

# INTRODUCTION OF MEDIATION IN BANJA LUKA'S 1<sup>ST</sup> INSTANCE COURT

Evaluation Report  
Alternative Dispute Resolution Program  
in Bosnia and Herzegovina



**SEED**

Southeast Europe  
Enterprise Development



**IFC**



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## **Acronyms**

**ABACEELI** American Bar Association Central and East Europe Law Initiative

**ADR** Alternative Dispute Resolution

**AoM** Association of Mediators in Bosnia and Herzegovina

**BiH** Bosnia and Herzegovina

**CE** Council of Europe

**CICR** Canadian Institute for Conflict Resolution

**CIDA** Canadian International Development Agency

**MIGA** Multilateral Investment Guarantee Agency

**OHR** Office of the High Representative

**RS** Republika Srpska

**SEED** Southeast Europe Enterprise Development

**WB** World Bank

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# **Alternative Dispute Resolution Program in Bosnia and Herzegovina Evaluation Report of Pilot Project Introduction of Mediation in 1st Instance Court in Banja Luka**

## **1.0 Background**

With funding from the Canadian International Development Agency (CIDA), the Canadian Institute for Conflict Resolution (CICR) undertook a program of conflict resolution training in Bosnia and Herzegovina (BiH) between 1998 and 2002. Over 700 people including some 200 judges and lawyers received training in mediation, facilitation and other alternative dispute resolution (ADR) processes. This conflict resolution training program, carried out by the CICR, led to the founding of the Association of Mediators (AoM) in Bosnia and Herzegovina by key members of the judicial sector that had taken the training. It also provided the impetus to develop and introduce a new law to support the use of mediation in the court system.

The Law on Mediation was approved by the BiH parliament at the end of June 2004, was publicized in the BiH "Gazette" August 12<sup>th</sup> and came into effect August 20<sup>th</sup>. The law encourages mediation as a first step in civil cases, and sets out a framework for the conduct of mediation and subsequent implementation of mediated agreements. It also regulates the establishment and status of mediators.

In order to implement the law, it was necessary to develop court procedures, hold information sessions for both the courts and the public, and test out the utility and public acceptance of mediation in a culture completely unfamiliar with it. The Southeast Europe Enterprise Development organization (SEED) sponsored a Pilot Project in the 1st Instance Court in Banja Luka to test out mediation processes and procedures for introducing mediation into the court system, and particularly for use with commercial cases. The Pilot Project was carried out between April and July of 2004. This report provides a review of the Pilot, setting out perceptions, successes, limitations, lessons learned and recommendations for further pilots and implementation of the mediation system on a broader scale.

## **2.0 Evaluation Methodology**

The purpose of the Pilot Project was to gather as much information as possible on what worked and what did not, so as to know how to implement an effective court mediation system on a broader scale. Accordingly, the CICR developed a system and the required tools to capture information and data at every stage of the Pilot Project.

### **2.1 Baseline Data**

Data, such as duration of mediations and value of successful mediations, was collected and recorded. Some of this data was compared with the data of cases going through the court system. The data collected was synthesized in charts and graphs which can be found in this report and its annexes.

## 2.2 Questionnaires

A **Mediation Survey Form** was used to capture information from both parties and their lawyers, and was completed after their final mediation session. There were 32 questions, 29 of which were multiple choice, allowing for easy tabulation of the results.

The **Trainee Evaluation Form**, consisting of 15 questions, was designed to capture information after the 3-day pre-mediation training, providing an assessment by the two trainers of the potential for the trainee to become an effective mediator. The criteria focused on level of performance during the role plays, commitment, flexibility and general mediation skills.

The **Mediator-in-Training Self-Assessment Form**, consisting of 11 multiple choice questions and one requiring a written response, while designed for their own learning, was useful in providing information on the mediator's own progress in developing their skills. It was filled-in after each mediation, until the mediator was approved to work on their own.

The **Mentor Evaluation Form**, designed for the mentor's ongoing assessment of the mediator-in-training after each evaluation, was also useful in capturing information on the mediator's skill development. It consisted of 14 questions covering all areas of a mediator's professional development. It was filled-in after each mediation.

## 2.3 Focus Groups

A focus group was held on July 5<sup>th</sup> and involved all Advisory Committee members, 4 mediators and the data analyst. It focused on four questions dealing with internal strengths, internal weaknesses, external possibilities and external obstacles to mediation development in BiH.

## 3.0 Description, Activities and Major Results of the Pilot Program

Set out below is a description of the main elements of the pilot, in order to provide a full understanding of the pilot and a context for the observations and analysis which follows.

### 3.1 Role of SEED

In addition to providing funding for the Pilot Project, SEED was responsible for the overall coordination of the project. They provided administrative backup, translation of documents to and from English, as well as publicizing the Pilot.

In early 2004, SEED contracted the Canadian Institute for Conflict Resolution to develop: a) Court and other Procedures for the Pilot, b) Roles and responsibilities within the Pilot Project, c) Pilot Project mediation forms (set of 12 forms) and d) an Evaluation Work Plan. The work was carried out by Mrs. Vesna Dasovic-Markovic and Mr. Kendel Rust. Ms. Dasovic-Markovic was also tasked to provide training and mentoring of the mediators and general advisory support to the Pilot Project.

### **3.2 Role of the Association of Mediators in BiH (AoM)**

Almost all work on ADR development in BiH to date has been done through the Association of Mediators in BiH. It is the only professional organization with a specific mandate in the ADR field in BiH. It has been active since 2002 in promoting mediation and training in BiH, produces a regular bulletin - the "MEDIJATOR" - contributed actively to revising the legislation, and is recognized as a partner by local and international organizations (OHR, Independent Judicial Commission, ABACEELI etc.). Accordingly, it was the entity chosen by SEED to play a key role with respect to provision of mediators for this Pilot Project.

### **3.3 Choice of 1st Instance Court in Banja Luka**

The choice of the 1st Instance Court in Banja Luka was based on:

- it being the largest court in the Republika Srpska,
- it having the largest case load, particularly in the commercial department (5000 cases),
- the availability of a large pool of potential mediators in Banja Luka,
- key people from the judicial system for the RS involve in the Pilot Project are located in Banja Luka (i.e. the Minister of Justice in the RS and a Supreme Court judge),
- four judges in the court already trained in basic and advanced mediation were enthusiastic about using mediation, and
- the willingness of the President of the Court to have his court involved.

A Partnership Agreement was signed with the 1st Instance Court regulating the duties and responsibilities regarding the pilot.

### **3.4 Advisory Committee**

A Pilot Project Advisory Committee was formed in April to provide overall guidance to the Project. The Committee consisted of:

- a) Minister of Justice of Republika Srpska – Mr. Saud Filipovic (Chair)
- b) Association of Mediators (AoM) Vice-President, Mr. Obren Buzanin
- c) Banja Luka 1st Instance Court representative, Ms. Branka Skoko, judge
- d) Mediator's group representative, Ms. Zora-Bulatovic
- e) SEED Representative – Ms. Lada Busevac
- f) SEED Representative - Ms. Azra Delalic
- g) Court Administrator - Ms. Hazima Catic
- h) The CICR Consultant - Mrs. Vesna Dasovic-Markovic
- i) Consultant/Assistant Mentor - Mr. Aleksandar Zivanovic

The Advisory Committee met twice during the May-July time period of the Pilot, once at the beginning of the mediation stage (May) and once at the end of June. They discussed all issues related to the mediations start-up and implementation as well as to develop a strategy for dealing with the Law on mediation imperfections. A further meeting was held in September to review lessons learned and challenges to implementing court related mediation on a broader scale.

### 3.5 Staff and Participants

The staff and active participants in the day-to-day operation of the pilot included:

- a) twelve Court Judges (9 working on civil cases, and 3 on commercial cases) who made the referrals, received the mediated agreements and “translated” them into court settlements,
- b) a Court Administrator responsible for scheduling mediations, maintaining files on cases referred to mediation and serving as liaison between the court and the Mediation Center,
- c) eight mediators, 4 of which took an active part, and 4 that served as backup,
- d) a mediation mentor, who participated in mediation sessions with each mediator as needed, and provided general ongoing support to the pilot processes,
- e) two assistant mediation mentors who provided further coaching and support to the mediators (one was a judge of the Supreme Court of Republika Srpska and both are AoM members and CICR recognized Third Party Neutral trainers),
- f) a data analyst who prepared spread sheets / data base for the cases, and collected, summarized and presented data in tabular and graphic formats,
- g) the SEED project coordinator who provided logistical support, acted as liaison between the Mediation Center and SEED, organized presentations and oversaw budget allocations.

### 3.6 Mediation Center

For purposes of the Pilot Project and follow-up mediation activities, SEED and the AoM jointly opened a “Mediation Center” in June 2004, for use by the mediators to mediate cases referred by the court. It consists of a rented facility not far from the court, with 2 mediation rooms (allowing for 4 half-day mediations), a training room and a meeting room. SEED helped with funding the opening and operation of the Center, and payment of the mediators and rent.

### 3.7 Mediator Selection and Training

Eight mediators were selected for the Pilot Project by four of the AoM trainers based on various criteria including: a preference for close proximity to Banja Luka (close enough to travel back and forth each day), familiarity with the civil law, availability, sense of responsibility and possessing a significant level of mediation skills. Three of them were active judges, 3 former judges and two lawyers. By the time the Pilot started, the opinion that active judges should not mediate prevailed and the Project was carried out by 3 former judges and one lawyer. All four were women.

They each had taken a one-week CICR “Third Party Neutral” (TPN-1) module, which provides general skill development and understanding of conciliation, mediation, facilitation, reconciliation and conflict resolution theory and processes. All mediators had also taken a one-week advanced mediation course (TPN-3). In April all mediators were given a further 3-day training session to practice their mediation skills, review the draft legislation on mediation and become familiar with the Pilot Project forms and procedures.

### 3.8 Public Awareness and Targeted Information Activities

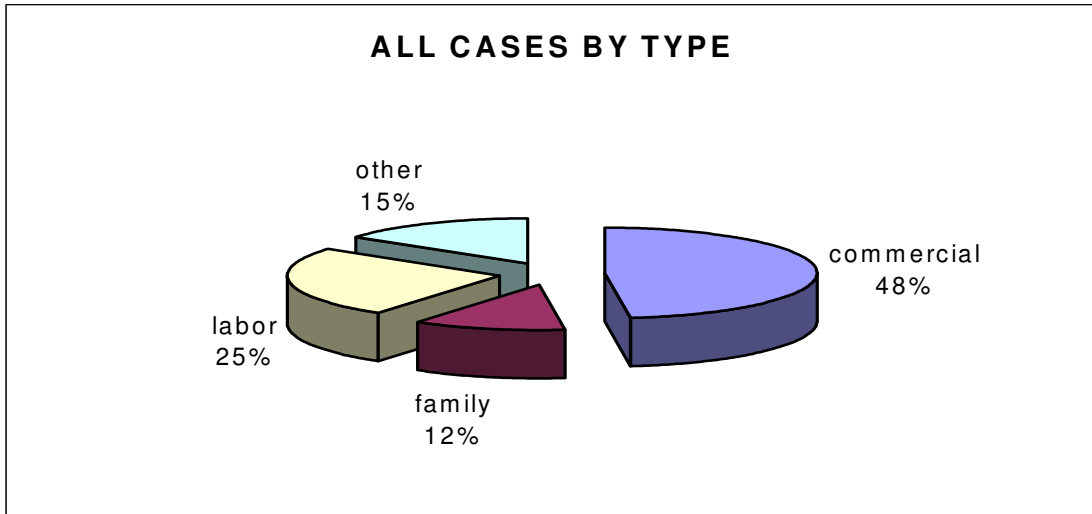
Information activities on the mediation process were as follows:

- SEED and the AoM have continuously worked on promotion of mediation and ADR in BiH. Media coverage included ONASA, Nezavisne novine from Banja Luka, Privrednik of RS and Alternative TV Banja Luka. All reported positively on the Pilot Project activities
- Round table sessions were organized and delivered in partnership with the Chambers of Commerce in Sarajevo canton, Banja Luka region, Tuzla canton, Zenicko-dobojski canton, Doboj region, and Bijeljina region to a total of 280 attendees between January and June 2004. The sessions were picked up by a total of 51 TV stations, radio stations and newspapers.
- A Memorandum of Understanding signed between SEED and the 1st Instance Court at the official start of the Pilot was picked up by 4 TV stations and 6 newspapers.
- 60 posters were distributed to relevant stakeholders.
- 1200 brochures were distributed to disputing parties.
- 2000 leaflets were distributed to the wider public.
- Interviews and articles on the first successful mediations in Banja Luka were picked up by a TV station and 9 newspapers.
- An interview with Slobodan Kovac, BiH Minister of Justice was picked up by 1 newspaper,
- On April 6<sup>th</sup>, a presentation was held for 11 judges of the 1st Instance Court Banja Luka on the Pilot Project and mediation in general.
- The AoM made a presentation at a regional conference on “Modern Judiciary in Southeast Europe: Needs, Results and Perspectives – Efficiency of the Judiciary and Mediation”. It was well received. Aside from one in Slovenia, it was the only non-court mediation model presented and was the one that was perceived as “best fitting”.
- Parties referred to mediation were initially sent a letter informing them of the mediation process and inviting their participation. A total of 638 letters were sent. Those interested, totaling 184, were briefed about mediation by the judge in charge of their case. The initial plan to hold group briefing sessions was dropped in favor of a more “personal touch” individual briefings.
- About 50 lawyers representing parties in the mediation-referred cases, attended a two-hour presentation on mediation in Banja Luka.
- “Medijator”, the AoM newsletter, was distributed to a large number of addresses.

### 3.9 Cases Referred and Processed

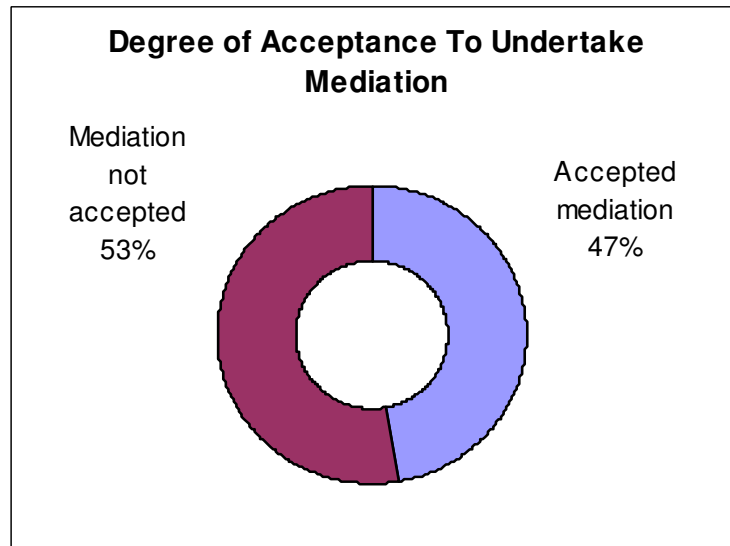
Outlined below is a summary of the numbers of cases involved at various stages of the process. An analysis of these numbers has been set out in the Section 5 on Efficiency and Section 6 on Effectiveness:

- a total of 318 cases were referred by the courts to mediation, including 153 (48%) commercial, 38 (12%) family, 79 (25%) labor and 48 (15%) other civil cases,



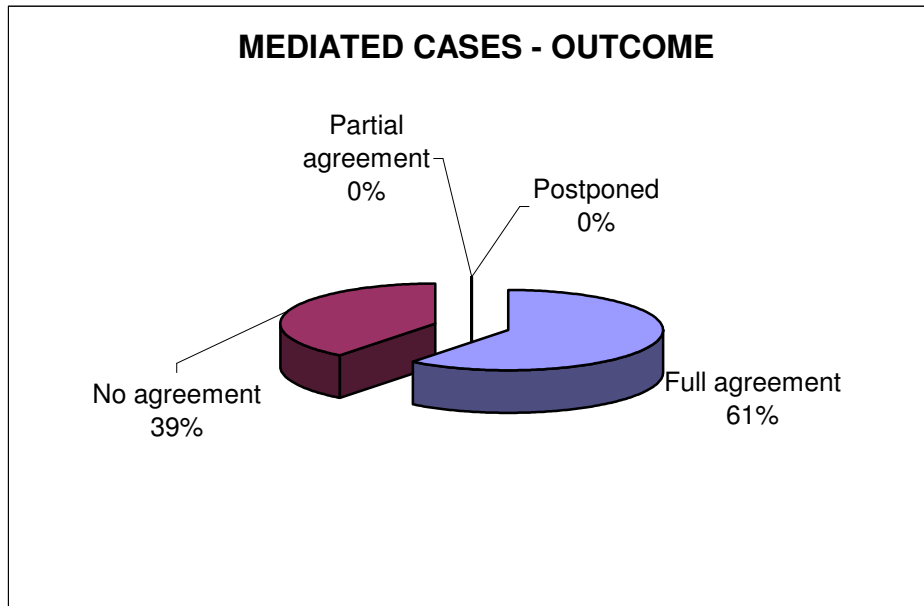
of the letters of invitation along with the brochure on mediation sent to parties of the 318 cases, 195 (61%) responded,

- of the 195 responses to the invitation to mediate, 92 (47%) accepted and were briefed on mediation by the judge in charge of their case,



- of the 103 that refused, 34 (33%) were refused by the plaintiff, 43 (42%) were refused by the defendant and 26 (25%) were refused by both parties (see section 2.10 below),
- of the 92 cases accepted by the parties and their lawyers for mediation, 76 (83%) were mediated,
- of the 16 cases not mediated during the Pilot, one was refused by both parties, one was refused by the plaintiff, one plaintiff did not come to the mediation and 12 others are awaiting mediation in September (eleven of these cases were labor related with the workers laid off and the employer/factory representative on vacation),

- of the 76 cases mediated, 46 (61%) reached full agreement and the other 30 (39%) did not reach any agreement,



- the 76 cases mediated involved 38 commercial, 8 family, 25 labor and 5 other cases,
- of the 76 cases mediated, 41 (54%) involved financial transactions. Six cases involved less than 3,000 KM, 18 involved 3000 to 15,000 KM, 4 involved 15,000 to 50,000 KM, 8 involved 50,000 to 100,000 KM and 5 involved over 100,000 KM,
- the total value of all mediated agreements was 2,604,008 KM.

### 3.10 Cases where Mediation was Refused by Parties

It was not feasible to develop a proper control group as had originally been planned. It was seen as an extra burden on the judges, and coupled with difficulties in getting proper inputs given their lack of knowledge of the pilot purpose, could have been counter productive to the pilot. In addition, the lack of time and non-existence or difficult access to court data would have limited the results.

However, it was felt to be important to understand why parties had refused to mediate, to assist with the referral process and for designing future public awareness campaigns. A sample of 27 cases, out of the 103 that had refused mediation were interviewed by telephone in August, including 16 plaintiffs and 11 defendants, 22 commercial and 5 family cases. The sample may have been slightly skewed by selecting those cases where phone numbers could be located as the courts do not retain phone numbers on file. However the low rate of response to the initial letter of invitation to mediate suggested that sending a questionnaire would probably not have provided adequate results.

- Five of the 27 cases (18.52%) had been resolved since the initial referral last April, including those in which the defendant paid the debt without a court decision. The other 22 cases (81.48%) have not yet been scheduled in the court.

- Only 5 of those interviewed cited nonexistence of the law as the reason. This is significant in the culture that is primarily driven by laws.
- One case (3.7%) claimed absence of any knowledge of mediation as the reason.
- Three cases (11.11%) cited a lack of confidence in mediation.
- Eighteen (66%) cited "other reasons" for not accepting mediation including having no authority to choose mediation, insolvency, not wanting to be part of setting a precedent and not believing that an agreement was possible.

There was still a high percentage of those interviewed (nineteen, i.e. 70.37%), that would not accept mediation if it was suggested to them again. Three (11.11%) would wait for the Law on Mediation to pass, while only 5 (18.52%) would accept. The 5 that accepted realized they would have nothing to lose from their participation.

#### **4.0 Assessment of the Pilot Project**

The Pilot Project, by its very nature, was intended to expose both the strengths and the weaknesses in implementing a court mediation system in the BiH context, once it had been tested in selected cases in the Banja Luka 1st Instance Court.

The Pilot was largely considered to be a success from the perspective of the Advisory Committee, mediators, court administrators and others consulted about the evaluation.

#### **4.1 Strengths**

The success of the Pilot Project was in large part due to the support and commitment from a number of judges, the mediators and others involved in the project. Those involved showed exceptional enthusiasm and worked as a very well organized team. No problems were identified that were not resolved "on site" in less than a few hours. Nobody missed any meetings related to the Pilot activities (even if it took two trips a day a 100 km distance from Banja Luka). Although the time frame was very tight and delivering some tasks was stressful, the team acted as one in dealing with parties, lawyers, the court and the public. However it needs to be emphasized that the Pilot Project was a burden on the court system, adding to an already heavy workload. Continuation of the Pilot Project any longer in the same mode would probably have resulted in "Pilot fatigue" for those involved.

While the Pilot Project was delivered by trained but inexperienced mediators, their commitment and dedication coupled with their own professional legal backgrounds resulted in mediations that were highly rated by the parties and their representatives.

The administration of the Pilot Project was perceived to be effective. The court-referred mediation procedures, forms and evaluation instruments were considered to be useful and

appropriate. The clearly defined roles and responsibilities of everyone involved allowed for the smooth day-to-day functioning of the Pilot.

The non-existence of the Law, as described under weaknesses below, was effectively countered by the openness, readiness and a good understanding of the procedures on the part of the trained judges, the mediators and the Minister of Justice in the RS. This resulted in procedures being defined that allowed mediated agreements to be enforced. In the end, it proved that, although the parties had to make one more trip back to the court in order for the mediated agreement to be ratified by the court as the court settlement, this model worked well.

## 4.2 Weaknesses

Weaknesses in the pilot largely reflect weaknesses that need to be addressed in an extended mediation system. The major challenges faced in the pilot were:

- The non-existence of the Law on mediation and uncertainties about the status of mediated agreements, which was the major issue and subject of debate in preparation and implementation of the Pilot. The opinion was that mediation could not work in BiH because it was not regulated and lawyers and judges would not accept it. This theory went against the possibility that court-referred mediation could be effective and efficient in the absence of the Law.
- The lack of education and awareness by both those in the judicial system and the interested public.
- The lack of experience on the part of the mediators.
- Very tight time frames and deadlines complicated by postponement of cases, working around vacation times, etc..
- Scheduling similar to that used by the courts (sending the notices-to-appear to the parties) did not work well with mediation and resulted in postponement or cancellation of mediations. (It is suggested that mediators and parties be scheduled by phone.)
- Particularly for commercial cases, there was often a lack of “negotiating authority” or Power of Attorney on the part of the company representative. This led to postponement of cases, limited scope in considering options or unwillingness of the company decision makers to accept non-traditional solutions.
- Some judges felt that the mediation process placed an extra burden on them, particularly in the selection of cases and individual meetings with the parties before mediation. Some judges showed disrespect and were unwilling to accommodate parties with signed agreements for court settlement. This was largely due to their inexperience with the selection process and a very limited knowledge of mediation. (This issue was resolved after the Mediation Center learned about it.)
- Overall, the pilot was too much work for the judges and administrative staff of the court. It is important that in future mediation-referred cases that this be addressed, particularly so that those judges who are not particularly interested in mediation not create a negative climate in the court.
- There were also some minor logistical/administrative concerns with the Center which could easily be addressed in any continuation of the Pilot Project. These include timely transfer of funds from SEED to the AoM for the payment to mediators, and to cover the expenses for mailings, telephone, supplies and equipment. There is also a need for at least one more computer.
- Most of the mediators were not computer literate, which was a barrier to writing up the agreement immediately after a successful mediation. During the Pilot, the court

administrator and data analyst often typed the agreements, which required them to always be present at the Center, and kept them from doing their own jobs.

- One mediator got a full time job during the Pilot. While she was not available as much as planned, she was able to fulfill her duties with support from other Pilot Project staff.
- The parties are used to somebody else making decisions and were reluctant to take this responsibility for themselves.

While it did not affect the Pilot Project, the legal status of the Mediation Center is not clear, which could result in the status of mediators and/or mediated agreements through the Center being challenged. It is urgent that the legal status of the Center be regulated in accordance with BiH, RS and Federation laws.

## **5.0 Efficiency of Mediation**

### **5.1 Implications for the Courts**

Each judge in the Banja Luka 1st Instance Court has an average load of approximately 3000 cases, of which they are able to make a judgment on about 26 cases per month (i.e. an average of 6 hours per case). With new cases continuously being registered, it will be difficult for the courts to catch up even with the new law on civil procedures limiting the number of times a case can come back. While the Banja Luka 1st Instance Court has one of the heaviest case-loads per judge in the RS, the general magnitude of the caseload is not untypical of any other court in BiH. Anything that can reduce this case-load will increase the court efficiency.

For those cases amenable to mediation, and assuming the mediation is successful, the workload for a judge could be reduced by 50 percent or more. The judge would only have to see the parties at the first hearing, explain the mediation process and refer them to a mediator. The successful mediation results would be referred back to the court so the case could be closed. Since mediated agreements imply that both parties are satisfied, there are not likely to be any appeals. If normal court procedures were followed, judges would need to have one or more additional hearings plus the potential of appeals.

As mediation becomes better known as an efficient and effective way to resolve disputes, more and more parties are likely to go directly to mediators without going to court. This will enable them to avoid court taxes, legal fees and considerably speed-up the decision making process. For the courts, this will further reduce their case-load. The Pilot Project received strong evidence of this happening, as the Center received some 20 to 30 calls from parties that had not yet gone to court, asking for their case to be mediated.

Efficiency is also determined by the extent to which there are cases in the overall caseload of the court that are amenable to mediation and by the willingness of the parties to mediate. While the portion of cases amenable to mediation would be difficult to estimate, certainly many of those related to commercial, family and work related disputes are prime candidates.

The majority of judges believe that there are plenty of cases that are appropriate for mediation but they have no time to work on them. Sparing time to work on potential mediation cases is a challenge that may be overcome once the link between mediation and the court case load reduction is backed up with data such as the fact that mediation only requires an initial court hearing of 1 hour or less compared with the average for regular court cases being 6 hours.

While the percentage of successfully mediated cases was 'only' 61%, this percentage could significantly increase with greater awareness of both the procedures for and the potential of mediation. One of the findings of the Pilot was that the readiness and openness of the parties to negotiate and work on reaching a mutually satisfactory agreement was the most important factor in eventually having a 'successful mediation'. The fact that most of the lawyers and other parties' representatives had been well briefed by the judges and wanted to participate in learning about conflict resolution leads to the conclusion that there is a large potential for the mediation processes to become sustainable and transformative in helping to renew the BiH judicial system.

There are also certain procedural factors that would facilitate the efficiency of court related mediation procedures. If the court had telephone numbers of the parties and their representatives that could be passed to mediators, both the scheduling and potential use of mediation could be increased.

The courts could consider having one or two judges of a particular court deal with cases amenable to mediation rather than having all judges involved. The courts could also make parties aware of the possibility of mediation when they first register with the court, thereby even avoiding the need of a first hearing, if the parties were willing to initiate a mediation procedure on their own with a qualified mediator.

## **5.2 Implications for the Parties**

For the parties, mediation represents a fast and efficient way to have their case resolved. While all of the parties who agreed to mediation and took part in the mediation, of those that refused mediation, from the sample of 27 who were interviewed by phone, 22 (81%) are still waiting for a court hearing to be scheduled.

From a time perspective, the 46 Pilot Project mediations that were successful, were generally resolved in 2.4 hours or less, which included an initial court hearing of 1 hour or less and an average mediation time of 1.4 hours. This is considerably less than the 6-hour average per case when dealt with by the court, as mentioned above. There were only a few cases during the pilot where the time frame was longer than 3 hours or when a second session was really required. While 24 cases were postponed, including 19 commercial, 7 have since been resolved successfully and another 11 will be heard in September. Assessment of the reasons for postponement suggests that most of them were not necessary, a situation that can be corrected as mediators gain more experience.

While the parties also had to go to the court for an initial hearing and briefing, in addition to the mediation session, it was certainly much less involved than normal court procedures, where they might have had to go back to court one or more times (even 4 to 5 times) before a judgment was

rendered. And with the potential of an appeal of the judgment, further lengthening the process. If the courts could develop an optional referral possibility so the case would not have to wait for a hearing, the case could be mediated quickly.

As identified under the previous section, to the extent that the parties are willing to go directly to mediation without involvement of the courts, they could avoid having to pay court taxes, legal fees and save time. However, in a fully operating mediation system, parties will need to pay for mediation. The Mediation Survey results showed that 87 % of the parties who responded would be willing to pay for mediation and indicated a willingness to pay an average of 82 KM (amounts cited ranged from 20 to 500 KM).

Many examples from the Pilot Project showed that a sense of ownership of the solutions by the parties facilitated speedy resolution. Once the first step had been taken so they understood that they owned the outcome, parties were willing to make a trip or more back to their offices, and consult as necessary to resolve the dispute immediately.

The informal setting of the mediation also made it more efficient. It seemed that if the parties felt equal in the process, they made better agreements. With a business-like, rather than adversarial environment, parties of commercial disputes saw the other party more as a business partner than as an adversary.

### **5.3 Implications for Lawyers**

From the results identified in the Pilot, it is clear that with fewer trips back to court in a mediated process, the workload per case for party representatives, on average, will be lower than for conventional cases. This factor has created resistance to mediation among some lawyers. However, given the backlog of cases to be considered and the range of cases not amenable to mediation, there is no lack of legal work to be done. As lawyers become more familiar with mediation, they may be able to better serve their clients by suggesting to them that they ask their cases to be mediated.

### **5.4 Implications for the Mediation Process**

The efficiency of the mediation process had a lot to do with how familiar and prepared the parties were for the mediation. In commercial cases in the Pilot, where the party/representative was sent with too limited a mandate, the cases were often postponed. In other cases where the negotiating authority of the party was limited, the range of options that could be considered was limited, reducing the chances of success. This argues in favor of the owners or managers being present at the mediation sessions as much as possible. As lawyers, judges, the commercial sector and the general public become more familiar with mediation, the mediation process itself should be much faster and more efficient.

Developing skilled mediators to be the guardians and custodians of the process based on their best judgment could add significantly to the efficiency of the mediation. In the Pilot Project, the lack of experience by the mediators sometimes led them to postponements, out of concern that they had to meet such requests from the parties, when the postponement clearly did not lead to

better solutions at the following session. The parties themselves sometimes hurried into proposing the postponement without a real reason or declined to use the phone to call their employers for information or greater authority. They often lacked the understanding of their role and ownership of the content and that “we are here to try to resolve this issue”. Neither parties nor lawyers are trained to negotiate and are generally neither familiar to a third party (a judge) taking the decision.

At an administrative level, it was seen from the Pilot Project experience that to operate efficiently mediators need to have adequate computer equipment and computer skills in order to produce the mediated agreements.

## **6.0 Effectiveness of Mediation**

### **6.1 Implications for the Courts**

One of the observations from the Pilot Project was that those judges who had been trained in mediation were far more effective in the case selection compared with those who had not. Their readiness, commitment and learning from the training, coupled with their own judging experience led them to good judgments on the appropriateness of cases for mediation. Some judges even instructed the parties to think twice about their own and the other parties readiness and interest before entering the mediation so that nobody’s time would be wasted. Other judges, although committed but not having received the training mentioned above, were unfortunately not in a position to apply the same skills to the cases they referred and a few felt obliged to simply ‘refer’ cases in order to meet the court’s Pilot Project commitment.

Cases referred without adequate assessment on their appropriateness for mediation, were much more likely to be postponed or not be successful. The lack of proper briefing by the judge at the initial hearing coupled with a frequent lack of authority by the party(ies)’s representative(s) to negotiate ended in parties not appearing for mediation or not being properly prepared for the mediation session.

For judges to be trained, there will have to be an initial investment of time to receive a minimum three-day workshop on mediation, enabling them to understand the basis of mediation, how to identify cases for referral and court related procedures for mediation. Ideally they should take the one-week basic and one-week advanced mediation training to be fully effective in the selection of cases and briefing of parties.

### **6.2 Implications for the Parties**

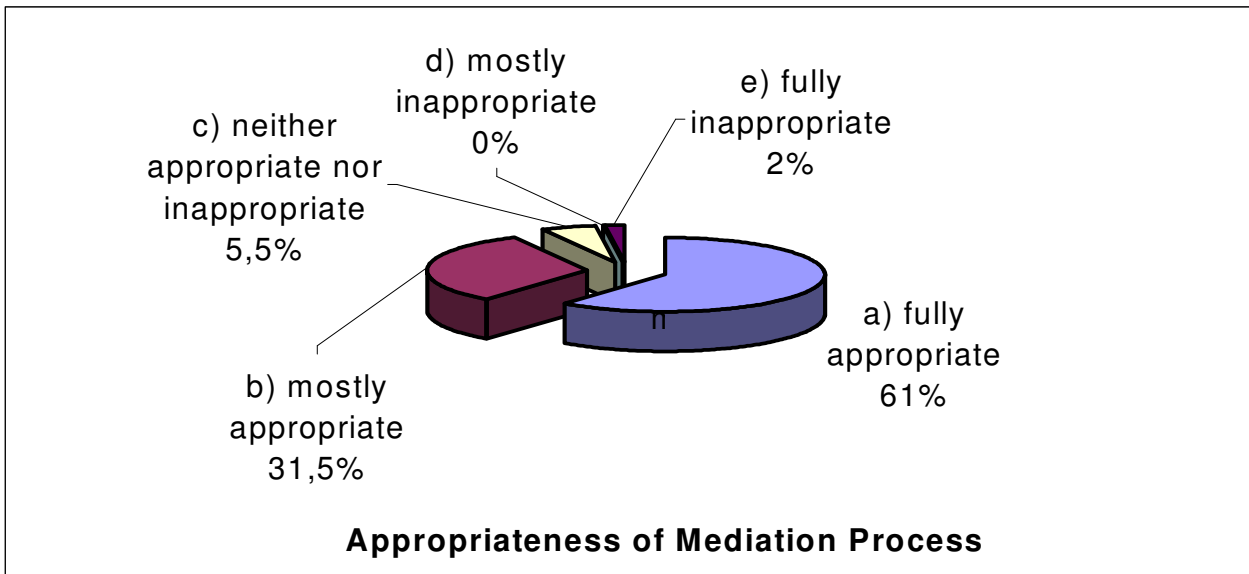
The main beneficiaries, from an effectiveness perspective, are the parties. Successful mediations result in agreements that both parties have ownership of, with each being satisfied with the results. The parties of mediated agreements often part on good terms leaving relationships intact or improved, with an increased understanding of the other’s interests and perspectives. For businesses, this is often extremely important. Appeals on mediated agreements are likely to be

rare. As a further indicator of the degree of mediation success, it will be important to verify how many mediated agreements have been honored in the 2-3 months after they have been reached.

The effectiveness of mediation is substantiated from the Pilot Mediation Survey, whereby 60.14% of respondents felt that mediation was very appropriate and a further 31.08% felt it was a somewhat appropriate way to resolve their dispute. Fifty four percent were fully satisfied with the outcome of the mediation and a further 29% were mostly satisfied. In response to a question on how mediation changed their opinion of the other party, 34% were very positive and another 35% were positive. Ninety four percent considered the agreement to be either fair or fully fair. With more skilled mediators and a greater awareness and preparation by the parties, these figures are likely to increase even further.

*In your opinion, was the process of mediation the appropriate way to resolving your dispute?*

Appropriateness	# of Respondents	Percentage
a) fully appropriate	89	60.96 %
b) mostly appropriate	46	31.51 %
c) neither appropriate nor inappropriate	8	5.48 %
d) mostly inappropriate	0	0.00 %
e) fully inappropriate	3	2.05 %



However, for certain types of cases, mediation will not be the answer and an agreement may not be possible. For example, in situations of a defendant's insolvency, the biggest problem is a willingness to accept mediation and being able to reach an agreement.

### 6.3 Implications for Lawyers

In the Mediation Survey, party representatives were not tracked separately from the parties. However the consistently positive responses would suggest that lawyers, if they are representing their parties in the mediation, will be viewed in a positive light, given the likely success of a satisfactory resolution to the dispute.

There is a potential downside for lawyers who don't inform their clients about the option of using mediation and the client later finds out that this would have been a more effective way to settle the dispute. Their professional reputation in defending and presenting the party's best interest could be at stake.

### 6.4 Implications for the Mediation Process

As mediators become more experienced and parties come to the mediation better informed and prepared, the kind of results identified above will most likely increase. Improved effectiveness will come from improved training of mediators and by greater public awareness and better pre-mediation briefing of the parties.

## 7.0 Acceptance of Mediation by the Public and Judiciary

Once there was a real understanding of what mediation involved and/or the kind of results it could deliver, either through the experience of it or hearing about the results, there seemed to have been a high level of acceptance. The very positive rating in all sections of the Mediation Survey completed by the parties and their representatives speaks to the high level of acceptance by almost all those who had been through the mediation process, even if the mediation was not successful. Of the cases mediated, 95.59 % of the respondents of the Survey said they would use mediation again and 87.40% of those would be willing to pay for it. Almost every party representative, once they had been through mediation, asked to be trained and certified as a mediator.

*Would you resort to mediation again?*

Interest	# of Respondents	Percentage
a) yes	130	95.59 %
b) no	6	4.41 %

***Would you pay for mediation in the future?***

Pay for Mediation?	# of Respondents	Percentage
a) yes	<b>111</b>	<b>87.40 %</b>
b) no	<b>16</b>	<b>12.59 %</b>

While evidence from those that heard about it from others and wanted to use mediation is only anecdotal, given that the Pilot Project was restricted to referred cases, it never-the-less shows a high level of interest:

- One factory in Banja Luka approached the Mediation Center to have disputes with 100 former employees resolved. Some of them were already in court, some were not but they all wanted to go for mediation including the ones that had not yet sued the factory.
- The Center was visited by a man who drove all the way from Gacko to ask for mediation to be introduced in the Trebinje court where he himself has a case to be dealt with.
- The Center received numerous calls from individuals wanting to become mediators.
- As identified in Section 2.6 above, a large number of newspapers and other media ran stories about the presentations made and press releases issued.
- Interest was shown from the court in Tuzla.
- The number of parties that showed up for their mediation session is a success in itself.
- In the post-Pilot period, the Center is still getting mediation requests from the public.

The news about successful mediations seemed to influence the attitude toward entering mediation and was seen as a contributing factor to success. For example, after hearing stories about the first mediation success, the following day 6 cases in court hearings ended by settling their dispute, something that is rarely seen.

The personal active involvement of a supreme court judge and the Minister of Justice of the RS (as Advisory Board members and mediation mentor) has gone a long way to demonstrating the importance of mediation, particularly to those in the judicial system. The active involvement of the RS Supreme Court judge gave additional weight to the effort. The fact that most of the mediators were former judges also added profile and stature to this initiative. Trust was easily established amongst the court parties and the mediators and others involved in the Pilot Project, based on the mediators' reputations from previous positions.

Presentations made to groups of business men and women, and lawyers early in the Pilot Project generally received a positive response. The majority of lawyers that attended the Banja Luka presentation were quite open to the idea of having mediation introduced in the BiH court system and becoming mediators themselves.

Another less tangible factor is the much greater comfort level that the public had in going to The Mediation Center rather than the court. A fundamental element of mediation is the willingness of the mediator and the other party to listen to the perspective of the party talking, in contrast to the rather cold bureaucratic and often uncaring atmosphere of a court.

In spite of the positive response in many quarters, there is still much that needs to be done to overcome resistance to and lack of awareness about mediation.

- The assumption and tradition “that lawyers best know the parties’ interests” and that “they are the only ones knowing it” must be broken. In addition, some lawyers see mediation and mediators as competition and won’t be eager to recommend it to their clients. It is not up to the lawyers to inform or not inform the parties about mediation. Mediation practitioners must have direct contact with the parties and have them present at the mediation - this is the essence of mediation.
- Some lawyers also have a “professional pride” in doing things the traditional way, coupled with being too comfortable with the status quo rather than being willing to make changes.
- Given the high number of lawyers that want to become mediators and the probable limitation on those that can be trained and certified, at least in the short run, those who are left out may become negative about it.
- Some judges perceive it as extra work to refer cases and subsequently having to brief the parties on mediation. They may also not want to take the time to be briefed about and trained in mediation themselves.
- In the Pilot Project, parties in only 61% of the cases responded to the letter of invitation to mediate, and of those that responded, both parties in only 47% of the cases accepted to mediate. While in many of the cases there were legitimate reasons for mediation not being used (e.g. letters were not received because of wrong addresses, parties resolved their dispute on their own), it never-the-less demonstrates the need for more extensive awareness and public education.

Even with extensive public awareness about mediation, there will still be situations where the parties will not entertain mediation as they have no interest in resolving the dispute.

For most of the cases of “not accepted mediation”, it was the defendant who refused, giving insolvency as the major reason. The case might be indisputable but because of a lack of money they would rather see it delayed in the court system for as long as possible. In 5 other cases the defendants did not show up, reflecting the same general attitude of “gaining time” by stalling, for whatever reason.

The focus group discussions and Mediation Survey, as well as anecdotal evidence described above, all suggest the high level of importance attached to awareness of and education about mediation, and the role it can play in successfully resolving cases to the satisfaction of both parties. Even with all the publicity materials produced, the events that took place and the media pick-up, respondents felt that there was insufficient promotion of the Pilot Project and its benefits.

Accordingly it will be important in future activities to give added attention to public awareness and education. The public needs to be more aware of the advantages of mediation. Judges need to understand how mediation can reduce their workloads and which types of cases are amenable to mediation, as well as to play a more active role in developing processes and working relationships with mediators. Lawyers need to know how best to represent their clients, and particularly in commercial cases, to have the mandate to negotiate a range of options. There is a

need for more activities such as newsletters, leaflets, monthly conferences and monthly presentations for judges and other interested parties.

The desire by the media to interview parties involved in mediation can also be an impediment to a mediation underway or completed, through an unintended breach of confidentiality by prying interviewers. Parties will usually want to keep their disputes private and the media should be sensitized to respect this.

## 8.0 Mediator Performance

Only 4 of the 8 mediators selected were utilized during the Pilot Project. Each mediator was coached by the mentor for their first 5 mediation sessions (one per day), while mediating commercial cases. After the 5 sessions, all four were deemed to be able to work on their own. This initial mentoring was done over a period of 20 days, with each mediator beginning their work one week apart. Mentoring of the fifth person was initiated, but due to the tight time line and the unavailability of the participant, it was not completed.

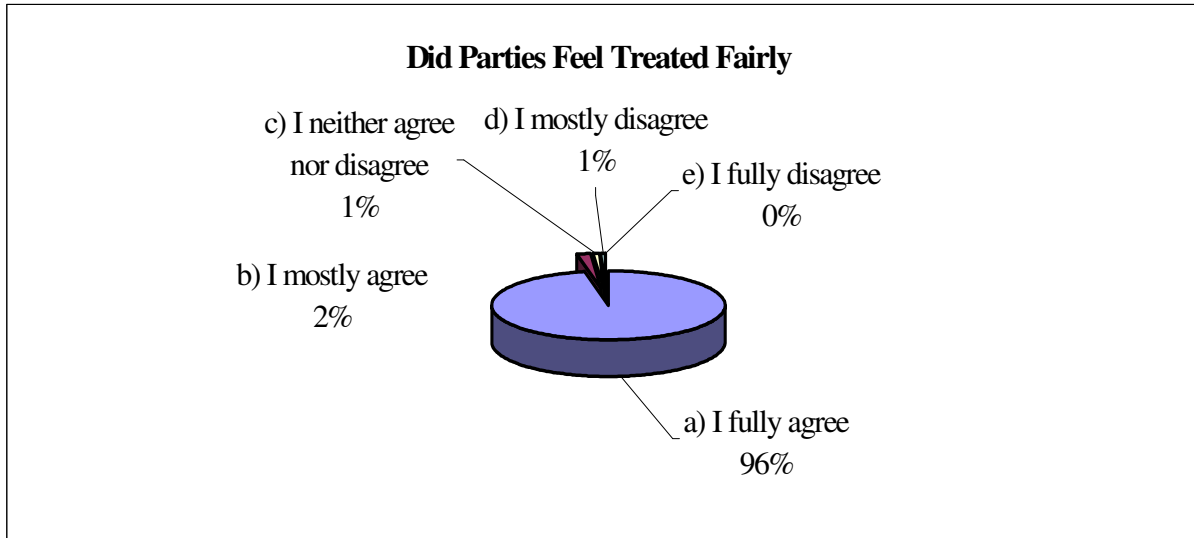
### 8.1 Parties' Perspective

The parties perspective of Mediator Performance was reflected in the Mediation Survey Form results filled out by 145 lawyers and/or parties. The form contained 8 questions on mediator performance including explaining the process, clarifying issues and interests, hearing concerns, fairness, understanding the issues, helping to creating options and not pressuring parties to settle. The parties were very positive in their ranking of the mediators' effectiveness in all categories – with over 90% of the parties ranking them as fully or mostly effective in all categories. This high rating was in spite of the fact that 39% of the mediations did not reach a settlement.

One of the most striking findings of the Pilot, is the extremely high level of trust in the neutrality and of fairness of the treatment they received. One hundred and forty one (96.58%) of all respondents, or 81 (97.59%) for commercial cases only, fully agreed that the mediators treated the parties equally. Only 1 (0.68%) out of 146 mostly disagreed and none disagreed. This is very interesting in a culture where there is usually a tendency to believe that one of the parties is favored by the authorities. The general lack of trust of anyone has become very pronounced since the war, especially if there is a power imbalance such as with an employee/employer relationship.

#### *Mediator has treated all parties equally*

Parties were treated equally?	# of Respondents	Percentage
a) Strongly agree	141	96.58 %
b) Somewhat agree	3	2.05 %
c) Neither agree nor disagree	1	0.68 %
d) Somewhat disagree	1	0.68 %
e) Strongly disagree	0	0.00 %



It is interesting to see that, even though they have not been trained in interest based negotiation, the parties expressed different views on the mediators effectiveness in exploring interests and developing options. One hundred and thirty seven out of 146 respondents said that the mediator help create options and 126 said the mediator was effective in the identification of key issues and interests. The absence of both parties deeper exploration of and better understanding of the other side's interests may be the reason the parties, when asked, opted for the agreement reached being rated as "fair" rather than "very fair".

## 8.2 Mediator Self-Assessment

The Mediator Self-Assessment form was completed by all four mediators-in-training for the first five mediations held with the mentor. The fifth mediator did the same only for the mediation he was able to undertake while the mentor was available in Banja Luka. On the scale from 1-5 (5 being the highest rating), most of the mediators-in-training assessed their own general and more specific performance at a level 4. Their ranking of the quality and effectiveness of their own performances depended mostly on their personality type. Those with a tendency towards perfection in every segment of their work were quite strict on themselves while the others were more flexible.

Beyond their own generally positive ranking, most additional comments made by the mediators-in-training on their own performance related to cases where agreement was not reached between the parties. They felt some pressure to have a "successful mediation". Some postponed mediations raised the fear of not being good enough, even if the mediator knew that the parties' lack of understanding of the process would have a negative impact on the outcome. This was more the case during the first few mediations and became less of a concern once they started feeling more confident in their role of mediator and less responsible for the outcome. This confidence lead them to be more effective in their ability and judgment on whether or not to postpone a case. It reflected well on their control of the process and the way they expressed themselves with the parties.

### 8.3 Mentor's Perspective

The mentor's perspective on mediator performance also reflects a positive view, while at the same time recognizing that they can become much more effective through further education, experience and coaching.

While all had similar professional backgrounds, they had no previous mediation experience. Their legal backgrounds, experience and knowledge of the reality and complexity of the commercial disputes was helpful, respected and appreciated by the parties. They all demonstrated different mediation styles that can be categorized as either facilitative or evaluative. They all had a tendency to be more problem solving, deal-oriented and suggestive rather than transformative in the improvement of relationships between the parties or facilitating the parties' own understanding of the underpinnings of the dispute. Fostering good communication between the parties, one of the most important aspects of improved relationships, was often neglected.

Preparation, punctuality and readiness to make themselves fully available was clearly shown by all the mediators including the one that got a full time job during the course of the Pilot Project. Their professionalism, seriousness and sense of responsibility for the Pilot resulted in them taking the initiative to add an educational component to each mediation session. All mediators without exception used each mediation session to educate participants on mediation in general and specially in the BiH context. At the same time they used each opportunity to observe their other colleagues mediating, incorporated feedback in their future work and showed a tremendous openness and flexibility for learning and professional development.

The result of 61% of all mediated cases being successfully resolved speaks highly of the quality of mediations, given the limited experience of the mediators. With more experience and further training, this could easily be brought up to a higher average, very likely in the 70% to 80% range.

Their progress from the first to the fifth mediation was evident in all segments, self-confidence being the most evident. There are, however, still some areas that could be improved:

- All mentored mediations were commercial and while appropriate for interest-based negotiation, they do not require as high a skill level to resolve as they often just dealt with the dispute without going into the cause. The nature of many other types of cases is more complex and requires more developed and sophisticated party interest identification before developing options, which almost all mediators shied away from. This often led to the postponed mediation sessions being canceled. The parties' representatives would go back to their employers with a too limited scope of options without sufficient room left for the negotiation.
- The mediators need to work on their communication skills, especially reframing techniques. Within the Pilot, there were not enough mentored cases to properly assess nor coach on communication skills.
- Humor, although very welcome, needs to be used with caution so as to keep the tone of the session serious and business-like.

- Legal language is not common to all parties involved (e.g. small business owners) and the mediators need to keep checking with the parties to make sure they understand what is being said.
- There is a need for continuous ongoing education, hands-on training experience and sharing of experiences and lessons learned with other mediators.
- Training in computer skills is extremely important for the preparation of mediated agreements.

## **9.0 Developing a Country-Wide Court-Referred Mediation System**

### **9.1 Implications Stemming from the Law**

The advantages and disadvantages of having the Law on mediation in BiH is one of the most important set of lessons and challenges learned in the Pilot Project implementation.

The text of the Law, as adopted by Parliament, has some elements which require some adjustments. After changes to the laws on civil procedures in both entities, the Law on Mediation introduced mediation and mediators into the BiH legal system. However, it leaves the mediator's position and the certification process open to interpretation by not regulating which or how many organizations (i.e. one or more for BiH, or one or more at the entity level) would be in charge of mediator certification and registration. As a result, in legal terms, mediators still don't exist in BiH. The Pilot Project was not significantly impacted or affected by this, but the future of mediation and the implementation of the law will.

Another issue which needs consideration is the fact the Law on Mediation stipulates that a mediated agreement is "enforceable by law", once it is signed with the Mediator. This stipulation adds a new dimension to the professional knowledge required by the mediators. Only those mediators that are trained lawyers currently have the capability to write the agreements in such a way that they are legal and enforceable by law. It limits other related professionals from becoming mediators, at least until some type of training program is put in place.

The solutions to this problem could be a) that an experienced lawyer/mediator participate in drafting the agreement, b) training in how to write agreements be organized or/and c) a standardized model with optional clauses be developed and made available. In any case, in accordance with Recommendation of the Council of Europe on mediation in civil matters, time should be left for the parties to consult their lawyers or to simply reflect on the proposed agreement, which would leave time for an agreement in due form to be written by someone who has experience in the drafting of similar agreements or documents.

The Law does not regulate in sufficient detail the path of a case once it has been sent for mediation, nor is there currently a sufficient amount of experience with this. It may be useful for the formal legal and ADR systems to regulate the relationship in this segment as well as defining the mediation case management process.

During the Pilot Project, this issue was dealt with by having the agreement go back to the court for the judge to ratify the agreement, in accordance with procedures followed in a normal court case.

## **9.2 Extending Mediation to Other Courts**

Application of the Law on Civil Procedures related to mediation and the Law on Mediation procedures in BiH is limited at this time as the justice system does not have the capacities to follow through on implementation. The Law stipulates that the judge can suggest or parties can ask for mediation at different stages of any civil case proceeding. It literally means that any judge or party in any of the 49 1st Instance Courts in BiH can use this right. In order for this norm to be applied there is a need for a system-wide organization of the mediation mechanism. This requires training and professional development of judges and mediators on the large scale and revisions to court procedures across the country, together with the already mentioned need for the formal legal system/ADR relationship to be defined.

It will take time to put a court-referred mediation system in place, even for just the major centers in BiH, let alone the whole country. Meanwhile, it will be important not to lose the focus and the momentum generated by the just completed Pilot Project. Accordingly, it would be extremely important for the mediation process to continue at the Banja Luka 1st Instance Court for at least a 6 to 9 month period. This would allow time for revisions to be made to the Law, the training of mediators, the development of court administrators and software for other courts, the preparation of a procedures manual and other such essential components needed for success. It would also allow for continued learning and related adjustments to court procedures and mediator training, as well as to continue the public awareness campaign.

At the same time, it would be extremely useful to have a second Pilot Project started in the Federation (as it was originally proposed in the initial Pilot Project plan to also have one at the Tuzla court). This would provide for greater engagement of the Federation Ministry of Justice and increase their “buy-in” to the mediation process. It would allow for greater experience and “lessons learned” to be gained. Finally, it would also provide a staging ground for more mediators to be trained.

## **9.3 Training and Certification of Mediators**

Aside from the above mentioned deficiencies in the Law, the greatest barrier to implementation of the Law on Mediation in other courts is the availability of trained and certified mediators. It would be unwise to attempt any broad-scale implementation without mediators trained to international standards, given the extreme importance of having public, party and lawyer acceptance of the mediation process. Negative publicity from improperly done and unsuccessful mediations would do much to slow momentum on implementation of the Law.

At this point, there is a very limited number of people in BiH trained in mediation. The only judges that have an understanding about mediation are the ones trained through the Canadian Institute for Conflict Resolution (using the Institute’s Third Party Neutral basic and advanced training modules) and the Association of Mediators. Most judges and potential mediators trained

so far are from the major centers of Banja Luka, Tuzla, Mostar and Sarajevo. There are perhaps another 20 people that have attended introductory seminars sponsored by other organizations that provided only a very basic overview of mediation.

On the assumption that the Law will be amended to take into account the previously identified deficiencies, it would be important for the Law to identify only one organization for the whole of BiH to be in charge of certification rather than two at the entity level. Harmonization of any/all certification processes, flexibility for mediators to work in both entities and disputes that involve parties from both entities argue strongly in favor of one certification body.

The AoM is currently the only organization in BiH involved in the selection, training and ‘oversight’ of mediators. While another organization could fill this function, at the present time the AoM is the only organization capable of certifying and registering mediators and could likely be a very suitable organization to be responsible for the certification process of mediators in BiH.

The AoM has developed its own certification process and Registry of Certified Mediators, which could be made available to any party wishing to use a mediator, whether or not the mediation was court related. The AoM certification of mediators with a university degree, in accordance to the Law on Mediation procedures, AoM by-laws and international standards, takes place when a mediator has fulfilled the following conditions:

- 1.0 Successful completion of a 40-hour basic training program (Third Party Neutral) and 40 hours of advanced training in interest-based negotiation and mediation or other equivalent training recognized by the AoM.
- 2.0 Acceptance of and agreement to abide by the AoM’s Code of Ethics.
- 3.0 Relevant University degree.

The major issue the Association of Mediator has yet to deal with regarding certification is the extent to which being able to write up a proper legal agreement in accordance with the new Law should be a requirement. There have also been suggestions that computer competency be a requirement.

The AoM has developed a new program for training on mediation. It includes a five-day mediation training for trainers, a two-day training for judges, and one-day seminars for court-referred parties and other final users of mediation. The AoM held a training-for-trainers in July for 15 potential trainers and is planning a mediation training for this fall, for which there is strong interest.

Once the first few mediators have been certified, the AoM would envisage an apprenticeship program be put in place whereby mediators-in-training would work with an experienced mediator for a period of time before being certified. This would reduce the requirement and costs of an outside mentor as was the case during the Pilot Project.

#### **9.4 Payment of Mediators**

Since the mediation process is outside the court system, there is no obligation by the courts to be involved with it, financially or otherwise. Accordingly, the parties themselves must be willing to eventually pay all the costs associated with mediation.

From the results of the Mediation Survey, as discussed elsewhere, 87 % of the respondents indicated a willingness to pay for mediation. Twenty-five respondents stated they would be willing to pay from 20 to 500 KM for mediation, with the average being 82 KM. Since each party is required to pay half, the total income from a mediation at this rate would be some 160 KM. In a fully operating system with 2 mediations a day and assuming a full time mediator received two thirds of this amount, with the remainder to cover overhead of a mediation center and other costs, this figure would not be out of line with what judges are paid on a monthly or yearly basis. It is probable that with greater public awareness and acceptance of mediation, particularly in the commercial sector, higher fees than those above would be acceptable.

In the short run, until the public becomes more familiar with the advantages of mediation, it is important that mediation costs be subsidized. Full payment for mediation would likely be an obstacle for any parties not familiar with its benefits and would slow down the introduction of mediation. However, it may be important to have partial, or even token payment for mediation, in order to have the public and those considering mediation recognize that this is a cost related to the settlement of a dispute. And certainly well worthwhile to avoid very long court delays and procedures.

#### **9.5 Engaging Other Donors**

In light of the highly successful Pilot Project carried out by the CICR, it would now be timely and appropriate to plan for a much larger scale project to implement a country-wide mediation system. Given the existence of the Law, it is no longer simply a small scale 'local' experiment in mediation, but rather an essential and important element of the overall judicial system in BiH.

Accordingly, it is expected that it would not be difficult to attract donor financing to supplement what has already been provided by SEED. Given the essential role played by SEED during the Pilot Project, it would be appropriate for SEED to play the role of donor coordination of any contributions to this program.

### **10.0 Major Findings and Recommendations**

There is an accelerating movement across North America, Europe and other industrialized nations to introduce mediation into their respective judicial systems. In 2002, the Council of Europe issued a set of recommendations pertaining to the use of mediation in civil matters which encourages the use of extra-judicial dispute resolution procedures and recognizes the important role of the courts in promoting mediation. An Action Plan for the Enhancement of the Business Environment and a Poverty Reduction Strategy Paper was adopted by the BiH federal government in 2001, with the support of the World Bank. The plan aimed to improve the

business environment including strengthening of the judicial and extra-judicial capacity to resolve commercial disputes. (MIGA's Experience in Conflict-Affected Countries - The Case of Bosnia and Herzegovina.)

Accordingly, establishment of the Law on Mediation in BiH and the implementation of a program to provide a greater understanding of how to implement a court-referred mediation system is timely. Particularly in a commercial context, it is important that BiH businesses not be left behind by their partners in other countries, who are moving ahead in this arena.

## **10.1 Major Findings**

While the Pilot Project revealed many challenges that need to be dealt with, it also demonstrated that overall court-referred mediation is an efficient and effective means of resolving disputes and one that is likely to be widely acceptable to the public and judicial system alike.

### Efficiency

- Mediation has the potential to significantly reduce the case-load of the courts.
- For types of cases that are amenable to mediation, it provides the parties with the option to have their dispute resolved quickly at a much lower cost than by regular court processes.
- Commercial cases are the easiest to resolve, given that the nature of the relationships and the underlying issues are generally fairly straightforward.
- The readiness and openness of the parties to negotiate and work on reaching a mutually satisfactory agreement is the most important factor in eventually having a 'successful mediation'.

### Effectiveness

- For a large majority of cases in the Pilot Project, disputes were resolved with solutions that had a high level of satisfaction by both parties.
- Mediation was perceived by most parties as being a highly agreeable and a fair process of resolving disputes, while maintaining relations intact, even improving them.

### Mediators

- One of the greatest obstacle to the implementation of a court-referred mediation system across BiH is the lack of trained and experienced mediators.

### Training & Mentoring

- The training in conflict resolution and mediation, carried out by the CICR since 1998, of more than 600 people, of which some 200 participants were judges and lawyers in the judicial sector, greatly facilitated the success of the Pilot Project, by having both champions and a critical mass of professionals who understood and supported the concept.
- The use of a mentor during the first 5 mediations of each mediator-in-training proved to be invaluable in development of their confidence and capabilities.

### Public Awareness and Targeted Information

- The greater the awareness by the public and the judicial sector of the advantages of mediation and of success stories, the easier it will be to implement a court-referred mediation system.
- The commercial sector will provide the greatest opportunities for implementing the system. Commercial cases are generally less complex and easier to resolve and businesses are likely to be more willing to pay for mediation.

## **10.2 Recommendations**

The recommendations set out below are a compilation those from preliminary observations by the Advisory Committee and other Pilot Project participants combined with other recommendations based on the Canadian Institute for Conflict Resolution's experience in this field.

### **It is recommended that:**

#### **1. *Judicial***

- 1.1. the law to be completed or a separate law to be drafted as quickly as possible to regulate delegating the mediators' services, and other duties related to mediation, on the association or the associations for extra-judicial and court connected mediation;
- 1.2. the by-laws to be drafted and enacted to regulate the Law on mediation procedures implementation process;
- 1.3. court-referred mediation procedures between the formal judicial system and the mediation sector be developed;
- 1.4. a resource guide be prepared to enable other 1st Instance Courts to establish a court-referred mediation system to support all components of the system (judges, lawyers, mediators and court administrators) to work effectively together;
- 1.5. courts record phone numbers of parties when first registering cases to facilitate scheduling of mediation sessions for referred cases;
- 1.6. the courts develop a referral possibility, so the case would not have to wait for a hearing and could be mediated quickly.

#### **2. *Training and Mentoring***

- 2.1. high priority be given to training a sufficient number of mediators, with mediators being selected from all major centers across BiH; the training must be hands-on, in-depth and involve a system of ongoing observation and practice with mentoring/coaching input, including the development of good communication skills;
- 2.2. an apprenticeship system be put in place for all mediators-in-training, once there are a certain minimum number of mediator-mentors available;
- 2.3. workshops be held to train mediators in writing agreements and/or mechanisms be put in place to provide mediators with access to trained advisors on agreement writing, for mediators that are not former judges (i.e. with no experience in writing agreements on court decisions);
- 2.4. mediators be required to have computer competency;
- 2.5. lawyers across the country be provided with a one-day training program which will

- enable them to better advise and represent their clients in mediation;
- 2.6. as a minimum, all judges be provided with a 3-day introductory training program to give them a basic understanding of mediation and its use in the courts;
- 2.7. to be fully competent in referring cases and briefing parties on mediation, judges should take the full mediation training; and
- 2.8. managers and owners of companies, and other end users be provided with mediation awareness workshops.

### **3. Mediator Certification**

- 3.1. clearly organized form of coordination for all of BiH be put in place to ensure a well managed system of the mediator certification process and data base;
- 3.2. clear competency and certification standards be established for mediators;
- 3.3. mediators-in-training be allowed to apply for certification only after they have achieved a certain threshold of experience in an apprenticeship program (e.g. the certification process involve the certifier observing a minimum number of mediations by the mediator-in-training);
- 3.4. re-certification be required at periodic intervals and provisions for de-certification be developed.

### **4. Legal entities in commercial and government sector**

- 4.1. emphasis be given to mediation of commercial cases, given the greater incentive and resources of this sector, coupled with the greater ease of reaching agreement for inexperienced mediators;
- 4.2. companies or organizations being referred to mediation be made aware that the owners or senior managers with proper authority need to be present at the mediation in order for it to work.

### **5. Public Awareness and Education**

- 5.1. a multi-layered awareness program be put in place based on the results of the pilot;
- 5.2. general public awareness be broadened through media events and articles, talks, workshops, and distribution of posters and pamphlets, as was done during the pilot;
- 5.3. a Guide/Manual on the process and benefits of mediation be developed for distribution to businesses and other end users.

### **6. Organizational Structure**

- 6.1. while SEED has taken responsibility for funding and organizing a Pilot Project on court referred mediation, the broader responsibility for implementing the system across the country be assumed by the respective Ministries of Justice coupled with a strong coordination mechanism between them;
- 6.2. the roles and responsibilities of the ministries include:
  - the development of a comprehensive budgeted plan for implementation of the overall system;
  - the allocation of their own resources and solicitation of donor support for implementation of the plan;
  - the coordination of a public awareness program through the media and with organizations such as chambers of commerce;

- the implementation of a training program with the judicial sector as outlined above;
- the allocation of funds to training organizations that would be accredited to train
- mediators, such as the Association of Mediators in BiH; and
- the provision of a certain level of subsidization of mediations for a limited period of time as a means for mediation to become established as a “way of resolving disputes”.

## 11.0 Next Steps

The Canadian Institute for Conflict Resolution strongly suggest that:

- the recommendations in this report be reviewed by the Advisory Board (AB) and that the AB decide which ones be passed on to the appropriate bodies for follow-up action;
- SEED continue its program of supporting mediation in the Banja Luka 1st Instance Court for the next 6 – 12 months, until other structures can be put in place, in order that momentum not be lost;
- the issue of extra workload on judges and administrative staff in continuing mediation in the Banja Luka court be addressed;
- a second Pilot Project be initiated in a court in the Federation, to provide the Federation judicial system with mediation related experience;
- in initiating a second Pilot Project, mediators with a strong professional background and reputation be used to bring more credibility to the process;
- the legal status of the Mediation Center in Banja Luka be regularized;
- the Mediation Center begin charging at least a token amount for mediations;
- the data base of information gathered on the Pilot Project design and implementation be improved and maintained;
- the data base easily be made accessible for use in any of the courts;
- promotional material to be adjusted according to the findings of this Evaluation;
- action to be taken in order that the ministries of justice take an active role in financially helping mediation;
- a survey be done in 2 – 3 months to verify how many mediated agreements from the Pilot Project are still being honored, as a further indicator of the degree of mediation success.

## **ANNEX I**

- 1. Questionnaire Analysis**
- 2. Questionnaire Analysis - Commercial**

# 1. Questionnaire Analysis

1	When the charge was brought for the first time?	a) less than a year ago	30	20.41 %
		b) 1-3 years ago	88	59.86 %
		c) 3-5 years ago	22	14.97 %
		d) more than 5 years ago	7	4.76 %
2	What is your role in mediation?	a) plaintiff	54	36.73 %
		b) defendant	52	35.37 %
		c) the representative of plaintiff	21	14.29 %
		d) the representative of defendant	17	11.56 %
		e) other (please cite)	3	2.04 %
3	The type of dispute	a) commercial	83	56.46 %
		b) labor affairs	43	29.25 %
		c) family relations	20	13.61 %
		d) other (please cite)	1	0.68 %
4	The value of dispute	a) < 3 000	32	22.07 %
		b) 3 000 - 15 000	50	34.48 %
		c) 15 000 - 50 000	19	13.10 %
		d) 50 000 - 100 000	20	13.79 %
		e) > 100 000	24	16.55 %
5	Did you attend the presentation on processes, objectives and strengths of mediation?	a) yes	86	60.14 %
		b) no	57	39.86 %

## 1. Questionnaire Analysis

1	On your opinion, was the process of mediation the appropriate way of resolving your dispute?	a) fully appropriate	89	60.96 %
		b) mostly appropriate	46	31.51 %
		c) neither appropriate nor inappropriate	8	5.48 %
		d) mostly inappropriate	0	0.00 %
		e) fully inappropriate	3	2.05 %
2	Did you feel ready for mediation as per information, meetings and the material provided by the mediation program?	a) yes	134	91.78 %
		b) no	12	8.22 %
3	How much are you confident in the process, according to the Agreement on Mediation?	a) fully confident	77	53.85 %
		b) mostly confident	50	34.97 %
		c) neither confident nor unconfident	16	11.19 %
		d) mostly unconfident	0	0.00 %
		e) fully unconfident	0	0.00 %
4	How much were you satisfied with the possibility to bring information and your own opinion?	a) fully satisfied	124	83.78 %
		b) mostly satisfied	21	14.19 %
		c) neither satisfied nor unsatisfied	3	2.03 %
		d) mostly unsatisfied	0	0.00 %
		e) fully unsatisfied	0	0.00 %
5	How much were you satisfied with the level of understanding during mediation?	a) fully satisfied	112	76.19 %
		b) mostly satisfied	29	19.73 %
		c) neither satisfied nor unsatisfied	5	3.40 %
		d) mostly unsatisfied	1	0.68 %
		e) fully unsatisfied	0	0.00 %
6	How much were you satisfied with the process of mediation?	a) fully satisfied	103	69.59 %
		b) mostly satisfied	35	23.65 %
		c) neither satisfied nor unsatisfied	8	5.41 %
		d) mostly unsatisfied	1	0.68 %
		e) fully unsatisfied	1	0.68 %
7	How much were you satisfied with the duration of mediation?	a) fully satisfied	114	77.03 %
		b) mostly satisfied	32	21.62 %
		c) neither satisfied nor unsatisfied	2	1.35 %
		d) mostly unsatisfied	0	0.00 %
		e) fully unsatisfied	0	0.00 %

## 1. Questionnaire Analysis

1	How much a mediator(s) was efficient in opening and explaining the process of mediation?	a) fully efficient	129	88.36 %
		b) mostly efficient	15	10.27 %
		c) neither efficient nor inefficient	2	1.37 %
		d) mostly inefficient	0	0.00 %
		e) fully inefficient	0	0.00 %
2	How much a mediator(s) was efficient in explaining key issues and interests?	a) fully efficient	126	86.90 %
		b) mostly efficient	14	9.66 %
		c) neither efficient nor inefficient	5	3.45 %
		d) mostly inefficient	0	0.00 %
		e) fully inefficient	0	0.00 %
3	How much a mediator(s) was efficient in understanding your problems and/or questions?	a) fully efficient	125	85.62 %
		b) mostly efficient	18	12.33 %
		c) neither efficient nor inefficient	2	1.37 %
		d) mostly inefficient	1	0.68 %
		e) fully inefficient	0	0.00 %
4	How much were you satisfied with the work of mediator?	a) fully satisfied	130	89.04 %
		b) mostly satisfied	14	9.59 %
		c) neither satisfied nor unsatisfied	2	1.37 %
		d) mostly unsatisfied	0	0.00 %
		e) fully unsatisfied	0	0.00 %
5	Mediator(s) has not put a pressure during mediation to resolve a dispute	a) I fully agree	127	88.19 %
		b) I mostly agree	12	8.33 %
		c) neither I agree nor disagree	4	2.78 %
		d) I mostly disagree	1	0.69 %
		e) I fully disagree	0	0.00 %
6	Mediator(s) has treated all parties equally	a) I fully agree	141	96.58 %
		b) I mostly agree	3	2.05 %
		c) neither I agree nor disagree	1	0.68 %
		d) I mostly disagree	1	0.68 %
		e) I fully disagree	0	0.00 %
7	Mediator(s) has helped finding real options for a dispute resolution.	a) I fully agree	137	94.48 %
		b) I mostly agree	6	4.14 %
		c) neither I agree nor disagree	2	1.38 %
		d) I mostly disagree	0	0.00 %
		e) I fully disagree	0	0.00 %

## 1. Questionnaire Analysis

<b>8</b>	<b>Mediator(s) has understood all problems</b>	a) I fully agree	<b>131</b>	<b>89.12</b>	<b>%</b>
		b) I mostly agree	<b>14</b>	<b>9.52</b>	<b>%</b>
		c) neither I agree nor disagree	<b>2</b>	<b>1.36</b>	<b>%</b>
		d) I mostly disagree	<b>0</b>	<b>0.00</b>	<b>%</b>
		e) I fully disagree	<b>0</b>	<b>0.00</b>	<b>%</b>

## 1. Questionnaire Analysis

1	Has mediation resolved this dispute?	a) yes, fully	81	60.45 %
		b) yes, partly	11	8.21 %
		c) no (if not, skip question 6)	42	31.34 %
2	How would you estimate the overall outcome of mediation?	a) fully satisfied	82	61.65 %
		b) mostly satisfied	25	18.80 %
		c) neither satisfied nor unsatisfied	19	14.29 %
		d) mostly unsatisfied	4	3.01 %
		e) fully unsatisfied	3	2.26 %
3	How much are you satisfied with the outcome as per your expectation before mediation?	a) fully satisfied	74	54.01 %
		b) mostly satisfied	29	21.17 %
		c) neither satisfied nor unsatisfied	23	16.79 %
		d) mostly unsatisfied	6	4.38 %
		e) fully unsatisfied	5	3.65 %
4	How much are you satisfied with the possibility to control the outcome of mediation?	a) fully satisfied	83	63.85 %
		b) mostly satisfied	37	28.46 %
		c) neither satisfied nor unsatisfied	8	6.15 %
		d) mostly unsatisfied	0	0.00 %
		e) fully unsatisfied	2	1.54 %
5	How the mediation has changed your opinion on other party?	a) very positive	45	33.58 %
		b) positive	47	35.07 %
		c) neither positive nor negative	33	24.63 %
		d) negative	7	5.22 %
		e) very negative	2	1.49 %
6	If the agreement has reached, how would you estimate it?	a) fully fair	45	48.91 %
		b) fair	41	44.57 %
		c) neither fair nor unfair	6	6.52 %
		d) unfair	0	0.00 %
		e) fully unfair	0	0.00 %
7	Do you think you saved your time for using mediation instead of a court process?	a) no	20	14.81 %
		b) yes	115	85.19 %

## 1. Questionnaire Analysis

8	If so, how much?	a) insignificantly	7	5.79 %
		b) reasonably	29	23.97 %
		c) significantly	85	70.25 %
9	Do you think you saved your money for using mediation instead of a court process?	a) no	21	16.94 %
		b) yes	103	83.06 %
10	If so, how much?	a) insignificantly	5	4.85 %
		b) reasonably	30	29.13 %
		c) significantly	68	66.02 %
11	Would you resort to mediation again?	a) yes	130	95.59 %
		b) no	6	4.41 %
12	Would you recommend mediation to others?	a) yes	134	100.00 %
		b) no	0	0.00 %
13	Would you pay for mediation in the future?	a) yes	111	87.40 %
		b) no	16	12.60 %
	If so, how much would that be?	a) in KM	82 KM	
		b) I do not know	51	34.46 %

## 1. Questionnaire Analysis

### **Volume IV, Question 12 - Explanations (literally translated):**

Right place for dispute resolution, just continue with your work. Be persistent, do not give up. I am on your disposal.

Mediation saves money and time significantly, defendant can be a plaintiff in other processes and other way round.

Speed of resolution, preservation of good business and private relations, reduce of expenses, business and personal reputation.

The process is economical, successful and managed by a professional and experienced mediator.

This way of agreed resolution is always better end more efficient.

For the possibility of immediate consolidation of plaintiff's request with the proposals of defendant.

The discussion runs in a pleasant atmosphere so that both parties become flexible and reasonable on the bases of presented.

The possibility of agreement, quicker dispute resolution, comfortable in dispute resolution.

The mediation is a service for positive resolution of disputes, if parties are interested in and if they are reasonable.

For all the reasons given in the presentation of mediator.

For efficiency and economy.

For the reasons of efficiency, economy and friendly relations with other party.

The process is faster, more efficient and less tiring.

Easier communication and quicker dispute resolution.

The process of faster and more efficient dispute resolution, without additional expenses.

Interesting.

I consider this is the shortest, the cheapest and the painless way of dispute resolution.

Reducing the duration of process as well as expenses.

Because this is a new process aiming peaceful, faster, cheaper and more efficient dispute resolution at the same time.

## 1. Questionnaire Analysis

The mediation provides full possibility of agreement and fair and fast dispute resolution.

It exceeds strictly defined legal frames in terms of proceedings course.

If there is a good will among parties during proceedings, mediation can reach positive outcome, otherwise not. Hence, the attitude of parties is the most important.

The mediation gives a chance to parties to try to resolve their dispute with the help of mediator.

It saves time and money. (comment cited 3 times)

Efficient, economical, fair, parties are reaching an agreement.

For the reason of efficiency, especially because it is not possible to schedule a hearing at court.

It was honest and fair, it was up to parties, not up to mediator.

The mediation is the way of faster dispute resolution.

Pleasant and efficient process.

Fully efficient.

Fast process.

We should resort to mediation before initiation of a court proceeding, it is more efficient and less expensive.

If parties are reasonable.

Fast dispute resolution.

Efficient process, pleasant both for plaintiff and defendant.

Efficient, less expensive, short, agreement between parties, professional and impartial mediators.

Efficient, simpatico and pleasant.

Efficient and simpatico. (comment cited 2 times)

Efficient. (comment cited 4 times)

Accessible, transparent and efficient.

Pleasant and efficient. (comment cited 2 times)

## 1. Questionnaire Analysis

Accessible, transparent and efficient.

Excellent way to resolve a dispute peacefully.

I consider that the mediation, as a way of dispute resolution, is the way of resolving disputes for mutual benefit.

Efficient, time is reduced, less formal.

Because the mediation is efficient and fast.

Only if both parties are fair.

Because a dispute is resolved efficiently, without additional court and other expenses.

The way of avoiding lawsuit which is difficult, slow and uncertain.

It saves time and money, a new relation between parties, based on voluntarism and understanding.

Very practical and economical.

Because it is an alternative to court proceedings - mutually acceptable dispute resolution.

It saves time and money. Both parties are pleased.

It is necessary to adopt and pass the law.

Fast, efficient and fair.

Short, pleasant and simpatico.

More possibilities for agreement.

### **Volume IV, Question 13 - Comments (literally translated):**

At 100 KM per hour

50% cheaper than court proceedings

Significantly cheaper than court proceedings

1/4 of court expenses

## 1. Questionnaire Analysis

Less than court expenses

Less than court expenses and the cost of charge

30% of court expenses

As per lawyer's pricelist

Price should depend on the value of dispute (comment cited 3 times)

As per pricelist, but not less than 100 KM per hour

At 100 KM per hour, as per complexity of process

50% as per lawyer's pricelist (comment cited 3 times)

### **What could be done to improve the process of mediation?**

As for its better efficiency, it is necessary for eventually signed agreement to have the power of executive note. (comment cited 13 times)

It is necessary to train people, lawyers. It is necessary to give a publicity to mediation in medias.

Once mediation begins, meetings should be scheduled frequently.

More information and education.

My proposal is to invite the owner of company, as I think that would effect the efficiency of work and give better results. Representatives are given strict authorization in advance, by which they have possibility for settlement.

It is urgent to pass a special law which would retain the procedure defined by pilot project. The procedure is simplified, efficient and economical where plaintiff and defendant share the risk of dispute. Resolution is in parties mutual interest.

Introduce the directors of companies with mediation.

It gives possibility of relaxed process, possibility of agreement and negotiation, it reduces the process for a couple of court trials. Mediation saves time and money.

More information on the process of mediation, with description of possibilities for dispute resolution.

It is necessary that mediator has an active role and presents his proposals for dispute resolution. He should interpret legal regulations to parties.

## 1. Questionnaire Analysis

Not allow a party to be partial. The party should be warned timely.

### **If you have additional comments, please cite**

From my experience, it is necessary to work on the promotion of mediation in many ways, as the overall situation is very difficult, and people are not educated and informed.

It is necessary for parties to understand that this is not a court.

Having regard this is a pilot project, it would be useful to educate mediators for improvement of the entire project, as well as it would be necessary to inform future parties in order to fully understand this institution and use it for dispute resolution.

I consider mediation as a very useful institution, under condition that mediators are always lawyers with court experience.

I have expected to save time and money, but other party has come with different objective.

Extremely fair relations between mediator and other participants in mediation. Consolidation of outstanding issues features as business conversation rather than a court process, which has a very positive impact to the outcome of dispute.

We have not resorted to mediation for the replacement of General Manager of RS Srpske Sume. I have to emphasize very positive and impartial role of Ms. Orleanka.

After the law enters into force, it is necessary to train more mediators and to equip all mediators with calculators and other equipment, eventually put on their disposal a number of specialists, especially economists.

Mediator Ms. Gorjana Popadic is professional, communicative and simpatico.

1. To resort to mediation before bringing the charge
2. To resort to mediation in commercial disputes
3. To introduce mediation in family relations disputes
4. To inform citizens better on the process of mediation and its strengths against court disputes, and to give a publicity to the process

In certain types of disputes introduce mediation as compulsory before bringing the charge.

To adopt and pass the law URGENTLY.

Stronger relations with court institutions for ending the process quickly.

## 2. Questionnaire Analysis - Commercial

1	When the charge was brought for the first time?	a) less than a year ago	20	23.81 %
		b) 1-3 years ago	46	54.76 %
		c) 3-5 years ago	14	16.67 %
		d) more than 5 years ago	4	4.76 %
2	What is your role in mediation?	a) plaintiff	26	31.33 %
		b) defendant	24	28.92 %
		c) the representative of plaintiff	16	19.28 %
		d) the representative of defendant	14	16.87 %
		e) other (please cite)	3	3.61 %
3	The type of dispute	a) commercial	83	100.00 %
		b) labor affairs	0	0.00 %
		c) family relations	0	0.00 %
		d) other (please cite)	0	0.00 %
4	The value of dispute	a) < 3 000	10	12.05 %
		b) 3 000 - 15 000	29	34.94 %
		c) 15 000 - 50 000	13	15.66 %
		d) 50 000 - 100 000	17	20.48 %
		e) > 100 000	14	16.87 %
5	Did you attend the presentation on processes, objectives and strengths of mediation?	a) yes	43	53.75 %
		b) no	37	46.25 %

## 2. Questionnaire Analysis - Commercial

1	In your opinion, was the process of mediation the appropriate way of resolving your dispute?	a) fully appropriate	47	56.63
		b) mostly appropriate	30	36.14
		c) neither appropriate nor inappropriate	5	6.02
		d) mostly inappropriate	0	0.00
		e) fully inappropriate	1	1.20
2	Did you feel ready for mediation as per information, meetings and the material provided by the mediation program?	a) yes	75	89.29
		b) no	9	10.71
3	How much are you confident in the process, according to the Agreement on Mediation?	a) fully confident	35	42.68
		b) mostly confident	36	43.90
		c) neither confident nor unconfident	11	13.41
		d) mostly unconfident	0	0.00
		e) fully unconfident	0	0.00
4	How much were you satisfied with the possibility to bring information and your own opinion?	a) fully satisfied	71	84.52
		b) mostly satisfied	12	14.29
		c) neither satisfied nor unsatisfied	1	1.19
		d) mostly unsatisfied	0	0.00
		e) fully unsatisfied	0	0.00
5	How much were you satisfied with the level of understanding during mediation?	a) fully satisfied	60	72.29
		b) mostly satisfied	20	24.10
		c) neither satisfied nor unsatisfied	3	3.61
		d) mostly unsatisfied	0	0.00
		e) fully unsatisfied	0	0.00
6	How much were you satisfied with the process of mediation?	a) fully satisfied	57	67.86
		b) mostly satisfied	22	26.19
		c) neither satisfied nor unsatisfied	5	5.95
		d) mostly unsatisfied	0	0.00
		e) fully unsatisfied	0	0.00
7	How much were you satisfied with the duration of mediation?	a) fully satisfied	64	76.19
		b) mostly satisfied	19	22.62
		c) neither satisfied nor unsatisfied	1	1.19
		d) mostly unsatisfied	0	0.00
		e) fully unsatisfied	0	0.00

## 2. Questionnaire Analysis - Commercial

1	How much a mediator(s) was efficient in opening and explaining the process of mediation?	a) fully efficient	74	89.16 %
		b) mostly efficient	8	9.64 %
		c) neither efficient nor inefficient	1	1.20 %
		d) mostly inefficient	0	0.00 %
		e) fully inefficient	0	0.00 %
2	How much a mediator(s) was efficient in explaining key issues and interests?	a) fully efficient	70	84.34 %
		b) mostly efficient	9	10.84 %
		c) neither efficient nor inefficient	4	4.82 %
		d) mostly inefficient	0	0.00 %
		e) fully inefficient	0	0.00 %
3	How much a mediator(s) was efficient in understanding your problems and/or questions?	a) fully efficient	72	86.75 %
		b) mostly efficient	10	12.05 %
		c) neither efficient nor inefficient	1	1.20 %
		d) mostly inefficient	0	0.00 %
		e) fully inefficient	0	0.00 %
4	How much were you satisfied with the work of mediator?	a) fully satisfied	76	91.57 %
		b) mostly satisfied	6	7.23 %
		c) neither satisfied nor unsatisfied	1	1.20 %
		d) mostly unsatisfied	0	0.00 %
		e) fully unsatisfied	0	0.00 %
5	Mediator(s) has not put a pressure during mediation to resolve a dispute	a) I fully agree	71	87.65 %
		b) I mostly agree	7	8.64 %
		c) neither I agree nor disagree	3	3.70 %
		d) I mostly disagree	0	0.00 %
		e) I fully disagree	0	0.00 %
6	Mediator(s) has treated all parties equally	a) I fully agree	81	97.59 %
		b) I mostly agree	1	1.20 %
		c) neither I agree nor disagree	1	1.20 %
		d) I mostly disagree	0	0.00 %
		e) I fully disagree	0	0.00 %
7	Mediator(s) has helped finding real options for a dispute resolution.	a) I fully agree	77	93.90 %
		b) I mostly agree	4	4.88 %
		c) neither I agree nor disagree	1	1.22 %
		d) I mostly disagree	0	0.00 %
		e) I fully disagree	0	0.00 %

## 2. Questionnaire Analysis - Commercial

<b>8</b>	<b>Mediator(s) has understood all problems</b>	a) I fully agree	<b>75</b>	<b>89.29 %</b>
		b) I mostly agree	<b>8</b>	<b>9.52 %</b>
		c) neither I agree nor disagree	<b>1</b>	<b>1.19 %</b>
		d) I mostly disagree	<b>0</b>	<b>0.00 %</b>
		e) I fully disagree	<b>0</b>	<b>0.00 %</b>

## 2. Questionnaire Analysis - Commercial

1	Has mediation resolved this dispute?	a) yes, fully	34	46.58 %
		b) yes, partly	8	10.96 %
		c) no (if not, skip question 6)	31	42.47 %
2	How would you estimate the overall outcome of mediation?	a) fully satisfied	37	50.68 %
		b) mostly satisfied	19	26.03 %
		c) neither satisfied nor unsatisfied	12	16.44 %
		d) mostly unsatisfied	4	5.48 %
		e) fully unsatisfied	1	1.37 %
3	How much are you satisfied with the outcome as per your expectation before mediation?	a) fully satisfied	30	39.47 %
		b) mostly satisfied	22	28.95 %
		c) neither satisfied nor unsatisfied	18	23.68 %
		d) mostly unsatisfied	4	5.26 %
		e) fully unsatisfied	2	2.63 %
4	How much are you satisfied with the possibility to control the outcome of mediation?	a) fully satisfied	42	58.33 %
		b) mostly satisfied	23	31.94 %
		c) neither satisfied nor unsatisfied	5	6.94 %
		d) mostly unsatisfied	0	0.00 %
		e) fully unsatisfied	2	2.78 %
5	How the mediation has changed your opinion on other party?	a) very positive	16	21.62 %
		b) positive	31	41.89 %
		c) neither positive nor negative	22	29.73 %
		d) negative	4	5.41 %
		e) very negative	1	1.35 %
6	If the agreement has reached, how would you estimate it?	a) fully fair	17	40.48 %
		b) fair	22	52.38 %
		c) neither fair nor unfair	3	7.14 %
		d) unfair	0	0.00 %
		e) fully unfair	0	0.00 %
7	Do you think you saved your time for using mediation instead of a court process?	a) no	14	18.67 %
		b) yes	61	81.33 %

## 2. Questionnaire Analysis - Commercial

8	If so, how much?	a) insignificantly	2	3.17 %
		b) reasonably	17	26.98 %
		c) significantly	44	69.84 %
9	Do you think you saved your money for using mediation instead of a court process?	a) no	12	18.46 %
		b) yes	53	81.54 %
10	If so, how much?	a) insignificantly	1	1.92 %
		b) reasonably	13	25.00 %
		c) significantly	38	73.08 %
11	Would you resort to mediation again?	a) yes	73	97.33 %
		b) no	2	2.67 %
12	Would you recommend mediation to others?	a) yes	75	100.00 %
		b) no	0	0.00 %
13	Would you pay for mediation in the future?	a) yes	72	88.89 %
		b) no	9	11.11 %
If so, how much would that be?		a) in KM	82.5	
		b) I do not know	36	43.37 %

## 2. Questionnaire Analysis - Commercial

### **Volume IV, Question 12 - Explanations (literally translated):**

Right place for dispute resolution, just continue with your work. Be persistent, do not give up. I am on your disposal.

Mediation saves money and time significantly, defendant can be a plaintiff in other processes and other way round.

Speed of resolution, preservation of good business and private relations, reduce of expenses, business and personal reputation.

The process is economical, successful and managed by a professional and experienced mediator.

This way of agreed resolution is always better end more efficient.

For the possibility of immediate consolidation of plaintiff's request with the proposals of defendant.

The discussion runs in a pleasant atmosphere so that both parties become flexible and reasonable on the bases of presented.

The possibility of agreement, quicker dispute resolution, conformability in dispute resolution.

The mediation is a service for positive resolution of disputes, if parties are interested in and if they are reasonable.

For all the reasons given in the presentation of mediator.

For efficiency and economy.

For the reasons of efficiency, economy and friendly relations with other party.

The process is faster, more efficient and less tiring.

Easier communication and quicker dispute resolution.

The process of faster and more efficient dispute resolution, without additional expenses.

Interesting.

I consider this is the shortest, the cheapest and the painless way of dispute resolution.

Reducing the duration of process as well as expenses.

Because this is a new process aiming peaceful, faster, cheaper and more efficient dispute resolution at the same time.

## 2. Questionnaire Analysis - Commercial

The mediation provides full possibility of agreement and fair and fast dispute resolution.

It exceeds strictly defined legal frames in terms of proceedings course.

If there is a good will among parties during proceedings, mediation can reach positive outcome, otherwise not. Hence, the attitude of parties is the most important.

The mediation gives a chance to parties to try to resolve their dispute with the help of mediator.

It saves time and money. (comment cited 3 times)

Efficient, economical, fair, parties are reaching an agreement.

For the reason of efficiency, especially because it is not possible to schedule a hearing at court.

It was honest and fair, it was up to parties, not up to mediator.

The mediation is the way of faster dispute resolution.

Pleasant and efficient process.

Fully efficient.

Fast process.

We should resort to mediation before initiation of a court proceeding, it is more efficient and less expensive.

Efficient process, pleasant both for plaintiff and defendant.

Efficient, less expensive, short, agreement between parties, professional and impartial mediators.

Accessible, transparent and efficient.

Pleasant and efficient.

Accessible, transparent and efficient.

Excellent way to resolve a dispute peacefully.

Efficient, time is reduced, less formal.

Because the mediation is efficient and fast.

The way of avoiding lawsuit which is difficult, slow and uncertain.

## 2. Questionnaire Analysis - Commercial

It saves time and money, a new relation between parties, based on voluntarism and understanding.

It saves time and money. Both parties are pleased.

It is necessary to adopt and pass the law.

Fast, efficient and fair.

### **Volume IV, Question 13 - Comments (literally translated):**

At 100 KM per hour

50% cheaper than court proceedings

Significantly cheaper than court proceedings

1/4 of court expenses

Less than court expenses

Less than court expenses and the cost of charge

30% of court expenses

As per lawyer's pricelist

Price should depend on the value of dispute (comment cited 3 times)

As per pricelist, but not less than 100 KM per hour

At 100 KM per hour, as per complexity of process

### **What could be done to improve the process of mediation?**

As for its better efficiency, it is necessary for eventually signed agreement to have the power of executive note.

**(comment cited 10 times)**

It is necessary to train people, lawyers. It is necessary to give a publicity to mediation in medias.

Once mediation begins, meetings should be scheduled frequently.

## 2. Questionnaire Analysis - Commercial

More information and education.

My proposal is to invite the owner of company, as I think that would effect the efficiency of work and give better results. Representatives are given strict authorisation in advance, by which they have possibility for settlement.

It is urgent to pass a special law which would retain the procedure defined by pilot project. The procedure is simplified, efficient and economical where plaintiff and defendant share the risk of dispute. Resolution is in parties mutual interest.

Introduce the directors of companies with mediation.

It gives possibility of relaxed process, possibility of agreement and negotiation, it reduces the process for a couple of court trials. Mediation saves time and money.

More information on the process of mediation, with description of possibilities for dispute resolution.

It is necessary that mediator has an active role and presents his proposals for dispute resolution. He should interpret legal regulations to parties.

Not allow a party to be partial. The party should be warned timely.

### **If you have additional comments, please cite**

From my experience, it is necessary to work on the promotion of mediation in many ways, as the overall situation is very difficult, and people are not educated and informed.

It is necessary for parties to understand that this is not a court.

Having regard this is a pilot project, it would be useful to educate mediators for improvement of the entire project, as well as it would be necessary to inform future parties in order to fully understand this institution and use it for dispute resolution.

I consider mediation as a very useful institution, under condition that mediators are always lawyers with court experience.

I have expected to save time and money, but other party has come with different objective.

Extremely fair relations between mediator and other participants in mediation. Consolidation of outstanding issues features as business conversation rather than a court process, which has a very positive impact to the outcome of dispute.

We have not resorted to mediation for the replacement of General Manager of RS Srpske Sume. I have to emphasize very positive and impartial role of Ms. Orleanka.

## 2. Questionnaire Analysis - Commercial

After the law enters into force, it is necessary to train more mediators and to equip all mediators with calculators and other equipment, eventually put on their disposal a number of specialists, especially economists.

Mediator Ms. Gorjana Popadic is professional, communicative and simpatico.

In certain types of disputes introduce mediation as compulsory before bringing the charge.

To adopt and pass the law URGENTLY.

Stronger relations with court institutions for ending the process quickly.

## LAW ON MEDIATION

### PARLIAMENTARY ASSEMBLY OF BOSNIA AND HERZEGOVINA

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Pursuant to Article IV.4.a) of the Constitution of Bosnia and Herzegovina, at its 37th Session of the House of Representatives, held on June 9, 2004, and the 25th Session of the House of Peoples, held on June 29, 2004, the Parliamentary Assembly of Bosnia and Herzegovina adopted the following

#### LAW ON MEDIATION PROCEDURE

##### **I - General Provisions**

Article 1: This law governs the mediation procedure on the territory of Bosnia and Herzegovina.

The mediation tasks shall by a separate law be transferred to the association or associations by the procedure set forth in that law.

Article 2: For the purposes of this law, the mediation shall be a procedure in which a third neutral party (mediator) assists parties in an effort to reach a mutually acceptable solution to the dispute.

The mediator may not impose the solution to the dispute on the parties.

Article 3: The mediation procedure shall be conducted by an individual mediator unless the parties agree to have more than one mediator conducting the procedure.

The mediator shall be a third neutral party mediating in resolution of dispute between the parties, pursuant to the mediation principles.

Article 4: The parties in dispute may agree, either before or after institution of the court procedure until conclusion of the main trial, to resolve the dispute in the mediation procedure.

If before institution of the court procedure the parties have not attempted to resolve the dispute in the mediation procedure, the judge conducting the court procedure, if he deems it appropriate, may at the preparatory hearing propose to the parties to attempt to resolve their dispute in the mediation procedure.

Article 5: The parties shall jointly select a mediator from the list of mediators established by the Association.

If the parties can not agree about the choice of mediator, then the mediator shall be appointed by the Association.

The written agreement enactment referred to in paragraph 1, or the enactment of the Association of Mediators referred to in paragraph 2 of this Article shall be submitted and inserted into the case file with the proceeding court, if the mediation procedure has been instituted during or after institution of the court procedure.

## **II – Principles of the Mediation Procedure**

Article 6: The parties in dispute shall institute the mediation process and participate in reaching a mutually acceptable agreement on a voluntary basis.

Article 7: The mediation procedure is of a confidential nature. The testimonies of the parties made in the mediation procedure may not without approval of the parties be used as evidence in any other procedures.

The mediator shall keep secret of the information provided to him during the separate meetings with each of the parties, and shall not discuss them with the other parties, unless agreed upon otherwise.

Article 8: The parties in the mediation procedure shall have equal rights.

Article 9: The mediator shall mediate in a neutral manner, without any prejudice as to the parties and the subject of dispute.

## **III – Mediation Procedure**

Article 10: The mediation procedure shall be instituted by a written agreement on mediation signed by the parties in dispute and the mediator.

Article 11: The agreement on mediation shall contain: information on the parties to the agreement, the legal representatives or plenipotentiaries, the subject of dispute (description of the dispute), the statement of acceptance as to the principles of mediation defined in this law, the place of mediation as well as the provisions on the costs of the procedure, including the mediator's fee.

Article 12: After signing of the agreement on mediation, in arrangement with the parties, the mediator shall schedule the time and the closer location – space for holding of the mediation meeting.

Article 13: If a court procedure is already in due course, the parties who have agreed to resolve their dispute in the mediation procedure shall be obligated to inform to that effect the judge conducting the court procedure, by submitting to him copies of the mediation agreement.

Article 14: If in the course of the civil action, on their own initiative or upon the proposal of the judge, the parties have agreed to attempt to resolve their dispute in the mediation procedure, the court shall postpone the hearing by no later than 39 days.

Article 15: If the parties in dispute are individuals, their attendance at the procedure shall be mandatory.

The interests of the parties in the procedure may be represented by their legal representatives or plenipotentiaries.

The actions in the mediation procedure, including signing of the settlement agreement, as undertaken by the plenipotentiaries, shall have the same legal effect as though undertaken by the parties themselves.

Article 16: In addition to the mediators, parties or their representatives, the procedure may also be attended by third parties, provided that the parties give their consent to that effect.

Any third parties attending the mediation procedure shall obligate themselves in writing that they shall adhere to the confidentiality principle of the mediation procedure.

Article 17: The parties shall in due time submit to the mediator all the relevant documentation related to the subject of dispute.

Article 18: In the beginning of the mediation procedure, the mediator shall briefly inform the parties of the goal of mediation, of the procedure to be conducted, as well as of the role of the mediator and the parties in the procedure.

Article 19: The mediation procedure may be terminated by either party at any time in the course of the procedure.

The mediator may terminate the mediation procedure if he believes that any further procedure should have no purpose.

The mediator shall terminate the mediation procedure if reasons exist or appear in the course of the procedure preventing him from being neutral and unbiased.

A written or oral statement of a party for termination of the procedure, or a belief on the part of the mediation that any further procedure is non-purposeful, shall be stated by the mediator in the form of a separate enactment, and shall be signed and submitted by him to the proceeding court.

Article 20: The mediator shall be obligated to conduct the mediation procedure without any delay.

Article 21: In the course of the mediation procedure, the mediator may also have separate interviews with either party individually.

Article 22: The mediator shall not give promises or guarantee specific outcomes of the mediation procedure.

Article 23: Upon the request of a party, brought up during a separate interview, the mediator may propose options for resolution of the dispute, but not the solution itself.

Article 24: Once the parties in the mediation procedure identify the solution to the dispute, with the assistance by the mediator, they shall draft a written settlement agreement and sign it off immediately.

Article 25: The settlement agreement referred to in Article 24 of this law shall have the force of a final and enforceable document.

Article 26: If civil action is in due course, the parties shall be obligated to inform the court of the outcome of the mediation procedure immediately, and no later than before the hearing is scheduled pursuant to Article 14 of this law, by submitting the settlement agreement.

Article 27: The mediator shall be subject to liability for any damage he may inflict on a party through his unlawful proceeding, according to the general rules of liability for damage, or disciplinary liability in accordance with the enactments of the Association.

#### **IV – Conflict of Interest**

Article 28: The mediator may not proceed in the cases in which he has any personal interest, family or business relations with a party in dispute, or if any appears in the meantime, or if other circumstances exist bringing into suspicion his impartiality.

The mediator shall not proceed in cases in which he has previously proceeded as a judge, or has been a plenipotentiary, legal representative or advisor to either of the parties.

Article 29: The mediator may conduct the mediation procedure even in cases referred to in Article 28, of this law, if the parties, once informed of existence of such circumstances, have agreed to have him conduct the procedure.

#### **V – Payment of Costs for the Mediation Procedure**

Article 30: The fee and compensation of mediator's costs, in the amount prescribed in the enactment of the Association, as well as other costs necessary to conduct the mediation procedure, shall be paid by the parties in equal parts, unless the mediation agreement provides otherwise.

#### **VI – Requirements for Conducting Mediation**

Article 31: The mediator may be a person meeting the general requirements for employment.

In addition to the requirements referred to in paragraph 1, of this Article, the mediator shall also meet the following requirements:

- a) a university degree,

- b) completed training according to the program of the Association or according to another training program recognized by the Association,
- c) entry into the registry of mediators held by the Association.

The person who is successful in completing the training for mediators shall be issued an appropriate certificate serving as a basis for entry into the registry of mediators.

Article 32: A foreign national authorized to perform mediation in another state may in specific cases, under the condition of reciprocity, conduct the mediation procedure in Bosnia and Herzegovina, provided that he obtains a prior approval from the Ministry of Justice and the Association of Mediators in Bosnia and Herzegovina.

## **FINAL PROVISIONS**

Article 33: This law shall come into effect on the eighth day from the date of publication in the Official Gazette of BH, and in the official bulletins of the Entities and the Brcko District of BH.

PS BiH No. 76/04

June 29, 2004

Sarajevo

Presiding Representative  
of the House of Representatives  
**Martin Raguz**, in person

Presiding Delegate  
of the House of Peoples  
**Goran Milojevic**, in person



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