



FTI FOUNDATION FOR
TOLERANCE INTERNATIONAL

International Alert.



MEDIATOR'S HANDBOOK



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MEDIATOR'S HANDBOOK

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About International Alert

International Alert is a 27-year-old independent peacebuilding organisation. We work with people who are directly affected by violent conflict to improve their prospects of peace. We seek to influence the policies and working approaches of governments, international organisations such as the United Nations and multinational companies, to reduce conflict risk and increase the prospects of peace.

We work in Africa, several parts of Asia, the South Caucasus, the Middle East and Latin America, and have recently started implementing projects in the UK. Our policy work focuses on several key themes that influence prospects for peace and security - the economy, climate change, gender, the role of international institutions, the impact of development aid, and the effect of good and bad governance.

We are one of the world's leading peacebuilding NGOs with more than 200 staff based in London and 14 field offices. To learn more about how and where we work, visit www.international-alert.org.

About Foundation for Tolerance International

Foundation for Tolerance International (FTI) is a non-governmental organisation working for the prevention and nonviolent resolution of conflicts. The Foundation was established in 1998 as a follow up of the "Conflict Transformation and Teaching Tolerance" initiative implemented in 1996 with the support of the UNHCR.

To date, the Foundation has completed more than 100 different projects and programmes. Foundation for Tolerance International is currently one of the largest and most experienced NGOs working in conflict prevention and resolution in Central Asia. The Foundation employs 20 staff with different specialisations representing a range of ages and nationalities. FTI has its Head Office in Bishkek, three branch offices in Batken, Osh and Jalal-Abad. The Foundation is a founding member of the NGO network "Valley of Peace", which covers Kyrgyzstan, Tajikistan and Uzbekistan. It is also a member of a number of other international networks and is the regional coordinator for Global Partnership for the Prevention of Armed Conflict in Central Asia.

About European Union

Since the independence of the Kyrgyz Republic in 1991, the European Union has been a committed partner of the country and its citizens in their endeavours to achieve political, economic and social reform. In 1999, a solid foundation for the EU - KR relations was established in the form of a broad-ranging Partnership and Cooperation Agreement. In 2007 the Strategy for a new Partnership between the EU and Central Asia was adopted, bringing a renewed and strengthened focus of the EU on Kyrgyzstan and other countries of the region.

Partnership includes political dialogue and economic cooperation in spheres such as further democracy building and human rights, strengthening of rule of law and penal reform, border management, education, social protection and support for food security.

In its cooperation with the Kyrgyz Government, the EU, in cases where suitable conditions can be met, uses direct support to the national budget, together with assistance to make the use of the budget more effective for meeting the country's priorities. The EU is committed to assist the peoples of the Kyrgyz Republic in moving towards a market economy and parliamentary democracy, and in establishing closer relations with Europe. The EU Delegation places particular importance on cooperation with civil society; on supporting non-governmental organisations and think-tanks, and on encouraging cooperation between them and with state and local authorities, all to the benefit of the country as a whole. In fact, developing and strengthening partnerships has become one of the EU Delegation's main strengths.

In the last twenty years of successful partnership, the EU and Kyrgyzstan have established strong relationships that focus on both economic cooperation with financial aid and political dialogue on issues of mutual interest to promote human rights, democracy, rule of law and good governance. To achieve further progress in these areas, the EU stands ready to continue cooperation with the Kyrgyz Republic in the future.

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In 2011, a group of international non-governmental organisations working under the acronym TASK began implementation of a project entitled “Conflict Mitigation and Peacebuilding in Kyrgyzstan”. The project was implemented with the financial support of European Commission under the framework of the Instrument for Stability.

The goal of the project was to mitigate sources and drivers of conflicts and to promote peace and stability. Furthermore, the project encompassed the development of conflict mitigation capacity of 100 target communities in Kyrgyzstan, as well as creating additional opportunities for social and economic development to relieve tension and to promote common peaceful interests. The main target groups for the project were vulnerable members of communities including women, youth and representatives of small businesses. Geographically, the project covered the three southern regions of Kyrgyzstan: Osh, Jalal-Abad and Batken oblasts as well as Chui oblast in the north.

One of the six key components of the project was called “Expanding and strengthening of mediators’ network to resolve local disputes or conflicts in the target communities”. This guide for mediators was developed within the framework of this component by Foundation For Tolerance International working in close partnership with International Alert. As part of the same objective, another publication has been issued entitled: “Mediation Case Study Publication, Kyrgyzstan” which provides an more detailed description of mediation practices in the Kyrgyz Republic.

This handbook is a practical manual designed for beginner and intermediate level mediators, as well as for representatives of government authorities and local public institutions who practice and promote peaceful methods of conflict and dispute resolution.

This handbook describes the importance of mediation as an alternative method of resolving conflicts or disputes and provides the basic foundations of the underlying theory of conflict resolution. For clarity, each phase of the mediation process is illustrated with a real case study that took place in Kyrgyzstan as part of this project.

PRACTICAL METHODS AND STRATEGIES OF CONFLICT RESOLUTION

What is conflict?

There are a lot of definitions of conflict. One of the most popular definitions of conflict is the following: The relationship of two or more parties - individuals or groups - who have or think they have incompatible goals.

All conflict can lead to a constructive or destructive end and has a constructive or destructive origin. There is no development without conflict. Contradictions and problems revealed and dealt with in time can help a society accelerate its process of development and change. Otherwise, if contradictions are ignored or remain unaddressed, conflict can change from being creative and constructive to having a more destructive effect. For example, in the Ferghana valley, many community-level conflicts are due to the use of outdated irrigation methods, inefficient use of water, the lack of water or the suboptimal use of land resources.

Conflicts bring existing contradictions to the fore, attract public attention and create conditions for their resolution. However, if proper precautions are not taken in time, conflict may take more destructive forms and may ultimately lead to violence.

However, there is hope because one of the most important features of a conflict is that conflict is possible to predict and can be managed so that it does not lead to violence. More efforts are being made nowadays to understand the nature and causes of conflicts and to identify the most effective ways to resolve them.

Methods of conflict settlement

Before taking action, it is important to consider an approach that ensures that any actions taken will not lead to a worsening of a difficult situation. Actions should be taken in a conflict sensitive manner. Conflict sensitivity is an acknowledgement that any actions or interventions will positively or negatively affect the conflict.

Being conflict sensitive means that you or your organisation are able to:

- Understand the context that you work on;
- Understand the possible effect of your actions and interventions on the conflict context;
- Act with an understanding of this interaction in order to avoid negative consequences and increase positive impact of these actions.

Thus, an individual or an organisation wishing to make an intervention to support the resolution of the conflict should do no harm. From the initial conflict study right through to the implementation of agreed actions as part of a settlement, mediators should always ensure that they do no harm. This will help to minimise the negative consequences of interventions and help to establish the good offices of the mediator.

Interventions that can be made at a local level during a conflict:

- monitoring and observation;
- mobilising a community to work on the conflict;
- running public awareness campaigns;
- lobbying decision-makers;

Monitoring and observation can be defined as activity aimed at collecting information about changes to the conflict context. Observers or monitors follow any developments on a regular basis and pass objective information to a centre where it can be analysed, for example by an organisation responsible for monitoring. Monitoring reports can also be disseminated among mass media, relevant authorities, partnership networks and to other peacebuilding organisations.

One dangerous element of a conflict which can provoke violence is the prevalence of rumours, misinformation and the difficulty for conflict parties sometimes to separate fact from fiction. It is therefore important to have in place a mechanism to continuously assess and verify information and to pass this onto the conflict parties.

The observer or monitor can track how the conflict evolves from a latent to an open state of confrontation. Of course, to undertake effective monitoring and observation, there need to be tools and mechanisms to collect and transmit verifiable information - preferably at a local level - which allow intermediaries to respond to the conflict. Clearly, there also needs to be a robust system and protocol for communication between conflict parties and mediators so that everyone can share information about the conflict context.

Mobilising of a community to work with the conflict refers to the active involvement of all levels of a community in joint problem solving processes. Mobilisation is a process through which local communities jointly identify priorities, analyse causes and consequences of problems - including strengths, weaknesses, opportunities and threats - carry out an assessment of existing and necessary resources, and develop a strategy to tackle the conflict.

The transition from conducting analysis of a conflict to attempting to actively influence the conflict is a very important step. In every conflict context, there will always be people, organisations and institutions that can support activities that contribute to conflict transformation and peacebuilding. It is important to mobilise these people or organisations to support joint analysis of the situation, as well as for wider strategy development and implementation.

Running public awareness campaigns are a way to influence target groups through different media channels to raise awareness or to encourage the adoption of different behaviours. Influencing the debate by communicating effectively and raising knowledge levels related to the conflict is an important part of changing attitudes, whatever the particular subject, and can help to highlight positive behaviour.

Conversely, a lack of information can serve as a conflict accelerator. Poor communication contributes to a conflict by building barriers between conflict parties and decreases a mutual understanding of each other as well as the context. The situation can deteriorate because of rumours and misinformation which are often be spread for malicious reasons and provide the motivation for others who were not active before to take part in a conflict. Of course, this can also lead to more negative behaviour complicating the conflict and making resolution more difficult.

Lobbying decision-makers refers to work with decision makers or with others who have influence over decision makers to influence different decisions. Lobbying can be for anything, including for overall changes in those laws that support ideas of peace and justice in society.

Strategies of conflict settlement

When a conflict situation arises, conflict parties need to consider choosing an appropriate response to guide their behaviour. As a rule, there are three main strategies for conflict parties to choose from:

- *Forcing a settlement*
(using a power based strategy)
- *Appealing for a judicial decision*
(using a rights based strategy)
- *Seeking a mediated settlement*
(using an interest based strategy)

Methods

Force

FEATURES

One of the conflicting or a third party forces a settlement favourable only to one party.

Can be applied when one of the parties dominates and is in possession of advantageous positions, resources and power; or in an emergency situation that requires immediate action because delays could lead to even greater problems or violence.

This method is characterised by a low level of participation of conflicting parties in the decision making process. As a result, forced settlements are only sustainable for as long as the imbalance in power remains.

Judicial decision

A decision or solution is made by a third party as opposed to the conflict parties themselves.

Can be applied when there is a well-developed dispute settlement procedure provided by law which is enforceable and mandatory for all conflicting parties. The judicial decision cannot be overturned other than through an additional appeal within the same judicial structure.

There is some level of participation of the conflicting parties in the conflict resolution process. Conflict parties can provide arguments and motives; they can also be heard. However, the final decision is made by a third party.

Mediation

The conflicting parties agree a mutually beneficial solutions together with a help of a third party mediator. A mediator is defined as a third party in a conflict resolution process that provides for constructive discussion of the problem.

Can be applied in many cases, as long as there is mutual consent for the use of a third party mediator by the conflict parties.

The method is characterised by high levels of participation by all parties to the conflict and leads to a mutually agreed outcome that reflects the wishes and needs of all parties. The outcome is highly sustainable, as all parties have an ongoing interest to implement the terms of the settlement.

MAIN SCOPE OF MEDIATION

When direct negotiations between conflict parties are not enough to resolve the conflict or if communication channels are blocked, a third party can sometimes provide additional support to help resolve the conflict. In this case, the third party is known as a mediator.

Mediation is an alternative method of settling disputes that uses the good offices of a mediator - an unbiased, third party to the conflict - to support the conflict resolution process and to assist the conflicting parties to find mutually beneficial and viable settlements.

Based on the given definition, the role of the mediator can be further defined in the following way:

- A mediator does not have a personal interest in the outcome of the conflict, nor do they act as a representative of the conflict parties. Mediators should be impartial and they should never themselves promote a particular outcome;
- A mediator does not make a decision. They only assist the parties in establishing common ground and mutually beneficial conditions for peace;
- A mediator is not a peacekeeper who separates parties during violent episodes of conflict. Mediators act in conditions of relative peace, either before or after any escalation to violence, but never during the phase of open hostilities;

MAIN PRINCIPLES OF MEDIATION:

- A mediator works with all parties to the conflict and studies the situation from all sides. They should engage with everyone and not be indifferent to any of the parties' interests;
- All parties have to agree to participate in the mediated conflict resolution process voluntarily and accept the mediator's role in managing the conflict resolution process;
- A mediator strives to help all parties in dispute equally;
- The primary aim of mediation is to find mutually beneficial solutions which satisfy the interests of all conflicting parties and not to establish the objective truth in a conflict;
- A mediator conducts and controls the mediation process, however, they do not manage the content of discussions;
- The responsibility for generating alternative solutions to the conflict should lie with the conflict parties themselves, so that it is easier for them to accept the negotiated settlement and feel a sense of ownership over all decisions reached.

KEY QUALITIES OF AN EFFECTIVE MEDIATOR:

- **Having good listening skills.** Mediators have a willingness to be patient, careful and take time to understand what others are saying whilst always assuming they are telling the truth.

- **Being non-judgmental and impartial.** Mediators are skilled at not getting into debates on the content of the dispute, not expressing their own opinions and not criticising even when they themselves would have behaved differently than the conflict parties. Mediators need to be able to accept any mutually agreed settlement, without trying to find the perfect answer to the conflict. They need to show tolerance towards different people, and to react constructively to the words, ideas and ways of thinking of a wide variety of people.

- **Staying calm.** Mediators should always remain positive and impartial even when confronted with difficult behaviour. They should be able to concentrate and think creatively, especially when they are put under pressure.

- **Staying positive and encouraging people engage positively.** Mediators need to be skilled at managing disappointments constructively and containing the aggression of conflict parties, as well as not taking things personally. They should always play the role of a constructive and realistic optimist. Effective mediators have good communication skills, an ability to encourage others and be able to themselves demonstrate the persistence necessary for conflicts to be resolved.

- **Trustworthiness and the ability to respect confidentiality.** Mediators need to be able to work without disclosing details of discussions and agreements at all stages when mediating between conflicting parties.

- **Being well organised.** Mediators need to be able to organise their own work, keeping the parties updated, choosing and preparing appropriate locations for meetings and documenting the process for the benefit of the parties.

There are of course some instances where mediation is not appropriate. Accepted international standards and legislation on mediation in different countries limits the use of mediation in the following circumstances:

1. Mediation cannot be conducted during a period of open conflict, when disputing parties are engaged in violence towards each other.
2. All conflicting parties must give their voluntary consent to take part in mediation. Nobody can force a conflict party to accept mediation.
3. Mediation is usually not applicable if the dispute is about a serious crime or the parties to the conflict are subject to criminal prosecution.
4. Mediation cannot be applied in those cases where one or more parties of the conflict are legally incapable of making decisions for themselves.
5. Mediation cannot be applied if a conflict touches upon interests of a third party who is not taking part in the mediation process.
6. Mediation cannot be applied if the conflict relates to corruption or a crime against the state.
7. Mediation is not possible, if there are significant barriers impeding the work of the mediator or if mediation would result in threats to life or health to the mediator or other parties.
8. Mediation should not be applied if the mediator has reason to believe that it would be impossible to resolve the conflict through mediation.

In order to demonstrate both the theoretical and practical elements of each stage of the mediation process, the description of each phase of the mediation process will be illustrated with a real case study from Kyrgyzstan.

Case study: Background

In one of the districts of Bishkek, a local landlord provided a low-income family with housing in one of his out-buildings. The family were internal migrants and consisted of two people: a 15-year old boy and his mother. Following a divorce, the mother began to drink alcohol. The son had finished only three grades at school. After the divorce, the boy stopped studying as he had neither the right documents nor any desire to continue his schooling. The boy also suffered from a rare bone illness, which caused him constant pain. As a result, he was both physically and psychologically damaged as well as formally uneducated.

One day, the boy stole goods worth thirty thousand soms from the shop owned by their landlord. According to the landlord himself, he never suspected the boy in the beginning. However, after a police investigation it was established that the boy was indeed guilty of theft. The case was referred to the courts.

Thanks to their close cooperation with courts and social workers, mediators were informed about this case around the time it was referred to the courts. These events took place in 2009 and the mediation process lasted four months.

The preparation phase of a mediation process is a series of consecutive events which create the conditions necessary for the parties to start a dialogue. This phase consists of the following three activities:

1. Agreeing to use mediation as a way to resolve a conflict. For mediation to be considered, one of the conflicting parties or other interested parties would make a proposal to involve a mediator or an organisation of mediators to help resolve the conflict. The proposal may be made either verbally or in writing. The mediation procedure starts when all parties to the conflict agree to participate in mediation process. Should one or both of the parties refuse the proposal, the mediation process stops here. Annex 1. Sample of an invitation letter formally proposing mediation

2. Choosing the mediator(s). During this stage, the conflict parties decide on how many mediators they would like and who these mediators will be. The parties may appoint a mediator themselves or seek assistance of a relevant institute to appoint a mediator for them.

3. Preparing for the initial mediation sessions.

There are two key elements in preparing for mediation. First is the technical preparation for the process: Finding a convenient place and time for the conflict parties. Second is the participants' own process of having to prepare both psychologically as well as gathering information and facts for their case. The psychological preparation should be covered as part of any initial meetings between the mediator and the parties to the dispute themselves. The mediator considers their approach and thinks through the process from beginning to end. When preparing for the meetings, conflict parties may also ask for assistance of psychologists and conflict experts. At this stage, conflict parties collect information about the dispute, seek advice of experts, and involve specialists as needed.

Case study: Preparation

The court shared information about the case with mediators. The court and the mediation organisation have a cooperation and information exchange agreement which allows them to share information whenever there were cases before the court which could more easily be solved by using mediation. In this case, mediation served as an additional method of conflict resolution to the court trial.

Initially, mediators worked with the accused boy and his mother. Because of her alcohol dependency, the mother was not able to take on the responsibility of representing her son. Mediators turned to the mother's sister, the boy's aunt. She agreed to take part in the mediation process and joined the meetings as the unofficial representative of the boy.

The landlord - in this case the injured party - was initially outraged and very angry. He demanded the toughest punishment for the boy. When he was first offered the possibility of mediation to resolve the conflict, he refused to take part in any joint meetings or negotiations. Despite this negative reaction, the mediators left him with an open invitation to meet and talk in case he changed his mind. A week later, a mediator conducted a follow-up visit with the landlord and asked him whether he had thought about the proposal. Having given it some thought, the landlord agreed to cooperate and meet with the boy and his aunt.

All parties agreed on a venue for the meeting, a place which had additional rooms for rest and breaks, should things become too tense. Of course, the mediators undertook some preparatory work with the boy and his aunt as well. He was told about the benefits of mediation as a way to solve the conflict without resorting to the courts.

During the preparatory meeting, the boy again admitted his guilt. At first, he explained that he stole because he needed money for surgery because of the pain of his medical condition. However, later on during this meeting, he confessed that he had been talked into committing the crime by one of his mother's acquaintances, and that this man had taken most of the money. The boy had spent his share of the money to buy a mobile phone and some ice cream for his friends.

The second phase is the actual meeting of the disputing parties with a mediator. The mediation process is a series of meetings to allow for an open airing and discussion of all sides of the conflict and a process of working out mutually beneficial solutions by the conflicting parties themselves. The main goal of the mediator during this phase is to provide the conditions for an open and constructive dialogue. The mediation process itself follows the following steps:

A. Introduction. The mediator informs the parties about the process, their role and function, sets out the ground rules for the discussion (for example, no interrupting or insulting the other party), and finally explains the main principles of mediation. The mediator is an impartial organiser and convener for the whole process. Mediators set the tone for constructive dialogue and help the parties establish agreement on the process from the very beginning of their dialogue. Agreement by all parties to follow the process plays an important role throughout as it reassures the parties that they will come to a conclusion that takes their needs and objectives into account.

Case study: Introduction

All of the participants in this process were introduced: the mother, the boy, his aunt, the landlord, two social workers who represented each side and, of course, the mediator. All participants agreed on basic procedural rules as laid out by the mediator. After this, each of the parties was given an opportunity to put forward their position.

B. Putting forward the positions. Each party now has the opportunity to tell their own story and explain what happened from their perspective. After each party has finished, the mediator then repeats and summarises what was said, clarifying details and softening the language used, if necessary. Often, this will be the first opportunity for the parties to actually listen and really hear each other. The fact that they address the mediator when speaking rather than speaking directly to each other often also helps to reduce tension and discomfort. After sharing their positions and their understanding of the problem, all parties are provided with an additional opportunity to ask clarifying questions or add any additional points.

Case study: Putting forward the positions

The boy told his story. He talked about this other man who convinced him to steal. According to his statement, the man came to their house with a bottle of vodka. The man, the boy and his mother sat at the table and the man and his mother started drinking. It is worth mentioning that the boy's mother fell asleep during this part of the mediation process so wasn't able to participate in the discussion. The boy continued to tell his story regardless.

The landlord was then given the chance to speak. He focused a lot more on his feelings and the shock he had experienced being a victim of theft. He reiterated his good attitude towards the family, said that he was helping them and felt betrayed by the boy. He wanted to know why the boy did this to him. The landlord was very forthright in sharing his feelings.

Even though the boy was afraid of what could happen to him, the rules everybody accepted allowed him to feel secure. The landlord also reassured the boy by saying that he was not interested in revenge, but just wanted to know the truth and real reasons that motivated the boy to commit this crime.

C. Formulating the agenda. The mediator helps the parties separate fact from interpretation and define key issues for discussion during the mediation process. This is made possible through discussions about each party's position and clarifying what is fact and what is opinion.

Case study: Formulating the agenda

The preparatory work with the parties and adherence to the mediation procedure up front allowed for a smoothing of relationships between the conflict parties. The discussion also took into account the new information about the man's role in encouraging the boy to steal.

Even though the owner of the shop expressed his emotions openly, he was not aggressive. The mediator created an atmosphere for dialogue, in which the parties were able to listen to each other and sincerely find ways to resolve the dispute peacefully.

D. Assessing and choosing solutions. The mediator maintains control of the discussion, helping parties to think through issues, negotiate in a cooperative way and seek solutions that would meet not just their own interests, but those of the others as well. Based on ideas discussed, the mediator also helps the parties to make a choice among possible solutions. Together with the parties they also monitor the implementation of these settlements, and compare them to the outcomes expected by the parties during the mediation process. If the parties are getting too emotional or the discussion between them becomes unconstructive, the mediator can propose a break and speak with each party

separately. Parties can share what is making them anxious or blocking progress that they are not able to express in the meeting. Whatever is said during such a session remains confidential and may be communicated to the others only if the first party agrees to this.

Case study: Assessing and choosing solutions

After the parties clarified their positions, they started discussing how they could solve the problem. Even though the mother said that she would pay back the stolen money, it was also agreed that it was important to make the boy responsible for his deed. The boy's aunt offered to hire both him and his mother and to guarantee them a salary.

The landlord had begun to calm down and behaved with tolerance when the parties were thinking of solutions to the problem. As a result of the process, the landlord understood the details of the situation. He agreed to receive his money back in installments. The money was not really that important for him, so he was comfortable with this arrangement. His goal was to ensure that the boy and his mother took responsibility for what had happened.

E. Reaching and formalising the settlement. In this phase, the mediator helps the parties to reach and correctly formalise a suitable agreement. The parties should discuss consequences should they violate the terms of the settlement. These consequences are also part of the conditions of the final agreement. For the agreement to be viable, it has to be clear, realistic, explicit and comprehensive for both parties. Upon reaching an agreement, the parties draft and sign an amicable agreement. Upon signature, the parties consent to end the dispute and become bound by this agreement.

Annex 2. Sample of an amicable agreement.

Case study: Reaching and formalising the settlement

After the terms were defined, the parties signed an amicable agreement. The landlord agreed that the mother and her son would pay him two thousand soms every month until the money had been paid back. The fact that the aunt guaranteed their employment for the duration of the agreement meant that the boy and his mother would be able to pay this sum every month. The fact that the theft had been committed upon the instigation of another man also made a significant difference to the landlord's view of what had happened. By the end of the process, the landlord was absolutely calm and told the mediators that he found answers for all of questions he had.

The boy sought medical advice on support for his illness. Though not bound to do so, the mediators voluntarily supported him to assist him in his interactions with the medical establishment.

During the post-mediation phase mediators review the implementation of the agreement. Ongoing separate and joint meetings take place with the parties to discuss possible problems that arise when implementing the agreement. If needed, mediators may decide to convene additional meetings for more mediation.

Case study: Follow-up

As a result of the successful mediation process, the court dismissed the case and dropped the charges against the boy. Court records do not show that the existence of a mediated solution led to the dropping of charges in this case. However, it is hoped in the future that courts will more proactively seek the involvement of mediators to reach more sustainable settlements quickly and at less cost to the state than recourse to the judicial system alone.

Unfortunately, the story itself of a family in difficult circumstances has a much sadder ending: For the first few months, the agreement held and the family paid back the debt to the landlord. However, after four months, the family fled from the area and their whereabouts are still currently unknown.

The mediators discussed the situation with the landlord, as he was now in his rights to continue the criminal prosecution or even request the missing sum from the aunt, who had agreed to act as guarantor for the family. Due to the powerful sense of reconciliation afforded to the landlord by the process of mediation though, he decided not to pursue the family for the missing money. He forgave them and did not want to pursue his legal claims anymore.

Summary of key activities in mediation:

1. Preparation

- Agreeing to use mediation
- Choosing a mediator
- Preparation for the meetings (technical as well as meeting parties)

2. Mediation

- Introduction
- Putting forward the positions
- Formulating the agenda
- Assessing and choosing solutions
- Reaching and formalising the settlement

3. Follow-up

- Conducting follow-up meetings to check implementation of the settlement
- Evaluating the success of the mediation process

Creating a good environment. The parties should be invited to a place which is not associated with the conflict. For example, if a conflict took place in a company's office, mediation should not take place in these offices. The conversation should be conducted in an unconstrained environment which does not remind the participants about negative aspects of the dispute. This will help them establish psychological distance from the conflict and be more open-minded.

The room should be arranged in a pleasant way. Placement of the participants is also important and is part of the arrangement mediators should make. Parties should sit in a way that makes them feel equal. They should have a good opportunity to see each other and the mediator. Nothing should block a view of the parties.

Conflicting parties should not sit too close to each other (to avoid any physical confrontation and to maintain comfortable personal distance from each other) but not sit too far away either. Small details can help create favourable conditions as well, for example, flowers, a table, beverages, air conditioning or heating, etc.

However, the most important element in creating a good environment are the opening words and overall conduct of the mediator. Mediators have to create a trustful, cooperative environment that is free of fear for everyone. Minor details, like words of approval for taking part in the mediation often mean a great deal.

Handling introductions. The mediator(s) introduce themselves and ask the parties in conflict to do the same. While introducing themselves, it is also useful for the mediators to disclose some personal information about themselves (for example, marital status or whether they have children). This creates openness and encourages the parties to share something personal as well, setting a productive and open tone for the meeting.

Reviewing the background. To avoid giving the impression that mediators have already sided or are unduly influenced by one party, mediators should take time to describe the process from the very first contact until now and provide the full disclosure on information they received during the process. The parties at the meeting then can also provide a similar declaration of the background to the mediation meeting. It goes without saying that none of them should be given preference by the mediators.

Exploring expectations. To verify the information received at this stage - because information may be biased or incorrect - mediators should check any disputed facts with the conflict parties. This can also help to demonstrate the impartiality of the mediator and establish trust. It is helpful to ask the parties at this stage about their expectations. If some participants are found to have unrealistic expectations, this is better tackled sooner rather than later.

Explaining the mediation methodology. Even if it has already been explained during the preparation phase, the mediators should review the goals and aims of mediation, the role of the mediators as well as the basic rules of mediation. The conflict parties have to clearly understand what to expect and what is important at this stage of the process. As a general rule, all parties should receive the same information at the same time to reduce misinterpretation and further promote equality, fairness and the impartiality of the mediator.

The process of mediation should be described conceptually and in practical detail. It is important for the conflict parties to know what will happen and when it will happen. For example, when is the right time for them to present their various solutions to the problem? The mediators should explain that are following a process, that they are responsible for the process, and when needed they will intervene if needed. For example, if solutions are presented before all parties have had a chance to present their stories, the mediator will intervene. Being clear about the process helps establish the ground rules for the mediator to interrupt or stop conflict parties if they deviate from the process. Parties are “warned” about possible interventions and will tend to be more understanding should this happen.

Establishing willingness or resistance. It is important to check at this stage whether or not the parties are able to express their readiness and willingness to follow the described methodology and abide by the rules. Each party present at the meeting should be asked to express their willingness individually. This personal expression of willingness helps to establish the psychological contract that shows they will be ready to be bound by future decisions and establishes the mandate of the mediation process to resolve the conflict. If the parties are still uncertain in their willingness to commit to the process, their resistance cannot be just pushed aside or countered with arguments. By listening actively, a mediator can demonstrate to a conflict party that their views and feelings are being heard and taken seriously. Sometimes this alone will be enough for some to allay their doubts and fears. This also means that later on, it will be easier to reach settlements that are sustainable.

Making logistical arrangements. It is important to ensure that all organisational and logistical issues are solved up front. This includes such things as the duration and frequency of meetings, protocol for requesting

breaks, etc. If the mediator is planning to record the meetings for educational purposes, this should also be discussed with conflict parties in advance. Even getting agreement on whether note-taking should be allowed during mediation is also a subject for discussion. Note-taking will help mediators remember and process information, but of course none of the notes or recordings should be published. Notes should be taken evenly and carefully so as not to offend those speaking when no notes are taken. This can be an opportunity to demonstrate impartiality as well for the mediator.

Allowing space for parties to fully express their position. In the beginning the conflicting parties are called to think about why they have agreed to mediation, what they want to say, and also for them to take notes if they wish. This eases the task of listening for those who have to listen first and only get to speak later. During this phase, it is important that the parties are able to articulate the emotional distress they have felt as a result of the conflict so these can be understood in the context of what happened and how they behaved. The presence of impartial mediators can enable new information to be brought to the table that was hitherto unspoken, so that conflict parties have a chance to consider a contextualised and nuanced explanation of one side's position and experience of the conflict.

Sequencing speakers and listeners. As a general rule, the right to speak first is usually given to the party who initiated the mediation process. However it is often better to give the floor first to those parties who are most intolerant and worked up, so that they might be better able to listen to others once they have spoken. Another option is to give the floor first to a "weaker side" to avoid a discourse dominated by the "stronger side". To those who start off by just listening, it is important to acknowledge their difficult task, that remind them that they are not here to just passively listen. They have to listen actively, and with care and be

tolerant when they suddenly feel - as they most probably will - that something objectionable is said to them or about them. It can be helpful to put out writing pads and pens for them so they can note their objections and not forget them. They will have a chance to speak when their turn comes. At the end, the mediator summarises the most important points raised by the speaker and checks to ensure that everything has been understood and accurately summarised. Should the other parties have any clarifying questions, they may ask those at this stage.

Highlighting common ground and establishing differences. Once all parties have presented their points of view, mediators identify issues parties have in common, perhaps even issues the parties did not realise they had in common. The common ground can be written up on a flipchart or large piece of paper and displayed so that conflict parties can see it. This helps all parties appreciate that there is a basis from which to negotiate and that not everything the other parties say is in opposition to their own views and opinions. Of course, the mediator should collect and list all issues still in dispute, so that they can be tackled later on.

Clarifying the conflict. It is possible that so many latent interests and emotions have already been expressed by this time that the parties may already have reached some mutual understanding and additional sessions about establishing facts in the conflict become unnecessary. The parties then can already begin looking for a solution. However, other mediation sessions will take longer. It may be that in the first round, the parties have only stated facts. This process alone can be very time consuming. Mediators in the storytelling phase should not interrupt the stories, while keeping an eye on those parties who find it difficult to sit for long periods of time without having the opportunity to speak. That is why sometimes it may be useful to wait with clarifying questions, feelings and getting deep into the conflict until the subsequent next meeting.

Identifying problems and blockages. Mediators can examine issues which they wish to know more about or issues they suspect hide deeper drivers of conflict. At first, mediators can focus on a simple - though not insignificant - problem to start to make immediate progress. In other cases, it will be clear that there may be a problem which needs to be solved urgently. If this is the case, then it is better to start with the urgent problem. Using a targeted questioning technique, mediators can uncover feelings, needs and other hidden causes of a problem. This kind of problem clarification can help the parties understand their conflict better and thereby seek better solutions. At this stage, the conflicting parties should have a chance to say what they want to say and they should also share their opinion of what an ideal resolution of the conflict would look like for them. At this stage, it does not matter whether it is possible to implement this solution or not. Other parties are also given a chance to speak and share their feelings, interests and more hidden needs. Ideally, the crux of the conflict should be getting more clear to all parties, which supports the growth of mutual understanding and trust.

Encouraging cooperation. In previous stages, it was necessary to understand the motives of conflict parties to get a picture of the whole conflict. At this stage, focus should be shifting from a the perception of the conflict as a battle or competition, but as a common problem that needs to be solved to the satisfaction of all. It should be possible to get parties to acknowledge that each party has its own interests and needs, and that these can be helpful in explaining their behaviour and that it is imperative to find solutions which take these factors into consideration. The dispute can be solved through a cooperative effort much faster and in a better way than through prolonging the conflict. The more each party considers the objectives of the

others, the more open they are to hearing about my interests and objectives. This cycle of mutual understanding helps all parties' find an optimal solution to the conflict.

Collecting possible solutions. The mediators now break the conflict into smaller, more specific problems and begin work with the easier ones. Once parties see some successful results, they will be more motivated to solve the more complex problems. A whole range of directions and possible solutions will already have been established during the previous phases. Solutions should not be limited to the obvious or the first ideas. This is a genuinely creative process that also forms part of the trust-building that occurs between parties in mediation. It is not recommended, for instance, that mediators stop and concentrate on the first solution generated; it is not necessarily going to be the best one. New creative ideas take time to generate and this is why it is better first to find as many various solutions as possible. Techniques such as brainstorming can help stimulate creativity. A question for brainstorming can be formulated in a general way: "What kind of ideas do I see?" or more narrowly: "What steps am I ready to make in order to get to a good solution?" It is important that these ideas are not assessed and questioned in the beginning, they just need to be allowed to flow. Brainstorming can be conducted in a big group cooperatively or separately with parties in small groups. Please ensure that all ideas are noted down so they can be remembered and discussed together. While collecting ideas, the mediators could also bring proposals to the table, but they should take great care to remain neutral and conflict sensitive. Experienced mediators get around this by simply asking: "What if...?" Such a formulation is more neutral compared with "I would like to propose the following to you...".

Assessment and choosing the solution. Once different possibilities and ideas have been collected, they should be sorted out and assessed. Some may be unrealistic and can be crossed off right away while others should be checked more carefully for viability. Mediators should be able to probe and question the positive aspects of all ideas and possibilities, to see how they can be improved. To get to a situation where both sides feel that they have “won” the negotiation (a so-called “win-win agreement”) mediators and conflict parties have to be willing to think about satisfying underlying interests and needs, not just focus on each other’s positions. For example, if parties are discussing financial support or the distribution of money, it makes sense to first develop criteria for the assessment of the proposals before calculating the exact split of assets (creating a “win-lose agreement” which benefits one party at the expense of the other). The criteria should be fair, just and reasonable. Mediators can focus first on obligations that all parties have to meet and only afterwards focus on the obligations of separate parties. A “win-lose agreement”, where one party unilaterally makes concessions, tends not to be a very sustainable agreement and could impact on the success of the implementation of the settlement.

Further refining possible solutions. Possible solutions which have been selected by conflict parties can be checked in more detail and implications carefully thought through. More information or input from others may be needed. If the disputing parties are having trouble agreeing on a common decision, mediators can use a “one text method”, where the mediator would propose a text that can be jointly edited by the parties in accordance with their objectives and building on the already established mutual understanding and willingness to work together.

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Annex 1.**Sample of an invitation letter formally proposing mediation**

Dear _____ (and _____ if there is more than one party to the conflict),

_____ (a mediator or mediation organisation) has contacted us regarding a current dispute that is causing stress/concern/worry between you and _____ (the other parties in conflict). We sincerely wish to help you solve this situation in a peaceful and sustainable way which acknowledges everyone's needs and wishes.

Our organisation would like to propose using the process of mediation to resolve this situation. We will work with you and the other parties as a neutral mediator without taking anyone's side. Following the principle of absolute impartiality, we can try to help all of you to find a fair and just solution to your dispute. We would be happy to organise an initial meeting with you to discuss the issue and answer any questions you may have about mediation as a discipline or our process.

The meeting can take place not too far from where you live at any time convenient to you.

I am attaching an informational booklet, which further describes the mediation procedure. Please feel free to call me so that we can discuss further details I hope you find this information useful and can see how mediation might be a quicker, cheaper and better way to resolve your conflict.

With friendly regards.....

Annex 2.

Sample text of amicable agreement.

Annex 2. Sample text of amicable agreement.

Mediation agreement №

(general form)

_____ « ____ » _____
 (place) (date)

_____,
 (full name of an organisation/ person)
 represented by _____
 _____, acting upon _____,
 hereinafter called as «Party 1»,
 from one side, and _____,
 _____,
 (full name of an organisation/ person)
 represented by _____
 _____, acting upon _____,
 hereinafter called as «Party 2»,
 from the other side, hereinafter together called as
 «Parties», have concluded this Agreement.

I. Subject of the Agreement

1. The parties conducted a mediation procedure in regards to a dispute(s) related to

_____ *(subject of a dispute-s)*
with participation of _____

_____ *(name of an organisation or full name of mediator-s, address, telephone numbers, e-mails)*

_____ as a mediator *(organisation, providing the conduct of mediation procedure)*.

2. Mediation was conducted in the following order: _____

_____ *(reference to the rules of conduct of mediation procedure approved by a relevant organisation responsible for mediation, or regulations of mediation procedure with clearly written rights and obligations of the Parties during the procedure, peculiarities of a mediation procedure while regulating this dispute, other conditions of conducting of mediation procedure)*.

3. Terms of mediation procedure: _____

4. The mediation procedure activity of mediator-s *(organisation providing the conduct of mediation procedure)* was paid by the Parties equally.

5. As a result of mediation, the Parties have agreed to:

5.1. Party 1 to be obliged to _____ to Party 2 during _____ in the amount of _____, while Party 2 to be obliged to _____ to Party 1 during _____ in the amount of _____.

5.2. Party 1 has a right to _____ from Party 2 during _____ in the amount of _____. Party 2 has a right to _____ from Party 1 during _____ in the amount of _____.

6. This Agreement shall not serve as a barrier to filing a suit to a court or to an arbitrary court.

7. This Agreement may be amended or terminated upon the consent of the Parties or upon a request of one of the Parties. The Agreement shall be terminated before in the case of:

- Liquidation (or death) of one of the Parties;
- Relevant decision made by a court.

8. The Parties shall take all measures to solve issues regarding implementation of this Agreement by negotiations.

9. Should it become impossible to regulate the disputes by negotiations the dispute will be sent for consideration of a _____

_____.
(name of a court to consider the case)

10. The Parties shall not disclose any information, related to this Agreement or to the Agreement's implementation without prior written permission of another party, except for the cases when providing of information is obligatory in accordance with legislation.

11. The Parties shall be guided by legislation regarding issues not provided by this Agreement.

12. All written notifications are to be addressed to:

Party 1, address _____;

Party 2, address _____.

13. If data, provided by p. 16 of the present Agreement is changed the Parties shall inform each other in written form during _____ days.

14. The agreement is valid from the moment of conclusion. This Agreement is effective until the proper performance of obligations by the Parties.

15. This Agreement has been concluded in 3 copies with equal legal force: one for each side and one for mediator (*organisation, responsible for conducting of a mediation procedure*)

16. Location and bank requisites (passport information) of the Parties:

Party 1	Party 2
---------	---------

Signatures of the Parties

Party 1

Party 2

_____ (_____)

Stamp

_____ (_____)

Stamp

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