

SUPPORT TO JUSTICE INITIATIVES

(A Comprehensive Report)



**Center for Legal Research and
Resource Development (CeLRRd)**

Report Preparation Committee

Kishor Silwal	Director, CeLRRd
Sudeep Gautam	Programme Co-ordinator, CeLRRd
Sakila Chhetri	Programme Secretary, CeLRRd

Management Committee

Jaya Bista	Account Officer
Hari Kumar Magar	Account Officer
Sarita Phuyal	Office Assistant

Design

Maheswor Phuyal
9851056273

Published by

Centre for Legal Research and Resource Development (CeLRRd)
P.O. Box 6618, Tinkune, Kathmandu, Nepal
Tel: 977-1-2042268, Fax: 977-1-4112293
Email: celrrd@wlink.com.np, Website: www.celrrd.org

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PREFACE

To materialize the concept of rule of law, efficient and transparent judiciary comes as a primary requirement. Realizing such a pertinent role of the judiciary, the Constitution of Nepal has envisaged competent, autonomous and accountable justice delivery system. However, such all-embracing, pious, efficient and infallible sort of judiciary has not been hitherto attained. Probably, it corresponds to the fact that the present day judiciary is encountering several identified and unidentified threats, thereby resulting into a loose faith upon the whole justice system. Hence, it leads to the situation wherein immediate measures are to be adopted to rescue judiciary from the pervading accusations and its in-house incompetence to satisfy court users and victims.

The collaboration between DanidaHUGOU and CeLRRd started since 2000 yielding several invaluable initiatives and accomplishments ranging from resource development and capacity building of justice sector actors (judges, prosecutors, police investigators, and defense lawyers) to several researches, and publications in line with the reform of judiciary including Criminal Procedural Guidelines, Human Rights Manual, and so on. With the development of the manual, a Training of Trainers (ToT) course to Registrars of the Appellate Courts was conducted. With the completion of the ToT, nine orientations on the Manual for non-gazetted employees of the judicial and quasi-judicial bodies had been conducted under “Support to Justice Initiatives” wherein 230 individuals were sensitized. The orientations helped to enhance the capacity of the clerical staffs and generated a sense of awareness and sensitivity regarding their role and responsibilities in relation to the protection and promotion of human rights of the court users and victims. It then set the rationale for continuing the HR orientations.

Onwards, after internalizing the significance of Informal Justice System to deliver quantitative and qualitative justice, DanidaHUGOU again partnered with CeLRRd under the same project title “Support to Justice Initiatives” and implemented Community Mediation and Human Rights Orientations to non-gazetted staffs of judicial and quasi-judicial bodies. It was initially presumed for a period of November 2005 to April 2008. At one level, it has increased poor and marginalized groups’ access to justice through mediating locally arisen cases via a network of empowered mediators in Bardiya and Morang, and at the other level, it has provided human rights orientations to over 500 non-gazetted employees of judicial and quasi-judicial bodies. Thus, it has sensitized and/or increased their human rights understanding in relation to court users and victims.

Against the present context wherein a significant chunk of citizens have

inaccessibility to justice due to several reasons like poor financial condition, huge litigation cost, ignorance of the Constitution entitled rights, formal procedures of court and so on, community mediation has largely come as a relief to the populace of rural and semi-rural areas. Moreover, the fact that it not only settles disputes but also helps to restore relationships is its key point.

The project was supposed to end by April 2008, according to the agreement reached upon in 2005. However considering the fact that its relevance was increased and therefore it had to end only after ensuring the sustainability of its initiatives, the project was extended from May 2008 to March 2009. By the end of the project, district level networks have been formed in respective districts; abundant support is generated from local authorities, community people and other sectors of societies, mediation is handed over to local bodies; and at least some financial resources have been garnered so far. Thus, it can be assumed that mediation at the respective locations is sustainable.

Upon the completion of 41 months project, we have taken this opportunity to share our accomplished activities, invaluable experiences and hardships encountered while implementing the programme. This report exclusively mentions about “Support to Justice Initiatives” and provides just a glimpse of community mediation implemented in TAF’s support. However, it gives a detail about total community mediation activities, and achievements accomplished by CeLRRd till the date.

We hereby would also like to express our immense gratitude towards DanidaHUGOU, Mr. Lars Peter Christensen, Programme Coordinator, Mr. Mukunda Kattel, Mr. Prakash Gyawali, and also Mr. Sundeep Bista, Advisors whose support we think is highly worthwhile in the project implementation, and especially throughout the process of developing CeLRRd’s Five Years Strategic Plan, 2009-2013. On top of all, it is the effort of field officials including District Coordinators, Trainers and local mediators of both the districts without which the programme would never have been materialized. We realize that the faith, that both the stakeholders and consumers of justice have upon our organization and programme, will perpetually guide us in the coming days to fight for improving access to justice. Therefore, there is amongst us, a mixed feeling of pride and responsibility.

Kishor Silwal
Director

CONTENTS

Chapter 1: Prologue	7
1.1. Background	8
1.2. CeLRRd's Involvement in Community Mediation	11
1.3. Introduction of Support to Justice Initiatives	11
Chapter 2: Activities Implemented	13
2.1. Baseline survey	14
2.2. District and VDC/MC Level Interaction Programmes	14
2.3. Training of Trainers (ToT)	15
2.4. Basic Mediation Training	16
2.5. Basic Mediation Training to Legal Professionals	19
2.6. Refresher Trainings	21
2.7. Mediation	25
2.8. Success Stories	32
2.9. Practice Sharing Programmes	37
2.10. Consolidation Meeting	40
2.11. National Conferences to institutionalize Community Mediation in Nepal	42
2.12. District Mediators' Networks, Formation and Conferences	46
Chapter 3: Human Rights Training to Non-Gazetted Employees of Judicial and Quasi-Judicial Bodies	53
Chapter 4: Additional Activities	61
4.1. Court-Referred and Annexed Mediation	62
4.2. Formulation of Strategic Plan (2009-2013), CeLRRd	64
4.3. External Review of the Project done by Development Consultancy Center (DECC)	65
Chapter 5: Achievements, Outcomes and Challenges	67
5.1. Achievements and Outcomes	68
5.2. Challenges	71
Programme in Papers	72

ACRONYMS

AC	Appellate Court
ADR	Alternative Dispute Resolution
ASI	Assistant Superintendent of Police
CDO	Chief District Officer
CeLRRd	Center for Legal Research and Resource Development
CJSCC	Center Justice Sector Coordination Committee
CMC	Community Mediation Center
Danida	Danish International Development Assistance
DAO	District Administration Office
DC	District Court
DFO	District Forest Office
DPO	District Police Office
HR	Human Rights
HUGOU	Human Rights and Good Governance Advisory Unit
MC	Municipality
NGO	Non-governmental Organization
SSP	Senior Superintendent of Police
ToT	Training of Trainers
VDC	Village Development Committee

Chapter 1

PROLOGUE



Manju Devi Majhi, Rajkumar Majhi & Mediators in a mediation session, Tetaria

1.1. BACKGROUND

Access to justice, being an important part of rule of law is considered an inseparable element of good governance. Over the years, the concept of ‘access to justice’ has been redefined and now it emphasizes on providing people with adequate knowledge, legal aid and right based awareness that in the long run will ensure their informed participation in the policy making procedure thereby, bringing in qualitative change in their lives whereas in the short run, it emphasizes on getting the poor people’s rights realized.

Access to justice is not merely confined to the formal justice sector, rather it gives due importance to the informal sector as well. It emphasizes on resolution of conflict rather than punishment and also allows the poor to have influence in the law-making and law-implementing procedures. On the top of all, the new version of access to justice focuses on civic engagement, and with it, the empowerment of marginalized segments.

From a theoretical perspective, the concept of justice as reflected in ‘access to justice’ is indebted to two dichotomous views- retributive-restorative dichotomy and distributive- commutative dichotomy.

In the formal legal system, justice follows the retributive principle where the State has the liability to fix the legal guilt against the state and the state, after being sure that the very person is guilty and liable under the law, takes necessary arrangement to ensure that the guilty gets due punishment. The aim is to inflict similar pain to the guilty ones. On the contrary, restorative justice emphasizes on restoration of the harmony

between the parties, and thus, tries to heal the wound a dispute has caused.

Access to justice therefore, means restoration of harmony by relying on the formal structure and counseling, mediation, negotiation and other forms of non judicial representation.

As the courts have grown more congested and litigation has become more expensive, there has been increasing interest in alternative dispute resolution (ADR) which is faster, less expensive and more private than going to court.¹ Besides few people, a larger segment of Nepalese populace is devoid of access to justice due to geographical inaccessibility of courts, huge litigation cost that poor people cannot afford, lengthy court procedure and other formalities that uneducated people seldom understand, and lack of privacy in the formal court proceedings.

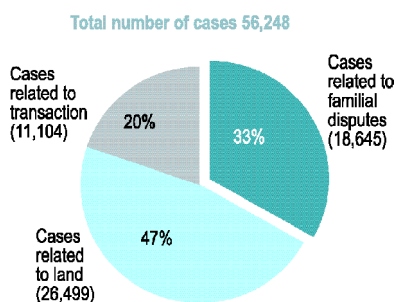
Hence, the formal justice system is costly, cumbersome, and agonizingly slow, and many view the formal legal system as being owned by legal professionals who control procedures and outcomes. Even today, access to justice remains something that the majority of the Nepali cannot even dream about. Overall, it has been criticized for its failure to adequately recognize the dignity of complainants and defendants, satisfy human needs and provide for direct participation in a meaningful way. As in other developing countries, courts in Nepal confront debilitating delays, perpetual under funding, frequent and long adjournments, delays in issuing initial notices and in passing execution of final orders, and persistent allegations of

¹ Research Report of Trial Court System in Nepal, CeLRRd, March 2002.

corruption. All these factors undermine confidence in the judiciary, and restrict access to the formal justice system. Despite the Nepali judiciary's effort to provide justice, it continues to struggle in enhancing the public's access to justice and in tackling the multitude of problems plaguing the courts of Nepal.

Against such a backdrop community mediation was envisaged. Community mediation offers constructive processes for resolving differences and conflicts between individuals, groups, and organizations. It is an alternative to avoidance, destructive confrontation, prolonged litigation or violence. It gives people in conflict an opportunity to take responsibility for the resolution of their disputes and control of the outcomes. Hence, mediation was envisioned to be implemented in two districts, Bardiya and Morang.

Supreme Court Report 2064/65 has also revealed the scope of informal justice system. Total number of cases in all tiers of courts is 89939, and the cases are categorized into 26 varieties. The following categories have the highest number of cases²:



This infers that out of the total cases, 62.54% cases relate to the above mentioned categories, and the rest 23 categories occupy only 37.45%. Moreover, out of 6388 transaction related cases pending in Supreme Court, nearly 11 percent cases have the value

less than NRs.1000. All these figures point to the fact that there is a huge prevalence of common cases in the judiciary that if mediated would save time, resources and thus, increase productivity of the court personnel. If mediation is applied to such cases, it helps judiciary to concentrate on few serious cases, which in fact would eventually lead to the quality of justice.

Against such a backdrop wherein the backlogs of cases are increasing with every passing year, mediation is being implemented in Nepal for the last few years. It is voluntary, confidential, informal and non-binding process in which an impartial third person, mediator, helps those involved in a dispute to resolve it, by helping them to reach their own agreed resolution. It provides an opportunity for agreement in win-win position, and even in a situation of disagreement, there is no obligation or consequences attached. Mediation has been resorted to in civil and commercial disputes, divorce and family disputes, among others. Amongst all forms of mediation, community mediation is increasingly gaining popularity as one of the effective alternative dispute resolution methodologies that has been able to yield tangible benefits at grass roots level. Community Mediation not only provides speedy, affordable, and meaningful remedies to rural and semi-rural societies, '*masses of unprivileged and disenfranchised population*' but also has helped dispensing justice keeping in spirit international human rights standards such as gender equality, non-discrimination for social status, and respect for life.

Community mediation is a process of 'devolving the judicial power from the state to the people for meaningful response to the social problems. In this character, the mediation process can be taken as a 'democratic approach to settle disputes' as

² Table No. 11, Supreme Court Annual Report

it is characterized by a system that

- (1) permits stakeholders to the controversy to establish the discussion agenda- that is, they could “put on the table for discussion whatever concerns mattered them the most, whether or not they fit within the existing ‘legal or administrative categories’
- (2) involves an inclusive process, permitting participation not only by trained advocates but also those persons or organizations which has to abide by the resolution
- (3) requires persons to be accountable for designing solutions to problems, not just complaining about them
- (4) supports the belief that meaningful, direct participation of parties in the disputes enhances participants’ respect for the fairness of the process and strengthens potentiality of compliance with negotiated outcomes by parties.
- (5) appears to be both harmless and minimal in cost involvement. Most strikingly, since the mediation sees disputes as social, but not legal conflicts, its social acceptance is higher to that of

court’s decision. Mediation thus not only democratizes the ‘justice system’, but by securing easy access to justice socializes the legal system.

Nevertheless, mediation is not new to Nepal. Traditionally, the Nepalese societies also had an approach of ‘community involvement’ to settle disputes. As early as Lichhavi period (2nd -12th Century), *Gosthi* (currently known as *guthi*) was the lowest body of the society to ‘mediate disputes’. In course of time, a system of settling disputes by ‘five elderly villagers’ in presence of several peoples developed. This practice was called ‘*panchyati*’. Mediators involved in the dispute settlement process were called ‘*bhaladmi*’ (*bhala*- gentle and *admi*-men). *Bhalaadmi* allowed peoples to put their causes and arguments, and persuaded to reach a settlement. In failure, they intervened with ‘decision’, generally supposed to be founded on ‘righteousness, necessity and benefits of both parties). This practice continued for long time in the history, in fact till sometime after take over by brutal Rana regime. Although the exact date is not available, the Rana regime destroyed the ‘practice of community mediation for its deceptive move to ‘generate revenues out of court proceedings and penalties’. Every dispute was then dragged to the court so that the proceedings could be used to generate ‘revenues’. Then onwards, access to justice started to become a far fetched goal for many poor ones.



◀ Disputants expressing their delight after resolving the dispute at Katakari VDC

1.2. CeLRRd'S INVOLVEMENT IN COMMUNITY MEDIATION

CeLRRd has prioritized the issue of access to justice from the very beginning. CeLRRd has not only intervened in enhancing the capability of formal justice system professionals through trainings be it on human rights, mediation and others, but also oriented quasi-judicial bodies and community people about the benefits of community mediation which has then contributed to the settlement of civil, commercial and familial disputes effectively with more responsiveness and sensitivity. CeLRRd's involvement in community mediation dates back to 2002. Initially it started with the Asia Foundation in 4 districts and then 2005 onwards; two additional districts had mediation in the support of DanidaHUGOU.

Presently, community mediation is being implemented in 48 locations of 6 districts, Morang, Bardiya, Nawalparasi, Dhading, Banke and Kanchanpur for the last 6 years. Under DanidaHUGOU's support, "Support to Justice Initiatives" is being implemented in Bardiya and Morang from November 2005, and in other districts, it is being supported by TAF since 2002. The achievements like, over 7000 cases are



Bisnu ,Jaddu Recidev & Mediators of Budhanagar

resolved through 48 mediation centres till date, pools of around 1450 trained community mediators and 22 Master Trainers generated and 6 District Level Networks of mediators' are in place, reflect the concern the organization has shown for enhancing access to justice. At one level, mediation has empowered community people, and at the other level, it has significantly reduced case load in local authorities of the programme locations and even in courts. In the coming days, CeLRRd has planned to extend community mediation to 10 districts and 100 locations.

1.3. INTRODUCTION OF SUPPORT TO JUSTICE INITIATIVES

(1 Nov 2005 to 31 March 2009)

The "Support to Justice Initiatives" project agreed between Centre for Legal Research and Resource Development (CeLRRd) and DanidaHUGOU has undertaken the mission of enhancing peoples' access to justice through imparting and implementing community mediation, thereby making them self sufficient in terms of resolving local level disputes, both

chronic and acute that are prevalent in the rural communities.

Along with this, frequently organized orientation sessions on Human Rights Manual to non-gazetted employees of the judicial and quasi-judicial bodies has had an objective of improving the justice sector qualitatively and quantitatively by making

the junior employees of judicial and quasi-judicial bodies aware of the human rights of court users and victims. No matter how small the initiative seem to be, it has paved the way for collaboration and cooperation between the informal and formal justice delivery institutions that in the long run will help materialize the rule of law.

The scope of both the integral parts of the project, mediation and orientation on HR manual is found to be profound. Influenced by the fact that the project till the date has been able to settle huge number of disputes originated in the rural communities involving less time and no cost, CeLRRd sees it reasonable to implement this initiative in other districts to redress interpersonal disputes within the communities and there is no better way than making the communities self sufficient in terms of resolving the disputes.

The intense gratitude shown by some of the disputants towards community mediation has become a centripetal force for the mediators to pursue the initiative.

Objectives

The development objective is “Interpersonal and community level violence and disputes eliminated through the use of non-violent conflict resolution strategies and access to

justice secured for all”. The immediate objectives are

- Community mediation centres are effectively engaged in settling local level conflicts and disputes
- Collaboration and cooperation between community level justice delivery institutions and formal justice system strengthened and
- Culture of human rights protection developed and followed by non-gazetted employees of the judicial and quasi-judicial bodies.

As the sustainability of the initiatives, especially community mediation in the programme locations, was significant, the initial project period, 1 Nov 2005 to 30 April 2008 did not prove sufficient for making the programme sustainable. Moreover, Constituent Assembly Election in April and the violent clashes in Terai region for a prolonged period further complicated the situation, and hindered in the timely implementation of many of its activities. Hence, firstly DanidaHUGOU approved the extension from May to November 2008, and then again to December . Again in the request of CeLRRd for three-month no cost extension till March 2009, DanidaHUGOU approved it to ensure sustainability of the project’s initiatives.

Achievement of Community Mediation Programme Implemented by CeLRRd

SN	Districts	Number of Cases Disposed	Direct Beneficiaries	Indirect Beneficiaries
1.	Banke	1716	3586	9592
2.	Dhading	220	459	1229
3.	Nawalparasi	984	2056	5500
4.	Kanchanpur	395	825	2208
5.	Morang	2681	5604	30019
6.	Bardiya	1112	2324	13366
	Total	7108	14854	61914

Chapter 2

ACTIVITIES IMPLEMENTED



Director Kishor Silwal conducting the HR training for Court Staff at Kailali

2.1. BASELINE SURVEY

With the intention of getting acquainted with the objective realities of the two districts selected for launching community mediation under the project, the initial most activity performed is the conduction of Baseline Survey. It has also provided information about the districts' financial, social, political, cultural, geographical, and many other variants. Therefore, from retrospection it can be said that the base line survey has been supportive from different dimensions in formulating several strategies or programmes hitherto been undertaken under the project.

This is to say that the community mediation presumes that disputes have to be looked at from various perspectives. Most of the

time it is due to ethnic and gender- based discriminations that are perpetrated upon certain groups relegating them to the position of minorities and backward communities as such. Inherently such presentations bring forth suppression and other forms of domination. Hence, every sort of dispute can be traced to these social evils, and can only be solved if these are effectively addressed in any dispute resolving methodology. Community mediation assumes that if effective communication is established between any two disputing parties, resolution is inevitable. Hence, such baseline survey allowed detailed information about both the qualitative and quantitative figures of disputes in the undertaken districts.

2.2. DISTRICT AND VDC/MC LEVEL INTERACTION PROGRAMMES

To take mediation to the target communities, it was necessary to make the local stakeholders, would be affected people and others as well aware about the objectives and scope of mediation. It was also to acknowledge the programme procedures to them, and highlight its potential role in the mode of social transformation.

In the context, district and VDC levels interaction programmes were devised. Representatives from diverse sectors of societies including both governmental and private bodies would sit in this common platform: judges of district courts, chief district officers, local development officers, land reform and revenue officers, and representatives from police office, political party representatives, VDC secretaries, representatives from different NGOs. Such

an opportunity provided by the project in the form of a one-day interaction programme in each district was, thus, helpful in digging out their viewpoints in this regard, and eventually was of great assistance in selecting the VDCs and MCs to implement the programme. In the selected locations as well, later in different dates, a one-day interaction was carried out with the similar objective of popularizing the concept of community mediation and clarifying the roles that the local stakeholders are expected to undertake in the mission.

a) District Level Interaction

S. N.	District	Date
1.	Morang	2005/11/30
2.	Bardiya	2005/12/8



District Level Interaction in Bardiya

b) MC/VDC Level Programmes in Morang

S. N.	District	Date
1.	Biratnagar	2006/1/20
2	Budhanagar	2006/3/10
3	Rangeli	2006/5/18
4	Tetariya	2006/2/20
5	Katahari	2006/2/20
6	Urlabari	2006/3/18
7	Belbari	2006/2/19

c) MC/VDC Level Programmes in Bardiya

S. N.	District	Date
1.	Gulariya	2006/1/20
2	Sorahawa	2006/2/24
3	Mainapokhar	2006/2/27
4	Kalika	2006/2/23
5	Mahamadpur	2006/2/18
6	Taratal	2006/1/23
7	Sanoshree	2006/1/22

2.3. TRAINING OF TRAINERS (TOT)

The rationale behind the conduction of ToT, Training of trainers is to produce skilled manpower required for the project: 1 district coordinator and 3 master trainers in each district. They were provided coordination techniques and other training skills so that they could train the local mediators that were chosen in the next phase within the criteria set after a rigorous discussion amongst themselves. They were clarified about the framework of the programme, and were motivated to elevate the concept of mediation amongst more and

more people. It lasted for 10 days, from 29th December to 8th January 2006, and the number of participants was 10.



ToT programme participants and Trainers at Godawari ▶

2.4. BASIC MEDIATION TRAINING

The district trainer and three master trainers appointed in each district conducted Basic Mediation Training to the local mediators selected as 3 per ward (9X3), that makes 27 local mediators available per VDC/ municipality. They were provided 8 days basic mediation training. We believe that an organization cannot give continuity to such programme with its only effort. Rather if it incorporates local people or starts the programme in their initiation, then only, the programme can attain sustainability. A lot of care had been taken while selecting local mediators. Certain criteria that were set forth in the process are stated below:

- Ability to read and write
- To speak frankly in front of mass
- To check their reactions on time
- Should be interested in the betterment of societies
- Should be aloof from political influence
- Should have a permanent settlement in the operation areas
- Should represent *Dalit*, indigenous and women
- As far as possible, they should be service retired persons, and teachers having clear images.



Basic mediation training participants of Morang

a) Gender Wise Distribution of Mediators:

S.N	Morang			Bardiya		
	VDC/ Municipality	Males	Females	VDC/ Municipality	Males	Females
1.	Biratnagar MC	48	25	Gulariya MC	27	8
2.	Budhnagar	19	9	Mahammadpur	19	11
3.	Rangeli	17	9	Sanoshree	30	8
4.	Tetariya	15	13	Sorahawa	24	5
5.	Katahari	22	7	Mainapokhar	23	6
6.	Urlabari	17	11	Taratal	19	9
7.	Belbari	18	8	Kalika	17	12
	Total	156	82	Total	159	59
	%	65.55	34.45	%	72.94	27.06

b) Caste Wise Distribution of Mediators

i) Morang

S.N	VDC/ Municipality	Brahmin/ Chhetri	<i>Dalit</i>	Indigenous	Muslim	Total
1	Biratnagar	44	3	23	3	73
2	Budhnagar VDC	7	0	20	1	28
3	Rangeli VDC	18	2	6	0	26
4	Tetariya VDC	5	6	17	0	28
5	Katahari VDC	8	2	19	0	29
6	Urlabari VDC	20	2	6	0	28
7	Belbari VDC	15	0	11	0	26
Total		117	15	102	4	238
%		49.16	6.30	42.86	1.68	100.00

ii) Bardiya

S.N	VDC/ Municipality	Brahmin/ Chhetri	<i>Dalit</i>	Indigenous	Muslim	Total
1	Gulariya MC	14	2	17	2	35
2	Mahammadpur VDC	8	4	13	5	30
3	Sanoshree VDC	24	2	12	0	38
4	Sorahawa VDC	11	3	15	0	29
5	Mainapokhar VDC	12	1	16	0	29
6	Taratal VDC	20	5	3	0	28
7	Kalika VDC	17	5	7	0	29
Total		106	22	83	7	218
%		48.62	10.09	38.07	3.21	100.00

Considering the fact that the previously trained number of mediators was insufficient, an additional number of 55 local mediators have been trained and appointed in the two districts. Most of them are VDC secretaries of programme locations.

Moreover, it is also a fact that the initially trained mediators discontinued mediation

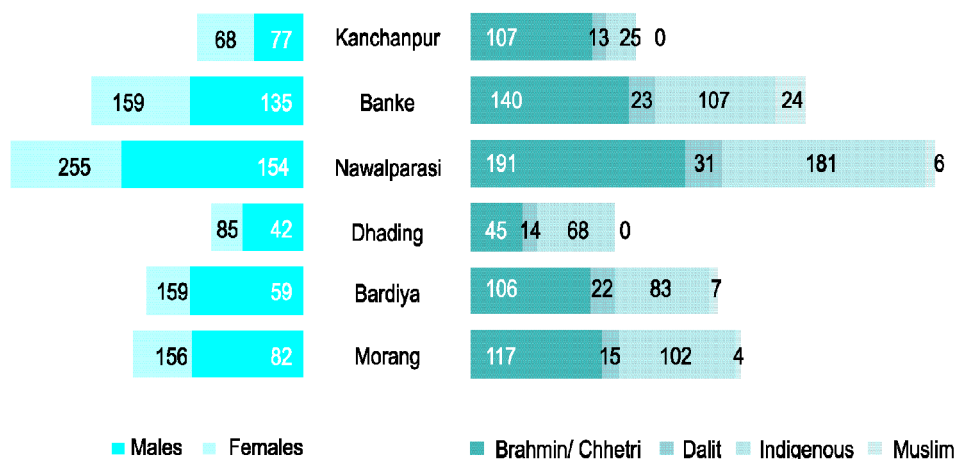
because of several reasons like migration, marriage, and death resulting in the reduction of mediators to 328. Hence, the two additional trainings in both the districts were envisaged in the later half of 2007 only. Now, in total an additional number of 79 mediators (including the lawyers as well) have been added, ultimately making a pool of 407 mediators in the two districts though 456 mediators were trained.



Visit of Professor Larkin of Washington University (Second from right) and her student (at the center) to Kalika Mediation Center at Bardiya

c) Mediators Demography

S.N	District	Males	Females	Brahmin/ Chhetri	Dalit	Indigenous	Muslim	Total
1.	Morang	156	82	117	15	102	4	238
2.	Bardiya	159	59	106	22	83	7	218
3.	Dhading	85	42	45	14	68	0	127
4.	Nawalparasi	255	154	191	31	181	6	409
5.	Banke	159	135	140	23	107	24	294
6.	Kanchanpur	68	77	107	13	25	0	145
Total								1431



2.5. BASIC MEDIATION TRAINING TO LEGAL PROFESSIONALS

As Mediation has already been adopted in the Supreme Court, DC and Appellate Court Regulations, lawyers of Appellate Court Biratnagar perceived the necessity of mediation skills so as to become better equipped justice deliverer. In their direct request, CeLRRd furnished mediation skills to 24 lawyers after consultation with and in technical assistance of DanidaHUGOU.

The training was conducted with the belief that if legal professionals are trained on mediation, it would gain more legitimacy and also much recognition in the formal justice delivery institutions. Both sorts of lawyers who were skeptic about the efficacy of mediation and who were interested to know about the technique were incorporated in the training, "Training on Mediation for Legal Professionals" that lasted from 2064/6/23 to 29 in Biratnagar. It had various other objectives like creating the environment for coordination and cooperation between the formal and informal justice delivery institutions, so that more number of people can have access to justice. The others are as follows:

- To lessen the load of pending cases in courts by referring locally arisen cases to mediation, and make them competent to handle new cases effectively
- Make the legal professionals incorporate mediation as a faithful justice delivery institution wherein prosecutors/defendants dichotomy will be replaced by mediators.
- To orient them about the techniques of mediation, the roles of mediators and its benefits over the formal justice delivery mechanism

It was a collaborative effort of CeLRRd, DanidaHUGOU and Appellate Court Bar Unit, Biratnagar.

In the inauguration session, the following guests put forward their opinions regarding the objectives and the probable outcomes.

1. Shamsar Rai Superintendent of Police, DPO
2. Padam Acharya legal officer, DGAO
3. Ramesh Pokhrel, Public Prosecutor, AC
4. Khadananda Tiwari, Registrar, AC
5. Madhav Bhattarai, Former Member, Bar Council
6. Devi Bd. Ghimire, Former President, AC Bar Unit
7. Kedar Chalise, Hon'ble Judge, AC, Biratnagar
8. Hon'ble Surendra Bir Shimha Basnet, Judge, AC, Biratnagar
9. Hon'ble Ohm Prakash Mishra, Judge, AC, Biratnagar (Chief Guest)

Along with providing them the theoretical techniques, they were also made to act like disputants and mediators and their performances were judged. This gave them the confidence in mediation.

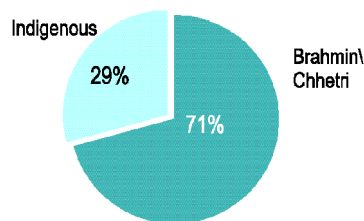
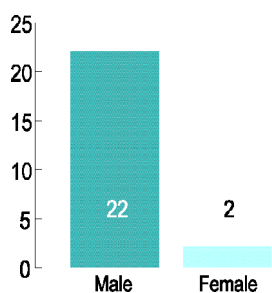
Eventually, they expressed their gratitude for allowing lawyers to be incorporated in the mediation programme.



Lawyers training in Biratnagar

Participants' List

S.N	Name	Organization
1.	Purushotam Dahal	Appellate Court Bar unit , Biratnagar
2.	Ram Prasad Khatiwada	Appellate Court Bar unit , Biratnagar
3.	Chandi Prasad Parajuli	Appellate Court Bar unit , Biratnagar
4.	Ram Bahadur Neraula	Appellate Court Bar unit , Biratnagar
5.	Dipak Acharya	Appellate Court Bar unit , Biratnagar
6.	Bishoram Bhattarai	Appellate Court Bar unit , Biratnagar
7.	Sushila Thapa	Appellate Court Bar unit , Biratnagar
8.	Ishor Neraula	Appellate Court Bar unit , Biratnagar
9.	Pramod Kumar Chaudhary	Appellate Court Bar unit , Biratnagar
10.	Raj Kiran Poudel	Appellate Court Bar unit , Biratnagar
11.	Sunil Ranjan Singh	Appellate Court Bar unit , Biratnagar
12.	Sailash Chapagai	Appellate Court Bar unit , Biratnagar
13.	Naraya Dahal	Appellate Court Bar unit , Biratnagar
14.	Ram Prasad Bhandari	Appellate Court Bar unit , Biratnagar
15.	Anil Kishor Kamat	Appellate Court Bar unit , Biratnagar
16.	Pramod Kumar Baidha	Appellate Court Bar unit , Biratnagar
17.	Shardha Nanda Dash	Appellate Court Bar unit , Biratnagar
18.	Shasi Shrestha	Appellate Court Bar unit , Biratnagar
19.	Yannar Singh Adhikari	Appellate Court Bar unit , Biratnagar
20.	Suresh Lal Shrestha	Appellate Court Bar unit , Biratnagar
21.	Suman Raj Pant	Appellate Court Bar unit , Biratnagar
22.	Kumar Bhattra	Appellate Court Bar unit , Biratnagar
23.	Yogendra Bahadur Chauhan	Appellate Court Bar unit , Biratnagar
24.	Sagar Ghimire	Appellate Court Bar unit , Biratnagar



It took the project a step forward in the way of building cooperation between the formal and informal justice delivery institutions. Now the trained mediators have been enlisted in the mediators' list of Biratnagar Sub-metropolitan city. Many significant changes have come in people to perceive lawyers as not

opportunities, but better service provider. Now they opine that lawyers and mediators are both equally needed in communities.

If mediation is provided by lawyers, it becomes much more significant as they understand the case better than any mediators without legal understanding.

2.6 REFRESHER TRAININGS

a) Refresher Trainings for District Master Trainers (17 to 19 February 2007)

With the objective of sharpening the competence of programme implementers of the project "Support to Justice Initiatives", a three-day Refresher Training Programme from 17th to 19th February was organized at Kathmandu. The participants included 1 district coordinator and 3 district trainers from each programme district (Bardiya and Morang) wherein community mediation is being implemented for the last 26 months. The refresher training programme was designed so as to combat the problems that are often encountered in mediation or likely to be encountered in near future, and thus, remain confident in any of the problems as such.

Since, they had acquired field experiences, the programme was highly interactive. Mr. Kishor Silwal, Director, and Mr. Sudeep Gautam, Programme Officer, were the resource persons from CeLRRd, and Mr. Ram Krishna Adhikari, Coordinator, Community Mediation Programme at Dhading also served as a facilitator in the training. Together with technical skills that should be followed for a better mediation, the participants were also furnished with good human traits that, if adopted in



Participants and Resource Persons of TOT of Refresher Training at Kathmandu

mediation will result a better output.

On the first day, i.e 17th February, Mr. Sudeep Gautam and Mr. Kishor Silwal highlighting the objectives of the programme said that it was conceived to enhance their skills from multiple dimensions, and, thus secure the smooth implementation of the project. The first topic introduced to them was Appreciative Inquiry which suggested that one always has to look into the root causes of success, and thus put concentration on the search for more opportunities to make the undertaken programme highly successful.

It has its foundation in two basic understandings: what you seek is what you find; where you believe you are going is where you end up. It can be discerned that three



Refresher Training at Bardiya

principles govern this optimistic model: If you look for problems, you find more problems; if you look for success, you find more success; and if you have faith in your dreams, you can achieve miracles. The devised 4-D cycle clarifies the model whose ingredients are, Discovery of the best thing, Dream about the would-be best thing, Design it, and finally deliver it. The definition session was followed by a distribution of a questionnaire. Four groups comprising of two people each were formulated. Each of the persons was required to fill up the questionnaire after conducting a brief interview-like session that reflected the search of root causes of success.

Each of them shared his/her interviewee's sayings. Firstly, the initial impressions and feelings upon hearing about community mediation were expressed; the second question asked to reveal such a moment during his/her mediation period wherein the mediator had swollen with pride. Hence, everybody identified the thrust to the success. They also gave the reasons that have been making mediation a faithful means of gaining justice. Mediators expressed that,

hitherto a faith has already been developed amongst them as a result of which they are referring more and more cases to mediation offices. Thus, a new culture that looks for the support of mediators rather than of courts is arising in almost all the locations. It seems that most of the people especially mediators who were skeptical about the sustainability of the mediation programme are now enthusiastic to give continuity to the programme themselves. The participants also revealed that mediation has brought changes in their behaviors as well. That is to say they feel more responsible towards societies and have a respect for effective communication between people, which is, in fact, a key to harmony.

Since unearthing potentialities of both the individuals and also of the community mediation programme as a whole, so as to move forward with conviction, was one of the major purposes of the programme, it was given maximum time, and was continued on the 18th February as well. All the resource persons were active in deducing the conclusion for the use of mediators while

providing similar refresher training to the local mediators. This carefully designed session was worthwhile in the sense that it motivated the participants to overlook the minor problems and stick to their major successes. Next to "Appreciative Inquiry", discussions were on "**Building a Positive Attitude**" which urged the participants to cultivate a habit of doing anything immediately; have a sense of gratitude, self-esteem and similar other positive things.

Though skills of mediation were already provided to them in the ToT session previously organized in 2006, they were given a better understanding of it on the third day of the programme. Especially it insisted them to address different people differently, but with a goal of having a resolution of the problem at the end. The procedures that should be followed from the initiation of mediation to the settlement of cases were scrutinized, and time and again they were alerted about their roles. It was also made clear that they should always be unbiased and should never switch to the position of therapist or consultant which if happens will erode the faith of people upon mediation. Rather they should allow disputing parties themselves to reach to a consensus.

Another form of mediation, **Transformative Mediation** was also discussed upon at the end of the last day, and a comparative study of Facilitative and Transformative mediations was done. In the former one, the focus is on dispute resolution wherein it is believed that the relationship gets restored simultaneously. But in the latter one, establishing relationship is primarily focused, and it is believed that this then helps settle dispute in the second phase of mediation. To give a constructive mode to a would-be destructive dispute, this form of mediation has been found effective, and therefore is acquiring popularity in the international context. This means, it brings notable changes into a vulnerable and self-

Master Trainers

Morang

Narayan Regmi	District Coordinator
Pramila Majhi	District Trainer
Prem Subba	District Trainer
Ganesh Raj Luitel	District Trainer

Bardiya

Satish Sharma	District Coordinator
Meera Chaudhary	District Trainer
Ganesh Devkota	District Trainer
Rishiram Kafle	District Trainer

centred state of a disputant, and transforms him/her into a powerful and considerate position. Then, the disputant becomes resourceful, clear, confident, focused, guided, and sensitive towards others' feelings and perspectives. Getting rid of dehumanizing and isolating sides of a dispute, s/he ascends to a humanitarian and harmonized state.

Upon completion of the training programme, all the participants expressed that the programme has empowered them and provided zeal to carry out mediation effectively in their respective fields. On the closing session, Mr. Kishor Silwal revealed his hope that the refresher training would prove worthwhile in tackling the difficult situations yet to come in the mission.

A master trainer facilitating Refresher Training at Biratnagar, Morang



b) Refresher Trainings for Local Mediators of VDCs and Municipalities:

Morang

S.N	VDC/Municipality	Date	No. of Males	No. of Females
1.	Buddhanagar VDC	17 – 19 March 2007	18	9
2.	Tetariya VDC	06 – 08 March 2007	14	13
3.	Katahari VDC	24 – 26 March 2007	20	7
4.	Rangeli VDC	28 – 30 March 2007	14	9
5.	Belbari VDC	06 – 08 April 2007	16	7
6.	Urlabari VDC	06 – 08 April 2007	14	10
7.	Biratnagar VDC	31 March – 2 April 2007	10	14
		27 -29 March 08	18	8
Total			124	77

Bardiya

S.N	VDC/Municipality	Date	No. of Males	No. of Females
1.	Buddhanagar VDC	17 – 19 March 2007	18	9
1	Taratal VDC	18 – 20 March 2007	14	8
2.	Sorahawa VDC	22 – 24 March 2007	21	3
3.	Mohammadpur VDC	22 – 24 March 2007	12	10
4.	Gulariya Municipality	25 – 27 March 2007	17	4
		17-19 March 08	21	4
5.	Sanoshree VDC	25 – 27 March 2007	16	4
6.	Kalika VDC	29 – 31 March 2007	11	11
7.	Mainapokhar VDC	29 – 31 March 2007	17	5
Total			129	49

A total of 379 mediators received refresher training under the Support to Justice Initiative. Refreshment trainings to the previously trained mediators has boosted their confidence.

The trainings were supportive in cultivating good behaviours in the mediators, remaining positive and thus aspiring for success. These qualities are seen to be fundamental in determining the success or failure of an individual or a project.

2.7. MEDIATION (Nov 2005 to March 2009)

a) Number of Disputes

Morang

S.N	Location	Registered	Total Mediated	Settled	Non-Settled	*Cases deviated	In process
1.	Biratnagar MC	340	316	306	10	4	20
2.	Budhanagar	927	900	711	189	12	15
3.	Rangeli	396	381	320	61	4	11
4.	Tetariya	183	157	147	10	14	12
5.	Katahari	702	678	657	21	6	18
6.	Urlabari	119	96	93	3	11	12
7.	Belbari	157	153	145	8	2	2
Total		2824	2681	2379	302	53	90

Bardiya

S.N	Location	Registered	Total Mediated	Settled	Non-Settled	*Cases deviated	In process
1.	Sorahawa	206	154	124	30	35	17
2.	Gulariya	180	145	127	18	22	13
3.	Sanoshree	101	71	60	11	14	16
4.	Kalika	190	166	157	9	5	19
5.	Mohammadpur	395	322	292	30	20	53
6.	Taratal	118	93	80	13	12	13
7.	Mainapokhar	186	161	143	18	8	17
Total		1376	1112	983	129	116	148

* *Note:* Cases deviated refers to those cases that could not be mediated even after getting registered in mediation centres as they got deviated probably because the second parties did not come to mediation even after much insistence or the cases went to other institutions.

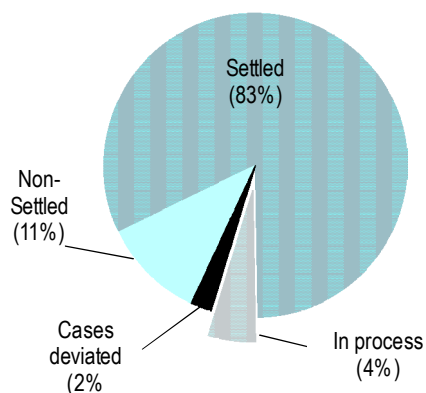
CeLLRd's Contribution to Community Mediation

S.N	Location	Registered	Total Mediated	Settled	Non-Settled	Cases deviated	In process
1.	Morang	2824	2681	2379	302	53	90
2.	Bardiya	1376	1112	983	129	116	148
3.	Banke	1778	1716	1563	153	-	62
4.	Dhading*	220	220	213	7	-	0
5.	Nawalparasi	1002	984	835	149	-	18
6.	Kanchanpur	411	395	302	93	-	16
	Total	7611	7108	6275	833	169	334

* Data does not include figures from 2007, as mediation in Dhading was left over.



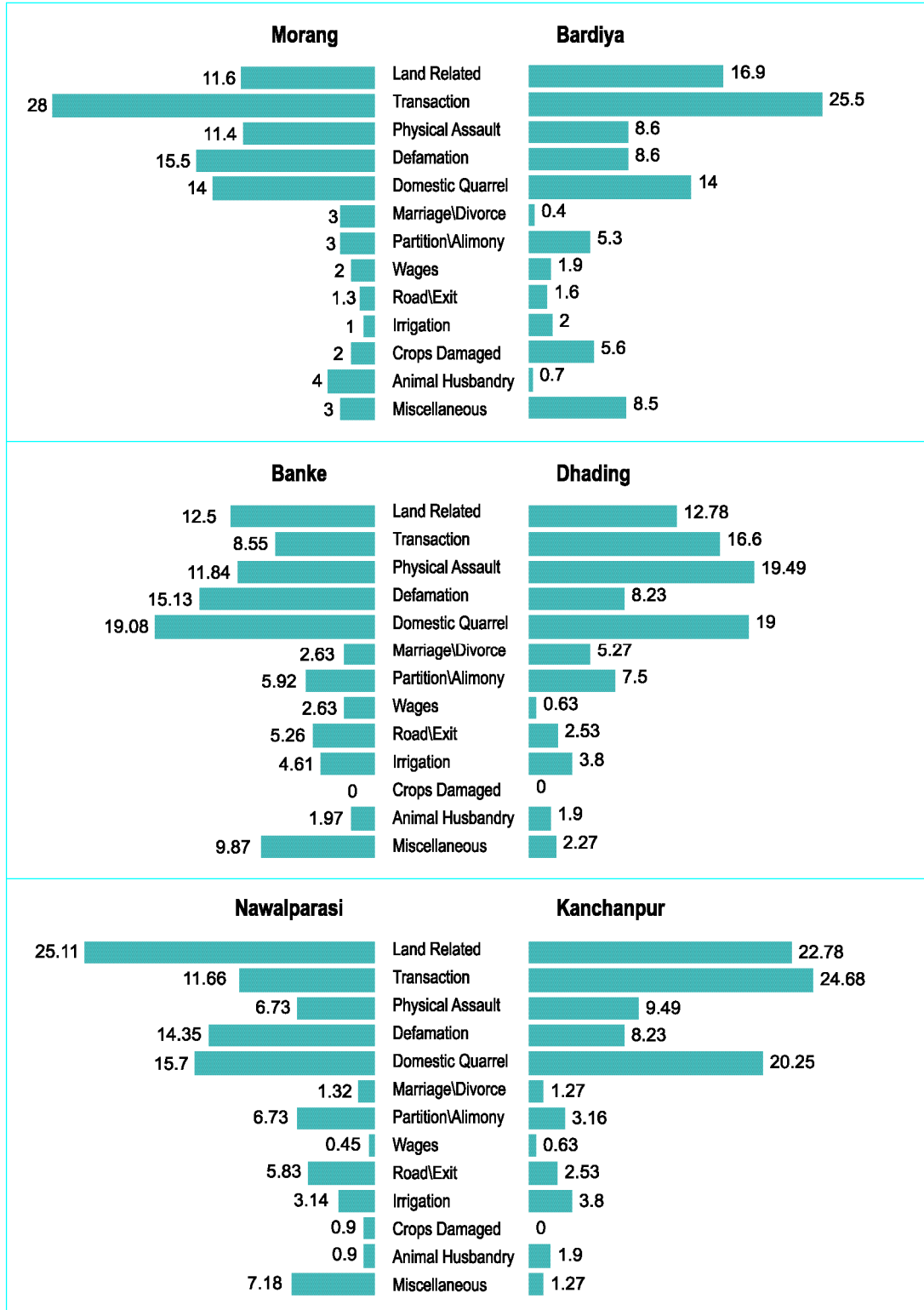
*Disputant from Sanoshree VDC sharing his experiences
District Level at Practice Sharing programme*



b) Nature of Disposed Cases (in percentage) (Both Settled & Non- Settled)

District	Land Related	Transaction	Physical Assault	Defamation	Domestic Quarrel	Marriage \ Divorce	Partition \ Alimony	Wages	Road \ Exit	Irrigation	Crops Damaged	Animal Husbandry	Miscellaneous
Morang	11.6	28	11.4	15.5	14	3	3	2	1.3	1	2	4	3
Bardiya	16.9	25.5	8.6	8.6	14	0.4	5.3	1.9	1.6	2	5.6	0.3	8.5
Banke	12.50	8.55	11.84	15.13	19.08	2.63	5.92	2.63	5.26	4.61	0.00	1.97	9.87
Dhading	12.78	16.6	19.49	8.23	19	5.27	7.5	0.63	2.53	3.8	0	1.9	2.27
Nawalparasi	25.11	11.66	6.73	14.35	15.70	1.35	6.73	0.45	5.83	3.14	0.90	0.90	7.18
Kanchanpur	22.78	24.68	9.49	8.23	20.25	1.27	3.16	0.63	2.53	3.80	0.00	1.90	1.27

Nature of Disposed Cases (in percentage)



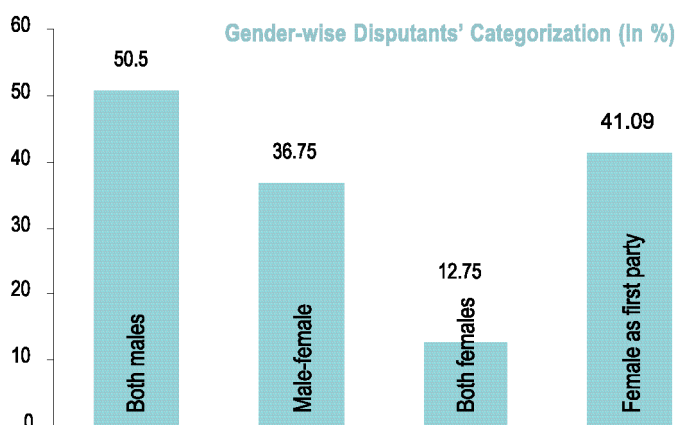
A number of organization related cases, that of affairs between two persons and few others are categorized under the miscellaneous heading. A significant number of cases related to transaction, defamation and domestic quarrel have been reported and mediated throughout the project period in both the districts.

As far as the natures of the cases are concerned, it is found that transaction related dispute has the highest occurrence. Since many people there live under the poverty line, borrowing money from local merchants (*Sabu*) or other

neighbouring person is a common phenomenon in the district. Due to their pitiful financial condition, they usually are not in a position to repay the money on time. Again when the illiteracy rate is high, the poor debtors most of the time are deceived. So in majority of the cases, difference in the money claimed by creditors and debtors arise. Following the disputes relating to transactions is land related disputes. Hence it reflects that in rural areas, most of the people depend on agriculture, thereby having more number of disputes relating to land.

c) Gender-wise Disputants' Categorization (In Percentage)

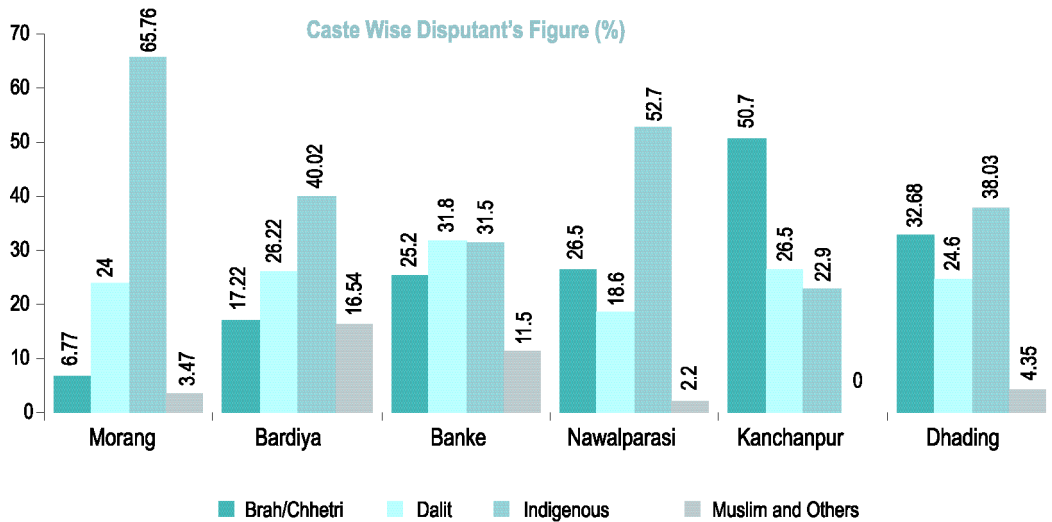
S.N	District	Both males	Male-female	Both females	Female as first party
1	Morang	51.5	38.05	9.09	39
2	Bardiya	69.87	20.23	9.89	27.25
3	Banke	35.5	54	10.5	57.26
4	Nawalparasi	63.2	18.8	18	32.3
5	Kanchanpur	36.9	48.6	14.5	40.8
6	Dhading	45.2	40.4	14.4	49.9



Though there is less number of cases of both parties involving females, it has empowered women of the disadvantaged community who otherwise would be ruined / tattered in the lack of justice.

d) Caste-wise Disputants' Categorization

S.N	District	Brah/Chhetri	Dalit	Indigenous	Muslim and Others
1	Morang	6.77	24	65.76	3.47
2	Bardiya	17.22	26.22	40.02	16.54
3	Banke	25.2	31.8	31.5	11.5
4	Nawalparasi	26.5	18.6	52.7	2.2
5	Kanchanpur	50.7	26.5	22.9	0
6	Dhading	32.68	24.6	38.03	4.35



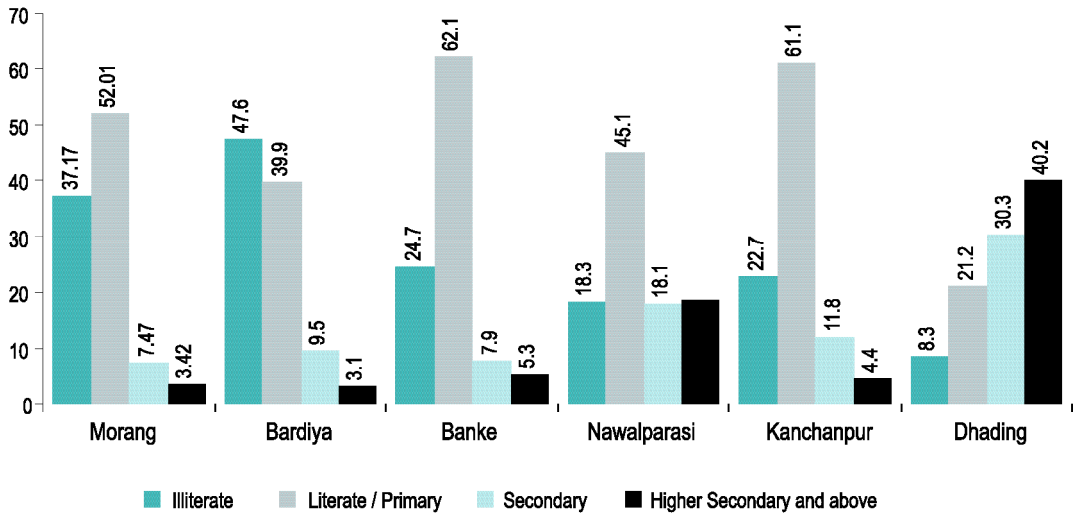
The data reflects that disputes from backward communities like Janagatis and *Dalits* are being registered and addressed more in mediation.

e) Disputants' Education and Economic Status

Disputants' Education

S.N	Districts	Illiterate	Literate/Primary	Secondary	Higher Secondary and above
1.	Morang	37.17	52.01	7.47	3.42
2.	Bardiya	47.6	39.9	9.5	3.1
3.	Banke	24.7	62.1	7.9	5.3
4.	Nawalparasi	18.3	45.1	18.1	18.5
5.	Kanchanpur	22.7	61.1	11.8	4.4
6.	Dhading	8.3	21.2	30.3	40.2

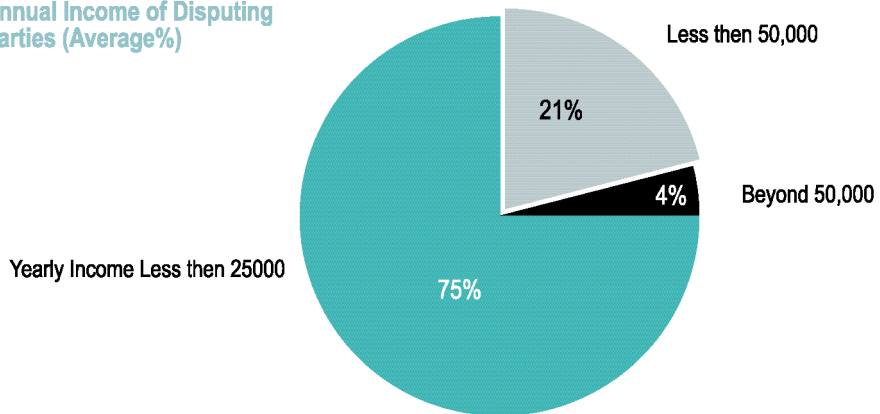
Educational Status of Disputing Parties (%)



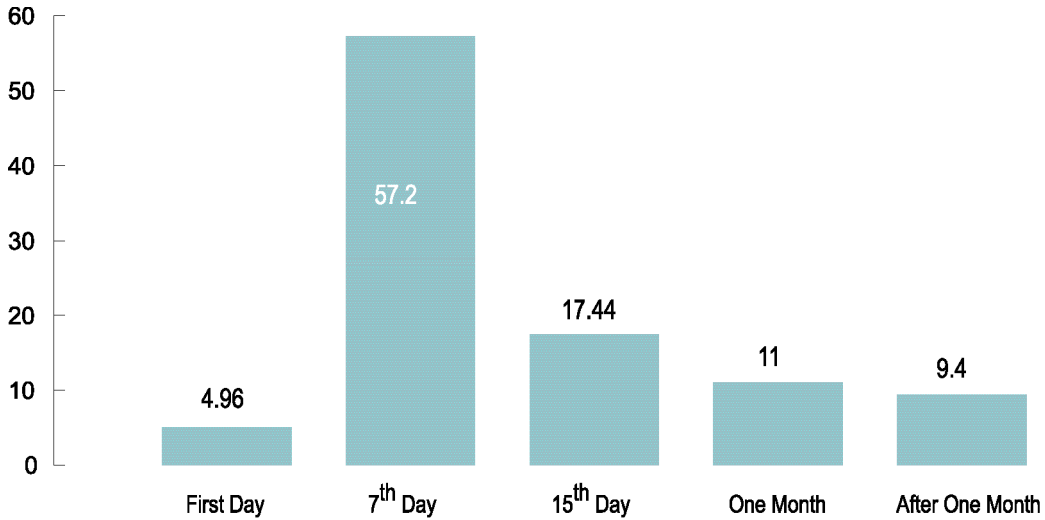
f) Average Economic Status of Disputants

S.N	Districts	Disputants' number	Number of Family Members	Yearly Income		
				Yearly Income Less than 25000	Less than 50,000	Beyond 50,000
1.	Morang	5362	30019	70.2%	24.2	5.6
2.	Bardiya	2224	13366	80.8	17.67	2.88

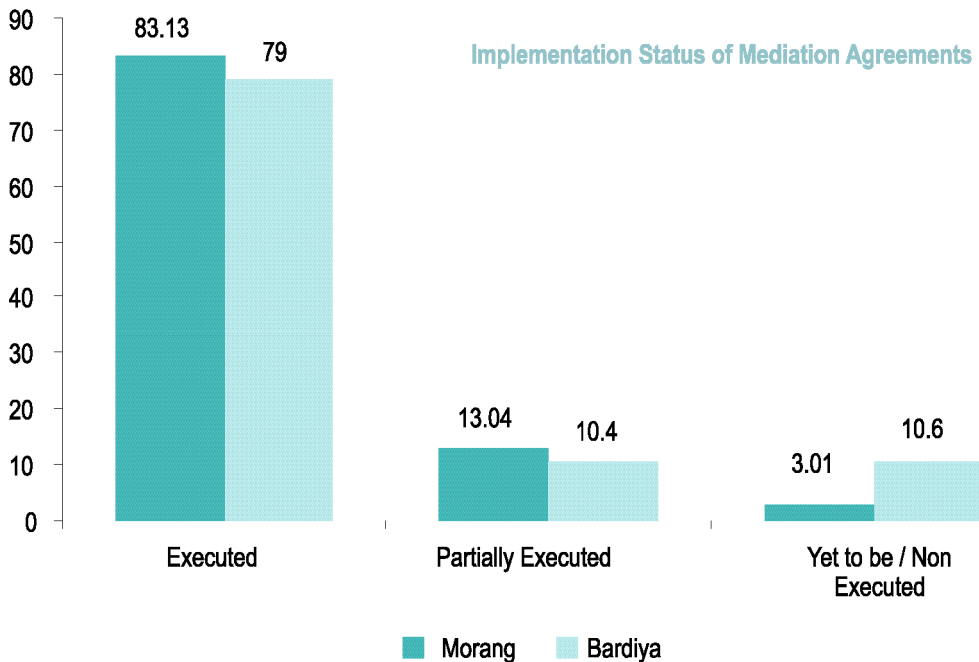
Annual Income of Disputing Parties (Average%)



g) Time Taken for Disposal of Cases (%)



h) Implementation Status of Mediation Agreement (%)²



² In Morang 1358 and Bardiya 720 mediated cases were evaluated after 3 to 6 months from mediation agreement.

2.8. SUCCESS STORIES

a) Case of Supreme Court Settled by Community Mediation - Photo

Sudar Tharu (name withheld) age 55 years, a tenant and Choplal Tharu (name withheld) age 60, a landowner, both the residents of Sorahawa VDC, Ward No. 6 of Bardiya district were litigants to a case for the last 10 years. Pursuant to the provisions under the Land Reform Act 2021, Sudar had claimed before Choplal his tenancy rights over 16 *kathha* of land, which was denied by Choplal. Having being denied, Sudar had filed a case against Choplal in Land Reform Office. Tension arose in both the families with no resolution for a long period. Finally, the Land Reform Office rendered a verdict in favor on the landowner. Subsequently, Sudar filed an appeal petition in the Appellate Court in Nepalgunj wherein the Appellate Court upheld the decision of the Land Reform Office. Having no other recourse, Sudar entered the Supreme Court. Though three years passed the case could not come up for hearing.

Getting tired of the long delays, no certainty to the final hearing and the huge litigation cost incurred, Choplal sought help from the local civil society. Civil society referred him to seek assistance from the mediation centre wherein the dispute was registered on 24/9/2006 and mediation session commenced from 27/10/2006.

During the mediation sessions, both of them expressed their desire to discuss the issue with one another, but could not do so due to the bitterness and enmity between them. After hours of discussion, and with the facilitation from the mediators the disputants were able to reach an amicable solution. Under the agreement reached

between the two, Sudar who had been enjoying the harvest for the past ten years, was to part away in whole the harvest for that year and in return the 16 *kathha* of land was to be equally divided between Sudar and Choplal.

The agreement and reconciliation brought happiness in their families. Sudar who was denied of his right received justice from the mediation and did not have to pay any fees. While the mediation session was cost effective Sudar had spent around 0.15 million just in the litigation processes. Likewise, Choplal was also equally satisfied with the mediation procedures, which demanded no cost and also maintained their privacy.

Choplal expressed his feelings in the following “I went to Kathmandu at least eight times to have my case heard and I even paid Rs. 65,000 including lawyer’s and court fee”. He also stated that he did not remember how much in terms of legal fees he had paid but expressed that the amount could have been more than Rs. 2.5 lakhs.

Sudar also expressed similar feelings and informed the mediators that he had consumed around 300,000 thousand rupees during the whole process and during the litigation process both of them were not on talking terms for the past ten years. He realized that with the amount of money spent he could have purchased one *bigha* of land but since his intention was to harass and defeat the landowner, he had taken recourse of the formal justice system.

b) Transaction Dispute

This was a 10-year-old dispute arising in a well to do family. Seema Khadka (name withheld), the younger sister in law had provided a certain amount of money to her elder brother in law named Dhiraj Khadka, (name withheld). She had mortgaged her parents' land and the money received from the mortgage was given to Dhiraj without anyone's knowledge.

Even after 10 years, she failed to receive her money. Although, she had on her own cleared the debts in relation to mortgaging the property, the money lent to Dhiraj was still due. Being a woman and younger to her brother in law, she was unable to impose any kind of influence on Dhiraj to get her money back. She had a 90-year-old father who was unaware of the transactions entered between Seema and Dhiraj.

Seema being younger to Dhiraj had the social responsibility to respect Dhiraj and uphold the social norms and values practiced in the society she also had the

responsibility to retrieve the money lent to Dhiraj. Although, Seema was receiving money from Dhiraj, the money she received was in trickles and had no particular significance and desired to have the full payment.

The brother in law's problem was that he was not in a position to immediately repay the total amount since he had acquired the loan to meet his obligation towards his family. However, he informed the mediators that he had no intention of withholding or delaying the repayment of the loan received from Seema.

The mediators were successful in bringing the disputants together wherein the disputants through were able to reconcile their differences and Dhiraj agreed to write a bond in Seema's name stating that the money would be paid within a year and Seema agreed not to hold any grudge against Dhiraj. Both the disputants were satisfied with the outcome. Moreover, they were happy that their privacy was maintained and status quo of relationship was maintained.

c) Husband – Wife Dispute Settled by Mediation

Kul Bahadur Pun Magar (name withheld), a resident of Taratal -5 did a second marriage to Januka (name withheld) after the death of her first wife from whom there were four children. Januka also gave birth to two other children. Eventually, meeting the expenses of the six children became unmanageable for the couple. Therefore, Kul Bahadur decided to send his wife for a foreign employment. Mortgaging a piece of land, he took a loan of NRs. 60,000, and sent Januka to Kathmandu. But after several attempts also, she could not go anywhere.

Eventually, the money that she had also got finished on daily expenditures. Then one day, she returned her house.

Kul Bahadur then started abusing Januka; he would beat and act immorally with her. After it became intolerable, she went with her children to her parents' house. Her family suggested her to divorce him and stay separately with the children. As Kul Bahadur heard that his wife is legally separating from him, he registered his case on 9 Mangshir 2008 in Taratal Mediation Center. Mediation occurred on the next day wherein Kul

Bahadur expressed that he had high hopes that she would go abroad and thus make their life little better, but as she returned with nothing, he suspected that probably she was engaged with other men as she was comparatively younger than him. Januka on the other side said that she thought about the future of her children. When his husband time and again asked her to leave away, she did so. At last,

they could come to an agreement that any of them would not create a dispute in relation to the loan. Januka would look after the family and the children well and Kul Bahadur would pay the loan doing labor work. He also agreed to quit alcohol, and both of them agreed on two major issues: to reestablish the previous relationship, and to decide in every case jointly.

d) Future of a Differently Able Secured

Harshadev and Ratna Upadhaya (name withheld), the residents of Kalika VDC-3 had three sons: Padma Raj, Khem Raj and Dibya Raj. Dibya Raj, (names withheld) the youngest one was dumb and deaf. Both the eldest and the elder sons had married and separated from the parents. But the youngest was with the parents. So that made the future of the youngest one more insecure.

Harshadev had two plots: 8 kattha and 1 Bigha. He then divided 8 kattha amongst the two sons and kept the bigger one for the sake of the security of the disabled son. That had caused tension in the family for the last two years.

The two brothers claimed that all the property should be divided into four equal portions. Ratna was also convinced with the demand. However, Harshadev refuted. Due to this, Ratna started living with the eldest son. As no woman was there to do household works, Harshadev went to bring Ratna from the eldest one's house. As he reached, his son discussed and disrespected him. Afterwards, he registered a case on 2065/ 3/1 and mediation was done on 2065/ 3/2. Harshadev expressed financial insecurity as the two brothers had already separated. However, Ratna and the eldest

son said that if divided into four equal halves, 5 kattha land from father's share would be given to the youngest son. They also said that thus, they can produce crops enough for the whole year for the two brothers, and in case if the parents are ill and the youngest brother has difficulties, they will look after them.

After mediation, they came to a consensus in a number of points.

- The married sons and daughter-in-laws will take care of the parents and the disabled brother in case of sickness and problems. After the death of the parents the eldest brother will look after him.
- The total land will be divided into four halves and the two sons will bear the cost of the processes of the segregation of property including its cost of measurement.
- 5 kattha land will be given to the youngest son in addition to his own share.
- The parents and the disabled son will live together and in case of problems, the other two will be responsible for managing them.

They all looked grateful as their dispute was settled in a confidential manner and all of them felt that justice was given to them.

e) Foreign Employment Dispute

Sanu Khatik and Chetan Khatik (Names withheld), both the residents of Sorahawa VDC- 6 were good neighbors before Chetan Khatik sent Sanu's son, Himesh to Malaysia for foreign employment. Sanu was comparatively poor than Chetan and hence, when he could not manage for the livelihood, he sold 10 kattha land, and from the very amount he wished to send his son abroad.

As Chetan was an agent of a manpower company, he consulted with Sanu and taking NRs 80,000 from Chetan, he sent Himesh to Malaysia with three years visa. However, the situation was not as said by Chetan. He had to do rigorous work, and even he could not manage living there. Due to the excessive workload, he felt ill for nearly a month. Finally he returned to Nepal merely with Rs. 35,000 within a year.

Afterwards, Sanu asked Chetan to pay him Rs. 45,000 (after deducting 35,000 from 80,000) as

his son came back suffering a lot. Yet Chetan refused to pay back. Sanu even had filed an application in the local area police station last year, wherein it was decided that he would pay only Rs. 25,000 within Bhadra of the same year but again it was not implemented. The dispute intensified henceforth. So, Sanu registered his case in Sorahawa mediation centre on 2065/2/15, and it was mediated on 2065/2/30. Both the parties expressed their views. Chetan said that he had no intension of thugging him. Just because he did not have any resources, he could not pay the money within Bhadra. But he also said that he did not want to destroy the relationship between them. Sanu said that since he already lost his land, he would buy some land, if he was given money.

Later on they could come to a consensus that Chetan would pay Rs. 25000 after harvesting rice in *Mangshir*. Until then, he would provide a monthly interest of 2 %. It seemed that mediation in such a somber manner was satisfying to both Chetan and Sanu.

f) Voice Given to a Voiceless

Bhumi Dhama (name withheld), a resident of Belbari-2, Morang had already lost her husband and had two sons, whom responsibility solely lied to her. Moreover, she had a pitiable condition as her brother-in-law had denied her right to property. Except a hovel, she was given nothing. Even after several pleas to give her share, Bhanu Lal (name withheld) did not listen to any of her requests. Finally, she lodged a case to Belbari mediation centre on 15 May 2008.

On 18 May, the case was mediated. However, Bhumi was so frightened even at the sight of Bhanu and therefore, she even could not express herself in front

of him. But as the mediators well handled the situation, she later could claim her right to property. Bhanu expressed that he had had no intention of deceiving her as he had already committed that he would give property as the nephews get young. But Bhumi said that he was simply providing excuses. At last, both of them reached to an agreement that Bhumi would receive 4 *kattha* land in which the house is built and Bhanu would receive 5 *kattha* land. Bhanu would also look after his parents and furthermore, support Bhumi in difficult circumstances.

Thus, a voiceless woman got her voice only through mediation.

g) A Desolate Life Transformed into a Sweet One

Januka Bishwas and Jaya Bishwas (names withheld) were residents of Tetariya VDC Ward No. 7 of Morang district. Both of them had deep emotional feelings for each other and they got married in a nearby temple without revealing it to anyone. Even after entering into matrimonial relationship, they were living separately and on one in their respective families were aware of their relationship. As time passed, Januka's family realized that their daughter was pregnant and

with the help of the local people tried to get her settled in Jaya's house but failed to succeed. Jaya's family did not accept her as Jaya's wife nor did they recognize and accept her as their daughter in law. Rather, they advised their son and compelled him to flee the place until matters settled down.

Januka went to Jaya's house several times but every time she was threatened and intimidated and was told that they would file a case against her for disappearance of their son. She could not bear it any longer and stayed in her parents' house. After some time she gave birth to a baby boy and continued in her parents' house. With the birth of the child, life for her was equally tough since her parents started ignoring her. The only way for her to survive was to work as a laborer in brick factories or in other people's houses as a domestic servant or work as a laborer in other's fields.

Although she was living a deplorable life, she wanted a secured life for her child. At times, she would be desperate looking at her condition and at other times she would speculate upon the child's future; she was all alone. When she was informed about the mediation practices undertaken in her VDC, she rushed to the mediation centre and had her dispute registered. The mediators were able to bring both the parties at the same place and initiated them to discuss on their issues. Jaya repented for his past mistake and confessed that in spite of having immense love for Januka, he was compelled by his family not to accept her. Finally, Jaya and his family were ready to accept her.



Januka and Jaya Biswas (names changed) reconciling after mediation, Tetaria 2

2.9. PRACTICE SHARING PROGRAMMES:

Practice-sharing activity is always considered as an appropriate platform to enhance the capabilities of mediators and assess the impact of the mediation project; it provides a good opportunity to share achievements made, problems encountered and also the measures to be taken into care for a better mediation. Therefore, it increases mediators' confidence and credibility among the local people.

Within the mediators' circle also, it increases "team spirit" and hence motivates them more and more to work in providing justice to the needy ones. Thus, when such programmes are

regularly organized, it acts as a distinct guide to the involved mediators in pursuing the work of mediation.

The major participants would be people from different segments and organizational representatives, affecting the mediation activities directly and indirectly: secretaries of the VDCs/ municipalities, presidents of the organizing committees, ward representatives, local school heads, community forest heads, local women's organizations, and clubs.

Local intellectuals also used to make their presence. Such meetings along with so many people obviously, used to be

Delegates of DanidaHUGOU at Practice Sharing Programme of Mohammadpur VDC of Bardiya





Women being empowered through mediation

helpful in continuing the mediation smoothly. Due to the reason that sharing is an inevitable part in the successful conduction of any community activity, frequent sessions of practice sharing programme were held on several dates in different targeted areas of Bardiya and Morang districts.

It was organized in four phases at three levels in both the districts as mentioned below:

- District Level Practice Sharing Programme
- Municipality Level Practice Sharing Programme
- VDC Level Practice Sharing Programme

Each district and VDC/MC level practice-sharing meeting would be organized once in every three months to tackle the hindrances that are encountered along different procedures of mediation. Together with this, its objective is also to make advertisement of mediation so that those disputes (estimated as 60%) that tend to remain in dormant stage in societies can be brought forward and permanently settled. Moreover, the continuous review of cases qualitatively and quantitatively uplifts the morale of mediators. This is also a rare forum that brings both the governmental and non-governmental sectors to work for a common mission, establishing peace and rule of law in societies.

a. District Level Practice Sharing Programme

Bardiya

S.N	Phase	Date	No. of Participants	Male Participants	Female Participants
1.	2006	29th June 2006	15	12	3
		15th Sep 2006	25	21	4
		18th Nov 2006	32	23	9
		20th Dec 2006	18	15	3
2.	2007	16 April 2007	35	21	14
		13 June 2007	29	22	7
		18 October 2007	19	15	4
		25 November 2007	22	17	5
3.	2008	15 March 08	37	31	6
		23 July 08	37	32	5
		25 Nov 08	31	26	5
4.	2009	20 Feb 09	21	15	6

Morang

S.N	Phase	Date	No. of Participants	Male Participants	Female Participants
1.	2006	16th June 2006	12	10	2
		1st Sep 2006	36	21	15
		16th Oct 2006	19	11	8
		30th Dec 2006	46	41	5
2.	2007	18 May 2007	24	21	3
		29 June 2007	24	21	3
		30 September 2007	13	11	2
		2 November	20	17	3
3.	2008	30 March 08	42	32	10
		25 July 08	18	17	1
		27 Nov 08	17	15	2
4.	2009	20 Feb 09	21	15	6



VDC Mediators sharing their experiences at Practice Sharing programme-Budhanagar VDC, Morang

b. VDC/MC Level Practice Sharing Programmes in Bardiya and Morang

A total of 168 VDC/municipality level practice sharing programmes (12 in each location in 2006, 2007, 2008 and 2009), were conducted throughout the project period in the 14 locations. Usually, a VDC level practice sharing programme would be conducted once in three months or even quarterly, and the participants' number would be ranging from 25-30. This was especially implemented so as to share the

experiences, lessons learnt, and thus prepare for the challenges that come along mediation. In the later stage of the mediation project, a significant number of local authorities were trained and thus mobilized in the favor of the programme itself. Such practice sharing programmes were key to generate support from the local authorities and as foreseen, ultimately mediation programme was handed over to the local bodies of the respective locations.

2.10. CONSOLIDATION MEETING

Consolidation Meeting was scheduled for the year 2007, but due to long political disturbances followed by strikes and restricted mobility of people in the Terai region, the meeting was postponed for the year 2008. The meeting was held in Chitwan from 5-7th of March with some

30 participants.

It brought selected mediators of the two districts (Bardiya and Morang) in a common platform to consider various issues: how to make mediation more effective in the upcoming days; how to create local bodies'

ownership upon the programme so that mediation would be institutionalized; and how to generate local resources so that the programme would sustain. Field visit to Ramgram Municipality and Devgaun VDC of Nawalparasi (where community mediation is being successfully run after the handover to the local authorities and local resources are being well utilized) were also incorporated in the programme so that the mediators themselves would observe the activities to get inputs to move ahead in a self-reliant manner.

The resource persons were, Mr. Kishor Silwal, Mr. Sudeep Gautam, Mr. Kumar Sharma Acharya and Mr. Sita Ram Adhikari.

On the first day, firstly each participant was made to express his/ her experiences, and expectations in relation to mediation. Their experiences were based on the following themes:

- Understanding about community mediation at community level
- Achievement of Community Mediation - What could happen if there was no CMP
- Response of Community towards

Community Mediation Programme

- Positive Impact of CMP in community
- Coordination with local authorities
- Situation of Observance of Code of Conduct
- Existing shortcomings on CMP

While the facilitators presented on the following subjects:

- Mediation and its Practices in the world (Bangladesh, Singapore, America, Srilanka, India, Malaysia) , and its prospects
- Sustainability of CMP
- Powers of Local Bodies on Local Resource Mobilization
- Statutory provisions
- Obligation of on Local bodies
- Situation of Local Resource Mobilization
- Public Private Partnership

Interactions were held on exploring local resources which included VDC/ municipalities' resource mobilization, and



Consolidation Meeting' Participants

their support. The prospects and challenges on local resource mobilization were also discussed. VDC and municipalities' coordinators also came up with a work plan to be implemented at the district level in the meeting.

On the third day, the team of 32 mediators of both the districts went on a field visit firstly to Devgaun VDC and then to Ramgram municipality. The places were mostly inhabited by Madhesis and Chaudharis. Mediation programme in both the locations was owned by VDC and municipality offices respectively. In Devgaun VDC, a pond was provided to mediators for fishing. The mediators manage all the activities of fish farming, and

hence from the earning, they manage some expenses involved in mediation. Hence from the combined effort of the local mediators and the local body, mediation could continue.

Mediation in Ramgram municipality was better. It was implemented by the municipality itself, so it incurred the cost of mediators' petty expenses like light snacks, the salary of coordinator and also the stationery cost involved in mediation. The process of registration of cases was like governmental one. First they would be registered in municipality office and then referred to mediation service. As recognition of the service of the mediators, the municipality office has had the enlarged photos of mediators.

2.11. NATIONAL CONFERENCES TO INSTITUTIONALIZE COMMUNITY MEDIATION IN NEPAL

A two-day National Conference to Institutionalize Mediation in Nepal was organized on 17-18 January, 2009 in



Chief Guest Hon'ble Top Bahadur Singh inaugurating the programme

Kathmandu. The programme was hosted by CeLRRd along with other partner organizations i.e. Pro Public, IGD, SUSS and RUWDUC with the support of The Asia Foundation (TAF). The programme was aimed at institutionalizing mediation in Nepal by sharing the experiences of South Asian countries. The main objective of the programme was to accelerate the process of institutionalizing community mediation in Nepal. It has also aimed to broaden the understanding regarding the necessity of mediation at local level. The programme observed paper presentation by resource persons from Nepal, India, Philippines, Malaysia, Sri Lanka and Bangladesh followed by comments from commentators and interaction among the participants.

The programme was inaugurated by Chief Guest Hon'ble Top Bd. Singh, Executive Director, National Judicial Academy and was chaired by Assoc. Prof. Geeta Pathak

Sangroula, President, CeLRRd. Mr. Nick Langton, Country Representative, TAF had welcomed the participants and guests. Prof. John Paul Lederach, Internationally recognized Mediation Expert had given key-note speech; Hon'ble Arju Rana Deuba, Member, Constituent Assembly; Dr. Ram Krishna Timilsena, Registrar, Supreme Court of Nepal; and Prof. Nomita Aggarwal, Former Dean, Delhi University had also given inaugural remarks during the session.

Putting his inaugural remarks, Hon'ble Singh set highlights on the activities of the judiciary in community mediation programme. He mentioned that Nepalese judiciary has taken community mediation as an integral part of dispute settlement in Nepal. He also informed that National Judicial Academy has been conducting various 'Training of Trainers' programme on court referred mediation with the theme "justice is inevitable for the sovereignty of the country". Focusing on the importance of mediation, he said, in mediation, mediator is neutral whose responsibility is to bring two conflicting parties at the table for discussion.

Earlier, welcoming to the participants and



Mr. Nick Langton, Country Representative of TAF, highlighting the objective of the programme

guest, Mr. Nick Langton, Country Representative of TAF, highlighted the objective of the programme. He informed that TAF has been supporting these kinds of programme from last 15 years and from 2001 it has started Community Mediation Programme in 14 districts of Nepal where USAID is supporting court referred Mediation.

As a keynote speaker Prof. John Paul



Keynote speaker Prof. John Paul Lederach giving his speech at the inauguration session



Participants of the Programme

Lederach, internationally recognized Mediation Expert, put his remarks on Institutionalization and Foundation of Mediation in Nepal based on his long experiences in the area. In his speech, he said that before discussing for institutionalization, it is necessary to test the viability of mediation in Nepal. "For this, there should be focus on three things; Experiences on the study of mediation in Nepal, Experiences from grassroots level and Understand sociological perspective of people", he added.

Recalling the Max Weber's theory, he said institution should be seen in relation to democracy and institutionalization of mediation should be tested from its sustainability. "Sustainability is required to understand the practice. It is needed to identify how mediation works, and under what conditions. But most of the researches are conducted on quantitative basis, not qualitative, so the primary requirement is in testing the viability of institutionalizing mediation in Nepal and it should be developed on the basis of action research", he said.



Lars Christensen, Programme Coordinator, Mukunda Kattel, Advisor and Michelle Parlevliet, Conflict Transformation Advisor, DanidaHUGOU at the conference

Community mediation has brought 'Personal Change, Relational Change, Structural Change and Cultural Change'. With these changes, mediation is taken as an effective tool for access to justice in Nepal. However, it is necessary to form long term strategy for the proper implementation of the plan so as to institutionalize mediation in Nepal, he said.

Speaking at the programme Dr. Ram Krishna Timilsena focused on the new Draft Bill which has incorporated many provisions for institutionalizing mediation in Nepal. He informed that government has decided to incorporate community mediation in Draft Bill. As mentioned in the Bill, local authority will enforce the provision of Local Self Governance Act and also court referred mediation and court annexed mediation. He also informed that government is discussing seriously on commercial mediation, local governance mediation, community mediation, court referred mediation and court annexed mediation.

Dr. Arju Rana Deuba, Member of Constituent Assembly, also stressed that activities so far are directed towards institutionalizing mediation in Nepal.

The inaugural session was followed by paper



Assoc. Prof. Dr. Yubaraj Sangroula presenting his paper at the conference

presentation. Participants were divided into two groups and presentations were made in different themes. Dr. Ferdous Jahan made presentation on Access to Justice for the Poor in Bangladesh: Problems and Prospects while Ms. Kamalini de Silva from Sri Lanka made presentation on Legislative Framework and Practices for institutionalization of Mediation. Similarly, Prof. Nomita Aggarwal made presentation on Institutionalizing traditional mediation practices focusing Lok-Adalat in India while Attorney Rowena Daroy Morales made presentation on Scope and practices of mediation in conflict situation and lessons learned and Barangay Justice System: A Citizen-Driven Tool For The Resolution Of Disputes In The Philippines.

Similarly, Assoc. Prof. Dr. Yubaraj Sangroula and Dr. Trilochan Upreti made presentation on Community Mediation: A Pedagogic Reflection and Institutionalizing mediation in formal justice mechanism respectively. Similarly, Ms. Gunathevi Sinnadurai from Malaysia made presentation on Scope and practices of mediation in conflict situation and lessons learned while Mr. Mukti Rijal made presentation on Cultural values orientation of communities in Nepal: Possible implications for Mediation. The last paper of the session was presented by Mr. Ben Reed entitled Comparative study of legislative framework of Mediation.

The paper presenters provided complete picture of mediation experiences in their respective countries followed by expert comments in each presentation. The commentators included Mr. Sadharam Sapkota, Joint Secretary of Ministry of Law and Justice and Constituent Assembly; Hon'ble Ishwor Prasad Khatiwoda, Judge, Appellate Court; Hon'ble Dr. Anand Mohan Bhattarai Judge, Appellate Court; Hon'ble Keshari Raj Pandit, Judge,

Appellate Court; Dr. Ramkrishna Timalina, Registrar, Supreme Court; Advocate Narendra Prasad Pathak, Former Deputy Attorney General; Mr. Mahendra Prasai; Assoc. Prof. Geeta Pathak; and Hon'ble Binod Sharma Judge, District Court of Nepal.

The conference ended with the adoption of five resolutions concerning jurisdiction of mediation, voluntary or mandatory process of mediation, qualification of mediators, remuneration to mediators, and implementation of decision to institutionalize mediation in Nepal.

TAF has been supporting community-level access to justice as a fundamental element of democratic governance in Nepal. With technical assistance from TAF, partner NGOs including CeLRRd have implemented community mediation



Hon'ble Ramchandra Jha, Minister of Local Development giving closing remarks at conference

activities in Nepal since 2002 to improve access to justice at the local level and strengthen the culture of dispute resolution. The project currently operates in 14 districts across the country, each affected to varying degrees by the conflict.

2.12. DISTRICT MEDIATORS' NETWORKS, FORMATION AND CONFERENCES

District conferences in Bardiya and Morang provided a common platform for all the mediators of the respective districts to get together in the district headquarters for sharing their experiences, challenges, achievements and scope of mediation and its sustainability.

Though the formation of district level mediators' networks was not envisaged earlier, the project oversaw their formation as an unintended consequence of the programme. The main objectives of convening the district mediators' conference were to-

- Appeal Constitutional Assembly to incorporate community mediation as a basic component of justice delivery

system at the local level while drafting the new constitution

- Appreciate and honor the best mediators selected for their involvement and contribution
- Familiarize all the community mediators working in the mediation centres
- Generate the support in establishing better coordination with local representatives
- Find out the ways of making community mediation sustainable
- Share each other's experiences, outcomes and problems of the community mediation programme.
- Initiate, strengthen and suggest district network of mediators

a) District Mediators' Conference, Bardiya

Prior to holding District Level Mediators' conference in Bardiya in 2009, earlier on 23 July 2008, the mediators of the district had already formed 26-member District Mediators' Network Committee with the following persons:

List of District Mediators' Network Committee, Bardiya

S.N	Mediators Name	Designation
1.	Balhari Subedi	President
2.	Thankumari Tiwari	Vice-president
3.	Niyaj Ahmad Shekh	Secretary
4.	Purna K.C	Joint- Secretary
5.	Sapana Sharma	Treasurer
6.	Min Raj Pangen	Member
7.	Inubahadur Gurung	Member
8.	Purshotam Khanal	Member
9.	Majiulla Kha	Member
10.	Nagendra Majhi	Member
11.	Tanka Dhungana	Member
12.	Ramlal Yadav	Member
13.	Mohan Thapa	Member
14.	Khagendra Dev Giri	Member
15.	Jagrani Chaudhary	Member
16.	Ambar Singh B.K	Member
17.	Chandra Bahadur B.K	Member
1.	Ex-officio, LDO Bardiya	Patron
2.	Bharat Naupane, VDC Secretary, Sanoshree	Advisor
3.	Ram Bahadur Thapa, VDC Secretary, Taratal	Advisor
4.	Arjun Subedi, VDC Secretary, Mahammadpur	Advisor
5.	Haridatta Joshi, VDC Secretary, Kalika	Advisor
6.	Krishna Bahadur Sapkota, VDC Secretary, Mainapokhar	Advisor
7.	Shankar Rokaya, VDC Secretary, Sorahawa	Advisor
8.	Ex-officio, Gulariya Municipality Executive Officer	Advisor
9.	Ex-officio, CeLRRd	Advisor



Guests and Participants at the conference

Then, a one-day conference was held on 27 Feb of 2009 in District Development Committee building at Gulariya. Almost all the mediators and invitees from different segments were present numbering to 251 participants. Programme was separated into three sessions i.e. Opening, Working and Closing session.

Mr. Balhari Subedi, President of District Mediators' Network chaired the opening session. The session initiated with the welcome speech from Mr. Rishi Ram Kafle, District Coordinator of mediation programme of Bardiya. He shared some bitter experiences while launching the

programme in the district. However, he also expressed some satisfaction that despite obstacles created by some local political parties, mediation programme is now successful winning the heart of community people and getting all kinds of support from every corner. Kishor Silwal, Director of CeLRRd highlighted the objectives behind organizing the conference.

At the conference, District mediators' network also provided appreciation letter to two mediators from each mediation centre for their contribution and commitment they have shown to institutionalize the mediation process in



their respective villages and municipalities. Chief Guest of the programme Mr. Bed Bd. Karki, CDO of Bardiya district and director of CeLRRd jointly felicitated the Best Mediator Award to the mediators selected by the network. Name of the mediators who received honor are as follows:

List of honoured mediators in Bardiya

S.N	Mediators Name	Address
1.	Goma Poudel	Sorahawa
2.	Hari Bahadur Ghatri	Sorahawa
3.	Bishnumaya Tharu	Mainapokhar
4.	Ishori Bahadur D.C	Mainapokhar
5.	Laxmi Adhikari	Kalika
6.	Dilip Kumar Singh	Kalika
7.	Dayaram Yadav	Mohammadapur
8.	Krishna Maya Thapa	Mohammadapur
9.	Bishnu K.C	Gulariya MC
10.	Ramlal Yadav	Gulariya MC
11.	Gunadevi Kuwar	Taratal
12.	Lok Bahadur Shrestha	Taratal
13.	Laxmi K.C	Sanoshree
14.	Khem Prasad Poudel	Sanoshree

Followed by felicitation, chief guest inaugurated the programme with his inauguration remarks. In his remarks, he shared about the role of mediation and its importance to provide access to justice to poor people. He further added that a large number of cases could be resolved through mediation instead of adjudication that also reduces case backlogs significantly. Mr. Bal Krishna Oli, President of District Civil Society Network appreciated the commitment of the mediators for their active involvement in the mediation process even without any economic benefit. He urged to extend the programme in all VDCs of Bardiya. Bir Bd. Rokaya, President of District Bar Association in his speech praised the mediators for serving low-income individuals and poverty afflicted communities. He also expressed commitment for his support if mediators needed. Deputy-in charge Keshav Raj Poudel, from Maoist Party, expressed best

wishes for the success of the conference and furthermore added that his party has already expressed commitment to popularize mediation in the constitutional assembly election manifesto. In his view, mediation is the the best out of all informal dispute settlement mechanisms. President Dip Bd. Rana, District UML Party shared the view that mediation programme is significantly helping community people to solve their disputes on their own interest, hence it should be continued even donors stop financial support. He further insisted to generate local support for its sustainability. He also urged mediators to claim for incorporation of community mediation programme as a part of judicial system while making the new constitution. Representatives

from *Tarai Madhesh Loktantrik Party* and *Rastriya Prajatantra Party* both shared their kin interest to support community mediation programme in Bardiya. The inauguration session ended with the concluding remarks from President of the District Mediators Network, Mr. Balhari Subedi. He thanked chief guest, all the invitees and participants for their kind presence and feedbacks. Programme was moderated by Ms. Mira Chaudhari, district trainer of the mediation programme.

Mr. Kishor Silwal chaired the plenary session. Mediators from each mediation centre presented their progress report from the establishment of mediation centres. They presented on how they established the centre, the nature of registered cases in the centre, support generated for the programme and the challenges they faced during the project period. The name of the presenters and their centres are as follows:-

- | | | |
|----|----------------------|--|
| 1. | Mr. Nagendra Majhi | Mainapokhar Mediation Center |
| 2. | Mr. Man Bd Chaudhari | Kalika Mediation Center |
| 3. | Mr. Dhan Bd Tharu | Mahammadpur Mediation Center |
| 4. | Ms. Bisnu KC | Gulariya Municipality Mediation Center |
| 5. | Mr. Purna KC | Sanoshree Mediation Center |
| 6. | Mr. Prem Timilsinha | Taratal Mediation Center |
| 7. | Mr. Min Raj Pageni | Sorhawa Mediation Center |
| 8. | Ms. Sapana Sharma | District Mediators' Network |

Then Mr. Sudeep Gautam, Programme Coordinator of Community Mediation Programme, CeLRRd facilitated discussion among the mediators concentrating on the strategies for institutionalizing mediation programme, allocation of the financial resources, coordination with local authorities & other institutions to strengthen the community mediation programme and strengthening mediators' networks.

Mediators from various centres expressed their concerns on the issues. Mediators also revealed that the present support to the existing mediation centres will be stopped and therefore, as Mr. Ram Mani Gautam, Treasurer of CeLRRd highlighted, there is

a need to generate support from the local authorities to institutionalize the mediation programme, and definitely, CeLRRd would help with necessary logistic supports. In coming days, CeLRRd would go for extension of mediation programme.

In the closing session, Mr. Arjun Subedi, Secretary of Mohamadpur VDC, and Bharat Kumar Neupane, Secretary of Sanoshree VDC showed their commitment to support the programme. Moreover, Mr. Jhabindra Poudel, executive member of CeLRRd and Mr. Radheshyam Tharu, District Trainer of Banke also stressed on the importance of community mediation and urged the local authorities and other institutions to support it.



Mr. Ram Mani Gautam, Treasurer of CeLRRd highlighting objectives of the conference

b) District Mediators' Conference, Morang

Similarly, the conference of the same type was held in Biratnagar on 15th March 2009. There were altogether 238 participants from six VDCs and Biratnagar Sub-Municipality, where the programme has been launched. Mr. Kishor Silwal chaired the opening session. Anjan Kumar Dahal, executive secretary of CeLRRd in his welcome remarks articulated the importance of community mediation and CeLRRd's efforts to improve access to justice. Hon'ble Ram Prasad Oli, Judge of Morang District Court was the chief guest. Other dignitaries invited were representatives of political parties, quasi-judicial bodies, local authorities and bar association. Mr. Narayan Regmi, district coordinator of Morang presented on the progresses of community mediation programme from its very inception. Mr. Sita Ram Rai, President of Morang District Court Bar Association Unit, Mr. Som Raj Thapa, Co-ordinator of INSEC, Ms. Sita Pokharel, President of Eastern Orphan House, Mr. Sankar Thapa, President of Regional Civil Society Network, Mr. Subarna Karmacharya, Director, Regional Office of National Human Rights Commission, Mr. Mriteunjaya Jha, Secretary, Madheshi Jana Adhikar Forum of Morang,

Disabled Mediator Mr. Narayan Prasad Shah, Kathahari VDC, being honoured



Participants of the District Mediators' Conference

Mr. Mohammad Kadir, President of Tarai Madhesh Loktantrik Party, and Mr. Bhogendra Yadav, deputy-in charge of United Maoist Party, expressed their willingness to support the programme and wished for the success of the programme. Followed by inauguration, the Chief guest along with the director jointly gave an honor to the best mediators, a male and a female mediator of each mediation centre.

List of honoured mediators in Morang

S.N	Mediators Name	Address
1.	Sushila Shrestha	Buddhanagar-8
2.	Mo. Mustapha	Buddhanagar-9
3.	Rajodevi Kha	Tetariya-5
4.	Bhakkulal Bishwas	Tetariya-4
5.	Laxmi Bhandari	Urlabari-4
6.	Salikram Sapkota	Urlabari-1
7.	Lashidevi Rajbangsi	Kathari-3
8.	Dhinaklal Paswan	Katahari-6
9.	Sabina Khulal	Belbari-1
10.	Padam Bahadur Niraula	Belbari-1
11.	Kalpana Katuwal	Rengeli-1
12.	Ramchandra Mandal	Rangeli-1
13.	Durga Karki	Biratnagar-7
14.	Jagadish Thakur	Biratnagar-21
15.	Narayan Prasad Shah	Katahari-1



The programme was moderated by Mr. Ganesh Raj Luitel, district trainer of the mediation programme. In the plenary session facilitated by Mr. Narayan Regmi, District Coordinator of Morang, the following mediators from each mediation centre and few others presented their details:

1.	Mr Udaab Prasad Timilsinha	Local Development Ministry
2.	Mr. Shree Ram Kamat	Katahari Mediation Center
3.	Mr. Kangress Rajbansi	Budhanagar Mediation Center
4.	Mr. Kamal Pd Chaudhari	Tetariya Mediation Center
5.	Mr. Padam Bd. Niraula	Belbari Mediation Center
6.	Mr. Ghanshyam Bhandari	Urlabari Mediation Center
7.	Ms. Kalpana Katuwal	Rangeli Mediation Center
8.	Mr. Shovit Mahato	Biratnagar Sub-Metropolitan City

After each VDCs presentation, four thematic groups were formed to initiate discussions on the issues of sustainability, coordination mechanisms with local bodies, possibilities of generating resources to implement the programme effectively and lastly urging the local civil society and politicians to support the programme.

At the end, the assembly then formed a 15-member district network committee with the following members:

List of District Mediators' Network Committee

S.N	Mediators Name	Designation
1.	Mohan Prasad Bhattarai	Coordinator
2.	Laxmi Bhandari	Joint-Coordinator
3.	Bhakkulal Bishwash	Secretary
4.	Dhaniklal Paswan	Joint-Secretary
5.	Kamala Subba	Treasurer
6.	Milansari Mandal	Member
7.	Hombahadur Thapa	Member
8.	Sita Gurung	Member
9.	Karamchandra Yadav	Member
10.	Laxmi K.C	Member
11.	Dev Kumari Khawas	Member
12.	Shiva Prasad Baral	Member
13.	Sabina Khulal	Member
14.	Ramchandra Mandal	Member
15.	Kalpana Katuwal	Member

Chapter 3

HUMAN RIGHTS TRAINING to Non-Gazetted Employees of Judicial and Quasi-Judicial Bodies



HR training

Enhancing the concept of the lawful state is the responsibility of all the apparatuses of the state. Realizing the fact, CeLRRd as a non-governmental organization was conceived for attaining the same objective. From its very establishment period, it has been continuously working in various ways to strengthen the judicial and quasi-judicial bodies. Advocacy of the free and efficient justice sector is one of the agendas that it has adopted to improve the standard of the Human Rights, which is integral to the establishment of rule of law.

Believing upon the legal proceedings and prosecution, many people who are devoid of justice come to the doors of court. Along the way to justice, not only their faith upon the justice system should be looked into by judges, lawyers and every other staff of legal sector, but their rights should also be well protected throughout the whole processes; they must be well aware of the human rights with regards to jurisprudence. In order to facilitate them to fulfill the responsibilities shouldered upon them, Legal Service Training Centre and National Jurisdiction Committee have been established. Despite their efforts, still a tendency to label the sides as “disputants” (looking down upon

them) pervades within the legal system, which then naturally blocks the way in behaving with justice seekers in a rightful manner.

It is normally found that judges and other senior members of a judicial body only get the privileges to be trained through the programmes organized nationally or internationally by different governmental and non-governmental organizations. But the non-gazetted staffs who, in fact, come in touch with the disputing parties before the judges and the other senior officials hardly get those sorts of opportunities.

Therefore, unless they are trained in the field of human rights, the humanitarian issues will just be limited to the theoretical domain, bearing no tangible effects. With the objective of sensitizing the non-gazetted staffs in this arena, a Human Rights Manual was prepared sometime back in 11 chapters and 3 schedules in the direct involvement of Honorable Justice Kesari Raj Pandit, Appellate Court including the obligations to be fulfilled by non-gazetted employees while registering a case, making hearings, gathering proofs, ensuring the protection of crime victims and witnesses. On the basis of this manual, Human Rights



Human Rights orientation in Illam



Participants of both the Judicial and Quasi-Judicial Bodies in the HR Orientation

trainings to non-gazetted employees of judicial and quasi-judicial bodies were carried out. It undertook the staffs of rural and semi rural areas, who are even less fortunate than their contemporaries of the urban areas.

It is commonly observed that most of the non-gazetted staffs are not working as per the spirit of the human rights convention propounded in 1948, as Universal Declaration of Human Rights, and the UN Declaration of Basic Principles of Justice for Victims of Crimes and Abuse of Power, 1985. Therefore, to enforce them work as per the mandate, it was necessary to have a Nepali translation of the English version so that they can understand and implement all the acquired knowledge in the court proceedings.

This project has undertaken 20 districts for the conduction of the human rights' orientation: to 32 Courts (District and Appellate) and have improved the level of understanding of 513 staffs regarding human rights of court users and victims.

According to the agreement, CeLRRd with the technical support of DanidaHUGOU organized 20 orientation programmes in the cooperation of the Central Justice Sector Coordination Committee (CJSCC), established by the Supreme Court, and District Coordination Committee. The initial

phase of a programme would highlight the objectives behind the establishment of the Coordination Committee and such district level trainings session. At the end of each programme a kind of review was done so as to assess the impact the programme has created upon them. The following list suggests the areas that were covered in each programme:

- Concepts of CJSCC, its objectives, works and responsibilities
- Concepts and Protection mechanisms of Human Rights in relation to case proceedings
- Concepts of Fair Trial and the role of judiciary
- Roles of judicial officials for the protection of Human Rights during registration of cases
- Roles of staffs during hearings in the protection of the rights of court users
- Responsibilities of staffs working for the protection of human rights in relation to case management
- Roles for human rights' protection during examining witness and evidences
- Responsibilities of staffs in the implementation of a verdict
- Responsibilities in maintaining court records
- Information about Judiciary's First Strategic Planning (2005 to 2009).

Details of venue, participants no, name of the courts covered and Date of Programme of HR Manual Training completed from, 2006 to 2009.

S.N	Programme Venue	Courts Covered	No. of Parts	Programme Dates
1.	Bhairahawa	District Court: Rupandehi	26	18-19 August 2006
2.	Ilam	Appellate Court: Ilam District Court: Ilam	25	8-9 September 2006
3.	Sunsari	District Court: Sunsari	25	13-14- October 2006
4.	Kailali	District Court: Kailali	25	8-9 December 2006
5.	Kanchanpur	Appellate Court: Kanchanpur District Court: Kanchanpur	25	10-11 December 2006
6	Syngja	District Court Syngja	28	17-18 March 2007
7.	Baglung	Appellate Court: Baglung District Court: Baglung	29	25-26 March 2007
8	Kusma	District Court: Parbat District Court: Mygdi	27	25-26 March 2007
9	Butwal	Appellate Court: Butwal	28	25-26 May 2007
10	Palpa	District Court; Palpa	25	25-26 May 2007
11	Dhankuta	Appellate Court: Dhankuta District Court: Dhankuta	26	22-23 June 2007
12	Hetauda	Appellate Court: Hetauda District Court : Makwanpur	28	11-12 August 2007
13	Biratnagar	Appellate Court: Biratnagar District Court: Morang	24	28-29 September 2007
14	Surkhet	Appellate Court: Birendranagar District Court; Surkhet	26	30 November to 1 December 2007
15	Ghorai	Appellate Court Tulsipur District Court Dang Deaukhuri	25	14-15 December 2007
16	Dadeldhura	District Court Dadeldhura	21	21-22 December 2007
17	Dipayal	Appellate court Dipayal District Court: Doti	22	21-22 December 2007
18	Charikot	District Court: Dolakha	26	18-19 July 2008
19	Dharding	District Court: Dhading	25	24-25 Oct 2008
20	Bhadrapur	District Court: Jhapa	27	21-22 Nov 2008
Total Participants			513	

In 2003/2004, CeLRRd had conducted HR Orientation in Morang DC 25, Banke DC 25, Tanahu DC 25, Kaski DC 27, Chitwan DC 26, kathmandu DC- two groups 51, SC- 51 in 2 groups resulting into 743 participants including court users, junior staffs of quasi-judicial bodies, judicial bodies. Till the date, the programme has covered 35 courts of Nepal.



Mr. Binod Sharma, Joint Registrar Explaining about JSCC in Doti

Presentations of Participants on the Issues of Judicial Administration:

1. What are the rights of court users that are violated if staffs involved are not sensitive towards their human rights?

Under any circumstances, staffs of judicial and quasi-judicial bodies are liable to be sensitive towards the human rights of victims and court users in every step ranging from case registration or lodging of an FIR to execution of judgement. In the lack of the sensitiveness towards their rights, the following rights will be infringed, and court users may suffer listed consequences:

- Infringement of the right to be heard in fearless environment and receive fair treatment
- Loss of parties' valuable time
- Chances of being victimized time and again and as a result parties may become mentally deranged
- Increment in the physical and mental pain
- Financial exploitation
- Harassment caused by undue pressure upon the parties
- Justice dispensation may be delayed due to failure to deliver summon.
- Detainees may be detained unduly for a long period.
- Violation of the right to be free from detention on time
- Parties may suffer injustice due to destruction of evidences
- Parties' political and social status may be harmed.
- Parties self-conscience may be injured.
- Delay in hearing
- Violation of the right to privacy
- Delay in execution of Judgments
- Violation of the right to fair trial

- Deprivation from right to information about the case
 - Deprivation from right to defend oneself
 - Denial from the right to quick and efficient dispensation of justice
 - Barred from registering case
 - Right against self-incrimination will be impaired
 - Avoidance of trustworthy environment
 - Violation of the Right to fair service
 - Violation of the Right to equality
 - Violation of the Right to get legal aid
 - Violation of the Right to make appeal
 - Violation of the Right to financial independence and employment
 - Violation of the users' right to honour and reputation
 - Violation of the right to information guaranteed to accused
 - Violation of the right to mediation facilities
 - Violation of the right to defend himself/herself
 - Deprived from their law entitled rights
 - Become victims of illegal detention
 - Deprivation from exercising right to property legally
 - Deprivation from right to quick and efficient justice
 - Right of accused to be presented before judge within 24 hours of detention
2. **What are the defects prevalent in the judicial administration for the protection of Human Rights?**
- Lack of means and resources
 - Lack of sufficient knowledge about judicial procedures among quasi-judicial bodies
 - Lack of humane treatment
 - Mental and physical torture to detainees
 - Dominance of conventional approach
 - Delay in witness testimony
 - Witnesses are not treated as friends of courts.
 - Arrest without warrant
 - Detainees are barred from legal counseling during detention
 - Miscellaneous (financial, political and social) pressure upon justice delivery institutions
 - Lack of coordination amongst justice sector actors and the need of the change of their attitudes
 - Inconsistency between the international HR convention and national Law
 - Lack of orientations, seminars and other information dissemination programmes about Human Rights
 - Biasedness in the judicial and quasi-judicial bodies
 - Tedious legal procedures
 - Prevalence of traditional/ faulty attitude
 - Inability to decide on time
 - Lack of studies and trainings
 - Lack of physical resources and means
 - Dominance of "nepotism" and "favour-ism"
 - Lack of awareness regarding HR protection
 - Delay in justice system
 - Lack of conviction in staffs for the protection of HR
 - Lack of an effective leadership in the justice sector
 - Lack of proper human behaviors
 - Lack of transparency / clarity in the functioning of quasi-judicial bodies
 - Oriented towards protecting criminals rather than providing legal support and providing compensation to victims

- Lack of judicial discipline and obedience
 - Lack of sensitivity in following human rights guidelines amongst the decision makers
 - Difficulties faced by indigent people in communicating their grievances due to vagueness prevailing in language system adopted by legal bodies
 - Prevalence of traditional technical work procedures
 - Request for unnecessarily postponement of the cases scheduled for hearing
 - Inability to give justice on time to the victims
 - Delay in execution of judgement
 - Lack of modern technical equipments for proper mapping and measurement
 - Inability of staffs to accommodate new principles and practices into their daily lives
 - Lack of reward and punishment system
 - Lack of well managed working environment
 - Tendency to discriminate people on the basis of social hierarchy
 - Lack of proper compensation measures for victims of legal action
 - Unavailability of juvenile correction home
 - Lack of camera hearing
 - Harsh treatment with detainees
 - Inhuman condition of detention centre
 - Lack of appropriate facilities for field staffs
 - Random extension for police remand without mentioning reason and causes
 - No hearing during extension of remand
 - Lack of awareness about human rights among court staffs
 - Lack of democratic ideals amongst them
 - Bureaucratic influence
 - Protection to corrupt officials
 - Tendency to copy rights equal to highly developed nations like UK and USA, but lack similar environment and standards
 - Lack of regular communication and consultation amongst higher level officials and lower level staffs while trying to find out legal treatment
 - Inability to adopt necessary changes in the pace of changing scenario
 - Nominal representation of women in the judicial and quasi judicial bodies
 - Difficulty in retrieving the paid amount from quasi-judicial bodies (since it goes into national revenue) when court decides to return to the concerned parties
3. **What are the roles of staffs working in judicial administration for the protection of Human Rights of court users and witnesses?**
- Change the ruling attitude and be accountable towards court users
 - Humane treatment with parties and/or witnesses; especial priority should be given to women, children, old and physically and mentally incapable ones.
 - Proper management of limited resources for effective delivery of justice
 - Make the environment of offices clean, peaceful, and promote mutual understanding
 - Ask only relevant and sensible questions in the cases involving women, children as parties and/or witnesses to avoid undue pressure and insensitivity towards them
 - Protect HR of court users in coordination with lawyers during dispensation of justice
 - Readiness to act guided by helping attitude

- Should consider study as an equally important task
- Should give due information to court users in relation to court procedures ranging from filing of case to the execution of judgement
- Respect court users' Human Rights
- Use plain and respectful language
- Assure them of receiving justice
- Give correct information about all the procedures to parties; those who can afford can use court-appointed lawyers, and those who cannot, receive some facilities in this regard, holding dates for court
- Emphasis on time management: complete the job within time frame prescribed by law (preparing summon and submitting summon); execution of judgment within fixed time; arrangement of time table for sitting of bench
- Making information management efficient: not to provide documents of cases heard in camera court except parties and victims
- Observe code of conduct as set by Act and Regulation
- Act as inspired by benevolence
- To have psychological understanding of the expectations of parties coming for legal support
- To speak humanely with all the users of judicial authority
- To do the job if it belongs to his/her own department as soon as possible
- To refer to the senior officers quickly, if it is beyond one's responsibility
- To protect the rights of detainees (men and women), accused, and witnesses
- To allow all detainees to have legal privileges like taking support from lawyers, and receiving relatives
- To examine the evidences and witnesses within certain time frame
- Not to harass witnesses and also not allow anybody to do so
- Should not keep unethical expectations from court users
- Should use respectful languages and treat them without any bias
- Should guide parties properly in vague, and unqualified matters
- Should not misbehave with the law seekers getting distressed by personal problems
- Should treat others' rights as their own, and respect them
- Should bring forward the opponent parties as soon as possible
- To guide parties for proper legal procedures
- To verify the witnesses before their examination
- To verify the relevancy of witnesses presented along with the registration of cases
- To study the case file carefully before the examination of witness
- To ask the witnesses in plain language
- Should use respectful words with the parties, but not the insulting ones
- Examining aged and physically weak witnesses making them feel comfortable
- Examining the causes for the postponement of schedule of hearings
- Maintaining confidentiality of the statements and witness testimonies in the case of camera hearing
- Should work in accordance with the spirit of the International Convention with regards to women, children, aged, physically disabled people
- Should not lag behind in performing the professional duties getting affected by the personal problems
- Should implement the theoretical knowledge into daily court processes / practicality

Chapter 4

ADDITIONAL ACTIVITIES



Guests of Mediation centre opening at Dolakha District Court

4.1. COURT-REFERRED AND ANNEXED MEDIATION

To minimize the prevailing problem of inaccessibility to justice for a great segment of populace, and also help reduce the backlog of court cases, several different agencies started implementing mediation. Though community mediation was more on focus, UNDP nevertheless started initiating settlement fair some years back and introduced mediation for court cases. Initially, it prepared manual for court-referred mediation and provided trainings to few lawyers on mediation.



Hon'ble Min Bd. Rayamajhi, and Rana Bd. Bam, Justices, SC and Ram Krishna Timilsina, Registrar, SC in the opening of Mediation centre at Lalitpur DC

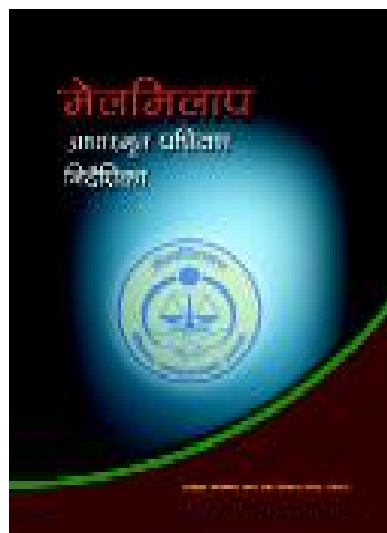
Mediation is a process where third neutral party assists to reach in agreement mutually agreed amongst disputing parties. Mediation gives the parties the opportunity to discuss the issues raised in the charge, clear up misunderstandings, dig-out the underlying interests or concerns, and ultimately find issues of agreement. A mediator does not impose a decision on the parties. Instead, the mediator facilitates the parties to reach to a mutual consensus. In a sense, success in court referred mediation makes the clients more satisfied court users.

After many endeavors were done in court referred mediation, Supreme Court finally amended the regulation of all three tiers of

court i.e. Supreme, Appellate and District Court thereby, introducing mediation as one of the integral processes for disposal of cases. Afterwards, the Supreme Court Mediation Committee headed by SC judge Hon'ble Minbahadur Rayamajhi finalized the minimum requirements for a mediator to be recognized by a court.

In the support of The Asia Foundation, CeLRRd also started to work in court referred mediation from 2007. In the direct coordination with and assistance of the Supreme Court Mediation Committee, CeLRRd developed training materials for court referred mediation based on the outline endorsed by the Supreme Mediation Committee. Then it provided training for 25 lawyers from Rupendehi, Nawalparasi, Kapilbastu, Palpa, Argakhachi, and Gulmi district courts and Butwal Appellate Court.

Similarly, CeLRRd has also intervened in court annexed mediation since 2007. Under court-annexed mediation programme supported by TAF-USAID, it has conducted feasibility study of three district courts, Kavrepalanchok, Lalitpur and Dolakha





Hon'ble Rana Bd. Bam, Justice Supreme Court, Hon'ble Leknath Regmi, DC and other dignitaries from TAF, and USAID at the opening of mediation centre at Kavre DC

district courts. It then conducted orientations for courts staffs and other concerned stakeholders of the respective courts. It was again followed by the opening of a mediation centre. Regular monitoring on the performance of the mediation centres of the courts has also been an integral component of the programme.

As one of the objectives of CeLRRd is to build capacity of justice sector professionals to deliver the needs of the poor and marginalized in a transparent and accountable manner, it has both directly and indirectly helped train a significant number of the stakeholders of justice including judges, court employees, and other relevant stakeholders. It provides expertise and skilled human resources also in the trainings conducted by National Judicial Academy.

- Worked in curriculum development committee formed by Supreme Court Mediation Committee
- Basic Mediation Trainings to around 50 legal professionals
- Manual on court-annexed/ referred mediation developed and published
- On the basis of the manual, NJA has conducted 3 training sessions for around 75 professionals (CeLRRd's director and Programme coordinators have worked in all trainings. Besides that CeLRRd Programme Coordinator Mr. Sudeep Gautam has served as lead trainer in one of the training session.)
- Orientations in 3 District courts for the implementation of court-annexed mediation programme
- Opening of court-annexed mediation centre in three district courts, Lalitpur, Kavrepalchowk and Dolakha
- Has been providing logistic support to three newly and one previously established (Patan Appellate court) mediation centres

4.2. FORMULATION OF STRATEGIC PLAN (2009-2013), CeLRRd

Though CeLRRd had been providing its services since 1998, it was unable to formulate any long term plan until 2008. Only in 2008, in the initiation and support of DanidaHUGO, CeLRRd could start its work in formulating Five Year Strategic Plan, 2009-2013. The applied methodologies were consultations with field staffs, beneficiaries, funding agencies and the desk review of its experiences and potentials based on the previously implemented projects. DanidaHUGOU, especially Mr. Lars Peter Christensen, Programme Coordinator, Mr. Mukunda Kattel, and Mr. Prakash Gyawali, Advisors were actively involved in the process and for this they owe our thanks. Primarily, the plan has focused on five areas of intervention:

1) Access to justice (Mediation, Criminal Justice System and Legal Aid) 2) Anti-Human Trafficking and Gender Justice 3) Juvenile Justice 4) Democracy, Good Governance and Human Rights 5) Legal Education. Access to Justice especially, the promotion of Alternative Dispute

Resolution Methodologies like community mediation, court-annexed and court-referred have received topmost priority. It reflects inclination of CeLRRd towards informal justice system which is a viable, effective, time saving and easy way for creating access to justice for women, poor and marginalized communities.

From the existing 6 districts, CeLRRd aims to extend mediation to 10 districts, generate over 1400 mediators, and train around 300 traditional leaders involved in dispute resolution on mediation. Similarly, in relation to extending legal aid to more indigents, CeLRRd has planned to extend legal aid through additional five centres. Research, advocacy and lobbying for improvement of penal and criminal procedure code will also be done in the coming five years.

A significant number of prisoners will be provided legal aid including both case representation and paralegal services. The outputs to be achieved in the next five years are: Human rights of the survivors of human trafficking protected through a chain of trained women paralegals, People are made aware of their constitutionally protected human rights (consumer rights in particular) and the institutional mechanisms available to promote, protect and fulfil the rights; Institutional mechanisms developed to improve the situation of juvenile justice; Qualitative legal professionals developed from disadvantaged and marginalized communities through especially designed legal education and support programmes.



Mr. Lars Peter Christensen, programme Coordinator, DanidaHUGOU and Ms. Geeta Pathak, President CeLRRd facilitating discussion in Partners' Meeting

Further, to share the Strategic Plan, discuss and garner support on the areas of its commitment, CeLRRd held a Partners' Meeting on 20 March 2009. On behalf of the organization, Mr. Kishor Silwal, Director and Ms. Geeta Pathak, President respectively highlighted CeLRRd's activities and discussed upon the Strategic Plan. Mr. Lars Peter Christensen Programme Director, DanidaHUGOU presented on the modality of Strategic plan itself and also the Partnership modality.

Besides DanidaHUGOU, the organizations that attended the meeting were, UNICEF, UNFPA, USAID, TAF, Tdh, Embassy of Denmark, ESP/DFID, JICA, UNDP, and ICRC. Along with giving positive response to the Strategic Plan, they said that collaboration and cooperation with CeLRRd will be done as such opportunities come. The



Kishor Silwal, Director making a presentation in Partners' Meeting

only difficulty, as most of them expressed was the long bureaucratic procedures and formalities that has been time consuming and thus severely hindering the outputs of such organizations. Save the Children, USA, and Care Nepal have also shown interest in working with CeLRRd. The discussions with them are going on.

4.3. EXTERNAL REVIEW OF THE PROJECT DONE BY DEVELOPMENT CONSULTANCY CENTER (DECC)

The purpose of the review was to document the impact created, learning generated and best practices demonstrated while working on community meditation initiatives as well as on the orientations on the Human Right Manual to non-gazetted employees of the judicial and quasi-judicial bodies. Likewise, the review also intended to independently assess CeLRRd's institution capacity and good governance practices. The evaluation team comprising of Mr. Raghav raj Regmi, (team leader), Mr. Hridaya Raj Devkota and Ms. Sashi Adhikari Raut evaluated the status of the project in the month of January 2007. Few remarks and/or recommendations that the team put forward are as follows:

- The acceptance of the CM services by the local people is significant and

recognition of the service and its value addition by other stakeholders has been also very significant and positive.

- VDC secretaries and local political parties including the Maoist seem very positive and appreciative of the CM services. Maoist run Peoples' Court refers cases to the CM service centres.
- The issue of sustainability should be given high priority. CeLRRd should build working towards institutional and formal relationship with DDC and develop their capacity to take over the programme.
- To address the issue of 'legitimacy' and 'institutionalization' some lobbying and advocacy efforts at central level with the Ministry of Local Development is



Evaluation team discussing with mediators

required. CeLRRd should also work towards this. The ministry can issue an executive order about the formation of ‘community mediation’ mechanism at the VDC level under the provision of current Local Self Governance Act. MoLD can also include this service within the framework of the SRF utilization guidelines. This will easily solve the issue of sustainability and Institutionalization.

Observations:

- “My colleagues say that I’m a changed

person after the training, my way of behaving with the case parties has significantly changed, I realized that they are human beings first and case parties later and they have some basic human rights which should be respected.” (a district court staff in Banke)

- “We laugh and cry with the case parties, it is so emotional sometimes to see the social relation and harmony reestablished between the case parties.” (a mediator)

Chapter 5

ACHIEVEMENTS, OUTCOMES AND CHALLENGES



Mediation Session at Budhanagar VDC Mediation Center

5.1. ACHIEVEMENTS AND OUTCOMES

a) Local authorities' support for Mediation

Apparent Supports from Local Authorities

Local authorities have had increasingly realized that mediation ought to be supported and at the end owned by VDC and/or Municipality. Eventually, all mediation centres are shifted to VDC/Municipality offices, except in Gulariya municipality only due to not having enough space for mediation centre.

In fact, Budhanagar mediation centre of Morang has already built a small building for itself in its own resources and very soon it is going to shift.

In addition to the endowment fund of Rs. 50,000 given under the project to each location for the sustainability of the programme, all programme locations have been able to garner apparent supports from the local authorities which are as follows:

Regarding the sustainability of the community mediation, it can be assumed that since mediation centres are handed over to the local authorities with some endowment fund, and the local stakeholders have been providing logical and financial supports to the mediation centres, the programme is sustainable. The supports are either, for example, in the form of allowing local resources to be used by mediators for bearing mediation expenses or strengthening its economic status or directly giving some fund or even providing infrastructural support. The district level networks which by now are in place are believed to further and manage mediation in the current locations.

Biratnagar, several organizations like Woman Development Organization have also started referring cases to mediation centres. Similar trend is also in place with regards to police station, DAO, and others.

Bardiya

Sorahawa	-	63,150
Mainapokhar	-	85,789
Kalika	-	59,000+ physical supports like telephone, and photocopy machine to the mediation centre.
Mohammadpur	-	73,100
Gulariya	-	53,900
Sanoshree	-	57,444+ A fish pond has been handed over to the Mediation Centre
Taratal	-	55800

Morang

Rangeli	-	78425 (28,425-Mediators' contribution)
Budhanagar	-	85000 (A seperate office is under construction for the Mediation Centre and one set of tube well from VDC)
Tetariya	-	83,500 (Mediators' contribution-23,500 and Village Council-10,000)
Urlabari	-	79,208 (Mediators' contribution-29,208)
Belbari	-	1,12,500 (Mediators' contribution- 12,500 + Village council-50,000)
Katahari	-	156,000 (Village Council-25,000+ a photocopy machine and Mediators' contribution-81,000)

b) Community People's support for Mediation

- By now, community people of Bardiya and Morang have internalized that mediation should be institutionalized as it is a better service deliverer in case of local level conflicts. Mediators who were in fact common people prior to taking mediation training have supported the programme with a great enthusiasm, and along with VDC coordinators and district coordinators, they have put some strategies to generate and mobilize local resources.
- Political parties' leaders in the two districts have well thoughts about mediation. Their coordination with local authorities and in turn their linkages with local mediators have been able to bring mediation to this level. In fact, coordination is one of the successful aspects of the project.
- A pool of around 1413 mediators is generated in the six districts. Furthermore, women cover around 39%. Brahmin/Chhetri covers 49%, Indigenous, 41%, Dalit-8%, and Muslims-2%. Hence, community mediation programme is able to empower women and ethnic minorities like Dalits and indigenous people thereby, respecting their say in all the phases of the programme and primarily looking into and handling their problems. Thus, to some extent, it has reduced social discrimination against minorities.
- It has also intervened in the operation of power and contributed to a great scale in creating social justice. Now, a Dalit can be a mediator in Brahmin/Chhetris' disputes and for that matter, a woman can settle disputes of public concern or any other hardliner male.
- As Mediation has apparently enhanced the situation of access to justice in the 14 rural and semi rural areas having many Dalit, Marginalized and downtrodden communities, the need for the replication of the programme in other locations is felt more
- 24 Legal professionals have also received mediation training on their will. It has taken the project a step forward in the course of building cooperation between the formal and informal justice delivery institutions. Their names have also been enlisted in the list of mediators in the Biratnagar metropolitan city. Now the chances are high that Biratnagar Appellate court will provide mediation service in a number of cases.
- The data reflects that a significant number of disputants were either totally illiterate or primarily literate. They covered 30-50% out of total disputants in Bardiya and Morang districts whereas, in Banke, Nawalparasi and Kanchanpur, the percentage of semi-literate is much higher. It is only in Dhading where the percentage of disputants having higher secondary level education is comparatively higher than other districts, i.e., 40%. Most of them, i.e., around 70% are again financially deprived (less than 25 thousands per year) having 5 family members in an average. So, it can be said that the mediation has come as a relief to the uneducated, poor and socially marginalized groups.
- The number of cases mediated is 7108 in the overall 6 districts. The direct beneficiaries are 14855 and indirect beneficiaries are 47059.
- A large number of organization related cases were also solved in Morang.
- The immense gratitude shown by disputants after getting their cases settled points towards the fact that mediation has to some extent lessened their burden in life.
- Regular Practice sharing programmes (168 VDC level and 24 district level) have provided a rare platform for representatives of the formal and informal justice delivery agencies so as to think and

discuss upon creating access to justice for maximum number of poor and under privileged people, and seek possibilities of coordination and cooperation.

- The project has made indigenous women mediators aware of human rights in general and their rights in particular, and as a result, they have created a forum called “*Adibasi Janjati Mahila Janajagriti Manch*” in Tetariya VDC that advocates for the rights of indigenous and other marginalized women. In the support of DDC Morang, Tetariya VDC, and CeLRRd, the forum provided three-day orientation to its members about their rights and their access to the state mechanism. Similarly, *Dalits* of Tetariya and Katakari have also become united to fight against the discrimination perpetrated upon them by individuals and the state. *Dalit Jagriti Manch* and *Dalit Sarokaar Sangh* have been erected in Tetariya and Katakari VDCs. In recent times, these are the active organizations working for the rights of marginalized in Morang district.
- In both the districts, the cases of human rights violations have decreased as the mediators regularly launch programmes and campaigns against human trafficking, and domestic violence against women and children, and also for environmental protection and basic legal education.
- There is an increased demand of mediation training from community people of other VDCs, police, local authorities and legal professionals. This reflects the impact it has created upon societies and the faith it has created upon alternative dispute resolution mechanism. More than 80% of cases relate to Dalits, Indigenous, Marginalized, Muslims and other Minorities. In Morang, women related (either first party or second party) cases make 46% and in Bardiya, it is 52%.
- It has been observed that the registration of cases is reduced in District Administration Office, District Police Office, Area Police Station, and VDC/Municipality offices. It points to the fact that community mediation has reduced their case load. VDC/ Municipalities can devote more time in developmental activities.
- Even National Human Rights Commission, Women Development Federation, and Bar Association refer the cases prevailing in local communities to mediation.
- There is an increased collaboration and cooperation between formal and informal justice delivery agencies and civil society members. All the mediation centres are now handed over to the VDC/Municipality Offices. Logical and financial supports, though limited are being provided to mediation centres. In other words, the local authorities have internalized and finally owned the programme in their respective areas.
- CeLRRd’s Strategic Plan for the next five years has been formulated. So in the five years, the organization is believed to get transformed into a more professional, and capable house.
- District level network are formed in all districts. These networks are believed to carry out the smooth execution of mediation programme in the existing locations and manage resources for its continuity.
- Till date, 513 non-gazetted employees of the judicial and quasi-judicial bodies of remote 20 districts of Terai and Hilly regions have been sensitized on human rights issues in relation to victims and court users; their tendency to look down upon disputants has been rectified and
- Similarly due to rigorous work in mediation, much public awareness has been created. Programmes about mediation are being published through several national and local dailies and even BBC Nepal proves that we are acting nation-wide. attitudinal changes have been observed among those employees.

5.3. CHALLENGES

1. The unstable political situation throughout the project period posed several hurdles along the way. The ascension of then King Gyanendra to the power, followed by the popular People's movement in April 2006 nationwide, the signing of peace accord, the clashes in Terai, Constituent Assembly Election, and overthrow of the monarchy are some of the historical events that Nepal saw from 2005 to 2008. Though peace is restored at large, still the disturbances in Terai informed by the sectarian attitude and search for ethnic identity persists. Hence, such anarchy in Terai belt has severely affected the programme implementation, and the number of flow of cases to mediation centres.
2. It was also observed that second parties were usually reluctant to come for mediation as they doubted upon mediation centres and mediators. Therefore, CeLRRd urged for some assistance from the parties whose cases were already resolved through mediation to approach the sceptic second parties, and acknowledge the process and importance of mediation to them. The strategy was eventually found much effective.
3. As no separate Mediation Act has come till the period, doubts upon it still looms large. The mediators have had a great fear what the Act would bring for them and take them to. Hence, a kind of psychological fear dominated in many mediators.
4. If the programmes were implemented also in close coordination with DDC and Ministry of Local Development (MoLD), sustainability of the initiatives would have been secured easily.
5. Despite the fact that community mediation programme is very worthwhile for restoring the peace in rural areas, its sustainability is still doubted upon. Previously the assumption was that locally elected representatives would be activated in the respective districts and subsequently, CeLRRd would hand over the programme to the local authorities. However, the political context took several turns eventually leading to CA election. But then, time and again the poll was put on hold. Therefore, the question of sustainability of the community mediation initiatives loomed large before CeLRRd until CeLRRd and DanidaHUGOU devised a strategy of giving endowment of Rs 50,000 per location to ensure the sustainability of the initiative.
6. Initially, Mediation even faced definition-crisis. The state forces and common people perceived mediation centre as people's court and the Maoists also felt that the state established it to challenge people's court. Therefore, the trainees of basic mediation were threatened to return. However, the problem was solved through dialogues with local leaders of Maoists who then allowed the trainings to happen. Later, it was even found that people's courts started referring cases to mediation centres.
7. Similarly, initially community people in all locations except in Biratnagar were sceptic about the programme. But after ensuring their involvement in frequent practice sharing programmes and discussions, they finally approved to support the programme. Furthermore, many VDC/MC secretaries were provided basic mediation training which eventually created a state of owing the programme itself by the VDCs/MCs.

