



**Bosna i Hercegovina
Ministarstvo pravde**

Action plan for developing mediation in Bosnia and Herzegovina

Under the Justice Sector Reform Strategy in Bosnia and Herzegovina 2008-2012

June 2008.

Development of the Action Plan completed within IFC project „Alternative Dispute Resolution“ in Bosnia and Herzegovina, with financial support provided by the Government of the Netherlands and with expert participation from the Centre for Effective Dispute Resolution (CEDR) from UK.



Project supported by Government of Netherlands



Contents page

Introduction.....	3
Executive Summary.....	6
Action area 1: Promotion.....	7
Action area 2: Systems development.....	12
Action area 3: Capacity building.....	19
Action area 4: Sector or Stakeholder initiatives.....	25
Action Area 5: Monitoring And Reporting.....	29
Conclusion.....	32

Introduction

Since 2003, there has been considerable success in Bosnia and Herzegovina (BiH) in developing alternative forms of dispute resolution ('ADR') for commercial disputes that were within the courts system but were not being resolved effectively or expeditiously. The key ADR mechanism used has been mediation.

With the assistance of the International Finance Corporation (IFC), a professional cadre of mediators were trained followed by the formation of a local civil society institution - The Association of Mediators in Bosnia and Herzegovina, with a subsequent Law on Transfer of Mediation Activities to the Association in 2005. In addition a Mediation Act (Law on Mediation Procedure) was drafted and enacted by the Parliamentary Assembly of BiH in August 2004 - and development of additional bylaws necessary for a successful implementation of the Law enacted by the State Parliament in March 2006.

Through pilot projects in Sarajevo and Banja Luka, the infrastructure was created that allowed the broader introduction of mediation through the courts and helped build trust of all stakeholders and business that these alternative forms of dispute resolution could work in BiH.

More than 600 cases were mediated by 12 mediators trained according to best international practices - a success rate of 55% was achieved - and the agreements reached in these cases released € 9.5 million in assets formerly blocked in the court procedures which lasted for three or more years. IFC surveys indicate that just 36 percent of court decisions are fully, and 28 percent partially, enforced; on the other hand in 87 percent of cases a financial transaction between parties was completed after signing a mediation agreement.

With the Association now taking responsibility for the certifying of mediators under the relevant legislation there are 51 certified mediators in BiH - and with the transfer of the first pilot centres to the Association in July 2007, the first phase of the development of mediation and other forms of ADR in BiH has been completed and now all stakeholders must plan for the next period of development.

It is with this in mind, that the encouragement of alternative forms of dispute resolution is seen as a key part of the Ministry of Justice's Justice Sector Reform Strategy 2008-12. As part of Pillar 4 - Support for Economic Growth, this strategy envisages the production of a detailed action plan to further develop the use of mediation in BiH during this period.

Accordingly the Ministry of Justice has engaged the services of the Centre for Effective Dispute Resolution (CEDR)¹, to work with them to develop this plan.

The objectives of the action plan are as follows:

- Define required steps in building capacities within the Ministry of Justice
- Determine required steps in terms of promotion of mediation
- Develop respective policies
- Establish a framework for monitoring successful implementation.

¹ CEDR is a UK based not-for-profit organization with 18 years experience in commercial dispute resolution. For more information see www.cedr.com

To ensure that these objectives are met CEDR adopted the following methodology to ensure extensive co-ordination and collaboration with all stakeholders.

After an initial period of review and preparation, an intensive round of stakeholder dialogue took place in late February 2008. A one-day workshop was held in Sarajevo with representatives of all stakeholder groups to ascertain their general perspective on areas that are working well, areas that need to be addressed and specific ideas for the further development of mediation in BiH. Following this, more detailed meetings were held with representatives of all stakeholder groups, to further identify the key actions for the next 5-year period. This led to a draft action plan which was the basis for further consultation with key stakeholders in May 2008 via meetings and written comments, which led to further amendments and production of this final Action Plan in the light of comments made.

The Action Plan is a distillation of the views of the stakeholders as well as some input from CEDR, drawing on CEDR'S experience of developing mediation in many jurisdictions. In completing this Plan the writers have deliberately taken an 'optimal' approach. That is to say that every major action considered desirable to assist mediation to develop in BiH in the next 5 years has been included.

Resources

We are however aware that in any jurisdiction there are always demands on resources and decisions must be taken about the allocation of the resources. To assist in this consideration a breakdown has been made of the number of person days for project management and technical assistance under each action. These are determined under each project heading, although we assume that there will be an additional need to revisit and follow-through on the range of projects across the four years to ensure sustainability and evolution of impact. Some additional time must be added to the skeleton figures in recognition of this.

In summary, our recommendation is that to deliver all these actions over a four-year period would require at least 2 project managers/leaders to ensure implementation and sustained impact - based in our experience of estimated days of project leadership and co-ordination required to implement each of the actions set out in the Action Plan. Administrative support would be required in addition, calculated at 1 day for every 6 days of project management input.

We have also made an assumption that within each project, there will be considerable potential for contributions from other stakeholders in BiH. We have not separately costed these, as we believe that most of these contributions will come as voluntary support or on the basis of the work roles of the other individuals and organizations likely to be included in the scope of the projects, such as the courts.

One model would be for this project resource to be shared between the Ministry of Justice and The Association of Mediators with a project leader in each, with both in partnership to deliver the plans while specialist contributions would be made as appropriate between the two project leaders, and also within the various action plan streams of work. We note for example that

the Canada-Bosnia and Herzegovina Judicial Reform Project has indicated it may be contributing further to the resources of the Association of Mediators in the next year of its own project.

In relation to external technical assistance, we estimate that in the first year, 60 days of input would be required to set the Plan off to a strong start, with this reducing over the 4 year period as technical know how is built up in BiH so that in year 2, 40 days would be required, 20 days in year 3 and only 10 days would be required in year 4 of the Plan.

Executive Summary

The action plan has been divided into 5 Action Areas, as set out below. Each action area begins with setting out the rationale and objectives of each area. Then specific plans are developed indicating the issue involved, making recommendations and then detailing the necessary steps for implementation. Our recommendation is that to deliver all these actions over a four-year period would require at least 2 project managers/leaders to ensure implementation and sustained impact, possibly shared between the Ministry of Justice and the Association of Mediators. External technical assistance may be required of up to 60 days in Year One, declining to 10 days by the final year. And additional administrative support would be required on the project, calculated at one-sixth of the time required for project leaders. Exact financial calculations of these inputs have been left for local and funding agency consideration, however person days are set out in relation to each project head as an estimate of project contribution required for delivery of the project.

Action Area 1: Promotion	Action Area 2: Systemic Development	Action Area 3: Capacity Building	Action Area 4 Sector and Stakeholder Initiatives	Action Area 5: Monitoring and Reporting
A. Media Programme to public	A. Court Systems Development	A. Lawyers Capacity Building	A. Business-based Initiative	A. Annual Reporting by the court
B. Targeted Promotion to Business Sector	B. Mediation Pilot to resolve Utilities cases	B. Developing Capacity of Judiciary	B. Construction sector Initiative	B. Annual reporting by the Association of Mediators
C. Targeted Promotion to Lawyers	C. Nationwide System for accessing mediation	C. Developing Capacity of MoJ and other government bodies	C. Increasing Government use of mediation	C. European Union Harmonisation: Legislation and Procedure Review
D. Case Study Development	D. Reform of lawyers rules to support mediation	D. Ensuring viability of Association of Mediators	D. Employment initiative	
		E. Developing mediation service provision in BiH		

Action area 1: Promotion

Objective:

- To develop a national promotion/communication plan to promote mediation and increase awareness of key sections of the general public such as SMEs
- To target promotion at those stakeholders who can make the most difference in terms of using mediation services

Rationale:

Without exception all stakeholders agree that one of the key ways to increase the use of mediation to BiH is to continue to promote the benefits of the mediation process as a dispute resolution method to the public, business, courts and the legal profession. Much promotional activity has already taken place, however the Justice Sector Review Strategy and this action plan provide an opportunity for there to be a national communications strategy in relation to mediation and the key actions below are intended as focus points for such a strategy.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
A. Media programme to public	MOJ, AoM	3-36	50 days	Successful communications impact on key groups

Issue:

There is widespread agreement amongst all stakeholders that the general public in BiH is not well informed as to the benefits of the mediation process.

Recommendations:

- Funding be obtained for a media programme for the general public or for those sections of the general public which are regarded as particularly significant in terms of use of court time, as likely to access mediation for improved results.
- Instead or in addition to a general campaign approach, a programme could be focused around a 'mediation week' or 'settlement week' initiative through all the courts in BiH. In such an initiative, courts focus their activities on announcing and implementing a week dedicated to settling/mediating cases over this one (or possibly two) week period, through a number of initiatives. This initiative can form the basis of a very specific awareness-raising programme in the media, which could include for example a website demonstration of the mediation process

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Consideration of mediation week concept and agreement whether to proceed with this or general communication programme	MoJ, HJPC, AoM	Months 3-12	10 days	Agreement to proceed with mediation week or general strategy
Communication plan formulated to include costings of such a programme.	MoJ	Months 12-18	15 days	Draft communication plan produced
Funding sought from donor community/other	MoJ	Months 12-24	10 days	Funding secured
Implementation of communication plan including mediation week if agreed	MoJ, AoM, HJPC, NGO's etc	Months 24-36	15 days	Wide spread publicity of mediation across BiH

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
B. Targeted initiative to business sector	MOJ	Months 12-36	30-40 days	Take-up of contract clauses, mediation offers, etc.

Issue:

Raising awareness amongst the ultimate users of mediation (the commercial disputants), is always difficult in any jurisdiction. However, for mediation to truly develop in BiH, it is important that business generally is made aware of the option of mediation to resolve commercial disputes (in addition to any more general SME approach in A above).

Recommendations:

- Targeted initiatives to publicise mediation to business, in conjunction with specific sector initiatives set out in section 4 below.
- Web promotion programme of mediation and contract clauses through advertisements placed in recruitment and other websites used by SMEs in BiH
- Contract clauses/Protocol/Pledge programme to industry associations/foreign investor groups etc

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Publicise mediation and contract clause to SME's through popular websites used by SME's in BiH	MoJ, AoM	Months 12-24	10 days	Tracking of website traffic in relation to mediation and download of contract clauses
Institute programme to get major businesses in BiH, to insert mediation clauses into contracts and make a pledge to use mediation	AoM	Months 12-36	20-30 days	Contract clauses in at least 20 companies' contracts. Public Mediation Pledge signed by 30 of top BiH companies

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
C. Targeted promotion to Lawyers	MOJ	Months 12-36	45-50 days	Active lawyer engagement at heart of mediation activities

Issue:

Currently lawyers are not sufficiently engaged in the mediation process nor encouraging clients to use mediation to resolve disputes. They need to be convinced of the benefits of the process for them and for their clients. (The Canada BiH Judicial Reform Project is also undertaking some of this awareness-raising.)

Recommendations:

- o Attention needs to be given to the messages required to convince lawyers of the benefits of mediation as part of communication strategy. The first step in this is to identify clearly the benefits the process could bring to attorneys.
- o Target well known legal professionals/attorneys and members of the Association of Mediators as mediation champions
- o Encourage teaching of ADR in University law and business faculties.
- o Establish Co-operation with Bar Association in promotion of mediation.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Develop clear communication strategy for lawyers including materials to be used to promote mediation to lawyers.	AoM, others	Months 12-24	10 days	Communication strategy document and milestones
Mobilise members to talk to lawyers and lawyers groups	AoM, Young Lawyers' Association	Months 18-36	5-10 days	50 meetings, seminars with lawyers.
Target influential lawyers as mediation ambassadors	AoM, Bar Association	Months 12-15	5 days	5 mediation ambassadors from legal community.
Develop curriculum around mediation for university law/business faculties	AoM, Faculties of Law	Months 12-36	25 days	Topic on law/business faculty curriculum

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
D. Case study Development	AoM	12-48	33 days	Dissemination of case publicity to key stakeholders

Issue:

The benefits of mediation are often only realised by disputants once they enter the process. Also given the confidential nature of the process it is difficult to publicise success stories of mediation resolving well known disputes. One way to assist with bringing the process to life in any promotional activity is to use case studies of actual cases while respecting the duty of confidentiality and anonymity of the parties involved in the actual mediations..

Recommendations:

- To support promotional activities, develop a suite of case studies profiling the use of mediation in different dispute and industry sectors, to enhance the activities in this action plan.
- Involve mediators who have mediated cases and lawyers involved in such cases

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Establish working group responsible for coordinating the writing of case studies.	AoM	Month 12	3 days	Working group established
Decide categories of case studies to be written and establish template.	AoM	Month 15	5 days	List of categories and case study template produced
Role plays drafted	AoM	Month 15-18	15 days	Suite of 10+ case studies drafted
Used in promotion of mediation	AoM	Month 18-48	10 days	Case studies used in all promotional activities

Action area 2: Systems development

Objective:

- To develop the systems and processes of the institutions in BIH to fully support the provision of mediation.
- To consider development of a mediation system to resolve particular types of disputes which exist currently in the courts in BIH.
- To ensure the uniform support for the provision of mediation in the courts, across BIH.

Rationale:

For mediation to truly develop nationally in any jurisdiction; promotion, training and capacity building are in themselves not sufficient. The courts must develop systems and processes which support the referral of cases to mediation and ensure that as far as possible these systems are applied consistently in all courts across the country. In addition to the courts, other institutions should adopt policies that support the use of mediation to resolve disputes and which ensure that all citizens should be able to access mediation services quickly and with the minimum of cost.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
A. Court Systems Development	HJPC, MOJ	12-36	35 days	Clear integration of mediation in court practices

Issue:

During the initial stage of development of mediation in BIH the courts have generally been very supportive of the use of mediation. A legal framework has been put in place to allow mediation to operate and the pilot courts have established systems to support mediation. However as mediation enters its next stage of development over the next 4 years, there is an opportunity to look at the court system as a whole and consider what other 'systemic' changes can be put in place to further enhance the courts' support of mediation and to ensure the best use of the process of mediation as an alternative to trials or to issuing proceedings.

Recommendations:

1. Cases referred to mediation by judges which go on to settle should be included within the 'norms' established for judges to dispose of cases. Cases referred to mediation should in itself be given some credit in respect of the judge referring the case to mediation even should the case not settle. This will provide an incentive for the judges to refer cases into mediation.
2. Presidents of courts should set targets for the number of cases that should be referred to mediation by individual judges within their courts and for the court as a whole. This would provide clear guidance to judges and provide a baseline to monitor the

performance of judges at the individual level and courts more generally. Compliance with these targets should be monitored on a regular basis to make them effective (see section 5 monitoring and reporting).

3. To assist the courts in encouraging parties to agree to mediation, the incentive of a reduction of the court fee should be available to parties who agree to attempt mediation, and thereby save judicial time. The Ministry of Justice and HJPC should work together to ensure the new court rules allow this to happen.
4. Consider system to allow for earlier referral of cases to mediation. Feedback from users of the courts is that mediation is not offered to the parties until the judge has reviewed the claim and response. This is often some time after the claim has been initiated. Consider referral to mediation at an earlier stage perhaps through the court registry and specific inclusion of a choice to refer to mediation on the court forms when initiating, and responding to a claim.
5. Court to provide clarity that they will enforce mediation provisions in contractual agreements between parties. This will encourage business to include such clauses in contracts and will support the contract clauses programme to business in section 1.
6. AoM and Courts to review existing guidelines to Judges for referring cases to mediation, including how to target appropriate cases, and to disseminate to courts.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Ensure court fee reduction when parties mediate, included in new court rules	MoJ, HJPC	Month 12- 18	5 days	New rules in place allowing for court fee reduction
Convene working group to consider the development of court systems to be applied across BiH to support the provision of mediation.	MoJ, HJPC	Months 6-18	5 days	Working group established
Recommendations by working group to HJPC (and others) on necessary changes to courts systems and referral templates	Working Group/HJPC	Month 24	5 days	Recommendation report written and sent to HJPC
Agreement as to changes to be made and full implementation plan developed.	HJPC/MOJ	Month 27	5 days	HJPC formally adopt changes and develop detailed implementation plan
Implementation	HJPC/MOJ	Month 27-36	15 days	Changes in place

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
B. Mediation pilot to resolve utilities cases	HJPC, MOJ, pilot court	6-36	20 days	Mediation element within redesigned utilities case management system

Issue:

The resolution of utilities cases is clearly a priority within the court system in BiH, as the sheer volume of cases and their nature make them difficult to handle through normal court procedures. The cost of resolving such cases through the courts often far outweighs the value of any claim. While mediation is by no means the complete answer, the provision of mediation as *part of* a new system to resolve such disputes, could provide a quick and efficient method of the reduction of these types of cases. There are a number of different model for using mediation to resolve such disputes and these are set out below for consideration by the relevant institutions as part of the broader reform of utilities case management in BiH - we assume lessons will be sought from handling of utilities cases in other countries.

Recommendations:

1. Within existing court structure develop pilot programme where these cases are referred to Association of Mediators for mediation, including pilot of a telephone mediation system as proportionate to smaller cases. This to be funded by relevant state institution through savings made by court not dealing with such cases. AoM to develop suitable refined mediation processes (use of telephone mediation etc) in order to resolve disputes effectively and efficiently

Or,

2. Develop an internal mediator capacity within a pilot court to assist the court to resolve such cases. We understand that in some courts separate sections of the court have been established with associates hearing utilities cases, as well as separate enforcement. As a first step in this process train court staff as mediators and refer cases to them to attempt to resolve the cases through a refined mediation process.

Or,

3. If a separate administrative body is set up outside the courts to deal with these cases then mediation should be considered as part of the process to resolve such disputes. This can either be done through using existing institutions such as the AoM or through training in-house mediators to mediate cases as a first step in the resolution process.

The most effective model to resolve these cases will require considerable design input, including comparative studies, but we see this as currently outside the major remit of the mediation project. The AoM should be involved in these discussions however, and funding to support pilots sought from utilities companies as well as others.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Ensure that a representative with knowledge of mediation is involved in working groups considering how to manage the resolution of utilities disputes	HJPC, MoJ	6- 18	5 days	Mediator designated and engaged with utilities reform
Consider pilot court or agency project for mediating utilities cases to test the efficacy of such an approach	HJPC, Pilot court, AoM, Utilities companies	Months 12-18	15 days	Mediation Pilot project established for utilities cases

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
C. Nation wide system for accessing mediation	HJPC, MOJ, AoM	6-24	38 days	Nationwide system for accessing mediation established. Increased mediation across BiH

Issue:

Initial development of mediation in BiH was through the 2 pilots in Sarajevo and Banja Luka. However mediators have been trained from all over the country and a system which allows courts and users to readily access information about mediation and mediators in their local area should be designed in order for mediation to begin to develop across the country without necessarily the need to establish physical mediation centres with their associated costs.

Recommendations:

1. Establish a system which allows one or two access points for the users and the courts to get information on the use of mediation and for the appointment of a mediator in the disputants' local area.
2. This could be achieved through establishing a free call national telephone number/website to connect to the AoM for information and appointment of local mediator.
3. Avoid the cost of replicating physical mediation centre by encouraging the conduct of mediation in local venues such as lawyers or mediators offices, local courts, places of business, community centres etc.
4. Involve local mediators in developing this initiative and the finding of appropriate local venues for mediation.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Convene working group to develop nationwide system for accessing mediation. Should include mediators from different areas.	MoJ, AoM, HJPC	Month 6	3 days	Working group established
Working group to consider options and make recommendation of system to be adopted.		12	5 days	Recommendation as to system operation
System approved	MoJ, HJPC,	18	5 days	Necessary

	AOM			authority given to implement system
Implementation of system		18-24	15 days	System set up against implementation plan
System to go live with launch and relevant promotion programme		Month 24	10 days	Nationwide system for accessing mediation in operation with mediation being conducted in local areas.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
D. Reform of Lawyers Rules to support mediation	MoJ, Bar Associations	12-30	25 days	Bar Association rule reforms to recognize mediation

Issue:

While mediation practice has developed through the courts adopting practices encouraging the referral of cases to mediation, there has not been a similar development in the attitude of lawyers in encouraging their clients to consider mediation, once it is offered by the courts.

Recommendation

1. Reform of Bar Association rules to impose a professional duty to advise clients on mediation, in appropriate circumstances.
2. Develop clear guideline as to the tariff lawyers can charge clients while engaging in the mediation process.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Engage with Bar Associations in respect of reforming their rules and get agreement to do so.	MoJ , Bar Associations/AoM	12	5 days	Meetings with Bar Association
Bar associations to develop draft rules and guidelines for consultation.	Bar Association/ AoM	18-30	10 days	- Draft rules and guidelines developed. - Consultation process
New Rules agreed	Bar Association/AoM	30	5 days	New rules in force
Guidelines for tariff for engaging in mediation agreed	Bar Association/AoM	30	5 days	New guidelines circulated to lawyers, courts etc

Action area 3: Capacity building

Objective:

- To build the capacity of selected stakeholders to engage in the mediation process.
- To ensure the viability and on-going delivery of the activities of the Association of Mediators
- To open up the provision of mediation services through increased competition and consideration of different service delivery models

Rationale:

In the first stage of development of mediation in BiH, the capacity of the Association of Mediators was developed to train mediators and deliver training to other stakeholder groups, as well as provide mediation services through the Association and pilot mediation centres. As BiH moves into this next 4 year phase of mediation development the AoM needs to be strengthened to allow it to fulfil its training and mediator regulation function while at the same time allowing for competition in the market place and different service provision models in order to stimulate growth in the use of mediation.

In particular training should be targeted at the Judges and lawyers to further enhance their capacity to engage in mediation.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
A. Lawyers Capacity building	HJPC, MOJ, Bar Association, Young Lawyers Association	6-48	35 days	Programme of lawyer engagement and scholarships initiated through Bar Association

Issue:

It currently appears that of all the stakeholders involved in mediation in BiH, it is the lawyers that are least engaged. Traditionally this is a group where a lower degree of acceptance of mediation exists. Accordingly, one of the best ways to increase their buy-in is to increase their capacity to engage in the process as mediators, representatives in mediation and generally ambassadors for the process.

Recommendations:

1. Develop capacity building programme for lawyers in BiH
2. AoM and/or Bar Association to concentrate on training lawyers to be mediators and to be advocates in mediation
3. Consider developing programme to educate young lawyers in mediation practice, such as donor funded mediation scholarships to overseas jurisdiction using mediation.

4. Identify key influencers within the legal community and encourage them to be ambassadors for mediation through training and platform opportunities.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Convene working group of members to develop programme to develop lawyers capacity including young lawyers and expert associates	Bar Association, Young Lawyers Association, AoM	Months 6-12	3 days	Working group established
Working group to develop specific action plan to engage lawyers and agreed by AoM	Bar Association. AoM	Month 12-24	10 days	Action Plan draft
AoM to develop and market a course on Mediation Advocacy for lawyers	Bar Association, AoM	Month 24 onward	5 days	Delivery of at least 3 courses a year to lawyers.
Implementation of plan	AoM and others	Months 24-60	10 days	Programme of action for lawyer capacity building
Approach donor and international ADR bodies to fund scholarships for Young Lawyer	MoJ, Bar Association. AoM	12-18	5 days	Scholarship applications sent
Offer scholarships through young lawyers association	MoJ, AoM, Bar Association	24-48	2 days	Young lawyers completing scholarships at ADR organization

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
B. Developing Capacity of the Judiciary	Centre for Education of Judges and Prosecutors, HJPC, AoM	12-48	20 days	Annual judicial training programme in mediation; awards

Issue:

The judiciary in BiH has received considerable training in mediation through the first stage of development of mediation. However this training needs to be on-going to ensure that judges

feel comfortable in referring cases to mediation for resolution.

Recommendation:

- Association of Mediators to continue to work with the Centre of Education of Training of Judges and Prosecutors to deliver compulsory training on mediation to new judges and court expert associates as well as a programme of refresher training to existing judges.
- Annual meeting of Judiciary to consider ADR activity and devise award system for successes of individual judges and courts in relation to mediation

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Development of clear plan to deliver Judicial training each year during the next four years; sponsor judicial awards for activities	CEJP, AoM, Presidents of Courts	Month 12	5 days	Judicial training plan; judicial award system
Support for such training amongst other stakeholders	HJPC, MoJ	12 - 18	5 days	Agreement by stakeholders of the plan
Delivery of training as set out in the Judicial training plan	CEJP, AoM	Month 18-48	10 days	Agreed number of training courses completed each year for Judiciary

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
C. Developing mediation capacity of the Ministry of Justice and other governmental bodies	MOJ, HJPC	6-48	25 days (specific projects)	Dedicated staff for project implementation with training in mediation

Issue:

The BiH Ministry of Justice has responsibility for the co-ordination of many of the activities of the courts and the AoM in respect of mediation. It is therefore essential that designated personnel have a good understanding of the mediation process and models and can engage with stakeholders and other government department in order to ensure the continued development of mediation in BiH.

Recommendation:

1. We anticipate that at least one project leader would be appointed in the Ministry to help lead and coordinate the Action Plan, particularly those aspects affecting the courts and lawyers associations. (This project leader would be engaged in delivery of many of the other projects in this Action Plan - resources below refer only to this specific action plan.)
2. There should be opportunities for training and study visits for such a person to familiarize them quickly with policies and practice in the area.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Specific MoJ personnel designated as central mediation contact with responsibilities for coordinating and monitoring mediation activity in BiH to undergo training in the process including overseas experience in mediation.	MoJ	Month 6-48	5 days (plus commitment to remainder of this action plan over four years)	Fully trained MoJ Official able to engage in developing mediation in BiH
Development of a plan to promote the benefits of mediation at all levels of BiH executive authorities including consideration of a government pledge to use mediation in appropriate cases	MoJ designated mediation contact	Month 15-18	10 days	Plan to engage with executive authorities in relation to mediation
Implementation of action plan to engage executive authorities (see also 4(c) below)	MoJ designated mediation contact	Months 18-48	10 days	Increased use of mediation by BiH executive authorities

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
D. Ensuring viability of the Association of Mediators	MOJ	6-24	15 days	Funding programme for AoM and agreed reporting requirements to MoJ

Issue:

The Association of mediators fulfils a vital role, delegated to it by the state, in the training and registration of mediators, thereby ensuring that the quality of mediators operating in BiH is maintained. In addition it assists in developing mediation by promoting mediation to stakeholders as well as providing mediation services through its centres.

Given its pivotal role, the Association must be made financially viable on an on-going basis in order to ensure it continues to carry out its functions

Recommendation:

- To consider the establishment of 'core' funding from the Ministry of Justice or other sources to allow the AoM to carry out its training and regulatory function, as delegated to it by the state (some contribution to this has already been indicated by the Canada - BiH Judicial Reform Project).

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
AoM to establish annual 'core funding' requirements for it to carry out its training and regulatory function	AoM	6-15 Months	5 days	Core funding requirement communicated to MoJ
Negotiations with MoJ to agree core funding	AoM and MoJ	15-18 Months	5 days	Agreement on core funding to be provided by MoJ
Development of reporting requirements from AoM to MoJ (see section 5 monitoring and reporting)	MoJ designated mediation contact	12-18	5 days	Reporting requirements established

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
E. Developing mediation service provision capacity in BiH	MOJ	12-48	35 days	Opening up market for mediation services

Issue:

While the AOM provides an important focus point for mediation development, given its limited resources it can also serve as a bottle neck in the development of mediation and the provision of mediation services. While the Association's role in the training and regulation of the supply side of mediation is important, consideration should be given as to ways of stimulating competition in the creating of demand for mediation services and to allow for different models for providing mediation in BiH or to varied sectors, other than through the AoM.

Recommendation:

Establish working party to consider liberalization of market (perhaps linked also to sector schemes - see Action Area 4). Issues that could be considered include; allowing advertising of mediators, promoting individual mediators' services and other bodies providing mediation services outside of the AoM

Consider involving Bar Association, employer associations and insurance agencies in discussion.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Establish working group to consider liberalization of mediation service provision	MoJ	Month 12-24	5 days	Working group on liberalizing mediation services
Recommendations of working group available for public consultation	MoJ/Working group	Month 30-36	15 days	Recommendations circulated for consultation
Agreed recommendations implemented		Month 39-48	10 days	Competitive market place established for mediation with more than 1 body offering mediation services
Consider developing in-house mediation capacity in courts for small claims cases in the court (perhaps linked to Utilities programme, see 1.B above)	MoJ, HJPC	Months 24-30	5 days	Report produced considering benefits, resource requirements and suggested implementation strategy.

Action area 4: Sector or Stakeholder initiatives

Objective:

- To increase mediation activity in a specific dispute sector or amongst a specific stakeholder group, which seems amenable to the mediation process

Rationale:

Experience from other jurisdictions shows that some dispute sectors or certain types of disputants, are more open to the use of mediation than others. Insurers for example are involved in large amounts of litigation and for costs reason would prefer to settle their claims if at all possible. The construction industry is one which values good working relationships especially amongst contractors and sub-contractors who may be working together on a number of different projects. They therefore see mediation as a way of resolving disputes while preserving the business relationship.

However informal feedback from these groups is that currently the system is not doing enough to allow them to access mediation, therefore consideration should be given to specific initiatives to encourage these sectors to use mediation to resolve their disputes.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
A. Business-based initiative	MoJ, AoM, Chambers of Commerce	18-42	50 days	Increased commercial mediation in pilot area.

Issue:

Although mediation exists for disputants, often, for a variety of reasons they do not access the service. Reasons given vary from not being offered it early enough or at all by the court, reluctance of defendants or paying parties to accept the offer to mediate, cost, delay etc.

Recommendations:

* Design an initiative to encourage business to refer cases to mediation, determining early on a key sector(s) for focus - for example, SMEs, financial services, inward investors, property or construction, insurance. The initiative could focus on a type of case, or sector, or target the whole business community through say chambers of commerce. This should focus on one geographic region perhaps outside the two previous pilot centres, Tuzla or Mostar for example. (See below, B, for specific construction sector proposal.)

- Business encouraged to sign pledge to refer cases to mediation. Could also dove-tail into contract clauses initiative to encourage referral to mediation to be built into business relationship contracts.
- Engage local mediators in initiative to engage with local business community.
- Mediation pilot in the court set up to specifically refer cases linked to this initiative into mediation quickly. (Note that the courts may prefer to identify a particular class of case separate from this business initiative recommendation.)
 - To consider referring all cases in the class of disputes automatically to mediation by the registry (Need to make clear in documentation that still can assert right to proceed to trial.) Parties need to write to Judge and specifically opt-out of mediation with reasons why. This will test the benefit of a presumption in favour of mediation as a first stage in or before issuing proceedings.
 - Reduction of court fees for those that go to mediation.
 - If appropriate, claimant to pay mediation fee to encourage other party to go to mediation.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Agreement as to target sector for a business initiative	MoJ, HJPC, Chamber of Commerce	Month 18	10 days	Initiative area agreed
Initiative committee set up comprising of local representatives of business, courts, mediators, lawyers	All stakeholders	Month 20	5 days	Committee established
Implementation plan agreed by committee	All stakeholders	Months 20-28	10 days	Agreed Implementation plan
Initiative implemented and goes live	All stakeholders	Months 28-30	15 days	Initiative operational
1 year pilot	All stakeholders	Months 30-42	10 days	Increased mediations from business sector

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
B. Construction Sector initiative	ACE, AoM	12-36	20 days	

Issue:

Construction is one of the prevalent industries in BiH, and one in which completion of long term projects is important. The projects cannot afford work to be affected by disputes during the course of the project or on-going business relationships affected because of specific one off problems. Therefore the construction industry has already shown interest in the use of mediation to resolve disputes, and this is an area where there is a significant international precedent.

Recommendation:

* Contacts established with Association of Consulting Engineers, FIDIC, and relevant leading property development employers (including government)

* Publicise cost-savings and relationship benefits of smooth working in construction sector

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Develop initiative with Association of Consulting Engineers BiH and FIDIC	ACE, IFC, AoM	12-36	20 days	Increase of construction disputes referred to mediation. Increase in mediation clauses in construction contracts

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
C. Increasing Government use of mediation	MoJ	12-24	20 days	Increased referral of disputes involving government agencies to mediation

Issue:

Although many branches of the state support mediation (courts, MoJ etc), government can often lead the way by encouraging government bodies to refer disputes where they are one of the parties to mediation. However if there is not some authority encouraging government

officials to refer cases to mediation, it is easier for them to refer to cases to courts and let judges take decisions and therefore responsibility rather than for them to take the initiative.

Recommendation:

- A government pledge by the relevant government body(ies) that the government will use mediation as a means of resolution in all appropriate cases.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Approach relevant government bodies to agree Government mediation pledge	MoJ	12-24	20 days	Official Government mediation pledge publicised.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
D. Labour initiative	AoM	24-48	10 days	

Issue:

Labour disputes, which often involve on-going relationships, are particularly suited to mediation. If taken through the courts, these relationships are often irreparably damaged.

Recommendation:

- Association of mediators to explore with the association of employers and trade unions ways of increasing referral of labour disputes to mediation.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Develop initiative with Association of Employers to settle employment disputes	AoM	24-48	10 days	Increase of employment disputes referred to mediation.

Action Area 5: Monitoring And Reporting

Objective:

- Develop system for courts to monitor use of mediation within individual courts and reporting to Court presidents, HJPC and MoJ
- Develop reporting system for MoJ to monitor activities of AoM

Rationale:

For mediation to develop, the practices of the key stakeholders need to be monitored in order that best practice can be established, problem areas identified and rectified and over time a baseline to be established in order for the use of mediation to be tracked.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
A. Annual Reporting by the Court	MoJ, HJPC	12-38	20 days	Annual reports on use of mediation within all courts in BiH; judicial awards

Issue:

While some statistics have been collected about mediation through the pilot courts in Sarajevo and Banja Luka, there is not a process in place for information in respect of mediation to be collected from all courts in BiH, or reviewed by the relevant bodies.

Recommendations:

- A system be established to collect data on mediation referrals through the courts
- These should be linked to the judges' norms and target mediation referrals set under 2.(A) above.
- Such data collection and reporting should be integrated into the Case Management system now being implemented in the courts in BiH.
- Yearly report should be presented to Annual meeting of Court Presidents to review courts' progress against established targets, and awards to leading courts made.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Agreement on data that should be collected, including setting targets for referral, establishing norms etc	HJPC; MOJ	12-15	5 days	Data collection requirements established.
Integration into CMS, or manual system for courts not using CMS	HJPC, Court Presidents	15-20	5 days	System in place to collect data in respect of mediation
Data collected for year period	Courts	24-36	5 days	Quarterly reports from Courts to HJPC
Annual report compiled and reviewed at meeting of all Court Presidents and awards considered for best results	HJPC, Court Presidents, MoJ	36-38	5 days	Annual report presented to Meeting of Court Presidents. Actions going forward agreed.

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
B. Annual Reporting by the Association of Mediators	MoJ, AoM	12-48	12 days	Annual reports on Activities of AoM to the MoJ

Issue:

Given that the AoM performs a delegated regulatory role on behalf of the state and assuming that it will receive funding from the state to carry out these core responsibilities, it is to be expected that the MoJ require the AoM to report on its performance in this respect.

Recommendations:

- MoJ should establish what information it requires to receive from the AoM in order for it to assess whether services are being provided that reflect the funding given by the state
- In addition targets should be set for the AoM on an annual basis, in terms of required performance to justify the funding for the upcoming year.
- Such targets should relate to responsibilities for core activities as well as specific development of the field as set out in this action plan.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Annual Reporting requirements established including targets and information to be provided.	MoJ	12-15	2 days	Data collection requirements established.
Information to be collected and 6-monthly report provided to MoJ	AoM	12-24	5 days	AoM recording information and provided 6 month report
Data collected for year period	AoM	12-24	2 days	
Annual report compiled and reviewed by MoJ	AoM, MoJ	24- 48	3 days	Annual report presented to MoJ. Meeting to discuss and agree next year targets etc

<i>Method</i>	<i>Responsible Institution(s)</i>	<i>Time frame for implementation</i>	<i>Resources required</i>	<i>Indicators of implementation</i>
C. EU Harmonisation: Legislation and Procedure monitoring	MoJ, HJPC, AoM	24-48	37 days	Report on suggested changes to legislation and procedures implemented.

Issue:

The existing legislation and procedures for mediation and rules of the Association have established a good framework within which mediation can operate. In the initial two years of this strategic period, mediation should take place under this framework. Towards the end of the 4 year period the operation of the law and procedures should be reviewed in light of experience from mediators, courts etc under this Action Plan and in light of developing norms in the European Union.

Recommendation:

Review Panel be established after 2 years of this strategic plan to review operation of legislation and procedures supporting mediation in BiH, including rules of courts and AoM, in light of developing EU practice.

Action	Responsible Institution(s)	Time frame for implementation	Resources required	Indicators of implementation
Review Panel established	HJPC, MoJ, AoM	Month 24	2 days	Review Panel agreed.
Consultation process conducted with all stakeholders by review panel	Review Panel	24-40	10 days	Consultation process complete with report
Review of current practice in European Union	Review Panel	24-40	5 days	Report on current EU practice
Draft recommendations produced for comment by stakeholders	Review Panel	40-42	5 days	Draft recommendation circulated to stakeholders
Final Recommendation submitted by review panel to HJPC and MoJ	Review Panel	Month 44	5 days	Final recommendations as to reform
Recommendations implemented	HJPC, MoJ	Month 48	10 days	Reforms implanted into legislation etc

Conclusion

We repeat that this Action Plan represents a range of initiatives that we believe - from experience and from stakeholder dialogue conducted as part of this project - will provide a solid foundation to strengthen the role of mediation in the Bosnia and Herzegovina justice system and economy. We have attempted to set out broad guidelines on the resources that will be required to lead and coordinate these various initiatives. We recognize that choices may have to be made if there are limited resources available to implement the Plans. Equally, experience in BiH and within the European Union, may also assist in refining and developing these plans, or suggesting new directions, and we urge any project leaders who become responsible for this project, to recognize the degree of flexibility that will be required in ensuring success in achieving the goals of the Action Plan and the ADR element of the Justice Sector Reform Strategy 2008 - 12.

Dr Karl Mackie and James South
CEDR, June 2008.