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Alternative Dispute Resolution (ADR)

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From Domestic Resolution to Global Enforcement: The Case for Ghana's Ratification of the Singapore Convention on Mediation, and Lessons from Nigeria.

BAKHITA M. KOBLAVIE

The Effectiveness of ADR in the MENA Region: The Future of Alternative Justice in the Arab World — Innovative Solutions Beyond Courtrooms.

SALMA AMER MOHAMED

Alternative Dispute Resolution (ADR) in Commerce, Trade and Communal Disputes.

PROMISE RITA IYERE

INTERVIEW WITH

PROFESSOR KARIUKI MUIGUA

Chartered Arbitrator and Professor of Environmental Law and International Commercial Arbitration at the University of Nairobi, Kenya

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EDITOR-IN-CHIEF'S NOTE

EZEKIEL ARCHIBONG

I write this segment with a quiet smile of retrospection and fulfilment. When I took over in January as Editor-in-Chief, The PALM had stopped publishing for more than three years. Like a book that left the shelf, we had slipped into oblivion. But we relaunched. Slowly at first, then steadily, the rhythm returned. Consistency became our compass, and quality, the creed we refused to compromise. Our mission was not just to start but to never stop. And today, we are proud to release our final quarterly edition for the year 2025.

This edition focuses on Alternative Dispute Resolution (ADR). We are reminded that justice is not always found in the clang of gavel or the heat of adversarial contest but sometimes, or maybe oftentimes, in the quiet triumphs of dialogue, empathy, and innovation.

We open with Bakhita M. Koblavie's article on the challenges of enforcing international mediated settlement agreements under Ghana's ADR Act. Her work underscores how the Singapore Convention on Mediation (SCM), already integrated into Nigeria's Arbitration and Mediation Act, provides a robust framework that strengthens cross-border enforcement, offering Ghana a model to emulate.

Similarly, Salma Amer Mohamed explores the evolution of ADR in the MENA region, rooted in traditional practices like "Sulh" yet modernised through progressive laws and institutions. She traces the growth of arbitration centres, while also noting the continued underutilisation of mediation due to cultural hesitations and enforcement inconsistencies.

On the other hand, Promise Rita Iyere takes us back to the origins of ADR in Africa, where customary practices, communal structures, and relational ethics guided conflict management. Her piece illustrates how these indigenous foundations continue to anchor modern ADR, promoting social harmony, commercial integrity, and sustainable development.

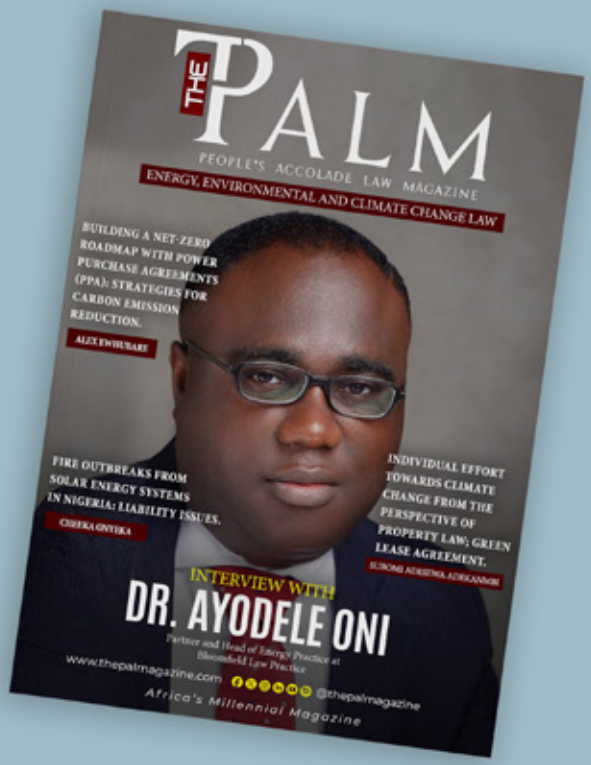
We feature an exclusive interview with Professor Kariuki Muigua, a Chartered Arbitrator and Professor of Environmental Law and International Commercial Arbitration at the University of Nairobi, Kenya. Professor Muigua reflects on challenges facing ADR in Africa, including misconceptions about its "alternative" nature, weak institutional frameworks, and limited recognition of customary justice systems. He advocates for reforms to legitimise indigenous mechanisms and strengthen Africa's presence in global ADR discourse.

I thank our editorial team for ensuring that our editorial standard is not compromised in this edition. I equally want to thank our writers, and everyone who contributed to this edition. To our readers, thank you, for your loyalty, for continually reminding us why The PALM stands as a voice of thoughtful reflection.

As we draw the curtain for 2025, we hope that you journey with us into the new year as we continue to champion the voices that shape Africa's legal landscape.

Cheers!

2025 EDITIONS



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CONTENTS

FROM DOMESTIC RESOLUTION TO GLOBAL ENFORCEMENT: THE CASE FOR GHANA'S RATIFICATION OF THE SINGAPORE CONVENTION ON MEDIATION, AND LESSONS FROM NIGERIA.

BAKHITA M. KOBLAVIE

INTRODUCTION

Alternative Dispute Resolution (ADR) has become an integral part of modern commercial dispute resolution and dispute management processes. ADR seeks to deliver more timely, less costly and more party centred outcomes than litigation. In Ghana, the Alternative Dispute Resolution Act, 2010 (Act 798) establishes the domestic structure for four core ADR methods. Act 798 is widely applauded for institutionalising mediation as a mainstream dispute resolution method, easing congestion in the courts and improving access to justice. While Act 798 provides for the enforcement of domestic mediated settlement agreements, it makes no provision for a process to recognise and enforce international mediated settlement agreements (iMSAs), leaving a gap in the enforcement of cross border mediated outcomes.

Meanwhile, the United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention [SCM]), adopted in 2018 and opened for signature in 2019, fills that gap by establishing a limited, uniform enforcement regime for iMSAs. Ratification of the SCM and the enactment of an implementing legislation would enable Ghanaian courts to recognise and enforce foreign made mediated settlement agreements without re litigating the merits. This has the potential to enhance legal certainty for international commercial parties engaging with Ghanaian counterparts and to strengthen Ghana's allure as an avenue for international mediation.

A recent comparative development is Nigeria's Arbitration and Mediation Act, 2023 (AMA), which, like the Ghanaian ADR Act, consolidates arbitration and mediation into a single statute and further incorporates the SCM's enforcement model to create a clear domestic gateway for enforcing iMSAs in Nigeria. Nigeria's legislative choice illustrates how domestic incorporation of the Convention can elevate mediation's institutional status, reduce enforcement uncertainty for cross border settlements and signal a jurisdiction's readiness to host international commercial mediation.

Building on this background, this article posits that Ghana, as the administrative seat of the African Continental Free Trade Agreement (AfCFTA), should ratify the Singapore Convention and amend the Alternative Dispute Resolution Act, 2010 (Act 798), to incorporate the enforcement framework of the Convention. This legislative reform is essential to establishing mediation as a credible and effective mechanism for international commercial dispute resolution. By doing so, Ghana would bolster investor confidence in its justice system and solidify its position as a regional hub for cross-border commercial mediation in Africa.

THE IMPORTANCE OF CROSS-BORDER ENFORCEABILITY FOR MEDIATED SETTLEMENT AGREEMENTS.

Cross border enforceability of mediated settlement agreements is crucial because it revolutionises mediation from a limited, domestic only option into a trustworthy, cost-effective mechanism for resolving international commercial disputes, thereby reducing transaction costs, boosting investor confidence, and supporting regional trade integration. In international trade and commerce, a dispute-resolution mechanism is only as strong as the enforceability of its outcomes. While mediation is celebrated for its flexibility and cost-effectiveness, these advantages are meaningless if the resulting settlement agreement cannot be reliably enforced across national borders. Enforceability provides the necessary legal force that transforms a mere private contract into a powerful tool for resolving international disputes. In this vein, enforcing mediated settlement agreements across borders offers significant benefits.

The primary aim of any dispute resolution process is to bring a definitive end to the dispute. Aside from the perks of reducing the burden on both foreign and national courts and arbitration systems, enforceability first creates certainty and predictability. Cross-border enforcement of settlement agreements brings finality and legal certainty to the dispute, preventing re-litigation . Without a direct enforcement mechanism, iMSA may remain ineffective. A party looking to enforce the settlement obligations would have to initiate a suit in the defendant's home country to have the settlement agreement recognised as a binding contract. Re-litigation thus defeats the very purpose of mediation, making the resolution process circuitous, time-consuming, expensive, and undermining the certainty that commercial parties require.

Second, cross-border enforcement boosts investor confidence, makes mediation a credible alternative, and encourages its use. International businesses and their legal advisors choose dispute resolution methods based on certainty, predictability and reliability. The existence of a clear and streamlined enforcement framework, such as the one provided by the SCM, gives parties the confidence to choose mediation. Parties are confident that the settlement agreement is an executable remedy and not a mere moral obligation. The assurance that the agreement has an avenue of enforcement in the same way as a foreign court judgment or an arbitral award becomes a strong incentive for the choice of mediation as a viable first option for resolving cross-border disputes.

Third, cross-border enforcement secures the realisation of the full benefits of cross-border mediation. The advertised benefits of mediation, which include speed, lower cost, party autonomy, and relationship preservation, are fully realised only when the outcome is seamlessly enforceable. If enforcement is difficult, the process becomes a preliminary step rather than a final solution. A rigorous enforcement

mechanism ensures that the time and cost savings achieved during the mediation are not lost in a subsequent, protracted enforcement battle. Enforceability also preserves the positive outcome of the mediation, allowing commercial relationships to continue based on a fulfilled agreement.

In essence, cross-border enforceability is not a peripheral issue but the critical component that elevates mediation from a facilitative process to an authoritative method of dispute resolution. It provides the legal backbone that ensures the time, effort, and resources invested in reaching an amicable settlement are protected and have a tangible, enforceable result.

THE ADR ACT, 2010 (ACT 798) AND MEDIATION UNDER PART II.

Act 798 establishes a comprehensive framework for ADR, designing mechanisms for the enforcement of the outcome of all the processes, while creating institutional architecture to support ADR practice. Divided into five parts, Part One is on arbitration, Part Two on mediation, and customary arbitration and customary negotiation for a settlement are in Part Three. The Act further provides for the institution of an ADR Centre to administer ADR across the various regions of Ghana in Part Four. Provisions on financial, administrative and miscellaneous matters are contained in Part Five.

Concerning Arbitration, the Act specifies mechanisms for the enforcement of both domestic and international arbitration awards under separate provisions, embedding the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (NYC) in the first schedule to the Act. Customary arbitration, being a purely domestic process, also contains enforcement provisions. The mediation process under Part Two of the Act, which is the main focus of this paper, contains provisions for the enforcement of domestic settlement agreements, without more.

A critical study of Part Two of Act 798 on mediation reveals a highly effective regulatory framework according to international standards. The provisions show "a prudent balance of legal certainty with flexibility as distinctive features of mediation." Thus, Part Two provides a clear legal basis for mediation, distinguishing it from other ADR processes and establishing its place within the Ghanaian dispute resolution system. Other makers include provisions that uphold party autonomy, party self-determination or voluntariness, provisions for procedural flexibility, provisions ensuring mediator integrity and competence, provisions integrating mediation with the judicial system clear provision for enforceability of settlement Agreements, which, for Act 798, as previously stated, are domestic in nature. In essence, these core standards represent interconnected components of a coherent mediation framework. For Ghana, these provisions engender a predictable legal environment for mediation, ensuring that mediation fulfils its promise as a nationally

accessible, efficient, and just method of resolving disputes in the twenty-first century.

Despite this accomplishment, the Act is limited, as it makes no provision for the enforcement of international mediated settlement agreements (iMSAs). The Act does not set up any procedure for the direct recognition or enforcement of settlement agreements concluded abroad and sought to be enforced in Ghana; nor does it establish a uniform standard for treating iMSAs in parallel to Ghana's treatment of foreign arbitral awards under the NYC under section 59 of Act 798. Consequently, parties seeking to enforce an iMAS in Ghana must issue a writ to enforce the settlement agreement as a contract and obtain a judgment, which is subject to enforcement as a judgment of the courts of Ghana. This circuitous nature of enforcing iMSAs thus undermines the leverage of efficiency that mediation seeks to deliver. The inability to enforce iMSAs in Ghana creates the disincentive of uncertainty and higher enforcement risks for foreign businesses and commercial investors who may prefer international mediation with their Ghanaian business counterparts.

This gap is highly consequential, particularly in the wake of Ghana's prominent role in the African Continental Trade institutional structure and the fact that international commercial mediation is increasingly becoming central to global and continental cross border commerce. As the host of the AfCFTA Secretariat, Ghana's legal environment carries a signalling effect for regional commerce, and the lack of a dedicated iMSA enforcement route diminishes Ghana's viability as a jurisdiction for cross border mediation and dispute settlement. The adoption of mediation as a dispute resolution mechanism in international commercial agreements involving Ghanaian parties, therefore, largely depends on the certainty that mediated settlement agreements will be recognised and enforced across jurisdictions, particularly Ghana.

THE SINGAPORE CONVENTION AND KEY PROVISIONS ON ENFORCEMENT

The United Nations Convention on International Settlement Agreements Resulting from Mediation (the Singapore Convention [SCM]) is a pivotal international convention that establishes a uniform and efficient framework for the cross-border enforcement of mediated settlements. Its primary objective is to facilitate global trade and commerce by providing a direct mechanism for enforcing settlement agreements resulting from cross-border mediation. The SCM was finalised at the 51st UNCITRAL Commission session in July 2018, and the UN General Assembly passed a resolution to adopt it by consensus in December 2018. It opened for signature on 7th August 2019 and entered into force on 12 September 2020. Ghana became a signatory State on 22nd July 2020, but has yet to ratify the Convention. The SCM is akin to the New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards (NYC) because, just like the NYC, the SCM provides an avenue for the recognition and enforcement of foreign mediated settlement agreements. It also, like NYC, operates on reciprocity, ensuring that settlement agreements reached in one signatory state are enforceable in another signatory state to the SCM. Lastly, the SCM, like the NYC, creates a streamlined process for the enforcement of iMSAs.

Before the adoption of the SCM, an often cited challenge to the use of mediation in commercial disputes was the lack of an efficient and harmonised framework for cross-border enforcement of iMSAs. Before the SCM, iMSAs had the status of contracts only and required further court proceedings to enforce compliance, where a party failed to abide by the terms agreed. Where the parties are international, this means potentially litigating in a foreign court to enforce the agreement. Now under the SCM, parties can apply directly to the courts of a signatory state that has ratified the Convention to enforce iMSAs, without needing to initiate new proceedings. Upon Ghana's ratification of the SCM, settlements resulting from mediation will be much easier to enforce, thereby promoting mediation as a mechanism

for international dispute resolution. Consequently, international businesses in cross-border commercial disputes will benefit from mediation as an additional dispute-resolution option alongside litigation before foreign courts and international arbitration, thereby avoiding situations where the occurrence of a dispute leads to the termination of a commercial relationship.

Singapore itself has leveraged ratification to consolidate its reputation as a global ADR hub. Its courts and institutions, and professional standards actively promote mediation, supported by the enforceability guarantee of the Convention. For Ghana, the Singapore Convention offers a ready made template to address Act 798's lack of a mechanism for the enforcement of iMSAs. The SCM creates an avenue for Ghana to maintain its domestic mediation structure while adding a distinct, treaty based pathway for iMSA enforcement. This approach would complement Ghana's existing arbitration alignment under the NYC, presenting mediation as an equally robust option for cross border commercial disputes, especially relevant for regional trade under AfCFTA, where speed, cost efficiency, and relationship preservation are highly valued.

The SCM applies to settlement agreements resulting from mediation, concluded in writing by parties to resolve an international commercial dispute. The convention excludes certain matters from the scope of the SCM. An iMSA under the Convention has a dual function. They can be directly enforced or can be invoked to prove that a matter has been resolved by mediation. Also, a party relying on a settlement agreement must furnish the competent authority with two key items. First is the settlement agreement itself, signed by both parties, and second, evidence that the agreement resulted from mediation. This evidence can take various forms, such as the mediator's signature on the agreement, a separate document from the mediator confirming the mediation took place, or an attestation by the administering institution. If these are unavailable, any other evidence deemed acceptable by the enforcing authority may be submitted. The party must also address any applicable requirements for authenticating the submitted documents.
Further, the SCM outlines the exhaustive grounds upon which a competent authority can refuse to grant relief and enforce a settlement agreement.

These grounds cluster into four main categories being defects relating to the disputing parties, i.e. incapacity to contract or other personal defects, defects in the settlement agreement itself, being nullity, invalidity, non finality, modification, prior performance or uncertainty of obligations; problems connected to the mediator and the mediation process, being serious breaches of mediator standards, including fraud or undue influence, or failure to disclose facts raising justifiable doubts as to the impartiality or independence of the mediator, that materially affected consent, and public law and forum limits applied by the enforcing jurisdiction, covering issues like overriding public policy or that the subject matter is not capable of settlement by mediation under that jurisdiction's law.
One notable challenge with the SCM is that, unlike the NYC, it does not recognise or enforce agreements to refer disputes to mediation. This means that where parties have a commercial contract that contains an agreement to mediate their dispute, but one party in the event of the dispute initiates litigation, contrary to the mediation agreement, no direct compulsion powers emanate from the SCM, as in the case of the NYC, which authorises courts of signatory states to compel parties to arbitrate, if one commences litigation in violation of the arbitration agreement.

COMPARATIVE INSIGHT FROM NIGERIA

Nigeria's Arbitration and Mediation Act, 2023 (AMA) integrates arbitration and mediation into a single statute, modernising the AMA, aligning it with contemporary international norms. Among its innovations, the statute explicitly operationalises the SCM within Nigeria's domestic law, permitting direct court applications for the

enforcement of iMSAs, relying on the limited defences embodied in the text of the SCM. This statutory basis for the recognition and enforcement of iMSAs in Nigeria mirrors the enforcement structure that has long existed for arbitral awards under the NYC. Thus, the AMA, by incorporating the SCM by reference, enables a party to an iMSA to apply to a competent court for enforcement, subject to the limited grounds for refusal, such as incapacity, invalidity of the agreement, serious breach by the mediator, or public policy, which grounds are consistent with those stipulated in the SCM.

This ratification does three important things. First, it provides a uniform avenue for commercial parties to enforce an iMSA, thereby enhancing predictability and reassurance. Second, it reduces the procedural burden on parties by dispensing with the need for fresh litigation on the merits. Enforcement therefore proceeds on the settlement agreement itself, consistent with the structure of the SCM, a mechanism that is currently missing in the Ghanaian context. Third, it places mediation on a stronger institutional footing alongside arbitration, improving the parity of esteem among ADR processes. All these culminate into a resolute foundation for Nigeria's ambitions as an ADR hub.

By directly incorporating the SCM enforcement model into domestic law, Nigeria has addressed the principal barrier to mediation's popularity, removing the uncertainty about cross border enforceability or iMSAs in Nigeria, signalling to investors that consensual resolution will be backed by the courts.

LESSONS FOR GHANA

For Ghana, ratifying the Singapore Convention (SCM) is a strategic economic action; a step that will align directly with Ghana's national trade and economic policies. As the host nation of the AfCFTA secretariat and the administrative hub of the world's largest free trade area by number of member states, ratifying the SCM would be a powerful demonstration of Ghana's leadership in influencing other member states, resulting in a harmonised continental mechanism for enforcing iMSAs. Also, because a significant portion of AfCFTA trade is driven by Small and Medium-sized Enterprises (SMEs), which are particularly vulnerable to the high costs of international litigation and even arbitration, having a national mediation framework supported by the SCM will provide a more accessible and less intimidating dispute resolution mechanism to encourage SMEs to engage confidently in cross-border trade on the continent.

Nigeria's approach shows the benefits of including the SCM's enforcement mechanism in domestic legislation, providing for judicial enforcement of iMSAs. Ghana could adopt and reform these measures to achieve even stronger outcomes.

As a first step, Ghana should chart a similar path, amending the ADR Act 2010 (Act 798). The ratification under a new law should

explicitly differentiate domestic enforcement provisions under the current Act 798 from international enforcement rules under the new Part that implements the Convention, as seen in the case of Nigeria. Second, the provisions authorising the courts to recognise and enforce iMSAs should be subject to clear and limited refusal grounds aligned with the grounds provided in the Convention. This will avoid the inefficiencies of re litigation and provide a clear procedural route for parties.

Ghana could go further by providing for the recognition and enforcement of mediation clauses in commercial contracts, thereby addressing an important gap left open by the SCM. Doing so would reinforce the country's existing statutory authorisation for parties to agree to mediation as part of their commercial arrangements. It would strengthen predictability and confidence in mediation as a dispute resolution option. This provision holds the promise of preserving the courts' mandate to refer parties to mediation in both domestic and international circles. Also, Act 798 should adopt the Singapore Convention's definitions of "mediation" and "settlement agreement" for cross border cases, thereby aligning domestic law with the Convention, clarifying the scope of iMSAs to be enforceable under the SCM, and eliminating any uncertainty about which instruments qualify for recognition and enforcement under the Convention.

Lastly, Act 798 should expand and clarify the Act's existing minimum standards for mediator conduct, so they align with the Singapore Convention's integrity safeguards by codifying clear duties of impartiality, disclosure of conflicts, confidentiality, competence and continuing training, record-keeping, and proportionate sanctions for serious misconduct, in a manner consistent with the Convention's integrity safeguards. Harmonising these provisions will minimise inconsistencies in interpretation, promote predictable outcomes and protect parties against procedural defects.

CONCLUSION

Ghana's Act 798 is a monumental ADR legislation that achieves its central domestic objectives. Among other things, it mainstreams mediation and ensures the enforceability of domestic mediated settlements. The next step is internationalisation. Nigeria's 2023 Act illustrates how a State can embed the Singapore Convention's enforcement model into domestic law, creating a predictable and efficient pathway for the enforcement of iMSAs. Adopting a similar approach in Ghana, by adding a new Part to Act 798 that codifies enforcement mechanisms aligned with the Singapore Convention, establishes narrow grounds for refusing recognition and enforcement, and sets out clear procedures to close the international enforceability gap, would bolster investor confidence and align Ghana's ADR framework with AfCFTA integration. This legislative reform would send a clear signal that consensual settlements reached through mediation of cross-border commercial disputes will enjoy the same degree of judicial respect and cross border enforceability as arbitral awards have long received.

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THE EFFECTIVENESS OF ADR IN THE MENA REGION: THE FUTURE OF ALTERNATIVE JUSTICE IN THE ARAB WORLD — INNOVATIVE SOLUTIONS BEYOND COURTROOMS.

SALMA AMER MOHAMED

INTRODUCTION

At a time when courts were overwhelmed with a growing backlog of cases, the concept of Alternative Dispute Resolution (ADR) emerged in the United States during the 1970s as a smart response to the crisis of slow justice and rising litigation costs. American legal scholar Frank Sander introduced his influential vision of the "multi-door courthouse" — one that would offer disputing parties' multiple options beyond traditional litigation, such as arbitration, mediation, and conciliation. While the term ADR originates from the US, its underlying principles have long been embedded within Arab and African societies, historically manifesting through tribal conciliation, customary councils, and community-based methods of resolving disputes—often outside state intervention. The modern institutionalisation of ADR in the Arab world began in the 1990s, with Egypt and Tunisia leading the way through legislative reform.

In recent years, countries such as the UAE, Saudi Arabia, and Morocco have further advanced ADR by integrating it into commercial frameworks and establishing sophisticated centres like the Saudi Centre for Commercial Arbitration (SCCA) and the Dubai International Arbitration Centre (DIAC), which now rival international institutions in terms of efficiency and standards.

Egypt notably established the region's first international arbitration centre, the Cairo Regional Centre for International Commercial Arbitration (CRCICA) in 1979, with UN support. Despite this established institutional progress, the region continues to face challenges including limited public awareness, cultural reluctance, and inconsistent enforcement of mediated settlements. Nonetheless, with robust legal frameworks, targeted training, and enhanced international collaboration, the future of ADR across the Middle East and North Africa (MENA) region appears promising. The evolution of ADR in the Arab world and Africa signals more than just legal reform—it represents a broader transformation in the understanding and delivery of justice. By reconnecting with traditional methods and embedding them within modern legal systems, these regions are shaping a more accessible, culturally attuned, and effective model of justice—one that meets contemporary needs while respecting historical roots.

This article explores the emerging landscape of alternative justice in the Arab world. It maps the legal innovations, regional institutions, and international commitments that are reshaping dispute resolution across the Middle East and North Africa. In doing so, it argues that the Arab region is not merely adopting global ADR models—it is localizing them in ways that reflect indigenous values, institutional realities, and the pressing need for justice that is fast, fair, and fit for purpose in a complex global economy.

ADR IN THE MODERN MIDDLE EAST: PROGRESS AND CONTRADICTIONS

Despite its deep cultural roots in reconciliation and amicable settlement, the Middle East has faced notable contradictions in the practical uptake of ADR, particularly mediation. While legislative reforms and institutional efforts have strengthened arbitration frameworks, mediation remains significantly underutilized in commercial disputes.

Traditional Arabic concepts such as sulh (settlement) and masala (reconciliation) have long reflected a communal approach to conflict resolution, where dialogue, mutual understanding, and relationship preservation are prioritized over adversarial confrontation. These values align closely with the philosophy of modern ADR. One reason for this discrepancy is the limited understanding of ADR's practical benefits within business and legal communities — whose mechanisms, procedures, and legal consequences are relatively well understood. ADR is often viewed with uncertainty or hesitation, particularly when it lacks enforceability or clear procedural guarantees. Nevertheless, where mediation is employed as one of the ADR, its effectiveness is well documented. It is typically a faster and more cost-effective process than litigation or arbitration. Most mediations conclude within one or two days, and even when a final settlement is not achieved, the process often narrows the contested issues, thereby reducing the scope — and cost — of subsequent proceedings.

This gap between cultural legacy and commercial practice poses both a challenge and an opportunity: to revitalize and recontextualize mediation not as a foreign import but as a continuation of indigenous legal traditions, adapted to serve contemporary commercial needs. Modernization began with Egypt's 1867 Mixed Courts, accelerated after the 1958 New York Convention, and entered a new phase when the UAE, Qatar, and Saudi Arabia rewrote their arbitration statutes between 2012-2018. In an era defined by globalised commerce and increasingly cross-border disputes, Arab legal systems—particularly in the Gulf are experiencing a quiet revolution in how justice is conceived and delivered. Traditional courtrooms, long burdened by procedural rigidity and delay, are gradually ceding ground to alternative pathways of dispute resolution that prioritise efficiency, neutrality, and party autonomy.

Alternative Justice—embodied in mechanisms such as arbitra-

tion, mediation, and conciliation—is no longer peripheral. It has become a cornerstone of the modern legal infrastructure in several Arab jurisdictions. The Gulf Cooperation Council (GCC) states have taken a leading role in embedding these mechanisms within progressive legal frameworks, closely aligned with international standards such as the United Nations Commission on International Trade Law UNCITRAL Model Law, the New York Convention (1958), and, more recently, the Singapore Convention on Mediation (2019).

From Saudi Arabia's 2012 arbitration statute and its adoption of the Saudi Center for Commercial Arbitration. SCCA Mediation Rules, to the UAE's expansive Federal Law No. 6 of 2018, and the launch of digital dispute resolution platforms under the Abu Dhabi Global Market. ADGM and Dubai International Financial Centre. DIFC, the region is reimagining justice—digitally, procedurally, and culturally. Egypt, Lebanon, and Jordan have likewise advanced hybrid frameworks that blend codified procedures with deeply rooted conciliatory traditions.

MODERN LEGAL FRAMEWORKS

GULF COOPERATION COUNCIL (GCC): A deep comparative snapshot of the ADR legal frameworks across six prominent (GCC) countries. It is designed to illustrate the degree to which these countries have modernized their domestic laws, particularly concerning international commercial arbitration and mediation, by adopting globally recognized standards like those set by the UNCITRAL. The data highlights the significant regional variation in legal harmonization and the varying approaches taken toward adopting international treaties that facilitate the cross-border enforcement of arbitration awards and mediated settlement agreements.

COUNTRY	CORE ARBITRATION STATUTE	UNCITRAL MODEL LAW ALIGNMENT	SPECIALIST MEDIATION LAW	NEW YORK CONVENTION STATUS	SINGAPORE CONVENTION STATUS
UAE	Federal Law 6/2018	High (Model Law, 61 articles)	Draft federal bill (in consultation); court-annexed mediation via Dubai Law 16/ 2009	Ratified 2006	Signed 2022; ratification pending
Saudi Arabia	Royal Decree M/34 (2012)	Partial (Sharia filter retained)	SCCA Mediation Rules (2018)	Ratified 1994	Founding ratifier 2020

COUNTRY	CORE ARBITRATION STATUTE	UNCITRAL MODEL LAW ALIGNMENT	SPECIALIST MEDIATION LAW	NEW YORK CONVENTION STATUS	SINGAPORE CONVENTION STATUS
Qatar	Law 2/2017 (UNCITRAL-based)	High	Mediation Law 20/2021	Ratified 2003	Founding ratifier 2020
Bahrain	Law 9/2015 (Model Law verbatim)	Very high	Draft law under review	Ratified 1988	Non-signatory
Oman	Law 47/1997 (amended 2021)	Medium	OCAC to publish rules	Ratified 1999	Non-signatory
Kuwait	Decree-Law 11/1995	Low	Mediation panels in commercial courts	Ratified 1978	Non-signatory

INSTITUTIONAL LANDSCAPE: COMPARATIVE ANALYSIS OF LEADING MENA ARBITRATION CENTERS

The sustained economic expansion and consequent growth in intricate, cross-border commercial ventures across the Middle East and North Africa (MENA) necessitates the continuous development of sophisticated and dependable dispute resolution mechanisms. The accompanying table provides an overview of the key arbitration and alternative dispute resolution (ADR) institutions currently operating in the region

INSTITUTION	SEAT	KEY RULES/ UPDATES	2023 CASELOAD/ VALUE
Dubai International Arbitration Centre (DIAC)	Dubai	New Rules 2022; Mediation Rules 2023	355 cases; AED5.5 billion
Abu Dhabi Global Market (ADGM) Arbitration Centre	Abu Dhabi	Digital hearings; opt-in to English common law	Figures confidential
DIFC Courts & DIFC-LCIA (legacy)	Dubai	DIFC Arbitration Law 2008; wide interim relief	10% of GCC seated cases
Saudi Centre for Commercial Arbitration (SCCA)	Riyadh	New Rules 2023: online dispute resolution, summary dismissal, SCCA Court	239 filings; SAR2.1 billion (SCCA press 2024)

INSTITUTION	SEAT	KEY RULES/ UPDATES	2023 CASELOAD/ VALUE
GCC Commercial Arbitration Centre (GCCCAC)	Manama	Region-wide, bilingual	41 cases (mostly banking)
Cairo Regional Centre (CRCICA)	Cairo	2024 Rules mirror 2021 UNCITRAL	115 new filings; USD2.3 billion (CRCICA 2025 bulletin)

MEDIATION MOMENTUM

The growing regional emphasis on mediation as an efficient and confidential dispute resolution method necessitates a clear understanding of the varying legal and procedural infrastructure across key Gulf jurisdictions.

JURISDICTION	DEDICATED MEDIATION STATUTE	COURT-ANNEXED SCHEMES	SINGAPORE CONVENTION STATUS
Qatar	Law 20/2021 (33 articles)	Investment & Trade Court referral powers	Ratified 2020
Saudi Arabia	None (institutional rules)	Mandatory settlement conferences pre-filing	Ratified 2020
UAE	Draft federal bill; ADGM & DIFC schemes	Centre for Amicable Settlement (Dubai)	Signed 2022

ENFORCEMENT AND PUBLIC POLICY: THE EFFECTIVENESS OF ADR IN THE MENA REGION

In recent years, courts across the Middle East have demonstrated an increasing propensity to enforce foreign arbitral awards, thereby enhancing the credibility and appeal of ADR within the region. However, enforcement is frequently balanced against adherence to public policy principles rooted in Sharia law. For instance, in Saudi Arabia, foreign awards involving contractual interest rates are often refused enforcement due to their inconsistency with Sharia public policy. These dynamic underscores the ongoing challenge of harmonising international ADR practices with local legal and cultural norms.

The UAE offers a sophisticated enforcement model, particularly through the interaction between its onshore courts and the DIFC). UAE onshore courts recognize DIFC arbitral awards as foreign judgments and apply reciprocal enforcement procedures accordingly. Simultaneously, the DIFC courts possess the authority to enforce onshore awards directly, illustrating an evolving and complementary ADR enforcement framework. Qatar has recently made significant strides in strengthening ADR mechanisms through judicial precedent. A 2024 ruling by the Qatari courts affirmed that mediation clauses within contracts constitute jurisdictional bars; that is, courts are precluded from hearing disputes unless mediation attempts have been undertaken. Failure to comply with mediation clauses results not only

in case dismissal but also imposes a double-fee penalty on the parties involved, emphasising Qatar's commitment to fostering ADR as an effective dispute resolution method.

STATISTICAL TRENDS IN ADR: A MENA PERSPECTIVE

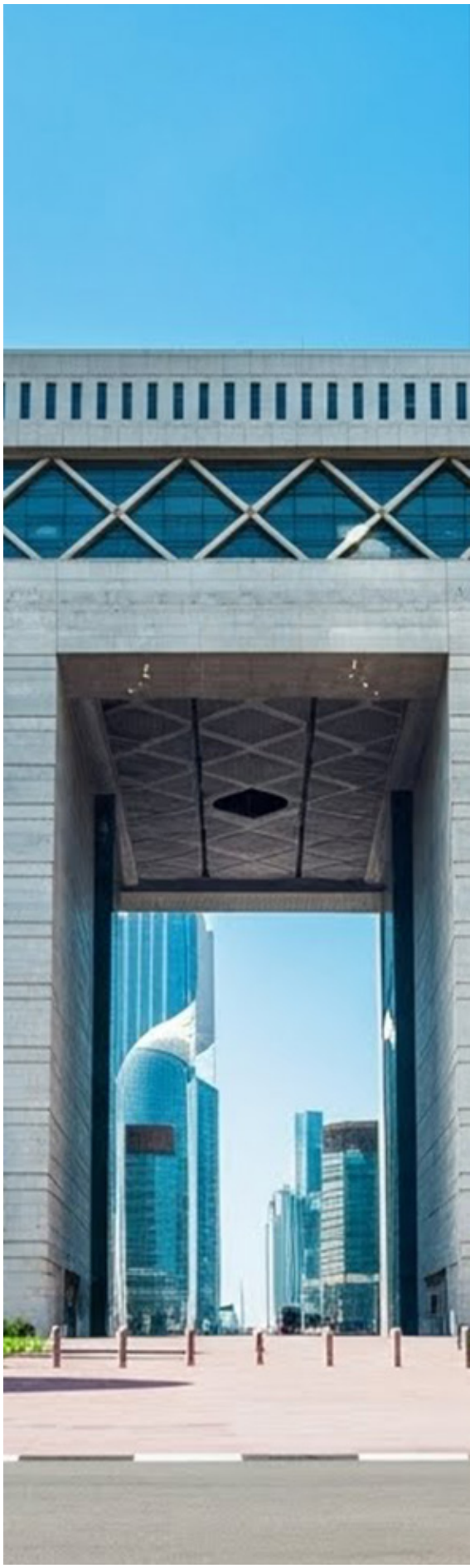
The most reliable and accessible statistical trends in ADR across the Middle East are notably concentrated in the United Arab Emirates (specifically the DIAC, the Kingdom of Saudi Arabia (through the SCCA) and Arab Republic of Egypt through CRCICA. These jurisdictions have demonstrated measurable and consistent growth in arbitration activity, reflecting increased confidence in regional ADR mechanisms.

UBAI INTERNATIONAL ARBITRATION CENTRE (DIAC) – UNITED ARAB EMIRATES

- **Growth in Case Volume:** DIAC has experienced consistent annual growth in arbitration cases:
  - 2020: 231 registered cases
  - 2021: 276 registered cases
  - 2022: 340 registered cases
  - 2023: 355 registered cases (a 4.4% increase from 2022)
- **Administered Arbitrations:** The number of arbitrations formally administered by DIAC grew by 11% in 2023 (from 292 in 2022 to 323 in 2023).
- **Monetary Value of Disputes:** The total value of disputes registered in 2023 surpassed AED 5.5 billion.
- **Sectoral Distribution:** Construction and real estate disputes accounted for nearly 60% of DIAC's caseload, with banking and finance disputes comprising approximately 10%.
- **International Engagement:** In 2023, parties from 49 different countries participated in arbitrations at DIAC, affirming the institution's international and neutral status.
- **Seat of Arbitration:** The seat of arbitration in 2023 was almost evenly divided between onshore Dubai and the Dubai International Financial Centre (DIFC), reflecting the increasing integration of free zone and federal dispute resolution frameworks.

SAUDI CENTRE FOR COMMERCIAL ARBITRATION (SCCA) – KINGDOM OF SAUDI ARABIA.

- **Increase in Filings:** While precise annual figures are not publicly disclosed, SCCA has reported a substantial 38% increase in case filings between 2021 and 2023.
- **Judicial Support for Arbitration:** Of the 316 motions submitted to courts of appeal in connection with arbitral awards in 2023, only 5.7% resulted in annulment—demonstrating robust judicial deference to arbitral outcomes in Saudi Arabia.



- **International Participation:** In 2023, approximately 44% of parties involved in SCCA-administered disputes were non-Saudi, indicating growing international trust in Saudi-based arbitration.

  Technological Innovation: The SCCA continues to lead the region in digitisation, incorporating online dispute resolution platforms and virtual hearings in line with international standards and increasing cross-border demand.

THE CAIRO REGIONAL CENTRE FOR INTERNATIONAL COMMERCIAL ARBITRATION (CRCICA)

- **Caseload:** In 2023, CRCICA registered approximately 53 arbitration cases, with the construction sector accounting for around 39.62% (roughly 21 cases)

- **Sectoral Activity:** Other active sectors included banking and finance, energy, telecommunications, transportation, tourism, media, and real estate.

DISPUTE VALUES

- The average amount in dispute during 2023 stood at approximately USD 4.64 million, marking a 48% rise from 2022 (USD 3.14 million).

- The total amount in dispute across all cases was approximately USD 246 million, remaining stable in comparison to the previous year.

- **Language of Proceedings:** Around 83% of CRCICA cases were conducted in Arabic, while 17% proceeded in English.

- **International Party Participation:** Disputes in 2023 involved parties from Kuwait, Saudi Arabia, the UAE, the United Kingdom, and others. Kuwait and Saudi Arabia led among non-Egyptian parties, with four cases each.

  Arbitrator Appointments: A total of 140 arbitrators were appointed in 2023, including 14 non-Egyptian arbitrators from jurisdictions such as France, Lebanon, Tunisia, Canada, Saudi Arabia, Syria, and the United Kingdom.

- **First Quarter Trends (2023):** Fifteen new cases were filed in Q1 2023, involving sectors such as construction, oil and gas, and banking, with an average sum in dispute of approximately USD 6.56 million—indicating a marked increase over Q1 2022. Hearings: CRCICA conducted 121 hearings in 2023, encompassing both arbitration and mediation proceedings.

The emerging statistical trends in ADR across key MENA jurisdictions clearly reflect a significant shift towards more effective, accessible, and internationally credible mechanisms of justice beyond the confines of traditional courtrooms. The consistent rise in case volumes, the high monetary value of disputes, increased participation of foreign parties, and the integration of digital innovations all indicate a regional embrace of arbitration and mediation as trusted alternatives to litigation. The UAE's DIAC and Saudi Arabia's SCCA demonstrate notable institutional maturity and international reach, while Egypt's CRCICA continues to serve as a cornerstone for ADR in North Africa, with a diversified caseload and growing cross-border significance. These developments reinforce the central premise that showing that ADR is evolving into a cornerstone of modern legal practice in the Arab world, aligned with global standards and business expectations.

However, despite this positive trajectory, the region still faces substantial challenges in fully embedding ADR into its legal and commercial cultures. Issues such as inconsistent enforcement of arbitral awards, limited public awareness, lack of specialized practitioners, and occasional judicial interference remain barriers to widespread acceptance. Addressing these challenges will be essential to ensure that the current momentum translates into long-term, sustainable access to alternative justice mechanisms across the region.

KEY CHALLENGES IN ADOPTING ADR IN THE MENA REGION

The adoption of ADR mechanisms across the MENA region faces a number of persistent and inter-related challenges as intimated above. These include:

Institutional Instability and Cost Concerns: Volatility and administrative changes within arbitration centres—such as those witnessed at the Dubai International Financial Center (DIFC)—have led to procedural delays and a decline in stakeholder confidence. Moreover, the cost of arbitration proceedings, often coupled with protracted timelines, tends to surpass initial expectations, thereby discouraging wider adoption.

Enforcement of Arbitral Awards: A critical issue lies in the inconsistent enforcement of arbitration awards across jurisdictions. Judicial support varies considerably, and legal uncertainty regarding the recognition and execution of awards continues to undermine the credibility and finality of ADR outcomes.

Cultural and Legal Resistance: In many jurisdictions, there remains a deep-rooted preference for traditional court litigation, stemming from the perception that ADR lacks the formality and authority of judicial proceedings. Furthermore, the coexistence of Sharia-based and civil law systems in several MENA countries poses complex legal harmonisation challenges.

Limited Expertise and Procedural Familiarity: The shortage of experienced arbitrators and mediators with adequate legal training remains a significant constraint. Additionally, unfamiliarity with ADR procedures can lead to concerns around impartiality and procedural inconsistencies, ultimately affecting the legitimacy of outcomes.

State Involvement and Political Risk: Where disputes involve states or state-owned enterprises, ADR becomes more complex. Issues surrounding sovereign immunity, political influence, and the unpredictability of enforcement create a cautious environment that hampers confidence in non-judicial dispute resolution.

Technological Disparities: Although the use of digital tools, including online dispute resolution platforms and virtual hearings, is on the rise, their adoption remains uneven across the region. This digital divide negatively impacts both the accessibility and efficiency of ADR services.

Fragmentation Among Regional Arbitration Centres: While competition among arbitration institutions in the region may drive innovation, it also contributes to fragmentation. This can result in confusion among users and pose challenges to establishing standardised best practices.

In conclusion, despite notable legislative reforms and increasing efforts toward modernisation, the effective and sustainable adoption of ADR in the MENA region depends on bolstering legal and institutional frameworks, ensuring consistent enforcement mechanisms, investing in professional capacity-building, fostering cultural receptiveness, and embracing technological advancement.

ADDRESSING THE CHALLENGES FACING ALTERNATIVE DISPUTE RESOLUTION IN THE MENA REGION

In today's complex commercial landscape, efficient and timely dispute resolution is essential.

ADR, encompassing methods such as arbitration and mediation, offers a powerful and promising solution. ADR effectively eases the burden on traditional courts while providing expedited, flexible outcomes for businesses. This is particularly vital in the Middle East and North Africa MENA region, where growing cross-border investments and diverse legal systems highlight the immense value of adaptable resolution mechanisms.

CONCLUSION

Through significant strides in adopting ADR practices and updating relevant legislation, the region is actively realizing ADR's full potential to deliver justice efficiently and foster a more conducive investment climate. The continued growth of ADR ensures that the MENA region remains an attractive hub for international commerce.

INSTITUTIONAL INSTABILITY AND COST CONCERNS

Practical Solutions:

a. Institutional Accreditation and Auditing: ADR centres should undergo regular independent audits and be accredited by internationally recognised bodies such as the International Council for Commercial Arbitration (ICCA) or UNCITRAL to enhance transparency and stability.

b. Cost-Capping Mechanisms: Introduce predictable cost schedules, fee caps, and early case assessment mechanisms (used in the UK and US under trust disputes) to avoid runawz ay legal fees—these builds trust in ADR affordability.

c. Public Subsidies or Tax Incentives: Governments could provide financial support or tax deductions for companies opting for ADR, similar to public-private mediation models used in Germany and Canada.

ENFORCEMENT OF ARBITRAL AWARDS

Practical Solutions:

a. Creation of Regional Enforcement Protocols (Mini-New York Convention): MENA countries can create a unified enforcement mechanism, modelled on the EU's Brussels I Regulation, to guarantee cross-border recognition of awards, especially where national courts vary in enforcement reliability.

b. Specialised ADR Enforcement Chambers: Establish dedicated commercial chambers in local courts that specialise in enforcing arbitration awards and can reduce the unpredictability of enforcement.

c. Capacity Building for Judges: Organise ADR-specific judicial training programmes (as seen in the US with trust litigation judges) on enforcing awards consistently under the New York Convention (1958).

CULTURAL AND LEGAL RESISTANCE

Practical Solutions:

a. Sharia-Compatible Arbitration Models: Develop ADR frameworks that are compliant with Sharia principles, such as Islamic Mediation (Sulh), ensuring alignment with civil and religious values. This model is already integrated in the Saudi Center for Commercial Arbitration (SCCA).

b. Public Awareness Campaigns: Run multi-stakeholder outreach programs with business councils, universities, and religious institutions to promote

ADR as a complementary tool, not a replacement for the judiciary.

LIMITED EXPERTISE AND PROCEDURAL FAMILIARITY

Practical Solutions:

a. Create ADR Practitioner Accreditation Systems: Establish national and regional certification schemes, modelled on CIArb (UK) and AAA (US), to ensure consistent training and competency.

b. University-Based ADR Clinics: Develop ADR legal clinics in law schools that train students in arbitration/mediation, while offering affordable services—used successfully in trust and estate dispute resolution in US law schools.

c. ADR Simulation Platforms: Use digital mock arbitration simulators to train young lawyers and arbitrators in procedure and ethics.

STATE INVOLVEMENT AND POLITICAL RISK

Practical Solutions:

a. Waiver Clauses in Sovereign Contracts: Include unequivocal waiver of sovereign immunity in state-investor arbitration agreements, modelled on ICSID and US trust law where trustees can waive rights in structured fiduciary litigation.

b. Third-Party Oversight of State ADR Processes: In high-risk disputes, appoint neutral third-party administrators (like ICC or PCA) to manage the proceedings and reduce the perception of bias or political interference.

TECHNOLOGICAL DISPARITIES

Practical Solutions:

a. Create Regional ODR Platforms: Launch regional online dispute resolution (ODR) portals supported by chambers of commerce, like the EU's ODR platform, tailored for SMEs and consumer disputes.

b. Government Incentives for Digital ADR Adoption: Offer grants and tech support for legal tech adoption, such as e-filing, AI-based mediation matching, and virtual hearing infrastructure.

c. Training for Tech-Based ADR Tools: Mandatory training for arbitrators on platforms like Zoom for Hearings, CaseLines, or DocuSign for settlements (as used in US probate disputes).

FRAGMENTATION AMONG REGIONAL ARBITRATION CENTRES

Practical Solutions:

a. Unified MENA ADR Charter: Draft a MENA ADR Cooperation Charter, similar to the ASEAN Dispute Settlement Mechanism, to harmonize rules, recognition procedures, and share arbitrator databases.

b. Institutional Collaboration MOUs: Encourage arbitration centres to sign Mutual Recognition Agreements (MRAs) to ensure procedural consistency

and cross-registration of arbitrators.

CREATES ADR PRACTITIONER ACCREDITATION SYSTEMS

Practical Solutions:

a. Establishment of a Professional Association or Dedicated Bar Division for ADR Lawyers: A dedicated professional association—or a specialised division within existing national bar associations—should be established to support, train, and officially recognise ADR practitioners. Such an entity would provide structured education and accreditation, ensuring ADR lawyers are acknowledged before all governmental and private bodies. This would enhance transparency, promote ethical practice, and ensure responsible use of alternative dispute resolution methods.

b. University-Based ADR Clinics: Develop ADR legal clinics in law schools that train students in arbitration and mediation, while offering affordable services—successfully used in trust and estate dispute resolution in M.R. law schools & universities.

c. ADR Simulation Platforms: Use digital mock arbitration simulators to train young lawyers and arbitrators in procedure and ethics.

CONCLUSION

The evolution of Alternative Dispute Resolution in the MENA region reflects a system in transition—one that is steadily moving from traditional, court-centric notions of justice toward a more flexible, efficient, and internationally aligned dispute resolution culture. The region's adoption of modern arbitration laws, establishment of reputable institutions such as DIAC, SCCA, and CRCICA, and endorsements of international instruments like the New York Convention and the Singapore Convention underscore a clear commitment to global standards. Statistical trends further demonstrate growing user confidence in ADR, particularly in cross-border commercial disputes. Yet, the trajectory of ADR in the MENA region remains incomplete. Persistent challenges—ranging from inconsistent enforcement, institutional fragmentation, cultural resistance, limited expertise, and procedural unfamiliarity—continue to hinder the full realization of ADR's potential. These structural and cultural constraints show that legal reform alone is not sufficient; it must be accompanied by judicial capacity-building, stronger practitioner training, public awareness, and harmonized regional enforcement mechanisms.

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INTERVIEW WITH

PROFESSOR KARIUKI MUIGUA

Chartered Arbitrator and Professor of Environmental Law and International Commercial Arbitration at the University of Nairobi, Kenya

Q Please, tell us a bit about yourself and your achievements?

Answer: I am a professor of Environmental Law and Conflict Management at the University of Nairobi, Faculty of Law. I have taught Environmental Law, Arbitration and Alternative Dispute Resolution (ADR) among other fields of law at the University of Nairobi, Faculty of Law for over twelve years. I also serve as a Member of the Permanent Court of Arbitration (PCA). I am a chartered arbitrator and accredited mediator with vast experience in international arbitration and mediation and I have successfully handled complex arbitration and mediation cases at the global, regional, and national levels. I am an accomplished author and I have widely published in the areas of arbitration, ADR, and access to justice. I have received numerous accolades recognising my contribution to the growth of ADR, access to justice and the rule of law in Kenya, Africa and globally including the Inaugural CIArb (Kenya Branch) ADR Lifetime Achievement Award in 2021, ADR Practitioner of the Year Award 2021 by the Nairobi Law Society of Kenya, and the ADR Publication of the Year 2021 by the CIArb (Kenya Branch). I have also served in various leadership positions including being the Chartered Institute of Arbitrators (CIArb) Africa Trustee between 2019 to 2022, and the branch chairperson of (CIArb) Kenya from 2012 to 2015.

Q What motivated you to pursue a career in law, and what has inspired your deep focus on ADR?

Answer: Law has always been my dream career since I was young. I grew up at a time when the state yielded much power and the rule of law was often disregarded. The human rights of ordinary Kenyans were being violated with perpetrators not being held accountable. It was my desire to make a difference and change the status quo hence I decided to pursue a career in law in order to contribute towards advancing the rule of law in Kenya and promoting a culture of respect for human rights. I decided to focus on ADR due to the challenges that ordinary Kenyans were facing in accessing justice. The court process was facing several challenges including technicalities, costs, physical inaccessibility, lack of legal know-how, and bureaucracies. I decided to focus on ADR since it was a simple, cost-effective, accessible and flexible process through which all Kenyans could access justice. Further, the idea of ADR is well-entrenched among Kenyan and African communities and is able to foster justice in accordance with the culture and customs of the people of Kenya and Africa.

Q Having received several accolades and recognitions over the years, what would you say is the true measure of success?

Answer: I believe the true measure of success is the difference we make in other people's lives and the legacy we leave behind. I have always aspired to use my position, skills and resources to make a positive difference in society through exemplary legal services, mentorship, advocacy, teaching and Afrocentric publications.

Q You have played a pivotal role in shaping Kenya's dispute resolution framework. What have been some of the most significant challenges you have encountered in promoting arbitration and ADR generally?

Answer: One of the key challenges in promoting arbitration and ADR in Kenya and Africa at large has been the notion that this concept is 'alternative'. As a result, there has been slow progress in embracing arbitration and ADR with litigation still being viewed as the ideal dispute resolution process. However, I have attempted to push the narrative that arbitration and ADR is 'appropriate' in Africa. These processes have been part and parcel of conflict management in the continent for many centuries and are well-aligned with the concept of justice in Africa. In addition, some of the challenges I have also encountered in promoting arbitration and ADR include inadequate legal, policy and institutional frameworks and inadequate marketing of ADR in Kenya and Africa.

Q You have served on several high-level institutions, locally and internationally, what experiences prepared you for this level of engagement, and how would you describe your experiences in some of the institutions?

Answer: I undertook extensive education and training in ADR and was therefore ready to serve in both global and national institutions. Further, I have practiced ADR for many years including the fields of international arbitration and international mediation. I am therefore well-equipped with the institutional rules and administrative processes of international, regional and national institutions. Having served in these institutions, I believe there is need to strengthen Africa's participation in the global ADR arena. The continent continues to suffer from low levels of representation despite the rich history of ADR in Africa.

Q What do you see as the most urgent legal or policy challenges facing Africa's ADR process, and what kinds of institutional reforms would you recommend addressing them?

Answer: There is need for legal, policy and institutional reforms to legitimise informal and customary dispute resolution processes in order to enhance access to justice through ADR in Africa. These processes are key in enhancing access to justice especially for poor citizens who cannot afford or access formal court processes. The most urgent legal and policy challenge facing ADR processes in Africa is lack of recognition of informal and customary justice systems.

Q Do you think the current structure of legal education is keeping pace with emerging areas of practice? What changes do you believe are necessary to truly prepare the next generation of lawyers?

Answer: The current structure of legal education has not kept pace with emerging areas of practice. It is imperative to reform legal education in line with emerging areas of practice such as Artificial Intelligence (AI), cybersecurity and Environmental, Social and Governance (ESG) in order to fully prepare the next generation of lawyers. Further, there is need to decolonize legal education in Africa by embracing African values, philosophies and knowledge systems.

Q If you could address one systemic issue in your lifetime, what would it be, and why is that issue personally important to you?

Answer: How Africa is portrayed in the global arena. The continent is a rich source of knowledge, values and philosophies that have been largely ignored, marginalized and disregarded. It is imperative to change the narrative about Africa and embrace its wisdom and indigenous knowledge systems for true development in the continent.

Q You wear many hats: a legal practitioner, teacher, author, public intellectual and mentor. How do you manage the demands of these roles and maintaining a healthy work-life balance?

Answer: It involves being disciplined and having a clear and elaborate plan for the day, week, month and year. I am able to manage my commitments and duties by fully devoting to one task before proceeding to the next one. I have been able to maintain a healthy work-life balance by having designated hours for work while also prioritising family and rest when not working.

Q You have mentored and inspired many young lawyers and academics. What advice would you give to the younger generation of legal professionals who want to make meaningful contributions in legal scholarship and practice?

Answer: Believe in yourself. You can achieve all your dreams. Have a clear plan of want you want, work hard, be disciplined and seek advice where needed.

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN COMMERCE, TRADE AND COMMUNAL DISPUTES.

PROMISE RITA IYERE

ABSTRACT

No doubt, human existence centers on daily interactions, including family engagements and commitments, the purchase of farm produce, the sale of property, and other transactions that serve both private and communal needs. According to Genesis 26:28-29, it illustrates the necessity and advantage of commercial, communal or trade relationships on the foundation of built agreement and well-defined clauses. In traditional Ekpoma and Uromi, amongst other urban areas; Africa's traditional judicial system which survived her colonial experience puts structures for arbitration of disputes in the event of restorative justice. This implies that from time immemorial, agreements existed between communities, (E.g. the people of ancient Israel and the Philistines) society and nations at large. It further implies that agreement provides for clauses which formed age-long practice of defining human interactions and expectations. See Genesis 26:28- 29. They answered, "We saw clearly that the LORD was with you; so we said, 'There ought to be a sworn agreement between us'- between us and you. Let us make a treaty with you. That you will do us no harm; just as we did not molest you but always treated you well and sent you away in peace. And now you are blessed by the LORD."

INTRODUCTION

Community exchange was predominant life in early farming and trade systems. This was largely because a product of personal treasury or community heritage could only pass to another through business or contractual relationships, making it possible for people to enlarge their treasury, expand their coast and increase their possessions. To regulate human interactions, agreements were written to regulate the interactions that took place between people and their communities and at other times, to define the roles and responsibilities of the people and their communities. Non-conformity to contractual terms was an issue. It was regulated by these written agreements, which were mutually consented to by the people and their communities.

Thus, from time immemorial, human actions in trade, business or commerce were regulated by formal or informal agreements. Documentations formed precedents and records of them were to be relied upon. They traced ancestry and reconciled communities by these formal and informal regulations. That is, projections and regulations were made based on written and unwritten agreements, precedents, records from rulers or inventions, tributes, and consequences of wrong doings were recorded. With these, communities and their people could interact within defined regulations and mutual agreements, with no communal backlash and misunderstandings were controlled.

ALTERNATIVE DISPUTE RESOLUTION (ADR) IN FORMAL AND INFORMAL MECHANISMS.

In Africa, the customary methods of dispute resolution employs one or more of the following to restore justice:-

i. ADR in agreements, Terms of Agreement or Terms of Settlement;
ii. ADR through historic approach and genealogies, question naires and fact finding correspondences;
iii. ADR through organized enquiries by both parties;
iv. ADR through mutual agreements, clauses and consent;
v. ADR through letters and correspondences;
vi. ADR through policy documents, treaties and conventions.

CONCEPTUALISATION AND DEFINITION OF TERMS

According to the Institute of Chartered Mediators and Conciliators of Nigeria (ICMC), ADR is defined as a device originated to find alternatives to the traditional legal system. Involving a third party, it is defined as an alternative to litigation or arbitration which intervenes to assist resolution of disputes. In the University of Benin Law Journal, a paper proposing the legal framework of Arbitration and ADR mechanisms as instruments for promoting Foreign Direct Investment in Nigeria, succinctly stated that:

> **"Arbitration is a device whereby the settlement of a question is entrusted to one or more persons who derive their powers from a private agreement not from the authorities of a State, and who are to proceed and decide the case on the basis of such agreement."**

It is known to be an adjudication process in which a third-party neutral simply decides the dispute. According to historic records, ADR is noted to have originated in the USA, as a response to adversarial and traditional legal systems, systems which indicated cost, rigidity, limitations and damage to relationships. Thus, arbitration is an adjudicatory process wherein a third-party neutral facilitates the decisions made or reached in the dispute. One of its characteristic features is that the proceedings therein are informal, unbounded by the traditional rules of evidence or procedure. The third-party neutral, who adjudicated and resolved the dispute, issues a judgment on the merits (which may be binding or non-findings) upon proof presented and correspondences passed from one party to the other.

Examining the arrangements of traditional and adversarial legal systems as well as public trials, one finds that the processes are quite rigid; from the pre-conceived rules, to predictive outcomes, of such legal or public trial; the parties—community members—are often left unsatisfied because they must follow prescribed rules, from the sitting of the court to the tendering and admissibility of documents, as well as other adversarial evidence. Therefore, the weight of the legal scale in adversarial systems could easily be determined and the party who has more evidence within the tenets of the prescribed law has the possibility of out-winning the other party in such instances.

At other times, judgment handed down by the Bench or representatives of the sitting community or council may be oblivious of the true facts of the

matter, as it relates to offering solutions that may be remedial or, at other times, provide a practical way to ease the tension between the disputing parties. Such differences will not making room for flexibility of procedure, the legal or traditional representative would only present the facts within the acceptable rules, leaving the parties with more damages at other critical times.

BIBLICAL ACCOUNT OF ADR AGREEMENTS:

In the scriptural practices of royal houses, ADR was a factor upon which negotiations were based. It revealed the early civilization of commerce and communal relations through correspondences and proclamations. For instance, 2 Chronicles 2:1-3 says:

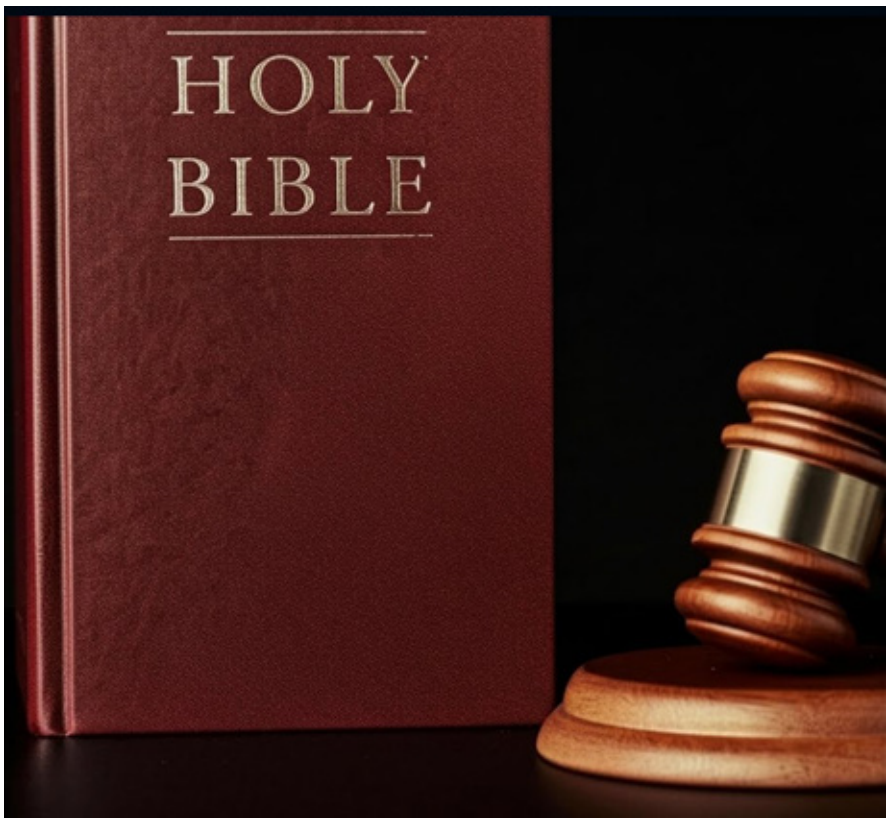
"Solomon gave orders to build a temple for the Name of the Lord and a royal palace for himself. He conscripted seventy thousand men as carriers and eighty thousand as stone cutters in the hills and thirty- six hundred as foremen over them. Solomon sent this message to Hiram King of Tyre: send me cedar logs as you did for my father David when you sent him cedar to build a palace to live in."

Also, 2 Chronicles 2:7 states that-

"Send me, therefore a man skilled to work in gold and silver, bronze and iron, in purple, crimson and blue yarn, and experienced in the art of engraving, to work in Judah and Jerusalem with my skilled craftsmen."

Replying the King's letter, he stated thus in 2 Chronicles 2:1-

Because the Lord loves his people, he has made you their King." I am sending you Hiram- Abi, a man of great skill... He is trained to work... He is experienced in all kinds of engraving and can execute any design given to him. He will work with your craftsmen and with those of my Lord, David your father."



Thus, the arrival of ADR was a definite proclamation which came as a relief in contractual transactions, the proverbial ointment in an apothecary, which has now taken diverse shape, so as to meet the needs of both emerging and existing communities by giving room to direct participation of the parties as well as sizable and private meetings to enhance and facilitate a win-win approach, thereby encouraging flexibility and direct participation amongst the reconciled parties/ communities.

"Arbitration was devised to overcome some of the problems encountered in litigation. Arbitration still empowers a third party to decide a dispute, though it is more likely that the arbitrator would have subject-area expertise which makes the decision more palatable as the arbitrator would better understand the issues at stake since he is able to speak the same language as the disputing parties. Arbitration has become very simple to litigation in both cost and time, though more streamlined... forms of arbitration have been developed."

According to the ICMC, Alternative Dispute Resolution (ADR) entails the deliberate cultivation of effective communication and interpersonal competencies, coupled with patience, tolerance, and accommodation, as tools for the resolution of disputes. Such mechanisms facilitate dialogue, foster openness, engender mutual understanding, and establish trust, thereby influencing parties' decision-making in personal, commercial, public, and community mediation contexts.

AIMS AND OBJECTIVES OF ADR

i. ADR techniques are imbued to commence the negotiation processes of contractual relations or communal relations. That is, with ADR, the presence of a Mediator changes the underlying dynamics of human differences in any form of contractual relations. Also known as the 'negotiating process,' it enables parties to reconcile differences and define a common framework governing the execution, production, and exchange of goods and services.

ii. With the presence of a mediator, the differences are settled through a pre-contractual negotiation adapting skills such as negotiation, problem solving, communication all of these help to ensure independence and neutrality, in the process of dispute resolution, thereby real progress is made.

iii. ADR puts a mediator, who is a neutral facilitator, in a potentially better position than any party or representative to advance the interests/positions of the disputing parties, in relation to the purpose of their contractual relations.

FORMS OF ADR MECHANISMS

The following are ADR features in today's businesses and transactions:

i. Conciliation
ii. Mediation
iii. Neutral Fact-Finder
iv. Early Neutral Evaluation
v. Med-Arb
vi. Arb-Med
vii. Arbitration
viii. Adjudication
ix. Expert Determination
x. Ombudsman
xi. Executive Tribunal
xii. Negotiation

LEGAL BACKING FOR ADR

With the emerging growth and trends in corporate transactions and economic trends around the world, ADR is taking a more definitive structure, so as to meet economic and emerging needs. Therefore, most states in Nigeria have included ADR in their civil procedural Rules:-

i. Arbitration and Conciliation Act (1988) ACA (Cap18, Laws of the Federation of Nigeria, 2004).

ii. Order 17 of the FCT Rule- "A Court or Judge with the Consent of the parties may encourage settlement of any matter(s) before it, by either- i. Arbitration ii. Conciliation iii.Mediation iv. Any other lawfully recognized method of dispute resolution.

iii. The Third Schedule, Conciliation Rules-Articles 1C Act- Cap 18, LFN of 1990- "These Rules apply to conciliation of disputes arising out or relating to a contractual or other legal relationships where the parties seeking an amicable settlement if by their dispute have agreed that the Conciliation Rules apply;

iv. The parties may agree to exclude or vary any of it for Rules at any time.

v. Article 2- Where any of these Rules is in conflict with a provision of this Act any law from which the parties cannot derogate, that provision prevails.

vi. Conciliation proceedings commence when the other party accepts the invitation to conciliate. If acceptance is made orally, it is advisable that it is confirmed in writing.

TYPES/ FORMS OF ADR- BINDING DECISIONS

i. Adjudication - Any process that allows a third-party intervener to decide on behalf of disputing parties is a gem of adjudication. Exemplifying this in traditional systems of dispute resolution, it is where Kings, emirs, clan heads, e.t.c. sit on judgment over their subjects. Traditional Adjudication: Other forms are written submission to a neutral third party, who is usually an expert, and this is summarily a flexible procedure of court sitting with a short period of time and a binding decision.

ii. Expert Determination, as the name implies, is hinged on a specific matter where the expert relies on their expertise to determine a matter ranging on contract or law, facts disputed or financial valuation. Decisions are binding based on the expert's reports and may not be appealed.

iii. Ombudsman- When an official is appointed by the government to investigate and report on complaints made by citizens against public authorities and big corporations. An appropriate means for individuals to complain of misadministration or improper decisions by major institutions, business or government.

iv. Arb-Med: As the name implies, Arbitration- Mediation, is a process where parties first present their case before an arbitrator. Thus, the award of the arbitrator is sealed and the parties are encouraged to try mediation, so as to arrive at an amicable resolution. The arbitration award is sealed. However, if mediation works, the Mediation Agreement supersedes the award.

v. Mediation- Arbitration (Med-Arb), experts sometimes try to blend mediation with its persuasive force, and arbitration with its guarantee of an assured outcome into a process called Med-Arb. Employing Mediation first, Arbitration comes handy where no agreement has been reached.

NON- BINDING THIRD PARTY INVOLVEMENT

i. Mediation: A voluntary, non-binding, private dispute resolution process in which a neutral person, the mediator, helps the parties to reach a negotiated settlement. In a number of countries, court annexed mediation schemes are mandatory and this may affect the willingness of parties to participate and reach an agreement. Nevertheless, the success rate in such instances is still substantially high.

ii. Executive Tribunal: Sometimes called a 'Mini-Trial.' It comes up when there is a deadlock in negotiation or mediation. In constituting a Mediation system, a Senior Executive- Neutral persons from each party joins the Mediator and other neutral persons to sit so as to hear submissions of each side's representatives. Thereafter, the submissions are considered, the executive retires, senior management perspectives are brought to bear and negotiate a settlement.

iii. Neutral Fact- Finder: Similar to expert determination, however, there is restriction, to clarify particular issues. The neutral does not normally make an award. For example, in communal conflict, a neutral fact-finder is contacted to physically visit the site and ascertain the true situation of things. Thus, situation can be used as fact in the process of resolving the said dispute.

iv. Early Neutral Evaluation ('ENE')- In order to assess the likely outcome of a legal action, Early Neutral Evaluation, is a quick method of obtaining a neutral advisory opinion, which may assist the parties in their negotiations. Here, the evaluation is binding if agreed so, usually, it is conducted by a retired judge or an experienced lawyer.

v. Conciliation- The meanings of Conciliation and Mediation may be the same, depending on the country or dispute sector involved. However, a differing view of this is that in Nigeria, it seems to be more formal than mediation. The Arbitration and Conciliation Act stipulates that the Conciliator must be appointed, may use documentary evidence to make suggestions or recommendations to the parties for settlement. Further to this, the United Nations Commission on International Trade Laws—UNCITRAL—has put together the underlying controversy between these two dispute resolution mechanisms, as globally known, recommending that Mediation and Conciliation can be used interchangeably.

WHY ALTERNATIVE DISPUTE RESOLUTION (ADR)

ADR was incorporated into commercial and communal practices through agreements for purposes including, but not limited to, the following:

i. ADR is seen as an alternative to the traditional ways of resolving civil disputes.
ii. It provides an alternative to adversarial and formal proceedings.
iii. It establishes and cultivates effective communication, interpersonal skills, patience, tolerance and accommodation, which are builders in contractual and communal relationships.
iv. It abates frustrations from litigants.
v. It eliminates delay by its flexibility and interconnectedness.
vi. Prohibitive costs.
vii. Case decongestion.
viii. It prohibits unsatisfactory determination that comes with the technicality of litigation.
ix. It prevents and mends ruined relationships.
x. It enhances foreign investments, due to its flexibility and resultant effects on all parties of any disputes.

ADVANTAGES OF ADR:

1. Speedy resolution of disputes.
2. Access to Justice for all.
3. Reduction in parties' expenses and time.
4. Harmonious co-existence, which leads to sustenance of contractual and business relationships.
5. Restoration of pre-dispute relationships.
6. Increase in voluntary compliance with resolutions.
7. Increase in foreign investment.

INSTITUTIONAL SUPPORT FOR ADR SYSTEM/ MECHANISM

i. Multi-door Court Houses
ii. Citizens Rights and Mediation Centers
iii. Professional Associations, E.g ICMC

DETERMINANTS OF ADR TECHNIQUES:

i. The Nature of the Case before the Council.
ii. The Relationship between the parties.
iii. Goals aimed to be achieved.
iv. Confidentiality.
v. Party control of dispute and outcome.

OUTCOMES OF ADR

i. A plausible outcome of ADR is an agreed conclusion, also known as 'Terms of Settlement.'
ii. Another feasible outcome is the ADR clause which guides the parties against future occurrences.
iii. Psychologically and emotionally, a potential/neutral Mediator achieves the following:

i. Overcomes parties' emotional blockages.
ii. Wins the trust of all the parties.
iii. Settlement and Settlement proposals are explored in more depths.
iv. Communications and Negotiations between Parties are reached, and parties are able to reassess their case and gain understanding of the other party's case.
iv. Ultimately, value is added to the negotiation when the negotiator has no personal stake in the case.
v. And parties are able to turn away from the history of the dispute and are encouraged to look to the future of the relationship.

COMMERCIAL AND TRADE RELATIONSHIPS

The success and scale of ADR application play a crucial role in shaping the world economy and investment climate. Commercial or trade transactions today promote tax incentives, liberalized economic sectors, a balanced domestic structure, qualifying agencies who promote and project the ideals of the company or trade, improved regulatory and compliant environment, and international treaties, all of which are equally facilitated by ADR.

A robust ADR mechanism is an investment treaty, fore-storing conflict and enhancing the global economy. According to the University of Benin Law Journal:

> **"Today, nearly 170 countries have signed onto one or more Bilateral Investment Treaties ("BITs"). These treaties offer foreign investors a series of economic rights, including the right to arbitrate claims, in hopes of attracting Foreign Direct Investment ("FDI") that will bring a country infrastructure projects, financing, know-how, new jobs and economic stability."**

ADR in its fore-storing nature, moves the contracting parties beyond war, gunboat diplomacy, and other forms of dispute resolution, so as to provide a neutral arbiter for resolution of trade and investment conflicts.

> **"ADR mechanisms have been described as one of the strongest investor protections in investment treaties."**

Without an iota of doubt, ADR speaks clearly to the terrain of the traditional system of commerce and trade as it is seen today.

THE ROLE OF ALTERNATIVE DISPUTE RESOLUTION (ADR) IN COMMUNICATION AND BUSINESS ETHICS

One vital role of ADR has been its ability to keep a peaceful existence, i.e its ability to advance communal life and businesses within pre- and post-defined agreements. ADR is both introspective and prospective. In other words, it works and acts before the physical manifestation of an idea, as in the case of a corporate or commercial transaction; it being a tangible declaration that a thing is completed, according to pre-defined rules.

By the practice of contractual relationships, certain requirements are fundamental blocks to the setup of a business or communal life. These requirements culminate into agreements. That is, one would find that an offer is made, an invitation to treat and an acceptance is advanced, so as to complete a business relationship. This procedure protects all parties involved in such contractual transactions and sees to its completion thereof. By communal life, correspondences emerge as a declaration and at other times a conveyance, which carries with it an ability to communicate the roles and responsibilities of a party. Including their rights or privileges, which are required to transact in a relationship, where there is dependence and commitment amongst / between members of the said community. Again, another productive and prosperous role that ADR advances is its ability to declare that consent was obtained without fostering any backlash or disagreement contractually.

Administratively, the Nigerian Constitution has been a proponent for protecting and promoting the dignity of the Human Person in business and contract formation. Chapter 4 of the amended Constitution of the Federal Republic of Nigeria is a commitment to uphold the dignity of the human person, to guard the right of a person to life, as well as freedoms in their various forms.

This is to make businesses thrive and be passed on to the next generation with vital considerations in view (the mind towards a developing nation). Clearly established contractual relationships, built upon defined structures and genuine consent, reinforce ethical practices in commerce and communal affairs, fostering a healthy economy and a resilient nation. Without an iota of doubt, ADR comes as a preventative mechanism in the scheme of human interactions and a productive tool in advancing trade, businesses and communal life. One finds that the outcome of an ADR clause or a mediation session is a robust community, fulfilled business alliances, and an economy that is built on trust, rewarding within and without.

RECOMMENDATIONS AND CONCLUSION

A successful organization, commercial or business enterprise is largely hinged on the various stratifications which exist therein. By reference, it is made to benefit business within the degree to which such businesses, organizations and communities are thoroughly equipped and structured for a free flow of its objective via implementation.

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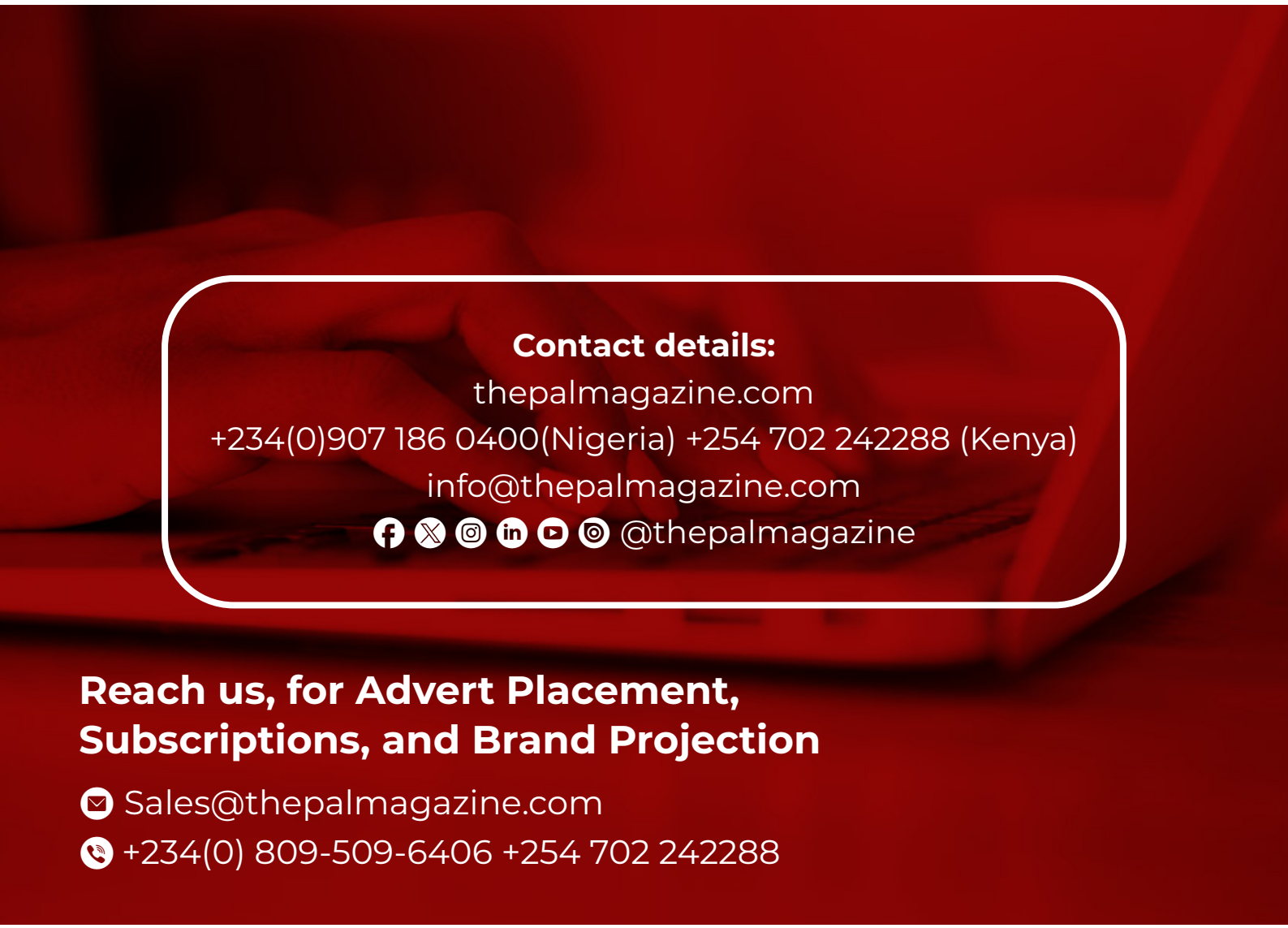

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