



CSSProject for Integrative Mediation

Discussion Paper

Communities and Mediation Committees in Kosovo

February 2006



Integrative Mediation: Bringing Local Leaders Together

The CSSProject for Integrative Mediation evolved out of ten years of experience of the International Mediator in Bosnia and Herzegovina, Dr. Christian Schwarz-Schilling. The work of the Mediator started informally in 1992 and was formally mandated by the international community and the peoples of Bosnia and Herzegovina from 1995 to 2004. Upon request, the format and structure of mediations were conducted at the local level based on practical needs and local conflicts. The Mediator sought to increase dialogue and reduce tensions by finding step-by-step solutions to daily problems. The format of the process included information visits, mediations, follow ups and round table dialogues. In 10 years the Mediator conducted over 185 local mediations in 55 municipalities. The mandate of the Mediator was completed in December 2004.

Integrative Mediation seeks to apply lessons learned and to adapt the unique Bosnia model for possible use in other parts of South Eastern Europe. The mediation team developed a comprehensive approach to mediation by including various levels of responsibility, multiple actors and a variety of techniques. It combines six different conflict resolution activities, drawing on classical mediation and developing a holistic and decentralized instrument for implementation of agreements. The elements of Integrative Mediation are Grassroots Mediation, Self-Mediation, Negotiation Training, Problem-Solving Workshops, Reconciliation-building, and Research/Analysis. Throughout the process, it assists local actors to develop initiatives and to implement confidence-building measures. In addition, it helps to clarify to civil society why certain measures are needed, and enables communities to participate actively in the local peace process. Furthermore, it brings the general and hierarchical process of conflict resolution down to the local level.

Integrative Mediation does not seek to replace or remove ownership of the peace process. Instead, by complementing the peace process Integrative Mediation provides local parties with a conflict resolution framework that enables them to identify for themselves the obstacles to conflict resolution and reconciliation efforts. The main aim of Integrative Mediation is to leave decisions and solutions in the hands of local actors and to strengthen the work of local peace initiatives, thereby facilitating return, co-existence and re-integration at the local level.

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Preface

The CSSP team arrived in Kosovo for a 2005 activities follow-up on Sunday, 22 January 2006, the day after the President of Kosovo, Dr. Ibrahim Rugova, passed away. With the death of Dr. Rugova, an era came to an end in Kosovo. Throughout the 1990s and in the post 1999 conflict period, Dr. Rugova was a symbol of non-confrontational opposition and the aspiration of the Kosovo Albanians for an independent state. His death left everyone wondering what would happen next in a region still under international supervision seeking to establish a framework for self-government based on democracy, free market, rule of law and a European perspective. Dr. Rugova was supposed to lead the Kosovo Albanian negotiations on the future status of Kosovo, which were scheduled to begin the week he passed away. The meetings were postponed until February to allow for an official mourning period and political reorganization. For all sides the coming weeks will be challenging. CSSP extends its sincere condolences to the family of Dr. Rugova and the people of Kosovo.

Introduction

The Provisional Institutions for Self Government (PISG) in Kosovo and the international organizations have been working on a model for the protection of rights that seeks to avoid some of the challenges and problems created in other regions. The goal in Kosovo is to develop a mechanism at the local level that affords each individual the right to raise complaints of discrimination based on membership in a particular community and the ability of the majority community to respond to those complaints in a non-violent and problem-solving environment. In this respect, various mechanisms, such as fair share financing, Communities and Mediation Committees, and a Communities Office, have been put in place at the municipal level to ensure the protection and active participation of all communities in municipal structures. Of particular importance have been the interrelationship and proper functioning of the Communities Committees and Mediation Committees. The two municipal committees were mandated by UNMIK Regulation 2000/45 and their functioning has been revised and updated by UNMIK Administrative Instructions in 2003, 2004 and 2005. According to UNMIK Regulation 2000/45, the Communities Committee shall endeavor to ensure that individuals are not discriminated based on membership in a community and that every individual enjoys equal rights and employment opportunities in municipal institutions. Furthermore, the Communities Committee is charged with investigation of claims of violation of rights and with the promotion of the rights and interests of all communities.¹ The Mediation Committee, at the request of the Communities Committee, shall on referral by the Communities Committee investigate the alleged violations and seek to find solutions through “mediation”. However, the problems with these committees have been manifold creating general dissatisfaction with the performance of the committees.

Observation

Four important structural factors can be identified as root causes of the dysfunction of the Communities and Mediation Committees:

- (1) the complex nature and demanding expectations of the process,
- (2) unfamiliarity and lack of understanding of how such processes work,
- (3) lack of adequate resources, and
- (4) lack of political will and responsibility.

The combination of the four factors above-mentioned has led to poor results generally and to a basic skepticism of the committees’ abilities to protect rights and promote the interests of communities. Currently the PISG and the international organizations are reviewing the work of these committees and will seek to overhaul the structures and functions of the committees in an effort to revive and strengthen the goals to protect and promote individual and community rights. A reform that does not address the above mentioned structural problems will encounter similar problems and cement further the skepticism in the committees and the ability of local institutions to deal with problems of discrimination. While there is much to say on the above

mentioned factors, this report will only concentrate on essential comments needed to present various ideas for consideration.

Preconditions for the Committees to Function Properly

As mentioned in previous CSSP reports, the current structures and guiding principles of the committees are in theory very useful for a society that has most of the democratic building blocks in place. However, Kosovo is in transition and still developing not only a framework of democratic government but also educating the general public as to the rights, duties, and possibilities provided by the new system of government. If these committees are to function properly, there are some preconditions that have to be in place.

Mediation in established and stable democracies is still developing. It has developed out of practice and experimentation. Over the years, practice has been complemented by new and developing theory. Therefore, it is to be expected that when such a complete system of mediation is implemented in a new democracy the persons charged with conducting such mediation will need adequate time, training and resources to adapt to the new system. Moreover, the system when properly implemented could very possibly be a full-time job for the members of such committees. Specifically, any reform of the committees needs to have a strong resources foundation.

Observation

Some of the resources which need to be considered for the committees to perform quality work efficiently are: adequate mediation facilities, financing for promotion of interests, legal expertise, timely and appropriate translation, regular financing for committee members, in-depth mediation training, access to mediation consultation/advice by the Mediation Committee, and support staff to process activities.

In addition to the resource precondition, basic principles of mediation and problem-solving need to be observed to ensure that Mediation Committees are able to develop. Specifically, inherent in the mediation process are the voluntary nature of the process, credibility of the mediator(s), and independence of the mediator(s). If these factors are not assured, mediation is bound to have mediocre results. Throughout the history of mediation as an acceptable alternative dispute resolution mechanism, credibility has not been a given, but something that must be earned with time. Therefore, the central and municipal government must ensure that the mediation process gains credibility and does not falter due to resources or lack of independence. Specifically, in a society that is building its credibility as a tolerant, open and multi-ethnic democracy, it is imperative that mechanisms designed to protect and promote community rights encourage minorities to use them. As stated in previous CSSP reports, the current committee structures while well intended and thought through can be daunting and discouraging to a member of the minority, especially the average community resident. During various CSSP field visits community members have expressed doubts in the

¹ See UNMIK Regulation 2000/45 on Self-Government of Municipalities in Kosovo, Section 23.

ability of the committees to protect their rights and interests. These doubts are a further challenge in motivating members to actively participate.

Doubts over the structures are based on concerns over the connection between the committees and the Municipal Assembly or other bodies. In mediation an agreement is made by the parties in mediation and implemented by the parties themselves. If there are external parties that have decision-making powers that affect the agreement, they must be brought into the mediation process and not in a ratification process. However, in the current structures, the connection to the Municipal Assembly leaves the agreement to the benevolence of the Assembly disempowering the parties to the agreement. Such a process discourages a member of the minority because of the perception that regardless of what is agreed in the mediation, the majority still has the possibility of rejecting the agreement through the Assembly. In this regard it is important to see if a distinction could be made regarding types of complaints that need decision-making from other institutions or bodies. Specific bodies involved in the conflict must be represented as parties to the mediation and be ready to make firm commitments. Mediation that requires a vote in the Municipal Assembly tends to be more of a political mediation and best left to some form of Assembly Mediation Task Force among the political parties. In such cases, a recommendation from the Communities Committee to the Municipal Assembly would be more appropriate than a mediation process that needs approval. In this regard, UNMIK Administrative Instructions are silent as to what happens when a mediation agreement was reached and in what form (agreement, conclusions, recommendations etc.) should an agreement be formulated.

Observation

It is important to achieve a balance between the Mediation Committee's independence to reach a mutually acceptable agreement and the responsibilities of the Municipal Assembly. More work needs to be done in defining:

- (1) Who are the parties?
- (2) Who makes the decisions?
- (3) What happens once a mediation agreement has been reached?
- (4) Is it appropriate or necessary to have the Municipal Assembly confirm the agreement?

In addition to resources and independence, credibility is based on the mediation skills of the mediator(s). Incompetence has been raised periodically as a major problem in both committees. While it is technically true that many members of these committees do not have the necessary skills to fulfill the tasks of the committees, incompetence

carries with it a negative connotation that ignores the crucial factor that most members are doing the best they can with the skills they have in a system that has been mandated by higher authorities. Moreover, a large number of them will be the same persons tasked with implementing any reform. Therefore, if a reform is to succeed in its objectives more emphasis has to be placed on identifying the exact skills needed to perform the required tasks. Moreover, it is important to increase the resources of these committees initially to ensure adequate training, supervision, consulting and support. A special emphasis must be placed on joint specialized training of committee members over a longer period of time. Training cannot be a one-off week or a set of documents. Instead the central government could use a mixture of local and international training providers to ensure high quality training, knowledge transfer and sustainability of the system.

Currently the PISG is considering adopting a Draft Law on Mediation. If the law is adopted it will be a very positive development and will further increase the credibility of mediation in Kosovo, especially as skilled mediators are needed to conduct successful mediation. However, it is still unclear what the link will be among the law, the mediation committees, professional mediators, and the Association of Mediators. It is also unclear that the role the proposed Mediation Council will play in supervising mediation committees, a role that could be beneficial and necessary. It is essential for the Ministry of Local Self-Government and the Ministry of Justice to brainstorm on possible contradictions or complementarities in this regard.

CSSP is of the view that there are overlapping interests yet unidentified in creating a link between municipal Mediation Committees, the Mediation Council, the Association of Mediators and professional mediators. Participation in the process by professional mediators will enhance the credibility of the mediation process and will alleviate some of the burden on members of the committees. At the same time, it will enhance the credibility of mediation as a profession in Kosovo and provide work initiative for a profession that is still developing. In this regard, it is important to consider specific “community mediation” training for specialized certified mediators. Moreover, a clearly defined mediation process, with specialized mediators, with supervision of a high mediation body, such as the Mediation Council, will enhance the effectiveness of the system and reduce the burden of municipal government in deciding which mediation agreements to accept. A system that is simplified, well organized and funded with appropriate training will go a long way towards repairing the damage to the credibility of the committees and will encourage individuals to use the system. With an increase in credibility, a corresponding increasing in political goodwill and responsibility might be identified in the medium-term.

Observation

If mediation is to succeed as a profession, it is imperative that central governments, municipal governments, and international organizations consider how best to incorporate them in the process and support them by giving them work. In this regard, the proposed Association of Mediators and Certified Mediators could play significant roles in assisting municipal Mediation Committees.

Communities and Mediation Committees

The above sections addressed the issues of credibility, resources, independence and the role of professional mediators, which are all preconditions for the committees to function properly. If these committees are to achieve their goals, the structure has to be simple, clear and efficient. The problem at the moment is that various goals have been joined into a structure that is complex and confusing. Three separate goals can be identified in this structure: review of municipal regulations for possible violation of rights (**active**), resolution of conflicts based on possible violation of rights (**reactive**), promotion of rights and interests (**pro-active**).

It is the view of CSSP that it is doubtful that a person without a university degree, extensive democratic political or organizational experience, or appropriate and in-depth problem-solving skills training can meet the expectations set out in UNMIK Regulation 2000/45 (and subsequent UNMIK Administrative Instructions).² Moreover, each additional Administrative Instruction has sought to resolve conflict but may have inadvertently complicated matters by trying to build on a system that is potentially flawed. The following two sections will review the work of the committees and identify some questions and issues raised by the current structures.

The Communities Committee

The Communities Committee has three roles: to review all municipal legislation and to make appropriate recommendations (**active**); to address individual grievances concerning discrimination or violation of rights (**reactive**); and to promote community interests and rights (**proactive**). Each of these tasks is a full-time job for a committee if it is to be done well. Review of municipal legislation when done properly could very well consume the Communities Committee's full agenda.³ Secondly the reactive role of the committee can be somewhat hampered in its investigation of violations. What rules of procedures are to be used in an investigation; on what basis should an investigation be carried out and who should carry out such an investigation? UNMIK

² See previous CSSP reports on this issue.

³ CSSP's experience with municipal institutions has been that there are also related issues to consider, such as the lack of appropriate and timely translation, which delay the committee's ability to respond appropriately.

Administrative Instruction 2003/002 article 5.3 goes some way to address these questions. However, an investigation of violation of rights requires a certain degree of legal understanding, training or expertise, which is lacking. Furthermore, it is unclear in the UNMIK Administrative Instructions as to deadlines for the investigative procedures. As a result Communities Committees often do not refer matters to the Mediation Committee and remain debating the problems. Instead committee members try and solve the problems themselves, at the detriment of the committees other proactive and active roles.

One issue of concern is whether the Communities Committee is the appropriate place to investigate a violation of human rights or whether other judicial bodies or courts are more appropriate. Often the claims of violations are very similar from municipality to municipality. Here one needs to consider if it is not the ombudsperson mechanisms that should be expanded and strengthened to deal with such cases. It is not to say that the committee does not have a role to play in such instances. However, a review of the role of the institution of the ombudsperson in relation to this committee should be considered in a reform of the committee.

Questions for Consideration

- (1) If a rights violation has taken place, is it right to use mediation to resolve the problem?
- (2) Or does the protection of human rights depend on a judicial system that reviews violations and establishes precedence that a violation in one municipality cannot be carried out in another place?

In addition to investigative procedures, the committee also has the task of promoting community interests and rights. This proactive approach is mentioned in related documents but has not been given scope or substantial meaning. Here the issue tends to be reduced to finances and the ability of a few people to promote community awareness and rights. One argument is that the Communities Office receives a certain amount of money for such activities and the Office staff is available for such activities. However, research from previous CSSP field visits shows that this Communities Office is very busy dealing with individual problems and on identifying development projects. Research also indicates that a very small amount of money is spent on the promotion of interests and rights and the majority of the amount is spent on development projects, such as street lights, streets, infrastructure, housing etc. While these are all worthwhile expenditures, they should be regular municipal development expenditures and not community specific, unless it has a community related aspect not foreseen in municipal development plans.

Questions for Consideration

- (1) How should resources be allocated for communities?
- (2) How can the Communities Committee use NGOs and civil society to promote interests and rights?
- (3) Should the Communities Committee only play a supervisory or coordinating role?
- (4) Should the Communities Committee have a smaller task force within the Communities Committee for proactive activities?
- (5) Is the Communities Committee the appropriate body to deal with claims of violation or should it be a responsibility of the Mediation Committee?
- (6) Should the Communities Committee be limited to reviewing municipal regulations and promotion of rights and interests?

The third and most developed role of the committee is the review of municipal regulations. If this role is properly understood under UNMIK Administrative Instruction 2003/002, it is very active because theoretically no regulation can be adopted without the opinion and recommendations of the Communities Committee. In this regard, issues of time, quality and timely translation, and understanding of regulatory procedures affect the work of the committee. Given that committees usually meet once a month but has only a two week window of opportunity to react to adopted regulations, this presents a problem. Tasks related to this are time consuming and depend very much on the goodwill of the Municipal Assembly to regard the Communities Committee as an integral part of the legislative process. One issue is whether a Municipal Assembly can bypass the committee or should it be required to wait for a response from the committee.

Mediation Committee

The Mediation Committee's sole function is to mediate violations of rights that are referred to it by the Communities Committee. UNMIK Administrative Instructions 2005/001 are unclear regarding what to do in case of successful mediation. Section 7 of these instructions only mention a report to the Municipal Assembly on how the matter should be dealt with. Therefore, it is unclear whether the goal is successful mediation or recommendation based on participation of the conflict parties. This distinction is important insofar as it defines the process and the outcome. However, the main problem with the Mediation Committee is that from its theoretical foundations the committee has been given a task that is challenging and possibly unobtainable in

most cases within the prescribed framework. Methodologically the framework has three problems: (1) definition, (2) independence, and (3) function. Each of these hampers the effectiveness of the committee and together they can create problems for the profession of mediation, which the central government is trying to establish.

The type of mediation and the role of mediation are not clearly defined. A generally accepted and simple definition of mediation is that mediation is a process by which a third party not involved in the conflict assists the parties to the conflict in reaching a mutually acceptable agreement. Corollaries to this definition include the neutrality of the mediator, the voluntary nature of the process, and the conviction that the mediator has a non-decision making role. With these concepts in mind, several questions arise.

Questions for Consideration

- (1) Can the members of the Mediation Committee be neutral when community issues affect them or when they are members of the Municipal Assembly?
- (2) Can a Mediation Committee be neutral when it has investigative and recommendation roles?
- (3) Can violations of rights be negotiated or mediated?
- (4) Will mediation performed by the committee be different from mediation proposed in the Draft Law on Mediation?
- (5) What is "Community Mediation"?

These questions need to be considered in view of the concept of a "Mediation Committee". This form of mediation must be defined under another form of mediation, for example "Community Mediation", to ensure that the general public understands it as different from private or commercial mediation. In this case, more experience in the field of community mediation as practice in various parts of the world should be examined and considered. One issue central to community mediation is the fact that the role of the mediation is not to investigate but to assist. If a party believes his/her rights have been violated, the violation has occurred in the perception of the individual and the role of the mediator is to assist the parties in resolving both perceptual and factual disputes. A dismissal of a claim only serves to confirm in one party that discrimination is systematic and that the individual is helpless. Therefore, if the Mediation Committee is to assist the local communities in resolving disputes, it must tackle the objective and subjective elements of the conflict.

The issue of the independence of the Mediation Committee is a central question of the committee's continued existence. Two sub-issues are of concern: the committee's ties to the Municipal Assembly and the ability to take self-initiative. By the fact that

members of the Assembly sit in the Mediation Committee there is already undue influence in the process, especially as a result of party affiliation. Moreover, mediation is based on a mutually acceptable agreement and should be implemented by the conflict parties. Therefore, agreements reached in the Mediation Committee which must go through the Policy and Finance Committee and the Municipal Assembly are prone to delay, re-negotiation and failure. These problems further discredit the committee's work and discourage individuals from using the opportunities provided by the committee. The third problem related to independence is the restriction of the Mediation Committee to referrals by the Communities Committee. Complaints that the committee does not meet can only be supported if referrals were made. More important is the independence of the committee to decide on its own the scope of work and to have access to the general public if the process is to be useful. In addition, there are overlapping investigative functions with the Communities Committee which can be streamlined.

Questions for Consideration

- (1) Is there a way to ensure the independence of the committee?
- (2) Is it useful to expand the scope of the committee to include requests from civil society, NGOs, individuals and municipal institutions (education, health, utilities etc)?
- (3) Is the Municipal Assembly the correct institution to approve a mutually accepted agreement?
- (4) Can politicians be neutral or impartial?
- (5) Should the mandate of the members be de-linked from the electoral process?
- (6) Should claims of violation and request for mediation be made directly to the Mediation Committee, which must investigate the claim anyways?

The third problem with the Mediation Committee relates to the above mentioned issues but focuses on the technical functions of the committee. Specifically there are concerns about the ability of the committee members to fulfill their roles with satisfaction and the expectations of the government as to results. Having a committee perform mediation between two or more parties runs the danger of complicating mediation beyond control and raises the complexity level for members who are unskilled or certified in mediation. The Draft Law on Mediation proposes that in future certified mediators need to have at least a Bachelors Degree and extensive training. Underlying this requirement is the belief that mediation requires a certain amount of experience and professional skill, which at the moment committee members do not have. Therefore, one consideration is that it is quite possible that the Mediation

Committee plays an oversight role but the actual mediation is performed by two or three specialized mediators.

It is highly doubtful that committees with numerous members who are politically affiliated and have minimal training are able to mediate a problem with the skills necessary to achieve the desired results. In addition, a mediation process that includes investigation, legal counsel, and representatives, as set out in UNMIK Administrative Instruction 2005/001, formalizes the informal process and begins to blur the lines between mediation and judicial or arbitration procedures and would require even further specialized training to ensure appropriate mediation.

Questions for Consideration

- (1) How many mediators should be involved in actual mediation brought to the committee?
- (2) What training or certification must be given to members of the committee?
- (3) What is the link among a future law on mediation, professional mediators and the Mediation Committees?
- (4) Is there a role for professional mediators?

All of the questions raised in this report should not be interpreted as an argumentation against either or both of the committees. CSSP is aware that there is a review of the committee structures underway. The concern is that the expectations and dissatisfaction with the committees have created a situation in which any reform will be seen with skepticism and a criticism of the work of the committee members, who have been trying to grapple with the structure imposed on them. It is the same person who will most probably be responsible for implementing any reform of the committee and their input is valuable. Moreover, if the reform fails to achieve the desired results, the committees will lose further credibility as will community leaders' belief in the system.

It is essential that the reform process considers the above mentioned questions carefully with the goal of ensuring that a system is developed that promotes the protection of rights and interests, facilitates credibility in local self-government, and simplifies the current structures while increasing quality and standards.

The questions raised in this section of the report have been compiled and placed in the appendix for the reader's convenience. The questions are not exhaustive but are meant to give impulse and reflection for the reader. In addition, the next section will focus on generating options on restructuring the committees.

Generating Options

The next section of this report will identify possible options for consideration when discussing the reform of the Communities and Mediation Committees. One of the main principles of mediation and negotiation is that joint exploration of options and decision-making remain in the hands of the negotiators. Therefore, CSSP does not seek to promote any one option as the ideal option, but to present various options and ideas as a basis for discussing possible new models for reforming the Communities and Mediation Committees. CSSP has identified three options and various ideas that might be useful. The three options are based on three questions: What is the goal? What is the structure? What is needed?

Option 1: Separate Committees

GOALS

- To de-link and clarify the roles of the Communities Committee and the Mediation Committee;
- To ensure independent scope and activities; and
- To create a balance between tasks/responsibilities and resources.

STRUCTURE

Communities Committee

- The Communities Committee is limited in scope to monitoring all municipal regulation and behavior of the municipal institutions (**active**) and promoting the interests and rights of the various communities (**proactive**).
- The committee is mandated to review all municipal institutions (utilities, schools, healthcare clinics etc.) to ensure that their policies are non-discriminatory.
- A specific budget is allocated to the committee for promotion campaigns (brochures, media, print, events etc.)
- The committee is assigned a supervisory role for the Communities Office's activities to ensure that a fair proportion of money given to the office is spent on this goal.
- Essential to the work of the committee is adequate and timely translation of documents of the municipality.
- The committee is given access to legal expertise (municipal, ministerial, ombudspersons etc.).

Mediation Committee

- The Mediation Committee is given the full task of receiving and processing claims of violation of rights (**reactive**) and directs the claim for appropriate action.
- The committee uses mediation to solve conflicts (**proactive**).
- Requests can be made from the Communities Committee, municipal institutions, NGOs, and individuals.
- Complaints are categorized (private, commercial, institutional, community, social etc.) Depending on the type of complaint, the committee can undertake appropriate measures or make recommendations to the complainant.

- Consideration is given on the role of professional mediators (as members of the committee or as consultants) or specialized “community mediation” training.
- Regarding the structure of the committee, it is useful to look at various forms of community mediation.
 - One option for consideration is to have a standing committee of 12 certified mediators who are prepared to mediate and meet to discuss cases; the actual mediation is performed by 3 mediators. Each party to the conflict would chose one mediator from the committee and the two chosen mediators would chose the third based on the nature of the complaint.
 - The committee has a supervisory and coordinating role.
- The committee is limited to community mediation and is prohibited from undertaking commercial or private mediation.
- Cases where private mediation is appropriate are referred to the Association of Mediators.
- The Mediation Committee meets on a regular basis.

NEEDS

- The Draft Law on Mediation needs to include references to Mediation Committees and the interaction between professional mediators and Mediation Committees.
- Alternatively members of the Mediation Committee need to pass a specialized training course on “community mediation”.
- The Communities Committee needs clearer guidelines on promotion of interests.
- All members of both committees need more training, specifically joint training.
- More financing for the proactive role of the Communities Committee is needed.

Option 2: Joint Committee

GOALS

- To consolidate the committees into one system.
- To increase efficiency.
- To provide for professional mediation.

STRUCTURE

- Create one committee that performs the tasks of the two committees (**active, reactive, and proactive**).
- The committee has two pillars: a standing committee and a roster of professional mediators accredited to the committee on a needs basis.
- Standing members are involved in receiving claims of violations, promoting rights and interests, and reviewing regulations.
- The committee is responsible for investigating the claims and processing them.
- The committee members do not perform the mediation itself.
- A roster of certified mediators is available for mediation when needed.
 - In order to ensure proper representation, the roster would have a reserved place for two mediators from each community.
 - As the number of certified mediators in Kosovo grows, the roster has a rotation of its members periodically, for example, every three years.
 - Persons who qualify to be mediators would have to meet certain criteria (training, non-partisan, experience etc.).
 - This option would also encourage persons in the communities to be trained as mediators in the nascent mediation profession developing in Kosovo.
- Once the mediation is concluded, the committee processes the results accordingly, including follow-up.
- A smaller task force within the committee is tasked with the promotion of interests.
- A second task force focuses on reviewing municipal regulation and activities of municipal institutions.
- The committee meets on a regular basis.

NEEDS

- Adoption of a Law on Mediation.
- Identification of specialized “community mediation” training.
- Creation of smaller task forces with book of rules.
- Increased financing of the committee.
- Development of a mediators roster.
- Development of rules of procedures for mediation process.

Option 3: Outsourcing Municipal Mediation

GOALS

- To focus on the **active** and **reactive roles** of the Communities Committee;
- To strengthen professional “community mediation”; and
- To specialize the skills of the committee on protection of rights and promotion of interests.

STRUCTURE

- The central government considers doing away with “mediation” as a function of the municipal government.
- More emphasis and resources are placed on encouraging local “community mediation” centers in each municipality.
- The Communities Committee investigates claims of violations and makes recommendations as appropriate to the appropriate municipal institutions, irrespective of the mediation process.
- The committee refers claims of violations to the ombudsperson or to the community mediation centre.
- Regulations are adopted committing municipal officials to at least engage in the process of mediation as an alternative to judicial action when a recommendation from the Communities Committee supports it.
- Municipal Assemblies are prohibited from adopting regulations that have not been cleared by the committee, or at least until the Committee has rendered an opinion.
- The Communities Committee is given strict deadlines to ensure that the process moves forward.
- The central government considers possible punitive damages if deadlines, translations and technical requirements are not met.
- The Ombudsperson plays an active role in Communities Committees deliberations.
- The Communities Committee is tasked with reviewing policies of all municipal institutions, such as utilities, socially owned companies, healthcare, education etc.
- A task force on promotion of rights is set up.

NEEDS

- Specialized training on rights for committee members.
- Expansion of the Office of the Ombudsperson.
- Specific financing for promotion of interests and rights.
- Establishment and support of “Community Mediation” by central government.
- Supervision of Community Centers by central government.

Conclusion

Despite the current delay in status negotiations for Kosovo, daily life at the local level is moving forward and reforms continue to be implemented. The trend is moving towards ensuring that local self-government can meet the needs of the residents and to protect their rights as individuals and as members of their communities. In the last year much work has been done and there is a noticeable improvement in the quality of work at the municipal level. The one area under consideration at the moment is the reform of the Communities and Mediation Committees and their relationships to other municipal bodies. How these committees are simplified to be more efficient, provide more service and produce more results will be decisive in developing credibility in the process.

It is imperative that international donors, the PISG, international organizations, and NGOs working in the field contribute to this process and support the reforms with funding, adequate training and consulting. It is also important to have a joint meeting of organizations providing mediation and negotiation training to discuss ways to complement the reforms and each others work. A network of international and local mediation organizations working in Kosovo would strengthen these efforts and support the individuals in these committees, whose task it will be to implement the coming reforms. Essential to these efforts will be the adoption of a Law on Mediation which clearly defines the role of the Association of Mediators, the link to municipal mediation and contribution of local mediators. If all these efforts come together, Kosovo will be at the forefront of mediation at the local level and an example to other regions, especially in regard to Europe as a whole.

Appendix

**General Questions for
Discussion on Mediation in Kosovo**

- How is mediation defined?
- Is mediation useful as part of municipal structures? If so how?
- What is the function and goal of mediation?
- What kind of mediation should be used for dealing with subjective and objective violation of rights?
- Are the current committees the best way to achieve the goals?
- Is the current committee structure conducive to democratization or an obstacle?
- How many persons should be involved in the actual mediation?
- Who should qualify to be a mediator?
- What training or certification should members of the committee have?
- How do you achieve quality mediation?
- How do you ensure quality control in the process?
- What issues should be mediated?
- How are the mediation agreements implemented?
- What is the role of neutrality in the Mediation Committee?
- How much independence should the Mediation Committee have?
- What is the role of the Ombudsperson regarding mediation of violation of rights?
- Can rights be mediated? What resources are required? Are there limits to what the Mediation Committee can achieve?
- How can the process be simplified?