

**OPENING REMARKS AT THE FOUNDATION COURSE ON ADR AND
ARBITRATION: CONDUCT AND PRACTICE ORGANISED BY TANZANIA
INSTITUTE OF ARBITRATORS IN COLLABORATION WITH THE LAW SCHOOL
OF TANZANIA AT THE LAW SCHOOL OF TANZANIA, DAR ES SALAAM -
20TH -22ND NOVEMBER 2019**

Good morning to you all, I am thankful to God for getting us all here today. As you are all aware, I serve as the current President of the Tanzania Institute of Arbitrators, elected in June 2019.

My job here is to welcome you all to the first Tanzania Institute of Arbitrators Foundation Course on ADR and Arbitration: Conduct and Practice 2019. We are delighted that this year we are in collaboration with Law School of Tanzania. This will no doubt ensure that we have an excellent opportunity to learn from and to interact and exchange viewpoints with esteemed faculty who will be facilitating the course during the 2 days.

The main objective of the training is to equip you all with knowledge on the various methods of settling disputes particularly alternative dispute resolution mechanism (ADR) and to provide you with skills on the procedures and practice of arbitration.

Using the acronym ADR to connote “Alternative Dispute Resolution” has the unfortunate unintended effect of stigmatizing dispute resolution methods, such as mediation and arbitration, as mere alternatives and not as preferred or even primary or usual choices. I and many scholars have suggested that perhaps the time has come for ADR to be understood as shorthand for “Appropriate dispute resolution”. This is not mere semantics. It properly situates these various dispute resolution methods within a tool-box of different dispute resolution methods each valid in its own right, from which users can select the most appropriate one that best serves their needs. Seen in this light, dispute resolution is not a zero-sum game between litigation and the other dispute resolution methods. They each have their strengths and attractions. But they do not compete with each other; rather they complement each other to serve the user enabling him to choose the tool that is the right fit for the particular circumstances.

In Tanzania there are two principal arbitration bodies, both with their own set of arbitral rules, namely, the Tanzania Institute of Arbitrators (TI Arb) and the National Construction Council (NCC). While the TI Arb was registered in December 1999 by the Registrar of Societies to promote and facilitate the resolution of commercial disputes in Tanzania. The NCC is a statutory body created under the National Construction Council Act (No. 20 of 1979) and has a unit undertaking such a responsibility for the construction related disputes only.

In my article, Good or Bad Deal: **The Rise in Investment Treaty Disputes – The Case for Tanzania**, I discussed the 2017 notable shift in international investment arbitration policy for natural wealth and resources sector in Tanzania. Specifically, the prohibition of disputes being referred to international courts/tribunals for adjudication under the Natural Wealth (Permanent Sovereignty) Act 2017, the Act moves to replace Bilateral Investment Treaties (BITs) to

appropriately balance investor protection with other public interest goals, including the promotion of development and redress and thus is pro-domestic arbitration (nationalization of arbitration proceedings hence no referral to international bodies out of the country).

Another is the recent Public Private Partnership (Amendment) Act, No. 9 of 2018 (the PPP Amendment Act) was gazetted and came into force in September 2018. The amendment provides that PPP agreements will be subject to local arbitration under the arbitration laws of Tanzania. This provision augments the existing governing law provision which provides that the PPP agreement will be governed by Tanzanian law. Therefore, in the event of a dispute, the parties must select a local arbitral forum i.e. the National Construction Council or the Tanzania Institute of Arbitrators.

It is a known fact that Tanzania does not have well established and tested arbitration practices and its arbitration statute is so antiquated that a complete overhaul is required. The Arbitration Act Cap 15 originally known as the Arbitration Ordinance, was enacted in 1932 and was based on the English law of that period. This is an ancient outdated law that dates back to 1887. The provisions of the Arbitration Act are brief, comprising only 32 sections and related schedules. Further provisions are contained in the Arbitration Rules of 1957, made under the Arbitration Act (published in Government Notice 427 of 1957).

As the Tanzanian legislation on arbitration was first introduced in 1931 and amended in 1971, the UNCITRAL Model Law on International Commercial Arbitration of 1985 (the Model Law) has had no influence on it. The Arbitration Act (Cap 15 RE 2002) (Arbitration Act) still incorporates multilateral agreements like the Geneva Protocol on Arbitration Clauses of 1923 and the Geneva Convention on the Execution of Foreign Arbitral Awards of 1927. The New York Convention entered into force in Tanzania on 11 January 1965. There have been no declarations made according to articles I, X and XI of the Convention. Tanzania has also been a contracting state to the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID) of 1965 since 17 June 1992 and to the Multilateral Investment Guarantee Agency of 1985 since 19 June 1992.

The arbitration scenario has been criticized on several aspects right from the manner in which the proceedings were conducted especially in ad-hoc arbitrations, the delays at par with the conventional courts systems, the exorbitant costs to parties, judicial interference at several stages, challenges with respect to interim orders obtained by parties in courts, difficulties in enforcement of awards and finally the challenge procedure of the award which would typically review the issues on merits and thus convert the process of arbitration into just another civil court litigation involving layers of appeal and thus inordinate delays. With this in mind, there is dire need for a complete overhaul of the Act to consider the developments in the field of alternative dispute resolution in Tanzania.

It should be noted that this initiating for a new arbitration law began sometime in 2012, although the process has been slow, we can confirm that the Law Reform Commission has already submitted its proposals under the BEST programme to the Ministry of Constitutional and Legal Affairs who are now developing and planning the policy. And just recently TI Arb has been approached to

extend comments on a general scope with regards to shaping the alternative dispute resolution and specifically arbitration legal and regulatory framework.

In the article I conclude that, “greater emphasis should be placed on host state legal reform (overhaul of the outdated arbitration laws) and, to the extent necessary, capacity- building within the system of the administration of justice, rather than on international investment arbitration. As such and anticipating more changes in the near future in the field of ADR in our country, the TI Arb and Law School of Tanzania saw there is a need to provide training and capacity building workshops, courses and seminars such as this one.

Indeed Dr. Lukumay, Adv. Mbwambo and Adv. Mchaki on Day 1 and Adv. Aderickson Njunwa, Chuwa, Adv. Usaje Mwambene and M.J.A Lukwaro our immediate past president on Day 2 are going to have a very busy couple of days and we look forward to drawing on their expertise and experience as we do with all our participants and i thank them all for their willingness to extend themselves for the achievement of the primary objective which is creating ADR practitioners in Tanzania.

The organising committee has worked hard to pull together an impressive programme and I congratulate them on the work they have done. I am confident you will see the outcome of their efforts as the day rolls on and I’m sure you will agree that it has been well rewarded.

Finally, I sincerely hope that the trainings and the information shared can be applied effectively in your careers/academics/profession wise.

Well, I will stop here. You have an exciting and interactive course on ADR and Arbitration ahead of you and i I hope you will all enjoy this training program. I wish you all a successful program and take this opportunity to welcome you to TI Arb as upon successfully completing the course and examination you will be eligible for registration as an Associate Member of the Tanzania Institute of Arbitrators.

Thank you very much.

Madeline C. Kimei

President, Tanzania Institute of Arbitrators (TI Arb)

DAR ES SALAAM - 20 November 2019