



# **International Developments in Mediation**







International Mediation Institute

Promoting Consensus & Access to Justice

**Professional Mediation Worldwide**

-  Driving transparency and high competency standards in mediation worldwide
-  Convening global stakeholders
-  Promoting understanding and adoption of mediation
-  Disseminating skills and materials for parties, counsel, and mediators

**International Mediation Institute**



# Overarching Themes

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## **Redefining the Value of Mediation:**

**What is your mediation elevator pitch?**

1. Mediation as a part of People-Centered Justice
2. Mediation as a business-enabling process



## **Mediation Enabling Regulatory Mix**

1. Mandating mediation
2. Raising of and internationalization of standards



## **Mediation Advocacy as Key to Success**

# CEPEJ Judicial Dashboard: Switzerland (2020 data)

## CEPEJ efficiency indicators

Clearance Rate (CR) = (Resolved cases / Incoming cases) \* 100

CR > 100%, court/judicial system is able to resolve more cases than it received => backlog is decreasing

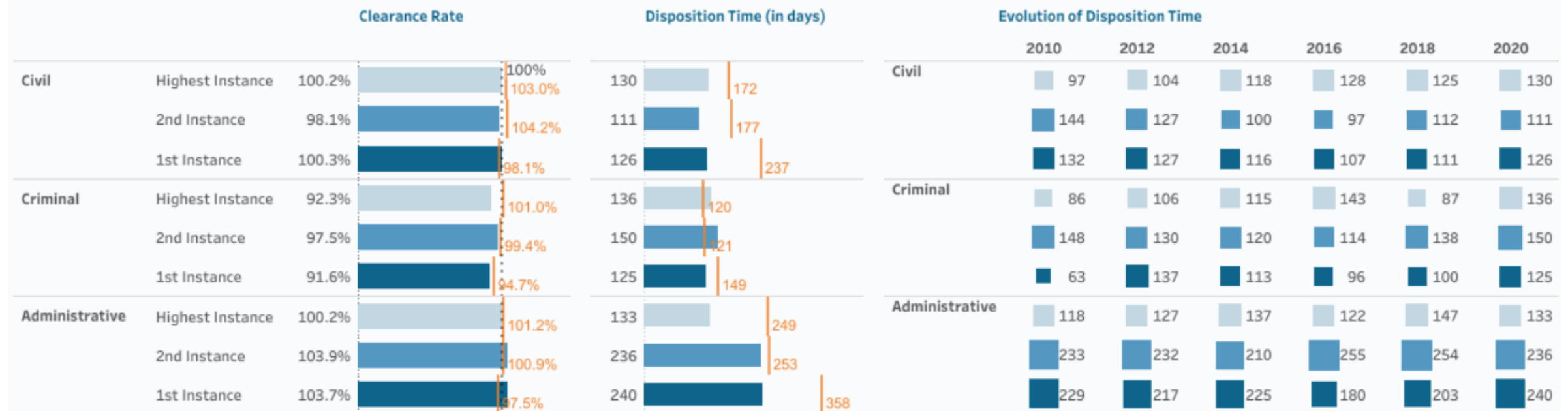
CR < 100%, court/judicial system is able to resolve fewer cases than it received => backlog is increasing

Disposition Time (DT) = (Pending cases / Resolved cases) \* 365

The Disposition Time (DT) is the theoretical time for a pending case to be resolved, taken into consideration the current pace of work

### Instance

- Highest Instance
- 2nd Instance
- 1st Instance



# DELIVERING JUSTICE, RIGOROUSLY:

## The Hague Institute for Innovation of Law – HiiL’s Guide to People-Centred Justice Programming





## BRIEFING

Requested by the JURI committee



### A Ten-Year-Long “EU Mediation Paradox” When an EU Directive Needs To Be More ...Directive

**The EU Mediation Directive remains very far from reaching its stated goals of encouraging the use of mediation and achieving a “balanced relationship between mediation and judicial proceedings” (Article 1).**

- The **paradox of mediation** is that it is universally praised and promoted, but used rarely
- Official data and multiple studies clearly show the benefits of mediation and that the best way to increase significantly the number of mediated disputes is to **require the disputants to make a serious and reasonable initial effort at mediation**, ex. through:
  - **mandatory mediation information sessions** or
  - **mandatory mediation with an easy opt-out**

# Conclusions from the 15-year EU mediation policy experiment

**“Trying to create a mediation culture before people are participating in mediation in any significant numbers is, essentially, putting the cart before the horse.”**

**“People generally are not open to new ways of doing things without being at least nudged into trying them first.”**

# “The submission problem”

See: [Meeting building block](#) on HiIL's Justice Dashboard ([HiIL n.d.-w](#)).

The paradox of mediation is due to the “submission problem”: **mediation can only work if the parties can be convinced to participate.**

[The submission problem is inherent to every dispute.](#)

The literature on mandatory mediation is extensive.

It mostly finds that voluntary mediation leads to a settlement at a slightly higher rate than mandatory mediation.

**The number of disputes resolved by a mandatory mediation programme (with sufficient capacity) is vastly higher than the number of disputes resolved by a voluntary program, however.**



# Solving the submission problem accross the world

- **England and Wales**
  - Civil Justice Council declared in 2021 that mandatory mediation was lawful and should be introduced in the judicial system
  - Court of Appeal to decide on 28th June 2023 in the case of Churchill v Merthyr Tydfil County Borough Council
  - **“Mandatory Mediation in in England and Wales: Much Ado About Nothing?”** Bryan Clark
- **Singapore**
  - Court Rules
  - Mandatory Mediation in Neighbourhood Disputes
- **Canada**
  - [Civil Court Mediation Program](#) (Alberta): 90 civil claims/month randomly selected and parties mandated to mediation. Initial resistance to mandatory mediation by the mediation community, but the results changed their minds. It turned into an opportunity for lawyers, judges and parties to experience mediation, which then resulted in claims being filed with a request that the claim go to mediation.
  - [Municipal Mediation Program](#) promotes collaborative resolution between municipalities through education and training as well as mediation services.

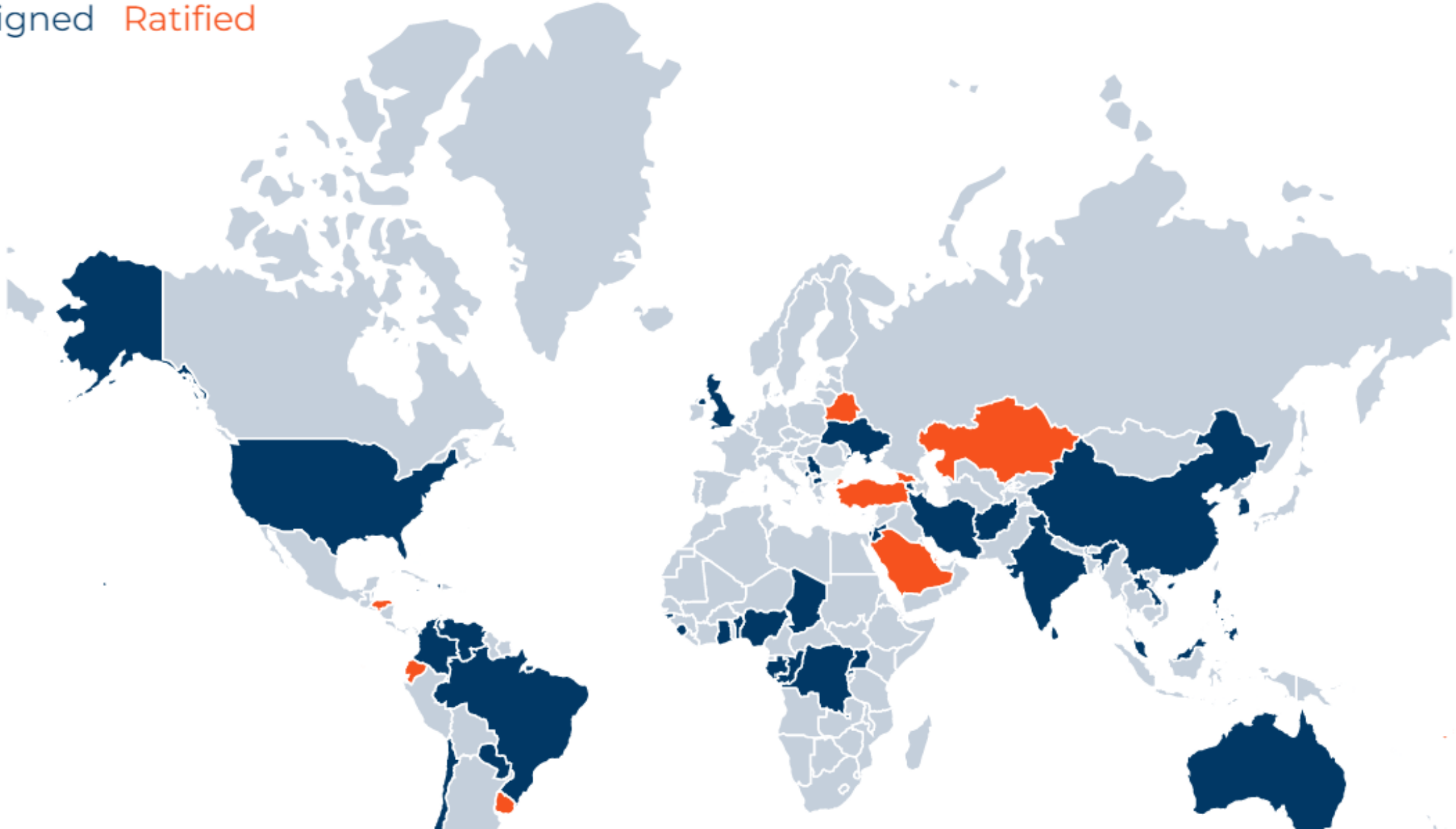


# **Key factors impacting whether and how mediation is used:**

- Regulatory environment rules,
  - Incentive rules,
  - Concerns about quality of service and professionalism, and
  - Levels of awareness among parties.
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# Singapore Convention

Signed **Ratified**





# UK Public Consultation Process on the Singapore Convention: Reasons to become a Party

Signal the UK's commitment to Alternative Dispute Resolution

Enhance the UK's status as an attractive international dispute resolution hub

Increase the credibility of UK based mediators

It could act as a gateway to international cooperation in developing standards in mediation, as well as adding trust and legitimacy to mediation, both domestically and internationally

Signal the UK's ambition to remain a global leader in Private International Law

The UK would be able to contribute to the development of the interpretation of the Convention's provisions through judgments given on the Convention by UK courts

# IMI credentialing system

- Offers an internationally recognised trust mark of high-quality mediators and mediation training through harmonising mechanisms, such as:
  - **mediator peer and client review (Feedback Digest)**
  - **a code of professional conduct for mediators**
- Overarching principles of transparency, trust, competence, confidentiality, and impartiality.
- Does not require/prescribe uniform standards

# Lawyers: a key partner in systemic change

- The “culture in the legal sector” needs to undergo a revolution – education, training and awareness raising
- Lawyers, even when trained as mediators, might understand the process, but not necessarily their role in it as client advisors
  - The importance of mediation advocacy should not be underestimated
- Attitude of the bar association, mandatory training, etc.
- Legislation/ Deontological rules:
  - ex. Professional Rules of Practice in Singapore and **Irish Mediation Act 2017**, under which solicitors and barristers:
    - i. Must advise their clients about Mediation
    - ii. Provide their clients with all necessary information
    - iii. Provide information on Advantages & Benefits of Mediation
    - iv. Must inform clients it is voluntary
    - v. Must complete a Statutory Declaration evidencing that they have completed all of the above



# Best practices in “Mediate First” Pledges

- **The Scottish Mediation Charter, launched by “Scottish Mediation”**
- **“Mediate First” Pledge campaign of the Department of Justice of the Hong Kong Special Administrative Region (“DoJ”) (2009)**

The Scottish Mediation Charter is a simple commitment that asks organisations to do two things:

- **give a commitment to use mediation where appropriate,**
- **create opportunities for people in their organisation to gain the skills of mediation**



For some larger organisations a commitment to using mediation can become integral to the way an organisation works.



Not every organisation might have the capacity to make the investment in creating an internal team of mediators but even something that allows the spread of the skills of mediation in an organisation can lead to better conversations where people are trained to listen effectively.



The ability to resolve disputes at an early stage can also go a long way to avoid the time and cost that is involved in dealing with formal internal discipline or grievance procedures and, even worse, in defending a court or tribunal claim.

# Mediation and the Art of Regulation

Nadja Alexander  
(2008)

## VII THE ART OF REGULATION: BRINGING FORM AND CONTENT TOGETHER IN THE MEDIATION MIX

The Mediation Mix brings together issues of regulatory form, explained through the four regulatory approaches to mediation, and regulatory content, analysed through a series of descriptive classification schemas. The Model provides a conceptual map to assist law and policy-makers navigate the labyrinth of regulatory issues in mediation and is represented in the following diagram.

Regulatory approach →	Market-contract	Self-regulation	Framework legislative	Formal legislative
Content of regulation ↓				
1. General 2. Sector-specific, or 3. Context-integrated				
1. Triggering 2. Process 3. Standard-setting 4. Beneficial				
Interface between process and legal system?				
1. Mandatory, or 2. Default				

Table 1: The Mediation Mix

- Law schools and research institutions should be more than aggregators of best practices and should think of what are society's evolving conflict resolution needs and how mediation can be further adapted to meet those needs
- This collective effort will be what enables mediation to fulfil its promise as a counterforce to the many social divisions and a method of resolving conflicts that keeps humans at its center.

### Examples:

- Cooperation between Dutch and Belgian professors active in the field of mediation and the Academic Mediation Pitch where researchers present their latest research findings on the subject. NL mediators initiative in cooperation with VU University and MfN.
- Netherlands Project on Criminal Mediation
- **University of Strathclyde Mediation Clinic** has been offering a mediation service across almost half the country's courts. In 2022 the courts referred 314 cases and the Clinic provided 167 mediations, a take-up of 53%, with a settlement rate of 75%.
- **Moot Court Competitions:** CDRC in Vienna, ICC Mediation Moot in Paris

# Universities, Research Institutions and Key Policy Makers: Creating Pockets of Collaboration





**NADRAC**  
NATIONAL ALTERNATIVE DISPUTE  
RESOLUTION ADVISORY COUNCIL

## MAINTAINING AND ENHANCING THE INTEGRITY OF ADR PROCESSES

From principles to practice through people

# Best practice example: NADRAC

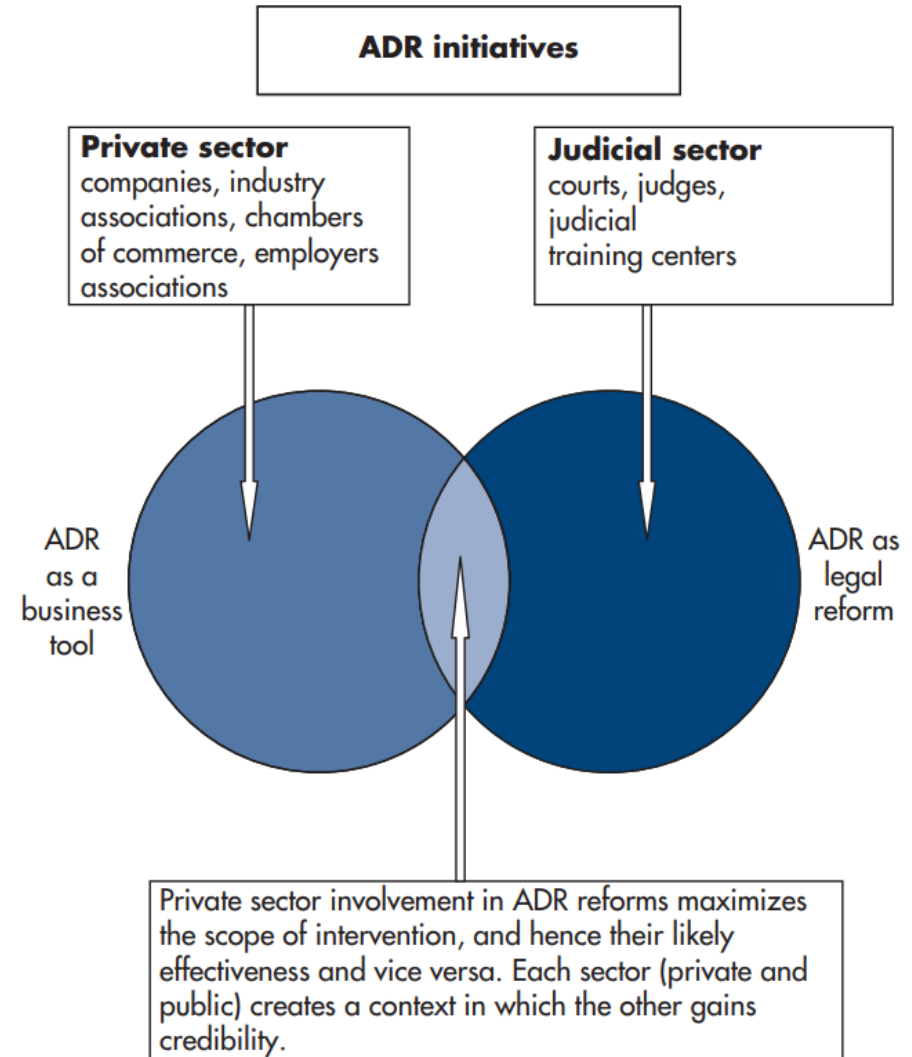
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- NADRAC was an Australian independent body that provided policy advice about [alternative dispute resolution](#) (ADR) to the [Attorney-General of Australia](#).
- Established in 1995 and concluded in 2013.
- **NADRAC was an independent non-statutory body, with funding provided through the Australian Government Attorney-General's Department. It provided expert policy advice to the Attorney-General on the development of ADR and promoted the use of alternative dispute resolution.**
- NADRAC made substantial contributions to the development and promotion of ADR in Australia, publishing reports and papers on the topic.
- **“Managing Disputes in Federal Government Agencies: Essential Elements of a Dispute Management Plan“**

# World Bank ADR Guidelines

**Mediation as a tool for people-centered justice and mediation as a business enabling tool: the public and private sector must work together**

Figure 1.1: Illustrating Key Access Points for ADR Initiatives



**We need to  
work  
together:**

**locally and  
internationally!**

[Access at:](https://dashboard.hiil.org/wp-content/uploads/sites/9/2022/09/Hii-L-trend-report-Delivering-Justice-Rigorously_web-1.pdf)

[https://dashboard.hiil.org/wp-content/uploads/sites/9/2022/09/Hii-L-trend-report-Delivering-Justice-Rigorously\\_web-1.pdf](https://dashboard.hiil.org/wp-content/uploads/sites/9/2022/09/Hii-L-trend-report-Delivering-Justice-Rigorously_web-1.pdf)

## COMPOSITION OF A TASK FORCE NEEDS CAREFUL CONSIDERATION





[IMI LinkedIn Page](#) and [Group](#)  
[IMI Facebook Page](#)  
[YMI LinkedIn Group](#)

[imisupport@imimediation.org](mailto:imisupport@imimediation.org)

Newsletter sign-up:  
<https://imimediation.org/newsletter/>

[imimediation.org](http://imimediation.org)

**Ivana Ninčić Österle,**  
**Executive Director**  
[LinkedIn](#)

**Robert Delaunay:**  
**“Windows Open Simultaneously”,**  
**1912**

