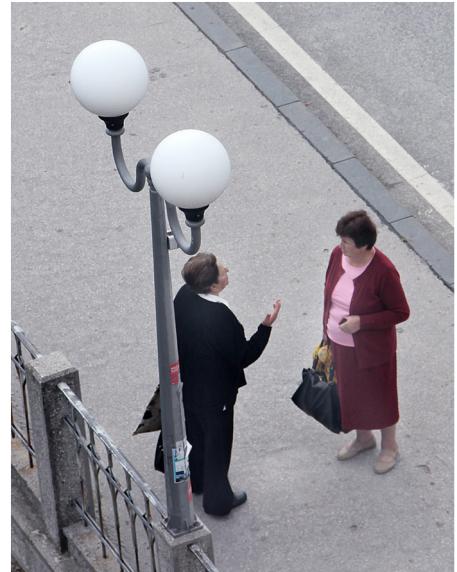




# Building Bridges – Strengthening (Community) Mediation in Mostar

Elvir Đuliman, Carla Schraml



Udruženje medijatora  
u Bosni i Hercegovini  
Удружење медијатора  
у Босни и Херцеговини



Udruženje medijatora  
u Bosni i Hercegovini  
Association of Mediators  
in Bosnia and Herzegovina

**ciP**  
Berlin Center for  
Integrative Mediation

**NDC**  
Nansen dijalog centar Mostar

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# 1. Summary

The present study, a cooperation between NDC Mostar and CSSP – Berlin Center for Integrative Mediation, was produced within a CSSP project aiming at strengthening (community) mediation in Mostar. This project is funded by the German Federal Foreign Office. The study is based on interviews with experts from different professional backgrounds working in the field of (community) mediation and dialogue (see Annexe 1) conducted by Nansen Dialogue Centre (NDC) Mostar. The study's main objective is to nurture project activities and to strengthen the involvement of relevant actors in the field of (community) mediation.

Enhancing mediation as a method of transforming conflicts at a community as well as at an individual level can support positive change in Mostar in many ways: It transforms relationships by revealing different perspectives, interests, needs and fears, which are still very rarely discussed e.g. between citizens living in the western and eastern part of the city. Generally, mediation strengthens relationships and promotes an attitude seeking to understand other perspectives. By involving crucial stakeholders at all levels in decision making processes that have often been limited to nationalistic political rhetoric and interests, these processes become more inclusive and based on a broader range of options.

Currently, Mostar is a de facto divided city: Croats live almost exclusively in the western part, whereas Bosniaks are living mainly in the eastern part. Substantial parts of public infrastructure (such as health, communal, or postal services) are organised separately in both parts of the city. Symbolically and politically charged disputes about Mostar and its future continue to create tensions at the political level that are sometimes transferred to the population.

However, large parts of the population resist living a daily life structured and organised along ethnic lines. Many people cross the invisible border – one of the main boulevards in town. There are many possibilities for interaction and encounters. Overall, ethnic tensions are rather seen as one problem among many and it is believed that reality is not as bad as often depicted in the media.

Mediation is a method of conflict resolution where a third party – a mediator – helps the conflict parties to find a solution which meets their interests and needs. The overall goal is to transform and improve the relationship between them. More often than not, the process follows distinct steps aiming at generating mutual understanding, adopting other perspectives, and joint generating of options. Its basic principles define mediation as a

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confidential and voluntary process in which the mediator stays “omnipartial”<sup>1</sup> and which leads to auto determined solutions. CSSP has specific expertise in applying mediation to community conflicts, i.e. conflicts involving group identities. Community mediation transforms the ways groups and individuals deal with conflict at the local level by focusing on transforming relationships, solving concrete problems and enhancing inclusive decision-making processes.

In the symbolically and politically charged environment of Mostar, specific entry points for strengthening (community) mediation are defined by: the history of mediation in Bosnia and Herzegovina (B&H), existing laws and regulations, as well as existing capacities and support of stakeholders and the population in Mostar. Experiences and lessons learnt from the field of mediation are also to be taken into account and are crucial for defining approaches for future projects.

Mediation was first introduced to B&H in the post war period when the Canadian Institute for Conflict Resolution (CICR) implemented the Third Neutral Party programme (1998-2002). Participants of that programme formed the crucial Association of Mediators in 2002. Mediation came to B&H as part of conflict resolution and reconciliation programmes on the one hand, as well as within justice system reform, on the other hand.

Generally, two main laws – as well as additional rule books – define how mediation is to be implemented as a tool for legally binding conflict resolution in B&H. Amongst others, the laws regulate court referred mediation, mostly applying to civil law cases. Furthermore, the laws make the Association of Mediators an exclusive partner for (legally binding) mediation processes in current B&H. Other laws such as family law and law on discrimination require mediation to be applied optionally and obligatorily before or instead of court procedures.

Mediation in B&H is very much understood and practiced as legally binding. Most active mediators in B&H are lawyers whose practices are focused on court referred mediation and legal disputes. Crucial stakeholders, such as the Association, support and understand mediation as part of the legal system. This predominance of professionals with a legal background favours a technical view of mediation: The need for and the objective of mediation are often seen by mediators and stakeholders as providing legally binding decisions – and its advantage in the thereby saved costs, not necessarily in the transformed relationship.

The Association of Mediators is the central actor related to mediation in B&H. Amongst others, it offers basic and advanced training for mediators. About 165 certified and registered mediators there mediated close to 2000 mediation cases in 2016, mainly in Republika Srpska (RS). In Mostar on the other hand, experience, usage and capacities related to mediation are relatively low and dispersed. Those related to community mediation are at an even lower level.

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<sup>1</sup> “Omnipartial” means that the mediator is partial to all parties in conflict seeing and understanding emphatically their perspectives, interests and needs.

Community mediation is hardly known and not institutionalised at all. Accordingly, capacities in this field are not very strongly developed except for some trainers from the Association who participated in trainings back in 2001. However, due to the post conflict context and existing divide in Mostar, many civil society actors have vast experience with interethnic dialogue projects and have been trained in dialogue facilitation. In schools, especially among school pedagogues, capacities for school mediation exist, as some of them have been trained in this field and have had some opportunities to apply their competences.

Crucial entry points identified by the study are, amongst others, an existing favourable legal and institutional framework for mediation in B&H, which, however, is seldom made use of. This is also due to the fact that information about (community) mediation is lacking. As mentioned above, mediation in B&H is highly influenced by and related to the legal sector. A rather technical understanding of mediation prevails and crucial stakeholders have a rather weak interest in promoting mediation.

Lessons learnt to be taken into account are, amongst others, the fact that the term »intercommunity« has a political connotation for many people and leads to scepticism. Similarly, many people have lost faith in projects that directly promote »peace building«, »reconciliation«, etc. because these terms have been used extensively in the past. Since many people in B&H have lost faith in future development, they are not interested in getting involved in political, social or civic initiatives.

With the specific context for mediation in Mostar and B&H in mind, some focus areas for projects aiming at strengthening community mediation in Mostar can be defined. One identified focus area is awareness raising and sensitisation activities targeting the population, court staff and lawyers as well as personnel from institutions that are enabled or obliged to use mediation. Furthermore, capacity building for this target group as well as for non-judicial staff in general should be a crucial focus for strengthening mediation. For all activities, good cooperation with stakeholders in Mostar and the Association of Mediators is key. It is a given fact that a needs based, goal-oriented and transparent approach will contribute to increased sustainability.

## 2. Methodology

The main source of information for this study were interviews with stakeholders from different fields related to mediation, such as civil society representatives from Mostar, representatives from the City of Mostar or the Municipal Court of Mostar as well as from the Association of Mediators of B&H (see Annexe 1).<sup>2</sup>

Some quotes have been attributed to the interviewee. The major part of information is depicted in an aggregated way without any explicit reference to the different sources. The present study, a cooperation between Nansen Dialogue Centre (NDC) Mostar and CSSP – Berlin Center for Integrative Mediation, was produced within a CSSP project aiming at strengthening (community) mediation in Mostar.

The interviews with experts from different professional backgrounds working in the field of (community) mediation and dialogue (see Annexe 1) were conducted by NDC Mostar. The study's main objective is to nurture project activities and to strengthen the involvement of relevant actors in the field of (community) mediation. Nonetheless it is also considered to be of use for the broader public seeking information about (community) mediation in Mostar.

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2 Since it is not considered to be relevant for an understanding of the content, the interviewees are not mentioned by their names, but by their institutions and professions.

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### 3. The political and social situation in Mostar

The current situation in Mostar is to be understood in the broader context of B&H. The country is divided into the two formalized entities Federacija Bosne i Hercegovine (FB&H) and the Republika Srpska (RS) and into three ethnically dominated parts of its territory. Whereas Serbs and Bosniaks each constitute the majority in the formalized entities, Croats are a relevant minority in the FB&H. The current forms of the B&H state, constitution and government are politically disputed – partly based on ethnically presented claims.<sup>3</sup> The current form of state, constitution and government is politically contested: the parties are in a power struggle over a design of the future state of B&H. Nationalist ideas play a role to justify and present their claims.

Ethnically driven institutions in B&H (favoured by a constitution designating the three peoples as constitutive) are enhancing a strong relatedness between ethnicity and the ability to fulfil political or public functions. This is especially the case for the national parties in power such as Hrvatska Demokratska Zajednica (HDZ), Stranka Demokratske Akcije (SDA) and Savez Nezavisnih Socijaldemokrata (SNSD), but in the political realm in general. At the local level, politically and ethnically defined majority-minority constellations often play a role: Those in minority in ethnic and political terms feel potentially uncomfortable and the system is (suspected to be) designed to work in favour of those belonging to the majority. Specific conflict dynamics emerge where political parties are struggling for power in multi-ethnic places without clear majorities, as is the case in Stolac, Mostar, Prozor-Rama, or Gornji Vakuf/Uskoplje. Often, frustration with the situation and fear of the alleged “other” is fabricated and enhanced by political parties in order to homogenize and mobilize “their” electorate.

Systemic reconciliation efforts jointly supported by elites could help to develop a single, integrated vision and narration of the past but have hardly been conducted at a national level. Opposing convictions are strongly present about victimhood and discrimination, about heroes and war criminals. Ethnic tensions are tangible, mostly in the media, but also within political circles and very often in social networks and on the internet. They culminate from time to time when there is some big political dispute (i.e. about elections, constitutional changes etc.), a sports event, or other exceptional events such as the verdicts of The International Criminal Tribunal for the Former Yugoslavia (ITCY).

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<sup>3</sup> According to the contested results of 2013 census (which were published only in 2016), Bosniaks make up 50.11 per cent of the population (and 88.23 per cent of those live in the Federation), Serbs 30.78 per cent of the population (and 92.11 per cent of those live in RS) and Croats 15.43 per cent of the population (and 91.39 per cent of those live in the Federation).

Mostar as a city is also symbolically charged and politically contested: It is one of the biggest urbanisations and one of the very few multi-ethnic cities in B&H. Mostar has a crucial role to play in the political disputes about the current form of B&H state, constitution and government. Consequences are, amongst others, a very complex and politically disputed internal statute of the city and a lacking agreement on an election law for its city council. Local elections have not taken place since 2008, a situation that is affecting the development of the city and everyday life of its citizens. The symbolically and politically charged disputes around Mostar and its future are creating political tensions which sometimes permeate to the population.

Currently, Mostar is a de facto divided city: Croats live almost exclusively in the western part, whereas Bosniaks are living mainly in the eastern part. Substantial parts of public infrastructure (such as health, communal, or postal services) are organised separately in both parts of the city. All kindergarten, elementary and high schools follow separate Croat or Federal (i.e. Bosniak) curricula. Most of them are even located in separate buildings, only few schools are “two schools under one roof”, working as one school with two curricula.

Many people living in Mostar perceive ethnic tensions, if at all, not at a personal, but at a group level. Ethnic tensions are seen to be individually driven incidents or a result of political manipulations. Overall, ethnic tensions are often seen as one problem among many, such as e.g. economy, unemployment, and lack of perspectives for young people. It is believed that reality is not as bad as often depicted in the media. Nonetheless, some topics (such as the organisation of a future B&H state, the question of responsibility for the war and major atrocities, and felt injustices and discrimination) are generally tabooed and often avoided in conversations in order to keep up a sense of ostensive normality.

Substantial parts of population resist living a life structured and organised along ethnic lines. Many people regularly cross the invisible border – one of the main boulevards in town. There are many possibilities for encounters and interaction. An active civil society contributes to an atmosphere where people live, work and socialise in a peaceful and normal manner. Many concerts, theatre performances, and cultural events take place with audiences of mixed ethnic or other background. For example, for the New Year’s celebration in 2017, people from all over Mostar gathered in the city centre and enjoyed a programme organised by the City of Mostar.

In May 2018, the American Embassy, the Office of the High Representative (OHR) and the European Union (EU) Mission in B&H oversaw the beginning of negotiations between the main B&H political parties. The main objective of the meetings was to agree on changes to the electoral law provisions for Mostar in order to make local elections possible in October 2018, for the first time in ten years. However, the stances of HDZ and SDA once again blocked an agreement: Whereas SDA insisted on solving the question of the statute of the city first, HDZ strived for amendments to the electoral law as a precursor for discussing changes to the statute.

## 4. (Community) mediation

Mediation is a method of conflict resolution where a third party – a mediator – helps the parties to the conflict to structure their conflict and conversation in a way so that the parties can find a solution, which meets their needs and interests. The overall goal is to transform the relationship between the conflict parties. The mediator supports the parties by asking questions and moderating their conversation. Often the process follows distinct steps aiming at generating mutual understanding, adopting the other's perspective, and joint generating of options. Depending on approach and context, e.g. a family or working environment, a focus is put on the exploration either of interests or more of underlying needs.

In mediation, the parties to the conflict are in the central position. They have the ownership of the conflict and the process. The mediator's job is to establish a better and more positive atmosphere, more coordinated and systematic interaction which gives both parties room and opportunity to listen and be listened to, to understand and to be understood. The mediator is not meant to propose any solution: Its basic principles define mediation as a confidential and voluntary process, in which the mediator stays "omnipartial"<sup>4</sup> and which leads to auto-determined solutions.

Unlike in court procedures, the goal is not to identify who is right or wrong or whose demands are more justified. Accordingly, in an ideal mediation process there is no one who will lose and be left unsatisfied. The method is meant to generate options and solutions that can achieve satisfaction for both sides because they are based on the interest and needs of the parties. In this sense, the courtroom is a win-lose or lose-lose environment, whereas mediation allows for a win-win situation. Besides the very central goal of transforming the relationship, mediation processes – as compared to court procedures, for example – are often less cost-intensive and quicker in achieving results.

Mediation can be applied with the aim to resolve different kinds of conflicts emerging at different levels of society and involving different actors. CSSP has specific expertise in applying mediation to community conflicts, i.e. conflicts involving group identities.

These conflicts are often related to (perceived) differences in economic, political or social power. Community conflicts can emerge between individuals as well as between groups. Community mediation transforms the ways groups and individuals deal with conflict at the local level by focusing on transforming relationships, solving concrete problems and enhancing inclusive decision-making processes. In this sense, community mediation can induce and support structural changes.

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<sup>4</sup> "Omnipartial" means that the mediator is partial to all parties in the conflict, seeing and understanding emphatically all their perspectives, interests and needs.

## 5. The history of mediation in Bosnia and Herzegovina

Formalised and legally binding mediation practices were introduced to B&H in the years after the 1992-1995 war. Before that, mediation was not formalised as a legal option. The introduction happened mainly thanks to various international organisations and NGOs. Mediation came to B&H as part of conflict resolution and reconciliation programmes on the one hand, as well as of the reform of the justice system, on the other hand.

One crucial step towards the institutionalisation of mediation in B&H has been the programme Third Neutral Party that the Canadian Institute for Conflict Resolution (CICR) implemented from 1998 to 2002. The aim was to create preconditions for using mediation as a tool for legally binding conflict resolution and to rebuild social structures in the regions of Mostar and Banjaluka. The project provided key professionals including lawyers, judges, teachers, social and NGO workers with the know-how and skills to be able to create bridges, reestablish communication and induce healing among community, religious and business leaders among Croats, Serbs and Bosniaks.<sup>5</sup>

One of the long-lasting results of the programme was the foundation of the crucial Association of Mediators in B&H in 2002 by its participants. Many mediators still active today were trained by this programme. »It was Vesna [Dasovic-Markovic, leader of the project] who brought mediation from Canada to B&H«, says Jagoda Ribica, herself a mediator and member of the association since then.

The first group of mediators was officially trained according to the certified training procedure defined by the Association of Mediators in 2005. Christian Schwarz-Schilling, former High Representative of the International Community and founder of CSSP, handed out the certificates.

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5 <http://www.cicr-icrc.ca/en/international/bosnia-and-herzegovina.html>

## 6. The legal framework of mediation in Bosnia and Herzegovina

Mediation in B&H is regulated by several laws that the Association of Mediators was actively involved in drafting. The process involved cooperation with the Ministries of Justice and the Associations of Judges and Prosecutors from both entities, the Independent Judiciary Committee (IJC) and the American Bar Association (ABA). The first step was the adjustment of process laws, including the directive that judges can direct (civil law and, partly, property law) court cases to mediation.

After these suggestions were adopted in 2003, next steps were taken with the aim to create legal preconditions for mediation. Abovementioned partners, together with the Office of the High Representative (OHR) and Southeast Europe Enterprise Development (SEED), created a working group that drafted the Law on Mediation Procedure which was adopted by the Parliament of B&H in June 2004.

In summary, mediation in B&H is mainly regulated by the following two laws:

- The Law on Mediation Procedure<sup>6</sup> (Zakon o postupku medijacije), adopted in 2004. It regulates the mediation procedure, its principles and the role of the mediator. According to this law, the signed agreement resulting from the mediation process can be as binding as a final court verdict. For criminal law cases, mediation can only be used when it is about deciding on a property claim and if the judge considers that the property claim is such that it is desirable to refer it to mediation. Civil law cases, however, can always be subjected to mediation. The parties to the conflict can agree to resolve their dispute before going to the court through mediation, but they can also opt for mediation even when the process has already started (yet, before the main hearing has been concluded). They can also choose mediation during a preparatory hearing.
- The Law on Transfer of Mediation Tasks to the Association of Mediators<sup>7</sup> (Zakon o prenosu poslova medijacije na udruženje medijatora), adopted in 2005. Adopting this law enabled practical implementation of mediation and created a legal framework for the Association of Mediators. Before, the legal framework was incomplete since the option of transferring mediation from the court to the association needed to be regulated. This law made the Association of Mediators a legal and exclusive partner in mediation procedures in B&H. According to the law, other associations registered in B&H could apply for this status to the Ministry of Justice. However, until 2018 the Association of Mediators remains the exclusive partner in mediation procedures in B&H.

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<sup>6</sup> [http://www.oss.ba/dokumenti/Zakon\\_o\\_postupku\\_medijacije\\_BIH.pdf](http://www.oss.ba/dokumenti/Zakon_o_postupku_medijacije_BIH.pdf)

<sup>7</sup> [http://www.umbih.ba/dokumenti/zakoni/zakon\\_o\\_prenosu\\_poslova\\_medijacije.pdf](http://www.umbih.ba/dokumenti/zakoni/zakon_o_prenosu_poslova_medijacije.pdf)

In 2005, the Association of Mediators formed a working group for developing rule books, which define its internal rules. Amongst others, they regulate how to register with the Association, how to become part of the mediators list, which fees are to be paid and which forms to be used to initiate a mediation process. The rule books, including the forms, were adopted in 2006 as a last step of necessary legal and administrative preconditions for practical implementation of mediation.

Furthermore, other laws require mediation to be applied optionally or obligatorily before or instead of court procedures:

- According to the Family Law of the Federation of Bosnia and Herzegovina<sup>8</sup> (Porodični/Obiteljski zakon Federacije Bosne i Hercegovine), mediation is obligatory in cases of divorce when spouses have children.<sup>9</sup> Besides that, mediation can be applied on a voluntary basis for spouses without children.<sup>10</sup>
- According to the Law on the Prohibition of Discrimination (Zakon o zabrani diskriminacije)<sup>11</sup>, the Ombudsman for Human Rights of Bosnia and Herzegovina is the central institution for the protection from discrimination. Within its competence, the institution can initiate a mediation procedure in accordance with the provisions of the Law on Mediation. The subsequent process is conducted with external support.

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<sup>8</sup> <http://www.fbihvlada.gov.ba/bosanski/zakoni/2005/zakoni/25hrv.pdf>

<sup>9</sup> »Before initiating the divorce procedure, spouse or both spouses that have children for which they have parental care, are obliged to submit request for mediation to the physical and legal person authorized for mediation.« (Family Law of Federation of Bosnia and Herzegovina, Article 45, Paragraph1)

<sup>10</sup> »Request for mediation could be submitted by the spouses that do not have children for which they have parental care.« (Family Law of the Federation of Bosnia and Herzegovina, Article 45, Paragraph 3)

<sup>11</sup> Law on the Prohibition of Discrimination, Article 7, Paragraph 2d:  
<https://www.parlament.ba/law/DownloadDocument?lawDocumentId=cbaa795e-85cf-42ca-8982-cec19b7134ab&langTag=bs>

## 7. Capacities, support and usage of (community) mediation

Generally, mediation is almost exclusively legally binding and existing laws regulate mediation as part of the legal system. Many of active mediators in B&H are lawyers whose mediation practice is focused on court referred mediation and legal disputes. Crucial stakeholders, such as the association and its representatives, support and understand mediation as part of the legal system. This predominance of professionals with a legal background favours a technical view of mediation: The need for and the objective of mediation are often seen by mediators and stakeholders as providing legally binding decisions – and its advantage in the thereby saved costs, not necessarily in the transformed relationship. Community mediation is nearly unknown in Mostar, although dialogue activities enjoy some awareness. Accordingly, capacities in this field are not very strongly developed. Some of the trainers from the Association of Mediators who participated in trainings organised by Canadian Institute for Conflict Resolution (CICR) back in 2001 dispose of capacities. They have also had some opportunities to apply their skills within the framework of school mediation. In schools, especially among school pedagogues, capacities for school mediation exist, as some of them have been trained in this field and have also had some opportunities to apply these competences. However, especially in the immediate post-war period, many projects in Mostar had interethnic dialogue components. In addition, most of civil society organisation representatives participated in dialogue trainings and have strong experience in implementing interethnic dialogue projects and facilitating dialogues.

### 7.1. Association of Mediators

The Association of Mediators was established in March 2002 and is registered at the level of B&H. It has two offices in Sarajevo and Banjaluka. These offices have one employee each who is tasked with technical and administrative duties such as receiving requests for mediation, handing out the relevant forms, communicating with courts, connecting clients to mediators, and registering resolved cases. The governing structure consists of an executive board with a president and six members and a supervisory board with three members.<sup>12</sup> Members of the associations include judges, lawyers,

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12 Executive board members are: Orleanka Nikodinović, president of executive board and association; Amir Avdagić, vice-president of executive board of association; Đemaludin Mutapčić, vice-president of executive board of association; Jagoda Ribica, member of executive board of association, Mensur Hadžimusić; member of executive board of association; Franjo Galić, member of executive board of association and Jelena Ćetković, member of executive board of association. Supervisory board members are: Hamdija Muratović, Dosta Baraković and Amra Mujkić Suljić.

education workers, psychologists, journalists and people from other professions who have been trained by the association in certified trainings and who applied for regular membership, including the payment of an annual membership fee. Membership and training fees are the main sources of the association's funding. Generally, the main activities of the Association of Mediators include offering mediation services<sup>13</sup> and trainings for mediators, certifying mediators, monitoring development and achievements in the field of mediation, as well as networking and outreach. The introductory or basic training to qualify mediators consists of two parts: The first one is called »Mediation 1 – Education for Mediators« and lasts 40 hours (5 days). The second one is called »Mediation 2 – Prepare for Mediation Process« and lasts 16 hours (2 days). Besides these trainings, the association conducts specialised trainings, including training for trainers. Trainings are organised and offered based on needs and interest, usually a few times per year.

As mentioned before, the association is currently the only organisation in B&H entitled to conduct mediation with legally binding agreements. Parties to the conflict hand in their application for mediation at one of the centres. They then can choose a mediator registered on the list<sup>14</sup> and trained by the association. The mediator contacts the parties and they start the process. If they reach an agreement, the parties as well as the mediator sign. The document is of the same binding character as a court decision.

In Republika Srpska (RS), the association receives substantially more requests than in the Federacija Bosne i Hercegovine (FB&H) (see below and Annex 2 for the Annual Report 2016 of the association).<sup>15</sup> One reason could be more proactive work in the field by mediators and association representatives. They managed, for example, to reach agreements with some public companies and significantly increased the number of mediations on communal cases (e.g. for disputes between citizens and public communal companies such as Elektrokratina). There are nearly no known cases of mediation directed from the court to the association, neither in the FB&H nor in the RS. In 2016, one case was reported (see below). Most of the mediations conducted in the B&H concern economic, communal and family disputes (see also Annex 2).

Table 1: Extract from the Annual Report of the Association of Mediators 2016<sup>16</sup>

| Mediation Cases 2016  | Sarajevo | Banjaluka | Total |
|-----------------------|----------|-----------|-------|
| Transferred from 2015 | 0        | 201       | 201   |
| Received              | 14       | 1917      | 1931  |
| From Court            | 1        | 0         | 1     |
| In Center             | 13       | 1917      | 1930  |

13 Please see Table 1 for more details

14 List of registered mediators:

[http://www.umbih.ba/umbih/index.php?option=com\\_content&view=article&id=106&Itemid=222&lang=ba](http://www.umbih.ba/umbih/index.php?option=com_content&view=article&id=106&Itemid=222&lang=ba)

15 Data for 2017 do not offer breakdown of numbers according to entity.

16 For the complete overview about mediation cases in the Annual Report 2016 and for the overview 2017, please see Annex 2.

## 7.2. Political environment

Within the city administration in Mostar, there are no specific individual capacities related to mediation. On the contrary, there is a need for stronger capacities: According to the City of Mostar statute, mediation is to be used in case of disciplinary procedures,<sup>17</sup> but there is currently no trained mediator among the employees who mediate these cases.

The Ministry of Education of Herzegovina – Neretva Canton supports school mediation, most often in the context of prevention of violence among pupils. More concretely, the ministry has organised trainings, published guidelines and coordinated activities in cooperation with schools and the Organisation for Security and Cooperation in Europe (OSCE). The Institution of Human Rights Ombudsman/Ombudsmen of B&H supports mediation within its mandate and capacities: Its staff is not formally trained nor in charge of conducting mediation procedures, but it can recommend mediation to the parties in conflict.<sup>18</sup> The Centre for Social Work Mostar (part of the City of Mostar Administration) is applying mediation to family disputes where it is obligatory according to the law. The parties to the conflict pay a fee for the service that usually covers one mediation session. This mediation is not legally binding and the mediators are not necessarily trained by the association. Additionally, the centre applies mediation to children at risk for restorative purposes (Family-Group-Conference-Model).<sup>19</sup>

## 7.3. Mediators

About 165 certified mediators are registered with the association. All of them concluded specialised training and passed their final exam. These mediators are exclusively entitled to practice legally binding mediation. Not all 165 mediators are practicing mediation on a regular basis. In Mostar, there are few active mediators, and they also do not regularly apply mediation.

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17 For example, if there is a situation where an employee is under disciplinary procedure (i.e. due to violation of some rules etc.) he or she should be directed to use mediation before further, legal measures are put into place.

18 »Depending on the nature of the case, the ombudsman suggest and directs parties to the mediation procedure. Often, it uses mediation to bring parties' positions closer. Success of this process depends on willingness of the parties and their openness for compromise. Mediation is proven to be very useful in cases of working disputes or cases related to family relations.« (Statement from Institution of Human Rights Ombudsman/Ombudsmen of B&H)

19 »A family group conference is a process led by family members to plan and make decisions for a child who is at risk. It is a voluntary process and families cannot be forced to have a family group conference.« (<https://www.frg.org.uk/involving-families/family-group-conferences>)

## 7.4. Legal environment

Mediation today is very much promoted and kept alive by judicial personnel and lawyers who constitute a substantial part of the members of the association. Even though other professionals are trained, more than half of trained and certified mediators are lawyers. Lawyers have a rather weak interest in using mediation, since the honorarium of a lawyer as compared to that of a mediator is substantially higher.<sup>20</sup> The law outlines an important role for the courts for initiating and applying mediation. However, only one case was directed by courts to the association in 2016.<sup>21</sup> Courts could have limited interest in initiating mediation cases, since cases solved by mediation count only half in the statistics, and the fees that the courts are entitled to only 10% of those of court cases. Nonetheless, the High Judicial and Prosecutorial Council of B&H verbally express support and some promotional activities have been organised, for example the Week of Open Doors at the Mostar Court by the Mostar Municipal Court and the Association of Mediators in December 2013.<sup>22</sup>

## 7.5. Civil society

The level of mediation capacities within civil society in Mostar is generally rather low. Some members of civil society have participated in trainings. Most of these did not focus systematically on mediation, but were thematically broader conflict resolution trainings. For the time being, mediation is rarely used by civil society. Generally, projects and programmes related to mediation have been drastically reduced since the early 2000s. One example for using mediation in schools has been the programme for prevention of peer violence in the Mostar's suburban area implemented by the Centre for Psychological Support (Sensus) from 2015 to 2017. Other local NGOs that occasionally use and support school mediation are e.g. the Nansen Dialogue Centre Mostar or the Network of Pedagogues of the Herzegovina-Neretva Canton.

Wider-ranging experience with interethnic dialogue and some experience with community mediation exist within civil society. More specific projects and organisations are, amongst others:

CSSP has been promoting community mediation and dialogue in various projects and with various partners in B&H and the region since 2012. From 2012 to 2014 a platform was (re) established and supported that strengthens the dialogue and exchange between civil society and the City of Mostar. More recently, dialogues between Mjesne Zajednice (MZ) and civil society as well as with municipality representatives have been conducted in other municipalities in the region.

20 The fee for a lawyer can be up to ten times higher than the fee for a mediator, depending on case.

The mediators' pricelist published by the association foresees the following honorarium: Up to an amount in controversy of 50.000 KM the mediator will charge 75 KM. Up to 100.000 KM, the mediator fee is 200 KM. ([http://www.umbih.ba/dokumenti/zakoni/pravilnik\\_o\\_nagradi\\_i\\_naknadi\\_v1.pdf.](http://www.umbih.ba/dokumenti/zakoni/pravilnik_o_nagradi_i_naknadi_v1.pdf.))

21 In this respect the Annual Report of the association does not provide information about 2017.

22 Mediators were promoting mediation at the court by distributing leaflets and talking to people etc.

For many years, Nansen Dialogue Centre Mostar (NDC Mostar) has been working on interethnic dialogue. Qualified and experienced trainers work with the centre and have organised and conducted various dialogue seminars throughout the years. Currently, NDC Mostar activities focus mainly on integrated education in ethnically mixed communities in the Herzegovina region.

Local Democracy Agency Mostar (LDA Mostar) has implemented various projects with interethnic dialogue components. Most of them focused on more specific issues (such as architecture, design and youth, as e.g. a part of the project ADA Mostar – Architecture Design Arts). Others promote intercultural values among youth (project My City – City of Interculturality). Strong capacities in intercultural as well as interethnic dialogue prevail within the organisation.

Other projects, such as the Mobile Team (MT) Orkdal – Mostar project,<sup>23</sup> have been promoting both interethnic cooperation and school mediation at the same time.

The Mobile Team, led by a psychologist, social worker and a pedagogue, have established a cooperation between the Centre for Social Work and primary schools and kindergartens. Seminars, workshops, and round tables have been organised, among others about school based peer mediation. The project has been based on principles of interethnic cooperation. The strong capacities built during the project are still present in abovementioned institutions.

## 7.6. Population

There are no specific capacities for mediation within the population. There are limited examples of use of mediation, amongst others through the Centre for Social Work in Mostar, where mediation is offered for divorcing spouses for whom mediation is obligatory. Generally speaking, the population – if it knows mediation at all – does not have much trust in mediation. “Vidimo se na sudu” (“see you at the court”) is a commonly heard phrase in B&H, also for smaller disputes. It might exemplify a cultural tendency for believing in authorities (such as courts) and for a weak willingness for compromise.

In schools, especially among school pedagogues, capacities for school mediation exist, as some of them have been trained in this field and have had opportunities to apply their competences. Amongst the few initiatives promoting mediation, the Mostar Fourth Elementary School established a mediation club in 2009 and has developed an annual programme.

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23 The project has been implemented from 2010 to 2013 as part of Municipal International Cooperation (MIC) between the City of Mostar and Orkdal municipality from Norway.

## 7.7. International community

The Organisation for Security and Cooperation in Europe (OSCE) supported mediation, mainly school mediation, in Mostar, in cooperation with the Cantonal Ministry of Education, schools and their pedagogues. Within its project Peer Mediation (2012), the OSCE organised a four day training for pedagogues, parents and students aiming at establishing mediation clubs in schools.

Mediation is used as a tool in that context. The OSCE Mission to BiH has also been one of the most active organisations in the field of interethnic dialogue for years. To this day, many of their efforts aim at promoting multi-ethnic cooperation (through education, civil society and relevant public institutions).

## 8. Entry points for strengthening (community) mediation

**Existing favourable legal and institutional conditions for applying mediation are little used.** In particular, the general legal framework, which entitles the Association of Mediators to conduct and organise legally binding mediation, is not much made use of, especially in the FB&H (see Table 1, or below). But also in more specific areas, such as antidiscrimination and Human Rights protection, labour and family disputes, laws and regulations define a central role for mediation in B&H. Institutions such as the ombudsman, the City of Mostar or the Centre for Social Work are legally entitled or obliged to apply mediation. Mediation tends to only be applied in these obligatory cases.

**Missing information about mediation is feeding scepticism and impedes its usage.** The low numbers of mediation cases in B&H (see e.g. Table 1) indicate that the population (especially in the FB&H) is hardly aware of mediation. Trust in mediation is possibly low. The legal provisions enabling the use of mediation are most often not known. Even among stakeholders, clarity is sometimes lacking, as in respect to the question of who is supposed and entitled to initiate the mediation process: Whereas e.g. Mostar Municipal Court sees the parties as entitled to ask for mediation, the Law on Mediation Procedure, Article 4, defines an initiating role for the judge.<sup>24</sup> In particular, the population and stakeholders from politics and civil society lack information about what community mediation is and what it can achieve. Asymmetrical information is contributing to defensive attitudes.

**The effect of promoting mutual understanding and transforming relationships is underestimated.** A rather technical understanding of mediation focusing on time and cost efficiency prevails in B&H: If mediation is known at all, it is known foremost as a procedure that is more cost and time-efficient than court cases. The advantageous aspect (as e.g. compared to court cases) of promoting mutual understanding and transforming relationships is rarely seen or acknowledged among stakeholders and the public. For example, few conflict parties see the (obligatory) family mediation at the Centre for Social Work in Mostar as a tool to reach an agreement and heal relationships, but more as a necessary step to get to the court procedure. A general exception from this understanding are dialogue projects whose immediate goal is seen as improving (interethnic) relationships.

**Possibly weak interest and lack of resources are compromising support by crucial stakeholders.** Courts are in a particularly advantageous position to promote mediation by

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24 Mostar Municipal Court describes the process and competences as follows (in an email replying to the interview request): »In the court proceedings, especially civil proceedings, if the parties express request for mediation, the court will direct them to the mediation procedure at the certified mediators, who are appointed by the Federal Ministry of Justice.« The Law on Mediation Procedure, Article 4, stipulates: »If the parties haven't tried to resolve their dispute before the court procedure by using mediation, the judge who leads the court procedure could, if he or she decides it is worthwhile, propose to the parties during the preparatory hearing to try to resolve the dispute through a mediation procedure«.

simply recommending it to conflict parties, but they rarely make use of it. Many registered mediators are lawyers who are most often not in need of income-generation through mediation and often do not have the time to work as a mediator in addition to being a fulltime employee or entrepreneur. Some lawyers might also have a limited interest in an enhanced use of mediation in B&H, since it potentially reduces the court cases and their income as lawyers (see above). The courts could have limited interest in transferring cases to mediation since it reduces the number of cases in their statistics and the incomes of the court (see above). The association – mainly funded by mediation (paid by parties to the conflict) and training fees – does not have the financial resources to conduct many promotional activities.

## 9. Lessons learnt

**“Intercommunity” has a political connotation.** “Intercommunity” is often related to “interethnic”, which to some ears has political connotations. As many people tend to avoid being related to political issues, the term “intercommunity” might create confusion and possibly cause defensive attitudes.

**Mediators are sceptical about the role of community mediation.** Mediators are sceptical towards community mediation, since it is not known and not acknowledged in any laws and its results and agreements are not legally binding.

**Terms such as “peace building”, “reconciliation”, “interethnic”, and “multi-ethnic”, have been used extensively in the past.** In recent years, many people have lost faith in projects that directly promote peace, reconciliation etc. The reason is probably that these big words have been used in an inflationary and excessive manner in the public discourse. This is also why many projects in the recent past have been dedicated to specific topics and not primarily to e.g. interethnic dialogue.

**Short duration of past projects has compromised sustainability.** There were some good initiatives and results in the field of reconciliation and interethnic dialogue, but a systemic follow up and long-term strategy was often lacking and failed to produce significant impact. Very often, people were frustrated and left alone with their failed expectations after the end of a project. Many projects related to mediation were short-term or ad-hoc activities. Accordingly, sustainability has been proven to be one of biggest challenges in (community) mediation and dialogue projects.

**General passivity and lack of interest of majority of population.** The majority of people in B&H are not interested in involving themselves in political, social or civic initiatives. B&H has one of the lowest election turnouts in Europe (50-55%). The people seem to have generally lost faith in both political as well as social reforms. Consequently, relatively few people are engaging in civil society initiatives.

## 10. Focus areas for strengthening mediation

**Sensitising population for mediation and its advantages.** Awareness needs to be raised among the population regarding the principles of mediation and its advantages, the legal provisions in B&H as well as the technical proceedings. The increased time and cost efficiency, but in particular the potential positive effects on the relationship need to be focused on. Generally, courts and other crucial institutions (e.g. Ministries of Justice, City of Mostar) should be involved. Sensitisation activities should also include institutions such as trade unions and chambers as well as (public) companies. Good practices in this respect are known from Republika Srpska where agreements between Association of Mediators and public companies have been signed, resulting in a significant number of resolved mediation cases.

**Sensitising court personnel and lawyers for mediation, including the specific legal provision, and its advantages.** Since judges and courts are the ones who are entitled to directly inform about and direct conflict parties towards mediation, their awareness needs to be raised, in particular for the positive effects on the relationship of conflict parties. Where procedures and competences in respect to court referred mediation are unclear, technical assistance and exchange needs to be provided.

**Sensitising and training of non-judicial personnel in respect to mediation.** Since a conflict of interest potentially exists for court personnel and lawyers practicing and promoting mediation, other professionals with non-judicial background (as e.g. social workers, teachers, and civil society representatives) are to be sensitised and if needed trained, ideally in cooperation with the association. Their involvement might also strengthen a less technical view of mediation and its advantages; in particular if they come from professional backgrounds which already involve social relationships.

**Sensitising legally able institutions to mediation and its advantages, conducting sensitisation activities in cooperation with them and training their personnel.** When legal provisions or internal procedures enable mediation or make it a legal requirement, as e.g. for labour disputes within the City of Mostar, but mediation is not or hardly applied, it is particularly important to promote the use of mediation (amongst others to e.g. avoid a backlog of disciplinary procedures). The awareness as well as the capacities of the personnel within these institutions as well as the awareness among potential clients need to be strengthened.

**Cooperating with stakeholders in Mostar and B&H, including Association of Mediators.** Experience and capacities regarding mediation and interethnic dialogue exist. The Association of Mediators as a crucial stakeholder for mediation as well as responsible authorities should be involved where possible. Mediators as well as established organisations and projects and possibly their target groups need to be involved in mediation and dialogue activities. Exchanges on good practices and lessons learnt could be very useful.

Next to competences in B&H, profound expertise in community mediation exists in Serbia, Croatia, and Kosovo.<sup>25/26</sup> For planning and conducting activities in the field of school mediation, local pedagogues, teachers, pupils, and representatives of the Cantonal Ministry of Education and Institutes for Education need to be involved.

**Conducting an innovative, needs-based, goal-oriented and transparent approach to community mediation and dialogue.** For designing and presenting the projects, it is important to keep in mind the intensive usage of some terms and the association between “intercommunity” and “interethnic”. Projects aiming at improving interethnic relations and reconciliation are needed, but for its general acceptance it helps to relate them to specific topics such education or the arts or to issues that are generally recognised as necessary. For strengthening community mediation, a special focus needs to be put on informing about the method: A clear presentation of the objectives should be a priority. Presenting good practices from other contexts is an option in order to improve the acceptance of the method.

**Carefully raising tabooed topics within dialogue while meeting the need for concrete change.** Although there are lots of opportunities for every day encounters in Mostar, structured and organised opportunities for dialogue, e.g. between Croats and Bosniaks, are missing. Some topics are tabooed and would have to be addressed very carefully. Improved understanding of the other’s perspective, in particular ethnically and politically influenced ones, might be a valuable goal per se. Yet the need of many people to see concrete change in visible things also needs to be met. A strong and exclusive focus on (interethnic) dialogue possibly provokes reluctance (see above).

**Strengthening school mediation by picking up on existent initiatives and structures.** There is a need and strong interest in school mediation. Representatives from schools and the Network of Pedagogues emphasise its big potential for preventing violence in schools and their environment. The Cantonal Ministry of Education is involved in processes in that field and see the need to intensify this work. School mediation could improve institutional cooperation of schools with either Federal (i.e. Bosniak) or Croat curricula, but also individual cooperation and relations among pupils, teachers and parents. The Centre for Psychological Support (Sensus) is recognized as actively working on the prevention of all forms of peer violence.

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25 Partners for Democratic Change Serbia (Partners Serbia) published »Manual for Mediation in Local Community«  
(<http://www.partners-serbia.org/wp-content/uploads/2015/09/Prirucnik-za-medijaciju-u-lokalnoj-zajednici.pdf>)

2. Center for Peace, Nonviolence and Human Rights, Osijek, Croatia published »Community Mediation«  
([http://www.centar-za-mir.hr/uploads/dokumenti/prirucnici/web\\_Medijacija\\_u\\_zajednici.pdf](http://www.centar-za-mir.hr/uploads/dokumenti/prirucnici/web_Medijacija_u_zajednici.pdf))

26 CSSP is strengthening (community) mediation in Kosovo. With the financial support of different donors, CSSP contributed decisively to built up the Mediation Centre Mitrovica, which is now an independent NGO promoting (community) mediation.

## Annexe 1: List of interviewees

- Association of Mediators, board member
- Center for Psychological Support »Sensus«
- Traffic High School Mostar
- Civil Initiatives Centre, project manager
- Local Democracy Agency Mostar, director
- Traffic and Mechanical Engineering Mostar, pedagogue
- Mobile Team Orkdal - Mostar Project, project manager
- Mediator and social worker
- Institution of Human Rights Ombudsman/Ombudsmen of B&H, office in Mostar
- Ivan Gundulić Elementary School, director
- Expert adviser for secondary education
- Adviser to the mayor of Mostar
- 4th Elementary school Mostar, director
- Mostar Court
- Mediators
- City of Mostar, independent officer for relations with NGO and religious communities
- Association of Mediators, president of executive board
- Network of Pedagogues of Herzegovina – Neretva Canton, president
- Association of Mediators, board member and certified trainer
- Centre for Social Work Mostar, pedagogue
- NDC Mostar, programme manager

## Annexe 2: Annual Reports of the Association of Mediators 2016 and 2017

**Table 1. Annual Report of Association of Mediators 2016**

|                         | Sarajevo 2016 | Banjaluka 2016 | Total         |
|-------------------------|---------------|----------------|---------------|
| Transferred from 2015   | 0             | 201            | 201           |
| Received                | 14            | 1917           | 1931          |
| From Court              | 1             | 0              | 1             |
| In Center               | 13            | 1917           | 1930          |
| Economic                | 10            | 210            | 220           |
| The Rest                | 4             | 1707           | 1711          |
| Finished                | 11            | 1877           | 1888          |
| Agreement Money Request | 8             | 1855           | 1863          |
| Non Monetary Claim      | 3             | 22             | 25            |
| Without Agreement       | 0             | 1              | 1             |
| Dropped                 | 0             | 118            | 118           |
| Remain in Progress      | 3             | 122            | 125           |
| Resolved Court Cases    |               | 170            |               |
| Funds Relieved (KM)     | 1,938,828.00  | 21,268,114.24  | 23,206,942.24 |

**Table 2. Annual report of Association of Mediators – First 9 months of 2017**

| Report: 01.01.2017 - 30.09.2017 |               |
|---------------------------------|---------------|
| Transferred from 2016           | 134           |
| Received                        | 1088          |
| Economic                        | 102           |
| The Rest                        | 986           |
| Agreements                      | 1046          |
| Without Agreements              | 6             |
| Dropped                         | 94            |
| Remain in Progress              | 76            |
| Resolved Court Cases            | 113           |
| Funds Relieved (KM)             | 13,792,627.38 |

## **Imprint**

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