



COMMERCIAL ALTERNATIVE DISPUTE RESOLUTION

Powering Economic Growth with Effective
Commercial Justice

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As the only global intergovernmental organization exclusively dedicated to promoting the rule of law to advance peace and sustainable development, the International Development Law Organization (IDLO) is committed to centring the rule of law in efforts to promote economic growth. Drawing on IDLO's experience, this paper explores how commercial alternative dispute resolution enhances inclusive economic development.

TABLE OF CONTENTS

ABBREVIATIONS	4
1. INTRODUCTION	5
2. OVERVIEW OF COMMERCIAL ADR	8
3. WHY USE ADR FOR COMMERCIAL JUSTICE?	10
3.1 Fostering fairness and predictability that boosts investment and growth	10
3.2 Accelerating access to justice for entrepreneurs and investors	10
3.3 Decongesting formal justice systems and reducing case backlogs	12
3.4 Ensuring equal participation and access for women and underrepresented groups in commercial justice	12
4. KEY INSIGHTS FROM IDLO'S APPROACH TO COMMERCIAL ADR	14
4.1 Build trust and improve perceptions through local engagement and ownership	14
4.2 Strengthen capacities of commercial ADR service providers	15
4.3 Promote awareness and disseminate new laws to business stakeholders	17
4.4 Enhance legislative and regulatory frameworks and leverage coordination	18
4.5 Address inequalities between commercial disputants	20
5. CRITICAL SUCCESS FACTORS	23
5.1 Generating political will	23
5.2 Ensuring complementarity with formal commercial justice systems	24
5.3 Building on local mediation traditions	25
5.4 Aligning with international standards and practices	26
6. CONCLUSIONS	29
ENDNOTES	30

ABBREVIATIONS

ADR	Alternative Dispute Resolution
CAM	Court-Annexed Mediation
EBRD	European Bank for Reconstruction and Development
FDI	Foreign Direct Investment
IDLO	International Development Law Organization
ISP / LDCs	Investment Support Programme for Least Developed Countries
SME	Small and Medium-sized Enterprise
UNCITRAL	United Nations Commission on International Trade Law

1. INTRODUCTION

Economic prosperity depends on a fair, predictable, and transparent legal environment.¹

For both domestic and international investors, the rule of law provides the foundation for growth by constraining corruption, reducing uncertainty, and fostering a conducive climate for business.² Where contracts are enforceable and rights are protected, domestic and international investors are more willing to commit resources that generate jobs and innovation.

Within this broad framework, the resolution of commercial disputes is a critical factor in supporting growth. Effective, timely, and impartial commercial justice ensures that entrepreneurs and firms can operate with confidence, knowing that agreements will be enforced and disputes adjudicated justly. Without adequate enforcement of contracts and resolution of commercial disputes, private investment declines and economic growth can slow,³ and medium-sized enterprises (SMEs) that lack the resources to withstand long delays or high litigation costs are hardest-hit. A system that delivers efficiency, predictability, appropriate confidentiality, and enforceability in dispute resolution thus becomes a cornerstone of sustainable economic development.

Individuals around the world use diverse pathways to justice to seek redress and resolve their disputes, and many countries turn to alternative dispute resolution (ADR) to address some aspects of commercial justice. Widespread adoption of mediation, arbitration, conciliation, and other practices (such as online dispute resolution) - in the commercial realm mirrors broader developments in civil justice toward resolution outside of courts.⁴ ADR tends to be more accessible to diverse justice seekers than court-based adjudication: it offers faster, more cost-effective, and less adversarial means of resolving

disputes than those present in overburdened or under-resourced court systems.⁵ By providing businesses with confidence that disputes will be handled fairly and efficiently, ADR strengthens both domestic markets and the attractiveness of countries for foreign direct investment (FDI).

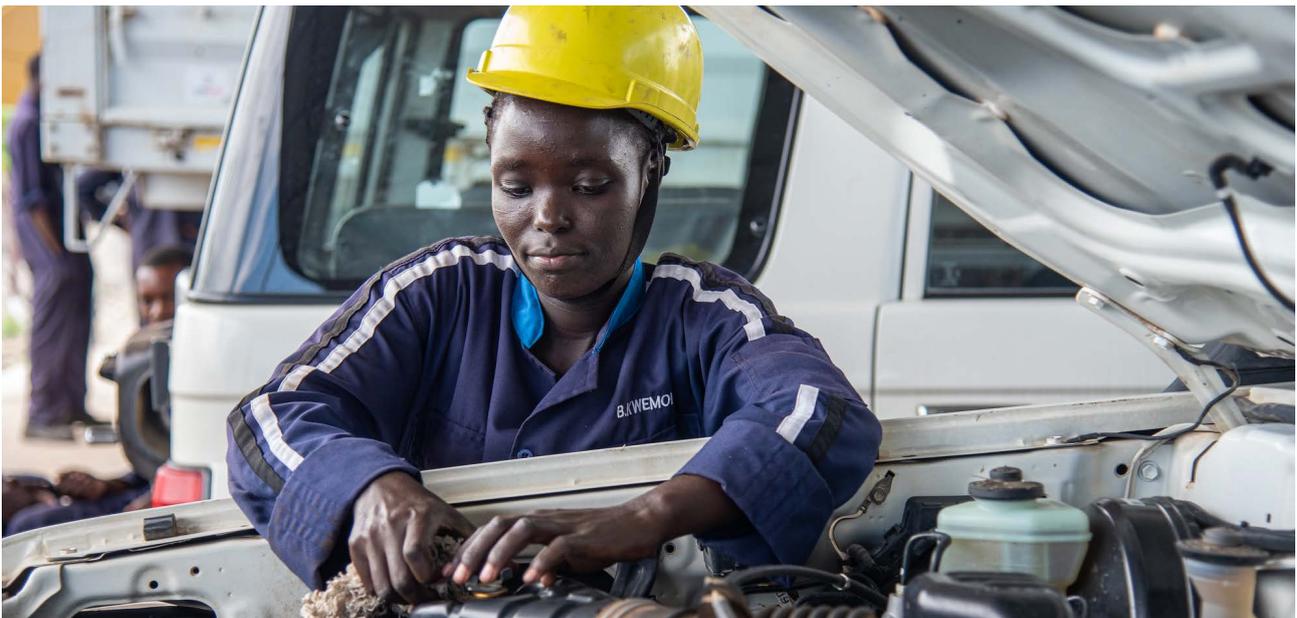
Adoption of commercial ADR also generates broader development benefits. By decongesting courts, it improves the overall performance of the justice system, which is associated with increased stability. By offering more accessible justice services, it expands opportunities for fair commercial dispute resolution to women and members of marginalized groups. When entrepreneurs and firms can choose from fair, efficient, and enforceable mechanisms, the justice ecosystem becomes more broadly resilient and responsive, strengthening confidence in institutions and supporting more inclusive prosperity.

Key terms: ADR, mediation, and arbitration

ADR refers to processes other than judicial determination in which an impartial third party assists those in a dispute to resolve the issues between them.⁶

Mediation and conciliation are processes where disputants identify the issues in contention, devise and consider options, and arrive at an agreement with the facilitation of a neutral third party.⁷ Mediation tends to be informal, consensual, and flexible. While a mediated solution is mutually agreed upon, it is not legally binding or enforceable externally. In conciliation, the neutral third party may provide advice on settlement options or make proposals. Mediation and conciliation are most relevant when parties are willing to negotiate, and seek to maintain (or restore) a long-term relationship.

Arbitration refers to a process where disputants agree to settle their differences in a private process outside the court system by appointing a neutral third party to render a decision.⁸ Arbitrators are frequently chosen for expert knowledge of the industry concerned in the dispute. Disputants typically commit to using an established arbitral organization with a fixed set of rules which serves as a buffer between the parties and helps preserve neutrality, uniformity, and efficiency, offering the parties amicability and confidentiality superior to that of litigation.



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As the only intergovernmental organization dedicated to advancing the rule of law for peace and sustainable development, the **International Development Law Organization (IDLO)** has supported inclusive economic development in partner countries since its inception, working with diverse stakeholders to unlock growth potential. IDLO's "top down and bottom up" approach to

leveraging the rule of law for inclusive growth involves complementing legal and regulatory reform and institutional capacity development with legal empowerment and raising public awareness. Since 2017, IDLO has supported the implementation of commercial ADR in countries such as Jordan, Kenya, Kyrgyzstan, Mauritania, Moldova, Mongolia, Serbia, Tajikistan, and Uzbekistan.

Drawing on that practical experience, this paper examines **how commercial ADR enhances economic development**, focusing on providing the fair, predictable, and confidential resolution of disputes needed to increase investment flows and fuel growth. It details lessons from the implementation of commercial ADR learned by IDLO in multiple countries, identifying approaches as well as key success factors that can inform future policy and practice.

IDLO's approach to commercial ADR can be summarized with the following points:

1. **Build trust and improve perceptions of ADR through local engagement and ownership**, for example through awareness-raising actions
2. **Strengthen capacities across the ADR landscape**, including the judiciary, business

community, and informal systems at community level

3. **Promote awareness and disseminate new laws to business stakeholders**, enabling entrepreneurs and firms to adapt their practices based on reliable information
4. **Enhance legislative and regulatory frameworks and leverage coordination**, prioritising fit-for-purpose legal frameworks and fostering open and constructive dialogue among stakeholders
5. **Address inequalities between commercial disputants**, contributing to empowering women and members of marginalized and excluded groups in the economic sphere

IDLO Commercial Alternative Dispute Resolution Projects

2017-2025

Jordan, Kenya, Kyrgyzstan, Moldova, Mauritania, Mongolia, Serbia, Tajikistan, and Uzbekistan.



2. OVERVIEW OF COMMERCIAL ADR

Mechanisms for negotiated, consent-based resolution of conflicts are deeply rooted in the history and culture of most countries.⁹

While contemporary formal justice systems are oriented towards fact-finding and determining right and wrong, modern ADR shares a key trait with customary and informal justice systems:¹⁰ that is, it emphasizes relationship maintenance and reparation, and is thus fit-for-purpose when disputants expect to continue to work together in the future.¹¹

ADR processes offer a means to realize the fair, predictable, and transparent legal environment needed by entrepreneurs and firms. Mediation, arbitration, and conciliation (among other practices) are efficient, fast, flexible, and non-adversarial alternatives to resolution of commercial disputes in formal courts;¹² they may be delivered through public models explicitly connected to the court system and involving judges or court officials in the process, or by private sector actors such as chambers of commerce or not-for-profit organizations. ADR solutions are guided by mutual interest and the prospect of sustaining relations beyond the settlement procedure.¹³

Today, commercial ADR is widely utilized and embedded in global policy frameworks. Most countries have introduced at least some provisions related to commercial ADR, with 174 countries and territories recognizing voluntary mediation or conciliation as a valid method of resolving contractual disputes.¹⁴ Commercial ADR is also supported by a latticework of international norms and conventions, notably the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention) and the 2019 Singapore Convention on Mediation. More than 100 countries have adopted the

1985 UN Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration, a template law used by national governments to harmonize domestic arbitration laws for international commercial disputes.¹⁵

An effective regime for commercial ADR is essential for domestic and foreign investors and contributes to a positive environment for economic development. Commercial disputes result in annual revenue losses of over USD \$1 trillion worldwide,¹⁶ and there is a strong positive correlation between effective justice systems and FDI in developing economies.¹⁷ Given the ways in which a lack of timely, predictable, and affordable access to commercial justice negatively affects the business climate by increasing risks for local and foreign investors, commercial ADR can enhance foreign investors' views of a country's business environment, reducing uncertainty and promoting trust, and leading to increased FDI.¹⁸ For these reasons, multilateral development institutions regularly advise governments to adopt measures promoting the use of ADR to attract FDI.¹⁹ The World Bank, for example, examines the implementation of ADR mechanisms in evaluating the suitability of a country's business environment for private sector development.²⁰ ADR also enhances access to justice and improves efficiency in the court system as a whole by helping to reduce case backlogs and bottlenecks.²¹ There is a demonstrated correlation between efficient judicial systems and increased entrepreneurial activity.²²

Commercial ADR can have salutary effects on the participation of women and marginalized or excluded groups in economic life. The barriers to accessing formal courts and the legal system faced by women entrepreneurs, and by people from marginalized and excluded groups seeking



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to build businesses, is high in countries where conventional court systems typically reinforce patriarchal and conservative norms and power relations. For this reason, ADR mechanisms are key to ensuring entrepreneurs who are women or come from marginalized or excluded groups can efficiently enforce contracts and other legal rights that are critical to managing a business.²³ For example: women entrepreneurs who lack the time and resources to pursue a claim or resolve a dispute in the courts run the risk of being victimized for pursuing grievances; commercial ADR allows women and others to settle disputes out of court with a degree of protection.²⁴ It is notable that, whereas men remain predominant as judges and officials in the formal justice system, women tend to be better represented among ADR practitioners.²⁵

Notwithstanding these advantages, **adoption and scaling of commercial ADR is not without risks.** For example, commercial ADR may not be a preferred option for disputants where there is a need to establish a clear precedent or public ruling, or where concerned parties are

not committed to negotiation or settlement.²⁶ Where parties cannot trust each other to abide by the terms of a settlement, a more formal and legally enforceable decision is often viewed as preferable to a mutually agreed solution. Perhaps most significantly, in instances characterized by a significant power imbalance, the settlement of a dispute via ADR may simply reproduce unjust social and economic power relations, to the disadvantage of marginalized or excluded constituencies.²⁷

3. WHY USE ADR FOR COMMERCIAL JUSTICE?

3.1 Fostering fairness and predictability that boosts investment and growth

Commercial ADR plays an important role in providing the fair, predictable, and confidential resolution of business disputes needed to sustain investor confidence. The predictability and flexibility of ADR processes enhance investor confidence by ensuring a reliable framework for resolving disputes in commercial transactions. Benefits include maintenance of confidentiality, protecting sensitive business information and competitive advantages that might otherwise be exposed in public court proceedings, and higher rates of reported satisfaction with outcomes for both domestic and foreign investors.²⁸ Unlike conventional adversarial court proceedings, ADR methods provide entrepreneurs and firms with opportunities for collaborative problem-solving; through mediation, for example, businesses can ensure outcomes that are mutually beneficial, co-owned, and conducive to ongoing commercial relations.

3.2 Accelerating access to justice for entrepreneurs and investors

ADR mechanisms can accelerate access to justice within the commercial realm by eliminating the lengthy and expensive process of using formal channels to resolve disputes. Commercial ADR helps entrepreneurs and firms to avoid prolonged litigation that hinders productivity and drains resources by offering faster solutions when compared with formal judicial proceedings. By prioritizing efficiency and flexibility, and streamlining procedures, commercial ADR speeds up the delivery of justice.³¹ By allowing parties to bypass lengthy court proceedings, ADR can also enable disputants to avoid high court costs, promoting more cost-effective dispute resolution and saving time and resources that can be reinvested into core operations and strategic growth initiatives.

Feature box: Improving the investment environment in Moldova

Since 2018, IDLO has worked to enhance the investment climate in Moldova, which was gradually eroded by incidents of corruption and bribery that deter potential investors. By promoting commercial ADR, the project aimed to provide investors with a viable means of resolving disputes outside of the formal court system, which enjoys low confidence.²⁹ Established frameworks for commercial ADR reassure investors that their concerns about corruption and bribery might be mitigated, and encourages them to invest in the country with confidence. As a result of this project and complementary interventions, use of mediation nationally rose steadily from just 277 cases in 2017 to 1702 in 2023.³⁰ By demonstrating the success of ADR methods in resolving disputes and mitigating legal risks, IDLO's work contributes to improving the overall business climate in Moldova, attracting both domestic and foreign investments and stimulating economic development across various sectors.



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Feature box: Accelerating commercial justice and reducing backlogs in Kenya

Efforts in Kenya to expedite commercial justice and reduce backlogs in the courts have yielded significant results, especially through the implementation of court-annexed mediation (CAM). CAM is a form of ADR whereby cases brought before the courts for litigation are referred to mediation for possible out of court settlement. The focus of CAM processes on maintaining harmonious relations between parties allows disputants to continue business relationships with a minimum of disruption. IDLO supported the operationalization of CAM in 94 court stations across the country,³² and 96% of cases were concluded with a full (84%) or partial (12%) settlement agreement among the parties, showing the capacity of CAM to restore relationships within the targeted communities.³³ Software developers and data entry clerks were employed to transition over 40,000 CAM files to the e-filing platform.

This work contributed to reducing the average number of days required to resolve a commercial dispute: whereas it took 465 days to resolve a commercial dispute through the standard court adjudication process, this was reduced to 66 days on average through application of CAM. Automation of CAM processes achieved significant efficiencies by reducing filing and payment steps from 8 to 2, enhanced transparency and accountability to track payments, and provision for e-justice initiatives aimed at using technology to expedite dispute resolution while ensuring accountability. Moreover, IDLO's work on CAM, among other case backlog reduction strategies of Kenya's judiciary, contributed to the reduction of the backlog of cases over 5 years old in the Commercial and Tax Division of the High Court from 2747 cases in July 2017 to 265 cases in July 2020, representing a nearly 90% reduction.

CAM is also a crucial tool for economic recovery, releasing large sums of capital back into the economy by resolving disputes efficiently and averting prolonged litigation. Approximately 52.1 billion Kenyan shillings (USD \$4 billion)³⁴ has been released back to the economy as a result of the quick resolution of cases through CAM. The financial year 2022/23 saw a settlement rate of 51.2%; while in the year 2023/24, the settlement rate was at 54.98%.³⁵



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3.3 Decongesting formal justice systems and reducing case backlogs

Commercial ADR can effectively reduce congestion within formal justice systems by reallocating eligible cases to mediation or arbitration, thus decreasing the burden on formal courts. Diverting suitable cases to mediation accelerates the resolution timeline and alleviates the strain on judicial resources.³⁶ The private and collaborative nature of ADR fosters a conducive environment for resolving disputes efficiently and effectively; ADR systems that offer clear pathways for recognition and enforcement of settlements and awards, quality assurance, affordable fee schedules for SMEs, and user guidance and outreach also contribute to reducing the backlog of cases awaiting adjudication in formal court systems. This success underscores ADR's role in enhancing access to justice for businesses and individuals alike, improving the overall efficiency and effectiveness of the civil justice system.

3.4 Ensuring equal participation and access for women and underrepresented groups in commercial justice

Commercial ADR can play a pivotal role in enhancing equal participation in commercial justice by offering user-friendly, flexible mechanisms for resolving disputes that complement formal court processes.³⁷ Women and members of underrepresented groups, such as SME owners and entrepreneurs from traditionally excluded communities, often lack the financial resources to pursue formal litigation. ADR methods, which are typically more cost-effective and efficient, help reduce barriers that could lead to insolvency or bankruptcy of their businesses. Entrepreneurs from marginalized backgrounds may also face challenges of limited education, language barriers, or limited familiarity with formal legal procedures. In such cases, ADR mechanisms can provide accessible and practical avenues for dispute resolution within the broader justice

ecosystem. ADR processes, often conducted in private settings or community venues, can create an environment that encourages participation and confidence among users who might otherwise feel excluded.

At the local, national or international levels, women should not only be beneficiaries of justice institutions, but also administrators and providers of justice, including commercial

justice. Female mediators, for example, bring unique and different perspectives to the table that can enhance the quality and effectiveness of the process.³⁸ Where commercial ADR promotes equal participation and access for underrepresented groups, it contributes to a fairer business environment and more inclusive economic growth that benefits society as a whole.

Feature box: Women mediators in Mongolia

In Mongolia, women constitute approximately 80% of court annexed mediators, one of the highest proportions globally.³⁹ This outcome is closely linked to the Law on Mediation, adopted in 2012, which made mediation a mandatory step in family disputes. Among all mediated cases, the majority fall under civil law (58.9%), followed by civil procedure (26%) and family law (10.8%).⁴⁰ Female mediators in Mongolia predominantly apply facilitative and transformative mediation styles when handling family disputes, emphasizing communication, understanding, empowerment, relationship transformation, and often serving as psychological counselors to provide guidance and support to parties throughout the dispute resolution process. The high demand for female mediators in family justice created a natural pathway for women to enter the profession. Over time, the expertise and credibility they developed in family mediation have enabled many to expand into other areas, including commercial mediation, thereby increasing women's professional participation across the justice sector. While there is no evidence on the effect of a disproportionately female mediation sector on access to commercial justice and economic empowerment for Mongolian women, there can be no doubt that the unintended consequence of mediation policy implementation has been opening new opportunities for women in commercial justice practice.

4. KEY INSIGHTS FROM IDLO'S APPROACH TO COMMERCIAL ADR

4.1 Build trust and improve perceptions through local engagement and ownership

Throughout the implementation of commercial ADR, IDLO fostered trust and improved perceptions of ADR through local engagement and ownership.

This was achieved by organizing awareness-raising campaigns and other interventions tailored to local communities, educating stakeholders about the benefits and processes of ADR. Additionally, an array of forums and platforms were established for knowledge-sharing and promotion of dialogue and collaboration among diverse stakeholders. These initiatives nurtured a sense of ownership and participation, bridged cultural divides, and enhanced the credibility and acceptance of commercial ADR practices within communities.

Awareness-raising efforts in Jordan were conducted through the organization of a forum focusing on judges, lawyers, and the private sector, including the Jordan Chamber of Commerce, the Jordan Chamber of Industry, and the Jordan Bar Association. One of the key conclusions emanating from the forum was that there must be channels of communication between all stakeholders to continue the exchange on **how the justice system and the private sector can collaborate to enhance the role of mediation.**

In Serbia, judges demonstrated enthusiasm and willingness to support the development of commercial mediation, as evidenced by their active participation in roundtables and endorsement of the Ministry of Justice ADR working group, highlighting the importance of judicial support in fostering mediation. Efforts were made to enhance the utilization of commercial mediation through initiatives such as webinars for stakeholder awareness and development of a comparative study to inform the creation of a robust commercial mediation regulation framework.

Feature box: Building trust in mediation in Kyrgyzstan

In Kyrgyzstan, IDLO's trust-building initiatives were intended to integrate mediation within the business community. Positive feedback from mediation beneficiaries highlighted its effectiveness and lighter financial burden compared to traditional methods. This further solidified the basis for mediation promotion. Complementary outreach and engagement actions included:

- Engagement with the academic community and students, including the development of a mediation curriculum and handbook taught at Kyrgyz Russian Slavic University, and the delivery of two mediation information sessions for law students
- Production of a video on commercial mediation, aired on the Capital KG TV programme of the KTRK TV Channel in Russian and Kyrgyz languages
- Increased dedicated coverage of mediation in Kyrgyz media that spurred interest in the topic of mediation and commercial mediation
- Establishment of the 'Danaker Talkuu' ('peacemaker discussion') series, a forum that brings together stakeholders to discuss issues related to mediation, using formats such as conferences, expert discussions, and information meetings, targeting specific constituencies including SME owners and journalists



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4.2 Strengthen capacities of commercial ADR service providers

Strengthening the capacities of commercial ADR service providers has been a central feature of most of IDLO's projects. Generally, this work involved building upon foundations for ADR within the judiciary, existing practices in the business community, and embedded informal systems at community level. Interventions focused on enhancing the effectiveness and resilience of these providers by implementing new mechanisms for legal support and dispute resolution. Capacity development initiatives targeted judges to improve their skills and knowledge to deliver fair and efficient adjudication. To reinforce these interventions focused on service providers, awareness-raising campaigns were conducted to empower communities with legal literacy, enabling them to navigate ADR processes confidently. Bolstering community demand for ADR played a vital role in fostering local ownership and sustainability.

In Kyrgyzstan, judicial training extended to specialized programmes focusing on mediation

referrals and online mediation. An initiative aimed at establishing a **model for incentivizing judges to use mediation was grounded in an analysis of internal practices and regulations** within Kyrgyzstan, while also drawing inspiration from successful approaches adopted in neighbouring countries and further afield. In Jordan, IDLO delivered 7 virtual sessions, raising awareness of mediation procedures among 102 judges, lawyers and representatives of the business community. IDLO facilitated the development of four comprehensive training courses for the Mediation Centre in Moldova, covering initial mediation training, negotiation, online mediation, and labour conflict prevention. These courses represent a unique offering in Moldova, as no other training provider in the country offers mediation trainings accredited by the International Mediation Institute. The accreditation of courses by the Institute enhances their credibility and recognition both locally and internationally, attracting aspiring mediators and professionals seeking specialized training in conflict resolution.

Feature box: Building judicial, academic, and private sector ADR capacity in Moldova

With a strong emphasis on preserving business relationships while addressing disputes, IDLO's commercial mediation work in Moldova aimed to foster an investment environment conducive to sustainable economic growth. IDLO provided support to Moldova to move mandatory judicial mediation from the Code of Civil Procedure and integrate mediation into the state-guaranteed legal aid system. IDLO also supported the drafting of secondary legislation to operationalize the Mediation Law. These legislative reforms streamlined dispute resolution processes, expediting access to justice.

These efforts were complemented by partnerships with the Law Faculty of the State University of Moldova, where the project helped launch the Mediation Lab, a dedicated space for student training, simulated mediation sessions, and research on ADR. This innovation has not only embedded ADR into the university curriculum but created a pipeline of future practitioners. Together with the National Institute of Justice, IDLO developed an e-learning course on extrajudicial mediation and arbitration, equipping future prosecutors and judges with essential skills. Three cycles of training of trainers' courses were carried out in 2022 and 2023, as well as 15 training workshops for mediators, judges, lawyers, court staff and members of the business community.

IDLO assisted the Chamber of Commerce and Industry in establishing two Regional Mediation Centres, one in the north and one in the south of the country. These centres expanded access to mediation services outside the capital, addressed geographic disparities, and increased visibility of ADR solutions among the public and local businesses. By providing information about mediation services and engaging individuals in mediation activities, these centres accelerated access to justice for commercial entities and individuals.

Feature box: Promoting the CAM alternative in Kenya

While arbitration was already established in the commercial justice sphere in Kenya, there was limited uptake of CAM. Promotion of CAM as a viable alternative to litigation involved production of training curricula for mediators, workshops bringing together judges and trained mediators, and training of judges to better understand and engage with the mediation process. While judges may not directly provide mediation and conciliation services, understanding conciliation principles equips them to effectively support its implementation and referral of court cases that meet the threshold to conciliation. To address the deficits of a largely manual case management system, IDLO prioritized the development of a Mediation Case Management System to provide for e-filing, case tracking, e-diary, e-notifications, case statistics, and e-feedback, among other innovations, accelerating decongestion of the system and reducing the case backlog. IDLO also supported the development of a Conciliation Training Manual to guide knowledge and skills transfer on conciliation. Joint workshops were conducted to sensitize stakeholders and engage them in discussions about mediation and conciliation, aiming to raise awareness and foster understanding of the benefits and processes involved in mediation and conciliation.

4.3 Promote awareness and disseminate new laws to business stakeholders

Promoting awareness and disseminating new laws to business stakeholders enhances regulatory compliance and reduces legal risks for businesses. Different stakeholders, such as lawyers and SME owners, have different and diverging interests and priorities regarding ADR. Some stakeholders exhibit more trust in formal legal systems than in informal ADR processes due to a lack of awareness and understanding of what commercial ADR entails. This lack of familiarity with ADR as an option contributes to low utilization and underscores the challenge of fostering broader acceptance and uptake of ADR within commercial contexts. When stakeholders are well-informed about extant laws and regulations, they can adapt their practices accordingly, avoiding potential disputes or penalties. This, in turn, fosters a more stable and predictable business environment conducive to investment and economic growth. Moreover, effective dissemination of new laws empowers businesses to make informed decisions and adjustments to their operations. Understanding legal requirements enables businesses to proactively integrate compliance measures into their strategies, fostering a culture of legal awareness and responsible business conduct.

Across a range of IDLO commercial ADR projects, the process of promoting awareness and disseminating new laws involved targeted communication actions, including workshops, seminars, publications, and digital resources. In Kyrgyzstan, **SME owners actively participated in awareness-raising campaigns and communication events** organized by IDLO. Entrepreneurs had the opportunity to engage in dispute resolution processes and experienced firsthand the effectiveness and accessibility of mediation. In Moldova, efforts were made to develop and amend ADR laws to meet the requirements set by the government. The Ministry of Justice initiated the formation of a working group comprising members

from various public sector entities to provide feedback on the proposed arbitration law. Efforts were also directed toward amending the law on mediation, with a focus on securing independence for the mediation council from the Ministry of Justice and ensuring financial autonomy. Development of laws on ADR resulted in a form of awareness raising with more people accepting commercial ADR and using it.

Feature box: Jordan's 2023 National Mediation Forum

Jordan's Ministry of Justice, Judicial Council, and Judicial Institute gathered 50 international and local practitioners, legal professionals, and representatives from the justice sector, banking and insurance industry, chambers of commerce, and business associations at the January 2023 edition of the National Mediation Forum. The event was organized with the support of a project co-implemented by the European Bank for Reconstruction and Development (EBRD) and IDLO. The National Forum was launched by the Secretary General for Judicial Affairs of the Ministry of Justice, who highlighted the need to expand mediation as an ADR tool in line with the Justice Sector Strategy of 2022-2026, and to strengthen private mediation.

Feature box: Kenya's Business Court Users Committee

In Kenya, engagement with business stakeholders was stimulated by providing a platform bringing the judiciary into conversation with a range of stakeholders identified in a mapping exercise, from SMEs to the Nairobi International Centre for Arbitration. Throughout the project, continued engagement efforts expanded this stakeholder network, leading to involvement of 20 interested organizations. The growing stakeholder network proved valuable for the ADR policy development process, demonstrating extensive consultation and collaboration efforts. A key to engagement with the business community was the Business Court Users Committee (now called the Commercial Justice Court Users Committee). Kenya's infrastructure of local Court Users Committees brings together actors in the justice sector to ensure a coordinated, efficient, effective, and consultative approach to the administration of justice at the grassroots; the Court Users Committees foster improved access to justice, enhanced service delivery by all actors in the justice system, greater public participation and engagement in the delivery of justice, and promotion of information-sharing and learning among stakeholders. Commercial Justice Court Users Committee members identified their interests in relation to CAM, conciliation, and arbitration and participated in a structured and constructive partnership with the judiciary, training institutions, professional bodies, and development partners that will help to cultivate culture change. Commercial Justice Court Users Committee also improved feedback mechanisms and proposed policies and legislation on the administration of justice, with a specific focus on CAM.

4.4 Enhance legislative and regulatory frameworks and leverage coordination

Enhancing legislative and regulatory frameworks, and leveraging coordination and collaboration across relevant stakeholders, is a prerequisite for advancing uptake of commercial ADR. Lack of a comprehensive legal framework and limited judicial capacity pose significant challenges to the effective implementation of commercial ADR mechanisms. The absence of a robust legal framework tailored specifically to commercial ADR can result in ambiguity or inconsistency in how ADR processes are conducted and enforced. This lack of clarity may deter parties from fully engaging in ADR or undermine confidence in its effectiveness. Judicial capacity constraints can thwart the proper administration and oversight of ADR processes, leading to delays or inefficiencies in resolving disputes outside traditional court systems.

The development of fit-for-purpose legal frameworks for commercial ADR must be rooted in context analysis and designed collaboratively, considering local customs, cultural sensitivities, and the unique dynamics of the country context. By engaging stakeholders including community leaders, businesses, legal experts, and civil society representatives in the design process, ADR frameworks can be crafted to function effectively in the country context and gain trust and legitimacy, encouraging participation in and acceptance of ADR processes as credible and effective avenues for resolving disputes. The provision of institutional support through resourcing, capacity-building, and technical assistance plays a critical role in strengthening relevant justice institutions. Effective coordination among stakeholders is similarly important for promoting consistency and coherence within legal and regulatory frameworks. By aligning policies, programmes,

and initiatives towards common goals, coordination reduces duplication of efforts and maximizes impact. Through shared knowledge and collaboration, stakeholders can develop sustainable solutions that promote access to justice and contribute to resolution of conflicts.

In the case of Kenya, lawmaking was itself a form of awareness-raising on ADR, with consultative processes related to the development of new policies and legislation informing people about available options, guiding conversations between stakeholders, and addressing drivers of resistance, leading to the development and adoption of the National ADR Policy, and broader uptake and compliance from legal professionals and commercial actors alike. In Jordan, IDLO's commercial ADR project included the **development of a national action plan based on findings from a functional analysis report and which recommended strategic changes to the implementation of mediation.** The action plan recommended an outreach and promotion plan targeting all relevant stakeholders and included advocacy for the establishment of mandatory mediation tracks in university curricula for business, psychology, and law schools. In Tajikistan, the success of IDLO's interventions was significantly enabled by the robust involvement of commercial actors in alleviating the financial burden of ADR, fostering a more conducive environment for adoption and uptake. The existence of a Mediation Centre within the Chamber of Commerce and Industry, a key partner in the project, demonstrates the commitment of the private sector to promoting mediation in Tajikistan in line with government policy.

Feature box: Legislative reforms in Uzbekistan

With support from IDLO, and thanks to the strong political will of the Ministry of Justice of Uzbekistan, Uzbekistan's government developed and introduced the 2025 Law on Mediation, along with a package of amendments to other legislative acts. These reforms include, for example, a legally binding procedure for enforcing mediated agreements.⁴¹ In March 2025, commercial mediation was also included in the Law on Limited Liability Companies of Uzbekistan as a dispute resolution tool. IDLO provided technical assistance to the Ministry of Justice, providing it with useful international experience and access to best practices from around the world. Specialists from the Ministry visited countries with strong mediation systems and received technical counsel from both international and local experts.

Feature box: Mongolia's Law on Mediation

IDLO supported Mongolia's Ministry of Justice and Home Affairs to revise the Law on Mediation and related frameworks to enhance pre-litigation commercial mediation. To explore best practices in commercial mediation and incorporate valuable insights into Mongolia's legislative revisions, IDLO organized a 2024 study visit to Italy for a Mongolian delegation, including representatives from the Ministry responsible for revising the law, the Civil Chamber of the Supreme Court, the First Instance Civil Court of Ulaanbaatar, and the Standing Committee on Legal Affairs of the State Great Hural (Parliament). Drawing on the Italian mediation model, the revised draft law represents a major advance in Mongolia's non-judicial dispute resolution landscape.⁴² It introduces landmark reforms, including judicial confirmation and mandatory enforceability of settlement agreements, a rigorous accreditation system for mediation centres, and comprehensive oversight by the Ministry of Justice and Home Affairs over licensing, training, and regulation of mediators. Commercial mediation cases will be conducted exclusively through accredited centres, with robust incentives modeled on Italian best practices, such as mandatory initial meetings and potential reductions in court fees, to encourage participation, while court-annexed mediation will continue to be mandated by the Judicial General Council of Mongolia. As part of its broader private law reform agenda, the legislative reform package will be submitted to parliament during the autumn 2025 session.

4.5 Address inequalities between commercial disputants

By actively involving women entrepreneurs in ADR processes, several IDLO projects contributed to promoting equality between women and men, generating more inclusive economic growth. Women entrepreneurs face unique challenges and barriers in accessing justice and navigating commercial disputes. Addressing women's distrust towards formal systems, providing a friendlier dispute resolution environment, ensuring financial accessibility, and tackling structural inequalities have proven effective strategies for enhancing access to commercial justice for marginalized groups, and empowering members of those groups to navigate the dispute resolution process effectively and obtain fair outcomes. Participation in ADR not only enhances women's access to justice but also enables them to protect their business interests more effectively.

Furthermore, engaging women entrepreneurs in ADR initiatives helps build their capacity, confidence, and resilience in managing business-related conflicts. This empowerment benefits individual entrepreneurs and nourishes broader economic development by leveraging the full potential of women as commercial actors.

Feature box: Access to commercial mediation for women entrepreneurs in Jordan

In Jordan, mediation plays a crucial role in fostering trust within the economy, minimizing the need for lengthy and economically disruptive legal processes. This is especially useful for women entrepreneurs, who face various barriers to accessing justice through standard commercial justice procedures. Where Jordanian women entrepreneurs can access mediation services, they are better able to simplify business affairs and sustain their own business growth trajectories.

IDLO conducted a comprehensive study focused on the challenges faced by women entrepreneurs in Jordan, particularly regarding access to justice. The project's holistic approach aimed to address systemic barriers and promote access to justice for women entrepreneurs. This study highlighted social norms and a lack of awareness about mediation as significant obstacles. In response, IDLO:

- Developed a detailed manual aimed at empowering women entrepreneurs with guidance on resolving legal issues, including information on courts, mediation, and arbitration
- Collaborated with organizations like the Jordan Forum for Business and Professional Women to deliver targeted training and capacity-building sessions to equip women with the skills to use the manual effectively
- Empowered women to become trainers themselves, enabling them to disseminate knowledge and skills to other women entrepreneurs across different regions
- Supported networking of rural women entrepreneurs following focus group discussions, enabling them to provide mutual assistance and advice on business registration and licensing

Insights from IDLO's approach to commercial ADR that may be applicable in diverse contexts include:



Build trust and improve perceptions through local engagement and ownership, for example through awareness-raising actions



Strengthen capacities across the ADR landscape, including the judiciary, business community, and informal systems at community level



Promote awareness and disseminate new laws to business stakeholders, enabling stakeholders to adapt their practices based on reliable information



Enhance legislative and regulatory frameworks and leverage coordination, prioritizing fit-for-purpose legal frameworks and fostering open and constructive dialogue among stakeholders



Support women entrepreneurs to use ADR, contributing to empowering women in the economic sphere and generating increased economic growth

5. CRITICAL SUCCESS FACTORS

5.1 Generating political will

Political will is an essential prerequisite for the implementation and fostering of commercial ADR. Political backing signals a recognition of the importance of ADR in promoting economic development, resolving disputes, and enhancing access to justice.⁴³ By working with the private sector to generate demand, disseminating information to key stakeholders, and cultivating support directly with key policymakers, it is possible to build political will that facilitates the adequate allocation of resources, development of an enabling policy environment, and establishment of institutional capabilities necessary for ADR to thrive within the broader legal landscape. Where there is broad-based political support and commitment, legal and administrative processes related to ADR roll-out with a minimum of resistance. Frictionless implementation not only accelerates the adoption and integration of ADR mechanisms, but encourages participation and cooperation from diverse stakeholders, including the public sector.

In Uzbekistan, for example, **reforms entrenching commercial ADR** could not have moved forward as quickly or successfully without the strong commitment of the Ministry of Justice and a general understanding of the concept, its benefits, and drawbacks. Similar progress has now been made in Kyrgyzstan, where the Ministry of Justice expressed strong commitment to moving rapidly toward adoption of the Singapore Convention, an important international framework for mediation and arbitration. In Mongolia, the strong commitment of a Minister of Justice and Home Affairs with personal interest in commercial ADR set the reform process in motion. Despite subsequent frequent changes in justice ministers and institutional contact points, IDLO has successfully supported the Ministry of Justice's legal policy department to liaise with the offices of incoming ministers and maintain momentum on amendment and uptake of relevant legislation.

Feature box: Mauritania's ADR Centre

Under IDLO's Investment Support Programme for Least Developed Countries (ISP/LDCs), Mauritania received extensive technical support focused on strengthening its investment dispute framework.⁴⁴ The programme's core deliverable was the development of a model arbitration clause to improve the legal framework for investment, notably in the extractive industries. Consistent political leadership and buy-in across government agencies were critical factors in institutionalizing training and establishing the Mauritania Centre for International Arbitration and Mediation. The Centre strengthened legal infrastructure for managing investment-related disputes and, following the arbitration training delivered under the programme, its caseload increased rapidly from two cases to over fifty per year.⁴⁵ This highlights a substantially higher use of arbitration services and the catalytic role of political commitment in scaling commercial ADR services.⁴⁶



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5.2 Ensuring complementarity with formal commercial justice systems

Shifting dispute resolution to out-of-court alternatives may have the effect of reducing trust in the formal justice system, with adverse effects on the rule of law in the long-term.⁴⁷ Proponents of commercial ADR in low- and middle-income countries argue for the adoption of mediation, arbitration, and other practices in the economic sphere as a means of clearing case backlogs in overburdened court systems, or as an alternative to existing state commercial justice processes that lack capacity or public trust.⁴⁸ Yet removing commercial dispute resolution from the formal courts may further reduce public trust and disincentivize investment and reform processes that could strengthen them, harming prospects of sustainable improvement. As such, promoting complementarity and coherence between the formal commercial justice system and other commercial ADR practices is essential, not only to reap the benefit of efficiency gains, but also to avoid eroding the ability of states to assert the supremacy of formal justice institutions.⁴⁹

Feature box: A coordinated approach to CAM in Kenya

A coordinated approach, involving diverse national justice institutions, international partners, and the business community, has been the linchpin of success for the CAM initiative in Kenya. Endorsement from the Ministry of the East African Community and the Ministry of Foreign Affairs signified broad government support and commitment to the initiative. The Judiciary used Bar-Bench Forums, where court officials interact with lawyers, as opportunities to raise awareness of CAM, emphasizing how it could simplify processes for judges and lawyers. IDLO collaborated with the Kenya Judiciary Academy to identify priority areas for capacity-building among judges, magistrates, tribunal members, researchers, and court clerks. Training content was specifically tailored to address these identified needs, with input from experts in the field and invited speakers from both local and international contexts to provide a comprehensive perspective. Standardization of mediation training addressed the problem of inconsistency in training curricula offered by different educational and training institutions for court annexed mediators and conciliators, and was implemented as a requirement for accreditation, thereby ensuring competency and uniformity in mediator training.

5.3 Building on local mediation traditions

Building on traditional and local mediation practices is a fundamental success factor for the effective implementation of commercial ADR. Traditional and local mediation methods are deeply rooted in community customs and cultural norms, making them familiar and trusted by stakeholders.⁵⁰ Leveraging these practices enhances the legitimacy of ADR processes and promotes buy-in from participants who are more inclined to engage in dispute resolution through familiar and culturally resonant channels. Incorporating traditional and local mediation into commercial ADR frameworks allows for greater accessibility and acceptance and enables the adaptation of ADR mechanisms to local contexts, ensuring relevance and effectiveness in resolving disputes within specific settings, including those where more excluded and marginalized constituencies may predominate. By embracing and integrating traditional mediation practices, commercial ADR initiatives can bridge cultural divides, foster mutual understanding, and build stronger relationships among parties involved in business disputes.

Feature box: Reconciling commercial ADR with mediation traditions in Kyrgyzstan⁵¹

Mediation is part of everyday life in Kyrgyzstan: the practice of settling disputes through negotiations, with the assistance of a reputable person, has been used for many centuries. Kyrgyz culture recognises the role of peacemakers, known as *Danakers*, and the institution of wise elders or *Aksakals* who are trusted to resolve disputes. A popular proverb holds that: 'If two people dispute, the third reconciles.' These traditions fostered a positive attitude towards mediation, but active participation from the parties and their ability to negotiate are crucial in Kyrgyz mediation practices. The contemporary legal term 'mediation' is relatively new to Kyrgyz society, being practically unknown to the majority of citizens. While legal actions and court judgments are clear and understood within society, there is uncertainty and lack of clarity regarding the legal validity and enforceability of mediation agreements in the broader public. Disentangling contemporary and traditional notions of mediation has been an important aim of outreach around commercial ADR in Kyrgyzstan.

5.4 Aligning with international standards and practices

The implementation of international conventions and good practices is vital for the advancement of commercial ADR.⁵² International frameworks, such as the Singapore⁵³ and New York Conventions,⁵⁴ and the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration,⁵⁵ provide a universally recognized regime for the enforcement of arbitral awards across borders, enhancing the credibility and enforceability of ADR outcomes. By adhering to international standards and conventions, commercial ADR practices gain legitimacy and acceptance among businesses, fostering confidence in novel dispute resolution mechanisms. Furthermore, adopting and implementing good practices in ADR, such as confidentiality, impartiality, and procedural fairness, promotes efficiency and effectiveness in resolving commercial disputes. Consistency with international norms and standards not only enhances the quality of ADR services but also facilitates harmonization and alignment with global business practices, ultimately contributing to a more robust and trusted commercial dispute resolution environment.

In Kenya, the government made the case that widespread entrenchment of commercial ADR would establish Kenya as an **investment destination and as an economic hub for regional business**; domestic stakeholders responded positively to this argument, and uptake of commercial ADR increased accordingly. In Kyrgyzstan, the Singapore Convention was a central focus of IDLO's support efforts. Priority mediation training programmes are now certified by prestigious international institutions such as the International Mediation Institute. IDLO supported ratification of the Singapore Convention in Jordan and integration of international best practices into Serbia's national ADR policies. These experiences show that infusing local dispute resolution practices with international norms can both safeguard state resources and strengthen credibility in global markets.

Feature box: Supporting the least developed countries toward sustainable growth

IDLO's ISP/LDCs programme provided technical and legal assistance, as well as complementary capacity building, through 16 initiatives in 9 of the least developed countries on investment-related matters, including negotiations and dispute settlement. Assistance under the project was demand-driven and provided at no cost to the beneficiaries, by leveraging the expertise of lawyers and experts working on a pro bono or reduced fee basis. Within this framework, ISP/LDCs provided support to The Gambia's government in an international arbitral proceeding initiated by a foreign investor concerning two offshore petroleum licenses. Through the programme, the government secured an expert to effectively counter the claimant's damage evaluation. Consequently, The Gambia reached a highly favourable out-of-court settlement, avoiding a potential claim of USD \$200-300 million.⁵⁶ Specifically, the foreign investor agreed to relinquish all claims over one petroleum license and renegotiate the terms of the second. This settlement not only eliminated the risk of substantial damages, but also enhanced The Gambia's capacity to manage its natural resources in alignment with national priorities, thereby promoting inclusive economic growth and sustainable development.

Feature box: Adopting international standards in Eastern Europe and Central Asia

In Eastern Europe and Central Asia, IDLO has successfully disseminated good practices from other countries and supported their adaptation to local contexts, with the aim of learning from the most successful models. The Italian model of commercial ADR, which emphasizes court-referred mediation where judges can encourage or order parties to attempt mediation conducted by a qualified practitioner before proceeding with litigation, has been consistently showcased as a success story.⁵⁷ Elements of that model were introduced in Moldova and Montenegro, promoting mutually acceptable out-of-court settlement of disputes to relieve pressure on formal justice systems. Integration of international standards was a key focus throughout these interventions, with the New York Convention an especially important point of reference, and the Singapore Convention an emerging focus.

The Italian mediation model has also had a noticeable influence in the legislative amendment processes in Uzbekistan and Kyrgyzstan. Italy's clear and organized method of including mediation in the court system, and especially the important role of judges in supporting settlements and the structured training and certification of mediators, has been used as a reference during national discussions on how to improve commercial dispute resolution. In both countries, policymakers and legal experts have looked at the Italian approach as a practical way to make mediation laws more in line with international standards, while still making sure they work well within local legal traditions.



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Activating political will, an essential prerequisite for the implementation and fostering of commercial ADR, by building broad-based political support and commitment, legal and administrative processes related to ADR can roll-out more effectively with a minimum of resistance

2

Building on traditional and local mediation practices, leveraging practices rooted in community customs and cultural norms to enhance the legitimacy of ADR processes

3

Aligning with international standards and practices, using adherence to international conventions and other frameworks to build acceptance of and foster confidence in novel ADR mechanisms

4

Ensuring complementarity with formal commercial justice systems, shifting dispute resolution to out-of-court alternatives may have the effect of reducing trust in the formal justice system, with adverse effects on the rule of law in the long-term.

6. CONCLUSIONS

An attractive environment for domestic and foreign investment depends on reliable contract enforcement and the fair, predictable, and transparent resolution of commercial disputes.

Ineffective commercial justice systems cost businesses nearly USD \$1 trillion each year. Efficient commercial justice is essential for generating and sustaining a business climate conducive to domestic investment and FDI.⁵⁸ Where contracts are enforceable and rights are protected, domestic and international investors are more willing to commit resources that generate jobs and innovation. Due to the demonstrated effectiveness of ADR as a means of expanding access to commercial justice, 174 countries and territories have formally recognized mediation, arbitration, and conciliation as means of resolving contractual disputes.⁵⁹

Commercial ADR can serve as a targeted enabler of comprehensive economic development in almost any context. While driving sustained economic growth requires complex integrated policy action beyond the rule of law sector, policies and programmes that establish and entrench commercial ADR practices can act as effective means to foster the fairness and predictability that boosts investment and growth. Commercial ADR also accelerates access to justice for entrepreneurs and firms, decongests formal justice systems and reduces case backlogs, and advances access to commercial justice for women and members of marginalized and excluded groups.

Commercial ADR also generates broader development benefits. By decongesting courts, it improves the overall performance of the justice system. By offering more accessible justice services, it expands opportunities for fair dispute resolution to marginalized groups. When

entrepreneurs and firms are empowered to resolve commercial disputes through a range of fair and efficient mechanisms, the justice ecosystem becomes more broadly resilient and responsive. Thus, ADR improves the social trust in institutions that supports more inclusive prosperity and stability in the long-term.

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