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A Focused Glimpse into Mediation Skills and Competencies

Prepared by: Mina Vaish, Christiana Laing, Prabha Sankaranarayan

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“We have thought of peace as passive and war as the active way of living. The opposite is true. War is not the most strenuous life. It is a kind of rest cure compared to the task of reconciling our differences...From War to Peace is not from the strenuous to the easy existence; it is from the futile to the effective, from the stagnant to the active, from the destructive to the creative way of life. ...The world will be regenerated by the people who rise above these passive ways and heroically seek, by whatever hardship, by whatever toil, the methods by which people can agree.”

Mary Parker Follett

1868-1933

Introduction

The inclusion of women in all areas of conflict prevention, resolution and peace processes including International Dispute Resolution (IDR) or International Peace Mediation (IPM), has been a major focus area of the international community for the past two decades. In 2000, the Beijing Declaration and Platform for Action laid a foundation through the UNSCR 1325's implementation which is still currently referenced.¹ The Convention on the Elimination of Violence Against Women, the Women Peace and Security Agenda, the Millennium Development Goals, and the Sustainable Development Goals all reference gender and inclusion in their mandates. Accordingly, academic research has gathered empirical examples which support the claim that women's involvement in peace processes is positive- in substantive and sustainable ways.² The international governmental community has also been a proponent of gender equality through considerations in programming, trainings, and ad hoc resolutions. However, the severe lack of representation of women in IPM is still a constant with less than 10 percent representation at the chief mediator level.³

Research published in 2012 showed that between 1991 and 2011, of 31 mediation processes only three were led by women as the chief mediator. Slightly more women have held senior positions in which they have fulfilled mediation roles, for example as a Special Representative of the Secretary-General (SRSG), but even when women in senior roles with a mediation function are included, the numbers of women achieving high-level discretionary appointments remain extremely low. The relative absence of women in high level mediation can be partly attributed to the fact that such discretionary appointments are made on the basis of political nominations by states. There is also a lack of transparency in the criteria that are applied to this selection process. The adoption of skills-based selection criteria for mediators and high-level mediation advisors would address the currently opaque nature of the appointments process.

The United Nations released a supplemental mediator guideline in 2017 outlining a guiding principles of gender inclusion which states "mediation strategies that include women systematically...lay the foundation for a more durable peace".⁴ This statement expanded on a 2012 version calling to "include a balance of men and women on mediation teams".⁵ Selection processes of IPM are also challenged by the 2017 Guidance on Gender Inclusive Mediation Strategies noting "when selecting and preparing mediators and mediation support teams" the selecting body should "appoint women as lead mediators" and "aim for gender parity in the mediation support team".⁶ These excerpts are solidified by United Nations Secretary General Antonio Guterres' strategy on gender parity which calls

¹ UNSCR 1325

² Proving women's success is an unnecessary precedent to set, and only furthers gender inequality unless the same processes are done to and for men. See also: Nilsson 2012, Krook 2009, and O'Reily & Súilleabháin 2013

³ UN Women report, 2012. Aggestam and Svensson, 2018: "Where are Women in the Peace Process?".

⁴ United Nations, 2017. Gender Guidance on Effective Mediation: 44. See also UNSCR 1325, UN SDGs.

⁵ United Nations, 2013. Guidance on Effective Mediation.

⁶ Ibid, 2017.

for “parity across the system, well before the target year of 2030” to include the UN Mediation Standby Unit as well as appointees.⁷

Mediation: Local to Global

“Mediation is one of the most effective methods of preventing, managing and resolving conflicts. To be effective, however, a mediation process requires more than the appointment of a high-profile individual to act as a third party. Antagonists often need to be persuaded of the merits of mediation, and peace processes must be well-supported politically, technically and financially. Ad-hoc and poorly coordinated mediation efforts – even when launched with the best of intentions – do not advance the goal of achieving durable peace.” - Ban Ki Moon, Secretary General of the United Nations, 2012.

Rooted in many ancient cultures and practices around the world, **mediation** has, because of its explosive use around the world, grown exponentially in the last twenty-five years. It is a widely accepted and often necessary process used to prevent and resolve long-held misunderstandings, quell stubborn stalemates, and end protracted violence. Informed by scientific and practical knowledge of the causes and resolution of human conflict and influenced by advances in emerging field such as social neuropsychology and behavioral economics, mediation has become widely used in a wide array of contexts including but not limited to commercial disputes in litigation, public policy disputes, reconciliation between victim and offenders, between large groups and communities, state and non-state actors and complex environmental conflicts involving multiple parties, complex technical and scientific issue. During this time, aspects of mediation processes, research on the efficacy of a range of practices in a range of contexts, the sciences that inform them and the qualifications, standards and selection processes have also evolved significantly.

International Peace Mediation (IPM), or International Dispute Resolution (IDR), terms used interchangeably in this brief, is evolving from the early days of diplomacy alone, by state leaders with political and diplomatic skills, to the inclusion of sophisticated and trained teams of mediators with expertise in the latest skills and processes, from purely power based models to interest based practices. This has, in conjunction with the shift toward people centered peacebuilding and changing norms and practices for inclusive peace processes, thus expanded the scope and possibility of mediation in recent years. The last ten years have also seen a shift from interstate, two party to intrastate and multiparty actors.^[1]with noteworthy examples of the latter including Alice Nduritu’s facilitation of the Kafanchan Peace Declaration and Southern Plateau Declaration in Southern Kaduna, Nigeria. These changes suggest that an effective IDR system requires the capacity to provide the full participation of non-state actors and address the full spectrum of issues in a dispute ^[2] including the impact of exposure to protracted violence and trauma. Most recently, the creation of Women’s Mediation Networks has focused on increasing and strengthening local capacity^[3] as well increasing women’s influence in mediation.

Simultaneously, the growth of mediation globally in civil, commercial, environmental, family and international contexts over the last twenty-five years has resulted in its integration into national legislation in over twenty countries and the development of court affiliated programs as well as community based mediation centers around the world, with the demand for training only growing- there are over 250 universities and colleges with undergraduate and graduate degrees in the field. The resulting development of identified skills, competencies and

⁷ UN Gender Parity Strategy <<https://www.un.org/gender/content/strategy>>.



ethics permit the implementation of Turner’s recommendation *“States and international organizations need to think more strategically about how to forge stronger links among local, national and international mediation practice”*.⁸

In 2012, Former Secretary General of the United Nations (UN), Ban Ki Moon wrote, “while all disputes and conflicts are unique and require specific approaches, there are good practices that should inform the approaches of all mediators”.^[4] These good practices are based in skill, and can be taught, learned, identified, and proven. To date, no internationally recognized or accepted list of mediator qualifications or selection process criteria has been made for IDR. Although standards for Track 1 mediator qualifications regarding skills and competencies are not easily identifiable, it is important to note that mediator qualifications in civil, commercial, family and other contexts have established professional guidelines, codes of conduct, and indeed specific measurables for competencies to mediate. It is hoped the data and experience of the private sector will lend insight and direction in the formulation of Track 1 mediation standards.

⁸ Women in Mediation: Local to Global, Turner, C. GCSP: Aug 2017 No.5



Purpose

The purpose of this research brief is to provide a *focused glimpse* into global and established mediation criteria and selection standards expected of certified mediators operating in civil, commercial, environmental, family and international mediation contexts. The brief also provides specific mediation definitions, and insight into how mediation process design can be enhanced to maximize a favourable outcome. Our research provides examples within national, regional, and organizational levels of currently used certifying measures and qualification criteria. As clearly stated at the outset while mediation has a rich history in many traditions and cultures, the definitions and criteria included here are extrapolated from established standards. They are to serve as examples and not meant to be representative of all practices across cultures.

The content gathered and presented is intended to:

- a) provide participants of the Geneva Workshop with an understanding of existing comprehensive standards for mediator skills and competencies utilized by bar associations, the UN, international mediation organizations, national and regional organizations to assess competency of a mediator and standards required to certify or accredit a mediator,
- b) illustrate consensus on standards across our selected sample of nations and organizations representative of entities with advanced mediation systems,
- c) provide material for discussion on what specific skills and competencies may be relevant for Track 1 mediation processes and
- d) elicit thoughtful discussion on inclusive process design, including the inclusion of women as lead or co-mediators, process designers and participants.

For the purposes of this brief, IPM will reference Track 1 mediation as the formalized mediation between parties in conflict either through International Governmental Organization (IGO) appointment or state-based representatives.

Definitions

Language and terms within the global context, conflict resolution, and mediation specifically are given alternate meanings and connotations. Therefore, for the purposes of this brief, terms used have been defined for shared understanding and consideration during the workshop.

1.0 CONFLICT TRANSFORMATION DEFINITIONS

Consultation	A process through which an impartial third party seeks parties' inputs and perspectives on issues that affect them. Most often undertaken as the first step of any Conflict Resolution exercise.
Arbitration	A process by which parties in a dispute refer their case to an impartial third party (Arbitrator) and agree to abide by the latter's decision, which is made based on the evidence they present. Differs from Mediation in that, here, the third party has power to impose a solution on the parties, rather than assisting them to arrive at a solution by themselves.
Conciliation	A process where a third party (Conciliator), not necessarily impartial, brings disputing parties together to resolve their differences. Distinct from Mediation or Dialogue Facilitation in that the Conciliator does not exert the same level of control over the agenda or the way parties communicate. Whereas the Conciliator may offer suggestions on how the parties could reconcile, those suggestions are not binding on the parties, who are free to accept or reject them.
Negotiation	The most basic process by which parties discuss substantive issues in a conflict and try to settle or resolve their differences amicably. Typically focuses on achieving an agreement rather than on the relationships between the parties. Parties can also use negotiation to agree on a course of action or to find a compromise solution to individual or collective needs.

Mediation	A facilitated process through which an impartial third party (Mediator) works with disputants to help them reach a mutually satisfactory agreement. Unlike arbitrators or judges, Mediators do not decide the dispute between the parties, but rather assist them to take responsibility for resolving their own dispute. Mediation also aims to help parties restore their basic relationship, not just reach a settlement.
Dialogue	A process wherein individuals or groups, with the help of an impartial third party Facilitator, engage in focused and productive conversation with the purpose of deepening their understanding of each other. Structured so as to help parties learn about each other; understand and address seemingly intractable differences; discover and unpack common concerns; and create tangible shifts in their perceptions of each other.
Joint Problem Solving	An activity – which may be part of Mediation, Negotiation, or Consensus Building – conducted to help parties identify their genuine needs and interests, and then collaborate to explore solutions that best accommodate these interests.
Consensus Building	An agreement-crafting process (often the stage following Dialogue) wherein multiple parties build a consensual decision with respect to an issue or set of issues of mutual concern or agree to work together collaboratively towards a common goal. The agreement or goal is inclusive of all stakeholders' interests and is determined without a preliminary vote.

Definitions Specific to Track 1 Mediation

Establishing mediation definitions specific to Track 1 mediation and process may require thoughtful input, debate and discussion. *This section is presented for discussion purposes.*

International Peace Mediation:	Mediation processes designed to address and resolve both interstate and intrastate conflicts in a manner that will lead to sustainable, enduring resolution to conflict.
Mediation	Mediation is a procedure based on the voluntary participation of the parties, in which an intermediary (or multiple intermediaries) with no adjudicatory powers systematically facilitate(s) communication between the parties with the aim of enabling the parties to themselves take responsibility for resolving their dispute.' - From the book "Mediation: Comparison of Laws,

	Regulatory Models, Fundamental Issues Klaus J. Hopt, Felix Steffek
Mediation:	(United Nations Guidelines)- Mediation is a “form of good offices whereby a third party, upon request, seeks to assist parties to a dispute to reach an agreement voluntarily through a formal dialogue process.
Mediation	International Mediation Institute: A negotiation facilitated by a trusted, neutral person. The mediator(s) assist parties to arrive at a consensus, and may take the form of a finalized agreement, resolution of dispute, development of effective communication, to build or improve relationships or all of these things.
Mediator:	An impartial, third party facilitator who assists participants to reach a mutually agreeable and voluntary solution or resolution to disputes, issues or conflict.
Co-mediation:	A process whereby mediation is co-facilitated by two or more mediators aimed at strengthening the mediation process.
Mediation team:	A support team formulated to support and empower the mediator(s) and stakeholders.
Standards:	A level of quality or attainment used as a measure, norm, or model in comparative evaluations.
Qualifications:	A quality or accomplishment that makes someone suitable for a particular job or activity.
Competency:	Ability for a mediator to demonstrate knowledge and experience in mediation skills.
Skills:	Identifiable mediation abilities (see further skills below).

Knowledge Skills:	Legislative, scientific, environmental, cultural, political, socio-economic, legal, religious, human rights and other knowledge-based skills and competencies.
Technical Skills:	The knowledge and abilities needed to accomplish certain tasks that require the use of certain tools.
Process Skills:	The knowledge and skills needed to make good observations, and to communicate, classify, and measure those observations.
Track One Mediation:	The use of mediation by official diplomatic channels between governments of different states and between official international and regional organizations.
Track Two Mediation:	The use of mediation by other unofficial, informal interactions by non-state actors in a manner that complements Track One negotiations. This term has emerged to specifically refer to the intervention by professional conflict resolution efforts.
Multitrack Mediation:	Using multiple tracks of diplomacy simultaneously to support the peaceful resolution of a dispute by both state and non-state actors.
Gender Parity:	A statistical measure that compares a specific indicator between the genders.
Mediator Core Ethics and Codes of Conduct:	Fundamental principles and codes of conduct expected of all mediators.
Mediation Process:	Carefully designed, managed and executed process crafted to maximize probability of a favourable outcome.



Global Mediation Standards

The practice of mediation is often referred to as both an art and a science, which creates a variety of standards and prioritized skills. Many governments, organizations, and regional law-based bodies have long established certification criteria for mediators to provide some regulation and oversight to professional conduct and practices.

The section below is a synopsis of strategically selected samples of mediator standards that encompass three levels of assessment (national, regional, and international). These categories showcase best practices from a commercial, civil, law-based and international mediator requirements.

It is worth noting that mediation standards and certification are often propelled into formulation by local bar associations, political or government authorities, and the need for standards to comply with legislation where expectations for competencies are required in the best interests of participants and stakeholders.

National Examples

This section explores national level initiatives, programs, or processes which currently have developed criteria for mediator skill-based criteria and selection.

1.0 Australia

Sample Accreditation/Certification Organization:

Australia National Mediator Accreditation System (NMAS)

Mediator Skills and Knowledge Requirements:

Knowledge criteria encompasses the nature of conflicts, power dynamics, negotiation, preparation, preliminary conferencing, cross-cultural awareness, timing and feasibility, as well as the role and function of the mediator. Skills criteria encompasses preparations, screening and conducting of the mediation, emotion management, meeting and

strategy tactics, reality-testing, and negotiation dynamics. Knowledge and ethical principles are the main headlines of NMAS with additional criteria attached.⁹

Mediator Experience Requirements:

To become accredited by NMAS, applicants must provide written references from two members of their community who have known them for more than three years to the effect that they are of good character. They must have no criminal or ties that prevent them from delivering unbiased mediation. Prior to accreditation, an applicant must have either completed a NMAS or similarly formatted training program. These training program have a 38-hour component of training, mentorship, and simulation assessment.

2.0 Canada

Canada has national and provincial accreditation standards for mediators. Mediators must adhere to professional ethics and conduct and be assessed according to specific standards in order to be certified or accredited by these agencies.

Sample Accreditation/Certification Organizations:

- Alternative Dispute Resolution Institute of Canada (ADRIC), Provincial Chapters: ADR Institute of British Columbia, Alberta, Ontario, Saskatchewan, Atlantic, and Institut de médiation et d'arbitrage du Québec (IMAQ).
- Family Mediation Canada
- Ontario Association for Family Mediation
- Mediate BC

Mediator Skills and Knowledge Requirements:

Canadian standards for skills and competencies are outlined in the Chartered Mediator (ADRIC) reference, however are also summarized in pages 19-29 of this document.

Mediator Experience Requirements:

Canada's national mediation certification agency, ADR Institute of Canada (ADRIC) with local provincial chapters, is one of the main mediation certification programs in the country. The designation of Chartered Mediator (C. Med-ADRIC) is a highly regarded certification, requiring candidates to demonstrate expert skills and abilities in mediation, and extensive practical experience evidenced by assessment of competencies and completed mediations. A copy of the ADRIC code of professional conduct and C.Med-ADRIC competency requirements is referenced¹⁰. In addition, ADRIC publishes a best practice selection process for the appointment of a mediator¹¹.

⁹National Mediator Accreditation System <https://msb.org.au/themes/msb/assets/documents/national-mediator-accreditation-system.pdf>

¹⁰ ADR Institute of Canada <http://adric.ca/>

¹¹ <http://adric.ca/pdf/ADRMEDIATIONRULES2014.pdf>

ADRIC specifically states “The Chartered Mediator designation recognizes a superior level of generalist competence, the goal being to assist those requiring mediation services in finding highly experienced and skilled mediators. The C. Med designation is awarded to mediators who meet the qualifications set out and is not dependent on any specific or prescribed mediator style. To ensure that a high and consistent set of standards is met by those entitled to use this designation, ADR Institute of Canada (ADRIC) has established general principles, a set of criteria and a protocol to be used in assessing the eligibility of an applicant for the designation and for the granting of the designation.”

Specific certification criteria include adherence to code of conducts and ethics, training and development, experiential learning (practicums), and theoretical knowledge-based skills.

Chartered Mediators must prove experience and education as follows:

- 80 hours of mediation theory and skills training
- 100 hours of study or training in dispute resolution
- 15 mediations as a sole, paid mediator.

Another example of required competencies in Canada are for family mediators in Ontario’s court-connected mediation programs. Roster mediators are required by the Ministry of the Attorney General of Ontario to be accredited family mediators by the Ontario Association for Family Mediators, Family Mediation Canada, or ADRIO. Such mediators must illustrate competency in mediation skills, domestic violence and power imbalances, and capacity assessments. Mediators must also be knowledgeable in dynamics of conflict, family law, court processes and must engage in continuing professional development. Furthermore, family court mediators must complete 100 hours of practical training as co-mediators or lead mediators prior to acceptance to the rosters.

3.0 United Kingdom (UK)

Sample Accreditation/Certification Organizations:

The United Kingdom’s main certifying (private) organizations are CEDR, the Civil Mediation Council (CMC), the ADR Group, CIArb and UK Mediation.

Mediator Skills and Knowledge Requirements:

The Center for Effective Dispute Resolution (CEDR)¹² utilizes a check-list and points-based competency assessment methodology in content, relationship and process competencies. Content competencies assess a mediator’s abilities to help focus parties on interests, needs and priorities, assisting parties to problem solve, test for practicality and reality checks, and assessing for risks and rewards. Relationship competencies include an assessment of a mediator’s abilities to create rapport, exude impartiality, and empower participants. Process competencies expected of CEDR mediators include an ability to lead complex mediated discussions involving multi-party stakeholders and effective use of caucusing, shuttle and other mediation tools.

¹² CEDR <https://www.cedr.com/>

The Civil Mediation Council (UK) is mediation certification organization providing guidance and standards for non-family mediations (workplace, civil and commercial). The CMC outlines a European Code of Conduct for mediators¹³ and a competent mediator checklist¹⁴

Mediator Experience Requirements:

CEDR Accreditation involves participation in a highly challenging 5-day course in mediation skills (40 hours), with some 70% of participants achieving accreditation. Participants must complete a written assignment after the course has been completed, and be peer reviewed by trainers for competency of skills. Following successful completion of this course, participants receive CEDR accreditation.

4.0 Singapore

Sample Accreditation/Certification Organizations:

Singapore Mediation Center (SMC)

Singapore International Mediation Center (SIMC)

Mediator Skills and Knowledge Requirements:

The SIMC has its own accreditation institute which has an agreed upon list of set standards for their mediators. The SIMC facilities and reputation are highly developed and boast accessibility in an international setting, neutrality, and mediator background diversity as their strengths. Women account for 23 percent of the gendered makeup for available SIMC accredited mediators. Certification for both branches of the Singapore Mediation Center follow a three-tiered approach. Unique and notable qualification standards are as follows:

- Mediation processes and phases are identified to contain five sections in a full-scale mediation: Opening statement, Exploration of Parties' Interests and Issues, Exploring Options, Private Caucus, and Formal Conclusion.¹⁵
- The qualifications of a SIMI mediator within these sections are identified as: awareness and communication of mediation design, information sharing, transparency, agenda creation, flexibility, awareness of changing dynamics, accessibility to both sides, closure techniques.

Mediator Experience Requirements:

An alternative approach is also offered to “experienced” mediators who wish to be part of the SMC. This path requires certification from IMI, or a different SMC recognized partner.

5.0 Norway

¹³ CMC Downloads/European%20Code%20of%20Conduct%20for%20Mediators.pdf

¹⁴ CMC Downloads/2016%20CMC%20Individual%20Registration%20Scheme%20Guidance.pdf

¹⁵ Singapore International Mediation Center <http://www.simi.org.sg/LinkClick.aspx?fileticket=-z4D3ax6ceY%3d&tabid=1174&portalid=0&mid=1586>

Mediation in Norway has historic roots, and a current framework that allows for four main types of mediation. The Dispute Act gave different regulations to different branches to ensure regulation amidst choice-based paths toward conflict resolution.¹⁶

Sample Accreditation/Certification Organizations:

Norwegian Centre for Conflict Resolution (NOREF)

Public Mediation: *Konfliktrådene* (Conciliation Boards) are legally binded by the *Forskrift til Tvisteloven (Tvistelovsforskriften)* (Supplementary Regulations to the Dispute Act)

Private Mediation: *Institutt for Voldgift og Alternativ Tvisteløsning* (Institute for Arbitration and Alternative Dispute Resolution)

Mediator Skills and Knowledge Requirements:

Specific requirements for actors interested in judicial mediation are:

- Participation in a basic course comprising over 15 hours in total;
- Actively reading the manual by K. Kjelland-Mørdre, C. Bommen, *Rettsmekling i Praksis* (Judicial Mediation in Practice);
- Conducting joint mediation processes together with an experienced mediator;
- In addition to working as a solo mediator, the regular conducting of joint mediation with a second judicial mediator which is subsequently evaluated.

Mediator Experience Requirements:

(Not available).

6.0 France

France adopted a legally based mediation framework (the EU Mediation Directive) in 1995 which includes court or contractual-based mediation.

Sample Accreditation/Certification Organizations:

Family Mediation:

Association Pour la Médiation Familiale — Association for Family Mediation (APMF)

National Advisory Council on Family Mediation (*Conseil National Consultatif de la Médiation Familiale*, (CNCMF)

General Mediation:

Association Nationale des Médiateurs — National Association of Mediators (ANM)

Fédération Nationale des Centres de Médiation — National Federation of Mediation Centres (FNCFM)

¹⁶ Nylund, A. *The Many Ways of Civil Mediation Mediation in Norway*.

https://www.researchgate.net/publication/287152062_The_Many_Ways_of_Civil_Mediation_Mediation_in_Norway

Mediator Skills and Knowledge Requirements:

Family mediation requirements for mediators are impartiality, autonomy, and competence as outlined by the CNCMF. In order to be accredited for family mediation, without prior mediation experience, a trainee must engage in a theory and practice based training. The theory training is 490 hours and the practice-based training is 105 hours with a mentor, after which the trainee is be given a state-based certificate. Applicants who have prior professional experience may be able to receive the accreditation without additional training.¹⁷

Mediator Experience Requirements:

Experience requirements for both court-based and contractual-based mediation are quite general, according to specific nationally adopted Article 131-5 C. For court-based mediation, a mediator must not be convicted nor legally incapacitated, and must not have violated good honor, or morals. There must be proof of qualifications for that specific mediation dispute, and commitment to non-bias. A mediator must also have engaged in mediation either in training or practice, beforehand.

Other Examples

Maryland

The state of Maryland approaches mediation from a community and law-based level wherein certifying bodies are recommended by the court system. Maryland Judiciary Mediation and Conflict Resolution Office (MACRO) created The Maryland Program for Mediator Excellence (MPME) which trains mediators according to accepted standards within the state.^{18 19} This symbiotic relationship serves both civil society and the legal needs through a shared training program to which all levels and needs are met.

MPME mediator certification requires basic certifications of training, standards, codes of conduct, cooperation with an ombudsman program, and a “commitment to continuing skills improvement. The roots of the basic requirements are as follows: consumer education, diversity, mediation definitions, practice of ethical standards, and training standards. The basic certification level can be built upon with other “branches” such as mentoring, self-awareness, performance-based certification, evaluation and continuing education and training.

The Maryland Judicial Council Alternative Dispute Resolution Committee formed a Work Group on Standards of conduct for Maryland mediators which allowed the public to submit written comments or suggestions. Though still in draft form, the most recent version identifies a cohesive set of standards of conduct for mediators.²⁰ The qualifications are: Self-determination, Impartiality, [lack of] Conflicts of Interest, Competence, Confidentiality,

¹⁷ <https://www.apmf.fr/la-mediation-familiale/diplome/>

¹⁸ Maryland Judiciary’s Mediation and Conflict Resolution Office. <https://www.courts.state.md.us/macro>

¹⁹ The Maryland Program for Justice Excellence (MPME). <https://www.mpmeonline.org/>

²⁰ Draft Revised Maryland Standards of Conduct for Mediators.

<https://www.courts.state.md.us/sites/default/files/import/macro/pdfs/draftrevisedstandardsconductcommentonly.pdf>

Quality and Integrity of the Mediation Process, Advertising and Solicitation, Fees and Other Charges, and Advancement of Mediation Practice.

At a minimum, Maryland court mediators must have completed at least 40 hours of basic mediation training in an approved program, have substantive knowledge in legislation, rules, and practices, co-mediated at least 2 cases. To mediate court-annexed cases relating to health care malpractice, business and technology, and other specific disputes, mediators are required to have additional skills and knowledge competencies.

South Africa

South Africa is both a country example and a regional contributor to continental and international government organizations such as the Network of African Women in Conflict Prevention and Peace Mediation (FemWise-Africa), as supported by the African Union. Currently, no standards for mediator qualifications or selections exist, though this has been a previously discussed topic and hope for future consensus. Many organizations and training centers independently offer mediator certification, within South Africa. One such organization, The South African Dispute Accreditation Council (diSAC), has created a framework for mediator qualification standards, professional code of conduct, as well as standards for accreditation partners.²¹

International Examples

International certifying agencies allow for a more global assessment of mediator skills and competencies and can be a good indicator of a general consensus of mediator qualifications across multiple jurisdictions. This section references specific organizations that have developed, implemented, and lead the way in training of actors interested in becoming certified as a mediator. Other organizations such as the Center for Effective Dispute Resolution (CEDR) can also be consulted for standardized practices.

1.0 International Mediation Institute (IMI)

Accreditation/Certification Organization

IMI is one of the most renowned and widely known international certifying bodies. The IMI's certification, known as an IMI Certified Mediator, is achieved by competency assessment by a Qualifying Assessment Program (QAP) typically done locally by a national and prominent mediation certifying agency. Some examples of QAP regionally are:

- The Mediator's Institute of Ireland
- JAMS (USA)
- Institut Français de Certification des Médiateurs (France)
- African Centre for Dispute Settlement (ACDS)
- ADR Institute of Canada

²¹ South African Dispute Accreditation Council. http://disac.co.za/?page_id=3654

IMI sets global professional standards through its Independent Standards Commission (ISC), a 70-person Commission consisting of mediators, users, judiciary, educators and trainers in mediation from 27 countries. Such standards are incorporated regionally by its QAP, listed above. As such cross- certification of both international and national certification is possible for a mediator (for example, a mediator certified by a QAP in France may apply for IMI Certification). IMI has 31 QAPs in 18 countries, and 400 mediators certified by IMI in 45 countries.

Mediator Skills and Knowledge Requirements:

IMI generally aligns consistently in its requirements for skills and abilities with the national and regional examples listed above. IMI does not have its own list of skills and competencies. For example, a Certified Mediator in Canada can apply for IMI Certification as he or she already been certified by a QAP.

Lists of general knowledge requirements a prospective mediator must have before certification are lengthy and cohesive. The themes of qualifications follow expertise in stages including: pre-mediation state, preparation stage, mediation stage, and closing and implementation stage.²²

An interesting certification offered by IMI is the Inter-Cultural IMI Certification. This certification encompasses substantive knowledge and skills and competencies in mediating conflict, issues and disputes heavily influenced by culture “The goal is to be able to apply a selected theory or theories about culture in such a way as to help mediators consider appropriate issues when setting up and facilitating an intercultural mediation”.²³

Mediator Experience Requirements:

IMI certification requires skills assessment by a QAP and at least 200 hours of mediation experience or 20 mediations as a mediator.

2.0 The United Nations

The United Nations is an international governmental organization that has been and continues to be instrumental in providing support, mediator appointments, and research-based guidance. The UN Mediation Support Unit (MSU) was established in 2006 in response to a growing need “to provide professional, cross-cutting support to 'good offices' activities, including preventive diplomacy and the mediation of disputes”.²⁴

The three main service areas of the MSU are to provide technical and operational support for peace processes, strengthen mediation capacity of the United Nations, its partners, and parties to a conflict, and develop and share mediation guidance, lessons learned and best practices. In 2008, a mediation Standby Team was created “to provide technical advice to United Nations’ officials and others leading mediation and conflict prevention efforts”. There are eight main advertised competencies a senior mediation advisor should have, as outlined by the UN Mediation Standby Unit hiring announcement platform, which rotates annually²⁵.

²²International Mediation Institute. <https://www.imimediation.org/practitioners/mediation-advocacy-certification/competency-criteria-mediation-advocates-advisors/>

²³<https://www.imimediation.org/wp-content/uploads/2018/04/imi-intercultural-criteria-and-cfa-final-draft-modified-.pdf>

²⁴ United Nations Mediation Support Unit. <https://peacemaker.un.org/mediation-support/activities-and-services>

²⁵ Application Requirements for MSU <https://jobs.unops.org/Pages/ViewVacancy/VADetails.aspx?id=15643#2>



²⁶ Beyond what a MSU member is required to have upon hiring, two instrumental guidance documents, Guidance for Effective Mediation (2012) and Guidance for Gender in Effective (2017), were created for use and reference.

Accreditation/Certification Organization

The UN MSU does not certify mediators according to an established and/or published criteria.

Mediator Skills and Knowledge Requirements:

The UN document A Manual for UN Mediators (2010) provides a glimpse into mediator skills and competencies that the UN values as necessary for international mediation efforts “Mediation skill, experience and knowledge, as well as extensive political skill and judgement are essential. Relevant languages are important, as are personal characteristics suitable for the cultural context. An in-depth understanding of all aspects of the conflict is necessary (although this can be attained on the ground through rigorous consultation). Mediators should be perceived as trustworthy, impartial (while adhering to the principles of the Charter) and authoritative. Good listening and problem-solving skills are indispensable, as is the capacity to understand parties’ motivations/concerns. The ability to communicate effectively and to give honest feedback is crucial, as are patience, persistence, creativity and willingness to take the initiative. Mediators should have a high tolerance for criticism and stress. Skill at handling the media and the ability to build a network of political and financial support for the process are also important, along with an understanding of the importance of working closely with the rest of the UN system so that a mediator’s efforts are part of a broad approach to the country and region.”

Mediator Experience Requirements:

The MSU mediators, including the standby team ²⁷ and mediation expert roster require an advanced academic degree, and at least 10 years of mediation experience, and are chosen by “referral only” by UN staff members and MSU partners.

²⁶Mediation Standby Team. <https://peacemaker.un.org/mediation-support/stand-by-team>

²⁷ <https://peacemaker.un.org/sites/peacemaker.un.org/files/Mediation%20Experts%20Roster%20Factsheet%202017.pdf>



Mediator Skills and Competencies: Coherence across programs

In reviewing our research from our selected sample sources, and analyzing the specific national, regional, international and organizational qualification standards, we have summarized what we believe to be a **general consensus** on mediator skills and competencies.

Skills and competencies are generally categorized into two domains:

- 1) Ethics and Codes of Conduct,
- 2) Mediation Skills, Knowledge and Process Design Competencies

1.0 Ethics and Codes of Conduct

Most of the sample organizations or certifying institutions canvassed incorporate a mediator code of conduct and code of ethics as part of their certification requirements. These best practices govern mediator conduct in order to establish acceptable expectations for professional ethics and conduct.

Mediator Ethics and Codes of Conduct:

Skills	Description	Competencies
Neutrality	An ability to not take sides or positions in an argument or dispute.	The Mediator does not hold a vested interest in any outcome of mediation, and does not align with either party, maintaining neutrality in both conduct and process. Often interchanged with impartiality.
Impartiality	The ability to ensure an unbiased presence in mediation.	The Mediator demonstrates equal and fair treatment to all participants consistently, such as by equal interactions with participants, consistent messaging and equal time in mediation sessions.
Independence	The ability of the mediator to be wholly independent of the dispute, parties or stakeholders; without a vested interest as to outcome.	The Mediator conducts personal and extensive conflict of interest checks for all stakeholders for perceived and potential biases and conflicts. The Mediator discloses and documents personal conflicts of interests (real or perceived). If a latter conflict appears, the mediator assesses whether recusal is necessary.
Abiding by ethics and codes of conduct	Respect for mediator codes of conduct and ethics	The Mediator reflects often upon ethical issues and dilemmas throughout the mediation process and reacts accordingly.
Integrity of process	Ability to infuse integrity into the process of mediation.	The Mediator illustrates consistent competency to evaluate, warn against and manage unconscionable or bad faith negotiations.
Voluntary negotiations	Ensuring parties' willingness to participate in mediation voluntarily.	The Mediator consistently explains the voluntary nature of mediation, rights of termination, and that the voluntary nature of mediation extends to the agenda (acceptance of what is being

		mediated, and after priorities “agenda-setting”).
Self-determination	Decisions about resolution rests solely with mediation participants.	The Mediator continues to empower participants to embrace self-determination as a mechanism for a lasting solution.
Checking personal biases and beliefs	Self-reflection about own personal biases and beliefs that may negatively impact mediation.	The Mediator exhibits an awareness of his or her personal biases, and carefully manages them, and where it may impact or harm the process, the Mediator discloses them to participants, and may offer recusal.
Confidentiality and limitations of confidentiality	Explanation of confidentiality of process, and explanation of limitations.	The Mediator clearly explains and maintains confidentiality of process, including explaining limitations.
Do no harm	A fundamental principle of mediation is to do no harm.	Mediators ensure a process to minimize harm to participants.

2.0 Mediator Skills, Knowledge and Process Design Competencies

Mediation skills and knowledge are often taught as part of a syllabus of learning outcomes, typically by qualified trainers. These basic skills are often used by mediators as part of a mediator’s “toolkit” to assist parties to effectively communicate, propose solutions, focus on needs and interests, and to empower participants. Often, such skills and competencies can take years of experience to master. Advanced mediation skills are often acquired during experiential learning, and provide significant strategic tools to mediators to advance progression in mediation and to maximize the opportunity for resolution.

Process design of mediation is a vitally important component of mediation. The ethics and principles of mediation must also apply to a properly designed, managed and executed mediation process. The process itself, if not properly reviewed and thoughtfully analyzed, flawed or perceived as bias or exclusive, can significantly impede a favourable outcome from mediation.

The combination of skills, knowledge and process design competencies are generally considered equally important components in certifying or accrediting a mediator. Below is a summary of generally acceptable best practices for competency in skills, knowledge, and process design across our samples.

SKILLS		COMPETENCIES
Active listening	The ability to listen with focus and reflection.	The Mediator regularly illustrates active listening and encourages participants to do the same.
Reframing	The ability to summarize and focus words or positions/interests made by parties to mediation.	The candidate uses reframing as appropriate to reduce conflict, focus the parties on solutions, and create an atmosphere of positivity and rapport.
Coercion/intimidation/ power imbalance checks	Ensuring fair negotiations and capacity to mediate.	<p>The candidate consistency checks for coercion, intimidation, and power imbalances, and provides mechanisms for mitigation, where appropriate.</p> <p>The Mediator assesses for capacity to mediate.</p>
Separating the problem from the person(s)	The mediator encourages participants to distinguish and focus on the issues or disputes, and not on personal or relationship issues.	The Mediator regularly focuses the participants on addressing the issues or disputes and does not allow for personal attacks.
Open-ended questions and probing of interests/needs	The ability to extract concerns or interests driving positions by asking open-ended questions and using other skills to explore underlying interests/needs.	The Mediator frequently probes interests by questioning intentions, exploring needs and concerns, and focusing away from entrenched positions.

Caucusing	Individual, confidential meetings with each party to mediation, and or stakeholders.	The Mediator uses caucusing appropriately, and selectively, with defined strategic mediation objectives.
Agenda setting	Prioritizing mediation agenda, and order of mediation agenda items.	The Mediator carefully obtains consensus on the agenda topics, ranking, and time allowances. Agenda setting by participants is part of the voluntary nature of mediation, and is often used as a negotiation tactic.
Language and tone	Oral and written wording used in mediation, both by the mediator and all participants.	The Mediator refrains from making inflammatory or insensitive comments, or utilization of words that could be perceived as inappropriate. The candidate consistency uses a calm, neutral and commanding tone.
Body language	Communicated feelings and emotions, interpreted by one's body positions.	The Mediator watches for personal and participant body language and takes measures to correct negative body language.
Reality checks	The ability to test solutions with reality checks.	The extent to which the Mediator is able to encourage participants to think through proposed solutions for compromise or collaboration.
Managing emotions	Ability to diffuse, manage and understand impacts of emotions on conflict.	The Mediator illustrates a balance in managing high emotions and to empower participants to consider the impact of emotion on the conflict.

Assessment of BATNA and WATNA	The ability to assist the parties' to extract their understanding of their Best Alternative to a Negotiated Agreement (BATNA) and the Worst Alternative to a Negotiated Settlement (WATNA).	The Mediator competently encourages parties to consider opportunity costs, what if scenarios, and determining one's bottom line.
Leadership	Ability to provide a leadership role for multi-party stakeholders and participants.	The Mediator exhibits excellent abilities to lead and motivate multi-party and multi-stakeholder interests and participation.
Ability to organize complex facts and financial data	Careful and consistent handling of complex facts and data.	The Mediator exhibits excellent data management skills.
Empowerment of participants	Participants are empowered to safely, and without repercussions or reprisals, voice concerns, participate in the process.	The Mediator carefully assesses and empowers participants.
Dealing with impasses	Ability to progress mediation despite impasses.	The Mediator expertly uses mediation skills and tools to break impasses, promote solutions.
Assessing risks and rewards	Ability to encourage an analysis of risk and rewards of scenarios and solutions.	The Mediator provokes thoughtful insight and reflection on proposed scenarios and solutions.
KNOWLEDGE SKILLS		COMPETENCIES
Drivers of Conflict	Ability to understand the drivers of conflict and how to diffuse or manage these drivers.	The Mediator illustrates exceptional knowledge in drivers of conflict and utilizes this knowledge to empower participants to manage conflict.

Cultural, ethnicity, religious sensitivity	Knowledge in impacts to conflict due to culture, faith, ethnicity differences.	The mediator demonstrates thoughtful and respectful knowledge and sensitivity with participants' culture, gender, religious, etc.
Substantive knowledge	Knowledge in the topic being mediated, including legislation, guidelines and best practices	The Mediator clearly exhibits substantive knowledge in area being mediated, and refrains from mediating what the mediator believes he or she is deficient in such knowledge.
Systemic peacebuilding	Knowledge in actors/relations, issues, spoilers and connectors, dynamics, context/structures, causation, and options/strategies.	The Mediators illustrates knowledge competencies in systemic peacebuilding.
Design knowledge	Knowledge in ceasefire design & monitoring, power sharing arrangements, transitional justice, mechanisms, media capacity building & messaging, joint fact finding, and interim security measures	The Mediator illustrates competency in the knowledge of case/conflict specific designs.
PROCESS DESIGN SKILLS		COMPETENCIES
Multiple and Mixed Methods	Selecting the appropriate methods for each stage of the mediation process, and sequencing them for a cohesive overall process	The Mediator utilizes multiple and mixed methodology of process to maximize a favourable outcome.
Venue selection	Choosing location for mediation sessions.	The Mediator carefully assesses and may need to mediate the location, timing and duration of meetings. Often, the venue is a neutral location.
Pre-mediation preparations and interviews	Preparing participants for mediation.	The mediator conducts equally in-depth pre-mediation interviews with each party to mediation.

Mediation Agreement	Clear description and overview of Mediation Agreement.	The Mediator carefully reviews the Mediation Agreement with each participant separately. The candidate allows the candidate to review the Mediation Agreement in detail with legal counsel.
Explanation of process and limitations of mediation, ground rules, role of counsel/advisors	Ability to clearly outline the mediation process and expectations.	The Mediator clearly explains the mediation process, ground rules and limitations of mediation, options for other dispute resolution (ADR), role of legal counsel, etc.
Interpretation/Language	Availability of interpreters	The Mediator ensures interpreters are available for participants where necessary or requested.
Accessibility	Accommodation and accessibility needs	The Mediator ensures all participants are asked about and accommodated for accessibility needs, such as for physical, mental or emotional disabilities, supports, etc.
Termination of mediation	Ability to clearly explain options for termination of mediation.	The Mediator underscores the voluntary nature of mediation, and the termination options.
Shuttle mediation, staggered mediation	Participants participate in separate rooms, on different days	The mediator selectively uses shuttle or staggered mediation to empower participants.
Documentation- Mediation reports, MOS, and Progress Reports	Ability to document progress and outcome.	The mediator issues a progress report after each mediation session, outlining interim or final understandings, information or preparation necessary for next meeting, financial reporting needs, etc.
Knowledge injections	Infusing the mediation with necessary resources and knowledge equally provided to	The Mediator recognizes a deficiency in knowledge and suggests resources to fill the gap in knowledge.

	all participants and relevant to the dispute or issue.	
Subject matter/thematic experts	Employing subject matter experts for valuations, disclosure needs, etc.	The Mediator, where appropriate, employs subject matter experts for neutral interventions, and to break impasses.
Inclusivity and Exclusivity	Process design that ensures all relevant participants and stakeholders are included and not specifically excluded due to power, control or coercion.	The Mediator is the clear authority as to who is involved with the mediation- and furthermore actively avoids participant influence for exclusions or inclusions.
Managing external influences	Minimization of external influences	The Mediator carefully assesses and mitigates against external influences, including competitors, trade unions, media, and political influences.
Financial and resource abuse limitations	Ensuring power imbalances due to financial strengths or weaknesses are mitigated by limitations of financial influence.	The Mediator clearly recognizes abuse of process due to power imbalances generated by financial strengths or weaknesses.
Training as mediation support	Training on the technical aspects of mediation can help conflict parties and mediators to overcome deadlocks or inject creativity into a negotiation process, which can provide a less politicized environment for exchanges.	The Mediator identifies training needs, designs training on specific skills or topics, and either trains the parties directly or identifies an effective impartial trainer.
Building an Enabling Environment	The creation of “friends”, “contact groups” or “core groups” of other stakeholders that will help support the	The mediator or mediation team has the ability to identify needs and the political will to form various groups of partners to support



	creation of a supportive external environment in an effort to encourage commitments of conflict parties.	the process in a way that encourages commitments of conflict parties.
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Conclusion

Mediation is a well-established tool for dispute resolution, consensus building and peacebuilding in many global jurisdictions and contexts. What appears to be lacking is a coherent global standard for Track 1 mediators.

This research brief illustrates a general consensus on established mediation standards for skills, knowledge and process design. It also highlights the abundance of mediation experience and expertise in commercial, civil, family and international peace mediation efforts. The brief does not provide recommendations on the mediation standards for Track 1 mediators. Instead, it allows the reader to understand basic and advanced mediation



methodology and best practices derived from the private sector in hopes of directing a conversation on the extraction of relevant considerations for Track 1 mediators.

The development of criteria for skills and competency standards Track 1 mediators is a complex exercise. High-level mediation cannot operate in a vacuum devoid of information on the ever changing and highly politicized geopolitical structure of conflict.

One way to begin an innovative and inclusive product of standardization in mediator certification is to engage women as architects of peace in both the practice of mediation and the creation of merit-based selection standards. However, even with these considerations there may still be barriers. A systemic gap of women's representation lingers in all areas of mediation, including and disproportionately within Track 1.