



**Institution of Court-Annexed Mediation System
Judiciary of the Kingdom of Bhutan**

Inception Document

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Establishment of Court-Annexed Mediation System in the Royal Court of Justice, Judiciary of the Kingdom of Bhutan

1. Introduction

Mediation of disputes has a long history in Bhutan. Guru Padmasambhava was not only an adept Buddhist teacher, but an avid mediator, the central theme of which is treading the 'Middle Path' with win-win and happy outcomes for both or all the parties in disputes. For that matter, Buddhism is not only a religion but a source of compassion and laws in Bhutan. The monolithic stone pillar of Nabji-Korphu Lhakhang in Trongsa is a towering testimony of the negotiation and dispute resolution skills of the Guru wherein he is credited with brokering peace between the two rival kings - Sindhu Raja and King Nouche. Millennia later, what Guru did then is today called the *Mediation* or the amicable settlements of disputes with the help of a neutral third party – which has been passed down the ages as the primary means of dispute settlement, till the establishment of the formal court system in the country in the 1960s.

The arrival of Zhabdrung Ngawang Namgyel marked the beginning of the formation of the Bhutanese State. He promulgated the first set of Bhutanese laws based on Buddhist principles pertaining to both temporal matters (*Gyal Thrim*) and spiritual matters (*Chhoe Thrim*). These laws pertained to punishment of robbery, banditry and other malicious behaviour including disrespectfulness, lack of compassion, ungratefulness and disregard for fear and injury caused to others – which broadly fall under the rubric of the *natural laws* today.

17 December 1907 is a significant date in the history of Bhutan. On that day, the people of Bhutan through a Social Contract elected Gongsa Ugyen Wangchuck as the first hereditary Druk Gyalpo. In addition to his pioneering development works, he was also known for his negotiation skills for successfully mediating dispute between British India and Tibet. The successive Monarchs have been promoting informal dispute resolution system for enduring social harmony and peace in the community. His Majesty the Fourth Druk Gyelpo said that legal services must remain free and prompt when the rights are trampled.

The introduction of Gross National Happiness (GNH) as the guiding philosophy of Bhutan's development process by His Majesty the Fourth King Jigme Singye Wangchuck reinforced the age-old customary practice of amicable dispute resolution in the guise of Good Governance Pillar which necessarily subsumes good laws and effective dispute resolution system including Alternative Dispute Resolution system such as Mediation. The GNH connotes balanced development to maximise happiness; and mediation is an important tool for the amicable resolution of disputes – thereby strengthening community vitality.

Known as *Nangkha Nangdrig*, mediation is generally understood as an intervention of a third party Mediator or *Barmi* where the Mediator, assuming the role of a facilitator, tries to convince parties of the benefits of settling disputes internally, instead of seeking court intervention. *Nangkha Nangdrig* literally means fixing a problem or solving an issue internally. This traditional mechanism is used widely in the communities to reach a compromise. It involves low-key processes, with respect and trust for the elder or mediator that the two parties have chosen to settle their dispute amicably.

The practice has no specific requirement for a person of certain qualification or age to conduct mediation in the communities. The local government and community leaders such as a *Gup*, *Mang-mi*, *Tshogpa*, *Chipon* or a *Barmi* may intervene in facilitating an amicable and mutually acceptable outcome for the parties. The *Barmi* is any person known and trusted by the parties to the dispute. The collective and community-oriented Bhutanese society preferred informal settlement of disputes to maintain social harmony and relationships.

Thus, Mediation in Bhutan is deeply rooted in our history and culture. Even as we progress, with the rest of the world, as a society that is increasingly legalistic with the increasing number of laws; and even as the growth of cities and people demand the use of legal processes – we must find a grounding in our tradition and culture by strengthening this age-old tradition of mediation, as a means to peaceful-coexistence, harmony and well-being of society and the people.

2. Purpose

This document aims to describe the establishment of Court-Annexed Mediation in the Royal Court of Justice, the Judiciary of the Kingdom of Bhutan. It broadly sets out the tasks required to support the operation of the Court-Annexed Mediation. It will form the basis for the management of the program.

On a broader level, this document aims to lay down the scope, objectives, tasks, roles and responsibilities, costs and deliverables relating to the institution of the Court-Annexed Mediation in the Royal Court of Justice, the Judiciary of Bhutan.

Specifically, this document covers the following areas:

- a) An outline of the approach to be adopted for the establishment of the Court-Annexed Mediation system in the courts;
- b) Details of the roles and responsibilities, functions and activities of the Management and Stakeholders; and
- c) Quality, records, risks, project controls and exceptions.

This document will also serve as a means of communicating key aspects of the project to:

- a) The Judiciary of the Kingdom of Bhutan;
- b) The Bhutan National Legal Institute; and
- c) Donors, Partners, and Stakeholders involved in the establishment of the Court-Annexed Mediation system.

This document will also serve as a baseline against which the success of this project will be measured.

3. Background

The Bhutan National Legal Institute (BNLI) is the training arm of the Judiciary. Established in February 2011 under the *Judicial Service Act of Bhutan 2007*, the Institute is mandated to facilitate the Judiciary in the fair and efficient administration of justice. It also assumes greater responsibility in ensuring access to justice by providing legal information and discourses to the judicial personnel and to the general public. In its endeavour to promote access to justice, the Institute is committed to decentralise the justice system by promoting alternative dispute resolution mechanisms in the country.

Therefore, under the visionary leadership of Her Royal Highness Princess Sonam Dechan Wangchuck, the BNLI has initiated a nationwide mediation training program with an objective to revitalise and institutionalise the age-old practice of mediation in the Kingdom. The outcome of this program is visibly clear since hundreds of disputes are mediated in the communities every year.

The local government leaders now play active role and encourage the parties to resolve their differences through mediation in the communities. However, one of the aspects of institutionalisation of mediation is to consider and examine the feasibility and operational scope of Court-Annexed Mediation in Bhutan. Therefore, the BNLI in coordination with the Judiciary aims to institutionalise Court-Annexed Mediation system in the country.

Court-Annexed Mediation has varied definitions. Many jurisdictions provide a contextual definition that suits their needs. However, the basic idea is that, it is a process where mediation services are provided to the litigating parties after they have filed their cases in the courts. The mediator could be either the judges, judicial officers, or any other person attached or affiliated to the courts. There are evidences around the globe that introduction of such system has helped the judiciary in managing the case dockets and reducing the pendency and clearing the back logs. It has ensured prompt and speedy justice.

Currently, no Court-Annexed Mediation service exist in the country, although judges encourage the litigants to exhaust the mediation recourse

out of the courts rather than the judicial settlement. As per Section 150 of the *Civil and Criminal Procedure Code (CCPC) of 2001*, judges provide mediation opportunity any time before delivery of the judgment upon the request of the parties. But, the litigants find difficulty in finding mediators, within as well as outside the courts. Therefore, the parties revert to adjudication of disputes by the courts, even if they have interests to settle cases through mediation.

Against this backdrop, the Judiciary of Bhutan and the Bhutan National Legal Institute are committed to establish the Court-Annexed Mediation system in the country. This will facilitate easy access to mediation services, within the court premises by trained and qualified mediators. It also facilitates access to justice and ensures that civil cases are resolved expeditiously.

4. Situation Analysis

Mediation is the primary dispute resolution forum for Bhutanese communities. Whenever disputes arises people seek the intervention of the community leaders and elderly people in the communities for the mutual settlement of disputes, rather than judicial redresses. Social cohesion and harmony are interweaving fabric for small and inter-dependent Bhutanese communities. People consider amicable resolution of dispute as more practical, time-and-cost saving, than the adversarial adjudication in the courts. They prefer 'losing in the community than winning in the courts' due to the divisive impacts the litigations bring to the society. Therefore, mediation has played a crucial role in maintaining peace and harmony in the Bhutanese society.

However, with the establishment of formal court system in the country, there was a paradigm shift in the dispute resolution spectrum. This was due to several reasons. First, the courts were vested with legitimate authority and appropriate skills to decide the cases; second, the capacity of the local leaders to resolve the disputes was inadequate for the increasingly complex disputes and literate litigants. Thus, the customary method of resolving the disputes lost its lustre and popularity. People's trust and confidence have tilted more towards the formal legal system than the informal resolution of disputes.

To address the first cause, it was found necessary to empower the local government leaders to settle the disputes amicably. Therefore, the *Local Government Act of Bhutan, 2009* allows them to mediate the civil disputes referred by the people in the communities. Secondly, they are now trained to manage conflicts and mediate disputes professionally. In this regard, the BNLI initiated capacity-building programs for the local leaders so that they are equipped with the skills and techniques which are indispensable for mediation. Starting 2012 the BNLI has trained successive local government leaders in mediation techniques and skills, ensuring that mediation is conducted with modern knowledge and skills – thereby retaining or taking back justice to the doorsteps of the people in the communities.

A study was conducted to assess and evaluate the success of mediation training of the BNLI provided to the local government leaders. It was revealed that the intervention was a success as per *Mediation Impact Assessment Survey 2015* and *National Mediation Report 2017*. The reports show that a total of 22846 disputes have been resolved through mediation in the communities by the local leaders between 2012 to 2017. Therefore, it can be concluded that the age-old practice of mediation in the communities has been successfully revitalised through the nationwide training program.

The Mediation Impact Assessment Survey of 2015 shows that a total of 20934 civil cases have been litigated between 2012 and 2015. With time disputes are increasing thereby burdening the courts with heavy pendency of the cases; and defeating the aspiration of the people and judiciary of prompt and speedy justice. *The Annual Judicial Report of the Kingdom of Bhutan 2017* shows that the Courts receive more number of civil cases (4897) compared to criminal cases (1403). Similarly, 2379 civil cases were pending in 2017 compared to 1622 in 2016, and 1516 in 2015.

However, mediation cannot substitute formal place of dispute resolution the court of justice. Mediation is a voluntary process where parties have the freedom to choose whether they want their cases to be mediated, and by whom. Moreover, when the mediation fails, the ultimate recourse is with the judiciary.

Thus, the court is the ultimate and final forum for the people to have their differences resolved by the professional judges and competent courts. However, it is a waste of resources for the people if the grievances are trivial, warranting no judicial intervention. Trivial matrimonial, land and inheritance disputes, and cases of small financial matters are commonly litigated which do not merit expenditure of judicial resources. Therefore, the courts provide opportunity to resolve such petty civil cases through mediation under Chapter 23 of the *Civil and Criminal Procedure Code*. If the parties desire mediation, the judges adjourn the cases. However, even if the parties want, they eventually return to the courts without settlement agreements. One of the main reasons for non-settlement of disputes out of courts is obvious – there are no mediation facilities; and no professional or certified mediator in the country.

If Bhutan is to live up to its tag of a ‘happy country’, we have to create enabling conditions and appropriate institutions that provide prompt and speedy judicial services, in addition to the courts. Access to justice is not only having accessible courts, but also ensuring accessible alternative disputes redressal forum and mechanisms to resolve the disputes with less time and cost.

5. Legal framework

The Judiciary of the Kingdom of Bhutan draws its legitimate authority from various legislations. Article 21(1) of the *Constitution of the Kingdom of Bhutan 2008* provides:

The Judiciary shall safeguard, uphold, and administer Justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law to inspire trust and confidence and to enhance access to Justice.

This requires the Judiciary to enhance access to justice and to inspire trust and confidence in the administration of justice. Access to justice has a broad sweep which includes the empowerment of citizens to resolve their own conflicts in an amicable manner. In that sense, access to justice calls for alternative forums where people can communicate and charter possible consensus-building methods with desirable outcomes. The courts are not the only public institution which guarantee access to justice, but certainly, mediation program equally plays important role in accessing

this right. Therefore, the judiciary has the legitimate authority and the mandate to initiate reforms such as the Court-Annexed Mediation system that enhances access to justice.

Similarly, Chapter 23 of the CCPC provides “Adjudication without Proceedings”. The following provisions are notable:

150. At any stage of the proceedings, it shall be open to the parties to take the help of a *Chimi, Gup, Chipon, Mang-mi or Barmi* as mediators for mutual settlement of a civil case in accordance with the requirements of this Code.

150.1. Efforts to achieve negotiated settlement in all civil cases may at the discretion of each party proceed with or without the assistance of a *Jabmi*.

150.2. The parties may request the Court for an adjournment in accordance with this Code in order to pursue this settlement.

150.3. The settlement must be by voluntary consent and signed by the parties and the mediators in their presence and executed without erasure or alterations.

These provisions are significant because they recognise the principles of Court-Annexed Mediation in our context. The only difference is that the CCPC does not mention specifically whether the judges and judicial officers can mediate the disputes that are referred under these provisions. It also does not provide whether the court should have panel of mediators to facilitate the mediation processes. Therefore, the only task for the Judiciary is to make the Court-Annexed Mediation procedures more clear and succinct empowering the judicial officers to facilitate the mediation process when referred by the judges.

Also, Section 168 of the *Alternative Dispute Resolution Act of Bhutan 2013*, states:

At any stage of the court proceedings, the parties may pursue negotiated settlement and the court shall adjourn the proceedings upon request of the parties.

The parties may pursue negotiated settlement at any stage of the court proceedings, and conversely, the courts are required to adjourn the judicial proceedings upon the request of the parties. If the litigants request the courts to refer their cases to mediation, the courts normally oblige, except that there are no trained mediators available.

These legal frameworks provide the legitimate power for the judiciary to institute Court-Annexed Mediation in Bhutan. This initiative will uphold the Constitutional values of administering justice fairly and independently without fear, favour, or undue delay in accordance with the rule of law and enhance access to justice. Ultimately, mediation services within the court premises will inspire trust and confidence in the justice system.

6. Project Output

Some of the expected outputs of this Project are:

- a) Establishment of Court-Annexed Mediation Unit in the Royal Court of Justice;
- b) Promote and institutionalise the age-old practice of *Nangkha-Nangdrig*;
- c) Achieve Constitutional aspiration of enhancing access to justice;
- d) Preserve community vitality through win-win resolution of disputes;
- e) Resolve disputes efficiently and amicably thereby strengthening peace and cohesion in the society;
- f) Educate the public on how the nominal winner in litigation is often a real loser – in terms of fees, expenses, and waste of time;
- g) Ensuring legal professionals understand their roles as a peacemaker through training and discourse; and
- h) Reduce pending of cases in the courts through alternative means of resolving disputes.

7. Project Scope and Work Plan

This Project will cover several activities to be undertaken in collaboration with the Judiciary, Bhutan National Legal Institute, Bar Council of Bhutan, Local Government, and other stakeholders. A summary of work plan and strategies of each activity is listed below:

(i) Establish Court-Annexed Mediation Unit

To ensure systematic operation of the Court-Annexed Mediation System, it is necessary to establish the Court-Annexed Mediation Unit. The Unit shall be established in each and every court in the Judiciary. However, for the purpose of convenience, the establishment will be implemented in the following three phases:

Phase I

In the first phase, the Court-Annexed Mediation Unit shall be established in the following eight courts. These courts were chosen based on the number of cases registered and resolved in the courts. Being situated close to the heart of the capital, and in the populated urban areas, the number of cases registered in these courts are comparatively high. Therefore, it is found logically right to give preference and priority to these eight courts.

For the purpose of capacity development and training of the mediators, each court will nominate two senior bench clerks. These bench clerks will undergo extensive mediation training program and will be accordingly certified as a mediator under the Mediation Accreditation Standard. Similarly, every judge will be disseminated on the establishment through a day long extensive advocacy program.

Sl. No.	Court	Judges	Bench Clerks	Total
1	Thimphu	5	10	15
2	Paro	2	4	6
3	Haa	1	2	3
5	Chhukha	1	2	3
5	Punakha	1	2	3

6	Wangdue	2	4	6
7	Phuntsholing	2	4	6
8	Gelephu	1	2	3
	Total	15	30	45

Phase II

In the Phase II, the Unit shall be established in the following twelve courts. For this purpose, the following estimated number of judges and bench clerks will participate in the advocacy and mediation training program respectively.

Sl. No.	Court	Judges	Bench Clerks	Total
1	Gasa	1	1	2
2	Tsirang	1	2	3
3	Dagana	1	2	3
4	Sarpang	1	2	3
5	Samtse	1	2	3
6	Zhemgang	1	2	3
7	Panbang	1	1	2
8	Lamoi Zingkha	1	1	2
9	Lingzhi	1	1	2
10	Sombaykha	1	1	2
11	Dorokha	1	1	2
12	Sipsoo	1	1	2
	Total	12	17	29

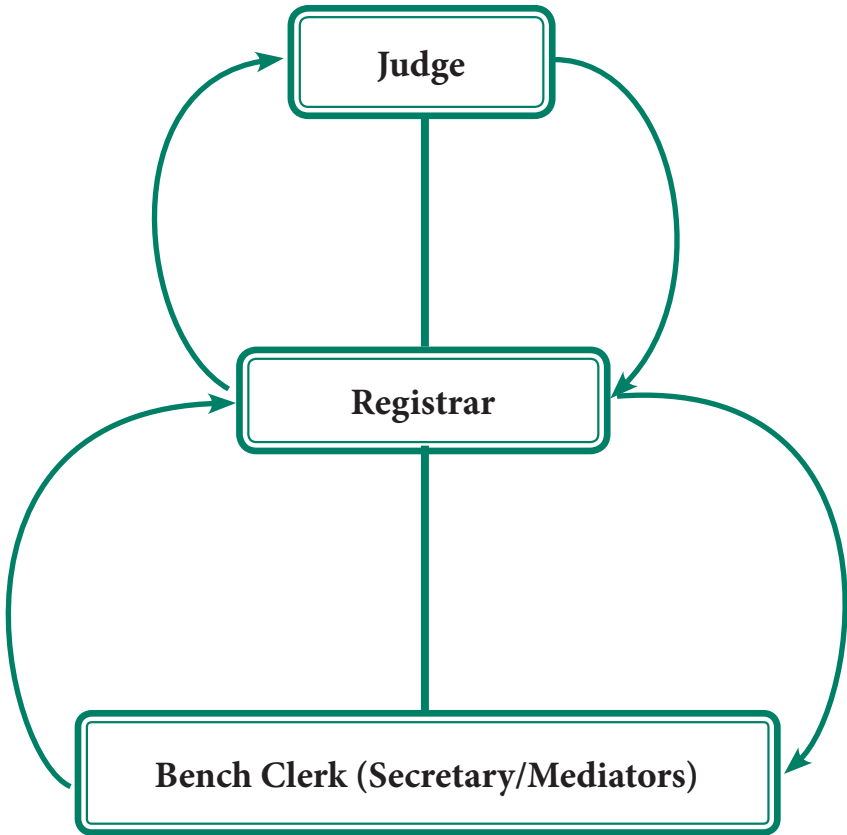
Phase III

Similarly, Phase III will have fifteen courts as shown in the table below. The Court-Annexed Mediation Unit shall be established in these Eastern Dzongkhags and Dungkhags. For the purpose of advocacy and training program, there will be thirty-eight participants approximately.

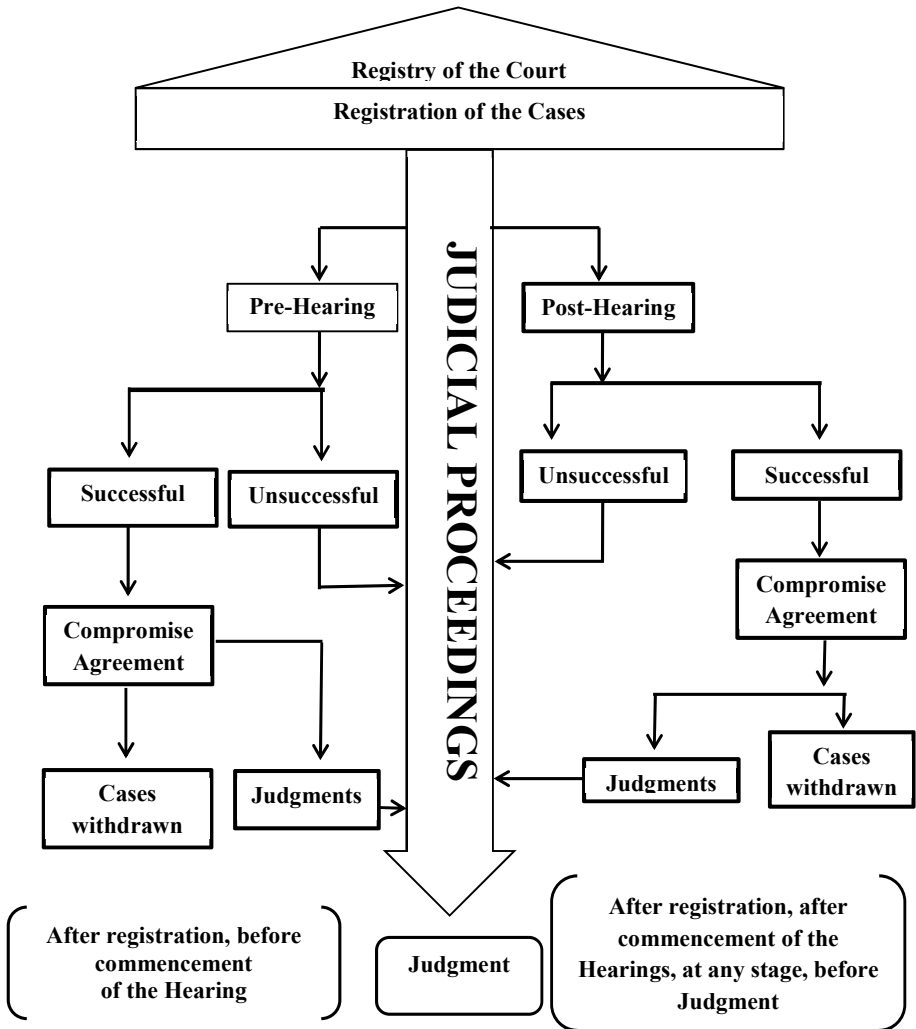
Sl. No.	Court	Judges	Bench Clerks	Total
1.	Trongsa	1	2	3
2	Bumthang	1	2	3
3	Lhuentse	1	2	3
4	Mongar	1	2	3
5	T/Yangtse	1	2	3
6	T/Gang	1	2	3
7	P/Gatshel	1	2	3
8	S/Jongkhar	1	2	3
9	Wayringla	1	1	2
10	Wamrong	1	1	2
11	Sakteng	1	1	2
12	Thrimshing	1	1	2
13	Nanglam	1	1	2
14	Jomotsangkha	1	1	2
15	Bangtar	1	1	2
		15	23	38

The Unit shall be presided by the Judge of that particular Court, and the respective Registrar of the Court shall assist the Judge in the referral, assignment and supervision of the cases to the Judicial Mediators. The Judge shall supervise operation of the Unit and monitor the mediators. He/she shall also maintain a list of mediators for the Unit. Every Unit shall designate a Bench Clerk who shall be responsible for secretarial works of the Unit.

The composition of the Court-Annexed Mediation Unit shall be as follows:



Graphical Representation of Court-Annexed Mediation of Disputes in Bhutan



(Ref. Lobzang Rinzin Yargay & Sangay Chedup, *The Court-Annexed Mediation: Enhancing Access to Justice through In-House Court Mediation Services in Bhutan*, Bhutan Law Review, Volume X 2018)

(ii) **Develop Strategic Plan**

The Bhutan National Legal Institute in consultation with the Judiciary has prepared the Strategic Plan. The Strategic Plan will guide and shape the mediation services, adopting the most desirable aspects of mediation. The development of Strategic Plan is critical for the implementation of Court-Annexed Mediation System in the Country.

The Strategic Plan is a document which defines the vision, mission, values, goals, and objectives of the units. It develops a plan of action for the medium and long term, defining the most suitable way to timely achieve the goals and objectives of the Mediation Units.

Strategic Planning is a pattern of purposes and policies defining the Units. In a Court-Annexed Mediation environment, Strategic Planning will help to articulate and make clear:

- a) What objectives the Program intends to achieve (clear outcomes of the processes);
- b) What steps are needed to achieve the objectives;
- c) The time needed to reach the objectives; and
- d) How to measure its efficiency in achieving the objectives proposed.

Thus, before implementing the program, the policymakers must clarify its vision, mission, values, and proposed goals. Then, the program will be monitored and evaluated in relation to the premises established in this preliminary phase.

(iii) **Logistical Facilities and Infrastructural Needs**

Infrastructural challenges pose significant impediments to the development of mediation practices particularly in relation to the efficiency of the Court-Annexed Mediation programs. Developing adequate state-of-the-art infrastructure facilities for mediation is crucial for successful mediation and increasing user awareness.

There is a need for the Government to invest more and assist financially to support the infrastructural needs of the Mediation Units. Effective communication between Judiciary and Executive will allow conducive environment to determine the infrastructural and resources need for Court-Annexed Mediation Units.

Establishment of Court-Annexed Mediation Units requires separate allocation of rooms and spaces within the court premises. Consumer-friendly infrastructures such as waiting areas, mediation rooms, and mediator's office will reinforce the simplicity and comfort of an informal and open mediatory process.

Modern information and communication technology has become indispensable for any institution. In the long run, Mediation Units would require modern technology to enhance and assist the mediation processes. For instance, installing a google map with a screen and projector would help the mediator and parties to locate disputed property without having to travel to the disputed sites for physical inspection. A party to a mediation process (including the lawyer), once convinced by the efficiency of mediation is likely to opt and attempt mediation in the subsequent disputes, thus enhancing the popularity of the mechanism.

(iv) Training and Accreditation of Mediators

Institutions can be paralysed without adequate and competent human capital. Dr. B. R. Ambedkar said, *"However good a Constitution may be, if those who are implementing it are not good, it will prove to be bad. However bad a Constitution may be, if those implementing it are good, it will prove to be good"*. If mediation is to become a fully integrated process within the modern justice system, the quality and competence of those who deliver the services is of critical importance. Therefore, it is important that we develop good mediators through training and capacity development programs who will facilitate the progressive development of the Court-Annexed Mediation. No matter how good the initiative is, if we do not have trained and experienced mediators, Court-Annexed Mediation will prove to be bad. Thus, well trained mediators can positively impact the settlement rates of mediation. They are also crucial to mould the processes favourably for the parties to objectively consider their differences. Hence,

it is imperative that the mediators empanelled in the court-annexed programs are of the highest quality and possess the requisite domain of expertise.

Once the mediators are trained and training requirements are fulfilled, they need to be accredited. The Rules and Regulations need to be framed including the mandatory continuing education on mediation and related fields to renew their certificates/licenses. This ensures that mediators are kept abreast with the modern information and skills required for mediation.

A list of senior Bench Clerks shall be provided by the Supreme Court for commencement of judicial mediators for the Court-Annexed Mediation Units. Upon fulfillment of the requirement, formalities and standards, they shall be accredited. The Institute also conduct conduct necessary awareness and consensus workshops for the Judges for their knowledge, cooperation and the smooth operationalisation of the Court-Annexed Mediation Units.

(v) Develop Training Packages

In order to ensure that training for Court-Annexed Mediation is standardised nationally, training packages need to be developed. Training packages will recognise and assess the skills and knowledge of the relevant personnel to increase their competency. It will provide relevant competencies in addition to determining the aims to be achieved, training needs, and provide standard training objectives and purposes so that people will acquire the skills that Mediation Units may require.

(vi) Prepare Rules and Regulations

The operation of the Court-Annexed Mediation system and Units require Rules and Regulations. Section 30 of the *Civil and Criminal Procedure Code (CCPC)* empowers the appellate courts to make rules for the purpose of giving effect to the provisions of the Code. According to Section 30.1 (c) of the Code, High Court and Supreme Court may frame rules and regulations with regard to ‘any other matter which is to be or may be prescribed’. However, any rules and regulations shall not be inconsistent with the provisions or the intentions of the CCPC or any other laws in force in Bhutan.

Therefore, under these provisions of CCPC, the Judiciary is empowered to frame rules and regulations with regard to the Court-Annexed Mediation. A Court can refer disputes for mediation in accordance with Section 150 of CCPC, however, there is no detail procedures for the Court to guide their referral. Therefore, rules and regulations can give effect to this provision of the Code.

(vii) ***Code of Conduct for Mediators***

Mediators need to be guided by the Code of Conduct and Ethics. Generally, it sets out a number of principles to which individual mediators need to commit themselves during the mediation processes. The Code of Conduct establishes the basic ethical guidelines that mediators ought to observe in the performance of their duties as mediators. This will ensure the integrity of mediation process that instils trust and confidence in the parties. It is in the interest of the general public that the mediation processes are uniform that is founded on sound ethical principles. Sound ethical principles ensure untainted levels of integrity and probity, that are not only intrinsic in the process but which are perceived as such by the end user of the service. The mediators Code of Conduct also provide confidence in mediation as a process of resolving disputes.

Therefore, the main objectives of the Code of Conduct for Mediators are:

- (i) To provide guiding principles for mediators' conduct;
- (ii) To provide a means of protection for mediation participants; and
- (iii) To promote confidence in mediation as a process for resolving disputes.

The Bhutan National Legal Institute in coordination with the Judiciary shall develop these standards to serve as a general ethical and practical framework for the practice of Court-Annexed Mediation. The standards may, from time to time, be reviewed and notified accordingly.

(viii) ***Develop Consent Form***

Voluntarism of the parties is one of the core tenets of mediation. Judges cannot coerce parties into settlement and mediators cannot mediate

without parties' consent. Mediation is inherently attractive because of its voluntary processes. Thus, consent is an important requirement in the dispute resolution procedures. It allows the parties to decide their disputes on their own volition. In fact, consent legitimises the mediation processes through consensual decision making by the parties.

Section 175 of the *ADR Act 2013* provides that:

The negotiated settlement shall be by voluntary consent and if the parties reach an agreement on the dispute, it shall be signed by the parties and the negotiators without alteration of the agreed terms and conditions.

Therefore, the concerned Court or a Judge shall not refer the cases for mediation if the parties do not wish to mediate the case. A judge or a mediator lacks legitimate power to mediate the case without parties' consent.

Verbal consent does not suffice for mediation of cases in Court-Annexed Mediation. The parties to the dispute shall sign Mediation Consent Form. Thus, the BNLI in collaboration with the Judiciary, and in consultation with the mediators, shall develop the consent Form in keeping with the relevant laws and principles.

(ix) ***Develop Settlement Agreement Format***

The final phase of the mediation process is the closure of the problem-solving process by bringing a win-win solution that the parties have agreed. Their solution is to be put into writing what is formally known as settlement agreement. Agreement in principle is a good first step, but until the agreement is reduced to language agreed upon by the parties, there is no certainty that they have indeed reached a legally binding consensus. Good agreements pay attention to the details of what the parties want. Reducing the solution into writing enhances the probability of implementation.

As a general rule, the mediator will write the Settlement Agreement. The role of an impartial third party is more likely seen as one who can draft an agreement that does not favour either of the parties. Section 174 of the *ADR Act of 2013* provides:

When there is a possibility of settlement which may be acceptable to the parties, the negotiator may:

- (1) Formulate the terms of settlement and suggest them to the parties for their observation; and
- (2) After receiving the observations of the parties, reformulate the terms of a possible settlement.

Thus, the mediator may prepare a final Settlement Agreement when the parties believe that they are satisfied with what they have decided, and that the mediator is comfortable in preparing the document and believes that the parties reached an agreement with adequate information and informed consent. However, without a standard Settlement Format, different mediators might write different agreement upon their own discretion. This will bring no uniformity in the Settlement Agreement. Therefore, the BNLI in consultation with the Judiciary shall develop a standard Settlement Agreement Format where the mediators will be guided during the process of drafting the Settlement Agreement.

(x) ***Prepare Court-Annexed Mediation Register***

Any project should encompass the perspective of efficiency, effectiveness, and customer satisfaction. This is attainable through a strong monitoring and evaluation system. Sufficient and accurate information permits adequate monitoring on an ongoing basis and evaluation on a periodic basis. Collection and analysis of data is significant to assess on-going progress and success of mediation.

In order to facilitate this, the BNLI shall prepare Court-Annexed Mediation Register which will then be distributed to every Mediation Units for maintenance of records. This will facilitate the stakeholders to assess the success, and future needs of development.

8. Leadership and Management

Independent administrative decision making is important to ensure efficient functioning of mediation units. The day-to-day administration of mediation unit should, therefore, be handled by professionals trained in the management of institutions, ideally familiar with the legal system. Administration by competent professionals or a human resource department would also result in better management of inter-personal relationships at mediation units, which is crucial in improving the quality of mediation services. It goes without saying that such professional managers would be unable to function without sufficient personnel and infrastructure to help run the mediation unit, and adequate provision must, therefore, be made for the same.

It is said that “a program with insufficient management is skating on a thin ice”. The success of establishment of Court-Annexed Mediation depends upon the institution of vibrant Management system. Management is essential for the smooth functioning of the project, keeping records, selecting office bearers, and allocating tasks and responsibilities. Therefore, the Court-Annexed Mediation System shall be fully and constantly guided by the Hon. President of the Institute – Her Royal Highness Ashi Sonam Dechan Wangchuck and H.E. Hon. Chief Justice of Bhutan.

9. Funding

In the initial phase, the Court-Annexed Mediation shall be established in the selected seven courts. The Judiciary and Bhutan National Legal Institute shall mobilise the fund for the training of the judicial mediators, judges and other qualified lay mediators for successful implementation of this Program. The following are some of the possible sources of funding:

1) Royal Government of Bhutan

The Bhutan National Legal Institute shall request the Ministry of Finance, Royal Government of Bhutan to provide financial support to establish Court-Annexed Mediation in the judicial system.

2) Donor Agencies

The Bhutan National Legal Institute shall mobilize funds from the Bilateral and Multilateral international agencies, Non-Governmental Organisations, etc. for implementation of the Project and enhancement of access to justice in Bhutan.

3) *Pro Bono* Mediation Services

The Unit can also invite interested trained and qualified mediators to mediate *pro bono*.

10. Reporting Mechanism

Monitoring and evaluation is the essence of any successful project. The legitimacy of courts diverting cases to alternative processes depends to a great degree on the quality of those processes and services. The mediation Unit shall fulfil its objectives for which it is established. This can only be ascertained through constant monitoring and evaluation processes.

Therefore, the Bhutan National Legal Institute as a Research and Training arm of the Judiciary shall monitor and evaluate the success of the Court-Annexed Mediation; for which the Mediation Units will need '*Court-Annexed Mediation Register*'. The Units shall maintain record of every mediation conducted, whether successful or failed, and submit report on an annual basis as required by the Rules and Regulations. The Bhutan National Legal Institute will then compile, analyse and publish the report.

11. Challenges

Any change or reform confronts challenges and opportunities. Following are some of the perceived challenges in institutionalising the Court-Annexed Mediation System in Bhutan:

(i) Traditional Community Mediation

Community or customary mediation of disputes is a time-tested traditional mode of dispute resolution in Bhutan. Presently, we encourage the local government leaders to resolve as many civil disputes as possible in the communities which ultimately benefit

the people. However, with the institution of mediation services in the courts, there is possibility of people abandoning the community mediation in preference to the Court-Annexed Mediation, especially if the judicial mediators are efficient.

Therefore, the community and private mediators need to be equipped with the requisite knowledge and skills to handle the minor civil cases in the communities efficiently and effectively. This will ensure co-existence of both the mediation services and provide people with alternatives, with people attempting to mediate their cases first with the community mediation services, and resorting to the Court-Annexed Mediation services in the courts.

(ii) **Stakeholders**

The most formidable challenge is the acceptance of new service by all stakeholders. The notable stakeholders are the Courts, the general public, and most critically the litigants and the lawyers. Mediation is seen as potentially undermining the authority of a Judge to make public judgments and normative pronouncements. However, since this reform and development emanate from the judicial leadership, beginning with the Hon'ble President and the Hon'ble Chief Justice of Bhutan, the acceptance and ownership of the new system is expected to be quick and smooth.

General public are likely to be doubtful or sceptical, at least in the initial phase since people have developed good faith in an efficient judicial system. Going by the public response to the institution of Mediation services in the communities, members of the public have welcomed the mediation reform.

The critical stakeholders are the litigants. They would have already exhausted the community or private mediation before coming to the court, therefore, they might lack interests in going for mediation in the courts. Therefore, the Courts should play a vital role in explaining the litigants the advantages of mediation in terms of time, cost, and the mutual benefit it brings to the society. Mediation seeks to bring a win-win result to both the parties through the medium of their own negotiation and mutual settlement, aided by a skilled impartial facilitator. Advocacy program would largely overcome this challenge.

As nation progresses both in terms of economy and information, *pro se litigation* is likely to decrease or even disappear. People will employ professional Jabmis to ‘fight’ their cases. In such a scenario, the fourth stakeholder is the lawyers who represent people in the courts. Lawyer’s immediate interest is to earn their livelihood like any other professionals through the litigations; and at times prolonging litigations may maximise their income. If the disputes are to be mandatorily mediated, lawyers might view Alternative Dispute Resolution as nothing more than an “drop in revenues”. Therefore, it is likely that lawyers may advise their clients to litigate rather than mediate. The real enduring interest of a lawyer, however, should be to see justice done, to see that it is done speedily, efficiently, cost-effectively and humanely. This is an effective means for a lawyer to win more cases, bring more clients, intensify work profile and multiply intake of fees. This perception will change through information and public discourses on the advantages of mediation in resolving the disputes than the adjudication. The Bhutan National Legal Institute and the Judiciary need to strive towards changing this mind-set through advocacy programs and public discourses.

(iii) ***Knowledge and Information***

Knowledge and information of mediation reform is another perceived challenge. The institution of Court-Annexed Mediation introduces the new tissue of mediation into the main body of litigation. Without adequate knowledge and information, general public might perceive such reform as ‘judicial laziness’ referring the cases for mediation rather than adjudication. This obvious problem will be addressed only through dissemination of information on mediation reform and its goals and objectives in preserving the community relationships.

(iv) ***Fund***

The Judiciary is the least funded branch of the government. The budget estimate for the Financial Year 2017-18 was Nu. 51,402.893 million out of which, only Nu.372.433 million was recommended amounting to 0.72 percent of the total budget. Therefore, budget is the main challenge in any judicial reform or transformation.

The Court-Annexed Mediation would require adequate budget for its effective institutionalization and administration. It requires good infrastructure, necessary facilities and equipment including furniture,

computers, and most importantly the human capital. The mediation room must be adorned to lend a peaceful atmosphere. We need to train and certify adequate number of people as mediators which involve series of trainings and discourses. We need to research and publish numerous documents on Court-Annexed Mediation. These series of activities will involve expenditure which is not possible without steady and adequate funding mechanism. Thus, any judicial reform necessitates political will and support from the other organs of the government.

12. Conclusion

Despite these challenges, establishment of Court-Annexed Mediation is need of the time – a reform which will benefit the people and the country in the long run. With the blessings and leadership of Her Royal Highness, the Hon'ble President of the Bhutan National Legal Institute, and the Chief Justice of Bhutan, this Project is expected to bring substantial benefits to the people. It is worth taking the risk because mediation has many advantages both to the communities as well as to the parties. Mediation enhances access to justice and promote prompt and speedy justice. It is cost-effective and time-saving. It brings amicable resolution of disputes that are workable and implementable. Mediation preserves parties' relationship and promote community vitality. The benefits of mediation, therefore, outweighs the possible setbacks. As the Bhutanese saying goes, '*neither the snake is killed, nor the stick broken*' the mediation results in a win-win situation.

Training Curriculum and Cost Estimation

I. Training of the Judges and Judicial Mediators

This training course aims to equip mediators with a comprehensive skills and knowledge on court-annexed mediation principles, stages and methodologies. It will enable participants to mediate the disputes and serve on the panel of Mediators on the court annexed mediation. It will also enable the participants to gain skills and experience to practice as mediators in the long run.

Expected Outcomes

At the end of this Course, participants are expected to be able to:

- (i) Understand the conflict and its nature;
- (ii) Discuss civil law, civil procedure and court-annexed mediation rules;
- (iii) Learn the negotiation and dispute resolution skills;
- (iv) Appreciate communication skills in mediation;
- (v) Define the advantages of court-annexed mediation compared to arbitration and litigation;
- (vi) Understand the theoretical principles and practical skills for mediation of disputes and processes;
- (vii) Understand the roles and functions of a mediator;
- (viii) Differentiate between principles, stages and methodologies of Court-Annexed Mediation;
- (ix) Discuss, analyse and evaluate the principles of ethics and professional conduct involved in Court-Annexed Mediation;
- (x) Conduct an effective Court-Annexed Mediation processes;
- (xi) Prepare necessary reports and settlement agreements;

- (xii) Understand the importance of leadership and teamwork in mediation; and
- (xiii) Explain the ways to deal with deadlock or impasse, and power imbalance in mediation.

Participants

This program is expected to train the following 50 Judges and 85 Bench Clerks of the Royal Courts of Justice:

Phase I

Sl. No.	Court	Judges	Bench Clerks	Total
1.	Thimphu	5	10	15
2	Paro	2	4	6
3	Haa	1	2	3
5	Chhukha	1	2	3
5	Punakha	1	2	3
6	Wangdue	2	4	6
7	Phuntsholing	2	4	6
8	Gelephu	1	2	3
	Total	15	30	45

Phase II

Sl. No.	Court	Judges	Bench Clerks	Total
1.	Gasa	1	1	2
2	Tsirang	1	2	3
3	Dagana	1	2	3
4	Sarpang	1	2	3
5	Samtse	1	2	3
6	Zhemgang	1	2	3

7	Panbang	1	1	2
8	Lamoi Zingkha	1	1	2
9	Lingzhi	1	1	2
10	Sombaykha	1	1	2
11	Dorokha	1	1	2
12	Sipsoo	1	1	2
	Total	12	17	29

Phase III

Sl. No.	Court	Judges	Bench Clerks	Total
1.	Trongsa	1	2	3
2	Bumthang	1	2	3
3	Lhuentse	1	2	3
4	Mongar	1	2	3
5	T/Yangtse	1	2	3
6	T/Gang	1	2	3
7	P/Gatshel	1	2	3
8	S/Jongkhar	1	2	3
9	Wayringla	1	1	2
10	Wamrong	1	1	2
11	Sakteng	1	1	2
12	Thrimshing	1	1	2
13	Nanglam	1	1	2
14	Jomotsangkha	1	1	2
15	Bangtar	1	1	2
	Total	15	23	38

Note: The Judges shall, attend one-day program to familiarise with the processes of the Court-Annexed Mediation system.

Course Content/Syllabus

The Program comprises the following :

A. Consultations and/or dissemination Program:

- (i) Court-Annexed Mediation Inception Documents;
- (ii) Court-Annexed Mediation Strategic Plan;
- (iii) Court-Annexed Mediation Rules and Regulations and Forms;
- (iv) Court-Annexed Mediation Accreditation System.

B. Core Mediation Program

(i) Theoretical Concepts

- i. Understanding Conflicts;
- ii. Spectrum of Alternative Dispute Resolution;
- iii. Negotiation and Dispute Resolution Skills;
- iv. Mediation Context – Basic Principles;
- v. Stages of Mediation;
- vi. Roles of Mediators;
- vii. Qualities and Traits of Mediators;
- viii. Ethical Code of Conduct for Mediators;
- ix. Leadership and Team Work;
- x. Power Imbalance in Mediation;
- xi. Dealing with deadlocks and impasse in Mediation;
- xii. Communication Skills in Mediation.

(ii) Practical Concepts

- i. Setting Mediation Chambers;
- ii. Creating an environment conducive to Mediation;
- iii. Opening Statements during a Mediation Sessions;
- iv. Conducting Private Sessions;
- v. Moving away from position to interest;
- vi. Control Mediation Processes;
- vii. Brainstorming win-win solutions;
- viii. Drafting workable settlement agreements;
- ix. Conducting Mock Mediation Sessions before a facilitators. Each participant will perform at least two Mediation Sessions before the facilitators and receive one-on-one feedback.

Tentative Training Schedule for the Judicial Mediators/Bench Clerks

Day 1		
Time	Session	Facilitator
09.00-10.15	Session One Opening Program	
10.15-11.30	Session Two Introduction & Breaking the Ice Setting out Participants' Expectations	
11.30-11.45	Morning Break	
11.45-13.00	Session Three Understanding Conflicts	
13.00-14.00	Noon Break	
14.00-15.15	Session Four Understanding Conflicts (Contd...)	
15.15-15.30	Evening Break	
15.30-17.00	Session Five Basic Concepts of ADR and Key Principles	

Day 2		
09.00-10.15	Session One Communication Skills in Mediation	
10.15-11.30	Session Two Communication Skills in Mediation (Contd...)	
11.30-11.45	Morning Break	
11.45-13.00	Session Three Communication Skills in Mediation (Contd...)	
13.00-14.00	Noon Break	
14.00-15.15	Session Four Negotiation Skills	
15.15-15.30	Evening Break	
15.30-17.00	Session Five Negotiation Skills (Contd...)	
Day 3		
09.00-10.15	Session One The Processes of Mediation – Opening Statements	
10.15-11.30	Session Two The Processes of Mediation – Opening Statements (Contd...)	
11.30-11.45	Morning Break	
11.45-13.00	Session Three The Process of Mediation (Contd...) <ul style="list-style-type: none"> - Parties Statements - Private Meetings/Joint Sessions - Brainstorming: Option Generations/ Offer/ Counter Offer/Narrow Options – Reality - Solution 	
13.00-14.00	Noon Break	

14.00-15.15	Session Four Settlement Agreement	
15.15-15.30	Evening Break	
15.30-17.00	Session Five The Process of Mediation – Role Play	
	Day 4	
09.00-10.15	Session One Dealing with Impasse/Deadlock in Mediation	
10.15-11.30	Session Two Power Imbalance in Mediation	
11.30-11.45	Morning Break	
11.45-13.00	Session Three Ethics and Code of Conduct for Mediators	
13.00-14.00	Noon Break	
14.00-15.15	Session Four Roles and Qualities of Mediators	
15.15-15.30	Evening Break	
15.30-17.00	Session Five Roles and Qualities of Mediators (Contd...)	
	Day 5	
09.00-10.15	Session One Mediation under the Law: Mediable and Non-Mediable Cases	
10.15-11.30	Session Two Leadership and Team Work in Mediation	
11.30-11.45	Morning Break	
11.45-13.00	Session Three Leadership and Team Work in Mediation (Contd...)	

13.00-14.00	Noon Break	
14.00-15.15	Session Four Holistic Approach/ Multiple Perceptions of Disputes	
15.15-15.30	Evening Break	
15.30-17.00	Session Five Role Play	
Day 6		
09.00-10.15	Session One Court-Annexed Inception Documents	
10.15-11.30	Session Two Court-Annexed Strategy Paper	
11.30-11.45	Morning Break	
11.45-13.00	Session Three Court-Annexed Mediation Rules and Regulations	
13.00-14.00	Noon Break	
14.00-15.15	Closing and Certification	

Time and Venue

Mediation is a vast subject. However, for the purpose of certification, this program shall entail a minimum of six days which is a minimum of 40 hours training period. The Institute plans to commence the training program in January 2019.

Accreditation System

A Certificate of Competence shall be issued to the trainees upon completion of the training. To obtain a certificate of competence, participants are required to attend and participate 100% of the course and are required to display passion and enthusiasm to be a good and certified mediator.

Funding

The budget requirement for the project is as estimated as follows.

Table 1: CAM- Estimate of expenditure for the Consensus-building and Sensitization Workshop for the Judges. (Working Lunches, Refreshments, DSA, etc.)

Sl. No.	Phase/Venue	No. of Judges	Cost (Nu.)
1	Appellate Courts	14	300,000
2	I/Phuntsholing	15	200,000
3	II/Gelephu	12	180,000
4	III/Samdrup Jongkhar	15	200,000
Total		50	8,80,000/0.88M

Table 2: CAM- Estimate of expenditure for the training of the Senior Bench Clerks on Court-Annexed Mediation Services (Working Lunches, Refreshments, DSA/TA -Mileage,etc.).

Sl. No.	Phase/Venue	No. of Bench Clerks	Cost (Nu.)
1	I/Phuntsholing	35	600,000
2	II/Gelephu	22	500,000
3	III/Samdrup Jongkhar	28	650,000
Total		85	17,50,000/1.75M

Table 3: CAM- Estimate of expenditure for the logistics for the training of the Judges and Bench Clerks on Court-Annexed Mediation.

Sl. No.	Particular	Cost (Nu.)
1	Opening Programs	200,000
2	Closing Programs	200,000
3	Training Tools, Stationary items, etc.	150,000
4	Conference Hall charges, banners, certificates, etc.	250,000
5	Facilitators/Trainers fees, honorariums, etc.	500,000
Total		13,00,000/1.3M

Table 4: CAM- Estimate of expenditure for the publication of Court-Annexed Mediation documents and training materials.

Sl. No.	Document	No. of Copies	Cost (Nu.)
1	CAM Inception Document	150	15,000
2	CAM Strategic Plan	150	15,000
3	CAM Mediation Accreditation Standards (MAS)	150	15,000
4	CAM Rules, Regulations and Forms	150	15,000
5	CAM Code of Conduct and Ethics	150	15,000
6	CAM Case Register	50	100,000
7	CAM MAS Register	3	5000
Total		803	1,80,000/0.18M

n accordance with the Court-Annexed Mediation Inception Document, the BNLI has drafted and finalized the following documents for the purpose of establishing Court-Annexed Mediation:

- (i) Court Annexed Mediation Inception Document;
- (ii) Court-Annexed Mediation Strategic Paper;
- (iii) Court-Annexed Mediation Rules, Regulations and Forms;
- (iv) Court-Annexed Mediators Accreditation Standard.

However, there are few other documents, including the Mediators Code of Conduct, Court-Annexed Mediation Register, etc. which need to be developed and published. These documents will be published and distributed to the Court-Annexed Mediation Units, the Judiciary, Judicial Mediators, donor agencies, and the stakeholders.

Table 5: CAM- Estimate of expenditure for the initial establishment of the CAM Units with basic furniture and office equipment in the 37 courts of the Judiciary.

Sl. No.	Particular	Quantity	Cost (Nu.)
1	Mediation Conference Table	40	500,000
2	Chair	150	300,000
3	Marking Boards	40	400,000
4	Marker Pens	200 pkts.	5000
5	Notebooks/Chart Paper	150	5000
6	Computer- Desk top/Lap-top	40	20,00,000
7	Printer	40	500,000
8	Telephone	40	50,000

9	Cookery/Tea Sets	40 sets	400,000
10	Wall Clock	40	40,000
11	Royal Portraits/Mediation Scrolls	40	200,000
12	Miscellaneous office items	40	100,000
		Total	4,500,000/4.5M

Logistic Facilities and Infrastructural Needs

As stipulated in the Inception Document, infrastructural challenges pose significant impediments to the development of mediation practice particularly in relation to the efficiency of the Court-Annexed Mediation programs. Developing adequate state-of-the-art infrastructure facilities for mediation is crucial for successful mediation and increasing user awareness.

The Court-Annexed Mediation Units require a separate and designated Mediation Chambers. The Mediation Chamber and an interior décor should evoke Peace and Compassion. The Chambers should offer the parties the appropriate ambience, facilities and services. It should fulfill that the individual needs of the parties and mediators. Gradually, the Mediation Chamber should be equipped with latest technology including audio-visual equipment, in-room speakers, VGA Connections, overhead projector, etc. However, to begin with, the following are the logistic facilities and infrastructural needs for the establishment of Court-Annexed Mediation Units:

Table 6: CAM- Summary of expenditure for the establishment CAM Units for the Supreme Court, High Court, 20 District Courts, and 15 Drungkhag Courts of the Judiciary of Kingdom of Bhutan.

Sl. No.	Table	Subject	Cost (Nu.)
1	Table 1	Training of 59 judges	880,000
2	Table 2	Training of 85 Bench Clerks	17,50,000
3	Table 3	Logistics and Expert/Trainers Fees	13,00,000
4	Table 4	Document publication	1,80,000
5	Table 5	CAM Units – basic office furniture and equipment	45,00,000
Total			86,10,000/8.61M



CAM Expert Committee Members

- 1) Drangpon Lobzang Rinzin Yargay
- 2) Drangpon Sonam Gyeltshen
- 3) Drangpon Lhindup Zangpo and
- 4) Sangay Chedup, Sr. Legal Officer

Support Staff

1. Tenzin, Legal/ICT Assistant
2. Pema Zangmo, Administrative Officer