



**SINGAPORE
CONVENTION
ON MEDIATION**

6 - 7 AUGUST 2019
SHANGRI-LA HOTEL,
SINGAPORE

CO-ORGANISED BY:



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SINGAPORE CONVENTION ON MEDIATION **BREAKOUT SESSION REPORT**

Title of Breakout Session: Setting Standards for Dispute Resolution in an AI Age
Date/Time: 7 August 2019, 3.20pm
Venue: Hibiscus Room II, Shangri-La Hotel, Singapore

Speakers:

- Dr Alberto ELISAVESTKY, Founder and Director, Social Network Online Dispute Resolution Latin-America (“**Dr Elisavestky**”)
- Ms Ana Maria Maia GONÇALVES, Founder and President, Institute for Certification and Training of Lusophone Mediators (“**Ms Gonçalves**”)
- Dr Tarik MOSSADEK, Founder and Partner, Mossadek Law Firm & Partners (“**Dr Mossadek**”)

Moderators:

- Professor Locknie HSU, School of Law, Singapore Management University (“**Prof Hsu**”)
- Assistant Professor Dorcas QUEK ANDERSON, School of Law, Singapore Management University (“**Prof Quek Anderson**”)

Report on Breakout Session

Main Themes

Obstacles to the development of ODR: With the rise of artificial intelligence, online dispute resolution (“ODR”) platforms have been developed globally. While the current ODR platforms feature a range of dispute resolution processes, the speakers focused on how mediation has been used in the ODR context. The speakers shared their unique perspectives on the historical development of ODR in their respective regions and also the obstacles which they face in developing and promoting ODR. They also spoke about the potential for future use of data analytics and other technology in dispute resolution.

Setting standards of ODR: ODR has disrupted the typical three-player mediation dynamic comprising the parties and the mediator, by adding technology as the fourth party. In this ODR age, there is a need to establish consensus on the standards required of mediators in an online setting. The speakers agreed that standards for ODR would differ from standards in conventional mediation. ODR standards include the ability of mediators to harness technology and apply their interpersonal skills effectively in an online as opposed to a physical medium.

Access to justice: Promoting access to justice is a universal goal. Currently, access to justice is limited by factors such as cost and access to technology. The question is whether ODR can be effectively leveraged to promote greater access.



Arguments

Obstacles to the development of ODR: According to Ms Gonçalves, the European ODR platform has seen a low usage rate. Only 0.05% of the 513 million inhabitants in Europe have submitted a complaint. This could be attributed to the long turnover period, where a consumer dispute takes an average of 90 days to be resolved. Hence, users' expectation that disputes should be resolved more quickly online than in the courts are not met. More generally, Ms Gonçalves also spoke about the ethical issues surrounding the use of big data in ODR. She observed that users tend to place a high and often unwarranted degree of trust in data. Hence, safeguards should be established to ensure that their trust is not misplaced. The last obstacle is a practical one - insufficient ODR funding from tight government budgets which may stymie its development.

Dr Mossadek shared his unique regional perspective from North Africa, where the main obstacles were infrastructural and cultural. Particularly in Morocco, the digital and legal framework needs to be updated. Further, it is difficult to promote ODR as parties in North Africa have a cultural preference for face-to-face mediation. There is also the need to build public confidence in the security of digital platforms. To tackle these challenges, Morocco has enacted legislation concerning the use of big data and has also created a public agency to develop digital technology.

The Latin American experience demonstrates a chicken-and-egg problem with regard to the mediator training when ODR was first developed. Governments were slow to endorse ODR due to the practitioners' lack of online mediation experience, which in turn prevented them from acquiring the necessary and relevant experience. Dr Elisavestky shared that this issue was overcome by utilising a training simulator. In order to attain the requisite ODR certification, mediators went through simulated mediation sessions and were given feedback on their performance. Dr Elisavestky also shared that Brazil has amended its law to recognise the use of ODR.

Standards: Dr Elisavestky shared that a mediator must first be trained to harness technology appropriately. This requires the mediator to identify and resolve technical issues. He explained specifically that in Argentina, mediator training includes going through a practical 'checklist' of technical problems/scenarios which may arise during an online mediation. He also shared that a mediator is required to understand and respond appropriately to the emotions of parties in an online environment. Dr Elisavestky believes that as technology becomes increasingly user-friendly, less demands are placed on the mediator in the online environment. Ms Gonçalves disagreed, and argued that more demands are now placed on mediators as they have to transform and adapt their conventional mediation skills to suit the new online medium.

Mediators must be able to identify how the differences in process impact the parties. They must also be prepared and trained to use the technology. They must also identify whether the parties are equally familiar with the use of technology and, if there is an imbalance, how to respond appropriately.

Access to justice: Dr Elisavestky believed that ODR can be used to narrow the digital gap and facilitate access to justice for those with lower income. He cited the example of how ODR is now available in his



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city as a free service for its citizens. This would allow more citizens to have their grievances heard, thereby facilitating access to justice.

Ms Gonçalves also noted that the idea that ODR increases access to justice is premised on two points: First, people are aware and understand the technology that is being used. Second, people have access to the said technology.

Dr Mossadek shared that small banking and insurance claims are required to undergo mediation in Morocco. Some of these disputes are resolved using technological tools. As efforts are made to narrow the digital divide, there is potential for ODR to be used to provide quick resolution to these disputes.

Conclusions

The future of dispute resolution is online. Nevertheless, countries still face obstacles to the development and integration of ODR into dispute resolution. Stakeholders such as users, practitioners, court officers, private organisations and governments each have a role to play in overcoming the obstacles. As ODR transforms the process of mediation, mediators must also ensure that they have the requisite skills and training to conduct mediation online.

Recommendations

There is a need to establish consensus on the standards required of mediators in online mediations. The standards comprise two aspects, namely, the technical and the interpersonal. Dr Elisavestky believed that a glossary of technical terms will enable mediators to navigate the online platform successfully and respond appropriately when there are technical failures or when parties are unfamiliar with the ODR platform. Robust training programs must be implemented to achieve such standards. As regards the interpersonal aspect, the use of training tools such as simulators can be used to ensure that the interpersonal nature of mediation is not lost in ODR.

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Date: 13 August 2019