

Sri Lanka: Government-Supported Community Mediation Key Points

Description: This case profiles Sri Lanka's community mediation program, which dates to 1990. The Sri Lankan program operates in all but the Northern and Eastern provinces, which are affected by civil war. It includes 218 mediation boards, with 5,400 trained mediators, and has handled about half a million cases since 1990. The program is based on a comprehensive Mediation Boards Act of 1988 (amended in 1997), and operates within a clear legal framework. The mediation boards are appointed and operate at the community level, with immediate oversight by commissioners and general oversight by the National Mediation Boards Commission.

Cases appropriate for mediation include civil disputes and minor criminal offenses; certain kinds of cases in fact need certificates of non-settlement from the mediation boards before they may be heard in court. Mediations are free to users; program costs are covered by the Sri Lankan government, with some funding from foundations. The mediation boards meet about once a week for approximately four to eight hours, using public buildings. Each mediation board is comprised of a chair and 12-30 mediators; individual panels for cases have three mediators. Satisfaction with the program is high.

Goals: The boards were established by the ministry of justice for a number of reasons: increase access to justice by reducing court backlog; increase access to the economically disadvantaged; replace the failed conciliation boards with a better ADR program.

Design: The program attempts to improve on the failed conciliation boards by incorporating lessons learned from that experiment, especially problems of politicization of personnel. Mediation is accepted by the population, and builds on indigenous conflict resolution systems.

Operation: To ensure the quality of dispute resolution services, the program provides training and ongoing oversight for mediators. The program relies heavily on volunteer staff, and so is extremely cost-effective. However, stipends provided to staff should be increased to ensure their costs are covered. Trainers are critical to operations but also overburdened, and so additional training staff should be hired. High literacy facilitates outreach and education, as well as the operation of the boards themselves.

Impact: Satisfaction by the mediation board users is very high; related compliance rates are also high. Court delays have been reduced. The government needs to ensure long-term financing as external funding becomes uncertain. Confidentiality of the mediation process needs to be improved. A lurking problem to continued success is the developing backlog of cases to be mediated.

SRI LANKA CASE STUDY

I. DESCRIPTION¹

A. *Program Origins and Goals*

Sri Lanka's mediation program is based on the Mediation Boards Act No. 72 of 1988. The act was written in response to concern that:

1) the backlog in the courts was preventing Sri Lankans from accessing justice effectively and efficiently (which was linked to a desire to keep minor crimes from becoming major ones); 2) the current justice system needed to be improved, especially to provide access to the economically disadvantaged; and 3) that Sri Lanka has a long history of community mediation and the failure of the Conciliation Boards Act of 1958 did not, in the minds of those working at the ministry of justice (MOJ), indicate that mediation was a failure. In fact, the MOJ asked that an analysis of the failed conciliation boards be conducted and the new program was designed based on that analysis. The MOJ then drove the process of writing the Mediation Boards Act No. 72 of 1988.

The act provides the legal framework necessary to institutionalize the mediation boards. The boards are empowered to use the process of mediation to resolve all disputes referred to them by disputing parties, as well as those referred by courts. The mediation boards are appointed at the community level and their members are persons respected in the community. Disputes over movable or immovable property valued below 25,000 rupees ' collection of bank loans, property disputes) have to be referred to mediation prior to filing an action in court; disputes involving minor offenses must also be referred to mediation prior to the police instituting action in court. Disputes between family members are also frequently brought to

the mediation boards for resolution. The program's goal is to divert minor disputes away from court for settlement if possible, in an atmosphere that is both free from the constraints of court procedure and which is also conducive to the amicable settlement of a dispute-the nature of which does not require the application of technical legal concepts.

The mediation board has no jurisdiction to mediate in matters where one of the disputants is the state, a public officer or the attorney general, or where the offence is one in which proceedings have to be instituted by the attorney general. If an action has already been filed in court, the dispute can be referred to mediation with the written consent of both parties. No lawyers or agents are permitted to appear before the board and "no statement made by any person before a mediation board shall be admissible in evidence in any civil or criminal proceeding¹.

The 1997 amendment to the act further defines the procedures to be followed in bringing a case from mediation to court (i.e., what kinds of cases need certificates of non-settlement before being allowed to be heard in court) and further clarifies how the mediation boards are constituted for any given case. (In the past, disputants chose the mediation panel with direction from the chair. Now, the panels are pre-constituted but the disputants have the right to change the membership. It was found that disputants rarely had an opinion about the mediators themselves and this amendment was written to expedite the process.) The amendment to the act came in part from feedback from the mediators themselves about how the process was working and what improvements might be made.

Oversight falls within the purview of the

¹ Conducted by Elizabeth McClintock, CMG Consultant, September 1997.

² Mediation Boards Act, No. 72 of 1988, Section 16 (2).

mediation boards commission. The mediation boards commission consists of five members, three of whom at least shall be from among persons who have held judicial office in the Supreme Court or the Court of Appeal. The chairman of the commission is nominated by the president. Commission members serve for three years. The commission meets once a week to discuss key issues, review the performance of mediation coordinators and mediators, as well as keep up to date on the progress of the boards.

The mediation boards program began functioning in 1990. At present there are 218 mediation boards in operation throughout most of Sri Lanka and approximately 5,400 trained mediators. It is hoped that mediation boards will be set up in the Northern and Eastern provinces in the near future (they are prevented from operating there at present because of the civil war). The number of cases referred to the boards has steadily increased since the inception of the program, from 13,280 in 1991 to 101,639 in 1996. Through July 1997 a total of 522,307 cases had been referred to mediation boards. Of these, 31,739 were rejected as not suitable for mediation, 17,279 were withdrawn by the applicants, and 13,925 were carried over until August 1997. A total of 459,364 disputes were taken for mediation and of these, 295,302 disputes were settled amicably. The settlement rate is 64.2%.

The program costs are covered predominantly by the Sri Lankan government. The government has demonstrated its commitment to continuing the program by providing at least the minimum budget--covering salaries of the mediation trainers, administrative costs at the MOJ, and the small stipends that mediators receive to cover costs of managing the mediation boards, travel, postage, stationary). The total budget for the mediation boards in 1997 was Rupees 24 million (less than \$500,000). The same amount has been budgeted for 1998. Additional training, public awareness programs, and media campaigns have been funded by the Asia Foundation (TAF) and

USAID through TAF's Citizen's Participation (CIPART) Project. Between September 1995 and December 1997, USAID has contributed approximately \$110,000 to the Mediation Boards Program through TAF.

B. Program Activities

The Sri Lankan ADR program is composed of several parts to ensure the success of the mediation boards:

1) The training of mediation trainers.

There are thirteen mediation trainer/coordinators, who hold their jobs until retirement. The thirteen coordinators are predominantly former family counselors (a few were probation officers), and received a five day basic mediation course and a five day advanced Training Of Trainers course from Dr. Christopher Moore of CDR Associates, Boulder, Colorado. In addition, six of the 13 trainers were given the opportunity to travel to the USA, Malaysia, or India for exposure to other mediation techniques. Mediation coordinators also participate in regular refresher meetings once a month at the MOJ.

Each coordinator is responsible for overseeing approximately 20 community mediation boards, visiting three to four boards every week. Their duties include monitoring the mediators, giving feedback to the mediators and the chairpersons, answering questions and giving advice about the mediation process, and dealing with any administrative issues.

2) The recruitment and training of mediators (panel members). Panel members are chosen according to the guidelines set out in the Mediation Boards Act.³¹ Individuals and non-

³¹The persons who shall be eligible for appointment to any panel of mediators are n/a.

- (a) any person resident in a mediation board area or engaged in any work in that area;
- (b) any person resident or engaged in any work outside such mediation board area if the commission so decides, in exceptional circumstances; and

political organizations nominate candidates for a position on the mediation board. The candidates are required then to submit an application to the Mediation Boards Commission and are then interviewed. The overwhelming majority of mediators are men (for example, at each of the boards attended, only two or three of a total of 30 panel members were women; approximately 2% of all mediation board chairs are women) and are well-respected local community members. Mediators are generally retired civil servants, such as teachers, school principals, postmasters, or district commissioners. Religious leaders, farmers, doctors, businessmen, and lawyers are also prominent as panel members. In theory, mediators serve for three years. They can be reappointed indefinitely, though their performance must be reviewed every three years, and on any given board, there must be a turnover of one-third of the staff every three years. Each mediator receives five days of initial training and a one-day refresher every six months. The board chairs receive a two-day refresher every six months. All mediators are volunteers and a small stipend is provided to them for travel (to and from the sites of land disputes, etc.) and to cover administrative costs such as sending letters to the parties to the dispute informing of their mediation date.

3) Awareness raising and educational programs for police, local officials, school children, social workers. The mediation coordinators are responsible for giving this training. These programs are divided into two types. In one type, stakeholders (, judges, police chiefs) implicated in the implementation of the Mediation Boards Act are given training, and approximately 5,000 stakeholders have

(c) any public officer nominated by the government agent of the administrative district within which such mediation board area is situated:

Provided however that an officer nominated under this paragraph shall be eligible for appointment to the panel appointed for every mediation area within that administrative district." Mediation Boards Act, No. 72 of 1988, Section 5.

participated in a one-day "awareness raising" program. The content of the program includes the presentation of the act, the role of the stakeholders in the implementation of the act, and a question and answer session. The second type of program are those conducted within organizations or constituencies to educate the participants about the mediation process. To date, programs have been offered to police officers, local bar associations, and local school children.

4) Regular monitoring and evaluation of panel members by the mediation trainers and the mediation boards commission members. (See the *Analysis Section for a further discussion of monitoring and evaluation.*)

5) Training for law school students at the Sri Lanka Law College. A six-month program was implemented to educate law students about mediation. The students participate in a three-day mediation workshop and then use the techniques they have learned in the legal aid clinics. Students are also given the opportunity to observe mediations conducted by the mediation boards. Approximately 1,500 students have participated in the mediation workshop to date.

6) Posters to advertise the boards in each community were produced in Sinhala, Tamil, and English. The posters include the address of the local mediation board. In addition, a public television documentary on mediation was produced and aired on national television. The police also refer cases to mediation, thus increasing the visibility of the program.

C. Operation of Mediation Boards

Each mediation board is composed of a chairperson and a panel of 12-30 mediators. The chair is chosen by the mediation boards

commission (based on input from the mediation coordinators) and serves for three years (with the opportunity for renewal). The mediation boards tend to meet once a week, generally one day on the weekend or after working hours during the week. The boards meet for anywhere from four to eight hours. In general, classrooms in schools or other public buildings are used as the venues for the mediations. The chairs are responsible for conducting the intake of all mediation cases, contacting the second party, informing the disputants about the process of mediation, assigning mediation panels, administration of the case load, and just generally managing their mediation board.

Approximately 25 cases are dealt with on any given day at a mediation board. Some of these cases are new, and some have been carried over from the last session. The MOJ has asked that all cases be dealt with within 60 days of the complaint being submitted to the chair. The chair can extend that time if necessary. The majority of cases dealt with at the mediation boards are land disputes, minor criminal offenses, debt collection, and family disputes.

When a disputant comes to the mediation board for assistance, he or she is required to fill out a standard application, issued by the MOJ, and provide a five rupee judicial stamp. Upon arrival at the mediation board, disputants are given a short presentation on the mediation process. The chair then matches disputants with a panel of three mediators.

Mediations continue until the case is settled or the session ends for the day. The majority of cases dealt with are land disputes and family matters. (At one mediation board observed, the chair estimated that 75% of his cases were land disputes.) Disputes between debtors and banks constitute the other major category of issues. In the urban areas, disputes involving drunk and disorderly behavior or assault are also common.

Satisfaction with the mediation boards

was quite high among the disputants interviewed. While most have confidence in the justice system, what makes mediation attractive is its accessibility, the low cost (both in terms of time and money), how they are treated, their control over the process, and the fact that it is a community-based solution. (Almost everyone interviewed mentioned that the mediation process provided the disputants with an opportunity to save face because, in their view, the mediators better understand their problems -they are from the same community-and agreements are based on consensus.)

Satisfaction is also reflected in the compliance rates. Anecdotal evidence indicates that a vast majority of bank-debtor settlements are respected. At the Moratuwa Mediation Board, the chairman said that 95% of the loan cases are resolved and the settlements abided by because both sides feel that mediation is more conducive to resolution. Interviews revealed that settlements reached in minor criminal offenses and assaults also had a fairly high compliance rate. Interviewees implied that mediation was far preferable to dealing with the police or the courts and that compliance was a small price to pay for resolving the issue. No data is available regarding land disputes and family matters although the mediation chairpersons implied that they have a lower rate of compliance, since people returned to the board to ensure compliance with a settlement.

The mediation boards enjoy an enormous amount of political support in Sri Lanka-all the way up to the Supreme Court. This support contributes to the success of the program both in terms of the funding it receives from the government and the reputation that the program enjoys amongst Sri Lankan citizens. The clear relationship between the mediation boards and the formal judicial system, outlined in the Mediation Boards Act, has also been a factor in the program's success.

II. ANALYSIS

A. Background Factors

In Sri Lanka, the mediation boards were not established as a substitute for the formal judicial system. Indeed, the formal judicial system enjoys a fairly good reputation in Sri Lanka. While there are several areas in need of reform, especially with respect to the modernization of the legal system (such as improving court administration and enhancing in-service training for young lawyers and the attorney general's department), recent surveys indicate that 98% of Sri Lankan citizens would still resort to the legal system if they had a legal problem. Instead, the mediation boards were created as a complement to the existing system, in an attempt to address court backlog. Approximately 8,700 court cases are currently pending nationwide⁴ resulting in a feeling of user dissatisfaction.

In addition to the judicial environment that formed the backdrop for the creation of the mediation boards, there are several background factors that have contributed to the strength of the program. First, success of the mediation boards system is rooted in the clear link between the mediation boards and the formal judicial system. The Mediation Boards Act, No. 72 of 1988, clearly spells out the structure and jurisdiction of the boards. More importantly, it delineates the types of cases which must have a certificate of non-settlement issued by the mediation board before it can be referred for court action. This has resulted in a more rapid popularization of mediation boards than otherwise might have occurred, had that link not been as clear. It has also meant that user confidence in both the mediation boards and the courts has increased as well-functioning mediation boards have resulted in greater user satisfaction with results, as well as a decrease in court backlog-thus reducing court delays.

⁴The backlog has been reduced from 13,000 cases, p. 6 CIPART Quarterly Report, April, 1997 - June 30, 1997.

A second, related background factor is the high quality of human resources available to staff the mediation boards. There is a strong sense of community service and responsibility among the generation of mediators who are currently serving on the mediation boards. This is complimented by the fact that the Mediation Boards Commission has made a strong commitment to ensuring that the boards are not politicized. Thus, the quality of mediators has remained consistently high. This has reflected positively on the reputation of panel members and the perception that they are well trained and relatively impartial. In their 1994 report, Hansen, et al. argued that user satisfaction with the mediation boards was higher than with the previous conciliation boards, largely because much greater care has been taken to select, train, and supervise community mediators. Observations here support this hypothesis.

In addition, the high rate of literacy in Sri Lanka has had a significant impact on the success of the mediation boards program. The health of the overall system of government is reflected in the literacy rate, as mediators, judges, and other public officials seem to be held to a higher standard of performance. In addition, the high literacy rate in Sri Lanka makes it easier to reach the target population.

A final background factor is the cultural fit of mediation with established social norms. Mediation has a long history in Sri Lanka. During the time of the kings the mediator was called the *duk gana ra/a*-loosely translated as "one who listens to the sorrows and woes of others." Seeking the counsel of elders and well-respected members of one's community is seen as an appropriate means of resolving disputes. In fact, prior to the establishment of the conciliation boards and in the intervening period between their abolition and the creation of the current mediation boards system, the local public servants, the Grama Seva Niladhari (GSN), were called upon to resolve disputes. Villagers continue to go to them as a first resort, but an aggressive information campaign has resulted in

the GSNs referring cases to the mediation boards. The GSNs interviewed indicated that they were supportive of the mediation boards system because: 1) they have an enormous number of responsibilities and do not have time to properly dispose of such disputes; 2) the mediators have demonstrated that they are trained to help parties to effectively resolve disputes; and 3) the GSNs are involved in the process-as they are often recruited to ensure that a settlement is abided by.

Parties themselves also emphasized that mediation-defined as a process of having others assist you in solving your problems-is a common and welcome means of keeping the peace in small communities. According to those interviewed, parties felt that they were treated better in the mediation process than they might have been in court or by the police and the fact that the resolution is based on consensus allowed them to save face. "The process was explained to me in great detail and was easy to follow. I felt the panel was balanced in their roles-those who listened to me and others who responded to my concerns. I was treated politely and I felt like my problems were understood by the mediators. I have learned something today and would do it again [participate in the mediation process], if necessary."⁵

The various religious traditions in Sri Lanka also promote consensus as a means of problem solving. Because many priests and imams also serve as mediators, parties feel that the mediation boards process not only respects those traditions but improves upon them. "Initially, we went to our imam to help settle our dispute but our perception was that the imam was not impartial so the settlement was not valid. Therefore we decided to come to the mediation board because we have heard that they [the

⁵ A young man who came to the Moratuwa Mediation Board in the Colombo district with his uncle when they had a dispute about the uncle's drunk and disorderly behavior at home (9/24/97).

mediators] are impartial and neutral,⁶ When asked if he felt the imams who serve on this mediation board were impartial he replied affirmatively, "because of the training they receive."

B. Program Design

With respect to program design, by far the most significant issue was the conscious decision to analyze the shortcomings of the Conciliation Boards Act of 1958 and to create a system that did not replicate the problems of the former system.⁷ There were three major drawbacks to the conciliation boards system which were identified by the drafters of the Mediation Act of 1988. First, the MOJ had the power to remove panel members if they had demonstrated incompetence. While this was important from an administrative standpoint, the act was worded so that the minister had power to remove members "without assigning any reason," leaving the system open to criticism (apparently justified) that this power might be used for political reasons.

A second area of concern revolved around the breadth of the panel's jurisdiction. Lawyers especially felt that the panels' power to deal with issues like divorce, child custody, and estate administration and to issue the equivalent of a decree of court was a dangerous precedent. The unavailability of extraordinary relief (i.e. injunction) caused delays because parties were required to seek redress at the conciliation board level prior to pursuing their case in court, thus replicating the very same problems the mediation system had been established to resolve. Also, a number of critics expressed concern that the settlements reached bore no relationship to the parties' legal rights. Finally, and perhaps most importantly, people were dissatisfied with the

⁶ A young man who, along with five other parties, had a land dispute come before the mediation boards. Akurana Mediation Board (9/21/97).

⁷ P.B. Heart, *From Conciliation to Adjudication in Sri Lanka: Causes and Problems*.

quality of panel members. Not only were they untrained, but there seemed to be a heavy element of politics in the selection process thus leaving the conciliators open to undue influence.

In setting up the mediation boards, the drafters of the 1998 Mediation Boards Act took great pains to ensure that these issues were dealt with.⁸ The establishment of the commission and its role in oversight of the system has removed the taint of politics from both the selection process and from the mechanism established to monitor, evaluate, and discipline mediators. The jurisdiction of the mediation boards is limited and clearly spelled out in the act. The relationship between the mediation boards and the judicial system is straightforward and the mediators must not only understand it themselves but must communicate that relationship and their rights to the disputants. And finally, the training that coordinators, chairpersons, and mediators receive has improved the quality of the services offered to parties and the perception of impartiality that the panel members enjoy.

C. Personnel and Training

The tension that mediation trainers face is that they want to encourage well-respected people to serve on the boards-usually people who have been in positions of authority (teachers, school principals, priests)-yet are now asking these people to behave differently than they are accustomed to. In other words, they are no longer supposed to make decisions based on their position of authority but instead are to help others make those decisions. In addition, the parties themselves will frequently come to the mediation with the expectation that the panel

⁸ Despite the experience with the conciliation boards, there are still some who want to give the mediation boards the power of summons and to give their settlements the status of decrees of court. Interviewees insisted that it would be a mistake to institute these measures, as the voluntary and consensual nature of the process are keys to the mediation boards' success.

members will solve their problem for them. The mediators need to learn how to manage this expectation as well as train themselves to think differently about their own role in the community and more specifically in the mediation process.

Linked to this challenge is the impact that a mediation board chair can have on the tenor of a mediation board. One of the mediation trainers interviewed indicated that if chairs have very strong personalities, they will often leave their mark on the functioning of the mediation board. Two of the three mediation boards observed bore this out. In both cases, the authoritative way in which the chair ran the board was reflected in the tone that mediators took with their clients. In conversations with disputants, this authoritative tone seemed to impact negatively on their perception that the mediators were impartial third parties. The mediation coordinators are trying to address this problem. The third mediation board observed was run by a woman who had excellent facilitation and organizational skills and her collaborative style resulted in an extremely well-run mediation board.⁹

D. Monitoring and Evaluation

Another aspect of program design that has contributed to the success of the mediation boards and to the confidence that users have in the program is the system to monitor the mediators. During regular visits, the mediation coordinator observes the mediators in action, offers advice, and interviews participants if problems are evident. Regular reports are submitted to the commission based on these visits and mediators are evaluated on their performance. If the coordinator observes a problem, s/he will follow up with the mediator. For serious problems, the commission may then assign a team of three coordinators to investigate the complaint.

⁹ Mrs. Murial Nilaweera is the chairperson of the Uduwara Village Mediation Board near Kandy.

E. Education and Outreach

Despite the fact that mediation fits well with cultural norms in Sri Lanka, it has been necessary to design an extensive public education program in order to publicize the mediation boards. Not all of these education efforts have been funded by the government and they have comprised a significant part of the grants that TAF has provided to Sri Lanka for support of the ADR program. There are three significant benefits to this education program: 1) co-opting those who are involved in implementation; 2) winning over those who might influence the reputation of the mediation boards from afar, and 3) widening the target audience reached by mediation board efforts.

First and perhaps most importantly, the education efforts have been incredibly successful at winning over those members of the community who are implicated in the implementation of the mediation system. This would include local magistrates, chiefs of police, judges, divisional secretaries, and the Grama Seva Niladhari (village headmen). Over 900 stakeholder workshops have been conducted across Sri Lanka with the intent of familiarizing participants with the Mediation Act and their role in ensuring its success. Bringing the village headmen on board has been especially important because they are not only involved in publicizing the mediation boards but are often called upon to "encourage" second parties to attend mediation and are integral to the enforcement of settlements, as they are a well-known and respected authority at the village level.

A second benefit of the education program is its potential for securing the support of respected members of the legal profession who, because of their stature in society, could play a crucial role in bolstering the reputation of the mediation boards. At present, there are rumblings within the legal profession that the mediation boards are "a step to deny access to courts of law."¹⁰ In fact, the concerns expressed by some detractors of the mediation board system have some validity. In particular, decisions are sometimes reached with respect to land disputes where the mediators and the parties may not have a clear understanding of the relevant laws. What the education programs seek to accomplish is to bring the legal professionals into the process so that their advice can be more constructively integrated into the system. To this end, the mediation trainers have organized workshops for students at the Sri Lanka Law College and sessions for local bar associations. While there is strong support within parliament for the continued operation of the mediation boards, the risk is that the support will be eroded unless efforts are continued to enlist the support of prominent professionals, such as lawyers.

Open letter to the Sri Lankan Bar Association, submitted June 1997 to the *BASL News* by Neil Dias, Attorney-at-Law. In the letter, Mr. Dias expressed grave concern that parties were being denied adequate justice because they were required to seek a certificate of non-settlement from the mediation boards under certain conditions, prior to having their case heard in court. Mr. Dias had five major complaints. First, mediations are conducted in secret. Second, he felt that mediators did not have the proper training to be dealing with the kinds of cases that came before them. Third, "what the mediators do during [a mediation] is done arbitrarily in that there is no observance of any law or legal or other precedent resulting in the same offense being settled in hundred or even thousand different ways and terms." Fourth, parties are not allowed legal representation at the mediation, and fifth, the settlements are not subject to review or appeal by another body.

Finally, incorporating education efforts into the program design helps to widen the target audience for mediation. One of the main goals of the mediation boards program is to provide access to justice for the disadvantaged.

However, sustenance of the program will depend on both increasing the number of people who have an understanding of the mediation process, such as school children and police officers, and increasing the number and type of voices advocating for the use of mediation as a means of alternative dispute resolution. Programs are currently being offered in schools and in police stations and reports from the coordinators indicate that they are very successful. Teachers have expressed interest in beginning peer mediation programs which will not only expand the practice of mediation but will provide fertile ground for developing a constituency of future mediators.

There is talk of getting the middle and upper classes more interested in the mediation boards with two direct benefits: a large number of more powerful advocates involved in the program; and bringing in businessmen, lawyer and other professionals may help to push mediation into other arenas such as labor, environmental, and commercial disputes. A more active education campaign needs to be mounted and would benefit from external funding, as the government does not have the funds at present to pay for them.

F. Finances and Staffing

The issue of funding brings to the fore some significant operational issues. At present, the costs of the mediation boards program are very low. As mentioned above, the total government budget is approximately 24 million rupees. Each mediator is given between 50-250 rupees per month for travel and each chairperson receives 500 rupees per year for stationary and

250 rupees per month as a clerical allowance (to cover the costs of stamps, etc.). As all the mediators are volunteers, the only other costs incurred are the salaries of the 13 full-time mediation coordinators and any pre- and in-service training offered to the mediators. There is no talk of instituting a user fee, as it is still a primary goal that the system be made available to the disadvantaged. At the same time, the small stipend given to the mediators and the chairpersons is not adequate to cover all their costs. This stipend should be increased in order to alleviate the risk of corruption as mediators may be tempted to seek to cover their costs through other means.

A second, related issue is the cost of training mediators. The consistent, high quality training offered to mediators has been a key to the success of the current program. The mediation coordinator/trainers interviewed are all very talented and overworked. It is critical that new trainers be hired in order to alleviate the burden on these people. In addition, further advanced training will keep both the mediators and the coordinators up to par. Presently, one-day in-service refresher courses are offered once every six months, but the length of these courses could be extended and the choice of topics broadened. In addition, as mediators are required to be retrained if they are re-appointed every three years, it is critical that the trainers have a wider range of tools that they can then share with the mediators so that the training does not become stale. These operational issues are inextricably linked to a consistent source of funding.

The mediation boards program benefits from an extremely dedicated pool of people who are committed to the idea of community service and whose reward for participating as mediators is simply the prestige they enjoy in their towns and villages. However, these people will not be able to serve on the boards forever. On the one hand, this is a positive thing as they will not then become "burned out" or disenchanted. On the other hand, it poses a risk for the continued

operation of the boards if there is no money to train new mediators as they are needed. In addition, the current commitment of these mediators and especially of the chairpersons may be tested if they cannot rotate out of their positions periodically. The chairpersons must deal with additional administrative responsibilities, which means that their investment in the program is not simply one day a week but often requires several days each week.

Further training of new mediators will help to alleviate some of the pressure on the current program. The MOJ has also considered some incentives to reward the mediators. None of the ideas, at present, includes monetary compensation, which is wise. One incentive under consideration is to give the mediators the title of "Justice of the Peace." According to both the mediation board chairpersons and the MOJ administrators interviewed, this title would provide them with the recognition that they deserve for their efforts.

G. Confidentiality

A final operational issue that deserves special attention is the issue of confidentiality during the mediation process. In general, the structure of the mediation process is well thought-out and consistent across the boards observed. The chairpersons were efficient administrators and structural constraints, three mediators per panel, were respected. Unfortunately, confidentiality was extremely problematic in all of the mediations observed. At the three mediation boards attended mediations took place in the same space and between four and six mediations were happening at a given time in either a classroom or a hallway. The more contentious disputes impinged upon others as the angry voices would permeate the room. The Moratuwa Mediation Board was an exception with the more difficult and potentially volatile cases conducted inside the single classroom available-the rest of the mediations, usually six others, took place in the corridor outside.

Only one of the disputants interviewed mentioned that the lack of confidentiality was a problem but every mediator (including the chairpersons) and all the coordinators indicated that this was one of the biggest problems the mediation boards face. And while disputants may have been reluctant to speak about the issue, their body language during the mediation sent clear signals that they were often uncomfortable discussing their problems in such a public forum.¹¹ There was some sense that some disputants felt somewhat coerced since they were forced to deal with their problems in front of the larger community.¹² These conditions not only make it difficult for the parties and the mediators to caucus but mediators in Udunuwara also said that they would probably get more family disputes if the mediations took place in more private settings.

Presently, the desire and perceived need for mediation as an alternative means of dispute resolution outweigh the discontent expressed with the lack of confidentiality. However, most observers of the mediation boards, supporters and detractors alike, recognize that this could become a serious problem-negatively impacting on the credibility of the mediation process. Suggestions for dealing with the issue have included giving the mediation boards their own space but to date this has been rejected as there is a fear that space will translate into another layer of bureaucracy which will doom the Mediation

¹¹ In Moratuwa, for example, disputants leaned forward over the tables to share their stories with the mediators. Often the mediators had to ask the disputants to speak up. Many disputants glanced around the room or space as they told their story, as if to check and see who might be listening.

¹² At the Moratuwa Mediation Board there were between forty and fifty people milling around, only a portion of whom were actually there to participate in a mediation. The others were there to give moral support to the parties and it looked as if some were there out of simple curiosity.

Boards. More operational suggestions include asking schools to give up more space for the use of the Mediation Boards on the weekends.

III. ASSESSMENT

The Sri Lankan mediation boards system seems to be an efficient and effective way to administer justice. Building on a culture of mediation and learning from the mistakes of the past, the MOJ has succeeded in meeting the goals it articulated in the formulation of these boards. Delays in the court system have been reduced, minor offenses are dealt with in an expeditious way-preventing smaller crime from becoming major problems, and the poor and disadvantaged have greater access to justice.

Particular strengths of the Sri Lankan mediation boards program include the close fit of this system with traditional means of resolving disputes. This has simplified educating the public about the boards and it has reinforced the value of modeling ADR programs on indigenous methods of conflict resolution. Structurally, the clear delegation of authority for the purposes of oversight, the mechanisms for monitoring and evaluation, and the consistent, high quality training offered to the mediators has resulted in a system with a deservedly excellent reputation, both nationally and internationally. In addition, the voluntary nature of the process, both from the perspective of the participation of the parties and the fact that the mediators themselves are volunteers has meant that people are more willing to use the system and abide by the settlements reached in this forum.

Two additional, especially important aspects of the Sri Lankan ADR system are its low cost-both to the user and for the government, and the wide-ranging education programs. The low cost ensures that the disadvantaged truly have access and for the government it means that the system can be sustainable over the long-term. The education programs have several benefits: the populations of potential users and mediators are increased, and perhaps most importantly a culture

of peaceful, consensual dispute resolution first re-established in Sri Lanka.

While the mediation boards system is very successful, there are three areas which merit improvement: funding, structure, and the reach of the program. With regards to funding, external resources will not always be available and therefore the government needs to evaluate its commitment to the program and build some long term guarantees into the budget to ensure the mediation boards' continued existence. Without that commitment, the government runs the risk that the mediation boards will lose credibility and ultimately users because of a lack of training and a lack of new mediators.

There are two structural weaknesses that the Sri Lankan government will have to address in the near future. The first is providing adequate training to ensure that mediators remain intellectually stimulated and mediation coordinators are able to evaluate and coach mediators using the most up-to-date skills. The greatest structural weakness in the mediation boards program is the lack of confidentiality in the mediation process. As discussed above, this problem must be dealt with soon or it will severely impact the credibility of mediation boards. Increased access to more public space, such as classrooms, could help. The lack of confidentiality also limits the kinds of disputes that are dealt with at the mediation boards.

The final issue that must be dealt with if the mediation boards program is to thrive is the limited reach that the boards currently have. This applies to both the types of cases that are referred to mediation and to the kinds of people who avail themselves of the mediation services. At present, the mediation boards function predominantly in the rural areas, serve the lower socio-economic classes, and address minor disputes. Increasing the reach of mediation would then increase the number of voices advocating for the use of mediation in all kinds of disputes and perhaps, in turn, broaden the base of users.

Power imbalances might become an issue in the case of banks using mediation boards as a means of collecting from debtors. During interviews at the mediation boards individuals were asked how the boards could avoid appearing to be a collection agency for the banks. Mediators and disputants alike replied that they feel empowered by the mediation boards: the focus is on the debtors and their stories, and so they perceive that they are treated more fairly than if they dealt directly with the bank or had to go to court. Perhaps most importantly, the options that can be created at the mediation are often more flexible and favorable to the debtors. An indication that the system is working lies in the fact that compliance rates with settlements reached with banks seem to be quite high.¹³

Power imbalances with respect to women do not seem to have been addressed in Sri Lanka. It is unclear as to whether this is because women do not experience discrimination at the hands of the justice system or simply because women have not been given the voice to express their dissatisfaction with the system. It is noteworthy, however, that a large number of women are in positions of influence at the MOJ and women mediators and chairpersons were treated fairly at the mediation boards observed. Increasing the number of women mediators is a goal of the administrators of the mediation boards program and much of the resistance that they encounter comes from the women themselves, who claim that the mediation board is too time-consuming. At the same time, while the number of women seeking redress at the mediation boards is rising, the overwhelming number of disputants are still men. If more women were recruited as mediators, there might be an increase in the number of disputes that tend to involve women (family disputes). All in all, due to the

¹³ Both the mediation coordinator in Akurana and the Chairnan of the Moratuwa Mediation Board indicated that settlement and compliance rates in debtor cases were as high as 95%. While this figure may be inflated, it seems to be well above compliance rates for other kinds of cases.

similarity in the kinds of people who are currently choosing to use the mediation boards, there exists a relative parity in power of the disputants.

Another important issue is that of funding. Given the resources available in Sri Lanka at the present time, the mediation boards will continue to need external funds in order to ensure a quality program. The government ought to be able to maintain the system, but the funds that the Asia Foundation and USAID have provided for training have been much-needed and well-used. The system which has USAID providing the funds and TAF administering the disbursement of those funds and monitoring their use on the ground seems to have been working quite successfully. TAF has the resources to follow the program and to assist the government in the development of support programs (such as public education campaigns and legal literacy programs). This has been an important part of the successful partnership between USAID, the government of Sri Lanka, and the Asia Foundation.

It has been proposed that USAID disburse funds directly to the Sri Lankan government, without TAF acting as an intermediary. Should USAID decide to do this, one consideration to keep in mind is that TAF provides an important oversight function which USAID is not currently positioned to undertake in Sri Lanka, especially given that USAID will phase out of Sri Lanka in the year 2000. If responsibilities for maintaining this program are then transferred to the State Department, TAF could conceivably provide much needed consistency in the program. Regardless of the form the external assistance takes, USAID and the U.S. Government are getting a high return on a relatively small investment in Sri Lanka.

Finally, the mediation boards have successfully dealt with a large number of the cases that are brought to them. Unfortunately, this success may lead to larger problem: a backlog is developing in this system which begins

to replicate one of the very problems the Boards were established to address in the first place--delays in the court system. While no immediate solutions have been proposed, the MOJ and the mediation coordinators are well aware of the problem and are trying to develop ways to address it.

While not perfect, the Sri Lankan mediation boards have been incredibly successful at providing low cost, accessible justice to a majority of Sri Lanka's rural poor. The system is well-administered and enjoys an outstanding reputation. If the few problems outlined above are dealt with in a timely manner, Sri Lankans will continue to benefit from a well-trained cadre of mediators.

* * *