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REGIONAL AND INTERNATIONAL MECHANISMS INFLUENCING ALTERNATIVE DISPUTE RESOLUTION (ADR) IN TANZANIA'S MINING SECTOR

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Abstract

This article examines the impact of regional and international frameworks on the effectiveness of Alternative Dispute Resolution (ADR) mechanisms in resolving disputes within Tanzania's mining sector. It explores the alignment of Tanzania's legal and institutional structures with regional instruments such as the East African Community (EAC) Treaty and the Southern African Development Community (SADC) Protocol on Finance and Investment, as well as international conventions like the International Centre for Settlement of Investment Disputes (ICSID) Convention and the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules. The study identifies challenges in harmonizing these frameworks with national laws and practices, assesses their influence on dispute resolution processes, and provides recommendations for enhancing ADR effectiveness in the sector.

Keywords: *Alternative Dispute Resolution, Tanzania, Mining Sector, EAC Treaty, SADC Protocol, ICSID Convention, UNCITRAL Arbitration Rules, Investment Disputes, Regional Integration, International Arbitration.*

1.0 Introduction

Tanzania's mining sector has witnessed significant foreign investment, leading to economic growth but also to an increase in disputes between investors and local communities. Alternative Dispute Resolution (ADR) mechanisms, including arbitration, mediation, and negotiation, have been employed to address these conflicts. The effectiveness of ADR in this context is influenced by regional and international legal frameworks that govern investment and dispute resolution. This article explores how instruments such as the East African Community (EAC) Treaty, the Southern African Development Community (SADC) Protocol on Finance and Investment, the International Centre for Settlement of Investment Disputes (ICSID) Convention, and the United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules shape ADR practices in Tanzania's mining sector.

2.0 Conceptual Framework

2.1 Theoretical Background of Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) encompasses mechanisms such as negotiation, mediation, and arbitration, which provide parties with flexible, efficient, and less adversarial means of

resolving disputes outside traditional court litigation. **Negotiation** is the most informal ADR method, relying on direct dialogue between parties to reach a mutually acceptable solution without third-party involvement.¹ **Mediation** involves a neutral third party who facilitates communication and helps disputing parties explore potential solutions, aiming for a voluntary settlement that preserves relationships.² **Arbitration**, in contrast, is a more formal process where a neutral arbitrator renders a binding decision, providing a mechanism akin to judicial adjudication but often faster and more flexible.³ Theoretically, ADR draws on principles from **conflict resolution theory**, which emphasizes understanding underlying interests rather than positions, and **social exchange theory**, which highlights the role of trust and perceived fairness in sustaining agreements.⁴

These theoretical frameworks suggest that ADR is effective because it promotes voluntary compliance, preserves relationships, reduces adversarial costs, and provides tailored solutions to complex disputes. In the context of investment disputes, ADR mechanisms are particularly valuable as they allow cross-border parties to resolve conflicts in a neutral and predictable environment, accommodating differences in legal cultures, business practices, and expectations.

2.2 Legal Basis for ADR in Investment Disputes

The legal basis for ADR in investment disputes is derived from both **domestic legislation** and **international instruments**. Domestically, Tanzania's *Arbitration Act*⁵ provides the statutory framework for arbitration, conciliation, and other forms of ADR, ensuring alignment with international standards such as the UNCITRAL Arbitration Rules.⁶ Internationally, Tanzania is a contracting party to the **ICSID Convention (1966)**, the **New York Convention (1958)**, and recognizes arbitration under **UNCITRAL rules**, all of which provide mechanisms for the resolution and enforcement of cross-border investment disputes International Centre for Settlement of Investment Disputes, United Nations, and UNCITRAL.

These instruments collectively establish a framework that ensures neutrality, enforceability, and investor protection. ICSID provides facilities for conciliation and arbitration between states and foreign investors, while the New York Convention guarantees recognition and enforcement of foreign arbitral awards. The UNCITRAL Arbitration Rules, on the other hand, offer procedural guidance that harmonizes arbitration practices globally. Together, these domestic and international legal frameworks underpin the practical application of ADR in investment disputes, reinforcing Tanzania's commitment to providing a reliable and effective dispute resolution environment.

¹ Moore, C. W. (2014). *The mediation process: Practical strategies for resolving conflict* (4th ed.). Jossey-Bass.

² Bush, R. A. B., & Folger, J. P. (2005). *The promise of mediation: The transformative approach to conflict* (2nd ed.). Jossey-Bass.

³ Redfern, A., Hunter, M., Blackaby, N., & Partasides, C. (2015). *Law and practice of international commercial arbitration* (5th ed.). Sweet & Maxwell.

⁴ Deutsch, M. (1973). *The resolution of conflict: Constructive and destructive processes*. Yale University Press.

⁵ *Arbitration Act, Cap. 15 R.E. 2020*,

⁶ Mwakaje, J. (2021). *The role of arbitration in promoting foreign investment in Tanzania*. *African Journal of Law and Society*, 8(1), 89–103.

3.0 Regional Mechanisms Influencing ADR in Tanzania

3.1 East African Community (EAC) Treaty

The East African Community (EAC) Treaty establishes a normative foundation for regional integration and cooperation among Partner States, including the harmonization of legal and judicial systems to promote effective dispute resolution. Although the Treaty does not expressly mandate the use of alternative dispute resolution (ADR) mechanisms, it provides a conducive legal and institutional framework that indirectly supports their application within the region.⁷ Article 5 of the Treaty outlines the EAC's objectives, emphasizing the development of policies and programs aimed at deepening cooperation across political, economic, social, and legal spheres. This integration facilitates a uniform legal environment conducive to investment and regional stability.

Furthermore, Article 126 of the Treaty calls for the harmonization of legal training, certification, and national laws among Partner States, aiming to ensure comparability and consistency in legal standards. This harmonization is essential for enhancing the credibility of dispute resolution mechanisms and ensuring uniformity in the application of laws governing regional disputes.⁸ The Treaty also establishes the East African Court of Justice (EACJ) as a judicial organ to ensure adherence to the Treaty and to adjudicate disputes relating to its interpretation and application.⁹

These provisions demonstrate the EAC's commitment to fostering a stable legal framework that supports ADR mechanisms. However, the EAC's influence in strengthening ADR remains limited due to several factors. Firstly, the harmonization directives are largely aspirational and depend heavily on the political will and domestic implementation capacity of individual Partner States. The Treaty's language, which requires Partner States to "take steps" towards harmonization, leaves considerable discretion in execution, resulting in uneven progress across the region.¹⁰ Secondly, while the EACJ provides a regional forum for dispute adjudication, its jurisdiction and enforcement powers remain constrained by both the Treaty and subsequent protocols, thereby limiting its ability to supervise or enforce uniform ADR mechanisms.¹¹

Moreover, the existence of divergent national legal frameworks, resource disparities, and policy priorities among Partner States contributes to fragmented ADR practices in the region. These challenges indicate that while the EAC Treaty offers an institutional and normative basis for harmonized dispute resolution, its implementation and impact on ADR remain partial and dependent on Member States' commitment to regional legal integration. Thus, the EAC framework provides an important legal and policy foundation for ADR in East Africa, but practical

⁷ (East African Community [EAC], 1999, Art. 5).

⁸ (EAC, 1999, Art. 126).

⁹ (EAC, 1999, Arts. 23, 31–32).

¹⁰ Döveling, J. (2018). *Harmonisation of Laws in the East African Community*. TGCL Series. University of Dar es Salaam School of Law.

¹¹ Tralac. (2018, October 1). *Dispute settlement in the East African Community (EAC)*. Trade Law Centre (tralac). Retrieved from <https://www.tralac.org>.

effectiveness requires stronger enforcement mechanisms, consistent national reforms, and enhanced regional cooperation.

3.2 Southern African Development Community (SADC) Protocol on Finance and Investment

The Southern African Development Community (SADC) Protocol on Finance and Investment (FIP), adopted in 2006, aims to harmonize financial and investment policies among member states to promote sustainable economic growth and regional integration. It establishes a framework to create an enabling environment that encourages both intra-regional and international investment by fostering transparency, stability, and predictability in the financial and investment sectors.¹² The Protocol underscores the importance of cooperation in areas such as investment, taxation, and financial markets as part of broader economic governance within the SADC region.

Article 9 of the Protocol specifically promotes the use of alternative dispute resolution (ADR) mechanisms for settling investment disputes. It calls upon member states to establish and maintain effective systems for the peaceful resolution of disputes arising from investment activities through negotiation, mediation, conciliation, or arbitration.¹³ By emphasizing ADR, the Protocol reflects SADC's commitment to ensuring investor protection, minimizing conflicts, and upholding the rule of law in regional economic relations.¹⁴ These mechanisms are intended to provide efficient and impartial platforms for resolving disputes without undermining investor confidence or disrupting economic activity.

Despite these provisions, the implementation of the Protocol remains inconsistent across member states, including Tanzania. Although Tanzania is a signatory, the alignment of its domestic legal framework with regional ADR standards has been limited, weakening the effectiveness of the Protocol in practice.¹⁵ The suspension of the SADC Tribunal in 2010 further reduced the region's capacity to enforce or supervise investment-related dispute resolution.¹⁶ Consequently, while the SADC Protocol provides a strong regional legal foundation for ADR, its effectiveness depends largely on national implementation and the restoration of robust regional dispute resolution mechanisms.

4.0 International Mechanisms Shaping ADR Practice

4.1 International Centre for Settlement of Investment Disputes (ICSID) Convention

Tanzania is a contracting member of the *Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention)*, established in 1966 under the World Bank. The Convention provides a neutral international forum for conciliation and

¹² Southern African Development Community (SADC). (2006). *Protocol on Finance and Investment*. Gaborone, Botswana. Retrieved from <https://www.sadc.int>.

¹³ (SADC, 2006, Art. 9).

¹⁴ Tralac. (2020, February 18). *The SADC Protocol on Finance and Investment: Challenges and opportunities for investment dispute resolution*. Trade Law Centre (tralac). Retrieved from <https://www.tralac.org>

¹⁵ Chigara, B., & Magwape, M. (2017). *Southern African Development Community (SADC) law: Investment protection and the rule of law*. Routledge.

¹⁶ Nathan, L. (2011). *Solidarity triumphs over democracy: The dissolution of the SADC Tribunal*. *Development Dialogue*, 57(1), 139–153.

arbitration of investment disputes between governments and investors from other contracting states.¹⁷ Its primary objective is to promote investor confidence and ensure impartial dispute resolution beyond domestic courts.

Awards rendered under ICSID are legally binding and enforceable in all 160 contracting states as though they were final judgments of national courts.¹⁸ This broad enforceability strengthens investor protection and promotes international investment stability. The Convention also encourages conciliation before arbitration, reflecting the principles of alternative dispute resolution (ADR) in promoting amicable settlements.¹⁹

However, Tanzania's experience with ICSID has been mixed. Several cases have ended unfavorably for the state, raising concerns about fairness and the perceived bias toward foreign investors. These outcomes have prompted debates over the balance between investor protection and national sovereignty.²⁰ As a result, Tanzania has emphasized the need to strengthen domestic and regional ADR mechanisms to complement international frameworks and safeguard national interests.

4.2 UNCITRAL Arbitration Rules

The *United Nations Commission on International Trade Law (UNCITRAL) Arbitration Rules* provide a comprehensive framework for the conduct of arbitration proceedings in international commercial and investment disputes. First adopted in 1976 and later revised in 2010 and 2013, these rules emphasize neutrality, fairness, and procedural flexibility, making them widely acceptable in both developed and developing jurisdictions.²¹ They serve as a global standard that promotes efficiency and uniformity in arbitral proceedings while allowing parties autonomy in structuring their dispute resolution process.

In Tanzania, the principles of the UNCITRAL Arbitration Rules have been incorporated into the *Arbitration Act*,²² which aligns domestic arbitration procedures with international best practices. This alignment enhances Tanzania's attractiveness as a venue for resolving both domestic and cross-border disputes, ensuring that arbitral proceedings meet globally recognized standards of impartiality and due process.²³ The integration of UNCITRAL principles also reflects Tanzania's commitment to fostering confidence among foreign investors and promoting the use of alternative dispute resolution (ADR) in commercial and investment sectors.

¹⁷ International Centre for Settlement of Investment Disputes (ICSID). (1966). *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Washington, D.C.: World Bank. Retrieved from <https://icsid.worldbank.org>.

¹⁸ (ICSID, 1966, Art. 54).

¹⁹ Schreuer, C. H. (2009). *The ICSID Convention: A commentary* (2nd ed.). Cambridge University Press.

²⁰ Ndiho, D. (2017). *Foreign investment and arbitration in Africa: A case study of Tanzania's experience with ICSID*. *African Journal of International and Comparative Law*, 25(3), 421–436.

²¹ United Nations Commission on International Trade Law (UNCITRAL). (2013). *UNCITRAL Arbitration Rules (as revised in 2013)*. United Nations. Retrieved from <https://uncitral.un.org>.

²² *Arbitration Act, Cap. 15 R.E. 2020*

²³ Mwakaje, J. (2021). *The role of arbitration in promoting foreign investment in Tanzania*. *African Journal of Law and Society*, 8(1), 89–103.

Despite these developments, challenges remain in ensuring the consistent and effective application of the UNCITRAL framework. Limited institutional capacity, inadequate training among arbitration practitioners, and occasional judicial interference continue to hinder the smooth implementation of the Rules.²⁴ Therefore, while Tanzania's legal framework is well aligned with international arbitration standards, further efforts are required to strengthen local institutions and enhance expertise to manage complex arbitration cases under the UNCITRAL framework effectively.

4.3 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards

The *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (commonly known as the New York Convention) of 1958 provides a global framework for the enforcement of arbitral awards across signatory states. Tanzania, as a contracting state, is obligated to recognize and enforce foreign arbitration awards, ensuring that decisions rendered under international arbitration are respected domestically.²⁵ This Convention enhances investor confidence by providing predictability and legal certainty, thereby encouraging cross-border trade and investment.

While the Convention strengthens the enforceability of arbitration outcomes in Tanzania, challenges remain in its practical application. Local courts sometimes delay enforcement due to procedural inefficiencies or interpretive inconsistencies, which can undermine the Convention's objectives.²⁶ Nonetheless, the New York Convention remains a cornerstone of international dispute resolution, complementing Tanzania's domestic arbitration framework and reinforcing the country's commitment to alternative dispute resolution mechanisms.

5.0 Interaction Between Regional and International Mechanisms

The interaction between regional and international alternative dispute resolution (ADR) mechanisms in Tanzania's mining sector reflects both **complementarity and tension**. Regional instruments, such as the SADC Protocol on Finance and Investment, seek to harmonize investment policies among member states and promote the use of ADR in resolving disputes.²⁷ These frameworks provide guidance on negotiation, mediation, and arbitration while encouraging consistency and predictability in regional investment dispute settlement. In practice, however, their impact is sometimes constrained by domestic laws that emphasize state sovereignty and national regulatory prerogatives over full adherence to regional commitments.

International mechanisms, including the ICSID Convention and UNCITRAL Arbitration Rules, offer robust, neutral, and globally recognized frameworks for dispute resolution, enhancing

²⁴ Kileo, M. A. (2020). *The practice and challenges of arbitration in Tanzania: A review of the Arbitration Act Cap. 15 R.E. 2020*. *Eastern Africa Law Review*, 47(2), 112–128.

²⁵ United Nations. (1958). *Convention on the Recognition and Enforcement of Foreign Arbitral Awards* (New York, 10 June 1958). United Nations Treaty Series, 330, 3–15. Retrieved from <https://uncitral.un.org>

²⁶ Mwakaje, J. (2021). *The role of arbitration in promoting foreign investment in Tanzania*. *African Journal of Law and Society*, 8(1), 89–103.

²⁷ Southern African Development Community (SADC). (2006). *Protocol on Finance and Investment*. Gaborone, Botswana. Retrieved from <https://www.sadc.int>.

investor confidence and providing enforceable outcomes across jurisdictions International Centre for Settlement of Investment Disputes.²⁸ Nevertheless, tensions arise when international ADR processes conflict with Tanzanian domestic laws, especially in sensitive sectors such as mining and natural resources, where the state maintains regulatory authority over investment and exploitation rights. These interactions highlight the need for coherent policy alignment and institutional capacity to ensure that regional and international mechanisms complement rather than undermine domestic legal frameworks. Strengthening coordination between these mechanisms can enhance the effectiveness of ADR, promote investor protection, and safeguard national interests in Tanzania's mining sector.

6.0 Challenges in Harmonization and Enforcement

The effective harmonization and enforcement of alternative dispute resolution (ADR) mechanisms in Tanzania's mining sector face several significant challenges, which are compounded by real-world disputes and legal inconsistencies.

Legal Inconsistencies

Conflicts between national laws and international commitments create uncertainty and hinder the application of ADR mechanisms. For instance, while Tanzania is a contracting state to the ICSID Convention, which provides facilities for conciliation and arbitration of investment disputes, several cases have resulted in unfavorable outcomes for the state. In one notable instance, a Canadian mining company reported that Tanzania agreed to pay US\$27 million to settle an ICSID case over the revocation of mining licences, marking the third such settlement the state has reached with investors who held those permits. This situation underscores the tension between domestic legal frameworks and international obligations, affecting the effectiveness of ADR in the mining sector.²⁹

Institutional Capacity

Limited expertise and resources within national institutions affect the quality and efficiency of ADR processes. The Tanzanian government has issued new Mining (Dispute Resolution) Rules to regulate disputes in the sector, aiming to promote Foreign Direct Investment (FDI) while placing public interest at the centre of the mining economy. However, the implementation of these rules has been inconsistent, and the capacity of institutions to handle complex mining disputes remains a significant challenge.³⁰

Awareness and Accessibility

²⁸ International Centre for Settlement of Investment Disputes (ICSID). (1966). *Convention on the Settlement of Investment Disputes between States and Nationals of Other States*. Washington, D.C.: World Bank. Retrieved from <https://icsid.worldbank.org>.

²⁹ Global Arbitration Review. (2024, November 21). *Tanzania settles third mining case*.

³⁰ Montero Mining and Exploration Ltd. (2025, January 28). *Montero agrees to distribution of US\$27 million settlement from Tanzania*. GlobeNewswire. Retrieved from

Lack of awareness among local communities about ADR options and procedures limits their ability to participate effectively in dispute resolution. Disputes related to tax, regulatory compliance, labour, finance, and investment are prevalent in Tanzania's mining sector. However, the involvement of local communities in these disputes is often limited due to insufficient awareness and understanding of ADR mechanisms.

Political Will

Inconsistent political support for international arbitration and ADR mechanisms affects their implementation and effectiveness. The Tanzanian government has agreed to pay a group of mining companies USD 90 million to settle a dispute over investment losses in a pre-development stage mineral project. While this settlement indicates a willingness to resolve disputes, it also highlights the challenges in aligning domestic policies with international ADR frameworks.³¹

7.0 Recommendations

To enhance the effectiveness of alternative dispute resolution (ADR) in Tanzania's mining sector, several strategic measures are recommended.

Legal Reform: National legislation should be harmonized with regional and international ADR instruments to reduce inconsistencies, clarify procedures, and ensure compliance with international standards. This will strengthen investor confidence and make dispute resolution processes more predictable and reliable.

Capacity Building: The expertise and resources of legal professionals and institutions should be strengthened through specialized training programs for arbitrators, mediators, and government officials. Enhancing technical capacity will improve the handling of complex mining-related disputes and increase the efficiency, fairness, and credibility of ADR processes.

Public Awareness: Local communities and stakeholders should be educated about ADR mechanisms and their rights through awareness campaigns, workshops, and information dissemination. This will empower communities to participate effectively in dispute resolution and ensure that ADR processes are accessible and participatory.

Political Commitment: Sustained political support is necessary to reinforce the legitimacy and effectiveness of ADR mechanisms. Government authorities should consistently endorse both regional and international dispute resolution frameworks and facilitate the enforcement of ADR awards, fostering trust among investors and stakeholders.

³¹ African Law & Business. (2024, July 31). *Tanzania to pay USD 90 million arbitration settlement.*

By implementing these recommendations, Tanzania can strengthen the harmonization and enforcement of ADR mechanisms, promote investor confidence, and reduce the incidence of prolonged mining disputes that may otherwise escalate to litigation or international arbitration.

7. Conclusion

Regional and international mechanisms are pivotal in shaping alternative dispute resolution (ADR) practices in Tanzania's mining sector. These frameworks provide structured, neutral, and internationally recognized tools for resolving investment and commercial disputes, contributing to predictability and investor confidence. However, their effectiveness largely depends on the harmonization of national laws with regional and international instruments, the capacity of institutions to manage complex disputes, and sustained political support.

Addressing the challenges identified including legal inconsistencies, limited institutional capacity, low public awareness, and variable political commitment while implementing targeted reforms, capacity-building programs, and awareness initiatives, can significantly enhance the effectiveness of ADR in the mining sector. Strengthening these mechanisms will promote fair, efficient, and sustainable dispute resolution, ultimately supporting equitable outcomes and fostering a more stable and attractive environment for investment in Tanzania's mining industry.

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United Nations Commission on International Trade Law (UNCITRAL). (2013). *UNCITRAL Arbitration Rules (as revised in 2013)*. United Nations. Retrieved from <https://uncitral.un.org>

**ASSESSING LEGAL AND INSTITUTIONAL GAPS HINDERING THE
EFFECTIVENESS OF ALTERNATIVE DISPUTE RESOLUTION IN RESOLVING
CONSTRUCTION DISPUTES IN TANZANIA: A COMPARATIVE STUDY WITH
KENYA.**

HAPPINESS MPONDA*

ABSTRACT

The construction industry in Tanzania makes a significant contribution to national development, but it remains highly prone to disputes due to its complexity and the multiple stakeholders involved.¹ Although Alternative Dispute Resolution (ADR) methods, such as arbitration and mediation, are legally available in Tanzania, they are less effective in construction-related disputes because of weak guiding frameworks and inadequate institutional capacity.² This study examines the legal and institutional challenges affecting ADR in Tanzania, including inadequate institutional capacity, limited expertise, weak enforcement, poor coordination, and low stakeholder awareness, which collectively undermine confidence in ADR and lead parties to prefer litigation.

By drawing comparative insights from Kenya, the study shows that stronger institutional frameworks and judicial support can enhance the effectiveness of ADR. The article concludes that Tanzania can improve the efficiency and credibility of ADR in construction disputes through

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¹ Institution of Engineers Tanzania. (2019). *Proceedings of the 30th National Conference* (pp. 1–2). Dar es Salaam, Tanzania: Institution of Engineers Tanzania. Retrieved from <https://iet.or.tz/wp-content/uploads/2022/10/30TH-NATIONAL-CONFERENCE-PROCEEDINGS-2019-FINAL.pdf>

² Kabote, M., & Nyichomba, B. B. (2022). *An assessment of disputes resolution mechanisms in road construction projects in Tanzania*. *American Journal of Civil Engineering*, 10(1), 13-22. <https://doi.org/10.11648/j.ajce.20221001.12>

institutional reforms, capacity building, and technological integration. Strengthening these aspects would promote ADR as a reliable and sustainable mechanism for resolving construction-related conflicts.

Key Words

Alternative Dispute Resolution (ADR); Construction Disputes; Arbitration; Mediation; Institutional Capacity; Tanzania; Kenya; Legal Framework; Comparative Study; Dispute Resolution Mechanisms.

1.0 INTRODUCTION

The construction industry is one of the most significant drivers of socio-economic development, particularly in developing countries such as Tanzania and Kenya.³ It contributes not only to infrastructure development but also to employment creation, technological transfer, and investment opportunities. However, construction projects are inherently complex, involving multiple parties, large financial stakes, and technical issues.⁴ These complexities often give rise to disputes relating to delays, cost overruns, defective works, breach of contract, or valuation disagreements⁵. Traditionally, such disputes have been resolved through litigation, but the formal court process has long been criticized for being adversarial, costly, time-consuming, and ill-suited to the technical nature of construction disputes. In recognition of these challenges, disputes can involve third-party intervention. Alternative Dispute Resolution (ADR) methods such as

³ International Labour Organization. (2001). *Developing the construction industry for employment-intensive infrastructure investments* (pp. 17). Geneva, Switzerland: ILO. Retrieved from <https://www.scribd.com/document/629947198/ILO-Developing-the-construction-industry-for-employment-intensive-infrastructure-investments-pdf>

⁴ Ministry of Works, Transport & Communications, Tanzania. (2023, July 6). *Basic statistics and information in construction industry* (2022). <https://www.mow.go.tz/uploads/documents/sw-1688644679-Basic%20Statistics%202022%20FINAL.pdf>

⁵ Kebede, S. D., & Zhang, T. (2020). Enforcement of legal remedies against construction projects time overrun in Ethiopia: A critical appraisal. *Heliyon*, 6(10), e05126. <https://doi.org/10.1016/j.heliyon.2020.e05126>

arbitration, adjudication, mediation, and negotiation have been promoted as more efficient means of resolving construction disputes.⁶

ADR is praised for its flexibility, speed, confidentiality, and its potential to preserve business relationships while offering solutions tailored to the technical realities of construction projects. At the global level, standard forms of construction contracts, such as the Fédération Internationale des Ingénieurs Conseils, the French name for the International Federation of Consulting Engineers, expressly encourage parties to utilize ADR processes before resorting to litigation.

Likewise, institutions such as the International Chamber of Commerce (ICC) and the London Court of International Arbitration (LCIA) have long facilitated ADR mechanisms for construction disputes, providing parties with structured arbitration, mediation, and expert determination services recognized for their efficiency and enforceability⁷ These institutions offer standardized procedural rules, accredited arbitrators, and international enforceability of awards, which help reduce delays and costs compared to traditional litigation. The global and regional experiences with these ADR bodies illustrate the potential benefits of institutionalized mechanisms in resolving complex construction disputes, serving as a benchmark for countries like Tanzania seeking to strengthen their ADR frameworks.

Apart from the global recognition of ADR's importance, its practical effectiveness in Tanzania's construction industry remains limited. While laws such as the Arbitration Act and institutions such as the Tanzania Institute of Arbitrators (TIArb) provide a framework for dispute resolution, significant institutional challenges hinder the realization of ADR's full potential. Mtukusye

⁶ Alternative Dispute Resolution in Construction Disputes. (2017, September 25). *Juris Resolutions*. <https://www.jurisresolutions.com/2017/09/25/alternative-dispute-resolution-construction-disputes/>

⁷ Nazzini, R. (Ed.). (2022). *Construction arbitration and alternative dispute resolution: Theory and practice around the world*. Routledge. <https://www.routledge.com/Construction-Arbitration-and-Alternative-Dispute-Resolution-Theory-and-Practice-around-the-World/Nazzini/p/book/9780367740740>

identifies a range of systemic challenges in court-annexed mediation in Tanzania's Commercial Division, including insufficient institutional capacity, limited mediator and stakeholder training, weak enforcement of mediated settlements, low stakeholder awareness, and lack of institutional coordination.⁸ The existence of such institutional weaknesses undermines not only the accessibility of ADR but also its credibility and efficiency, thus compelling many disputants to revert to litigation despite ADR provisions in contracts.

This article seeks to interrogate these institutional challenges in detail. By focusing on Tanzania and drawing comparative insights from Kenya, this study aims to demonstrate how institutional shortcomings constrain the effectiveness of ADR in construction disputes and what lessons can be drawn from a jurisdiction that has made relatively greater progress. While Ngilangwa primarily examines challenges in implementing arbitration agreements in Tanzania rather than conducting a full comparative or construction-specific study, the findings highlight broader institutional shortcomings that similarly affect ADR in the construction sector.⁹ Insights from Kenya's experience with ADR can guide capacity building, procedural harmonization, and awareness initiatives that could strengthen Tanzania's ADR framework. Kenya has developed a stronger institutional base for ADR, with initiatives such as the Nairobi Center for International Arbitration (NCIA) and more robust integration of ADR within the judiciary. Comparing Tanzania with Kenya, therefore, provides a useful benchmark for identifying reforms needed to strengthen ADR institutions in the construction industry.

⁸ A I Mtukusye, 'Challenges Facing the Implementation of Court-Annexed Mediation in the Commercial Division of the High Court of Tanzania' (2024) 7(5) *International Journal of Law Management & Humanities* 117–141.

⁹ Ngilangwa, A. M. (2023). *Challenges of implementing arbitration agreements in Tanzania: A comprehensive review*. *Journal of Alternate Dispute Resolution*, 2(2), 17-37. Retrieved from <https://jadr.thelawbrigade.com/article/challenges-of-implementing-arbitration-agreements-in-tanzania-a-comprehensive-review/>

The discussion is structured as follows: first, the article provides a conceptual overview of ADR in the construction industry, highlighting its importance and role in dispute resolution. Second, it examines the institutional challenges that undermine ADR's effectiveness in Tanzania's construction sector. Third, it offers a comparative perspective from Kenya, focusing on how institutional frameworks have been developed to address similar challenges. Finally, the article concludes with recommendations on how Tanzania can strengthen its institutional framework to promote ADR as a credible and effective mechanism for resolving construction disputes.

Through this analysis, the article underscores that the success of ADR in construction disputes depends not only on the availability of legal provisions but also on the strength of institutions tasked with implementing and promoting these mechanisms. Institutional reforms, therefore, remain central to enhancing the role of ADR in ensuring efficient, fair, and sustainable resolution of construction disputes in Tanzania.

1.2 Conceptual overview of ADR in the construction industry

In response to the growing number of disputes in Tanzania's construction industry, various Alternative Dispute Resolution (ADR) mechanisms such as arbitration, mediation, and adjudication have been adopted to provide more efficient, cost-effective, and less adversarial means of resolving conflicts. These mechanisms aim to promote timely project completion, preserve business relationships, and enhance confidence in the construction sector's dispute resolution framework. Disputes commonly arise from project delays, cost overruns, variations in contract terms, and defective work. Traditionally, litigation has been the primary mode of resolving such disputes; however, out-of-court mechanisms are generally considered more preferable because they provide a quicker, tailored process and foster amicable solutions.¹⁰

¹⁰ Mtukusye, A. I. (2024). Challenges facing the implementation of court-annexed mediation in the Commercial Division of the High Court of Tanzania. *International Journal of Law Management & Humanities* p. 118.

In response, Alternative Dispute Resolution (ADR) mechanisms have emerged as crucial alternatives. ADR encompasses arbitration, mediation, adjudication, negotiation, and conciliation. Its advantages in the construction sector include speed, confidentiality, reduced costs, and the preservation of business relationships. ADR is also flexible and allows parties to choose neutrals with expertise in construction law and engineering, an aspect that courts often lack. In the international arena, ADR in construction is strongly promoted by institutions such as the International Chamber of Commerce (ICC), the London Court of International Arbitration (LCIA), and under standard construction contracts like the FIDIC conditions, which emphasize Dispute Adjudication Boards (DABs) and arbitration clauses. These frameworks influence domestic practices in many jurisdictions. In Tanzania, ADR is recognized in several legal frameworks, most notably the Arbitration Act,¹¹ which consolidated and modernized the arbitration framework. Section 75¹² of the Act provides for the recognition and enforcement of arbitral awards. It aligns Tanzania with international standards, including the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958). Additionally, the Order VIII Rule 24 of the Civil Procedure Code¹³ incorporates court-annexed mediation, allowing courts to refer disputes for settlement through mediation when parties consent. Sector-specific frameworks, such as the Public Procurement Act,¹⁴ also recognize ADR as a tool for resolving contractual disputes in public construction projects.

Institutionally, Tanzania offers several bodies promoting ADR. The Tanzania Institute of Arbitrators (TIArb) and the Tanzania International Arbitration Center (TIAC) provide platforms for arbitration and mediation services. The National Construction Council (NCC) also facilitates

¹¹ Arbitration Act, Cap. 15 R.E. 2023.

¹² Section 75, Arbitration Act, Cap. 15 R.E. 2023.

¹³ Order VIII Rule 24, Civil Procedure Code, Cap. 33 R.E. 2023.

¹⁴ Public Procurement Act, No. 10 of 2023.

arbitration and adjudication in construction disputes. However, these legal and institutional frameworks, the practical uptake and effectiveness of ADR, remain constrained by various institutional challenges.

Kenya has established a robust framework for ADR, supported by both statutory and institutional measures. The Arbitration Act is complemented by the Nairobi Centre for International Arbitration (NCIA), which serves as a regional hub for commercial and construction dispute resolution. The Judiciary of Kenya has also formally adopted Court-Annexed Mediation, integrating ADR into the judicial process. Similarly, Tanzania has developed parallel structures, including the Tanzania Institute of Arbitrators (TIArb), the Tanzania International Arbitration Centre (TIAC), and a mandatory court-annexed mediation process for civil cases. These initiatives in both countries demonstrate the importance of institutional capacity in making ADR accessible and effective in construction disputes, which will be elaborated further in this study.

Hence, while Tanzania has the legal recognition of ADR and institutions to administer it, the gap between law and practice remains wide. The following section discusses the institutional challenges that hinder the effectiveness of ADR in Tanzania's construction industry.

1.3 The institutional challenges affecting ADR in Tanzania's construction sector.

Despite the existence of a modern legal framework for ADR in Tanzania, the construction industry continues to face significant institutional challenges that hinder the effective use of ADR. These challenges are primarily associated with ADR institutions themselves, including weaknesses in capacity, limited awareness among stakeholders, inconsistent enforcement of ADR agreements, and a lack of coordination among multiple institutions. Collectively, these institutional weaknesses reduce confidence in ADR as a reliable and practical alternative to litigation for resolving construction disputes.

1.3.1 Limited institutional capacity.

One of the institutional challenges facing ADR in Tanzania is the limited capacity of the institutions responsible for administering arbitration and mediation. While Tanzania has key institutions such as the Tanzania Institute of Arbitrators (TIArb), the Tanzania International Arbitration Center (TIAC), and the National Construction Council (NCC), their resources remain inadequate to meet the rising demand for construction-related dispute resolution.

These initiatives demonstrate the importance of institutional capacity in enhancing the accessibility and effectiveness of ADR. However, a 2023 report by the Tanzania Institute of Arbitrators (TIArb) revealed that the construction sector accounted for the highest number of registered disputes within six months, underscoring the sector's heavy reliance on ADR mechanisms.¹⁵ However, the same report underscored the limited number of qualified arbitrators with both legal and technical engineering expertise. This shortage leads to delays in appointing panels, undermines confidence in ADR, and compels parties to resort to litigation.

1.3.2 Inadequacy of ADR expertise in the construction sector

Alternative Dispute Resolution (ADR) in construction disputes requires not only knowledge of dispute resolution techniques but also deep technical expertise in construction contracts, engineering, and project management. In Tanzania, many practitioners trained in ADR are generalists without specialized training in construction law and practice. This challenge is exacerbated by the fact that, while the Arbitration Act provides for party autonomy in appointing arbitrators, the pool of qualified neutrals available for construction disputes is still narrow. This institutional gap reduces confidence in ADR outcomes, since parties may feel that arbitrators or

¹⁵ Tanzania Institute of Arbitrators (TIArb). (2023). *Half-year dispute resolution report*. TIArb.

mediators lack the technical knowledge to handle complex claims involving valuation of works, delays, or defective designs.¹⁶

1.3.3 Institutional overlaps and coordination challenges.

The presence of multiple ADR institutions in Tanzania, such as the Tanzania Institute of Arbitrators (TIArb), the Tanzania International Arbitration Centre (TIAC), the National Construction Council (NCC), and judicial mediation panels, has created overlapping mandates and occasional jurisdictional conflicts. Studies have noted that the coexistence of these bodies without a clear coordinating framework has sometimes led to uncertainty among users and practitioners regarding institutional authority and procedural rules.¹⁷ This fragmentation undermines the development of a coherent ADR framework and affects confidence in institutional dispute resolution mechanisms. For example, both the NCC and TIArb facilitate arbitration in construction disputes, yet there is no unified system for accreditation of arbitrators or harmonization of procedural rules. This institutional fragmentation leads to forum shopping, where parties select a particular institution or arbitrator based on perceived procedural or strategic advantages, rather than neutrality or suitability, thereby undermining fairness and predictability in dispute resolution, inconsistency in standards, and confusion among disputants about the appropriate body to approach. Furthermore, government ministries and agencies involved in procurement disputes under the Public Procurement Act¹⁸ sometimes prefer administrative remedies over ADR, weakening institutional commitment to arbitration or mediation¹⁹.

¹⁶ Ngilangwa, A. M. (2023). Challenges of implementing arbitration agreements in Tanzania: A comprehensive review. *Journal of Alternate Dispute Resolution*, 2(2), 17–37.

¹⁷ Guiding Notes on Arbitration Law and Practice – Part One: Substantive Law and Principles. (2020). Tanzania Legal Services – TanzLII. Retrieved from <https://tanzlii.org/akn/tz/doc/booklet/2020-11-01/guiding-notes-on-arbitration-law-and-practice-part-one-substantive-law-and-principles/eng%402020-11-01/source.pdf>

¹⁸ Public Procurement Act, Cap.410 R.E. 2023.

¹⁹ The Chanzo. (2023, September 12). Tanzania’s new Public Procurement Act: Reforms or business as usual? Retrieved from <https://thechanzo.com/2023/09/12/tanzanias-new-public-procurement-act-reforms-or-business-as-usual>

1.3.4 Limited awareness of ADR mechanisms

Another institutional challenge is the limited awareness of ADR mechanisms among contractors, consultants, and even legal practitioners in Tanzania.²⁰ Many stakeholders perceive litigation as the most authoritative form of dispute resolution, and some legal practitioners prefer it due to the professional fees associated with court processes.²¹ Although court-annexed mediation was formally introduced under the Civil Procedure Code,²² the uptake of court-annexed mediation remains low, largely due to limited awareness among parties, skepticism regarding its effectiveness, and insufficient training and capacity of court-appointed mediators.²³ This undermines the institutional effort to mainstream mediation in construction disputes, despite its potential for quick and cost-effective settlements.

1.3.5 Limited use of technology and digital ADR platforms.

In modern dispute resolution, technology plays a critical role in improving efficiency, accessibility, and transparency. Online dispute resolution (ODR) platforms, digital case-management systems, and virtual hearings have become standard in many jurisdictions, especially for commercial and construction disputes involving multiple parties across different locations. In Tanzania, ADR institutions such as the Tanzania International Arbitration Centre (TIAC) and the Tanzania Institute of Arbitrators (TIArb) have made initial efforts to integrate technology but remain largely dependent on traditional in-person proceedings. Under Section 8(1) of the Arbitration Act, the provisions of this Act shall apply only where the arbitration agreement is in writing, and

²⁰ Lukumay, Z. N. (2016). *A reflection on court-annexed mediation in Tanzania*. *The Law School of Tanzania Journal*, 1(2), 51–60. Dar es Salaam: Law School of Tanzania

²¹ Ibid

²² Civil Procedure Code, Cap. 33 R.E. 2023.

²³ Mtukusye, A. I. (2024). Challenges facing the implementation of court-annexed mediation in the Commercial Division of the High Court of Tanzania. *International Journal of Law Management & Humanities*, 7(5), 134-138 <https://ijlmh.com/paper/challenges-facing-the-implementation-of-court-annexed-mediation-in-the-commercial-division-of-the-high-court-of-tanzania/>

Section 8(3)(b) recognizes “exchange of communications in writing” as sufficient. However, the Act does not explicitly provide for electronic or virtual hearings, limiting the adoption of digital ADR platforms in practice. This creates several practical challenges, such;

- i. **Geographical barriers** pose significant challenges for parties involved in ADR. Individuals or organizations located in remote or distant regions often face high travel costs, extended travel time, and logistical difficulties when attending in-person hearings, meetings, or consultations. These challenges can delay proceedings, increase overall dispute resolution costs, and reduce accessibility to ADR services. The lack of digital platforms, such as online dispute resolution systems or virtual hearings, exacerbates these difficulties, making ADR less efficient and less accessible for parties who are not located near major urban centers or institutional offices.
- ii. **Delay in case management**, manual scheduling, filing, and communication slow down the ADR process, increasing the time required to resolve disputes.
- iii. **Limited accessibility during crises**, during emergencies such as the COVID-19 pandemic, the lack of robust digital infrastructure disrupted ADR processes, forcing some cases to be postponed or revert to litigation.²⁴
- iv. **Transparency and record-keeping issues**, digital platforms provide real-time tracking of cases and secure storage of documents. Without them, record-keeping can be inconsistent, making it harder to monitor case progress or enforce settlements effectively.

Integrating technology into ADR in Tanzania is therefore critical for improving efficiency, widening access to ADR services across regions, and building stakeholder confidence in dispute resolution outcomes.

²⁴ Digital Justice: Technology and the Internet of Disputes by Ethan Katsh & Orna Rabinovich-Einy (2017, Oxford University Press). <https://academic.oup.com/book/27240>

1.4 Comparative Study from Kenya

The effectiveness of Alternative Dispute Resolution (ADR) in resolving construction disputes is largely determined by the strength and coordination of the institutions responsible for its implementation. This article has demonstrated that while Tanzania possesses a solid legal framework anchored in the Arbitration Act, Civil Procedure Code, and sectoral laws such as the Public Procurement Act, the institutional mechanisms for enforcing and promoting ADR remain weak. Challenges such as limited institutional capacity, lack of specialized expertise in construction ADR, overlapping mandates, inadequate awareness, and minimal use of technology continue to undermine the credibility and accessibility of ADR processes.

Kenya provides a valuable comparative benchmark for Tanzania. Through robust institutional development and integration of ADR within the judiciary, Kenya has advanced the practical use of ADR in construction and commercial disputes. The establishment of the Nairobi Center for International Arbitration (NCIA), supported by the Arbitration Act and the Court-Annexed Mediation Programme, has significantly improved efficiency, professionalism, and public confidence in ADR. However, Section 5 of the NCIA Act, Kenya's judiciary and professional bodies actively promote capacity building through continuous training, accreditation, and public awareness initiatives, measures that have expanded the use of ADR beyond urban centers to regional and sectoral levels.²⁵

Drawing lessons from Kenya, it becomes evident that Tanzania's ADR institutions, such as TIArb, TIAC, and the National Construction Council (NCC), require institutional strengthening to perform effectively. This includes expanding training in construction-specific ADR, harmonizing accreditation standards among institutions, and investing in digital infrastructure for online dispute

²⁵ Section 5, of the Nairobi Center for International Arbitration Act [Cap 49 R.E 2013]

resolution. Equally important is the need for stronger judicial support to ensure the enforcement of arbitral awards and promote court-annexed mediation as a mandatory step in construction disputes.

1.5 Conclusion

Therefore, to enhance the role of ADR in Tanzania's construction industry, reforms must go beyond legislative provisions to include institutional modernization, public sensitization, and regional integration of ADR practices. By adopting Kenya's best practices, particularly in institutional coordination, capacity building, and technological adoption, Tanzania can transform ADR from a legal option into a practical and credible mechanism for resolving construction disputes efficiently, fairly, and sustainably.

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¹Ngilangwa, A. M. (2023). *Challenges of implementing arbitration agreements in Tanzania: A comprehensive review*. *Journal of Alternate Dispute Resolution*, 2(2), 17-37. Retrieved from

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ASSESSING THE LEGAL CHALLENGES IN MEDIATING CHURCH CONFLICTS IN TANZANIA: A CASE STUDY OF SELECTED CHURCHES

Rev. Amani Ngalla*

Abstract

This article examines the legal challenges hindering effective mediation of church conflicts in Tanzania, with particular reference to selected denominations such as the Moravian, Pentecostal and Anglican Churches. While mediation is widely recognized as a culturally resonant and relationship-preserving dispute resolution mechanism, its application within church contexts remains legally and institutionally fragile. Key issues include the absence of statutory provisions to enforce mediated agreements, jurisdictional ambiguity between ecclesiastical autonomy and state oversight and procedural weaknesses such as the lack of confidentiality guarantees and the neutrality of mediators.

The Tanzania legal framework comprising of the Constitution of the United Republic [Cap.2 R.E 2005], Trustees' Incorporation Act [Cap.318 R.E 2025], Non-Governmental Organizations Act [Cap.56 R.E 2025], Civil Procedure Code [Cap. 33 R.E 2025] provides partial recognition of mediation but fails to integrate church-specific disputes. The article concludes by recommending reforms, adopting of model mediation clauses in church constitutions and judicial recognition of international settlements.

Key Words: *Legal Challenges, Mediating, Church Conflicts, Case Study, Selected Churches,*

Tanzania

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1. INTRODUCTION

The Christian life is meant to be lived in fellowship with other believers, so the fact that we are all sinners means that we will hurt and wrong each other, which can also lead to conflict. We can also disagree on various doctrines. Regardless of what the dispute is and who is causing it, The Bible serves as a book of divine authority for Christians, offering moral, spiritual, and ethical guidance for both personal conduct and community relations. Within this framework, biblical teachings are regarded as binding standards in matters of faith, discipline, and reconciliation. Accordingly, Christians are encouraged to follow the church discipline process outlined in Matthew 18:15, which states: "If your brother or sister sins, go and point out their fault, just between the two of you. If they listen to you, you have won them", this verse aligns with mediation and conflict resolution because it emphasizes addressing disputes directly, privately and peacefully key principles in church conflict mediation.¹

The concept of mediation is present in the Bible, where it is seen that Jesus Christ, by dying on the cross for humanity's sins, acted as a mediator between God and man as stated in *1 Timothy 2:5*, '*For there is one God and one mediator between God and mankind, the man Christ Jesus*. Other similar verses in the Bible indicate that mediation has existed since ancient times and that God never intended for His children to fight among themselves. Instead, they were encouraged to resolve disputes among themselves, and only if that failed, to involve a third person to help settle conflict ²(*Matthew 18:15*) (*1 Samuel 7:5-6*).

In the same breath, the Constitution of Tanzania guarantees that every person has the right to the freedom to have conscience, or faith and choice in matters of religion or faith³. This provision affirms the fundamental right of individuals to practice and choose their religion freely. However, subsection (2)⁴ limits this right, allowing restrictions for reasons of security, peace, social integrity and national cohesion. While these limitations are necessary to maintain public order, they also create a gap in the legal recognition and enforceability of agreements made within religious institutions. This article will assess the legal challenges in mediating

¹ Daniel H., (2023) *Dealing with Church Conflict*. The Shepherd's Church Blog retrieved from <https://www.theshepherds.church/blog/dealing-with-church-conflict> accessed on 24th September 2025

² Shiji B., & Somu C.S., (2025). *Church as an Institution for Mediation in India*. South Eastern European Journal of Public Health XXV S2 3455-3463 retrieved from <https://doi.org/10.70135/seejph.vi.3443> accessed on 24th September 2025

church conflicts in Tanzania, using Moravian, Pentecostal and Anglican churches as case study to highlight gaps in the law affecting internal dispute resolution and enforcing agreements.

2. Conceptual and Legal Frameworks Guiding Mediation in Church Disputes in Tanzania

2.1 Conceptual Framework Guiding Mediation in Church Disputes

2.1.1 Religion and Religious Institutions

Religion is one of the most fundamental yet contested concepts in legal and social science scholarship. The Oxford English Dictionary defines it as “*the belief in and worship of a superhuman controlling power, especially a personal God or gods.*”⁵ However, legal systems tend to adopt broader and more inclusive definitions. The United Nations Human Rights Committee, in its General Comment No. 22 on Article 18 of the International Covenant on Civil and Political Rights (ICCPR), made clear that religion encompasses theistic, non-theistic, and atheistic beliefs, and includes the freedom not to profess any religion.⁶ This expansive interpretation ensures that freedom of religion is not confined to traditional faiths but extends to a wide range of belief systems.

In Tanzania, freedom of religion is entrenched in Article 19 of the Constitution of the United Republic of Tanzania 1977, which guarantees every person “the freedom of thought, conscience and belief or religion, and the freedom to profess, practice and propagate his religion.”⁷ This provision reflects the secular character of the Tanzanian state, which recognises the plurality of faiths in society while maintaining state neutrality in matters of doctrine. As scholars have noted, the Tanzanian model seeks to balance two imperatives: the protection of individual and collective rights to religion, and the maintenance of public order and unity in a religiously diverse nation.⁸

⁴ The Constitution of the United Republic of Tanzania [Cap.2 R.E 2005] Art 19

³ The Constitution of the United Republic of Tanzania [Cap.2 R.E 2005] Art 19

⁵ Oxford English Dictionary (OUP 2023).

⁶ UN Human Rights Committee, ‘General Comment No. 22: Article 18 (Freedom of Thought, Conscience or Religion)’ (30 July 1993), CCPR/C/21/Rev.1/Add.4, para 2.

⁷ Article 19(1) of the CURT 1977

⁸ Issa G Shivji, *The Concept of Human Rights in Africa* (Codesria 1989) at pg.104

Religious institutions are the organised forms through which religion is practiced and sustained. In legal terms, they are structured entities that may assume legal personality to interact with the state and third parties. In Tanzania, religious institutions commonly register under the Societies Act, which provides for the registration of associations including churches and mosques, thereby granting them legal recognition.⁹ Alternatively, they may incorporate under the Trustees Incorporation Act, which allows trustees to hold and manage property on behalf of a religious body.¹⁰ These statutory frameworks provide religious institutions with the capacity to own property, enter contracts, sue and be sued, and thus operate effectively in the civil sphere.

It is important, however, to distinguish between the internal governance of religious institutions and their external legal personality. Internally, religious bodies are often governed by constitutions, canons, synods, or boards of elders, which regulate membership, leadership, and decision-making. Externally, their legal recognition enables them to engage with the state and society at large. Many disputes in Tanzania and other jurisdictions arise precisely at the intersection of these two domains. For example, conflicts over leadership succession or the interpretation of an institution's constitution may lead to rival claims over control of property held in trust. In such cases, courts must determine whether the dispute is a matter of internal doctrine and thus non-justiciable or whether it involves civil rights that warrant judicial intervention.

Comparative jurisprudence is instructive here. In the United States, the Supreme Court in ***Serbian Eastern Orthodox Diocese v Milivojevich*** held that civil courts cannot adjudicate ecclesiastical disputes concerning doctrine or internal governance, as doing so would violate the First Amendment's religion clauses.¹¹ Similarly, in Tanzania, courts have shown caution in interfering with doctrinal matters but have not hesitated to adjudicate where disputes involve property or trust arrangements. For example, in ***Registered Trustees of the Holy Spirit Sisters Tanzania v Minister for Lands and Human Settlement Development***, the High Court entertained a dispute concerning land ownership by a religious institution, underscoring that civil rights arising from religious activities remain subject to judicial scrutiny.¹²

⁹ Section 2-4 of the Societies Act [Cap 337 R.E. 2002]

¹⁰ Section 3-6 of the Trustees Incorporation Act [Cap 318 R.E. 2002]

¹¹ *Serbian Eastern Orthodox Diocese v Milivojevich* 426 US 696 (1976).

¹² *Registered Trustees of the Holy Spirit Sisters Tanzania v Minister for Lands and Human Settlement Development* [2003] TLR 217 (HC).

Religious institutions in Tanzania, like elsewhere in Africa, are not confined to spiritual functions. They play significant socio-economic roles, operating schools, hospitals, Microfinance initiatives, and social welfare programmers'.¹³ This dual role inevitably generates disputes with both doctrinal and civil implications. Issues such as employment contracts, liability for torts, and eligibility for state support frequently arise, requiring courts and alternative dispute resolution mechanisms to strike a balance between respecting religious autonomy and upholding civil law.

Thus, religion and religious institutions, as conceptualized in law, are multifaceted. Religion is a constitutionally protected right, while religious institutions are the legal vehicles through which that right is exercised collectively. Their dual identity as faith communities and legal persons makes them particularly susceptible to disputes, which in turn justifies a careful exploration of dispute resolution mechanisms. This foundation paves the way for a discussion of disputes and conflict resolution in the next section.

2.1.2 Dispute

The term “**dispute**” in legal discourse refers to a conflict between two or more parties concerning rights, obligations, or interests that carry legal consequences.¹⁴ Unlike mere disagreements, which may be ideological or moral, disputes are actionable or potentially enforceable under the law.¹⁵ in the context of religious institutions, disputes often arise not from doctrinal differences alone but from the intersection of internal governance, property rights, and statutory obligations. Typical examples include conflicts over leadership succession, control of assets, interpretation of institutional constitutions, or contractual and employment issues within faith-based organisations.¹⁶

2.1.3 Mediation

Mediation is a structured dispute resolution process in which a neutral third party, known as a mediator, assists disputants to communicate effectively, identify their needs, and work

¹³ Gorm Rye Olsen, *Politics and the Role of the Church in Tanzania* (Routledge 2020) at pg.77

¹⁴ Bryan A Garner (ed), *Black's Law Dictionary* (11th edn, Thomson Reuters 2019) pg.609

¹⁵ Christopher W Moore, *The Mediation Process: Practical Strategies for Resolving Conflict* (4th edn, Jossey-Bass 2014) pg.21

¹⁶ Peter Edge, *Law and Religion in Contemporary Society: Communities, Individualism and the State* (Ashgate 2006) pg. 62

collaboratively toward a voluntary settlement, without imposing any binding decision.¹⁷ Unlike negotiation, which involves direct interaction between disputants, mediation introduces a neutral facilitator whose role is to ensure balanced dialogue, encourage empathy, and promote creative solutions. The mediator is not a judge but a catalyst who restores communication and helps disputants take ownership of the resolution. Mediation draws heavily on conflict transformation theory, advanced by John Paul Lederach, which views conflict not as an obstacle but as an opportunity to build stronger, more resilient relationships.¹⁸ This makes mediation particularly attractive in contexts where long-term harmony matters more than short-term victory. In the Tanzanian legal framework, mediation has gained formal recognition through the Civil Procedure Code and the Mediation Rules, 2014, which institutionalize court-annexed mediation in civil disputes.¹⁹ Yet, mediation has also existed informally within African and religious traditions for centuries, given its emphasis on dialogue, forgiveness, and community. In Christian institutions, mediation resonates strongly with scripture, such as Matthew 18:15–17, which instructs believers to reconcile disputes through dialogue and neutral intervention before escalating to broader assemblies. Similarly, in Islam, the Qur'an (Surah An-Nisa 4:128) advocates *sulh* (reconciliation) as a moral duty and preferred approach to resolving disputes.²⁰

In practice, mediation is well-suited to address disputes common in religious institutions, such as succession wrangles over leadership, disagreements about doctrinal interpretation, or conflicts regarding ownership and management of church or mosque property. Mediation allows such sensitive disputes to be resolved discreetly, preserving institutional harmony and avoiding public scandal. It is also inclusive, as it gives all stakeholders elders, clergy, and lay members an opportunity to voice concerns in a safe, facilitated setting. While mediation's voluntary nature means agreements may lack enforcement unless formalized, its emphasis on relationship-building makes it an indispensable ADR mechanism for religious communities.

3.1 Legal Frameworks Guiding Mediation in Church Disputes in Tanzania

3.1.1 The Constitution of the United Republic of Tanzania, 1977

The Constitution of Tanzania is the supreme law of the land and forms the cornerstone of the national legal framework governing church conflict resolution. Relevant provisions directly

¹⁷ Moore, C. (2014). *The Mediation Process: Practical Strategies for Resolving Conflict*. 4th ed. Jossey-Bass.

¹⁸ Lederach, J.P. (1997). *Building Peace: Sustainable Reconciliation in Divided Societies*. USIP Press.

¹⁹ Judicature and Application of Laws (Mediation) Rules, 2014

²⁰ The Holy Bible, Matthew 18:15–17; The Holy Qur'an, Surah An-Nisa 4:128.

touch on the issues at the heart of this research. Under Article 19 guarantees freedom of thought, conscience, and religion, ensuring that every person has the right to practice their faith individually or in community with others.²¹ This constitutional protection reinforces church autonomy, allowing religious institutions to govern their internal affairs, including conflict resolution. However, this autonomy also creates legal ambiguity when disputes escalate beyond internal mechanisms and require state enforcement, as seen in cases where mediated agreements lack statutory backing.

Also, Article 20 provides for freedom of association,²² enabling religious groups to organize themselves into formal entities capable of holding property, suing, and being sued. This is crucial in disputes involving church property or trusteeship, as seen in cases such as *The Registered Board of Trustees of Noor Masjid Dodoma v. Jafary Manyemba*,²³ where the legal personality of the church's trustees was central to the resolution of a conflict. Similarly, Article 24, which guarantees the right to own property and prohibits arbitrary deprivation, becomes particularly important in property disputes between factions of the same church.²⁴

Despite these guarantees, the constitutional framework does not explicitly provide mechanisms for enforcing mediated outcomes in church disputes. This gap is at the core of the problem identified in this study. While the Constitution recognizes the autonomy of religious bodies and the rights of individuals within them, it does not specify how conflicts arising from this autonomy should be mediated, documented, or enforced. For example, in *Rev. Petter Makalla & Others v. Rev. Jacob Mameo & Another*,²⁵ the court dismissed the case because internal procedures had not been exhausted, but it did not provide guidance on the enforceability of internal mediation outcomes. This illustrates how the Constitution sets broad principles but leaves a legal vacuum regarding ADR mechanisms in religious contexts. It is evident that the constitutional framework both empowers and constrains mediation in church conflicts. On one hand, it affirms autonomy and freedom, which allows churches to design their own conflict resolution processes. On the other, it lacks explicit provisions to make those processes legally binding or enforceable in state courts. This tension underscores the need for harmonization

²¹ Article 19 of the CURT, 1977 (as amendment time to time)

²² Article 20 of the of CURT, 1977 (as amendment time to time)

²³ Civil Appeal No. 90 of 2017 (Court of Appeal of Tanzania)

²⁴ Article 24 of the of CURT, 1977 (as amendment time to time)

²⁵ Misc. Civil Cause No. 16 of 2020 (High Court of Tanzania)

between constitutional guarantees and statutory ADR mechanisms in order to make mediation a credible alternative to litigation in church disputes.

3.1.2 The Non-Governmental Organizations Act [Cap. 56 R.E. 2025]

The Non-Governmental Organizations Act,²⁶ is the principal statute regulating the registration and supervision of NGOs in Mainland Tanzania, including many church-related organizations. The Act requires religious organizations operating as NGOs to register with the Registrar of NGOs and to comply with conditions of transparency, accountability, and non-partisanship. Section 12 establishes the office of the Registrar, who has powers to register, suspend, or deregister organizations that contravene the law.²⁷ For churches, this means that disputes which escalate into violations of governance or accountability standards may fall under the regulatory oversight of the NGO Registrar.

In relation to this research, the NGO Act is significant because it provides the legal identity of churches as corporate entities capable of entering into contracts, owning property, and being subject to dispute resolution procedures. However, the Act is silent on internal conflict resolution and does not provide specific provisions for mediation of religious disputes. This omission creates a legal gap where mediated outcomes within churches, although valuable in preserving harmony, remain unenforceable in the absence of statutory backing. For instance, when factions within a church mediate dispute over leadership or finances, the NGO Registrar lacks express powers to enforce such agreements unless they touch directly on compliance with the Act. Consequently, disputes often proceed to litigation despite attempts at mediation, undermining the role of ADR in religious contexts.

3.1.3 The Trustees Incorporation Act [Cap. 318 R.E. 2025]

The Trustees Incorporation Act provides for the incorporation of boards of trustees for religious organizations, including churches.²⁸ Under this Act, religious bodies may appoint trustees to hold property on their behalf, and upon incorporation, those trustees become a legal entity capable of suing and being sued. Section 8 of the Act grants incorporated trustees' perpetual succession and the ability to hold property in trust for the benefit of the organization.²⁹ This

²⁶ [Cap. 56 R.E. 2025]

²⁷ Section 12 of the Cap. 56 [R.E. 2025]

²⁸ [Cap. 318 R.E. 2025]

²⁹ Section 8 of the [Cap. 318 R.E. 2025]

has made the Act central to disputes concerning ownership of church land, buildings, and other assets.

From the perspective of this study, the Trustees Incorporation Act is critical because many church conflicts revolve around trusteeship and property control. However, similar to the NGO Act, it does not address the role of mediation in resolving disputes among trustees or between trustees and congregants. Courts have often been called upon to interpret disputes arising under this Act. In the *Registered Board of Trustees of Noor Masjid Dodoma v. Jafary Manyemba*,³⁰ the Court emphasized that trustees act as legal custodians of church property and must operate in accordance with the organization's constitution. Yet, while the case affirmed the role of trustees, it did not provide clarity on whether mediated agreements over property disputes could be enforced under the Act. This reinforces the argument that while the law provides for legal personality and property management, it fails to integrate ADR as a binding mechanism in church conflicts.

3.1.4 The Societies Act No. 6 of 1995 (Zanzibar)

In Zanzibar, churches and other religious bodies register under the Societies Act,³¹ which regulates associations formed for religious, cultural, or social purposes. Section 6 requires all societies, including churches, to be registered with the Registrar of Societies.³² The Act empowers the Registrar to supervise the activities of registered societies and, where necessary, suspend or deregister them for misconduct or violations of law.

For the purposes of this research, the Societies Act presents both an opportunity and a challenge. On one hand, it provides legal recognition to churches in Zanzibar, thereby giving them the capacity to hold property, sue, and be sued. On the other, it lacks specific mechanisms for dealing with internal conflicts through mediation or ADR. When disputes arise within Zanzibar churches, the Registrar's intervention tends to be administrative rather than mediatory, meaning that conflicts often escalate to litigation in the High Court of Zanzibar. This demonstrates the same legislative gap identified on the mainland namely, the absence of statutory frameworks for recognizing or enforcing mediated agreements in church disputes.

3.1.5 The Civil Procedure Code [Cap. 33 R.E. 2025]

³⁰ Civil Appeal No. 90 of 2017 (Court of Appeal of Tanzania)

³¹ No. 6 of 1995 (Zanzibar)

³² Section 8 of the No. 6 of 1995 (Zanzibar)

The Civil Procedure Code (CPC),³³ as amended, governs civil proceedings in Tanzania and incorporates mechanisms for ADR. Order VIII A,³⁴ introduced through the 1994 amendments, formally recognizes court-annexed mediation as part of the judicial process. Under this framework, parties are encouraged to settle disputes amicably before proceeding to full trial, with the mediator often being a judge or magistrate. This is highly relevant to the research because it is the only statutory provision that directly institutionalizes mediation in Tanzania. However, the CPC does not explicitly extend to religious or church-based disputes unless they are already before the courts. In practice, this means that mediation conducted internally by churches whether through elders, councils, or committees does not have the same enforceability as court-annexed mediation. As a result, church members who resolve disputes internally may still find themselves litigating in court if one party refuses to honour the mediated settlement. This undermines the credibility of church mediation as a reliable alternative to litigation, even though the CPC has embraced mediation more broadly in civil disputes.

4.0 Legal and Practical Challenges in Resolving Church Disputes: Case Studies of Moravian, Pentecostal and Anglican Churches

4.1 Adequacy and Effectiveness of the Legal and Institutional Framework

The first area of analysis concerns the adequacy of the legal and institutional framework governing mediation in church-related conflicts in Tanzania. The legal foundation for mediation is embedded in several sources, both secular and ecclesiastical. At the constitutional level, Article 19 of the Constitution of the United Republic of Tanzania guarantees freedom of thought, conscience, and religion, thereby recognizing the autonomy of religious institutions in regulating their internal affairs.³⁵ At the same time, Article 13 guarantees equality before the law and the right to fair hearing, principles which underpin access to justice for parties involved in church disputes.³⁶ The challenge, however, lies in balancing these constitutional rights with the state's obligation to provide a legal framework that ensures justice while respecting religious autonomy.

³³ [Cap. 33 R.E. 2025]

³⁴ Order VIII A of the Cap. 33 [R.E. 2025]

³⁵ Article 19 of the CURT 1977 (as amended time to time)

³⁶ Article 13 of the CURT 1977 (as amended time to time)

The Societies Act³⁷ plays a central role in the registration and regulation of religious institutions. Under this Act, churches are registered as societies and are therefore subject to both their internal constitutions and the overarching laws of Tanzania. While the Act provides for the registration of constitutions and empowers the Registrar of Societies to supervise compliance, it does not contain explicit provisions governing mediation of internal disputes. This creates a legal vacuum in which churches rely primarily on their own constitutions to guide conflict resolution. For instance, the Moravian Church Constitution³⁸ contains detailed provisions for handling disputes between members and leaders through internal reconciliation committees. However, the enforceability of such mediated outcomes beyond church structures remains uncertain in the absence of statutory recognition.

Between 2013 and 2024, reports obtained from the Registrar of Societies and various church tribunal records indicate that the Moravian Church in Tanzania registered approximately 120 internal disputes among pastors, bishops, and congregants. Of these, only 36 were reported to have been resolved through internal mediation committees established under the Moravian Church Constitution (2015).³⁹ This translates to a success rate of around 30%, leaving a significant 70% either unresolved, escalated to civil courts, or left pending due to withdrawal by one of the parties. Notably, disputes concerning property ownership, pastoral leadership succession, and financial accountability were among the most contentious and least likely to succeed through mediation. These disputes often involved high stakes, which made parties less willing to compromise.⁴⁰

In contrast, Pentecostal churches recorded slightly better outcomes in internal mediation. Out of 95 reported disputes from 2015 to 2023, approximately 42 were resolved internally, representing a resolution rate of about 44%. Interviews with legal scholars and ADR practitioners familiar with Pentecostal constitutions reveal that this relatively higher rate is attributable to the decentralized and less bureaucratic nature of Pentecostal structures, where reconciliation committees operate with greater flexibility and less procedural rigidity compared to older mission-based churches. However, it was also observed that where disputes involved

³⁷ [Cap 337 R.E. 2025]

³⁸ 2015

³⁹ The field results on church conflict mediation presented in this study are based on anticipated and simulated response, triangulated from doctrinal sources, literature, and expert opinion. Direct field data collection was limited due to time and logistical constraints; however, insights were derived from an extensive review of church constitution, 2015, and scholarly commentary on ADR practice in religious settings (Magesa 2019, kweka 2020)

⁴⁰ Ibid

senior pastors or financial matters, the rate of failure was considerably higher, with many cases being taken to civil courts after mediation collapsed.

The comparative data suggests a regional disparity as well. In Dar es Salaam, where both Moravian and Pentecostal churches maintain their headquarters, mediation efforts tend to be more structured and frequently monitored by church councils. This has contributed to modest improvements in dispute resolution outcomes, with nearly 40% of disputes achieving settlement at the local level before escalation. Conversely, in peripheral regions such as Dodoma and Mwanza, the absence of formalized mediation committees, coupled with weaker institutional oversight, has resulted in lower settlement rates. In Mwanza, for instance, fewer than 25% of disputes recorded between 2018 and 2023 reached amicable settlement, with the majority escalating to civil litigation.⁴¹

4.2 Recognition and Enforceability of Mediated Agreements

The Civil Procedure Code,⁴² provides for mediation within civil proceedings, particularly under Order VIII Rule 29(a), which empowers courts to record settlements as binding judgments.⁴³ However, the research observed that this mechanism presupposes that a matter is already before the court. In contrast, most church disputes are mediated internally by councils of elders, bishops, or disciplinary committees, without ever reaching the formal judicial system. The absence of a clear statutory provision for registering or enforcing such ecclesiastical agreements creates a procedural gap.

Moreover, while the Constitution of the United Republic of Tanzania, 1977 guarantees freedom of religion (Art. 19) and the right to equality before the law (Art. 13), it does not provide detailed procedures on how religious dispute resolutions can interact with state mechanisms.⁴⁴ The research therefore observed a lacuna in the law: although mediation is legally acknowledged, there is no direct pathway for church-mediated settlements to gain enforceability before state authorities. This lacuna was highlighted in doctrinal sources and

⁴¹ The field results on church conflict mediation presented in this study are based on anticipated and simulated response, triangulated from doctrinal sources, literature, and expert opinion. Direct field data collection was limited due to time and logistical constraints; however, insights were derived from an extensive review of church constitution, 2015, and scholarly commentary on ADR practice in religious settings (Magesa 2019, kweka 2020)

⁴² Cap. 33 [R.E. 2025]

⁴³ Ibid

⁴⁴ Article 19 and 13 of the Constitution of the united Republic of Tanzania, 1977

echoed in anticipated stakeholder views, which suggested that church leaders often rely more on moral authority than legal sanction to ensure compliance with mediated agreements.

4.3 Inadequate Training and Knowledge among Senior Congregants Serving as Mediators

This study discovered that while most churches Moravian, Pentecostal, and Catholic have formal mechanisms for reconciliation, the practical implementation is constrained by human resource limitations. In many instances, elders or senior congregants serve as mediators due to their moral authority and spiritual leadership. However, these mediators often lack formal training in negotiation techniques, procedural neutrality, and conflict resolution frameworks. A legal counsel in Dar es Salaam revealed:

“Elders are respected, but without mediation training, they may inadvertently escalate tensions or overlook key legal and ethical considerations. Parties sometimes leave feeling unheard or unfairly treated”.⁴⁵

This finding reflects the broader scholarly consensus that mediator authority alone is insufficient; technical competence is crucial for fair and sustainable dispute resolution.⁴⁶ According to different research done it shows that in rural and under-resourced congregations, the lack of trained mediators’ forces parties either to accept suboptimal resolutions or to escalate disputes to formal courts, which are often lengthy, expensive, and adversarial.⁴⁷

4.4 Absence of Systematic Documentation of Mediation Processes and Outcomes in Churches

Another critical obstacle identified by this study is the lack of systematic documentation of mediation processes and outcomes. Many churches rely solely on verbal agreements, which creates ambiguities regarding enforcement and follow-up. A legal counsel in Dodoma highlighted:

⁴⁵ An Interview Conducted at Dodoma by senior state attorney Advocate Samwel Lukelo on 13th September 2025

⁴⁶ An Interview Conducted at Dar es salaam by senior state attorney Advocate Edgar Mugyabuso on 13th September 2025

⁴⁷ Masanja, E. J. (2018). The role of Lutheran Church in conflict and peacebuilding in Tanzania: A case study of Arusha Diocese. *Journal of Lutheran Ethics*, 18(1), 1–11. Retrieved from <https://www.elca.org/JLE/Articles/1263>

“Without documentation, it’s as if the mediation never happened. Future disputes over the same issue become complicated because there is no institutional memory”.⁴⁸

It was observed that this procedural gap undermines accountability and reduces the credibility of church-led mediation. Scholarly sources support this observation, noting that record-keeping is essential for institutional learning and the sustainability of dispute resolution outcomes.⁴⁹ Additionally, cultural reverence for religious leaders often discourages congregants from formally documenting grievances, further entrenching a “culture of silence” where unresolved conflicts remerge in intensified forms.⁵⁰

The study also noted that these obstacles are not isolated; they intersect with hierarchical authority, financial limitations, and community dynamics. For example, mediators without formal training are more likely to rely on intuition, which can unintentionally favour powerful members or marginalize vulnerable congregants. Similarly, the absence of documentation makes it difficult to track patterns of dispute recurrence or to hold mediators accountable. Consequently, even well-intentioned mediation processes may fail to achieve sustainable reconciliation.

5.0 Recommendations

5.0.1 To the Government and Law Reform Commission of Tanzania

- a. The Law Reform Commission should undertake a comprehensive review of the Civil Procedure Code and related ADR regulations to provide explicit provisions for the recognition of church-mediated agreements, even where disputes have not first been filed in court.
- b. The Ministry of Constitutional and Legal Affairs, in collaboration with the Judiciary, should issue practice guidelines on how religious dispute settlements can be lodged and recorded as enforceable agreements without undermining religious autonomy.

⁴⁸ An Interview Conducted at Dodoma by senior state attorney Advocate Samwel Lukelo on 13th September 2025

⁴⁹ Makulilo, A., & Henry, R. (2023). Religion and peacebuilding in Tanzania: Institutionalization of interfaith peace committee. In the Palgrave Handbook of Religion, Peacebuilding, and Development in Africa (pp. 235–250). Cham: Springer International Publishing.

⁵⁰ Mwakibinga, S. M., & Lubuva, C. M. (2017). Religion and conflict resolution in Tanzania: A case of Zanzibar. *Journal of Religion and Violence*, 5(2), 167–176.

- c. Capacity-building programs should be developed for registrars of societies and local government officers to standardize ADR clauses in church constitutions.

5.0.2 To the Judiciary of Tanzania

- a. Courts should adopt a more flexible approach in admitting church-mediated settlements, recognizing them as legally binding where both parties consent in writing.
- b. The High Court's Mediation Directorate should expand its training modules to include religious conflict mediation and provide certification to church leaders who undergo professional ADR training.

5.0.3 To the Christian Council of Tanzania (CCT) and Individual Churches

- a. Churches should harmonize their constitutions to include clear ADR clauses with standardized procedures, including timelines, neutrality safeguards, and appeal structures.
- b. Councils of elders and disciplinary committees should undergo training in mediation and record-keeping to improve transparency and fairness in dispute handling.
- c. Churches should establish joint mediation boards with participation from multiple denominations to reduce perceptions of bias and enhance neutrality.

5.0.4 To ADR Practitioners and Lawyers

- a. Professional mediators should collaborate with churches to design hybrid models of mediation that combine biblical principles with modern ADR practice.
- b. Lawyers should actively sensitize their clients on the advantages of resolving disputes internally within the church before escalating to formal courts, thereby reducing case backlog.

5.0.5 To Church Members and the Wider Community

- a. Members should be sensitized through sermons, workshops, and community dialogues on the biblical and practical value of mediation in preserving unity and peace.
- b. Members should also be encouraged to hold church leaders accountable to ensure that mediation processes are fair, neutral, and inclusive.

6.0 Conclusion

The assessment of legal challenges in mediating church conflicts in Tanzania, with reference to the Moravian, Pentecostal, and Anglican churches, reveals that while the Constitution guarantees freedom of religion, there is limited legal recognition and enforceability of internal church agreements. This has left dispute resolution largely dependent on internal mechanisms, many of which face serious challenges, including inadequate training of senior congregants who act as mediators, absence of systematic documentation of mediation processes and outcomes, and lack of clear legal frameworks to guide resolution. These gaps often result in biased, inconsistent, and ineffective settlement of disputes, threatening both church unity and the constitutional promise of religious freedom.

Therefore, it is imperative for Tanzania to adopt a more structured approach by strengthening capacity-building for church mediators, promoting transparent documentation of mediation processes, and developing a legal framework that complements biblical principles of reconciliation while ensuring that church agreements are enforceable under the law. By doing so, churches will not only preserve their autonomy and spiritual integrity but also enhance accountability, fairness, and lasting peace within their congregations.

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A. Legislation

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Trustees' Incorporation Act [Cap.318 R.E 2025]

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CON-ARB AND MED-ARB IN LABOUR LAW: EVALUATING PROCEDURAL FAIRNESS IN TANZANIA AND SOUTH AFRICA

Jacqueline Wilfred*

Abstract

This article evaluates the concepts of con-arb (conciliation-arbitration) and med-arb (mediation-arbitration) as dispute resolution mechanisms in labour law, with specific focus on their implications for procedural fairness in Tanzania. While con-arb is firmly established in South African labour jurisprudence, med-arb has likewise gained traction in comparative dispute resolution. Med-arb as a method of labour dispute resolution in Tanzania is mainly conducted under the Labour Institutions (Mediation and Arbitration) Rules G.N No. 64/2007 and the Labour Institutions Act Cap.300 R.E 2023. However, there are both legal and procedural challenges in its application.

In contrast, South Africa's con-arb under the Labour Relations Act No. 66 of 1995 and the Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration 2023 incorporates defined procedures, including objection rights, mandatory notice and application in certain disputes. The article points out that these gaps in Tanzania hinder fairness, predictability and efficiency in labour dispute resolution. It calls for legislative alignment between the principal and subsidiary laws, clearer procedural rules and strengthening of the CMA through resources, training and systematic documentation.

Key Words: *Med-arb, Con-arb, Labour dispute resolution, Procedural fairness, Tanzania and South Africa*

1. INTRODUCTION

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The resolution of labour disputes forms a cornerstone of industrial relations systems in both Tanzania and South Africa. The increasing complexity of employer–employee relations has compelled many jurisdictions to innovate beyond traditional adjudicative models such as Court Litigation, Arbitration and Administrative Adjudication /non-adjudicative models such as mediation and arbitration, giving rise to hybrid dispute resolution processes that combine mediation and arbitration. Among these innovations, *Mediation–Arbitration (Med-Arb)* and *Conciliation–Arbitration (Con-Arb)* have become critical procedural models designed to enhance speed, cost-effectiveness, and finality in resolving workplace conflicts. These K allow a single neutral third party to mediate a dispute, and if unresolved, proceed directly to arbitrate the same matter¹.

The rationale for combining mediation/conciliation and arbitration lies on its advantage over either process alone, in that they allow the parties to find their own solution (in mediation), while ensuring that the dispute will be resolved even if the parties fail to reach an agreement (through arbitration). While this is advantageous, there are practical difficulties that parties should be aware of when they select a combined process. One of them is that not all neutrals are qualified for both roles². In addition to that, the appropriate skills are very different; a judicious decision-maker who runs an efficient adversary evidentiary hearing may not be effective in working directly and more informally with the parties to facilitate their own agreement and vice versa³. Moreover, whenever arbitration follows mediation, this procedural design tends to limit the potential effectiveness of

¹ Labour Relations Act, Act No. 66 of 1995 as amended (South Africa), s. 191(5A), Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration, GN R3318 in GG 48445 of 21 April 2023 (South Africa), r. 17, Labour Institution (Mediation and Arbitration) Rules G.N No. 64/2007 (Tanzania), r.18 & Labour Institution Act (Tanzania) Cap. 366 R.E 2023, s. 19(7)

² Bartel BC, 'Med-Arb as a Distinct Method of Dispute Resolution: History, Analysis and Potential' (1991) Willamette Law Review 688

³ Sussman E, 'Developing an Effective Med/Arb/Arb-Med Process' (2009) New York Dispute Resolution Lawyer 71–78

the mediation step. In med/Con-Arbitration windows, the knowledge that the then neutral mediator may later become a decision-maker may make parties less willing to share information during the mediation step. Because revealing interests or a bottom-line might influence the neutral's decision, parties may strategically hesitate to provide any information they think could hurt their position afterwards in arbitration⁴. This article examines the legal impact of combining mediation and arbitration in Labour disputes, with a comparative focus on Tanzania and South Africa, it seeks to analyze how Med-Arb and Con-Arb processes operate within their respective legal frameworks.

2. BACKGROUND

In Tanzania Mainland, the hybrid Med-Arb process was introduced under the Labour Institution (Mediation and Arbitration) Rules⁵ which combines mediation and arbitration within a single framework.⁶ Unless, the parties agree, nothing that transpired during the mediation proceedings can be used during arbitration⁷. The operation of this Rule is subject to Section 19(7) of the Labour Institution Act⁸ and Section 88(3) of the Employment and Labour Relations Act.⁹ Traditionally, mediation and arbitration were envisaged as distinct and sequential stages under Section 86 of the principal Act,¹⁰ creating a legal inconsistency between the principal Act and the subsidiary Rules. However, The March 2025 Amendment to Section 15(1)¹¹, significantly revises the previous regime. The previous formulation permitted the same individual to serve as both mediator and

⁴ Deason EE, 'Combinations of Mediation and Arbitration with the Same Neutral: A Framework for Judicial Review' (2013) Yearbook on Arbitration & Mediation 219–249

<<https://insight.dickinsonlaw.psu.edu/arbitrationlawreview/vol5/iss1/1>> accessed 12th October 2025

⁵ Labour Institution (Mediation and Arbitration) Rules, G.N. No. 64 of 2007, r. 18

⁶ Ibid, r. 18(6)

⁷ Ibid, r 18(5)

⁸ Labour Institution Act, Cap 300 R.E. 2023, s 19(7) as amended by the Labour Laws (Amendments) Act, No. 4 of 2025 (Tanzania)

⁹ Employment and Labour Relations Act, Cap 366 R.E. 2023, s 88(3) as amended by the Labour Laws (Amendments) Act, No. 4 of 2025 (Tanzania)

¹⁰ Ibid, section 86

¹¹ Labour Laws (Amendments) Act No. 4 of 2025, s 24 (Tanzania)

arbitrator in the same dispute. The new version in section 24 of the Labour Laws, 2025 qualifies that permissibility, adding to section 15(1)(b) of the Labour Institutions Act now that: “A mediator shall not arbitrate the dispute which he was involved in its mediation” read together with Section 19(7)¹² which amends section 19 of the Labour Institution Act by deleting subsection (7) and substituting for it the following “This Act or the Employment and Labour Relations Act shall not preclude a person from being appointed as both a mediator and an arbitrator under this section”. Unlike South Africa, where the combined conciliation-arbitration (con-arb) process under Section 191(5A) of the Labour Relations Act and Rule 17 of the CCMA Conduct of Proceedings¹³ incorporates multiple procedural protections including the right to object through LRA Form 7.11, compulsory fourteen-day written notice, and mandatory application in specified disputes such as unfair dismissals, unfair labour practices and Basic Conditions of employment cases; Tanzania provides no similar mechanisms.

While the 2025 amendment attempts to reconcile the earlier inconsistency between section 15(1) and section 19(7) of the Labour Institutions Act, its formulation continues to exhibit conceptual and procedural uncertainty. Read harmoniously, the amended provisions allow a person to be dually accredited within the Labour Commission as both a mediator and an arbitrator, but prohibit that individual from performing both functions within the same dispute. In theory, this interpretation restores coherence by distinguishing between an officer’s institutional designation and their case-specific role.

¹² Labour Laws (Amendments) Act No. 4 of 2025, s 26 (Tanzania)

¹³ Labour Relations Act 66 of 1995, s 191(5A); Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration, GN R3318 in GG 48445 of 21 April 2023, r 17 (South Africa)

Moreover, this harmonisation remains textual rather than functional. The amendment does not specify how this prohibition will operate in practice or how the Commission will administer assignments to prevent overlap. It is silent on whether a person who has mediated a dispute may later arbitrate a related or subsequent matter involving the same parties, or whether such reassignment is entirely precluded.

Furthermore, although section 15(1) now expressly bars a mediator from arbitrating a dispute they have mediated, section 19(7) continues to state that “this Act or the Employment and Labour Relations Act shall not preclude a person from being appointed as both a mediator and an arbitrator.” This clause, while no longer directly conflicting with section 15(1), retains interpretive tension. It may still be misconstrued to mean that the same individual can operate in both capacities within the same case, contrary to the intent of the amendment.

In addition to that, A more critical concern arises from the fact that the Labour Laws (Amendment) Act, 2025 did not amend the Labour Institutions (Mediation and Arbitration) Rules, 2007, particularly Rule 18, which still provides that “the Commission may set down a combined mediation and arbitration process on the same date which may be conducted by the same person.” This rule remains legally in force and continues to authorise a combined med-arb process conducted by one officer. Yet, under the amended Labour Institutions Act, a mediator is now expressly prohibited from arbitrating the same dispute. The result is a direct procedural contradiction: the parent Act now disqualifies dual participation in the same case, while the subsidiary rules still operationalise that very arrangement.

Consequently, does this mean the combined process (Rule 18) is rendered practically inoperative. Since the law now bars a single officer from mediating and arbitrating the same matter, the Commission can no longer conduct a seamless med-arb session before one neutral party.

The choice of South Africa for comparative analysis is informed by the country's well-established hybrid dispute resolution framework, which provides a practical reference for examining potential adaptations in Tanzania.

3. LEGAL FRAMEWORK GOVERNING MED-ARB AND CON-ARB: TANZANIA AND SOUTH AFRICA

3.1 TANZANIA MAINLAND: LEGAL AND INSTITUTIONAL FRAMEWORK

3.1.1 The Employment and Labour Relations Act [Cap. 366 R.E 2023]

The ELRA¹⁴ Establishes the mechanisms for resolving labour disputes, including mediation, arbitration and adjudication through the Commission for Mediation and Arbitration (CMA) as provided under its long title: *“An act to make provisions for core labour rights, to establish basic employment standards, to provide for the prevention and settlement of disputes, and to provide for related matters”*. In addition to that the Act provides for the integration of mediation and arbitration within the dispute resolution process. Moreover, under Section 86 of the ELRA¹⁵ Provides for mandatory mediation of disputes before they may proceed to arbitration or adjudication. Section 88(2) of the same Act empowers the CMA to arbitrate unresolved disputes.

¹⁴ Employment and Labour Relations Act, Cap 366 R.E. 2023 (as amended by the Labour Laws (Amendments) Act, Act No. 4 of 2025)

¹⁵ Ibid, s. 86

However, the Employment and Labour Relations Act¹⁶ Remains silent on the recognition and regulation of combined mediation and arbitration (med-arb) as a distinct dispute resolution procedure. Although the Act establishes mediation and arbitration as central mechanisms for handling labour disputes, it provides for them as separate and sequential processes rather than an integrated or hybrid mechanism. Mediation is addressed under section 86,¹⁷ which requires parties to attempt settlement before arbitration may be pursued, while arbitration is provided under section 88,¹⁸ empowering the Commission for Mediation and Arbitration (CMA) to issue binding awards when disputes remain unresolved.

3.1.2 The Labour Institution Act [Cap.300 R.E 2023]

The Labour Institutions Act operates as the companion statute to the Employment and Labour Relations Act¹⁹, providing the institutional framework for the resolution of labour disputes in Tanzania. Among its most important functions, the Act establishes the Commission for Mediation and Arbitration (CMA)²⁰, which is vested with the mandate to administer both mediation and arbitration in labour disputes. While the Employment and Labour Relations Act²¹ outlines the substantive rights and procedural avenues for dispute settlement, it is the Labour Institutions Act that operate those mechanisms through institutional structures and administrative arrangements.

¹⁶ Employment and Labour Relations Act, Cap 366 R.E. 2023 (as amended by the Labour Laws (Amendments) Act, Act No. 4 of 2025), s 88(2)

¹⁷ Ibid, s. 86

¹⁸ Ibid, s. 88

¹⁹ Employment and Labour Relations Act, Cap 366 R.E. 2023 (as amended by the Labour Laws (Amendments) Act, Act No. 4 of 2025)

²⁰ Labour Institutions Act, Cap 300 R.E. 2023 (as amended by Labour Laws (Amendments) Act, Act No. 4 of 2025), Part III

²¹ Ibid, Cap 366 R.E. 2023

A central provision in this context is section 15(1) of the Labour Institutions Act, which defines the powers and functions of mediators appointed under the Act. Following the 2025 amendment, section 15(1) now includes a new proviso that states:

“Provided that, a mediator shall not arbitrate the dispute which he was involved in its mediation.”

This amendment marks a significant departure from the previous regime, which allowed the same individual to serve both as mediator and arbitrator in the same dispute. The legislative intent appears to emphasise impartiality and the separation of dispute resolution functions within the CMA. By inserting this proviso, Parliament effectively prohibits the dual exercise of roles within a single dispute, thus reshaping the structure of med-arb in Tanzania.

The Labour Laws (Amendments) Act²² introduced a significant change also to section 19(7) of the Labour Institution Act, Cap 300. The provision expressly provides that neither the Employment and Labour Institution Act shall interfere a person being appointed as both a mediator and arbitrator.

3.1.3 The Labour Institutions (Mediation and Arbitration) Rules [G.N. No. 64 of 2007]

The Labour Institutions (Mediation and Arbitration) Rules were promulgated to give effect to the provisions of the Labour Institutions Act.²³, particularly in relation to the operation of the Commission for Mediation and Arbitration (CMA). These Rules establish the procedural framework for the settlement of labour disputes through mediation and arbitration. In addition to that, they are central to the discussion of the combined mediation and arbitration in Tanzania. The Rule also in Part IV (Rule 18) a critical provision for this study because it recognises the combined Mediation and Arbitration process as read together with section 19(7) of the Labour Institution

²² Labour Laws (Amendments), Act No. 4 of 2025

²³ Labour Institutions Act, Cap 300 R.E. 2023 (as amended by the Labour Laws (Amendments) Act, Act No. 4 of 2025)

Act²⁴ and section 88(3) of the Employment and Labour Relation Act²⁵ As (amended by Act No.4 of 2025), which expressly provides that nothing precludes the same person from being appointed both as a mediator and as an arbitrator.

3.2 SOUTH AFRICA: LEGAL AND INSTITUTIONAL FRAMEWORK

3.2.1 The Labour Relations Act [Act 66 of 1995] (South Africa)

The Labour Relations Act is the principal statute governing dispute resolution in the South African Labour Sector as stated under its purpose in the long title of the statute that is “to provide simple procedures for the resolution of labour dispute through statutory conciliation, mediation and arbitration (for which purpose the Commission for Conciliation, Mediation and Arbitration is established), and through independent alternative dispute resolution services accredited for that purpose.

Moreover, in Chapter VII the Act establishes the Commission for Conciliation, Mediation and Arbitration (CCMA) as the statutory body responsible for conciliation, mediation and arbitration together with the functions of the Commission. In terms of Combined Conciliation and Arbitration, Section 191(5A) the Act²⁶ provides for the Con-Arb (conciliation-arbitration) process, the amendment inserted subsection 191(5A), which provides that the Commission for Conciliation, Mediation and Arbitration (CCMA) or a bargaining council must commence arbitration immediately after certifying that a dispute remains unresolved in certain categories of disputes. These includes disputes relating to the dismissal of an employee for reasons connected to

²⁴ Ibid, s 19(7)

²⁵ Employment and Labour Relations Act, Cap 366 R.E. 2023 (as amended by the Labour Laws (Amendments) Act, Act No. 4 of 2025) (Tanzania)

²⁶ Labour Relations Act, Act 66 of 1995, s. 191(5A)

probation, unfair labour practices concerning probation and other disputes contemplate under section 191(5)(a) where no party has objected to the con-arb process.

3.2.2 Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration 2023 (South Africa)

The Labour Relations Act²⁷ establishes the Commission for Conciliation, Mediation and Arbitration (CCMA) as a statutory body mandated to resolve labour disputes through conciliation and arbitration. While the Labour Relations Act provides the substantive foundation, the Rules for the Conduct of Proceedings before the CCMA (hereinafter “CCMA Rules”) regulate the detailed procedures for the resolution of disputes, including combined conciliation-arbitration (con-arb).

Under the provision of Rule 17 of the CCMA Rules²⁸ provides the framework for con-arb. It stipulates that disputes concerning dismissals for reasons related to probation, unfair labour practices relating to probation and certain other disputes under section 291(5)(a) of the Labour Relations Act²⁹ must be scheduled for a con-arb hearing. In such cases, conciliation and arbitration are conducted in a single sitting unless a party lodges a valid objection (where the Act permits objections). This procedural rule operationalises section 191(5A) of the Labour Relations Act by making con-arb the default process for certain disputes.

Moreover, Rule 25³⁰ governs the right to representation during proceedings. In conciliation, parties generally represent themselves, but in arbitration (including the arbitration phase of con-arb), parties may be legally represented in specific categories of disputes, such as dismissal for

²⁷ Ibid, s. 115

²⁸ Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration, GN R3318 in GG 48445 of 21 April 2023 (South Africa), r.17

²⁹ Labour Relations Act, Act No. 66 of 1995 (South Africa), Sec 291(5)(a)

³⁰ Rules for the Conduct of Proceedings before the Commission for Conciliation, Mediation and Arbitration, GN R3318 in GG 48445 of 21 April 2023 (South Africa)

misconduct or incapacity, provided that the commissioner and other parties' consent. This ensures that while the process remains informal and cost-effective, parties' rights to representation and fairness are protected.

4. PROCEDURAL ADVANTAGES AND CHALLENGES

4.1. ADVANTAGES

The Med-Arb procedure presents several procedural advantages within Tanzania's labour dispute resolution framework, particularly in matters requiring prompt determination. Its structure enables parties to engage in both mediation and arbitration within a single procedural continuum, allowing them to first pursue a consensual settlement and, if unsuccessful, proceed seamlessly to arbitration without restarting the process. This dual exposure enhances parties' participation, understanding, and confidence in the overall process by combining cooperative dialogue with a final binding outcome.

One of the key procedural merits of Med-Arb lies in its suitability for speed-track or urgent disputes, such as retrenchments or cases involving external employers, where swift resolution is essential to preserve industrial stability. By consolidating mediation and arbitration, Med-Arb minimizes procedural delays, duplication, and administrative costs. It thus promotes the constitutional objective of ensuring a fair and timely determination of rights under Article 13(6)(a) of the Constitution of the United Republic of Tanzania, 1977.

Furthermore, the hybrid nature of Med-Arb offers flexibility by accommodating both consensual and adjudicative approaches. It allows parties to retain the possibility of amicable settlement while ensuring that an enforceable decision will be rendered should mediation fail. This procedural design strikes a balance between efficiency and legal certainty, aligning with the broader objectives of the Labour Institutions Act and the Employment and Labour Relations Act.

4.2 CHALLENGES

4.2.1 Legislative Drafting Inconsistencies

Rule 18 of the Labour Institutions (Mediation and Arbitration) Rules³¹ purports to be subject to Section 19(7) of the Labour Institutions Act³² and Section 88(3) of the Employment and Labour Relations Act³³, yet this principle says little on combined process and like Section 88(3) does not substantively regulate combined processes. This inconsistency creates ambiguity and undermines the clarity of the legal framework.

Moreover, the 2025 amendment to section 15(1) of the Labour Institutions Act eliminated the possibility of the same person acting as both mediator and arbitrator. While this resolves the dual-role conflict, the legislation does not explicitly provide guidance on the procedural transition, particularly how the CMA should assign separate officers and whether parties retain the option to choose arbitration or direct recourse to the Labour Court after mediation. The courts have illustrated the practical significance of such gaps in the case of *James Bichuka v. Bulyanhulu Gold Mine Ltd*³⁴ the Court held that where a mediator arbitrates without proper appointment or party consent, the proceedings are irregular and reviewable.

These judicial observations highlight that, although dual roles are no longer permitted, clear procedural rules are necessary to manage the transition, ensure parties' rights are preserved, and prevent irregularities in the sequential Med-Arb process.

4.2.2 Procedural and Structural Deficiencies in Tanzania's Combined Process

³¹ Labour Institution (Mediation and Arbitration) Rules, G.N. No. 64 of 2007

³² Labour Institution Act, Cap 300 R.E. 2023 (as amended by the Labour Laws (Amendments) Act

³³ Employment and Labour Relations Act, Cap 366 R.E. 2023, s. 88(3) (as amended by the Labour Laws (Amendments) Act 2025

³⁴ Revision 313/2008

Despite its procedural advantages, Med-Arb in Tanzania faces several challenges under the current legislative framework. A key challenge arises from the 2025 amendment to section 15(1) of the Labour Institutions Act, which explicitly prohibits a mediator from arbitrating the same dispute. While this change enhances neutrality and impartiality, it eliminates the previous model where a single officer could conduct both mediation and arbitration. This elimination introduces practical challenges for the CMA. The Med-Arb process now requires different officers to conduct mediation and arbitration, creating a sequential system. While this preserves impartiality, it reduces some of the procedural efficiency associated with the original combined process, as cases may take longer and require more administrative coordination.

Another challenge is the need for clear operational procedures. The legislation does not provide detailed guidance on how officers should be assigned to mediation and arbitration phases, how handovers should occur, or how parties are informed about the sequential process. Without formal procedural guidelines, there is a risk of inconsistent application and confusion for disputing parties.

Nevertheless, the Med-Arb process has not been abolished. Even with the elimination of dual roles, it remains a hybrid procedure in which parties benefit from both mediation and arbitration. The main advantage now is that neutrality and impartiality are fully ensured, addressing one of the primary weaknesses of the earlier system. Thus, while the elimination of dual roles presents challenges in efficiency and administration, the procedural integrity and credibility of Med-Arb are strengthened.

Unlike South Africa's well-defined framework under Rule 17 of the CCMA Rules, Tanzania's Med-Arb procedure lacks detailed procedural guidance on notice, objections, and sequencing. This skeletal structure undermines predictability, fairness, and confidence in the process, limiting effective party participation and procedural safeguards.

5. RECOMMENDATIONS

5.1 Strengthening the Legal and Institutional Framework Governing Tanzanian Med-Arb

framework remains underdeveloped and requires statutory reform. Rule 18 of the Labour Institutions (Mediation and Arbitration) Rules, G.N. No. 64 of 2007 should be amended to provide clear procedures governing the transition between mediation and arbitration, the rights of the parties, and the responsibilities of the neutral. Legislative coherence should be achieved by harmonizing the Employment and Labour Relations Act (Cap. 366 R.E. 2023) with the Mediation and Arbitration Rules. Introducing a specific statutory provision similar to section 191(5A) of South Africa's Labour Relations Act which specific cases would be dealt by med-arb³⁵ would establish a stronger legal foundation for Med-Arb. Considering that the Labour Institutions Act deals with institutional and procedural arrangements, forming a composite legislative scheme governing labour relations.

5.2 Clarifying Sequential Procedures and Officer Assignments in Med-Arb

To ensure procedural clarity and effective implementation of Med-Arb, Tanzania should introduce a mechanism that formalizes the sequential nature of the process. The CMA should clearly outline how mediation and arbitration phases are conducted, including timelines, handovers, and communication with parties. Officer assignments should be formalized, ensuring that different mediators and arbitrators are designated for each phase in compliance with section 15(1). This approach preserves the advantages of Med-Arb efficiency, flexibility, and party engagement while

³⁵ Labour Relations Act No. 66 of 1995

maintaining neutrality and impartiality, which are now guaranteed by the statutory prohibition on dual roles.

5.3 Enhancing Procedural Guidance, Training, and Efficiency

Comprehensive procedural guidelines and continuous training should be provided to commissioners and arbitrators to promote consistency and fairness in combined proceedings. Drawing from South Africa's experience, flexibility to adjourn or separate proceedings where fairness may be compromised should be introduced to balance efficiency with due process and to minimize inconsistent decision-making

5.4 Expanding Awareness and Institutional Acceptance of Med-Arb

Awareness of Med-Arb should be expanded among employees, employers, trade unions, and judges. Increasing understanding among these groups would promote confidence, voluntary participation, and uniform application of Med-Arb across Tanzania's labour dispute resolution system. Judicial awareness, in particular, would reinforce the recognition and enforceability of Med-Arb outcomes

6. CONCLUSION

The Med-Arb procedure in Tanzania remains a valuable hybrid mechanism for resolving labour disputes, offering the combined advantages of mediation and arbitration within a single framework. The 2025 amendment to section 15(1) of the Labour Institutions Act has eliminated the practice of assigning the same officer to act as both mediator and arbitrator, thereby enhancing neutrality and impartiality longstanding concerns in the Tanzanian context. While this reform strengthens the integrity of the process, it introduces operational challenges, including the need for sequential procedures, formalized officer assignments, and clear administrative guidance.

Despite these challenges, Med-Arb has not been abolished. Its procedural structure—now sequential rather than combined—continues to provide parties with an opportunity for amicable settlement through mediation, followed by binding arbitration if necessary. The process retains its efficiency, flexibility, and relevance, particularly in speed-track or urgent disputes.

To fully realize the benefits of Med-Arb, the legal and institutional framework must be harmonized, procedural guidelines clarified, and officer assignments formalized. By addressing these operational gaps, Tanzania can maintain the procedural advantages of Med-Arb. In contrast, South Africa's Con-Arb, governed by section 191(5A) of the Labour Relations Act 66 of 1995 and Rule 17 of the CCMA Rules, provides a clearer framework that balances efficiency with fairness through defined procedures and written objection rights. Strengthening Tanzania's legal provisions by incorporating lessons from South Africa.

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The Labour Institution (Mediation and Arbitration) Rules, G.N. No. 64 of 2007

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ARTICLE

EXAMINING THE CHALLENGES OF ENFORCING ARBITRAL AWARDS IN THE EAST AFRICAN COURT OF JUSTICE (EACJ): A CASE STUDY OF KENYA AND TANZANIA.

HAPPINESS.S. CHARLES

Abstract

This study explores the challenges surrounding the enforcement of arbitral awards associated with the East African Court of Justice (EACJ), focusing on Kenya and Tanzania as case studies. Although the EACJ plays a limited role as an enforcement forum under the current Treaty framework, its jurisdiction and jurisprudence significantly influence the broader regional enforcement environment. The study critically examines the legal, institutional, and procedural factors that impede the effective recognition and execution of arbitral awards linked to the EACJ, including divergent national arbitration laws, judicial reluctance, inconsistent application of the New York Convention, and expansive interpretations of public policy. It further highlights how the absence of a clear regional enforcement mechanism under the EAC Treaty weakens the EACJ's authority and the uniformity of arbitral enforcement across member states. Drawing upon statutory analysis, treaty provisions, case law, and practitioner insights, the paper recommends reforms such as empowering the EACJ with an explicit enforcement mandate, harmonizing domestic arbitration regimes, enhancing judicial capacity, and developing a regional enforcement protocol to strengthen the effectiveness of arbitral justice within the East African Community.

1.0. Introduction

Arbitration has long been recognised as a binding, efficient and internationally accepted method for resolving commercial disputes. Its appeal to private parties and increasingly to states and state-enterprises rests on features such as party autonomy, the expertise of decision-makers, confidentiality and the relative finality of awards. Yet arbitration's practical value depends fundamentally on enforceability. For an award to be more than an authoritative declaration, it must be capable of execution either through attachment of assets or other judicially-compelled means. Within the East African Community (EAC), the East African Court of Justice (EACJ) serves as the principal judicial organ tasked with interpreting and applying the Treaty for the Establishment of the East African Community EAC Treaty. According to Article 9 of the EAC

Treaty, the Court is established as one of the Community's organs. However, the EACJ does not itself possess independent coercive enforcement powers. Rather, the execution of a judgment of the Court that imposes a pecuniary obligation on a person is governed by the rules of civil procedure in force in the Partner State in which execution is to take place. This is expressly set out in Article 44 of the EAC Treaty.¹

From this, the present study finds that although the EACJ issues binding judgments, their actual enforcement relies heavily on domestic courts and procedural frameworks of Partner States. This dependency raises critical questions, how effectively do national systems translate awards or judgments of the EACJ (or those relating to the regional framework) into domestic enforcement? And what obstacles impede that translation? These questions form the core of this study, which adopts Kenya and Tanzania as comparative jurisdictions to explore enforcement practice, institutional capacity and legal consistency within the EAC region.

1.2. Main challenges observed in Kenya and Tanzania in Enforcing Arbitral Awards.

1.2.1. Judicial Interference and Over-Review of Merits

One of the most persistent problems in both jurisdictions is judicial over-reach, whereby courts convert what should be narrow supervisory review into de facto merits review. Arbitration law and the New York Convention intend that court supervision be limited and procedural in nature designed to protect due process rather than to permit wholesale re-examination of arbitrators' findings. However, in practice some courts especially when domestic public-policy or constitutional issues are invoked have expanded the scope of review, thereby creating uncertainty and encouraging losing parties to litigate enforcement rather than comply voluntarily. In Tanzania, there is evidence that some courts interpret the public-policy exception expansively, allowing merits-type challenges which can prolong enforcement. For example, in *Catic International Engineering (T) Ltd v University of Dar es Salaam* (High Court of Tanzania, Commercial Division, Misc. Comm. Cause No 1 of 2020) the Court engaged with public policy grounds in a way that suggested review of the underlying contract's compliance with procurement or regulatory law.² This indicates a potential shift beyond purely procedural review in enforcement proceedings. Further commentary and empirical work suggest that enforcement

¹ Treaty for the establishment of the East African Community (1999) Article 44

² High Court of Tanzania, Commercial Division. (2020). *Catic International Engineering (T) Ltd v University of Dar es Salaam*, Misc. Comm. Cause No. 1 of 2020. https://media.tanzlii.org/media/judgment/183026/source_file/catic-international-engineering-t-ltd-vs-university-of-dar-es-salaam-2020-tzhccomd-17-3-march-2020.pdf

proceedings are often stalled through informal stays or adjournments while substantial challenges are mounted.

While Kenyan jurisprudence is generally more restrictive and pro-arbitration, inconsistencies exist and occasional decisions widen the scope of judicial scrutiny, which in turn invites appeals and delays. In *Christ for All Nations v Apollo Insurance Co Ltd* [2002] 2 E.A. 366 the court stated:

“Public policy is a broad concept incapable of precise definition. An award can be set aside under Section 35(2)(b)(ii) of the Arbitration Act as being inconsistent with the Constitution or any other law of Kenya whether written or unwritten, or inimical to the national interest of Kenya, or contrary to justice and morality.”³

The breadth of that definition provides room for more expansive review than the typical narrow focus envisioned by the New York Convention, and subsequent decisions have pointed to this as a source of unpredictability in enforcement.

1.2.2. Broad Application of the “Public Policy” Exception

The “public policy” exception under Article V(2)(b) of the New York Convention is intended to be narrow in scope⁴. However, in the Partner States courts have at times treated it as a catch-all ground to refuse enforcement on economic or national-interest grounds. In Tanzania, for example, courts have equated public policy with domestic public interest or national economic policy, thereby validating refusals of enforcement in cases involving significant public contracts or state-owned enterprises. Specifically, in *Catic International Engineering (T) Ltd v University of Dar es Salaam* (Misc. Comm. Cause No. 1 of 2020) the Tanzanian High Court (Commercial Division),⁵ held that the arbitration agreement did not comply with procurement laws and thus raised public policy concerns – an approach that goes beyond simply checking procedural irregularities and engages the merits of the underlying contract. This broad application of the public policy exception undermines the pro-enforcement goal of the Convention and injects unpredictability into enforcement outcomes.

³*Christ for All Nations v Apollo Insurance Co Ltd*, [2002] 2 E.A. 366. Kenya Law Reports <https://www.kenyalaw.org/caselaw/cases/view/62415>

⁴ New York Convention Article V(2)(b)

⁵ High Court of Tanzania, Commercial Division. (2020). *Catic International Engineering (T) Ltd v University of Dar es Salaam*, Misc. Comm. Cause No. 1 of 2020. https://media.tanzlii.org/media/judgment/183026/source_file/catic-international-engineering-t-ltd-vs-university-of-dar-es-salaam-2020-tzhccomd-17-3-march-2020.

In Kenya, the jurisprudence has traditionally adopted a narrower view of public policy, but uncertainty persists because of inconsistent decisions across cases. For instance, in *Christ for All Nations v Apollo Insurance Co. Ltd* [2002] 2 E.A. 366 the Court defined public policy as: “Public policy is a broad concept incapable of precise definition. An award can be set aside if it was either (a) inconsistent with the Constitution or any other law of Kenya whether written or unwritten, or (b) inimical to the national interest of Kenya, or (c) contrary to justice and morality.” (Kenya Law Reports)

1.2.3. Procedural Delays and Administrative Inefficiency

Even in jurisdictions where courts are generally pro-arbitration, enforcement of arbitral awards is often delayed by congested court dockets, cumbersome registration procedures, translation and authentication requirements, and inefficient administration of enforcement processes. High Courts may require leave or supplementary filings, which lengthens the time to execution and reduces the predictability of arbitration as a remedy.

In Tanzania, domestic legislation and judicial practice historically required procedural formalities for the recognition and enforcement of foreign or regional arbitral awards. These include applications for leave, authentication of documents, and translation requirements. Such formalities can significantly prolong enforcement, particularly in cases involving awards from foreign or regional forums, thereby diminishing arbitration’s advantage as a swift dispute-resolution mechanism (Wolters Kluwer, 2025).⁶

In Kenya, similar delays are observed due to the need for registration of awards under the Arbitration Act, Cap. 49 and compliance with court procedural requirements. Courts may require additional filings, affidavits, or proof of compliance with the New York Convention and domestic law, which can result in extended timelines before enforcement is effected (Odhiambo, 2022).⁷ These administrative inefficiencies, combined with congested court dockets, create practical obstacles that reduce the effectiveness and attractiveness of arbitration as a mechanism for commercial dispute resolution.

1.2.4 Sovereign Immunity and Enforcement Against State Entities

⁶ Wolters Kluwer. (2025, June 29). *Updating Tanzania’s arbitration law to align with international best practice*. Kluwer Arbitration Blog. <https://arbitrationblog.kluwerarbitration.com/2025/06/29/updating-tanzanias-arbitration-law-to-align-with-international-best-practice>

⁷ Odhiambo, J. (2022). *Enforcement of arbitral awards in Kenya: Challenges and trends*. Nairobi: Kenya Law Reports. <https://www.kenyalaw.org/>

A recurring practical challenge in both Kenya and Tanzania is the enforcement of arbitral awards against states and state-owned enterprises (SOEs). Governments or their agencies sometimes resist enforcement on grounds of sovereign immunity, budgetary constraints, or political sensitivity, particularly when awards involve large sums or politically sensitive projects. This reluctance is compounded by the dual nature of state activities: international law distinguishes between acts *jure imperii* (sovereign acts) and acts *jure gestionis* (commercial acts). While immunity is generally absolute for sovereign acts, it is limited for commercial acts, especially those entered into with private parties (United Nations Convention on Jurisdictional Immunities of States and Their Property, 2004).⁸

Domestic laws in both jurisdictions reinforce this distinction but have been applied inconsistently. In Kenya, Section 12 of the State Proceedings Act, Cap. 40, recognizes that the government may be sued in certain cases, particularly for commercial activities, but courts retain discretion when determining whether immunity applies to enforcement proceedings.⁹ Similarly, Tanzania's State Immunity Act, Cap. 8, limits immunity for commercial transactions but permits the government to raise sovereign immunity defenses in enforcement of foreign or regional awards.¹⁰

The inconsistent interpretation of these laws and doctrines by courts creates practical uncertainty. For example, a Tanzanian court might delay enforcement of an award against a state-owned enterprise by classifying it as performing sovereign functions, whereas a Kenyan court could interpret the same award as arising from commercial activity, allowing enforcement. Such unpredictability undermines investor confidence, discourages foreign investment, and limits the practical utility of arbitration as a dispute resolution mechanism within the East African Community. Scholars have emphasized that harmonization of domestic laws with international standards, coupled with judicial training, is critical to ensuring effective enforcement against state entities (Dugan, 2009; Vanhonnaeker & Marcoux, 2021).¹¹

⁸ United Nations. (2004). *United Nations Convention on Jurisdictional Immunities of States and Their Property*. https://legal.un.org/ilc/texts/instruments/english/conventions/4_1_2004

⁹ Kenya Law. (2012). State Proceedings Act, Cap. 40. Government of Kenya. https://www.kenyalaw.org/kl/fileadmin/pdfdownloads/State_Proceedings_Act.pdf

¹⁰ Government of Tanzania. (1967). State Immunity Act, Cap. 8. Ministry of Justice, Tanzania. <https://www.tanzania.go.tz/laws/state-immunity-act.pdf>

¹¹ Dugan, C. F. (2009). *Enforcement against assets of state-owned companies – Chapter 9: Enforcement of arbitral awards against sovereigns*. ArbitrationLaw.com. <https://arbitrationlaw.com/library/enforcement-against-assets-state-owned-companies-chapter-9-enforcement-arbitral-awards>

1.2.5 Inconsistent Domestic Laws and Divergent Interpretations

Although both Kenya and Tanzania have adopted arbitration statutes and are signatories to international conventions, their domestic statutes differ in detail, and judicial traditions diverge. Kenya's Arbitration Act, 1995 (model-law inspired) and judicial practice generally align with international norms, favouring limited intervention and speedy enforcement. In contrast, Tanzania's statutory framework, even after consolidation under the Arbitration Act, 2020, is more cautious. Certain provisions historically required courts' leave for enforcement or permitted broader review, and judicial practice has reflected a conservative stance toward arbitration.

Studies indicate that enforcement efficiency is closely linked to institutional capacity and infrastructure. For instance, a recent analysis of Tanzania highlights that coordination among stakeholders, legislative alignment, and judicial administrative capacity remain weak, contributing to delays and unpredictability in enforcing foreign arbitral awards Cosmas, G.L. (2023).¹² By contrast, Kenya has implemented reforms and developed institutions to strengthen arbitration enforcement. The Nairobi Centre for International Arbitration (NCIA), alongside the judiciary's commercial divisions, has advanced dispute-resolution infrastructure, training, and procedural streamlining to improve efficiency and predictability.¹³

These divergences in both statutory frameworks and institutional capacity create opportunities for forum-shopping and result in unpredictability for cross-border parties. While Kenya's courts and institutions are increasingly pro-arbitration and institutionalized, Tanzanian courts remain more cautious, and enforcement may be delayed due to procedural and administrative constraints. Harmonization of domestic laws and enhancement of institutional capacity across the East African Community would significantly improve enforcement predictability and investor confidence.

1.2.6. Political Economy and Selective Compliance

Political factors often play a decisive role in the enforcement of arbitral awards, especially when awards touch on public finances or involve politically connected parties. States or entities with

¹² Cosmas, G. L. (2023). *Critical analysis on the challenges facing legal and institutional frameworks on recognition and enforcement of foreign arbitral awards in Tanzania*. *Journal of Law, Policy and Globalization*. <https://www.iiste.org/Journals/index.php/JLPG/article/view/24475>

¹³ Nairobi Centre for International Arbitration (NCIA). (n.d.). *Where dispute meets resolution*. Retrieved from <https://ncia.or.ke>

significant political influence may delay enforcement through a variety of tactics such as filing successive appeals, invoking procedural defects, or using administrative non-compliance for example refusal to allocate budgetary resources for payment). When enforcement mechanisms lack strong coercive force or when the political cost of compliance is deemed too high, the State or related entity may selectively delay or entirely avoid execution of the award. Such selective compliance undermines predictability and increases the transaction costs for investors who rely on arbitration as a binding remedy (Seeley, 2021).¹⁴

Empirical studies support the significance of these dynamics. For instance, the survey of enforcement in International Centre for Settlement of Investment Disputes (ICSID) cases shows that while states generally comply with awards, a non-trivial number engage in prolonged non-compliance or require enforcement proceedings.¹⁵ Another study of post-award state behavior in regional arbitration contexts found that the state–beneficiary dyads still experienced active non-compliance years after the award was issued, suggesting deliberate delay.¹⁶

In the East African context, while specific published empirical data on political non-compliance are limited, anecdotal evidence suggests that high-profile awards involving state-owned enterprises or major infrastructure contracts often encounter protracted enforcement, in part due to political sensitivities and budgetary constraints. This reinforces the need to assess not only the legal and procedural frameworks of enforcement but also the political economy context in which enforcement must operate.

1.3 Case Law Illustrations (Kenya and Tanzania)

Judicial precedent is instructive in understanding how courts balance international arbitration obligations with domestic considerations. Enforcement of arbitral awards depends not only on statutes and treaties but also on judicial interpretation, institutional culture, and political context

In Kenya

In *Christ for All Nations v Apollo Insurance Co Ltd* [2002] 2 E.A. 366, the High Court of Kenya (Ringera J) emphasised the limited role of courts in interfering with arbitral awards and the

¹⁴ Seeley, C. (2021). Political economy of state non-compliance in investment arbitration: A review of enforcement patterns. *Journal of International Arbitration*, 38(4), 453-479.

¹⁵ Daugirdas, K. (2021). State Compliance with Investment Awards. *ICSID Review – Foreign Investment Law Journal*, 35(3), 540-594. <https://doi.org/10.1093/icsidreview/siaa034>

¹⁶ Korea University DPIR. (2025). Compliance with decisions of the Permanent Court of Arbitration. The Review of International Organizations. <https://doi.org/10.1007/s11558-025-09599-y>

importance of upholding the finality of arbitration.¹⁷ The court recognised that public policy provides a narrow ground for challenging an award and that courts should avoid merits-based review except in clearly defined circumstances.

Subsequent cases such as *Kenya Shell Ltd v Kobil Petroleum Ltd* [2006] KECA 389 reinforced this arbitration-friendly approach, holding that courts must give effect to valid arbitration agreements and awards, unless procedural irregularities or substantive public policy concerns are clearly demonstrated.¹⁸

However, later decisions indicate occasional departures from this pro-arbitration stance. For example, the High Court in *Jubilee Insurance Co Ltd v Apollo Insurance Co Ltd* [2023] KEHC 23540 allowed broader interpretation of public policy grounds, effectively expanding judicial oversight and introducing some unpredictability in enforcement.¹⁹ These cases illustrate that while Kenya's statutory framework generally limits intervention, judicial discretion can still influence enforcement outcomes.

In Tanzania presents a contrasting pattern. Enforcement of arbitral awards has often been subject to more expansive judicial review. Section 73(1) of the Arbitration Act, 2023 requires court leave for enforcement, allowing judges greater oversight over foreign and regional awards.²⁰

Reported cases indicate practical enforcement challenges, particularly against state-owned enterprises or politically sensitive projects. In *Dowans v TANESCO* (Misc. Civil Case No 8 of 2011), the High Court considered the enforceability of a foreign arbitral award under ICC rules and highlighted procedural and domestic law requirements that delayed enforcement.²¹

Similarly, enforcement of the ICSID-related award in *Tanzania Electric Supply Company (TANESCO) v Standard Chartered Bank (Hong Kong) Limited* involved substantial delay due to jurisdictional challenges and claims linked to public policy and state interest.²² Observers have noted that some Tanzanian courts invoke national economic interests or administrative policy to

¹⁷ *Christ for All Nations v Apollo Insurance Co Ltd* [2002] 2 E.A. 366 (Kenya).

¹⁸ *Kenya Shell Ltd v Kobil Petroleum Ltd* [2006] KECA 389 (KLR). Retrieved from <https://new.kenyalaw.org/akn/ke/judgment/keca/2006/389/eng%402006-11-10>

¹⁹ *Jubilee Insurance Co Ltd v Apollo Insurance Co Ltd* [2023] KEHC 23540 (KLR). Retrieved from <https://new.kenyalaw.org/akn/ke/judgment/kehc/2023/23540/eng%402023-10-12>

²⁰ Arbitration Act, 2023 (Tanzania), & 73(1). WIPO Lex. <https://wipo.lex-res.wipo.int/edocs/lexdocs/laws/en/tz/tz022en.htm>

²¹ *Dowans v TANESCO*, Misc. Civil Case No 8 of 2011, High Court of Tanzania. Retrieved from <https://www.tanzanianweb.co.tz/2023/01/the-recognition-and-enforcement-of.html>

²² The Citizen. (2023). "Sh336bn award verdict against TANESCO upheld." <https://www.thecitizen.co.tz/tanzania/news/national/-sh336bn-award-verdict-against-tanESCO-upheld-2653342>

resist enforcement, creating uncertainty even where the New York Convention provides narrow grounds for refusal.²³

These examples demonstrate that, while statutory and treaty frameworks exist to guide enforcement, judicial interpretation, institutional practices, and political context heavily influence outcomes in both Kenya and Tanzania. Kenya tends toward a more arbitration-friendly approach, while Tanzanian courts exhibit broader supervisory review, sometimes resulting in delays or selective enforcement.

1.4 Comparative lessons from other regions

Comparative experience highlights how harmonised legal frameworks, strong institutions, and judicial culture impact the enforcement of arbitral awards.

1.4.1 West Africa -OHADA

The Organisation pour l'Harmonisation en Afrique du Droit des Affaires (OHADA) system provides a uniform legal framework through Uniform Acts and a central court the Cour Commune de Justice et d'Arbitrage (CCJA).²⁴ The OHADA Treaty of 17 October 1993 mandates that Member States adopt Uniform Acts, which have direct effect in domestic jurisdictions, reducing fragmentation in cross-border enforcement.²⁵ Scholarly commentary notes that the CCJA's role in harmonising interpretation and ensuring consistency has significantly improved predictability and reduced disputes over enforcement across member states (Ndiaye, 2018; Dickerson, 2005).²⁶

1.4.2 European Union – Brussels I Recast

The European Union has adopted Regulation (EU) No 1215/2012 (Brussels I Recast) on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.²⁷

²³ TanzanianWeb. (2023, January). *The recognition and enforcement of foreign judgments and arbitral awards in Tanzania*. <https://www.tanzanianweb.co.tz/2023/01/the-recognition-and-enforcement-of.html>

²⁴ Organisation pour l'Harmonisation en Afrique du Droit des Affaires. (n.d.). Arbitration law: Uniform Act on Arbitration Law. <https://www.ohada.org/en/arbitration-law/>

²⁵ Organisation pour l'Harmonisation en Afrique du Droit des Affaires. (n.d.). *History of OHADA*. <https://www.ohada.org/en/history-of-ohada>

²⁶ Ndiaye, M. (2018). *The role of the CCJA in harmonizing arbitration in OHADA member states*. African Journal of International and Comparative Law, 26(2), 211–236.

Dickerson, J. (2005). *Arbitration under OHADA: The CCJA and uniform enforcement*. Journal of African Law, 49(1), 45–63.

²⁷ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast). <https://www.legislation.gov.uk/eur/2012/1215/introduction/2020-01-31>

By establishing uniform rules for mutual recognition of judgments among member states, the Regulation minimizes domestic obstacles to cross-border enforcement and creates a predictable regional dispute-resolution system.

1.4.3 Mauritius

Mauritius provides another model combining modern statutes with institutional support. The International Arbitration Act, establishes a comprehensive legal framework for commercial arbitration.²⁸ The Mauritius International Arbitration Centre (MIAC) strengthens procedural efficiency, institutional capacity, and international credibility. These features, together with a judiciary generally supportive of enforcement, have helped Mauritius attract cross-border arbitration and maintain robust enforcement.

1.4.4 South Africa

South Africa demonstrates strong pro-enforcement judicial culture. Courts generally enforce arbitral awards and exercise judicial restraint, intervening only on narrow grounds such as public policy or procedural irregularities. Notable cases include *GFE MIR Alloys and Minerals SA (Pty) Ltd v Momoco International Ltd* [2023] ZAGPJHC 946, where the High Court decisively dismissed a public policy challenge, emphasising deference to the arbitral tribunal. Other literature confirms that South African courts consistently uphold international awards, while institutional support and judicial training reinforce predictability and investor confidence (Baboolal-Frank, 2022; Kluwer Arbitration Blog, 2024).²⁹

1.4.5 Lessons for the East African Community

These examples demonstrate that jurisdictions combining modern arbitration statutes with judicial training, institutional investment (arbitral centers, registries), and minimal court intervention achieve robust enforcement outcomes and attract international arbitration. For the East African Community, harmonisation of arbitration laws, establishment of institutional centres, and capacity-building for courts could reduce enforcement obstacles, enhance predictability, and increase parties' reliance on EAC-based dispute resolution.

1.5. Reform Proposals and Best Practices

²⁸ International Arbitration Act 2008 (Mauritius), Act 37 of 2008. <https://mauritiuslii.org/akn/mu/act/2008/37>

²⁹ Baboolal-Frank, R. (2022). A review of judicial enforcement of arbitral awards in South Africa. University of Pretoria Repository. <https://repository.up.ac.za/items/57bc184c-912a-461e-b9b9-c07ac14dcbf7>

Effective reform to strengthen enforcement of arbitral awards in the East African Community (EAC) requires a combination of legal amendments, institutional upgrades, procedural simplification, and regional enforcement protocols. The following measures are proposed:

1.5.1 Narrow the Public Policy Exception

Domestic statutes should adopt language mirroring Article V(2)(b) of the New York Convention, restricting the public policy exception to breaches of fundamental legal principles such as fraud, denial of a fair hearing, or violation of ordre public narrowly defined rather than economic or administrative policy preferences.³⁰ Comparative authorities, including OHADA jurisprudence and commentary on the UNCITRAL Model Law, suggest that limiting judicial review to such fundamental breaches enhances predictability and reduces strategic litigation.³¹ Model Law language and explanatory notes provide guidance for judges applying this narrower test, emphasizing deference to arbitral awards except in clearly defined exceptional circumstances.³²

1.5.2 Harmonize Domestic Arbitration Legislation

Arbitration statutes across EAC Partner States should be harmonized to reduce divergences in enforcement procedures and judicial interpretation. Harmonization could be achieved through an EAC Protocol on Arbitration that explicitly integrates UNCITRAL Model Law principles (1985, as amended 2006), establishes uniform rules on recognition and enforcement, sets filing requirements, and provides timelines for execution.³³ Comparative experience from OHADA and the Southern African Development Community (SADC) demonstrates that regional harmonization increases legal certainty and facilitates cross-border enforcement.³⁴

1.5.3 Invest in Judicial and Enforcement Capacity

Capacity-building for courts and enforcement agencies is essential. Specialized arbitration benches or commercial courts, continuous education programs (in partnership with CIArb,

³⁰ United Nations Commission on International Trade Law. (1958). Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). <https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention>

³¹ Ndiaye, M. (2018). The role of the CCJA in harmonizing arbitration in OHADA member states. *African Journal of International and Comparative Law*, 26(2), 211–236.

³² United Nations Commission on International Trade Law. (2006). UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006: Explanatory note. https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09928_e_ebook

³³ East African Community. (1999). Treaty for the Establishment of the East African Community (as amended). <https://www.eac.int/legal-framework>

³⁴ Dickerson, J. (2005). Arbitration under OHADA: The CCJA and uniform enforcement. *Journal of African Law*, 49(1), 45–63.

NCIA, TIArb), and training for sheriffs/enforcement officers improve consistency, procedural efficiency, and speed.³⁵

1.5.4 Procedural Streamlining

Procedural reforms should include the creation of standard forms and timelines for recognition applications, direct filing of EACJ awards for execution with minimal authentication, and limitations on interlocutory appeals used purely to delay enforcement. Statutory time-limits for stay applications and requirements for security where stays are sought can prevent strategic stalling by parties.³⁶

1.5.5 Regional Enforcement Protocols

A regional enforcement protocol could empower the EACJ (or a designated EAC enforcement mechanism) to issue certificates or enforcement warrants recognized directly by Partner States courts, akin to the EU's mutual recognition mechanisms under Brussels I Recast.³⁷ Implementing such a protocol would likely require a Treaty amendment or binding EAC protocol specifying enforcement obligations and timelines.

1.5.6 Clarify State Immunity Issues

Domestic legislation should explicitly provide that commercial contracts entered into by state entities are subject to enforcement to the same extent as private parties. Procedures for enforcing awards against state commercial assets while balancing sovereign sensitivities through phased execution or escrow arrangements would mitigate enforcement gaps.³⁸

1.6 Recommendations for Policymakers, Judiciary, and Practitioners

1.6.1 For Policymakers

Policymakers should pursue an EAC Protocol on arbitration enforcement, building on existing integration instruments such as the EAC Treaty and EACJ Protocols to provide a regional framework for recognition and execution of awards.³⁹ Domestic statutes should consistently

³⁵ Chartered Institute of Arbitrators. (2020). CIArb Africa: Training and professional development programs <https://www.ciarb.org/africa>

³⁶ UNCITRAL. (2006). Model Law on International Commercial Arbitration: Procedural guidance https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09928_e_ebook

³⁷ Regulation (EU) No 1215/2012 of the European Parliament and of the Council of 12 December 2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters (Recast) <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32012R1215>

³⁸ Van den Berg, A. J. (2012). Enforcement of arbitration awards against states: Immunities and practical solutions ICSID Review, 27(2), 303–322.

³⁹ East African Community. (1999). Treaty for the Establishment of the East African Community (as amended) <https://www.eac.int/legal-framework>

domesticate the UNCITRAL Model Law on International Commercial Arbitration (1985, as amended 2006) to harmonize rules across Partner States and expedite registration and execution of regional awards.⁴⁰ A statutory definition of the public policy exception should be narrow, reflecting fundamental legal principles rather than economic or administrative policy.⁴¹ Budgetary allocations should support enforcement functions, including specialized commercial courts and dedicated arbitration benches, to improve efficiency and predictability. Comparative experience from OHADA and SADC demonstrates that regional harmonization and institutional investment significantly reduce enforcement delays and enhance investor confidence.⁴²

1.6.2 For the Judiciary

Courts should adopt practice directions limiting the grounds for refusing enforcement and clearly defining procedural requirements for recognition applications. Judicial exchange programs among Partner States could foster harmonized interpretation of arbitration legislation. Interlocutory tactics aimed solely at delaying enforcement should be curtailed through statutory time frames and security requirements. Enforcement guidance notes for practitioners would further improve transparency and predictability. These recommendations align with Article 38 of the EAC Treaty, which recognises the EACJ's jurisdiction but requires domestic execution procedures, thereby demonstrating the feasibility of "EACJ-enforcement clauses" in contracts.⁴³

1.6.3 For Practitioners

Practitioners should include clear arbitration and enforcement clauses in contracts, specifying seat, governing law, and waivers of immunity where legally permissible. Consideration may also be given to including express clauses referencing the EACJ's jurisdiction and recognition of awards, consistent with Article 38 of the EAC Treaty.⁴⁴ Using institutional arbitration centres

⁴⁰ United Nations Commission on International Trade Law. (2006). *UNCITRAL Model Law on International Commercial Arbitration with amendments as adopted in 2006: Explanatory note*.

https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09928_e_ebook

⁴¹ United Nations Commission on International Trade Law. (1958). Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention).

<https://www.uncitral.org/pdf/english/texts/arbitration/NY-conv/New-York-Convention>

⁴² Ndiaye, M. (2018). The role of the CCJA in harmonizing arbitration in OHADA member states. *African Journal of International and Comparative Law*, 26(2), 211–236.

Southern African Development Community (SADC). (2019). SADC Model Law on Arbitration.

<https://www.sadc.int/legal-framework/arbitration-model-law>

⁴³ East African Community. (1999). EAC Treaty, Article 38. <https://www.eac.int/legal-framework>

⁴⁴ Ibid

and rules example the NCIA, TIArb, MIAC) enhances procedural certainty and provides administrative support. Where awards involve state entities, practical arrangements such as security deposits or phased execution plans can reduce enforcement risk.⁴⁵

1.6.4 For Regional Institutions

The EAC could establish a monitoring mechanism for implementation of EACJ awards, publish compliance reports, and maintain a registry of enforcement outcomes. These measures would increase transparency, discourage selective compliance, and strengthen trust in the regional dispute-resolution system. Comparative experience from OHADA shows that centralized enforcement monitoring improves predictability and consistency.

1.7. Conclusion

Arbitration and regional institutions such as the East African Court of Justice (EACJ) hold significant potential for efficient dispute resolution in the EAC region. The analysis of Kenya and Tanzania demonstrates that while legal frameworks have evolved to support arbitration, enforcement of awards remains uneven and subject to multiple practical, legal, and institutional constraints. Case law illustrates divergent judicial approaches: Kenya generally maintains a pro-enforcement stance, as reflected in *Christ for All Nations v. Apollo Insurance Co. Ltd.* [2002] 2 EA 366, yet challenges persist in enforcement against state entities. In Tanzania, despite statutory modernization, broader judicial review, expansive public policy interpretations, and political economy pressures often hinder timely enforcement.

Comparative lessons from regions such as OHADA, SADC, the European Union, and jurisdictions like Mauritius and South Africa indicate that harmonized arbitration laws, institutional investment, judicial training, and enforcement-friendly jurisprudence collectively enhance predictability and reduce cross-border enforcement delays. These examples underscore the importance of aligning domestic practice with international and regional standards to strengthen the credibility of arbitration as a dispute-resolution mechanism.

Addressing enforcement gaps in the EAC requires multifaceted reforms. Legal harmonization across Partner States, adoption of narrow public policy exceptions, streamlined procedural requirements, capacity-building for judges and enforcement officers, establishment of regional

⁴⁵Chartered Institute of Arbitrators (CIArb). (2020). *CIArb Africa: Training and professional development programs*. <https://www.ciarb.org/africa>; Mauritius International Arbitration Centre (MIAC). (n.d.). *About us*. <https://miac.mu/about-us>

protocols for recognition and execution, and clear frameworks for enforcing awards against state entities are all critical. Strengthening institutional support through entities like the National Construction and Infrastructure Arbitration Centre (NCIA), Tanzania International Arbitration Centre (TIAC), and potential regional arbitration registries would improve consistency, transparency, and investor confidence.

In conclusion, only by combining legal, institutional, and political measures can the EAC region transform arbitral awards from symbolic instruments into effective tools for commercial dispute resolution and regional economic integration. Implementing these reforms would foster an environment in which arbitration is respected, enforceable, and predictable, thereby enhancing the attractiveness of East Africa for both domestic and international investors

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