

Bolivia: Private Arbitration and "Conciliation" of Commercial Disputes

Key Points

Description: Since the 1980 s, USAID/Bolivia has pursued reform of the justice system to support both anti-narcotics and democratization objectives. In 1990, USAID began to support the use of ADR, especially commercial arbitration and conciliation, as a way to reduce the backlog of cases in the court system. By reducing the backlog, ADR could support both anti-narcotics and broader judicial reform objectives.

This case study profiles the development and operation of the commercial arbitration and conciliation program. USAID's implementing partners, the Inter-American Bar Foundation (IABF) and the Bolivian Chamber of Commerce, established Conciliation and Arbitration Centers within the chambers of commerce i Bolivia's three major cities. Starting in 1994, the centers recruited and trained conciliators and arbitrators from the business community, provided education and outreach to potential users of their services, and helped draft a new Arbitration and Conciliation Law to make conciliation agreements and arbitration decisions enforceable by the courts.

The centers provide both conciliation (an opportunity for disputants to reach a voluntary agreement with the help of a neutral party, the equivalent to mediation in the U.S.), and arbitration (a binding decision by a panel of three arbitrators with expertise on the disputed issues). Users pay a fee based on the monetary value of the dispute; the fees are supposed to cover operating costs. The demand for their services is still small: the La Paz Center, the largest of the three centers, has conciliated 10-25 cases annually since 1994, and arbitrated 1-8 cases a year, with a high resolution rate and high levels of compliance and user satisfaction. The major obstacle to increased use of commercial ADR seems to be the business community's low level of awareness and understanding of ADR.

Goals: The program's primary goal-reducing court backlogs-was set by USAID in the context of its anti-narcotics and democratization objectives. In practice, the program has contributed only very indirectly to this goal, though it has the potential to meet business sector goals by reducing the cost and time to resolve commercial disputes.

Design: Though the program's designers recognized the need to make conciliation agreements and arbitration decisions legally enforceable, they did not accomplish this goal until three years after the program began operation. Potential users' uncertainty about the enforceability of ADR may have constrained the demand for the centers' services. In addition, the design did not establish any clear links between the program and the courts. It might have been possible to use the courts to provide information about ADR services to commercial litigants.

Operations: Despite the lack of legal sanction for their work, the centers have been able to attract enough paying clients to cover their direct operating costs. USAID support has covered their outreach and training costs. In the fall of 1997 , USAID decided to discontinue its funding for the centers; the centers therefore may need to increase demand and/or fees to make the centers financially self-sustaining.

Impact: To date, the centers have had only limited impact within the commercial sector. It is difficult to assess the centers' impact on court backlogs, because the centers have not determined whether the disputes they handle would otherwise have been resolved in the court system. Future impact will depend on the centers' ability to build demand within the business community through continuing outreach and education. It ma also be possible to increase demand by creating a court referral system for commercial disputes, but this possibility has not yet been investigated, and would require prior institutional reform, education, and training within the judicial system.

BOLIVIA CASE STUDY

I. DESCRIPTION¹

Alternative dispute resolution mechanisms in Bolivia address an extraordinarily broad range of social needs, reflecting the limited ability of state judicial institutions to address those needs over time. Several factors have spurred ADR developments in Bolivia: ongoing political democratization ; a national ADR law package passed in March of 1997; a new criminal code reform passed in October of 1997; rapid urbanization and rural flight; increasing national consciousness of the multiple and distinguishable cultural and ethnic layers that constitute the Bolivian population; as well as the ever-present national debate on the links between subsistence cultivation of the coca plant and the need to cultivate favorable bilateral relations with the United States.

In Bolivia, ADR services fall into three categories: chamber of commerce conciliation and arbitration centers, court-annexed pilot programs, and extrajudicial community conciliation for marginalized communities. The court-annexed pilot program for civil cases in the city of Cochabamba is not yet operational, but was interviewing candidates for conciliator positions in October 1997. Future operation is uncertain at this time, due to the inability of the Supreme Court to authorize funding for it beyond the end of 1997. USAID/B has supported the extrajudicial community conciliation work, such as a pilot university-affiliated conciliation center and conciliation centers in marginal communities.

This case study focuses on the chamber of commerce's commercial ADR centers. Commercial ADR was the first ADR activity supported by USAID/B and therefore has received more support and for longer duration than the other areas. These

¹ Conducted by Anthony Wanis St. John, Research Consultant for CMG's USAID/ADR Project.

centers operate in a context in which large sectors of Bolivian society do not participate in government, do not have access to state institutions regarding dispute resolution, are not aware of their rights, and continue to be marginal participants in the economy.

A. Program Goals

USAID-funded ADR activities in Bolivia were originally designed to assist in the creation and strengthening of an independent judiciary which, it was thought, could not face the strength of the drug traffickers, nor hold its own institutionally against a powerful executive branch. USAID/Bolivia's support for ADR began in 1988, but took more concrete form in 1990. One of the five components of AID's justice sector project was to "provide information on modern commercial arbitration practices and institutions," which would be demonstrated by the adoption of arbitration mechanisms for commercial disputes. USAID/B subcontracted with the IABF to sponsor commercial arbitration seminars in Bolivia. Declared US policy priorities were the strengthening of democracy, promotion of economic stability/recovery, and control of illegal drug production/trafficking.

In 1992, USAID/B began a new project entitled "Bolivia Administration of Justice" to "improve the effectiveness and accessibility of key democratic institutions in Bolivia." USAID had broader objectives as well: the creation of "a more expeditious judicial process to make court managed conflict resolution and criminal prosecution more efficient "and" a more accessible and public judicial system through alternative dispute resolution and delay reduction programs." The key concern was the removal of institutional obstacles to effective criminal (especially narcotics) prosecution. One core activity contemplated under this project was the institution of private commercial ADR.

As a part of its goal to promote commercial ADR activities, USAID/B supports conciliation and arbitration centers in three cities La Paz, Cochabamba, and Santa Cruz. USAID/B targeted these centers in an effort to develop ADR as a means of saving time and money in the resolution of commercial disputes, promoting stable conditions for private investment, and relieving the backlog in the official justice system. The IABF, with the chambers, are USAID/B' s implementing partners in this project.

B. Program Activities

USAID/B supported the following commercial ADR activities: visits to Colombia so that future arbitrators could observe arbitration; support for attendance at two ADR seminars in 1993 in Argentina; sponsoring three national ADR seminars in 1993; a series of roundtable discussions to promote commercial arbitration; and provision of equipment and presentation materials to set up three arbitration centers via their respective chambers of commerce.

USAID/B's work began with the introduction of arbitration concepts among the chambers' business membership. Arbitration, though legally sanctioned, was not formally practiced in Bolivia until recently and was not well-known or accepted in the business sector. USAID/B, with IABF, sponsored several seminars for chamber of commerce business members, lawyers and other professionals, development professionals, and government officials. IABF also supported the passing of the Arbitration and Conciliation Law of 1997, which gave commercial ADR its essential legal framework. After promoting and supporting the concept of commercial ADR, IABF coordinated the training of arbitrators and conciliators (through the provision of training workshops, and study trips to other Latin American arbitration centers), as well as the physical set-up of each Center.

In all three cases, the center operates

within the organizational framework of the corresponding chamber, and IABF has provided basically similar types of support to all three. All three currently have operational centers and trained professionals arbitrating and conciliating commercial disputes. The centers will be examined collectively, except where required to highlight important features of a particular center.

The centers for resolution: payment disputes for goods/raw materials purchased or sold, problems within partnerships, heavy equipment sales/leasing disputes, construction contract disputes, corporate dissolutions, and numerous other types of civil/commercial causes of action. Types of disputants targeted include domestic business enterprises (of any size), private parties involved in disputes with business entities, foreign and international investors and businesses, domestic local government agencies, and the state itself (when it is party to a contract or otherwise subject to private law).

2

The criteria for selection of arbitrators and conciliators are similar in all the centers. Potential arbitrators and conciliators are drawn from the following groups: business professionals of diverse fields of specialization (engineering, accounting, economists, general managers, bankers, doctors, architects, insurance experts), lawyers, ADR experts (foreign or national). The available list of arbitrators/conciliators is made public by the centers so that potential users may choose from this list, or the center may choose the arbitrator/conciliator(s) in the absence of agreement. The critical legal framework

²Screening of cases must be based on the criteria set forth in the Arbitration and Conciliation Law (arts. 3, 6), which include any contractual/extra-contractual matter that arises between parties and which is not a matter of public interest or law. Explicitly excluded are: labor disputes, state actions governed by public law, any matter in which a judgment has been issued (with some exceptions), matrimonial matters, estate matters where one party is considered incompetent.

(supplemented by internal institutional rules of procedure) provides guidance on who exactly is excluded from serving on an arbitral panel in the interests of maintaining impartiality. There is also an 'implied' criterion for third parties: to be known to the community (in the sense of being recognized and of distinguished stature in the business community), rather than simply trained in the techniques of dispute resolution. There is a related emphasis on arbitrator specialization (as compared to the non-specialization of judges in the Bolivian court system,) which leads to more intimate familiarity with the issue in dispute and methods of arriving at adequate resolution.

The centers offer arbitration, set up with the composition of an institutional arbitral tribunal temporarily vested with adjudicative powers, which considers documentary, expert, and testimonial evidence and issues a judgment and/or an arbitral award. The centers also provide conciliation, a less adversarial procedure similar in design to US-style mediation. It is less structured than arbitral procedures, relying on cooperative, joint problem-solving by the parties with greater or lesser degrees of intervention by the conciliator and resulting in a written agreement totally or partially settling the dispute.

Conciliation is considered to meet many goals of commercial dispute resolution. For one, it keeps open the possibility of renewed commercial interaction between the parties. Other reasons include the fact that complex legal regulation is not needed for conciliation and the process itself, as practiced in Bolivia, is informal and uncomplicated. The absence of attorneys in conciliation processes is also cited as a factor affecting the positive impact of conciliation, since attorneys' legal training/culture has not included ADR concepts or emphasized settlement. The power of commercial conciliation lies in the fact that it stays judicial or arbitral proceedings on the same dispute. Unilateral withdrawal from a conciliation procedure is permissible, and can have the effect of delaying resolution of the case.

In terms of enforcement, arbitral awards and conciliation agreements are recognized as

cosa juzgada (the legal principle of *res judicata*) law and are thus legally-binding, subject to limited judicial review. Arbitrations and conciliations can be initiated at almost any stage of an ordinary litigation and have the effect of temporarily suspending such action. One or more of the parties may end the ADR process and resort to the courts by unilateral or joint declaration (for a conciliation) and joint declaration (for arbitration).

C. Operation of Centers

The organizational structure of the centers is similar: each has a director who is a lawyer and works closely with the general counsel of the chamber. The director manages the center, maintaining case databases and marketing services to chamber members, and coordinating the assignment of conciliators or arbitrators to a given case.

Program funding is mainly provided by user fees and subsidized by the budget of the respective chamber of commerce. Fees are set as a percentage of the amount in dispute [US\$5000 (5%) if the disputed amount were \$1,000,000]. Additional costs include expert witness fees, a nominal amount for administrative costs to the center (ranging from \$200 to 3% of disputes valued over \$1,000,000), and any costs incurred by the tribunal itself, for travel to a case site for visual inspection). The tribunal also determines the portion of costs each side is responsible for and includes it in the arbitral award. Conciliator fees (per conciliator) are also calculated along a range according to the amount in dispute. Administrative costs for conciliations are set at half the amount of arbitration fees. Total costs of the conciliation are split evenly among the parties. Members of the National Chamber receive a 20% discount on all assessed costs.

Continued financial support for the centers is unclear. The initial support provided by USAID/B will be discontinued as of the end of 1997. This decision has been attributed to the need to cut the USAID/B budget, and the resulting shift in funding priority to activities

more directly linked to anti-drug programs. USAID/B funds to date have furnished the centers, trained conciliators/arbitrators, and informed potential users. Actual operations may not be affected, given user fees and the centers' reliance on physical space, resources, personnel, and supplies provided by the chambers of commerce.

The National Chamber has a "Commission on Conciliation and Arbitration", which acts as a kind of board of directors and includes the principal officers of the chamber; all conciliators, arbitrators, and administrative staff of the center. This body collectively supervises the operations of the center and its compliance with the internal rules. It receives applications for conciliator/arbitrator positions, fixes the fee schedule, and designates conciliators or arbitrators in the absence of party consensus. This commission supervises the centers and provides procedural oversight for arbitrations and maintains the power to intervene and correct procedural errors or delays.

Generally speaking, the demand for the centers' services is low. For example, in the largest center in La Paz, from 1994, when ADR activities started, to October 1997, the center had taken in 77 cases for conciliation, of which 59 were brought to a final written conciliation agreement. This center has arbitrated 1 to 8 cases per year.

In terms of time, the Santa Cruz Center reports that its conciliations require an average of 4 to 7 meetings, each meeting lasting up to three hours, and scheduled on a weekly basis, yielding an approximately one month to two month duration for conciliations. Arbitrations, by law, are to last no more than six months, and upon application of the parties, can extend their activities for another two months. Regarding satisfaction, all three centers claim high rates of satisfaction with conciliation/arbitration for users who reached an accord, and all claim that there is 100% compliance with agreements and arbitral awards.

II. ANALYSIS

A. Setting Program Goals: Political, Legal, and Cultural Factors

The goals of commercial ADR are defined differently by different stakeholders. USAID/B's main goal is the alleviation of the court backlog, with a view to more efficient judicial handling of the counter-narcotic caseload. The chambers of commerce and their members' goal is to provide a service that they do not consider otherwise available—speedy, efficient, and inexpensive resolution of commercial controversies.

The convergence of ADR interests between USAID/B and the Bolivian business sector stems from regional (and global) economic integration and increased competition for foreign private investment, both contributing to the increased need to resolve commercial disputes quickly, cheaply, and fairly in Bolivia. Regarding political support, backing of the Ministry of Justice and a government-originated emphasis on popular participation in government are key conditions to USAID/B funding in Bolivia.

Political support, cultural fit and adequate resources were and continue to be relevant contextual factors in ADR goal-setting in Bolivia. Political support was also critical in the passage of the Arbitration and Conciliation Law, drafted by the previous administration (by Bolivia's first Minister of Justice). High level political support for ADR was galvanized by linking USAID/B support for ADR to the passing of the Arbitration and Conciliation Law, which in turn was part of a much broader package of legal system reforms. This approach by USAID/B appears to have successfully linked legislative aspects of judicial reform and ADR. Thus, while Bolivian government officials and congressional deputies worked to gain support for broad judicial reforms and the international development resources they required, they also built support for ADR and provided it with a critical legal framework. By using the chambers

of commerce as a forum for the outreach, marketing, and education about commercial ADR concepts, IABF created political advocates for the centers. Since chamber members are themselves private sector actors, the chambers provided a built-in constituency of potential beneficiaries of services.

Concerning resources, centers may need to increase demand and/or user fees to have sufficient financial resources once USAID funding ends. The three conciliation and arbitration centers are increasing provision of services, but are not, by their own estimates, at capacity yet. They seek to both create and meet new demand, as well as act as a truly alternative avenue to the court system for contractual disputes. Qualitative assessments by program stakeholders indicate that the growing number of cases denotes increasing awareness by potential users of commercial ADR services. Still, in interviews with local business managers, it was apparent that there is still great growth potential for commercial ADR. People do not know about the services and still need to learn how to best utilize the commercial ADR services (inclusion of arbitral/conciliation clauses in contracts, execution of arbitral/conciliation agreements in the absence of pre-existing contractual clauses, etc.). Much material distributed by the three centers focuses on education of the potential market.

One concern with increased demand expressed in interviews with the centers' personnel is that to grow, they need to have adequate numbers of trained service providers (conciliators and arbitrators), which is precisely the kind of expense they do not feel capable of funding. Their case load has grown over the last several years, although absolute numbers of cases resolved do not amount to more than approximately 75 per center to date. Aggressive marketing and educational activities, some feel, will enhance demand for services before there are adequate numbers of trained ADR professionals there to handle it.

The greatest issue facing the program

designers in terms of commercial ADR was, for several years, the lack of a unifying, legitimizing legal framework. While the new law addresses both arbitration and conciliation, its main regulatory value is in the elaboration of arbitration procedures and enforcing awards. The existence of the law now gives service users the confidence that a reforming judicial system will back up their investment in arbitration or conciliation. Service providers similarly feel more confident that they can market ADR now as a bundle of services. Early on, the absence of the law led to examination of the trade-off between applying program resources to either arbitration or conciliation. Conciliation, relying on cooperative dynamics rather than the handing down of a judgment began to be practiced even without the backing of a legal framework. The centers felt that they could not really offer arbitration services widely until there was assurance that an arbitral award would be recognized as the final determination of a disputed matter (*res judicata*) and thereby prevent re-litigation. As a direct result of the lack of such official legal support for arbitration until 1997, there was considerably more experience gained in conciliation as compared with arbitration in all the centers.

From the progress made on commercial (and other) ADR during the previous administration in Bolivia, it is apparent that political will to support ADR implementation is a key background condition. The prior (and first) minister of justice was easily accessible to key stakeholders in ADR planning. This was evident in his ability to personally attend their meetings, entertain funding requests, and receive criticisms of relevant legislation. The implications of the recent change in administration are not yet known, and the absence of a national level body promoting ADR as part of wider reform may affect the progress and continued funding of ADR programs, especially in light of the USAID/B change in funding priorities (although this may not impact non-commercial ADR due to its nonprofit nature). The new minister of justice is a member of the Cochabamba Chamber of Commerce and is reportedly a conciliator with its

center, leading some to believe that there is hope for continued political support which has not yet become apparent.

Cultural fit is another consideration in goal-setting regarding commercial ADR.³ The background condition most widely cited by ADR stakeholders in Bolivia, regardless of sector, is a self-perceived predisposition of the population to seek out absolute, judicial/legal style resolutions for their disputes. Similarly, the Bolivian legal profession's training has traditionally been highly formalistic, procedural and adversarial, requiring education and outreach to change. The Santa Cruz Center is partnering with its chamber-operated Universidad Privada to spread ADR concepts at the community level and thus sell non-adversarial approaches to dispute resolution to the larger population.⁴ The centers' arbitral/conciliation clauses in all new business contracts have been designed to multiply awareness and use of commercial ADR.

B. Monitoring and Evaluation

Monitoring and oversight received little emphasis in the operations of the centers. The National Center in La Paz functions under the oversight of a commission, but the commission is partly made up of some of the people who actually participate in the center's operations. Monitoring is done through informal interviews with users, conducted to determine satisfaction. This information is not systematically gathered, stored, or analyzed. There is a complaint procedure against conciliators/arbitrators but it does not appear to have been used to date in any center.

The lack of attention to monitoring and

³ Cultural fit is a factor in community conciliation and where parties come from different ethnic /linguist groups.

⁴ Similarly, the Universidad Mayor de San Simon's Law School is introducing mandatory ADR coursework into the curriculum for existing and incoming students, which should have a broad impact on lawyering in Bolivia in the long run.

evaluation means that the centers' work has no effect on the official court system. Results and lessons learned are not systematically channeled into any restructuring of the judicial system, or for example, into the education and training of lawyers and judges. The need for systematic monitoring of cases is illustrated by the debate as to whether or not the cases heard by the centers would have ended up in the court system at all, with USAID/B generally maintaining that they indicate the creation and satisfaction of new demand and the centers generally pointing to their case load to show they alleviate the burden on the court system.

USAID/B, given its oversight role, and as a stakeholder in both the broader judicial reform program and the various ADR activities, has the potential to be a channel for such learning. IABF, by the nature of its role as executive agency involved in court-annexed and commercial ADR, also has the potential to link courts with lessons learned in the centers.

III. ASSESSMENT

Commercial ADR responds to a well-defined need in Bolivia, that of creating the conditions which encourage investment. The centers have tried to provide a low cost, speedy alternative to litigation that also has the capability to preserve commercial relations among disputants. In terms of relieving the backlog in the judicial system, hard evidence of this must await the completion of other USAID/B-sponsored modernizations to the court system, including the current project to computerize case management information. This will enable interested parties to measure decreases in backlogs and theorize as to the source of the reduced backlog, whether it be commercial, extrajudicial or court-annexed ADR, or general improvements to court procedures, or some combination of these.

Commercial ADR service providers do believe that they have created a service with the potential to both alleviate court backlog and satisfy new demand by providing services to

those who would otherwise not seek out judicial resolution. This goal of satisfying a new demand is not explicitly supported by USAID/B as one of its development aims. It might be wise to link commercial ADR to the broader judicial reforms which are USAID/B-supported in order to capture the lessons of case management, speedy resolution, specialization, and others and transfer such learning to the court system. Only an agency that has promoted both of these activities and has active connections to both could play such a role and that agency would be USAID/B (or IABF).

Also, such linkage of goals could expand funding sources. The counter-narcotics-driven policy goal of alleviating the burden on the court system is laudable and should be supplemented with a valuation of commercial ADR, for its own sake, as a facilitator of conditions that encourage private investment that fuels economic growth and supports democracy. It may be appropriate to link rule of law reform, including ADR activities, more directly to the broader development aims that they accomplish, such as facilitation of international private investment and adoption of respect for rule of law in foreign business dealings.

There are other serious social concerns in Bolivia that are not, of course, addressed by commercial ADR. The magnitude of such social problems leaves room for many players and even the chambers of commerce want to help out, by establishing community conciliation centers (Santa Cruz) and interacting in some way with the district courts (Cochabamba). Without comment on the appropriateness or feasibility of such plans, they indicate that the latent need for access to justice is great in Bolivia and that USAID/B's initial support for such initiatives was certainly on track insofar as creating services and constituencies for them. A redefinition of administration of justice and development goals might fruitfully acknowledge this reality and should be founded on data indicating what the potential market for ADR in Bolivia is.

One may argue that power imbalances are not a significant problem in commercial ADR services at present, since they are used by relatively homogenous parties. Regarding conciliation, should one party exercise unduly coercive power to resolve a dispute, the law empowers the "weaker" party to withdraw from a commercial conciliation unilaterally and resort to the official court system. Arbitrations were designed to be binding procedures and so unilateral withdrawal is impossible, which may help weaker parties keep stronger parties in the ADR process.

The power imbalance in cases involving state agencies may affect implementation of commercial ADR in the future: while the centers claim that conciliation has the potential to even the power disparity between parties due to the requirement for a cooperative posture that it implies, one center notes that state enterprises, while legally subject to arbitration regarding contract law issues, may indeed prove too powerful for the arbitration system as it presently exists. The only other recourse a private party would have is the official court system, which is still in the process of strengthening itself and becoming independent and modernized. Explicit anticipation of state submission to commercial ADR procedures was laudable, but effective implementation may still need a stronger court system, where arbitral awards will have to be enforced in case of non-compliance. While elaborate planning in the Arbitration and Conciliation Law links arbitral awards to the courts, it remains to be seen whether or not the broader USAID/B-supported judicial reforms will suffice to make the judiciary independent enough to enforce awards against the power of the state itself.

Concerning the centers' operations, the first requirement for assessing staff and case management adequacy is sufficient financial resources to maintain separate, as opposed to seconded, commercial ADR staff. Independent third party evaluation may be required in order to periodically assess impartiality, third party performance and competency. Staffing levels at

the centers are currently minimal and increased staff will be a requirement for proper growth of each center. Obtaining alternative sources of development funding, in the absence of USAID/B funding, and moving toward financial self-sufficiency are the obvious recommendations in this regard. Better measurement of data on case duration, number of sessions, length of sessions, and ultimate costs to parties are all needed and should be maintained in database form by each center. Each center has access to computer and software resources that could be used for this purpose. What is required is the systematic design of a process to capture this information and a process for sharing and utilizing it.

Cultural legitimacy is not a serious obstacle for commercial ADR in Bolivia at present. It will become an issue if and when commercial ADR providers reach the micro-enterprise level of business activity, where the different characteristics of the Quechua and Aymara indigenous people, are cited as examples of cultural differences that can generate conflict⁵. At that time, commercial ADR providers will face the cultural issues facing ADR providers in other sectors: how to integrate indigenous norms in a national rule of law framework and how to respect customs and practices that may or may not be consistent with democratic rule of law initiative and how to deal with cross-cultural conflict dynamics that are present but not controlling issues in commercial ADR. Commercial ADR providers will need to learn from the other ADR providers in the court- annexed or community ADR sectors already grappling or about to grapple with these issues.

Political support is, on the one hand, a product of constituency building and advocacy. At the same time, it derives from having key government players lend their prestige and support to reforms. In terms of constituency

building, the sector approach to ADR tends to naturally build constituencies for each sector and the business community is one of the better prepared constituencies available, compared to other social groupings.

Maintaining political support through the democratic changes of administration in Bolivia will require sufficient bureaucratic investment in ADR so that such support survives changes of political leadership. It will also be a matter of encouraging new leaders in the government to endorse and actively promote ADR. Exploiting links to the newly formed ministry of justice and to its new justice minister are essential. The lack of a formal link between commercial ADR and the court system is an obstacle to obtaining such political support. By transferring knowledge from the commercial ADR sector to the government, such a link can be created and can then be the basis of new relationships with the government.

* * *

⁵ Commercial ADR via the Centers does not as yet impact this level of business activity, most likely due to the economic and social marginalization of such parties, and their consequent lack of participation in the ADR planning process.