchers, while final analysis was conducted by the lead consultant on the evaluation.

III. The Impact of Mediation

Sri Lanka's Community Mediation Boards Program has a number of potential impacts. Firstly by attempting to resolve a high percentage of minor disputes it might reduce the number of cases being filed in the courts, and presumably play a part in relieving case backlogs. A second potential effect is increased access to justice, by providing



an efficient and effective mechanism for dispute resolution that is accessible to all segments of the population. Finally, the CMB program has the possibility to improve social harmony and local dynamics by introducing a method of problem solving that seeks out mutually agreeable solutions focused more on restitution than punishment. All three of these potential impacts were raised by both users of mediation and mediators when asked to consider the effects of mediation, beyond resolving individual disputes (Respondents could choose more than one option).



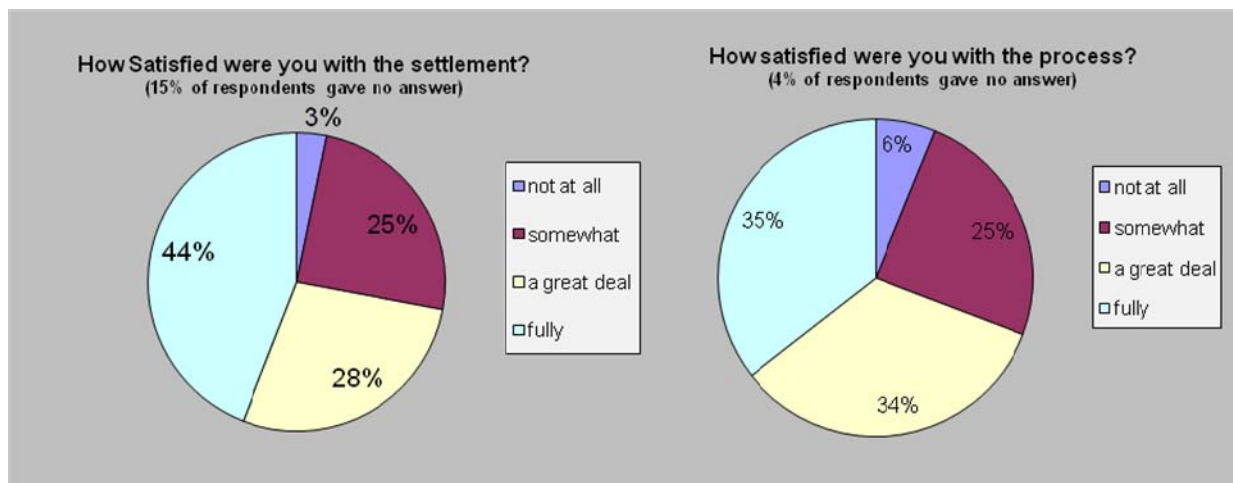
Prior to discussion on the higher level impacts of mediation mentioned above, it is vital to first consider whether the Mediation Boards have been successful on a more fundamental level. Initial questions to consider include: Are the Mediation Boards being used? Are communities aware of the role they play? And, are users satisfied with the mediation process and the outcomes produced? The awareness poll suggests that 75% of the general public is aware of the Mediation Boards. Most had heard

about the Boards from relatives/friends, or neighbours (11% each). Furthermore one in four people polled had brought disputes to the Mediation Boards, which demonstrates a substantial level of use within society. Among those users of mediation services, an overwhelming 90% were satisfied with the mediation process and 83% indicated that they would take future conflicts before the Mediation Boards.

This high rate of satisfaction reflects a solid record of settlement and compliance. Since the program began, approximately 60% of disputes coming before the Mediation Boards have been settled.⁵ The in-depth case studies carried out during the evaluation revealed that this strong settlement rate was complemented by good levels of compliance; among the 29 case studies 19 settlements were complied with in full and two had been partially complied with. Generally this evaluation has found that the Mediation Boards have been able to effectively resolve the cases brought before them and have generated good levels of awareness regarding the services they provide.

Reducing Case Loads

One of the primary challenges with the Sri Lankan justice system, which is common throughout South Asia, is the extremely slow pace of court proceedings; cases routinely last for years. Among the many causes for these delays are the shortages in resources and capacity for the formal justice system to process all of the cases in a timely manner. Introducing mediation for minor disputes, and requiring mediation for certain offences was intended to reduce some of this case backlog. However, measuring the effect mediation has on court waiting times can be difficult. We can state that since 1991 more than two million individual cases have been mediated, and 60% of them have been resolved without the need for deliberation within the courts. It cannot, however, be conclusively stated that all of these cases would have been brought before the courts if there were no Mediation Boards. In addition, mediation adds to the administrative burden on the courts by introducing new court procedures to refer cases, or to receive, process, and utilise the settlement or non-settlement certificates from the Mediation Boards.



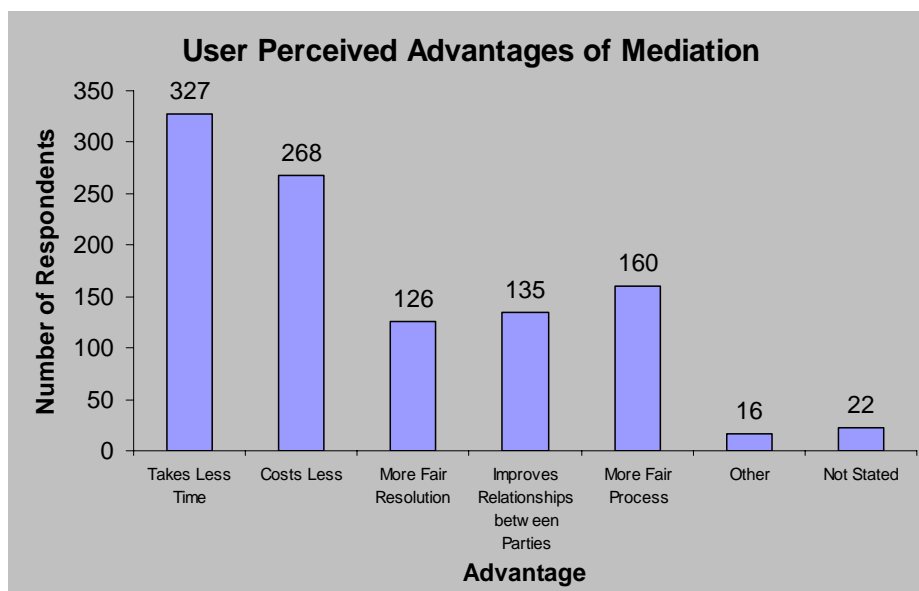
⁵ There is an important distinction to be made between the rate of ‘success’ and the rate of ‘settlement’. The ‘settlement’ rate includes the cases where a party was absent so no mediation could take place making it somewhat inflated relative to the ‘success’ rate as some 10% of disputes are not resolved because of absenteeism. For example in 2008 the ‘settlement’ rate was 59% whereas the ‘success’ rate was only 53%.

There are also no clear statistics available on the length of court cases or the backlog of cases in the Sri Lankan justice system, to see if there have been improvements since the beginning of the CMB program. Even if those statistics were made available, the number of variables involved in reducing the backlog in court cases would make it unlikely that any specific trends could be attributed to the CMB program.

Conclusively determining the effect of mediation on case loads may not be possible, but it is clear that the Mediation Boards provide an alternative method for resolving disputes that functions much more quickly than the courts. Research indicates that more than half of mediation disputes are concluded in one mediation session (56%), and a further 20% concluded within two sessions. In terms of the length of the process from registering a complaint to a settlement or referring the case to the courts, 33% of cases are disposed of within 30-60 days and 99% of cases within one year. This is one of the key ways in which mediation services are, in fact, improving access to justice within the communities served.

Improving Access to Justice

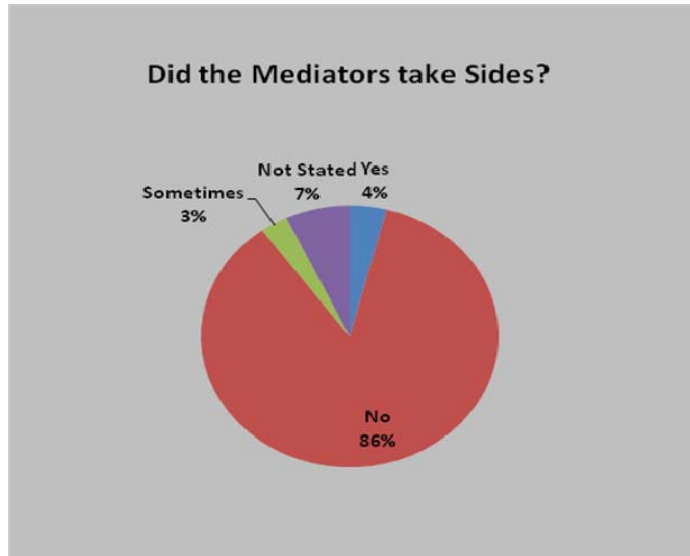
When users of mediation were asked to list the benefits of mediation, this issue of faster resolutions to disputes was the most common response, mentioned by 31% of respondents. The next most common responses were that it costs less than the courts (25%) and that the process is more fair (15%). In all, 80% of disputants indicated a preference for resolving disputes through mediation rather than the formal courts and only 8% of those surveyed preferred the courts.



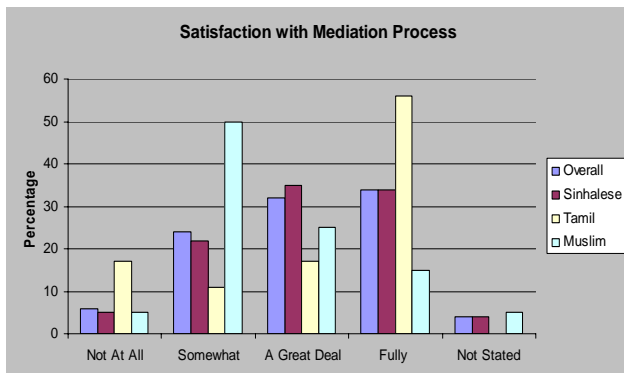
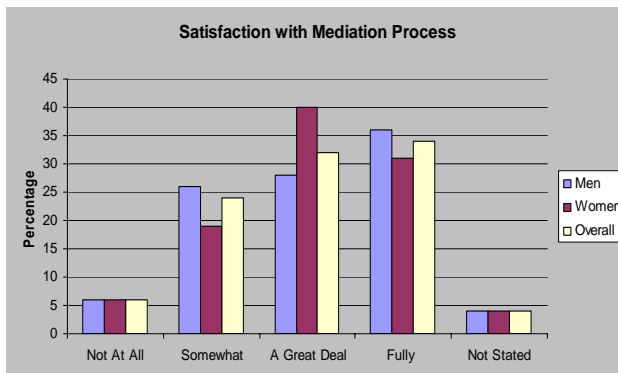
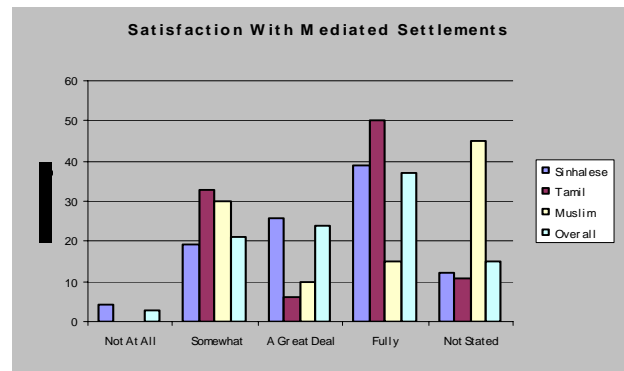
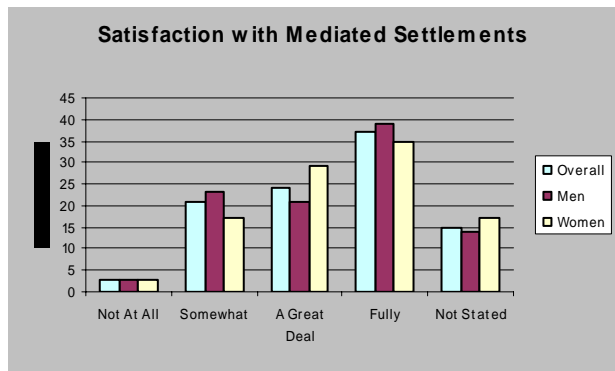
The issue of cost is also relevant in the Sri Lankan context. The courts use complex procedures that make the system difficult to access without a lawyer. With legal fees higher than many can afford, the justice system effectively prices some users out of pursuing resolution to their cases. While an extensive legal aid

system has been developed to address this problem, access challenges still remain. The mediation process does not allow disputants to hire or involve lawyers, making it immediately more accessible to most Sri Lankans.

Mediation is also able to avoid any perceptions of bias or a lack of independence among mediators since disputes are resolved by consensus. Mediation is carried out with the agreement of both parties and solutions should be found and accepted by all parties. Only a small portion of mediation users felt pressure to agree to a settlement (15%). This percentage corresponds roughly with the 85% of mediators who stated that disputants generally generate solutions to settle their own cases. Even in situations where mediators did propose solutions, which only 25% of users responding identified as being the case, it was clear to most users (two thirds) that they did not have to accept the mediators' proposal. Survey respondents also rarely perceived bias by mediators. 86% replied that mediators never took sides and even among that small percentage who did perceive bias, less than 20% felt that they had been negatively affected by it.



Cost effective, efficient and fair resolutions to conflicts are important aspects of overall access to justice, and the CMB program seems largely to have succeeded in meeting these standards. These three factors do not, however, provide a complete analysis of access issues. Justice services must also be applied fairly for diverse groups of users, and be accessible to people of all backgrounds. Generally the evaluation has found that the Mediation Boards



have performed well in serving diverse populations. More than 40% of users had not reached the GCE Ordinary Level in school, and only approximately 25% had reached or exceeded the GCE Advanced Level. With regard to employment it was found that 22.5% of users were currently unemployed, a rate far higher than the official national rate of unemployment (6%).

Data on gender, ethnicity and age clearly illustrate that all segments of the population are engaging with the Mediation Boards, but there is perhaps some room for growth, particularly among the youth and female population groups. Only 15% of users surveyed were less than 30 years of age in a country where 45% of the population is under the age of 25. It is difficult to suggest what this rate should be, as youth are less likely to be involved in certain types of disputes, such as land disputes. However, there does seem to be a disparity. Analysing usage statistics for women suggests a similar trend of usage rates falling well below population splits. Only 35% of disputants surveyed were women. Again it is possible that much of this gap could be attributed to lower incident rates and the more prominent role of men in property and land disputes, but the disparity between female and male usage of mediation seems too large to be explained away entirely. One potential cause for lower usage among the youth and women is the profile of the mediators, who are overwhelmingly male and most frequently over the age of 60. While this profile might be unsurprising when considering the need for mediators to command respect within society, it may have an effect on the types of users bringing disputes before the Boards. Research results disaggregated by ethnicity, unsurprisingly showed Tamils and Muslims dominate usage in the North and East, while users in other areas are predominantly Sinhalese. Rates of satisfaction with the mediation process did not vary significantly across different population groups.

There was some indication that Muslims were somewhat less satisfied with the process than Sinhalese or Tamils, but this might largely be explained by a strong tradition of community mediation through Imams and other religious leaders. Overall the survey findings indicate that the CMB program is achieving success with diverse population groups that bring disputes to the boards.

In regard to assessing the impact of mediation the conclusion that can be drawn is that mediation has clearly played a significant role in improving access to justice for Sri Lankan citizens, but that improved access might still be expanded and deepened within certain segments of the population.

Broader Impact on Society

The evaluation generated significant evidence that the CMB program is having positive effects on communities nationwide. 82% of disputants and 63% of mediators surveyed thought that mediation has a larger impact on the community beyond resolving individual disputes. Improving social harmony was the larger impact which was most frequently cited by both disputants (37%) and mediators (30%).

With 72% of disputes involving neighbours (37%), relatives (22%) and family members (13%) many informants suggested that resolving issues through discussion and problem solving was more appropriate and mutually beneficial compared to the formal court system. Mediation by design should reduce tension and promote peaceful and more reasonable discussion by seeking solutions that are mutually agreeable, and ensuring that both parties try to understand the perspective of the other. 90% of mediation users surveyed found that mediation helped them to understand the other side's point of

view, and 79% of disputants found that their relationship with the other party improved because of the mediation process. This 79% is particularly significant as only 40% of respondents had completed a settlement. This implies that even in cases where mediation was ongoing or a settlement could not be reached, mediation was reducing tensions and improving communication between the parties.

Case studies underscore these results. In multiple cases disputes between neighbours or family members, which had even escalated to the point of physical violence, had been resolved, and both parties to the disputes cited cordial and sometimes even friendly relationships developing after mediation. Case studies also indicated cases where observers felt that escalation had clearly been avoided. In one dispute between neighbours over land, police referred the parties to the Mediation Board because they feared the growing involvement of extended family members was creating a path towards violence. This potentially inflammatory situation was diffused in one mediation session and within six months the families were on speaking terms again.

There are no quantitative ways in which to precisely measure the impact mediation is having on social harmony and cohesion or the economic savings that result from avoiding escalating conflict, violence, drawn out court cases, and imprisonment. But a combination of user and mediator perceptions, observed mediation processes and qualitative analysis of cases studies and interviews with disputants, mediators and other stakeholders supports the claim that mediation positively impacts communities.

It is also clear, however, that mediation has not yet reached its full potential for positive impact. Results do not suggest that Mediation Boards have had a significant role in reducing ethnic tensions, or improving inter-ethnic relations as there is limited evidence of cases between people of different ethnic groups. Despite this, 15% of mediation users and 16% of mediators believe that the CMB program has had a positive impact on reducing inter-ethnic tension. More research could be useful in further understanding the gap between positive perceptions and the limited number of actual cases discovered.

IV. Findings on Mediation in Practice

As the evaluation explored the mediation process, some of the underlying conditions and practices which lead both to the successes and shortcomings of the CMB program, have become more clear. Analysis of the challenges and lessons that have emerged over many years of the program's operation provide an effective foundation for discussion on improvements that can be made to increase impact. This section will present and analyze some of the key findings that emerged over the course of the study. Through this discussion some background on the processes and procedures of the CMB program will be provided, but more comprehensive descriptions can be found in the Annexes of the report. This section of the report will be structured around major findings, with the key ten findings grouped into four main categories: overall findings, institutional findings, program management findings, and case findings.

Overall Findings

1. Interest-based mediation has been successful in the Sri Lankan context.
2. Mediation is largely successful across Sri Lanka.

Institutional Findings

3. Oversight and strategic planning can be strengthened further.
4. Linkages with government institutions, especially the police, need to be reviewed.

Program Management Findings

5. More opportunities to focus on diversity are present.
6. National strategy needs to learn from local practice.
7. More in-depth trainings desired for Mediators.

Case Findings

8. Assault and land disputes are the most common types of cases.
9. Instalment payment settlements pose a unique challenge.
10. Compliance appears to be strong but remains difficult to measure.

OVERALL FINDINGS

1. Interest-Based Mediation has been successful in a Sri Lankan context

The process of interest-based mediation is generally followed, and has been well received by both the mediators and the majority of users. 64% of users felt they had enough opportunity to explain their grievance. 77% said all three mediators listened to them, and 14% said that two mediators listened well or one listened better than the others. 84.5% felt the mediation process was different in its approach to resolving disputes compared to other mechanisms such as the police, elders and religious persons. The most common explanations as to why mediation is different were that mediators listened to both parties (50%), because they settled disputes voluntarily (28%) and that they got a chance to explore different options (18%). The observations made of Mediation Boards found that generally mediators were polite and cordial to disputants and there were very few instances of mediators adopting a harsh tone. For description of the Mediation Process please refer to Annex D.

The annual success rate published by the MoJ has in recent years been just under 60%. Among specific types of cases covered in the user survey, assault and loan matters were the categories of disputes which had the highest settlement rates (76% each). Over half of land disputes were settled (56%), while the figure was less than half for family and domestic violence disputes (44%). Land disputes (34%)⁶ and cases of assault (15%)⁷ were the categories of disputes which mediators found the most challenging to mediate. The challenges with these disputes were unwillingness to compromise and particularly in land disputes, insufficient knowledge regarding the law. In general, however, it can be concluded that the

⁶ These consist of the following four categories in the questionnaire: competing claims to land, access to land/roadway, boundary disputes, and other land matters.

⁷ This includes the categories of “assault” and “assault with a weapon” in the questionnaire.

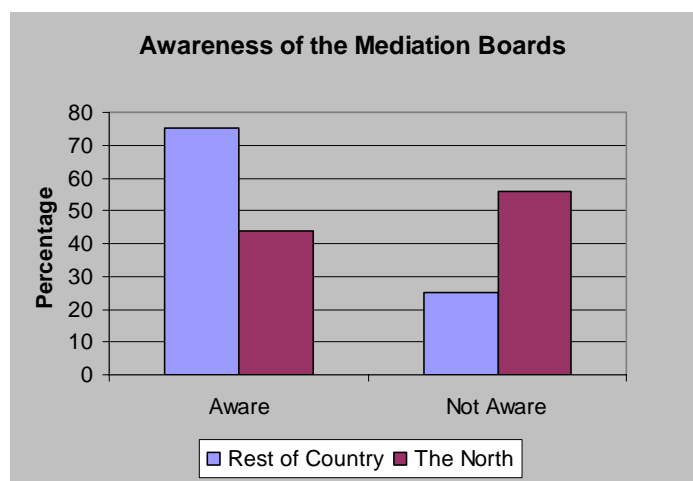
process of mediation has been very well received, and shows a reasonable record of success within the Sri Lankan context.

Absenteeism of the disputants remains one of the few ongoing problems with the process. According to user surveys, 52% of all postponed mediation sessions were caused by the absence of a disputant. Only in four percent (4%) of cases was the session postponed due to the absence of a mediator. The amendment to the law in 1997 introduced a new section 14A providing that a certificate of non-settlement could state the absence of the party, and that parties should be told this when notified about a mediation session. It was assumed that parties would be more reluctant to miss a mediation session if their absence was recorded in the certificate. The number of applications disposed of due to the absence of a party seems to have slightly declined, but is still averaging around 10% of the total number of matters disposed of.

2. Mediation is largely successful across Sri Lanka.

Results indicate that similar levels of satisfaction with both settlements and the mediation process persist throughout the country. Satisfaction levels were comparable nation wide, as were the profiles of the mediators and users, and the prominence of land disputes and assault as the most common types of disputes faced. These similarities actually held true in the two areas studied in the North as well, the only noteworthy point to add was that the advanced age of the average mediator was even more pronounced at the Mediation Boards in the North.

In the North the major differences were related to awareness and perceptions of the Mediation Boards. These differences can largely be attributed to the relative youth of the Mediation Boards in the North. Because the working of the Boards had largely been disrupted during the periods of violence, and in many locations there had simply never been Boards put into place, citizens in the North were less aware of the working of the Mediation Boards with only 44% of respondents stating they knew of the Boards compared with 75% of respondents in other locations throughout the country. Perhaps related was the notably lower number of users who stated that they saw potential for mediation having a larger impact beyond resolving individual disputes. Whereas nationally 82% of respondents believed there could be a larger impact, only 11% of respondents in the North answered similarly. Given the relative novelty of Mediation Boards in the North, and a general lack of awareness regarding the work that they do, it would not be surprising for residents to have a less optimistic view on whether or not the Boards could significantly improve social harmony. Also potentially related to the low number of



Northerners seeing the potential for broad impact of mediation is the still high distrust of the government, demonstrated by data from the North showing less interaction between the police and the Mediation Boards. Despite some challenges, mediation in the North is very promising given the high levels of satisfaction with the process and settlements despite the intermittent nature of support for the local Boards.

INSTITUTIONAL FINDINGS

3. Oversight and strategic planning can be strengthened further.

Mediation has clearly been a success on the whole, but there remain some weaknesses in the oversight and management of the institutions. Issues of concern identified during the course of the

Oversight and Accountability

The MoJ is responsible for overseeing the finances of the CBMP. The MoJ and MBC share responsibility for the oversight of the actual mediation processes. The primary oversight mechanisms used are:

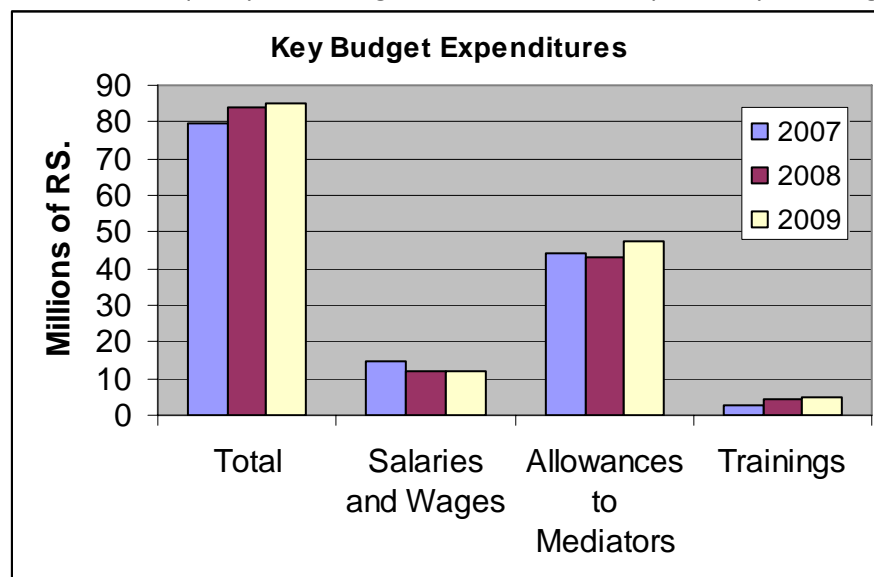
- Monthly reporting forms completed by Mediation Board chairpersons;
- Periodic visits to Boards by Mediator Trainers and visit reports;
- Quarterly meetings with all chairpersons from a given district.

For more information on management and oversight please refer to Annex A.

evaluation included limited capacity to manage and use the information gathered through the rigorous monitoring systems in place and financial audits. There is also room for greater clarity in the roles of the MoJ and MBC. The fact that there has not yet been a permanent official recruited to fill the position of Secretary of the MBC is a significant concern. However, the move of the MBC offices to the same building as the MoJ will offer opportunities to

immediately improve coordination and cooperation. Overall, it seems that growth in the number of Mediation Boards and improvements in the quality of training have not been accompanied by a strategic

vision and efforts to make broader institutional improvements to the program. Some concerns also remain about the challenge with getting accurate budgetary information regarding the CMB program. While the evaluation team could get access to budgetary data, the reporting formats have changed over time, which



makes it a challenge to compare spending on specific program components over time. Since 2003 there has been a rapid expansion of the mediation budget, from Rs. 30.75 million in 2003 to just over 85 million in 2009,⁸ This growth in budget largely reflects an increase in staff and spending on training that has been required for the program to grow. In recent years (since 2007) the program has actually decreased spending on staff salaries, but has seen increases in the allocations made to mediators during trainings and the costs of training overall. These increases are to be expected given the increasing number of Mediation Boards. This larger budget allocation and the number of disbursements given the increased numbers of mediators and events require sophistication in auditing and financial management, which does not appear to be present. The CMB program remains an extremely cost-effective way to improve justice outcomes across the country, but better financial management would help make sure that scarce resources are used to their greatest possible effect within this important program.

Despite fairly strong monitoring mechanisms in place, the evaluation also found that information being gathered was poorly managed and not used for institutional planning. The main mechanisms used to oversee the boards are regular observation visits by mediator trainers to specific Boards, and a monthly report submitted by the chairperson of each Board to the MoJ. As a key to the CMB program is its cost-effectiveness, the fairly simple plan for data collection and the use of these two major methods seem practical. However, the lack of effective use or analysis of the information collected largely renders these processes ineffective. Monitoring efforts need to link into planning and strategy discussion, so that the program can be improved and strengthened over time. For these challenges in information management and coordination at the policy level, new opportunities for improvement are expected to result from a recent change which has moved the MBC offices to the MoJ building. This is an important step towards a more efficient and effective working relationship.

Observation visits of the mediator trainers are conducted somewhat irregularly and a new data collection system is not yet operational. 72% of mediators surveyed stated that a trainer had observed their board, but the MoJ does not maintain clear data or schedules to indicate when specific trainers will visit Boards in the future and the information that was available suggests that the number of visits and choice of location are almost ad hoc, with some Boards visited multiple times every year and some not at all. There was no clear system for gathering the visit reports or considering the trends revealed.

Data collected from monthly chairperson reports is not routinely used by MBC staff. A central database is used to collect the information from the 300 Boards' monthly reports, and annually the MBC produces a "Summary of the Mediation Boards Statistical Report".⁹ This central database is managed by a single officer, and is rarely accessed by the clerks responsible for specific geographical areas. The MBC computers are not networked, so the data is only accessible from a single computer. In general Mediation Boards do submit the required reports, but delays of up to several months are not uncommon. It is the job of the data entry officer to follow up with chairpersons who are late to submit

⁸ This figure comes from the MoJ's budget under the heading "Implementation of the Mediation Boards Act"

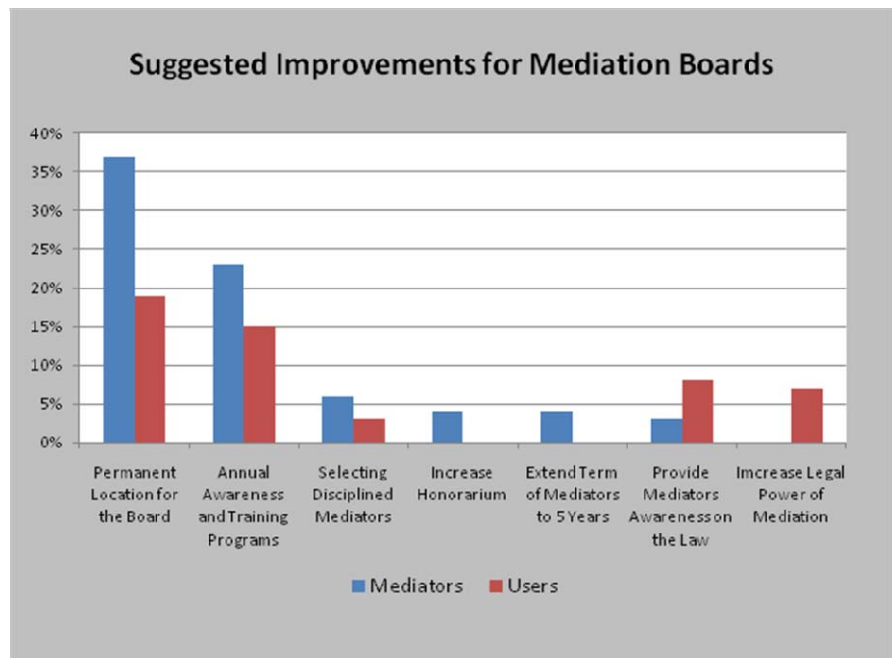
⁹ This report is intended for internal use and considered confidential, but was made available to the evaluation team.

their reports, but this does not seem to be done regularly. While the current database is rather limited in its analytics, a more comprehensive database was designed through World Bank support to the MoJ several years ago. This database still has some errors to work out and has not been put into full use, but it is a comprehensive system that will allow the MBC to use the statistics more effectively.

Management challenges also exist at the level of specific Mediation Boards. Almost all negative comments about mediation focused on logistics rather than process or case results. In interviews it was noted that mediators and especially chairpersons receive no formal training on management techniques and organizing their human resources. Given the challenge of handling a large number of cases with a team of volunteer mediators, more focus on this topic might be useful. Management techniques were among the three most popular topics that mediators wanted to receive more training on (along with land-related dispute resolution and victim-offender mediation techniques).

When asked how mediation might be improved, finding a suitable venue was the most popular suggestion among both users (19%) and trainers (23%). The observations made of Mediation Boards confirmed that schools are a common venue for many Boards.

Whether mediation is conducted with due regard to privacy and confidentiality depends to a large extent on the space available. In some locations, disputes could be spread out into different rooms, and in others multiple disputes were mediated in a single room and discussions could be heard by other mediation sessions and by disputants waiting for their

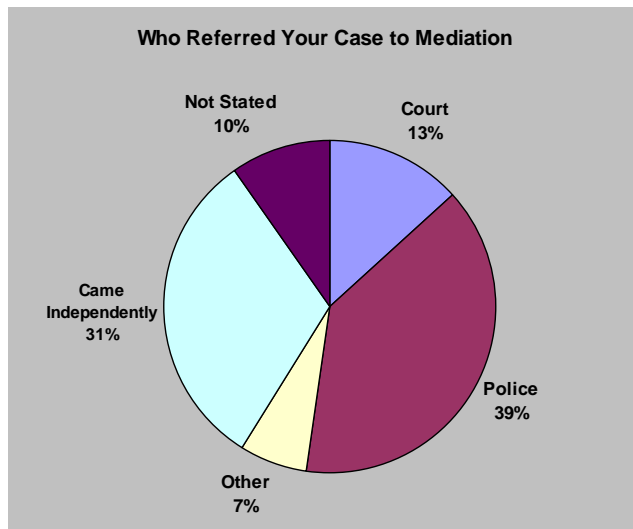


disputes to be taken up. Sometimes sessions were disturbed by other events going on in the school, such as tuition classes and band practice. The second most popular suggestion on how mediation could be improved from both users (15%) and mediators (23%) was raising awareness, despite the fact that this evaluation found widespread awareness of the CMB program.

4. Linkages with government institutions, especially the police, need to be reviewed.

The police are intensely engaged with the Mediation Boards despite extremely limited formal relations and guidelines. Research findings indicate the extensive level of police involvement with the

Mediation Boards. They are the partner most likely to refer a dispute to the Mediation Boards and are also the most likely to assist Mediation Boards in contacting disputants.



The majority of cases, 39%, were directed to the Mediation Board by the police. 31% of cases were applications brought directly by a disputant, and 13% were directed by court.¹⁰ The proportion of direct applications is much higher in the Eastern Province Boards at 58%, with police-directed applications at 14.5% and court-directed ones at 6.5%. Currently the police are making these referrals without clear guidance or procedures. So it is generally done based on the relationships with the local Board, and the approach promoted in each locality.

A higher percentage of respondents were notified by the police than the GN regarding their cases. In the Mediation Act, it envisioned that the Boards would be assisted by local government officials to facilitate communication with disputants. According to the user survey, 36% of disputants were notified by a letter sent by the Board, 12.5% were notified through the police, while 5% were notified through the GN, and 40% of the respondents stated that this question was not applicable to them. These results suggest the police are playing the role envisioned for the GNs in many cases.

Mandatory and Non-Mandatory Disputes

Mandatory mediation cases are those that are legally required to go before Mediation Boards prior to entering the court system.

Non-Mandatory, also called voluntary or direct application, cases are referred to mediation by the courts, police, or local officials with the parties' consent.

For more on the legal categories of disputes relating to mediation please refer to Annex C.

Generally there was evidence that awareness and advocacy among GNs could be improved. Interviews and research indicated that it was only local government officials in the East that believed the Mediation Boards were decreasing their work burden; not coincidentally it was also only local government officials in the East who were regularly referring disputes to the Mediation Boards.

Coordination between the MoJ, MBC and local officials appears to be limited, and ambiguities remain. While plans to improve coordination between the MoJ and MBC have been introduced, and are starting

¹⁰ The study did not distinguish between different types of court referrals. Some referrals were the result of judges asking for party consent for the referral, and others would have been made when the case falls out of the court's jurisdiction, for example when a mandatory mediation case is filed at that court directly.

with the physical movement of the MBC to the MoJ buildings, there is no indication that tying in local government officials is a priority. The fact that neither Divisional Secretaries nor Grama Nildharis

referred cases with any regularity does not seem to imply a lack of awareness or knowledge of mediation services, as local government officials demonstrated a strong understanding of the types of disputes that should be mediated. These country-wide findings were distinctly different from those found in the two Eastern Province Mediation Board areas. In these areas both the DS offices and the GNs actively sought to refer cases to the Mediation Board. In these Eastern areas there is evidence that the GNs proactively promote mediation more than in other regions. This might be motivated by the feeling that the Mediation Boards actually reduced their workloads, which is not an opinion shared by most government offices surveyed in other areas of the country.

The key role played by the police in referring cases causes some confusion over the issuance of certificates. It was observed that some Boards send the certificates to the police rather than to the parties, even though legally there is no requirement to provide that information to the police. In general local practice varied depending on the relationships between the Mediation Boards and other local institutions. The police also complained about Mediation Boards not knowing which unit within the police to send their reports to. These comments are noteworthy as Mediation Boards are not formally required to share any information with the police. Clearly there is a mutual desire among the police and Mediation Boards to work together, so local systems have developed for information sharing and coordination, but there is no official oversight or guidance for this process.

The confusion regarding the issuance of settlement certificates also extends to those sent to the courts. Multiple judges complained of case reports and certificates not being sent by Mediation Boards in the required amounts of time. Informants reported that in the majority of cases that are not settled, the non-settlement certificates do not reach court in time for the next scheduled hearing.

Among the judiciary there seem to be mixed views on the utility and importance of the Mediation Boards. In interviews, some judges portrayed mediation as a nuisance, rather than a system designed to reduce the courts' caseload and promote access to justice. Some judges stated that they never referred cases to mediation unless it was mandatory; some also expressed the opinion that mediation should not be mandatory in any cases. One judge stated that he was not aware if non-mandatory cases could be referred at all, and another stated that they are not referred because they can be settled by the court within a shorter period of time. A separate judge echoed this sentiment, stating that mediation was too slow and that a judge could solve some issues in a single day, which would take 60 days in mediation. These interviews largely indicate that Section 8 of the Act (permitting referral of a dispute by a civil court with the consent of the parties) is not often used. There were also judges interviewed who have a positive image of the Mediation Boards and could provide examples of good practice in which judges helped to resolve some of the issues local boards were having with reporting requirements, but greater understanding is needed within the judiciary regarding the important role of the Mediation Boards.

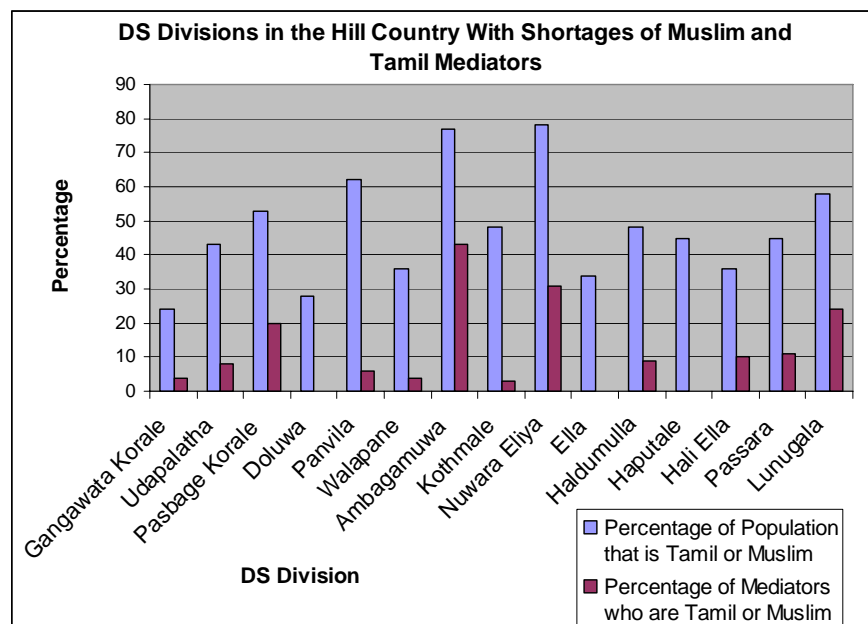
PROGRAM MANAGEMENT FINDINGS

5. More opportunities to focus on diversity are present.

Satisfaction with mediation services varied quite little based on gender and ethnicity. All population groups were mostly positive about their engagements with the program, and the Boards have had success in all areas of the country. Despite these important findings, considering the profiles of the mediators and mediator trainers there still is room for growth in promoting diversity within the CMB program. Key informants in the Eastern Province specifically called for an increased number of women mediators, and interviews with police, local-level officials and civil society underlined the need for a greater gender balance on Mediation Panels.

Results from a survey of mediators and a review of official MoJ data both confirm that there is room to improve on diversity. 56% of all mediators were age 60 or older. In stark contrast, fewer than 10% of mediators were under the age of 45. Regarding gender, female mediators number less than 100, only 14% of the total. There also appears to be a bias towards the selection of mediators with links to public office. 43% of mediators are former government employees and 36% are currently working in the public sector. Among the remaining 21% backgrounds are extremely varied. Education levels are generally high with 64% of mediators

having passed the GCE Advanced Level examination or higher, and all of the mediators having finished the GCE Ordinary Level examination. As was previously mentioned, the ratio of Tamil mediators to the population levels is low at 5%, whereas Muslims make up 9% of the mediators and Sinhalese 86%. While there is some distortion based on the lack of functioning



Mediation Boards in the North, the disparity remains noteworthy. This challenge is most acute in multi-ethnic areas of the hill country. In Kandy, Nuwara Eliya and Badulla districts there are areas that need to do better at recruiting Tamil and Muslim mediators. In two of twenty Divisional Secretariats in Kandy the percentage of Tamil and Muslim mediators is equal to or more than the population percentages. A further 8 are within 10% of the population statistics, but there are five Divisional Secretariats where the difference is more than 20% (Panvila, Gangawata Korale, Doluwa, Udapalatha, Pasbage Korale). In Nuwara Eliya, none of the five Divisional Secretariats have percentages of Tamil and Muslim mediators

equal to or more than the population percentages. One of five is within 10% of the population statistics, and the remaining four Divisional Secretariats have a difference of more than 30% (Kothmale, Walapane, Nuwara Eliya, Ambagamuwa). Considering Badulla District, in five of 15 Divisional Secretariats the percentage of Tamil and Muslim mediators is equal to or more than the population percentages. A further four are within 10% of the population statistics, but the remaining six out of the 15 have differences of more than 25% (Passara, Lunugala, Hali-Ela, Ella, Haputale, Halduummulla). Across these districts there are three Divisional Secretariats that are more than 25% Tamil and Muslim, and do not have a single Tamil or Muslim mediator. The challenge here is not discrimination or prejudice, but rather seems to be insufficient nominations and willing volunteers among these communities.

The MoJ has also had trouble recruiting Tamil speaking mediation trainers. Analysis of this key challenge has largely led the evaluation team to conclude that the underlying cause of these diversity issues is not prejudice or active discrimination, as much as a lack of positive effort to correct the situation. The number of female mediators has been increasing, but not fast enough. The MoJ also has a plan to recruit more Tamil language trainers, but there is no evidence that they have successfully put this initiative into action. Causes for diversity issues, especially among the mediator profiles, can be sourced to two stages in the appointment process: nominations and final selection by the MBC.

Nominations

A number of different types of local actors can nominate individuals to the Mediation Boards. Nominations can come from:

- The District Secretary;
- non-political individuals or organisations;
- a public officer or head of department of the Provincial government,
- active or retired heads of a place of religious worship or school;
- a Mediation Board chairperson;
- a person or organisation involved in a range of specified social service activities.

Mediator Selection Process

The selection of mediators goes through several phases.

1. Potential mediators are nominated.
2. All nominees are invited to interview with the MBC.
3. The MBC selects appropriate candidates for a five-day training course.
4. Mediator Trainers evaluate the participants over the course of the five-days and make recommendations to the MBC.
5. The MBC selects a panel of mediators for a program location and chooses one as chairperson.

For more information on the selection process please refer to Annex B.

At present over half of all nominations received come from government officials, or the Mediation Boards themselves. Of the mediators surveyed in this evaluation 34% had been nominated by the Grama Niladhari; 19% by the Mediation Board itself; 16% by the Divisional Secretary; and 14% by Buddhist monks. Other nominators mentioned

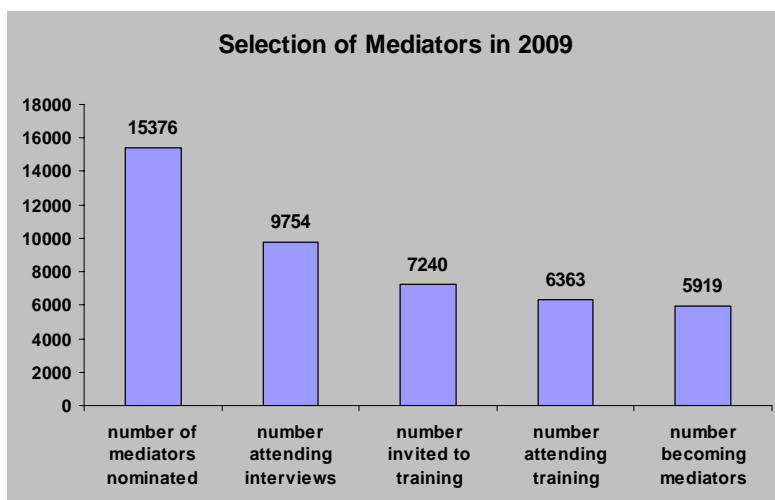
were the District Secretary, school principals and SANASA (a village-level credit organisation). There were very few nominations received from NGOs and CBOs. Given these statistics, it is not surprising that nominated mediators are mostly retired or active government officials. Given the high rate of mediators nominating each other, it is also unsurprising that of the mediators surveyed, 37% had been serving for over 10 years while 23% had served 5-10 years, indicating that usually mediators are repeatedly reappointed. Anecdotally it was confirmed that mediators habitually nominated one another for a further period, so the same people are repeatedly reappointed to the Panel. This narrow profile of mediator nominators might be attributed to the fact that the opening for nominations is not widely publicised, and communication channels to the local government are more effective than the gazetting.

Focus groups and interviews raised several other slight issues with the nomination process. A few GNs mentioned that they would ideally like to have more information on the people they nominate – references from community leaders and/or a police report. Interviews with the clergy indicated that they are sometimes in a difficult position when persons who are “dayakas” of their temple (i.e. those who frequent/support the temple) seek their endorsement to be nominated as a mediator. While in theory anyone who nominates a person to be a mediator could be influenced by favours or gifts, clergy are in a particularly difficult position as they depend on the goodwill of the community for their sustenance and for the maintenance of the temple.

The final selection process for mediators might contribute to the limited diversity of mediator profiles. Final selection of mediators occurs after nominated candidates complete a five-day training. Based on candidates’ performance over the course of that training, mediator trainers make recommendations to the MBC as to who should be appointed. In principle the MBC should base their appointments on the assessments and recommendations of the trainers, but in practice many trainers believe their recommendations are not taken into account sufficiently. The MBC has, at times, appointed trainees not recommended by the trainers. Specific cases in which trainees were still appointed despite having not attended all the training sessions, a fact reported to the MBC through attendance sheets, were cited in focus group discussions with the mediator trainers. Mediator trainers have noted a tendency for the MBC to favour older persons over younger in their appointments, believing them to be more suitable as

mediators. Some trainers expressed concerns that younger, more active and perhaps more skilled mediators were being overlooked.

In 2009, from an original pool of 15,000 nominations, only 38% eventually became mediators. Among those not selected, very few were turned away as poor candidates. In fact 74% of those



interviewed were invited to the five-day training, and 93% of those trained became mediators. So there does not seem to be substantial evidence of a clear selection bias on the part of the MBC. Of the 9457 nominees who did not become mediators, 6499 (69%) dropped out voluntarily and either did not attend the initial interview or did not come to the five-day training. These statistics suggest that the profiles of selected mediators are also limited due to a problem of recruitment. Participating in the Mediation Board requires a significant time commitment, as well as stature or respect within the communities served. For this reason retired men are the most common profile. Younger people who are fully employed or women with significant responsibilities to their families might choose not to interview, or might not be able to take five days to attend a training or meet the time requirements needed to serve as a mediator.

6. National strategy needs to learn from local practice.

Current practice at local levels does not currently follow the original procedures and processes in many cases, and sometimes procedures have evolved over time. Over the course of 20 years of operation, local Mediation Boards have evolved and developed their procedures and practices which deviate to some extent from what was envisioned by the Act. This issue is present both in the management and oversight of the Boards, as well as at the Boards themselves. These deviations are largely motivated by a desire to increase the efficiency and decrease the time required for the mediation process, but insufficient oversight and management could also play a role. The case might also be made that practice has developed naturally according to demand and expectations, moving beyond what was originally envisioned.

Original procedures laid out in the Mediation Act for selection, by disputants, of specific mediators or the entire panel are often not followed. Only 29% of users surveyed said that they had the opportunity to select a mediator or a panel. The observations of Mediation Boards confirmed that these requirements were not carefully observed, with the chairperson assigning boards to disputants without informing them that they could select mediators. Compared to the overall survey results a higher

Selection of the Mediation Panel

According to the Mediation Boards Act, for each dispute the Chairperson of the Mediation Board should assign mediators based on the preferences of the disputants. This can be done by:

- Each disputant selecting one mediator, and the third being selected by the two mediators OR
- Disputants can also choose an entire board of three mediators based on the boards constituted for previous disputes (a pre-constitution board.)

In the event that disputants are unable to agree the Chairperson may make the selection/s.

For more on dispute settlement procedures please refer to Annex C.

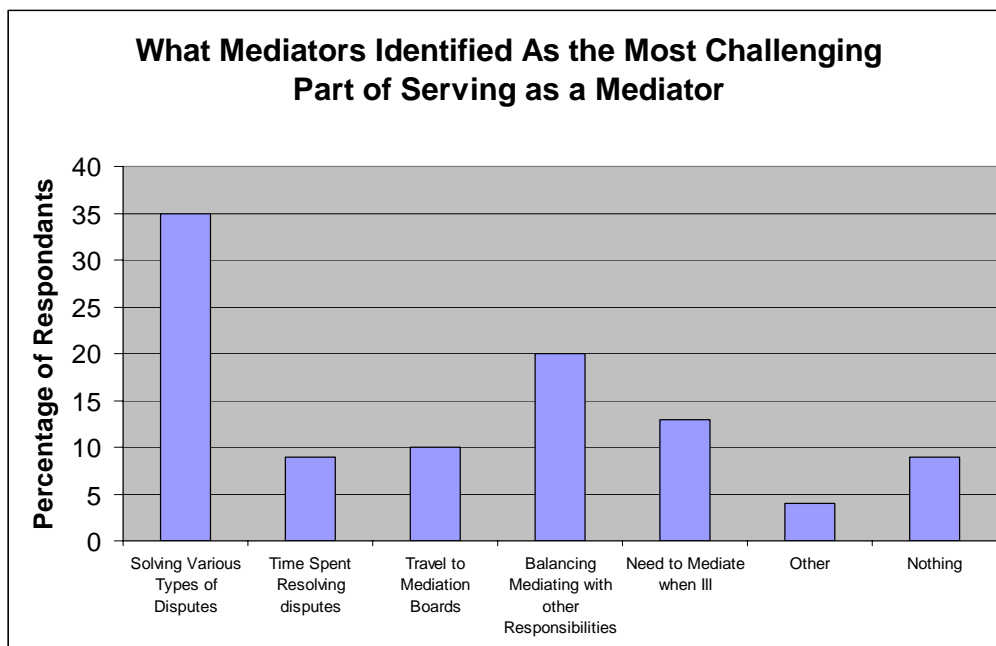
number of users from the two Eastern boards – 44%, stated that they had an opportunity to select mediators, suggesting that the procedures for selecting mediators may be followed more frequently in those areas. This evaluation has also produced some evidence that once

constituted the Mediation Boards have at times altered during the mediation process. 17% of disputants surveyed reported that members of the Mediation Board changed over the course of the dispute. A further 12% only had one or two mediators present during the dispute.

The opening speech by the Mediation Board that reminds everyone of the aim and process of mediation is often not given precisely and sometimes not at all. Observations of Mediation proceedings suggested that when speeches were conducted, they varied significantly depending not only on the specific Board but the mediators. Sometimes speeches were addressed to the mediators rather than the disputants, and often the content was adjusted in ways distinctly different from the intended text.

The major causes for these changes seem to be timing and efficiency, and particularly attempts at reducing the burden on the mediators, especially the Chairperson. The process of selecting mediators takes time. Skipping opening statements and having the Chairperson simply assign mediators for each case speeds up the process. When mediators were asked what made their jobs most difficult, the issue of convenience and the amount of time expended was related to 4 out of the top 5 challenges mentioned (time taken to travel to mediation board, spending time to resolve disputes, balancing service as a mediator with other responsibilities, having to mediate when ill). Unfortunately these changes to the process might theoretically undermine the effectiveness of mediation as a whole. Opening statements are seen as crucial in generating an understanding among disputants of how mediation should work as well as creating the right atmosphere for open discussion. Similarly disputant choice of mediators is very important. Choosing the mediators increases the amount of ownership over the process felt by disputants and reduces the chances of biases being perceived.

Despite the irregularities in approach and procedures, there has not been a clear reduction in the quality of mediation observed due to these slight discrepancies. Most likely in the average case these minor changes have little effect, but these deviations could have a negative impact in certain cases. In



considering how to rectify this situation, an appropriate balance between necessity, namely the importance of limiting the time investment of the mediators, and the need to create a process that protects all disputants is vital.

The issuance of settlement or non-settlement certificates is another process which is not consistently carried out in the manner envisioned in the Mediation Act. More details on this issue were provided previously in the discussion on the relationships with the courts and police. Observation concluded that Mediation Boards, including Chairpersons, were sometimes uncertain about to whom the certificate should be issued and in some cases certificates are only granted when requested by the parties. There are very practical issues that might contribute to this issue such as the lack of photocopy machines. Without establishing clearly that the locally evolving practices are limiting the effectiveness of mediation, it is difficult to recommend more enforcement of strict procedural requirements. Mediation was designed as a practical tool to provide a low cost but effective solution to minor disputes. To fit into this model, it might be best to learn from local practice and understand what can make the boards more efficient without losing effectiveness and re-assess national policy according to those lessons.

7. More in-depth trainings desired for Mediators.

Over time trainers and mediators have identified certain subjects or issue areas on which they would like more training to be provided. Learning from concrete mediation experience to inform training topics might further improve the quality of services being provided. Among the potential topics raised were human rights, diversity and important laws relevant to the most frequent types of disputes mediated. Specific trainings on land disputes and cases of assault were also raised as important topics to incorporate in greater depth. One of the key approaches to supplement this initial training is the use of periodic advanced trainings.

Settlement Certificates

According to the Mediation Act, settlement/non-settlement certificates should be issued in all cases. In voluntary mediation cases these should go to the parties, in mandatory cases they must also be sent to the courts.

Approximately one third of the mediators surveyed had never received an advance training. In the Eastern Boards it was striking to note that only 25% of trainers had participated in an advanced training. The strategic use and planning of advanced trainings needs to be more consistent and transparent. The evaluation could not firmly establish how frequently these follow-on events were happening, and how the specific topics covered were decided upon. These trainings provide an important opportunity for both continuing skills development among mediators and also institutionalizing good practice and procedures. In an attempt to continue developing the skills of the mediators, one day advanced trainings are offered periodically, generally following an initial year of service. Nationally, the topics most frequently chosen by the trainers

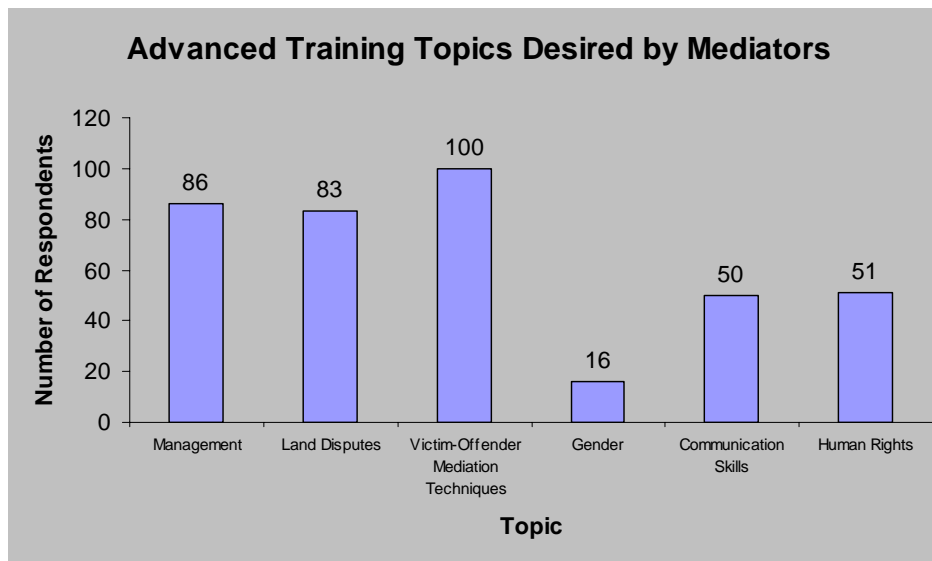
Mediator Training

The Five-day Mediator Training is structured around the development of five basic skills:

1. moving beyond an impasse
2. identifying the root causes of the dispute
3. communication
4. negotiation
5. generating alternatives

For more on training please refer to Annex B.

according to mediators surveyed were land disputes (22%), and mediation itself (13%). When asked what training they would like to receive, mediators generally agreed with the focus on land-related dispute resolution (21% cited this as the most important area for advanced training), but also wanted focus on victim-offender mediation techniques (25%) and management (22%). Management techniques and organising the human resources and logistics of mediation are not covered in depth at any point in the training process.



Both mediators and mediator trainers clearly believe that broader training of mediators, beyond the imparting of basic mediation skills and techniques, is needed. In focus group discussions with trainers it was noted that currently very little or no training is provided

on diversity or human rights. Trainers felt that diversity training in particular would be useful given the biases regarding gender, race, religion and caste that are still present in Sri Lankan society. Trainers mentioned that a diversity sensitivity training and training on the Prevention of Domestic Violence Act had been piloted by two NGOs, and that these sessions should be improved and integrated more comprehensively. Trainers also thought that knowledge of the law, at least at a basic level, should be provided to mediators. Additional training on complex areas of law like land and new areas like domestic violence would also be useful, although some also noted that training should not be overly technical as training should not encourage a law based approach to mediation but rather seek mutually agreed upon solutions.

Training events continue to suffer from significant logistical challenges. Trainers explained that the facilities provided for the trainings, which are arranged by the DS office, are at times poor, and even basic facilities are lacking. So the quality of the training experience varies significantly depending on the DS area, its commitment to the program and available resources. Secondly, low allowances paid to the trainers means that they often have to obtain accommodation through the trainees themselves. The state provides the trainers only Rs.400, and only when trainers travel to different Districts for training. However, in a large District they would need to travel relatively far from home for their duties. Staying in the homes of mediator candidates raises questions regarding ethics, as they should be judging potential mediators on their performance without bias, and also has a negative effect on their motivation levels, job satisfaction, as well as the quality of training.

CASE FINDINGS

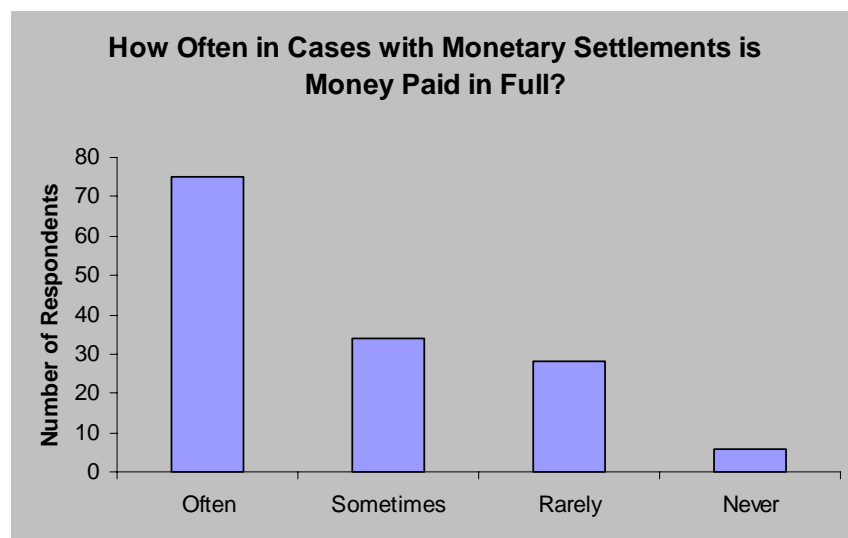
8. Assault and land disputes are the most common types of disputes.

According to the results of the user survey on mediation, at 31%, assault was the most common type of mediated dispute, followed by land disputes at 26%. The figure for assault does not even cover domestic violence, which is classified as a family dispute and constitutes 8% of all cases mediated. In assault matters victims almost always make the police their initial point of contact. Following land disputes, 19% of cases related to loans - bank, private, small-scale credit programs, and “seettu” (traditional system of savings and credit). Among all of the disputes, approximately 15% were related to breaches of previously mediated settlements.

Looking separately at the two Boards in Eastern Province shows different results. Assault cases account for only 5% in the East. Contrary to expectations, land disputes do not figure prominently in the Eastern Province boards, but disputes regarding access to water show an unusually high proportion of 17%. Family and domestic violence disputes are also much higher than in the overall findings, at 29%. The lower than expected percentage of disputes covering land issues might be attributed to higher proportions of disputes involving the state, meaning cases are referred directly to the DS.¹¹

The overall figures of the user survey can be seen as roughly mirroring the breakdown of minor offences annually reported to the police. According to the police statistics, of 900,000 minor offences reported to the police nearly half relate to assault, abuse or land disputes, while less than 10% are family disputes including domestic violence and property/inheritance matters.

Assault and land disputes are both the most common types of disputes mediated as well as the most controversial in terms of views on what role mediation should play. With regard to assault it is



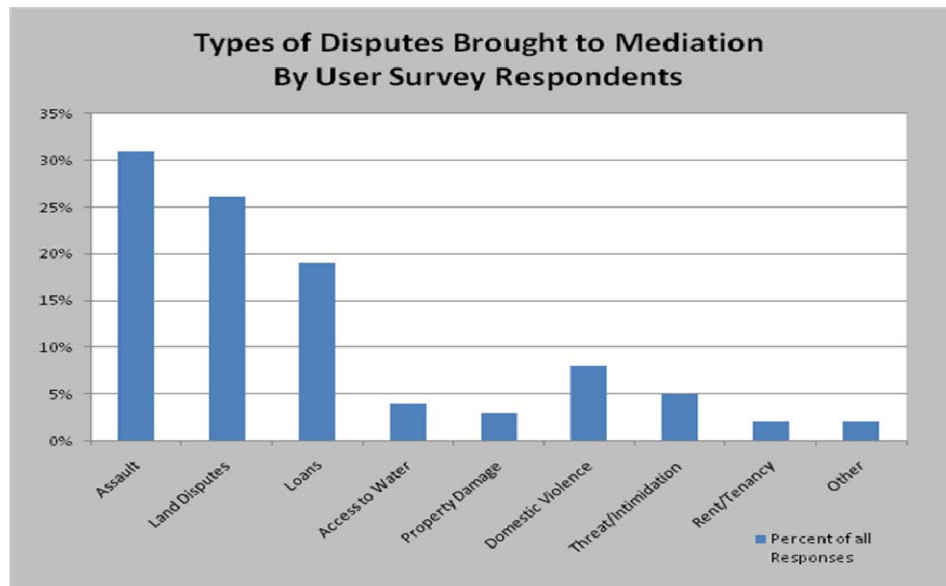
mandatory for cases to go first to the Mediation Boards; this is true both in the case of lesser offences of assault and causing hurt, but also the serious offences of causing grievous hurt and even causing hurt/grievous hurt by an act which endangers life. In practice however, both judges and the police generally thought it prudent for more serious cases of causing hurt to first go to the courts. In cases

¹¹ This explanation was offered by a Ministry of Justice official, but it was not verified during the research process.

of serious assault police noted that with mediation they could not take suspects into custody, which can prevent victims from seeking retribution, or allow offenders to abscond. Police and judges preferred that decisions be made after B reports had been filed in court, providing a clearer picture of the nature and gravity of the act so that appropriate action could be taken.

Other factors also contribute to police and courts feeling more comfortable with giving preference to the formal justice system with their referrals.

Contributing to this preference was the challenge for police of making nuanced decisions such as the difference between endangering life and attempted murder. Whereas one crime must be mediated (endangering life), the other must go immediately to the courts (attempted murder). Police and the courts tend to err on the side of caution and in serious cases direct matters first to the courts. In one Mediation Board area the police said that they had been instructed by the Magistrate’s Court to send the matter first to court, for it to be referred thereafter to mediation, so that the court has an initial record of it if it comes back to court unsettled. Interviews also revealed that this ambiguity might lead to opportunities for tampering. Some interviewees



suggested that the tendency among police to refer assault cases to the courts may not always be genuinely motivated by prudence and safety. Some interlocutors suggested that sometimes there is a lack of awareness or understanding among the police, while in other cases it may be due to police corruption when one party pressures the police to send the case directly to court due to some perceived benefit.

9. Instalment payment settlements pose a unique challenge.

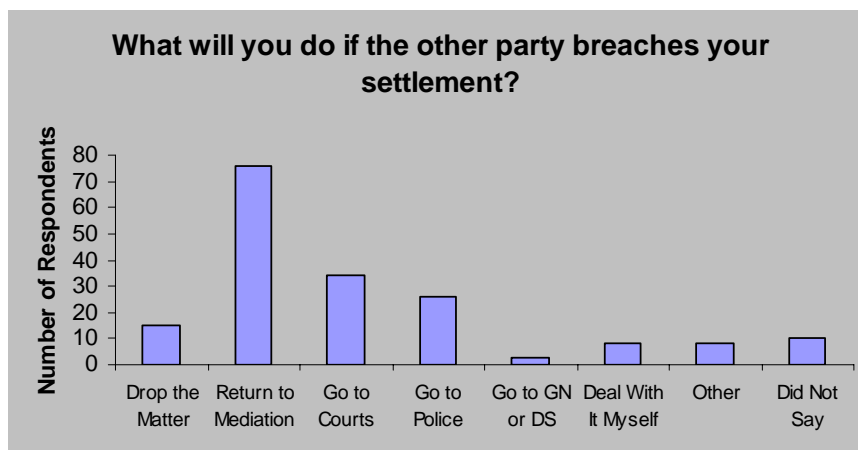
A number of legal grey areas and ambiguities have been raised by the evaluation, including the confusion surrounding the definition of what constitutes a settled case and how that relates to cases where compensation was to be paid in instalments. The quick nature of decisions is a key factor in the success and popularity of mediation. However, strict deadlines for settling cases can be problematic due to some ambiguities regarding what constitutes a settlement. According to the mediator survey, a large percentage of disputes (some 58%) that were settled involved an agreement that included monetary payments in the settlement, often through instalment payments. These cases pose particular procedural problems, since while a settlement is agreed to, the case is not really “settled” until the final

instalment has been paid. Research indicated that 24% of mediation users believed that financial penalties were rarely paid in full. The logic behind not defining a case as settled until after the compensation, or penalty has been paid is clear, but it creates significant problems in keeping to the statutory time limit set for mediation.

Even if a monetary case gets “settled” on the first day with the party agreeing to pay in instalments, several mediators explained that the courts often send back the settlement certificate saying that the case is not settled. Interviews with the police pointed out that when a party defaults on payment of an instalment the court cannot take the case up again if the case has been closed, and the Board has to call the case for discussion again. Trainers too raised this issue, saying that the Mediation Act allowed insufficient time particularly for instalment cases. Because of the statutory limit a mediation case must be settled within 90 days. If a case exceeds the 90 days, even where an agreement was reached through mediation involving instalments, then the court should seek a formal legal remedy.

10. Compliance appears to be strong, but remains difficult to measure.

There are no official statistics regarding compliance. Case studies, however, do offer some insight into this subject. In 19 of the cases, about 2/3, the terms of settlement were complied with. While of no strict statistical validity, this figure may give an indication of how many of the “settled” cases before Mediation Boards are truly “settled” in terms of providing a lasting resolution to the dispute. In four cases the terms of settlement were breached and the parties returned to mediation. In two cases the settlements were partially complied with, and the disputes continued. In three cases the settlement was not adhered to at all. In one case the intervention of a third party - a public authority, i.e. the Municipal Council, was necessary to resolve the issue, and the parties “settled” on the basis that they would seek the assistance of the Council, but the Council has not attended to the matter.



In general compliance is very hard to measure or track. As mediation is voluntary, and resolutions must be agreed to by all parties to be deemed a settlement, compliance becomes less of a contentious issue. There is certainly evidence that compliance does not occur in

all cases, but this does not seem to have a significant impact on perceptions of the usefulness of mediation. In fact, when disputants were asked what they would do if the settlement was breached, the most popular choice – 42%, was to return to mediation. 19% said they would take the matter to court,

and 14% that they would take it to the police. This demonstrates a certain belief in the utility of the process and the importance of negotiating settlements.

V. Recommendations

The recommendations presented in this section have been developed based on the major report findings presented in Section IV. Given the general success of the program, these recommendations for program development represent potential improvements rather than absolute necessities.

1. Increase focus on promoting diversity

The Ministry of Justice has recognized the shortcomings in diversity among mediators and mediator trainers, and has responded with plans to overcome these challenges. The plans have not been rigorously applied as of yet. On this issue there simply must be a greater sense of urgency and commitment to the task of diversifying the profiles of various stakeholders. While the Ministry of Justice has clearly recognized gender and ethnic diversity as important issues, there is also a need to consider diversity in terms of expertise and profession among the mediators as well as engaging youth in this program.

One of the key steps to be taken to increase diversity is to increase the size of the pool of people nominating mediators. In order to engage potential mediators with diverse profiles in terms of gender, age, ethnicity and profession, a diverse group of nominators with different interests and perspectives is also needed. A particular emphasis should be placed on soliciting nominations from NGOs and CBOs, who seem to be largely unengaged at present. In order to accomplish this, the notification calling for nominations will have to be more widely distributed. Perhaps several distribution chains might be established beyond the current one that goes mainly through the local government offices. An NGO distribution list might easily be developed, as could such a mechanism going through Samurdi societies or local business forums and chambers of commerce.

2. Add new components to mediation training and upgrade training facilities

The current training program has been effective and there does not seem to be any clear need to change the basic curriculum for mediators. There are additional training subjects, however, that are not presently being taught that might benefit the mediators as well as the quality of mediation. Key content to be added would include focus on how to address cases of assault and domestic violence, how to resolve land disputes, and effective case and duty management with a specific focus on managing time to improve service to mediation users. Some diversity sensitisation might also benefit the program. Given the expected increase in commercial mediation cases as the threshold for mandatory mediation cases rises to Rs. 250,000, there might also be a need to increase training in this area in urban locations that might frequently encounter such cases. With increased training there needs to be care to ensure that mediators are not trained to be lawyers or judges, but more targeted training if done well should increase the quality of mediation services provided.

Adding more focus on these new components could be done either through a slight revision of the initial five-day training, or by working to make the advanced training system more effective and efficient. Currently it seems that advanced trainings are not provided for all Mediation Boards. It might be useful to re-assess this system and move towards fewer events with a greater number of mediators attending, or more clearly scheduled, planned and executed advanced trainings.

The division of trainer responsibilities and geographical coverage should also be given further thought, and logistical arrangements and facilities for mediation training improved.

3. Clarify and make more efficient engagements with government institutions (police, judiciary, and local officials).

The findings of this evaluation suggest that the linkages with other key government institutions can further be developed to strengthen the CMB program. The most immediate need is to address the ambiguities and practical implications of the official policy regarding the relationships between the Boards and the police. While there is little or no formalised connection with the police, informally the police are heavily engaged. In order to clarify this problem, procedures should be established to manage relationships with the police and what kind of information should be sought and shared with them when they become engaged in a particular case. Logically there should also be an effort to educate and inform the police about the CMB program, and discuss how the force can support and increase the effect of the CMB program.

Regarding the judiciary and local government officials, there is no need to review relationships and create procedures, rather it is simply an issue of increasing awareness and understanding of the program. While in many locations the courts and local government officials seem to be providing support to the Boards and contributing to their impact, in most locations the evidence is that there is no effective engagement. There seems to be a lack of understanding for the program and its goals among many relevant actors. If awareness and advocacy within government are effective they can both improve the overall work of local governments, as well as increase the local impact of the Mediation Boards.

Awareness and advocacy might also be an appropriate focus more broadly within the general public. While awareness of the Mediation Boards was quite high, the problem of absenteeism of disputants remains. The changes made through the amendment to the Mediation Act have not substantially reduced absenteeism. There seems to be a persistent lack of understanding of the Mediation Boards among the general public despite the high awareness levels. There could be greater clarity on the links to the formal courts and the legal implications of being absent from mandatory mediation proceedings. So a strategy to increase public understanding of the role that Boards play might help address this challenge.

4. Revisit Mediation Act

Over time local Mediation Boards have changed and evolved based on practical needs and expectations. Processes and procedures are not always followed according to the exact content of the Mediation Act,

e.g. procedures for selection of mediators by disputants. The evaluation has not, however, found substantial evidence that these changes negatively affect the quality of mediation services being provided. With this in mind, rather than attempt to enforce the exact content of the Act more vigorously, it might be advisable to reconsider the Mediation Act in light of the changes. This could lead to a variety of steps, including adjusting the Act itself to reflect processes that have developed organically, writing more flexibility into the law, and/or ensuring implementation of existing provisions.

Revisiting the Mediation Act would also allow for consideration of two outstanding legal issues; (1) confusion over which disputes can or cannot be mediated and (2) the complexity of instalment cases in light of the required time constraints. It is important that any changes to the law be made with full consultation of those involved in implementing the Act. With regard to the issue of which types of disputes cannot be mediated, the Third Schedule is quite clear in preventing certain disputes from going to the Mediation Boards. There is, however, some ambiguity within the Act as Sections 6 and 8 do not explicitly make mention of the Third Schedule. By not being explicit, the Act is left open to interpretation so that if parties wish to (Section 6) or if the courts refer it (Section 8), any dispute potentially including those on the Third Schedule might be mediated. Part of the problem is that disputes mentioned in the Third Schedule are sometimes referred to in broad terms, for example “actions relating to matrimonial disputes” is included. This term encompasses disputes wider than just divorce, and includes some minor marital disputes or those over maintenance payments, which may be possible to mediate. A possible revision would be to amend the Third Schedule to refer to “matrimonial disputes requiring an order of court” to narrow the scope of disputes covered. Each of the 15 types of disputes in the Third Schedule could similarly be revisited for refinement, and clarifying amendments to Sections 6 and 8 might also be made.

Strengthen Monitoring and Evaluation (M&E) activities

Challenges with managing data and information, planning strategically and tracking compliance are all closely related to the topics of M&E. The CMB program seems to be working hard to monitor its work, but the efforts expended fall short of their potential impact due to information gaps and a lack of emphasis on evaluation and analysis of that data.

M&E structures should first be reviewed to generate plausible ways to collect information on a few key topics that are not covered by current systems such as the types of disputes being mediated, with care taken to ensure that MBC statistics are sufficiently nuanced so that information can be gathered on such things as domestic violence (which often is simply classified as assault). Other useful information to gather would be statistics on voluntary vs. mandatory mediation disputes and the issue of compliance. Data on compliance would most likely require the courts to gather information as well, on how many cases previously mediated end up in their dockets. More systematic information collection on the activities of the mediation trainers would also be a key gap to fill.

Strengthening data analysis and thereby the resources available for strategic planning starts with improvements to the information storage system. Key Ministry of Justice staff needs also to be generally comfortable accessing this information in databases and using it to inform decision making processes.

ANNEX A: Management and Oversight

The Ministry of Justice (MoJ) is responsible for the policy planning and overall management of the Community Mediation Boards Program, including resource allocation and decisions about creating new boards. There is an independent Mediation Boards Commission (MBC) which is directly responsible for appointing, disciplining and managing mediators. The MBC is a body of five appointed directly by the President, which must consist of at least three former Supreme Court Judges. The Secretary to the MBC is a senior MoJ official, who is responsible for coordination between the MoJ and the MBC. Until recently the MBC was located in office space outside of the MoJ, but it is currently moving into the Ministry itself. In order to fulfil its tasks the MBC has a number of subject clerks, each responsible for one or more districts. They function under a chief clerk who liaises with the (Acting) Secretary of the MBC and provides day-to-day logistical guidance to the clerks. The Eastern Province Boards (three districts) and the Jaffna District Boards are all handled by a single clerk who is Tamil-speaking.

The MoJ oversees all the financial aspects of the CMB program itself. Oversight of the actual Mediation Boards is the shared responsibility of the MoJ and MBC. The primary mechanisms used are mediator trainers who conduct periodic site visits to the boards, and a monthly reporting form sent to the MoJ by the chairperson of each Mediation Board.

During the periodic visits, mediator trainers observe and report on the functioning of boards. Mediator trainers are generally assigned one to a district and they are expected to monitor the operation of Boards in that district by visiting three Boards per month. They also hold quarterly meetings with all of the Board Chairpersons from a given district. While the numbers of Boards in a district vary widely, from five in Nuwara Eliya to 27 in Kurunegala, this works out very roughly to about one visit to a Board every 3-6 months. Trainers report back to the MoJ on what they observed on the day of the visit with a formal report. During these visits, the trainer records facts about the cases going on, such as the number of mediators, and the number of panels in session, and also makes observations on the quality of the services being provided. The trainer gives feedback and guidance directly to mediation panels during these visits.

The monthly reporting forms sent to the MoJ compile important information on the functioning of every Board including the number of disputes carried over from the previous month, the number of new disputes,¹² the number of disputes disposed of,¹³ and the number of disputes carried over into the next month. The MBC is responsible for collecting and reviewing the information contained in the monthly reports. A central database is used to collect the information from the 300 reports every month, and annually the MBC produces a “Summary of the Mediation Boards Statistical Report”.¹⁴

At the operational level these actors within the MoJ rely on District and particularly the Divisional Secretariats to play a coordinating role. These local officials handle nominations, process remuneration requests, arrange facilities for trainings as well as mediation meetings and manage the daily expenses of the mediators.

¹² New disputes are categorized in three ways (a) direct applications, (b) mandatory mediation cases and court referrals, and (c) breach of settlement disputes.

¹³ The disputes disposed of are classified in one of five ways (a) settlement, (b) non-settlement in direct applications of breach of settlement cases, (c) non-settlement in court-referred cases, (d) rejection due to incompatibility with Section 6 of the Mediation Act, and (e) withdrawal by parties.

¹⁴ This report is intended for internal use and considered confidential, but was made available to the evaluation team.

ANNEX B: Appointment and Training

The MBC is responsible for appointing mediators when new Boards are created or terms come to an end. A functioning Mediation Board has to have a panel of 12 mediators, no more than five of which can be public officers. The appointment process begins with a call for nominations, which is announced through a Gazette notice. Nominations can be made either by the District Secretary or by non-political individuals or organisations including a public officer or head of department of the provincial government, an active or retired head of a place of religious worship or school, a Mediation Board chairperson, or a person or organisation involved in a range of specified social service activities. Nominations must include an explanation as to why the person nominated is suitable to serve as a mediator.

Once recommendations are received, the MBC selects from among them persons it thinks suitable to follow a preliminary training course in interest-based mediation skills and techniques. This training course is both an exercise in capacity building, and an important part of the selection process. During the course trainers assess the suitability of nominees to serve as mediators. These five-day programs are run by the MoJ mediator trainers, except for those in areas with a predominantly Tamil population due to insufficient Tamil language ability among MoJ mediator trainers. Tamil language training is provided by the Centre for Mediation and Mediation Training (CMMT), a non-government institution receiving foreign funding on a project basis. The content of this training course has been designed and improved over the years with the input of mediation experts, mainly from the USA but with strong local involvement, supported by The Asia Foundation. Course content is built around developing five basic skills of mediation: (1) moving beyond an impasse, (2) identifying root causes of the dispute, (3) communication, (4) negotiation, and (5) generating alternatives.

When the training is completed the trainers submit a report on each of the trainees to the MBC, commenting on their aptitude, knowledge and skills to function as a mediator. On consideration of the reports the MBC appoints a panel of mediators for each Mediation Board area, one of whom is appointed as Chairperson of the panel. Mediators are generally appointed for three years but may be re-nominated and re-appointed on the expiry of their period of office. In an attempt to continue developing the skills of the mediators, one-day advanced trainings are offered periodically, generally following an initial year of service.

ANNEX C: From Dispute to Mediation

There are two broad categories of disputes that end up before Mediation Boards: (1) mandatory mediation cases are legally required to go before Mediation Boards prior to entering the court system, and (2) voluntary cases are referred to mediation by the courts, police, or local officials provided with the parties' consent. For mandatory cases that cannot be settled by mediation a non-settlement certificate is issued and the dispute is referred to the courts.

There are, of course, certain disputes that cannot go before Mediation Boards according to the Mediation Act. This includes disputes where the state or a public officer acting in their official capacity is a disputant. Also included are a number of violent and serious crimes laid out in the Act. There are certain types of cases which are ambiguous with regard to mediation, specifically civil disputes listed in the Third Schedule of the Act which include land partitions, matrimonial disputes, trusts etc. These types of disputes are excepted from the mandatory category, but in theory they could be brought to a Mediation Board through a direct application by one of the parties. Officially, however, they are viewed as being outside the capacity of mediators to resolve due to their complexity as well as the requirement for legal court orders for resolution such as divorce decrees and land titles. In practice, research has shown that these issues, particularly land disputes, do come before Mediation Boards, suggesting a lack of clarity between mediators, courts and policy makers on this issue.

The data maintained by the MBC only categorizes disputes as "court referred" or "direct applications". Disputes referred by police or local government actors might fall into either category depending on the manner in which disputants were convinced to attempt mediation. According to this categorisation, broadly speaking of an annual average of about 100,000 or so disputes going to mediation, about 25,000 are referred by court, while the others are direct applications. The results of the mediation user survey offered a more nuanced view of how mediation cases end up before the boards. The majority of cases, 39%, were directed to the Mediation Board by the police, 15% were applications brought directly by a disputant, and 13% were directed by court. The proportion of direct applications is much higher in the Eastern Province Boards at 58%, with police-directed applications at 14.5% and court-directed ones at 6.5%.

ANNEX D: Mediation Process

Each Mediation Board hearing a dispute consists of three mediators selected from the local panel for the Mediation Board area. According to the Mediation Boards Act, for each dispute the Chairperson of the Mediation Panel should assign mediators based on the preferences of the disputants. This can be done by each disputant selecting one mediator, and the third being selected by the two mediators. Disputants can also choose an entire board of three mediators based on the Boards constituted for previous disputes (a pre-constituted board.) In the event that disputants are unable to agree, the Chairperson may make the selection/s. Where a disputant indicates in writing his/her unwillingness to select a mediator, the Chairperson will make such selection by lot, and if the disputant objects to that selection, a further selection should be made by lot by the Chairperson.

According to the Act, Mediation Boards may require the assistance of GNs to communicate any notification to disputants, and GNs must assist the board as necessary. This would generally arise on occasions where the address of a party is incorrect and the board does not have sufficiently accurate information to notify a party itself.

Once a Mediation Board has been constituted, it legally has a tight time schedule to generate an amicable settlement. Disputes should be disposed of within 60 days on an offence and within 30 days of a Mediation Board being constituted. In the case of a matter referred by court, the settlement is sent back to court and the court enters a decree in accordance with the settlement. In the case of direct applications, if one party fails to comply with the terms of settlement at any time, the other party should report this to the Board and the Board must try to resolve the matter and help them enter a fresh settlement.

Once a settlement has been reached the Mediation Board issues a settlement certificate. If no settlement is reached then a certificate of non-settlement can also be issued. Legally the Mediation Act requires that copies of certificates in direct applications should be given to the parties and in court-referred cases sent to court. While this rule is quite straightforward, research has indicated that there is significant confusion on this issue. As previously mentioned with regard to cases involving instalment payments, the role for the Mediation Board in following up on settlements is somewhat ambiguous. It is common practice for the Mediation Board to issue a settlement certificate when an agreement between the parties is reached, but there are no rules regarding their role in monitoring compliance or conducting follow-ups.