



TRIP REPORT:  
COURT-CONNECTED MEDIATION  
15 SEPTEMBER– 4 OCTOBER  
2005  
CARR SWANSON AND  
RANDOLPH, LLC  
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# ALTERNATIVE DISPUTE RESOLUTION IN NEPAL

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## Report on Opportunities for Expanded Work in Court Connected Mediation

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**Robert C. Randolph**  
**Carr Swanson and Randolph, LLC**

**November 2005**

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## **ALTERNATIVE DISPUTE RESOLUTION IN NEPAL**

### **I. Statement of Work and Executive Summary**

#### **A. Statement of Work and Roundtable Findings.**

At the request of the ARD Rule of Law Project (“ARDROL”) project, I visited Nepal from September 15-October 4, 2005 to assess the current status of mediation in Nepal and to provide a report on ways in which ARDROL could assist the Supreme Court, and implement its work plan to strengthen mediation and consensus building in Nepal. In particular, I was tasked with:

1. Conducting three workshops for judges, lawyers, business people and other stakeholders on the benefits of court-connected mediation.
2. Submitting a written preliminary plan for implementation of the expansion of court-connected mediation in Nepal .
3. Designing a public relations program encouraging court users to consider the benefits of court-connected mediation in Nepal.
4. Making recommendations as to other opportunities for consensus building in Nepal.

**Deliverable 1 (Workshops).** In fulfillment of the first deliverable, and with the assistance of ARDROL staff, Judge Patrick King of Boston, and a local facilitator, workshops (in the form of “Roundtables”) were delivered on the benefits of court-connected mediation in three different cities (Kathmandu, Biratnagar and Pokhara). See Report of Proceedings at Ex. A. The Roundtables produced a consensus on the need to reduce judicial backlogs and eliminate or substantially reduce public dissatisfaction with the judiciary by expanding court-connected mediation in Nepal. The Roundtable participants reached consensus on the following aspirations for implementing court-connected mediation in Nepal.

- There was a consensus on the importance of reducing judicial backlogs with an alternative dispute resolution process—mediation--that is reliable, cost-effective, informal, and gives the parties control over the shape of the outcome.
- There was a consensus that more work needs to be done to publicize the existence of the mediation alternative and the benefits which flow from using mediation. Participants urged programs to increase public awareness about mediation and its benefits. They want to create an environment in Nepal where the public and Judges, lawyers and parties are fully aware of and supportive of the mediation alternative.

- There was consensus that the Nepali Judiciary and government should move quickly to provide a legal foundation for court-connecting mediation. Legislation authorizing mediation would be preferable in the long run. However, since Nepal does not currently have a sitting Parliament, the court in the short run can provide the legal basis for the process by court rule.

To facilitate fulfillment of deliverables 2-4, ARDROL and USAID organized meetings with US Embassy and USAID officials (including Ambassador Moriarty); courts (Supreme Court Registrar and Lalitpur District Court), Supreme Court Justices (including the Chief Justice), other sitting judges and retired jurists, including retired justices of the Supreme Court; community mediation providers (Asia Foundation and CVICT); the UNDP sponsored “Mediation Center” (Shukul Pun); Ministry of Law and Justice Officials, Nepal’s primary business association (Federated Nepal Chamber of Commerce and Industry), Bar Association Officials (national and local), public relations and media consultants, attorneys, mediators and others knowledgeable about mediation in Nepal. In addition, we were able to meet many other business people, government officials, judges, lawyers, academics and mediators in the course of the roundtables.

The discussion of deliverables 2-4 is contained in the body of this Report as set forth in the following Sections and Pages.

**Deliverable 2 (Mediation Expansion Plan).** The plan for expanding court connected mediation in Nepal is set forth in Sections III and IV. (Pages 13-19)

**Deliverable 3 (Mediation Public Relations Program).** This report sets forth a preliminary design of a mediation public relations and awareness campaign at Section III.B (Pages 16-17).

**Deliverable 4 (Consensus Building).** This report makes recommendations for further consensus building in section IV by mobilizing the support of key influentials (IV.B at 13) for the campaign to expand court-connected mediation in Nepal, partnering with the bar to neutralize lawyer hostility to mediation (IV.E at 19) and working with the MOLJ, and other stakeholders to draft a “modern” mediation law for Nepal. (IV.D at 18).

In sum, this Report and the accompanying deliverables are based on the meetings with the above referenced stakeholders, the findings generated by the roundtable participants, reports and memoranda prepared by donors and consultants, including ARDROL staff, concerning the development of mediation in Nepal and the professional experience, judgments and analysis of Carr, Swanson and Randolph, LLC.

## **B. Executive Summary**

**Current Status of Mediation in Nepal.** Section II provides an overview of the current landscape for mediation in Nepal. (Pages 4-8). In particular, Section II discusses

The Asia Foundation and CVICT community mediation programs which have antecedents in village level dispute resolution mechanisms used by indigenous peoples in Nepal. Section II also discusses the UNDP court-referred mediation program which currently focuses on district courts in eight districts where cases are referred by the courts to Bar Association centers. Since its inception in 2002, the UNDP program has trained over 1000 mediators, has worked in 16 districts and has achieved a settlement rate of approximately 60% of the cases referred by courts to mediation.

**Opportunities for Court-connected Mediation in Nepal.** In Section III, the Report discusses opportunities for expanding court-referred mediation in Nepal. (Pages 9-11). The community mediation programs take very few court referrals and UNDP is currently operating court-referred pilot programs in only eight districts. The busiest district court, Kathmandu District Court, and the biggest appellate court, Patan Appellate Court, do not currently have court-referred mediation programs, despite the fact they have the most “clogged” dockets of any court in the country. This report recommends establishing pilot programs in both courts.

In addition, Nepal does not currently have a mediation center which specializes in commercial mediation, an underserved part of the mediation landscape. When businesses become involved in interminable and costly litigation, the economy suffers because management time and potential investment resources are diverted from the goal of growing the business, generating growth and increasing employment levels. When backlogs worsen, there is a direct impact on GDP. In other countries, commercial mediation has traditionally developed in the Chambers of Commerce. With its country-wide membership and contacts, the Federated Nepali Chambers of Commerce (FNCCI) has potential to be a viable and sustainable partner for the development of commercial mediation in Nepal.

**Barriers to Implementing Mediation in Nepal.** Section IV begins with a discussion of four significant barriers to the implementation of mediation in Nepal which were identified by participants in the Roundtables: (1) Lack of public awareness which, in turn depresses the demand for mediation; (2) Lack of adequate training for mediators and for judges in selecting, evaluating and referring cases to mediation; (3) Lack of adequate legal foundation for mediation, particularly court-connected mediation; and (4) Hostility from the legal profession. See page 15. Strategies for surmounting these barriers are discussed at pages 16-19 of Section IV.

**Recommendations.** Section IV discusses and makes recommendations in four areas which will be crucial for overcoming barriers to the use of mediation in Nepal and attaining the goal of expanding mediation in Nepal with programs in Kathmandu District Court, Patan Appellate Court and FNCCI— (1) Designing and conducting a vigorous public information campaign; (2) Training mediators and training judges in the art and practice of court-connected mediation; (3) working with the Ministry of Law and Justice to draft a modern mediation law for Nepal; and (4) Partnering with attorneys and the bar associations to educate attorneys about the benefits of mediation and, at the very least,

neutralize any potential opposition to mediation among members of the bar. (Pages 16-19).

## **II. Mediation in Nepal: The Current Landscape**

### **A. Alternative Dispute Resolution and Court-Referred Mediation Defined**

ADR is a term which is used generically to encompass any alternative to the formal court system of litigation for resolving disputes. ADR thus embraces many different forms of dispute resolution, such as negotiation, mediation<sup>1</sup>, conciliation, non-binding advisory evaluative opinions, non-binding mini-trials, arbitration<sup>2</sup> and med-arb<sup>3</sup>.

At the round-tables, there was lively debate and some confusion engendered about the difference between court-annexed mediation and court-referred mediation. Ultimately, we reached a definitional consensus which is consistent with the usage of those terms in the US and Western Europe. In “court-referred mediation”, the parties will be referred to private mediators or mediation centers whose offices are located off the premises of the court house. In both cases, the mediation center and the private mediator operate independently of the court, have case management systems which are not funded by the courts and conduct mediations in premises which are not furnished by the courts.

In “court-annexed” mediation, the mediation takes place on court-house premises and is conducted by court-personnel or, in some cases, by private mediators who have been selected and vetted by the court. In all cases, the court will play a greater role in case selection and management, in maintaining the roster and qualifying mediators and in

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<sup>1</sup> In mediation, the parties choose a third party neutral to assist with the resolution of their dispute. However, unlike arbitration, the neutral third party has no power to decide the case for the parties. Instead, the mediator uses communication and facilitation skills to assist the parties to reach a mutually agreeable resolution of their dispute. In litigation and arbitration, the primary relationship is between the parties and the decision-maker, be it arbitrator, judge or jury. In mediation, the relationship is between the parties who remain in control of their fate throughout the process. Commercial parties in North Atlantic countries are increasingly opting for mediation because it is relatively inexpensive, expeditious, produces high settlement rates and usually preserves the business relationship.

<sup>2</sup> In arbitration, the parties retain and pay a private-sector third party, the arbitrator, to resolve their dispute. Parties who lack confidence in the courts of a foreign country where they are doing business will usually contract to have their disputes resolved through arbitration. In its basic format, arbitration resembles litigation in the sense that the parties have a hearing in which they present evidence to the neutral third party, file briefs, make arguments and usually have rights of cross-examination and rebuttal. Arbitration is like litigation in that the parties are willing to let a third party make the decision but want to have greater control over the choice of the decision-maker-- a choice usually unavailable in litigation. Commercial parties will also opt for arbitration because it is quick, has limited discovery and provides finality with only limited rights of appeal. Arbitration with its limited rights of discovery and streamlined procedures is usually less costly than litigation.

<sup>3</sup> “Med-Arb” is a hybrid mediation-arbitration technique where a neutral first attempts to resolve the dispute through mediation and, if unsuccessful and if the parties agree, the same neutral or another neutral will be selected by the parties as the Arbitrator to render a final and binding decision terminating the dispute.

providing institutional and resource support for the activity. With the Nepali, the most defining factor was the fact that the mediations took place in the court house in mediation rooms provided by the courts and were conducted by mediators who had the imprimatur of the courts.

In this report, we will occasionally use the term “court-connected” mediation to embrace both the court-annexed and court-referred concepts.

## **B. Community and Court-Referred Mediation Programs in Nepal**

### **1. Introduction**

Mediation has been pioneered in Nepal by donors who conducted assessments concluding that mediation could enhance glaring deficits in both the informal and formal dispute resolution systems then operating in the country. Many Nepalis do not have ready access to the formal dispute resolution system because of ignorance and isolation or because they lack the wherewithal necessary to hire lawyers and litigate disputes in courts. Nevertheless, poor Nepali and Nepali living in remote and rural areas still have disputes over domestic relations, property, inheritance and petty crime issues. To provide greater access to dispute resolution services for these Nepali, international donors have funded community mediation programs implemented by The Asia Foundation and CVICT (“Centre for Victims of Torture, Nepal), a local NGO.

The litigation explosion which has occurred in all continents during the past three decades has made mediation an increasingly attractive option for litigants, particularly businesses. Nepal is no exception, as judges, attorneys and businesses report heavy court backlogs compounded by the judiciary’s lack of familiarity with legal developments in the fields of commercial law and intellectual property rights. As governments everywhere have been unable or unwilling to build courthouses and hire judges in sufficient numbers to alleviate the problems created by crowded court dockets, litigants have had to face unacceptable delays and ever rising court costs when using the courts to resolve their disputes.

Again, Nepal is no exception. UNDP has funded pilot court-referred mediation programs in 16 judicial districts (out of 75) which have partially alleviated the clogged dockets problem. Despite UNDP’s successes, there is still much work to be done in order to implement mediation in Nepal. The busiest court in the county in the capital, Kathmandu, has no mediation program to alleviate the burden of its backlog. Likewise, mediation could be an antidote for the clogged appellate docket at Patan Appellate Court which handles the highest volume of appeals in the country.

The “clogged dockets” problem has been compounded in developing countries like Nepal where most courts have only a passing acquaintance with efficient court administration procedures, little familiarity with free market commercial law principles

and, occasionally, insufficient attachment to principles of judicial ethics relating to corruption and conflict of interest. As a result, litigants, particularly businesses, have turned to mediation as a way of controlling the outcome of their dispute, avoiding the uncertainties and delays which characterize judicial dispute resolution, expediting resolution of their dispute and reducing the high legal fees and court costs which make modern litigation so expensive for all concerned.

Since Nepal's fledgling legal system is currently overloaded with cases and, in any event, may have insufficient resources and competence to efficiently resolve complex cases, particularly commercial cases, Nepali litigants would greatly benefit by having a viable ADR alternative to the current court system. In the next section, this report will first discuss current community and court-referred mediation programs in greater detail.

## **2. Community Mediation Programs—TAF and CVICT**

**TAF.** TAF operates through subgrants to 4 local NGOs who work with 103 Village District Councils in 14 of Nepal's 75 districts. TAF's community mediation efforts are funded by USAID with supplementary funding from US foundations. TAF has trained 2700 mediators, approximately 27 per VDC.

TAF mediators are 72% male, with almost half coming from the Brahmin and Chetri castes and one third from indigenous groups. TAF mediators use the "facilitative" approach where the mediator guides the parties to an agreement using communications and conflict resolution skills without rendering an opinion on the bona fides of the parties' respective positions. Administratively, the process begins when the disputants file an application with the VDC, receive an orientation from the VDC mediation coordinator and then begin the process of selecting a mediator. Mediations are conducted by a "panel" of three mediators, with each party selecting a mediator and the VDC coordinator appointing the third mediator.

TAF states that it has conducted 3500 community mediations, with a 78% settlement rates and few enforcement problems. We were very impressed by the knowledge level and energy of TAF's administrative staff, the description of the training provided to TAF mediators, and the apparent excellent results achieved by TAF mediators in the VDCs.

**CVICT.** Community mediation in the VDCs is also implemented by CVICT (Centre for Victims of Torture, Nepal) with the assistance of grants from European donors, such as DFID (The British Development Agency) and DANIDA, (the Danish Development Agency). CVICT's community mediation program was launched four years ago in 15 VDCs in three districts, Elam, Javan and Sattpam. CVICT and TAF had previously agreed on a division of districts to avoid duplication of effort. CVICT apparently used a "sociological" approach in implementing its program, researching how indigenous peoples in rural areas handled dispute resolution and then attempting to adapt traditional western mediation principles to these indigenous concepts. CVICT endeavors

to overcome the traditional reluctance of Nepali women to stand up for their rights. CVICT materials are professional, readable and informative.

CVICT mediators have been trained by local lawyers, and others were sent to Bangladesh for training. The training involved basic legal principles, human rights and dispute processing techniques. CVICT mediators are often retirees (teachers, village officials, etc). CVICT claims that it has handled over 1,000 mediations. The types of mediations include land disputes, family and domestic violence disputes, neighborhood disputes, adultery and debtor-creditor disputes. The mediation is commenced when a case is filed with the VDC usually by the disputing parties. Cases can also be referred by the Village Councils or, in some instances, by the Courts to CVICT community mediators.

CVICT mediations seem to be open to the community, and even political parties have been encouraged to attend the mediations. The process has been criticized for its lack of confidentiality which deters some from speaking openly and frankly in the mediation. The CVICT community mediation program has also been criticized because the concept of community mediation has been praised by the Maoists and because of the fear that Maoists may be getting some financial gain by “taxing” community mediation projects in the outlying villages.

According to CVICT, its community mediation has been very successful. Village district officials used to spend an inordinate amount of time resolving disputes; now with the assistance of community mediation, they can spend more time on village administration.

### **3. Court-Referred Mediation--UNDP**

The UN Development Programme (“UNDP”) initiated a court-referred mediation pilot in 2002 in three Nepali districts (Parsa, Udaypur and Saptari) under its Access to Justice Program. In 2005, UNDP is working with 8 of Nepal’s district courts (Jhapa, Morang, Saptari, Udaypur, Sarlahi, Lalitpur, Banke and Kailali). The courts refer most cases to bar associations for mediation. UNDP also carries out a “community” mediation program (neighbor to neighbor and family disputes) in two districts each year. The statistics are exemplary, but have been criticized as unsubstantiated.

UNDP states that 1000 lawyers had been trained as mediators in its program, with most receiving 16 hours training initially. The initial training was given by an American ABA volunteer in 2002. The training been extended to 38 hours in the “American mode.” The trainees learned the US 7 stage process, including the caucus, but apparently lean more towards the evaluative than the facilitative model. In 2004, a cadre of trainers went to the Philippines for a train the trainer program. Most of the cases are family, boundary line, inheritance, and small “tort” disputes. UNDP is obligated to fund the Mediation Center through December, 2006, although funding could run through 2008 (with extensions). There is some concern about sustainability when UNDP funding terminates.

The UNDP court-referred process will not be unfamiliar to court-referred practitioners and consultants. The judge reviews the docket and selects cases to be referred to either the court-annexed process or to the Center or Bar Association. The Judge meets with the parties, explains the mediation process and gives them the option of attempting mediation. Although the process is said to be voluntary, the statistics suggest that the Judge may lean heavily on the parties to take the mediation option. Some of the judges confirm that they use “judicial persuasion” to inspire the parties to go to mediation.

If the parties agree to mediation, the judge will issue a referral order, and the registrar will then place the case in the court-annexed system or refer the case to a center or bar association.

When the case arrives at a mediation center, usually a bar association, the Center meets with the parties, explains the process and then shows them the roster of mediators. The parties can select 1-3 mediators, and the center will assist with information about mediator expertise and, probably, qualifications. The parties usually have 45 days to complete the mediation.

If there is a settlement, the agreement is forwarded back to the court and entered by the court into the docket as a “compromise” which is said to be enforceable as a judgment. As mentioned before, there does not seem to be a problem in Nepal with respect to enforceability of mediated settlement agreements. According to UNDP publications, 4802 cases have been mediated during the past 3 years, with 2875 of the cases being settled. Most were mediated by lawyers after referral to the bar association. Enforcement does not seem to be a problem. According to the judges, there is a high level of satisfaction with the settled case, the parties have “ownership” and there is rarely back-sliding.

At the beginning of 2005, UNDP began funding a Mediation Center in Kathmandu which commenced mediating cases in May, 2005. The Center has a competent administrator, Shukul Pun, and an active board, including two former Supreme Court justices, Laxman Aryai and G.P. Khatri. At the Center, the parties have the option of choosing 1-2 mediators or, in complex cases, 3 mediators. One wonders whether, in complex cases, the mediators function more like evaluators with each party picking a mediator-evaluator that might be thought favorable to the party’s point of view.

Since May, 2005, 80 cases have been referred to the Center by courts, and 20 have been resolved via settlement. Only 2-3 of these cases are commercial cases. Many of the cases are still on-going. At the end of our meeting, we entered the other mediation room and found a family law mediation mediated by co-mediators that was adjourning for the day. Although we did not see any part of the mediation, the parties were represented by counsel and the process had the look and feel of a real mediation. We talked to one of the mediators who heads the mediation program at the Lalitpur Bar

Association and who subsequently invited us to meet with the bar association to discuss the Lalitpur district court referral program.

### **III. Opportunities for Expanding Mediation in Nepal.**

There are at least three significant opportunities to advance mediation initiatives in Nepal within spaces currently unfilled by other donors: (1) court connected mediation with a district court not currently working with UNDP; (2) Appellate mediation with one of the 16 appellate court and, perhaps, with the Supreme Court; and (3) a commercial mediation program with the Federated Nepal Chambers of Commerce and Industry (“FNCCI”). However, in order to maximize the success of any mediation initiatives the ground should first be prepared with a simultaneous launch of a public information and media campaign and, if the opportunity presents, collaboration with the Ministry of Law and Justice to draft, and have enacted into law, a modern mediation statute.

This Report documents strong support among relevant stakeholder communities for helping the courts develop procedures for referring appropriate cases to private mediators. However, there would be little point in creating court-referred mediation capacity in the absence of Mediation Centers and qualified mediators to resolve cases referred by the courts. The achievement of this goal would be best facilitated by encouraging the simultaneous development of both court and non-court related mediation programs, along with mediator training and a focused public awareness campaign.

#### **A. Establish Court-Referred Mediation in a Pilot District Court**

Court-referred programs enable courts to refer cases to mediation specialists, thus alleviating backlogs and enabling courts to maintain their unique role as adjudicators in a more efficient fashion. The UNDP court-referred mediation program in Nepal has demonstrated that Nepal has the potential for the increased growth of mediation, although there is some skepticism about the quality of training provided UNDP mediators and the validity of the UNDP statistics.

One of the major problems facing the economy of a transitioning country, such as Nepal, is a substantial case backlog in the courts that causes undue delay in the resolution of commercial cases. Mediation is a practical method to resolve disputes quickly, thereby releasing businesses tied up in the courts to pursue productive commercial activities and relieving pressure on the courts. Locating a “pilot court” project in a busy commercial center could yield substantial benefits for the courts as well as the local economy.

Kathmandu is the largest city in Nepal with the busiest district court, a court which handles 15% of all the district court cases in Nepal. Furthermore, the Kathmandu District Court has one of the heaviest backlogs with only 11.5% of all cases settled prior to trial. Regrettably, Kathmandu, is an underserved locality as mediation is concerned. Kathmandu district court litigants have no access to court-referred mediation services. Thus, Kathmandu has the greatest need in the country for mediation services and

therefore has the greatest potential for the successful launch of a pilot. We recommended that USAID implement a court-referred pilot in Kathmandu on the basis of feedback from the judicial, legal and business communities.

### **B. Establish Appellate Mediation in an Appellate Court**

At this juncture, the Nepali Courts are the only guardians of the rule of law in Nepal. The King has abolished parliament and is ruling by fiat through the agency of his anti-democratic friends and advisors. The Courts, particularly the appellate courts, have exercised some courage in ruling against the government on key issues, involving political controversies. The appellate courts are also weighed down by the crush of appellate litigation. The Supreme Court has a backlog of some 17,000 cases, and, since it only disposes of 25-30% in any given year, the back log continues to grow. Patan Appellate Court has the greatest case-load of any appellate court in the county, handling 27% of the nation's intermediate appellate court cases. Yet, the Patan Appellate Court has one of the lowest disposition rate in the county at 27%, about 40% of the national average.

Implementing appellate mediation in Nepal would unburden the appellate courts, particularly the Supreme Court and Patan Appellate Court, would lead to higher disposal rates and increased judicial efficiency and would thus enable those courts to give more attention to their crucial role in preserving what is left of the rule of law in the country.

### **C. Establish a Mediation Center at FNCCI.**

The successful adoption of commercial mediation in Nepal is dependent on a “buy-in” and close cooperation from the business community. Thus, CSR would recommend creating a “private provider” program within FNCCI to resolve pending commercial disputes, including disputes that have not reached court. FNCCI has expressed a willingness and enthusiasm to partner with ARD in promoting mediation in Nepal and in participating in the upcoming roundtables. FNCCI believes that passage of modernized commercial laws would lead to more litigation and that the Chamber's members would want to have an ADR option as an alternative to litigation in the courts. FNCCI to wants get ahead of the curve and offer mediation as a service to its members in view of the anticipated increase level of litigation in the courts. Assistance to FNCCI would embrace mediator training, case administration training and the development of provider capacity to market and promote mediation.

In Eastern and Central Europe, as well as Latin America, commercial mediation has traditionally developed in the Chambers of Commerce. With its country-wide membership and contacts, FNCCI has potential to be a viable and sustainable partner for the development of commercial mediation in Nepal.

**D. Investigate Potential for Mediation of Labor and Debt Collection Cases**

Influential interlocutors have suggested that ARDROL consider implementing mediation programs in the administrative courts. The Bar Association has recommended that ARDROL consider mediating labor cases, and FNCCI has recommended the mediation of debt recovery cases. CSR does not have enough information, at this point, about the potential for mediation of labor and debt collection cases, but would recommend investigating the potential during the next trip.

**IV. Expanding Mediation in Nepal.**

**A. Introduction: Barriers to Mediation in Nepal**

The Roundtables identified a number of barriers to mediation in Nepal which must be overcome in order to successfully expand mediation in the Kingdom. These barriers can be grouped along four major themes:

- **Lack of Public Awareness and Support.** There is a lack of public awareness about the nature of mediation, and its benefits, which, in turn, depresses the demand for the mediation alternative. Lack of public awareness and consequent support for mediation, the participants contend, has produced an environment where the stakeholders are closed-minded and non-supportive.
- **Lack of Training for Judges and Mediators.** The participants recommended more training for both mediators and the judges who refer cases to them. Many of the current corps of court-referred mediators in Nepal were provided with only 16 hours training. In the past several years the training requirement was increased to 38 hours, still below the standard of 55-60 hours established in other jurisdictions. Providing a standard training regimen of 55-60 hours for new Nepali mediators and refresher and advanced training for current mediators would help to alleviate the training issue surfaced at the Roundtables.
- **Lack of Adequate Legal Foundation for Mediation.** Participants cited the lack of a formal legal basis for mediation as a major issue. Currently, Nepal does not have a statute authorizing a mediation law; nor does it have a sitting parliament which could pass such a law, assuming a desire to have one. An ideal law would cover the traditional mediation issues, such as enforceability and confidentiality, but should also provide incentives for the use of mediation. At present, parties who settle and have their settlements “enrolled” by the court have to pay high court fees; thus, one answer is to incentivize mediation by reducing the “enrollment” fees for parties who have settled their dispute as a result of mediation. Furthermore, Nepal does not have a process for mediating “petty

crimes” which, in the US, would be handled through the tort system.<sup>4</sup> Any new legislation, the participants urged, should provide for petty crimes mediation.

- **Hostility of Bar.** Roundtable participants did not view lawyers as allies in a campaign to expand mediation in Nepal. The participants believe that lawyers, for economic reasons, view mediation as a threat. Some lawyers are not supportive of the mediation alternative and create in the minds of their clients unreasonably high expectations of success in litigation which make settlement all the more difficult. Participants also spoke of a lack of coordination between lawyers and disputing parties that prevents parties from getting together, with their attorneys, to discuss mediation.

### **B. Design and Implement a Public Information and Awareness Campaign.**

In order to hurdle the awareness barrier identified in the Round-tables, it will be critical for ARDROL to launch a media and public information campaign which emphasizes the benefits of mediation vis-a-vis litigation. With the assistance of a public information consultant, ARDROL can generate support for the initiative among key champions such as judges, attorneys, politicians, key government officials, business people and the press. Experience in Central and Eastern European countries is that well publicized and organized media events, TV and Radio “spots”, and print media articles generate public awareness, interest in mediation by potential consumers (disputants and litigants) and serve as a tool for recruiting mediators. The public information roll-out would include:

- Phase 1: A press launch with key judges, MOLJ officials, attorneys, business leaders and other key stakeholders; The placement of articles in newspapers and magazines; TV and radio interviews with knowledgeable supporters of mediation, such as judges, attorneys, business persons, community mediation administrators and MOLJ officials; Periodic Press Roundtables with journalists; creation of both a promotional and a training video.
- Phase 2: Connecting ARDROL with key influentials, stakeholders and business leaders.
- Phase 3: Publicizing mediation successes, particularly in the context of a mediation settlement week.

The Phase 1 roll-out would serve a number of important functions. First, the roll-out would increase awareness about mediation among the public at large and mobilize support for mediation among key stakeholders, such as businesses and business associations, attorneys, judges and MOLJ officials. Second, the roll-out will educate potential users of mediation and gate-keepers – litigants, attorneys and courts – about specific benefits of mediation, other incentives and tax implications, as well as important

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<sup>4</sup> Nepal does not have a well-developed tort system. Consequently, disputes which would ordinarily be handled by the tort system in the US, such as automobile personal injury, property damage, petty assault and defamation, are resolved in Nepal’s criminal court system.

mediation concepts, such as case selection, finding mediators, the mediation process, confidentiality, settlement agreements and enforceability. During phase 1, it will be important to develop two separate videos—one as a training aid and a second as an integral part of the marketing campaign.

In Phase 2, it will be important also to keep the roll-out “rolling” with periodic articles, news items and media spots highlighting mediation and mediation practitioners and, even more importantly, enlist key influentials and decision-makers as allies in the campaign to expand mediation in Nepal.

The goal in Phase 3 will be to publicize successes. The media consultant can assist in development and implementation of a highly publicized “Settlement Week” designed to incentivize and encourage litigants to agree to go to mediation. The purpose of “Settlement Week” is to generate a critical mass of cases for ARDROL trained mediators to mediate during a finite period of time.

Settlement Week serves three major functions: First, “bunching” a number of cases into a five-day period generates excitement and publicity about mediation as an alternative to litigation which, in turn, increases public awareness about the mediation alternative. Second, the courts, providers and mediators participating in the process will gain almost instantaneous experience in referring, managing and mediating court-referred cases which might otherwise take many months, if not a year or more, to acquire. Third, donor and contractor program goals relating to numbers of cases processed can be more readily achieved in a shorter period of time by utilization of the Settlement Week process.

### **C. Implement Mediation Training for Mediators and Judges**

CSR recommends a training program for Nepali mediators and judges which includes--basic mediation training, advanced mediation training, a mediation “practicum” (where trainees mediate “mock cases”), administrative training for mediation administrators at FNCCI, case evaluation and referral training for judges and “train the trainer” modules.

CSR contemplates training mediators for the Kathmandu District Court, the Patan Appellate Court Mediators and the FNCCI mediators with an emphasis on commercial mediation techniques for the benefit of the FNCCI mediators. CSR could also provide “advanced” and “refresher” training for mediators trained by UNDP who need to upgrade or refresh skills.

Experience teaches that judges will be more knowledgeable advocates of mediation if they take the basic and advanced mediation training along with the mediator trainees. Training in mediation helps the judges understand that mediation skills are different from judicial skills and that the judicial approach, when transferred to the mediation room, rarely leads to successful resolution of disputes in mediation.

Next steps would include:

- **Stakeholder Facilitation.** Facilitate meetings between bar, business community and judges to determine appropriate role for legal and business communities in pilots.
- **Design and Implementation.** Facilitate the design and implementation of a court-referral program for the court; including reviewing and selecting cases for mediation and preparing necessary documentation (i.e., rulings referring cases to mediation and suspending proceedings during mediation). Provide coaching and mentoring to judges and court personnel as needed.
- **Public Awareness.** Assist with public information activities, and develop informational materials such as brochures/web/video/other media. The public information initiative will involve intense work with court public relations personnel and the ARDROL media relations consultant. See Below
- **Build Capacity in Mediation Centers.** Identify potential Mediation providers and then assist ARDROL with the selection of the provider with greatest potential for sustainability; provide training for center administrative personnel
- **Mediator Training.** Provide extensive training for prospective mediators.
- **Settlement Week.** Assist in development and implementation of a highly publicized “Settlement week” designed to provide incentives and encourage litigants to agree to mediation for a one week period as a “try then buy” option.
- **Evaluation.** Prepare an evaluation of the pilot projects at their close.

#### **D. Assist MOLJ with the Drafting of a Modern Mediation law.**

The MOLJ is supportive of ARDROL court-connected mediation efforts, including appellate mediation, and is, also, very supportive of ARDROL working with FNCCI on commercial mediation and wants assistance drafting the Nepal Mediation Act. The MOLJ has expressed interest in moving ahead with the drafting of a mediation law despite the fact that the King has dissolved the Parliament. Moreover, the MOLJ has stated a concern that, since mediation at the present time is authorized only by district court rule, court-referred mediation is on uncertain legal ground and would benefit from a statutory basis.

One might assert that since there is no Parliament currently sitting, it would be futile to spend time and energy on the drafting process. To the contrary, this would be an opportunity to work with a willing MOLJ at a time where there is little in the way of legislative work competing for the MOLJ’s attention. In addition, draft legislation agreed by the stakeholders and supported by the MOLJ would be fast off the blocks when a new parliament is finally convened and would have an excellent chance of passage in the period of relative calm before the new parliament is once again swamped with legislative agendas.

### **E. Work with Bar to Neutralize Opposition to Mediation**

Lawyers are the gatekeepers for their clients, and lawyers can impede the successful and timely implementation of a mediation program by spreading the word that mediation will reduce fees, disserve clients and undermine the judicial system. Wherever mediation has been attempted, there have been some bar associations and lawyers who have actively opposed its introduction. Roundtable participants identified attorney ignorance and obstructionist tactics as a barrier to successful implementation of court-connected mediation in Nepal. It is absolutely necessary to work with bar associations and lawyers to win the support of the bar for mediation if possible or, at the very least, effectively neutralize any opposition emanating from the bar. At the present time, ARDROL has the support of the Nepal Bar Association in connection with the implementation of its mediation programs. It will be important to continue working with the national bar association and expand activities with the local bar.

### **V. Summary**

For the reasons outlined above, CSR concludes that there is a favorable environment for further development of mediation programs in Nepal. In particular, and for the reasons stated above, there are three potential opportunities for expanding mediation programs in Nepal—(1) creating a commercial mediation program in the FNCCI; (2) creating a court-referred district court pilot program in Kathmandu District Court; and (3) creating appellate mediation programs in the Supreme Court and Patan Appellate Court. (Deliverable 2).

In order to increase the probability of a successful launch of the mediation initiative, it is recommended that ARDROL give high priority to a media campaign to increase public awareness of the benefits of the mediation alternative. (Deliverable 3).

ARDROL should work closely with the MOLJ to draft a modern mediation law to pave the way for acceptance of mediation as an alternative to litigation and should partner with the Nepal Bar Association to gain Bar support for USAID mediation initiatives or, at the very least, to neutralize attorney hostility toward the introduction of mediation in Nepal. (Deliverable 4).

Respectfully Submitted,

Carr, Swanson and Randolph, LLC

**By: Robert C. Randolph**

**November 6, 2005**

## **ATTACHMENT A: REPORT OF ROUNDTABLE PROCEEDINGS**

September 26 (Kathmandu, Sup. Ct. Justice Rayamaji, chair); September 28 (Biratnagar, App. Justice Damodar Purush Dhakal, chair); September 30, (Pokhara—App. Justice Tahir Ali Ansari, chair)

### **Summary of Kathmandu, Biratnagar and Pokhara Proceedings**

#### **Aspirations for court-connected mediation in Nepal?**

- There was a consensus on the importance of reducing judicial backlogs with a process that is reliable, cost-effective, informal and expeditious.
- Participants emphasized the need to create a greater sense of satisfaction with the legal system. There must be a proper selection, training and evaluation of mediators.
- Courts should take the leadership in implementing court-referred mediation by promoting mediation and inspiring parties to go to mediation. Judge Ansari (Pokhara). Mediation is not a substitute for the legal system. Mediation is a friend; not a competitor.
- With court-referred mediation, the court can provide the legal basis for the process by court rule. (We do not have to wait for a statute).
- We need an environment in Nepal where all stakeholders (Judges, lawyers and parties) are fully supportive of the mediation alternative.

#### **Challenges facing court-connected mediation in Nepal?**

- Lack of awareness and knowledge among stakeholders (judges, lawyers, and litigants) and affected public (businesses and ordinary litigants).
- Lack of Legal Rules and Regulations. Justice Ansari (Pokhara). We need to have a broader perspective. Let's focus on quality and not get tied up in legalities or lack thereof.
- Litigation Constraints
  - Parties who settle and have their settlements “enrolled” by the court have to pay high court fees; thus, the answer is to reduce the fees for settling parties,
  - Too high expectations among parties (usually created by lawyers)
  - Obstruction from lawyers who see mediation as a threat (particularly emphasized by Justice Aryal in Pokhara). Lawyers must be cooperative and facilitative.
  - Lack of coordination between lawyers and disputing parties that prevents getting together to discuss mediation.)
- Lack of sufficient legal knowledge
- Lack of legal rules for mediation of petty criminal cases referred by police
- Lack of Resources
- Lack of skills among mediators, including a sense of ethics
- Close-mindedness and narrow-mindedness by court, attorneys and parties
- Lack of Facilitative environment

#### **What is to be done?**

- Media Campaign
- Assistance to MOLJ/PA with draft mediation law
- Training for judges in court-referred mediation, training for appellate courts in appellate mediation, training for FNCCI in implementing a mediation program, , including training mediators and FNCCI staff
- Introduction of Mediation skills training in universities

## DESCRIPTION OF PROCEEDINGS

9:00	<p><b>Opening</b></p> <ul style="list-style-type: none"> <li>• Ambassador James P. Moriarty</li> <li>• Fred Yeager, ARD Rule of Law Project (USAID); Govind Das Shrestha in Biratnagar and Pokhara.</li> </ul>
9:20	<p><b>Anatomy of Alternative Dispute Resolution (Tab 2)</b></p> <ul style="list-style-type: none"> <li>• Robert C. (“Bob”) Randolph. Randolph fielded questions about mediation as a profession and who pays for the mediator.</li> </ul>
10:00	<p><b>Anatomy of Court-Referred/Annexed Mediation (Tab 4)</b></p> <ul style="list-style-type: none"> <li>• Judge Patrick King, US Judge (ret.) and mediator. Discussed Massachusetts experience where courts were overwhelmed with cases in the 1970s and 1980s. The courts started experimenting with case conciliators and case evaluators before moving on to mediation. <ul style="list-style-type: none"> <li>○ Accessibility a major issue so the courts had to ensure that everyone, regardless of ability to pay, had access to mediation.</li> <li>○ Massachusetts experimented with many different types of ADR over the years. Some processes, such as summary jury trial and conciliation, are very rarely used. The most frequently used ADR techniques are facilitative mediation, case evaluation and arbitration—the latter being used most frequently in construction disputes and commercial disputes. In arbitration, the parties can select the arbitrator. In King’s practice, 50% of the cases are arbitrations.</li> <li>○ Requiring the client to be present at the mediation surfaces real interests of clients which are getting an agreement saving legal fees, as opposed to lawyer’s interest in maximizing fees.</li> </ul> </li> </ul>
10:45	<p><b>Morning Tea</b></p>
11:00	<p><b>Video: Resolution Through Mediation (“PowerBrands” Statement of Facts at Tab 5)</b></p> <ul style="list-style-type: none"> <li>• The Video was well received</li> <li>• Discussion of Study Questions (Tab 5) facilitated by Manoj Bhattarai and Bob Randolph (One question per table most efficient way of facilitating discussion)</li> <li>• In Pokhara, it was pointed out that there were protections in arbitration act which could be imported into mediation.</li> </ul>
12:15	<p><b>Lunch</b></p>
1:15	<p><b>Mediation in Nepal—The Judicial Perspective:</b> Report on Judges’ trip to Netherlands/Italy to observe Court-Mediation by Prabha Basnet, Judge of Lalitpur District Court and Justice Min Badahur Rayamajhee, Justice of the Supreme Court.</p> <ul style="list-style-type: none"> <li>• Basnet. UNDP has played a significant role training judges and attorneys in court-referred mediation. The judges “inspire” the parties to go to the Bar Association and select a mediator. Lalitpur “settled” 156 cases in 2004. The Netherlands has a good system; Mediators take 40 hours of training. Slovenia has a good family law and commercial law program with high success rates. The court provides Mediation meeting rooms inside the court house.</li> <li>• Rayamajhee. The Judges in the Netherlands are committed to justice (as well as law). The Dutch courts had 100,000 pending cases and mediation helped clear the docket.</li> <li>• Manred Gautam (Biratnagar). Focused on mediation in Netherlands and Slovenia, and case management in Italy. Mediation started in Netherlands in 1995. In Netherlands and Slovenia, we learned about their experience. These countries have a civil law system. Judges can mediate in Netherlands. <ul style="list-style-type: none"> <li>○ Slovenia. Most of cases referred to mediation settle. (82% success rate)</li> </ul> </li> </ul>

	<ul style="list-style-type: none"> <li>○ Comment. In Nepal, we can not blindly apply what we have seen. In Netherlands, people are educated and have a high civic sense and a high level of awareness about mediation.             <ul style="list-style-type: none"> <li>○ There is a need for legal reform in Nepal from District to Supreme Court</li> <li>○ Can justices be mediators? We need commitment</li> </ul> </li> <li>● Chandi Dhakal, District Judge, Kaski District (Pokhara) and Chief Justice Tahit Ali Ansari (blue).             <ul style="list-style-type: none"> <li>○ In Italy, more concern on case management, rather than mediation. One judge can have a docket of 100,000 cases. There are fewer judges per capita in Italy than in Netherlands.</li> <li>○ In Netherlands, mediation started in 1990s. Mediation Centers started at private sector level. Cases sent to mediation center by district judges. Judges can act as mediator on free time. 40 hours training required for entry into mediation. In Netherlands, cases are referred to the mediator who has the reputation for settling cases. There is a high quality program in the Netherlands. There are more than 1,000 mediators in Netherlands. By contrast, we have 1,000 mediators here in Nepal and most are jobless. In Netherlands, there is an issue of cost-effectiveness. Mediation can be costly, as mediators can make 2,000 Euro.</li> <li>○ In the Netherlands, two rooms in the court house are set aside in court for judges to mediate. If mediation succeeds within the first two hours, the expense is borne by the state; if the mediation goes beyond two hours, the expenses are borne by the parties.</li> <li>○ In Slovenia, the courts mediate matrimonial and business cases. There is a great deal of concern about the spouse, the children and property rights. Family cases considered to be very important and very sensitive. In Slovenia, judges, ex-judges and attorneys mediate. In Slovenia, there are training programs conducted by foreign mediation trainers. There is a lot of utilization of arbitration as an ADR device. There are 17 courts, but only one has a mediation program. Insurance companies also like mediation.</li> <li>○ At the round-tables, there was much discussion about the distinction between court-referred and court-annexed mediation. In court-annexed mediation, the court makes rooms available for mediation in the court. In court referred mediation, the cases are sent from the court to private mediation centers.</li> <li>○ In Nepal, we have a lack of qualified judges and mediators; that is why we haven't been able to develop mediation.</li> </ul> </li> </ul>
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<p>1:45</p>	<p><b>Mediation in Nepal—The Current Landscape</b></p> <p>Community Mediation: Preeti Thapa, Asia Foundation (SlidesTab 8). Preeti showed her slides which do a good job of presenting TAF's community mediation program which operates, through subgrants to 4 local NGOs in 14 Districts (103 VDCs). Funding, other than USAID, comes from Hewlett and McConnell foundations.</p> <ul style="list-style-type: none"> <li>○ TAF trains mediators in the “facilitative” mode using a four phase approach [(1) Orientation and ground rules; (2) disputants tell stories in presence of other parties; (3) disputants share interests and perspectives with each other; and (4) disputants work to identify interests and options. Ministry of Law, Justice and Parliamentary Affairs.</li> <li>○ Description of administrative process: disputants file application with mediation service; disputant notifies other disputant; disputants get orientation; disputants select mediator; mediation scheduled; mediation conducted and agreement reached, documented and filed.</li> <li>○ TAF has trained 2776 mediators, 27 per VDC. Mediator demographics: 28% women; 72% men/49% Brahmin and Chhetri; and 34% indigenous.</li> <li>○ Mediations are conducted by three mediators, one each by the parties and the third</li> </ul>
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appointed by the VDC coordinator. TAF has conducted 3500 community mediations; 2700 (78%) have been settled; no enforcement problems. Question from audience re: legal enforceability of TAF mediated settlements since the mediator might not observe all the legal niceties. Preete says court referred mediation authorized by District Court Reg. 2052 and reemphasizes that there have been no enforcement problems

- Biratnagar—from the floor: How have you done with court-referred community mediation?
- Mediation Centre: Laxman P. Aryal. Justice Aryal talked about differences between court-connected, court-annexed and court-referred mediation. Emphasized that there is a need to have rules governing mediation. Actions taking in the absence of law, such as mediated settlement agreements, are problematical. MOLJ/PA is working on draft legislation which Centre supports.
  - Pokhara. Mediation Centre registered as NGO and registered with court for court-referred mediation.
  - In Pokhara, there was a big dispute about the difference between court-referred and court-annexed mediation, generated by Judge Hari Prasad Bagale, of the Skania District Court. Judge Bagale also wanted to know whether an amicus curiae was like a mediator. The consensus appeared to be that in court-annexed mediation, the mediation takes place in the court, and in court-referred the mediation takes place outside the court. In court-annexed, the court may appoint the mediator. The mediation takes place inside the court. In court-referred mediation, the main thing is that the parties take the initiative to go outside the court to retain a mediator. Conceptually, there is no basic difference because the process is the same. In both cases, the mediator has to be highly qualified. We need to emphasize mediation which can take place within the premises of the court and outside.
  - Pokhara. In Nepal, we need to have rules and regulations governing mediation, particularly qualifications. (1) Qualifications. In Netherlands, there is a 40 hour training requirement; here in Nepal, we have no training requirement. (2) Legality. We also need a law regulating the finality and enforceability of mediated settlement agreements. Right now, there is an issue of validity and legality.
- MOLJ: Lila Gadtaula, Kathmandu ([lunamanjil@yahoo.com](mailto:lunamanjil@yahoo.com)) and Komal P. Acharya and Hom Badahur K.C., Pokhara.
  - Gadtaula. We have problems with the reality of difficulties facing us as we implement court-referred mediation. In response to a question whether MOLJ was working on mediation rules, Gadtaula says MOLJ is working on a draft statute. Biratnagar--Pushkar Raj Nepal is the MoJ representative. Will be drafting legislation and seeking cooperation of stakeholders.
  - In Pokhara, Komal P. Acharya (Under Secretary) presented. He was accompanied by Hoom Badahur KC. MOLJ always concerned with the needs of the people to legitimize new processes. Went over the issues:
    - What kinds of cases can be resolved through mediation
    - What are the desired qualifications, and who should monitor the quality of the training and prescribe the qualifications for mediators?
    - Legality is the main concern.
  - Hoom Badhur KC also presented on MOLJ efforts to draft legislation: Legislation will be very flexible; law will cover selection of cases, who can be mediators (centers or individuals), qualifications of mediators, description of procedural protections (issues of voluntariness, confidentiality), flexible p processes based on agreement of parties, number of mediators—again rules will be very flexible. We will try to figure out how to implement mediation provision in local self government act. We have gotten good

	<p>feedback from Jumla.</p> <ul style="list-style-type: none"> <li>• CellRd (Centre for Legal Research and Development): Sudeep Gautam (Kathmandu and Biratnagar), (sudeepgautam@yahoo.com), Coordinator CellRd (Also Kathmandu School of Law). Kishore Silwal presented in Pokhara (<a href="mailto:kish_teach@yahoo.com">kish_teach@yahoo.com</a>, <a href="mailto:ksilwal@enet.com.np">ksilwal@enet.com.np</a>). Mediation is not unknown in Nepal. Community dispute resolution has a long history among indigenous peoples. Silwal gave a clearer exposition with better slides.             <ul style="list-style-type: none"> <li>○ Mediation training began in 1993-94 with support of TAF. Kathmandu School of Law was founded in 2000 and began teaching mediation as part of its curriculum. In 2002, DFID and UNDP began mediation programs; In 2005, Tribhuvan U. and Purvanchal University to provide space for mediation training. To the government: Focus efforts on legal education and training mediators.</li> <li>○ Mediation contributes to the promotion of justice within the legal system.                 <ul style="list-style-type: none"> <li>▪ Mediation as a part of legal training</li> <li>▪ Expand to Morang and Bardiya</li> </ul> </li> <li>○ TAF has mediation in 14 districts. CellRd launching mediation program in 29 locations in four districts. Opening locations in two districts, Morang and Bardiya.                 <ul style="list-style-type: none"> <li>▪ Putting interns in Mustang and Munang districts for one month.</li> <li>▪ To promote culture of mediation</li> </ul> </li> <li>○ Problems: lack of awareness and knowledge, lack of trained mediators, lack of sensitivity on part of stakeholders (stakeholders think that mediation can not work), lack of support on part of bar who see mediation as a threat, lack of legislative mechanism for mediation, lack of socially responsible legal education, and ad hoc nature of programs. Donor community has not taken mediation sufficiently seriously to provide and formalize legal education</li> <li>○ Way forward: promote mediation in law schools and promote the culture of mediation.</li> </ul> </li> <li>• Justice Rayamaji. We haven't really started to build a court-referred mediation program until now.</li> <li>• Issues raised by questions:             <ul style="list-style-type: none"> <li>○ Mediating with government? (King: the same in every jurisdiction, the government is not bound by normal financial constraints and will go to the mats rather than admit a mistake that might cost someone his/her job;</li> <li>○ How can mediator keep from giving opinion when the parties have each given their respective opinions? (Question of mediator ethics; in Mass, mediator can not give a legal opinion and will only "evaluate" as a last result)</li> <li>○ Biratnagar: Can non-attorneys be mediators? Yes, social workers, construction experts, architects, etc., can be good mediators.</li> <li>○ Enforceability of mediated settlement agreements? We find that when case is mediated, it goes back to the court and party will not comply with the agreement. Judge King says that, in his practice, it is rare that parties will not comply. Parties realized that settlement is better than going to trial.</li> </ul> <p>Comments by Judge King (need ADR education in law schools) and Robert C. Randolph (need a mediation law to remove uncertainties surrounding mediation, clarify mediator protections (confidentiality and mediator immunity) and provide for enforceability of settlements.</p> </li></ul>
3:00	<p><b>Mediation in Nepal: Perspectives of Bar and Stakeholders</b></p> <ul style="list-style-type: none"> <li>• Lawyer and Bar perspective             <ul style="list-style-type: none"> <li>○ Appellate bar (Biratnagar): Shestra—Problems getting settlements, problem with enforcing settlements, problems with qualifications. Without a highly qualified corps of mediation, real mediation can not take place. Praises CELLrd, praises Asia Foundation</li> </ul> </li> </ul>

	<p>and makes a plea for more ADR education in the law schools.</p> <ul style="list-style-type: none"> <li>○ Nepal Bar Association—Morang District Biratnagar (Mr. Thapa). Mr. Thapa mentions programs launched with cooperation of UNDP. Mr. Thapa then summarizes Bar President Thapa’s paper. Mediation an important tool for resolving disputes. This is a noble objective. Morang Bar Association has just established a Center. Target of 180 cases to be mediated; 61 cases has been mediated; and 27 cases have been settled. Maoist problems could obstruct the program. We need more trained mediators; we need legal reforms; and we have to improve the economic conditions of the people who do not even have enough moneys for transport to the Center. We need more coordination between judges, mediators, bar and parties</li> <li>○ Ms. Anita Gunung, VP Pokhara Bar Association and TAF District Coordinator for Kaski. Describes case of 40 years duration recently mediated. So called learned people do not know much about mediation, so we haven’t made great progress. Also, we do not have enough money and enough time. Describes training by Millers where we learned that the parties have hidden interests. After taking the training, my views changed. I found that the system worked. I had a water dispute between a Brahmin and a dalit. In mediation, the Brahmin treated the Dalit as an equal. The parties are living in a quiet and peaceful life. (Preete said this was a TAF case)</li> </ul> <p>Moderated by Bob Randolph</p>
<p>3:30</p>	<p><b>Afternoon Tea Break</b></p>
<p>3:45</p>	<p><b>Commercial Mediation in Nepal—business perspective</b></p> <ul style="list-style-type: none"> <li>• FNCCI: Ashok Todi. We want to implement a mediation program in FNCCI. Our members want a quick, effective and inexpensive alternative to litigation. What is important to business community is time, because time is money. FNCCI will be launching a mediation program.</li> <li>• Rudra Sharma (Biratnagar and Pokhara). How can FNCCI contribute to the resolution of disputes? We can work as an institution in dealing with the problem.             <ul style="list-style-type: none"> <li>○ Question whether parties are seeking arbitration or mediation. Here, we are talking about mediation.</li> <li>○ Commercial cases differ from non-commercial cases. Nepal can be a country where business mediation can be sustainable. Business community wants to prevent disputes. Focusing on prevention because time is money. We have had several cases at FNCCI-Kathmandu: One involving Sokol Fund, another involving Gold Star and another involving a trade mark issue.</li> <li>○ Disputes: distinction between right and power; focuses on “vacuum of law” or absence of law (lack of harmony in laws and uncertainty caused by new laws coming into force); disputes because of clash of interests.</li> <li>○ .Business people should be mediators in business cases.</li> </ul> </li> <li>• Agenda Kumar Lichen, President PCCI (977-61-520264; <a href="mailto:pccipkr@fewanet.com.np">pccipkr@fewanet.com.np</a>). We try to bring employer and unions together; if you can bring both of the parties together. I am from Mustang and I know that there are indigenous dispute resolution mechanisms. In Mustang, people are afraid to go to court. If we fail to get a resolution at the village level, then parties will go to court. We need mediation at the grass roots, as well as business             <ul style="list-style-type: none"> <li>○ I just came from a meeting with contractors who had a dispute and we were able to bring both of the parties together.</li> </ul> </li> <li>• Audience comment from Kathmandu: Mediation may be fast, but justice hurried is justice buried. Response from Toddy: Our members understand that there is a time value of money; the fact that you can get somewhere in a reasonable time doesn’t necessarily entail speeding to get there.</li> </ul>