

Zambia's Alternative Dispute Resolution Landscape: Exploring Legislation, Policy and Institutions Promoting the Practice.



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Introduction

This article provides a comprehensive state of Alternative Dispute Resolution in Zambia, highlighting insights into legislation, policy, and institutions promoting ADR Practice while identifying areas in need of improvement. Alternative Dispute Resolution (ADR) encompasses various methods used in resolving disputes outside the traditional court system. Some of these mechanisms include arbitration, mediation, adjudication and negotiation among others. In Zambia, the growing recognition of ADR as a viable alternative to litigation reflects a broader trend in many jurisdictions aimed at enhancing access to justice and reducing the burden on courts. This article assesses the historical background, legal, policy, and institutional frameworks that support ADR, current trends, challenges, and recommendations for strengthening these mechanisms.

Historical background

In Zambia, Alternative Dispute Resolution practice can be traced back to the 90s. Over the years, the ADR landscape has evolved in terms of the overall practice. There are various mechanisms that are practiced, however few ADR mechanisms are widely practiced and these are; Conciliation, Mediation and Arbitration and Construction Adjudication. Over the past 20 years Zambia has witnessed development targeted at strengthening legal, policy and institutional frameworks.

Legal Framework

Zambia has established a legal framework for ADR through several key pieces of legislation. The Constitution of Zambia provisions, Arbitration Act, Statutory Instruments on Mediation

and Conciliation provided for in the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia.

Constitution: The 2016 amended Constitution recognizes the important role of Alternative Dispute Resolution in enhancing access to justice. Article 118 (2) (d) of the Zambian Constitution No. 2 of 2016 provides that alternative forms of dispute resolution, including traditional dispute resolution mechanisms, shall be promoted provided that the traditional dispute resolution mechanisms shall not- a) Contravene the Bill of Rights, b) Be inconsistent with the provisions of the Constitution or other written law or be repugnant to justice and morality.

The Arbitration Act: Zambia is a signatory to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards, ensuring international enforceability of awards rendered. In 2000, the arbitration Act was enacted to replace the ancient Arbitration Act which was in place since 1964. The 2000 Arbitration Act adopted the UNCITRAL Model Law on Arbitration with modifications which are contained in the Sections in the Act. The Sections in the Act vary the application of the Model Law which is the First Schedule to the Act.

The Act contains enabling and incidental provisions while the substance of the arbitration provides for matters subject to arbitration and exceptions; Effect of death of a party: Arbitration agreement and interim measures; Appointment of arbitrators; Appointment of substitute arbitrator; Powers of arbitral tribunal to order interim and other measures; Default of a party; Form and contents of award and costs and expenses of arbitration; Application for setting aside as exclusive recourse against arbitral award; Recognition and enforcement; Grounds for refusing recognition or enforcement; Effect of award; Legal or other representation; Prohibition of representation or acting as witness by arbitrators in legal proceedings; among others provisions. The Arbitration Act has aligned the Zambian legal system with international standards specifically the UNCITRAL Model Law on International Commercial Arbitration. Since the amended UNCITRAL Model Law on International Commercial Arbitration of 2006, Zambia has not revised its Arbitration Act to incorporate the new provisions on UNCITRAL Model Law on International Commercial Arbitration 1985 With amendments as adopted in 2006.

Mediation Rules: In 2018 the High Court Rules and the Subordinate Court Rules were amended through Statutory Instrument No. 73 of 2018 which introduced Court Annexed Mediation in the Subordinate Court. Statutory Instrument No. 72 of 2018 amendments enhanced the already existing High Court Rules provisions on Mediation. The success of Court Annexed Mediation in the High Court informed the extension of mediation to the Subordinate Courts. Some of the key provisions introduced by Statutory Instrument No. 72 and 73 include:

- *Party autonomy:* the recognition of party autonomy which is an important principle in ADR. The law now requires that parties be given a chance to choose their Mediator from a list of accredited mediators.

- *Pre-trial protocols in the Court system* According to Order 31 Rule 4 (1) of the High Court Rules it is mandatory that at scheduling conference and before setting an action down for trial, a Judge should refer any action amenable to mediation to Court Annexed Mediation, except for a case involving a constitutional issue, the liberty of an individual, an injunction or where the trial Judge considers the case to be unsuitable for referral. Further, Order 43 Rule 17 (1) of the Subordinate Court Rules provides that a Court may at any time before the hearing of a civil matter, but after the defendant has filed a defence, refer the matter for mediation.
- *Harmonized timeframe:* both Statutory Instrument No. 72 and No. 73 has harmonized the time limit for conducting a mediation process, the time limit is set for forty-five (45) days and clarity has been provided that the time limit covers the period between when the Mediator collects the records.
- *Sanctions for non-attendance:* The new rules provide for sanctions to be imposed on a Party that fails to attend the Mediation process. According to Order 31 Rule 8(3) of the High Court Rules the Court shall, where a party that has received notice of mediation in accordance with rule 7 fails to attend without reasonable cause, make an order as to costs from the date of referral of the proceedings to mediation in favour of the party in attendance, despite the defaulting party being successful in the action.
- *Family matters:* Mediation has been extended to a certain aspect of Family Law, Interlocutory Matters such as adoption applications, child and spouse maintenance and property settlements can now be mediated.

Industrial and Labour Relations Act: The Industrial and Labour Relations Act provides for the use of Conciliation, Arbitration and Mediation in resolving collective disputes in the labour and employment sector. Part IX of the Industrial and Labour Relations Act, Chapter 269 of the Laws of Zambia and the amended Industrial Relations Court by the Industrial Relations Court (Arbitration and Mediation Procedure) Rules 2002 are primary laws with provisions on use of ADR mechanisms. Particularly, the amended Arbitration and Mediation Rules of 2002 provides for Parties' right to apply to court to have matters referred to either mediation or arbitration.

Policy Framework Supporting ADR in Zambia

The Zambia has recognized the importance of ADR in enhancing access to justice, despite not having a comprehensive policy on alternative dispute resolution, in 2018, government adopted the National Legal Aid Policy which incorporated and recognized Alternative Dispute Resolution (ADR) to include mechanisms such as mediation, conciliation and negotiation which are used prevent to settle disputes. There are efforts to facilitate for the development of a comprehensive National Policy on Alternative Dispute Resolution to further enhance ADR practice in Zambia.

The Policy is expected to provide for a national framework and coordination structure for Alternative Dispute Resolution in Zambia.

The Role of the Judiciary in Promoting ADR

The Judiciary plays a very important role in promoting Alternative Dispute Resolution in Zambia. The Court provides both supportive and supervisory roles. The Court's role is provided for in both the Constitution and other legislation such as the Arbitration Act and Statutory Instruments in Mediation.

In Arbitration: The Court's role in arbitration is both supervisory and supportive. Court's roles include:

- *Staying proceedings:* The Arbitration Act of 2000 provided that the court can stay legal proceedings and refer the parties to arbitration. The court will not do this if it finds the arbitration agreement to be null and void, inoperative, or incapable of being performed.
- *Interim Measures:* Section 11 (1) provides for interim measures of protection and (2) provides for examples of orders that can be granted.
- *Recognition, Enforcement and Registration of an Award:* Arbitration being private means that the Arbitration Award is equally private. Despite this fact, the award should be confirmed by the Court to enforce it against a losing party who is unwilling to comply with the award. This is done by obtaining a court order that directs the losing party to comply with the award. The Court's supportive role in this process is extremely important and it gives authority to the arbitral tribunal which otherwise could lack authority as this should be endorsed by the Court. Section 18(1) of the Arbitration Act further, provides for the force of endorsed arbitral awards. This provides also caters for foreign arbitral award.
- *Recourse Against an Award:* Section 20(1) of the AA 2000 provides that an award made by an arbitral tribunal pursuant to an arbitration agreement is final and binding on the parties or any person claiming through or under them. This means that there is no appeal against an arbitral award. A losing Party is at liberty to challenge the award through the Court to have the award set aside on specific grounds provided for in *Sub-section (2) of Section 17*. In addition, other circumstances in which an Award can be challenged are: if the applicants proves that; (i) *the subject matter of the dispute is not capable of settlement by arbitration under the Law of Zambia;* or (ii) *the recognition or enforcement of the award*


would be contrary to public policy; or the making of award was induced or effected by fraud, corruption or misrepresentation.”

- If the award challenge application is successful, the; (a) Court may decide to remit the award to the arbitral tribunal for modification; or (b) The Court may itself modify the award; or (c) It may set aside the award in whole or in part. If, the award is set aside, the proceedings must be commenced de novo. If the reason for setting aside of the award is that the arbitrator lacked jurisdiction, the arbitration must commence fresh unless the setting aside is because of other reasons. Worthy noting is the timeline requirement of three months for any party to make an application for setting aside an award. Rule 23(2) of the Arbitration (Court Proceedings) Rules, 2001, provides for how the procedure must be commenced and what documents are required.

Meditation: In Zambia, Judiciary has a well-established system for Court Annexed Mediation which has evolved over time. There is a dedicated mediation office which assists parties referred to mediation to select mediators and handles the administrative part of court annexed mediation. In court-annexed mediation, the Court’s role is to refer disputes to mediation through its established mediation system, this is done to help parties try to resolve a matter before going to trial. The court also support the implementation of mediation settlements by registering these settlements as Court orders. The Court’s role in this process is significant in that it can help more cases to be resolved quickly.

Institutions promoting Alternative Dispute Resolution in Zambia.

In the last 15 years Zambia has witnessed growth in both legal and institutional frameworks on alternative dispute resolution. Below is a highlight of ADR institutions.

Judiciary: The Judiciary of Zambia has continued to promote the use of alternative dispute resolution mechanisms such as mediation, arbitration, conciliation among others. The Court’s commitment can be seen in the way it deals with cases before it that otherwise could be mediated or arbitrated. The continued efforts in improving the operations of the court annexed mediation is a clear indication of Judiciary’s commitment. The Court conducts mediation settlements weeks which is meant to help encourage disputing parties settle cases through mediation. Read more here  <https://judiciaryzambia.com/services/>

iSettle: iSettle is a boutique dispute resolution company specialized in providing dispute avoidance and management services. It was founded in 2023 by its managing partner Ms. Mary Mutupa who is a legal Consultant, Arbitrator, Mediator and an Adjudicator with over nine (9) years of practice as a dispute expert. iSettle is specialized in commercial and investment disputes, offering a variety of services such as early neutral evaluation, Advisory services, case

management, drafting and reviewing of arbitral Clauses, tribunal secretarial services, skills training and dispute resolution system design. iSettle has signature programmes such as SettleSmart and the Arbitrator Connect which offers specialized skills training and support services to users of ADR. Read more here 🖱️ <https://www.linkedin.com/company/isettle-management-consulting/>

Chartered Institute of Arbitrators-Zambia: The Chartered Institute of Arbitrators (Ciarb) Zambia was established and registered on the 21st September 2011 under the Societies Act after the formal approval by the Board of Trustees of the Institute in London. On 29th January 2015, Ciarb was granted recognition, by Order of the Minister of Justice, as an Arbitral Institution in Zambia providing Alternative Dispute Resolution services and trainings. The Chartered Institute of Arbitrators-Zambia has been very instrumental in the training of the current crop of arbitrators, mediators, and adjudicators not only in Zambia but in the neighboring countries. Ciarb continues to return its expertise in alternative dispute. The institute has for a long time been returned as an appointing authority with a reputation of having ADR practitioners who are well trained through its trainings. In addition, Ciarb has been key in both judicial and legal reforms that has sharpened the Zambia's dispute resolution landscape. Ciarb runs arbitration, mediation and construction adjudication courses which are recognized globally. Ciarb has its own rules which Parties can use. Read more here <https://www.ciarb.org/networking/our-branches/africa/zambia/>

Institute for Mediation Excellence: Institute for Mediation Excellence (IME) is a privately owned company that was founded in 2023. It's located in Lusaka, Zambia. IME founding members Stephen M Lungu and Lois Chisompola Sikwenda. Institute For Mediation Excellence provides dispute resolution pathways to resolving matters outside the court system. IME is committed to delivering excellence in conflict management through providing comprehensive solutions tailored to meet the unique needs of clients. It has comprehensive approach that ensures every aspect of the conflict is considered and resolved effectively. The institute provides the highest level of service to foster positive outcomes and long-term satisfaction for our clients. Read more here 🖱️ <https://www.imezambia.com>

Lusaka International Arbitration Center: The Lusaka international arbitration center was founded in 2024 and is in Lusaka, Zambia. The Lusaka International Arbitration Centre (LIAC) aims to provide a forum for the resolution and administration of international commercial and domestic arbitrations and other alternative dispute processes in the country. Its establishment is a response to the demand from the business community for a reputable forum for speedy disposal of commercial disputes. Read more here 🖱️ <https://liac.co.zm>

Law Firms: Several law firms have evolved and developed alternative dispute resolution as part of the practice. These are offering specialized ADR services with most of them focused on

arbitration. The collaboration of Zambia's ADR is vital for creating a cohesive ADR environment that is accessible to all Zambians. Collaboration between public institutions and private ADR providers is crucial for enhancing the effectiveness of ADR in Zambia.

Current Trends and Developments in ADR

As stated in the legal framework section, Zambia has continued to make progressive changes to its ADR laws. Currently there is a process underway to amend the Arbitration Act of 2000 to allow for incorporation of practices on rules and standards. The changes will enhance the effectiveness of ADR in Zambia. The emerging issues such as technology (online platforms, AI), increased cross-board commerce and disputes continues to influence the practice. The rise of technology has introduced new ways conducting dispute resolution. Online Dispute Resolution has gained so much traction during the COVID-19 pandemic which saw reforms in rules and procedures being developed to accommodate virtual procedures. This has brought about flexibility and adaptability of conducting meetings. The impact of COVID-19 influenced the use of digital tools in ADR processes.

Challenges and Barriers to ADR

Public engagement on ADR services remains very low with very few entities engaged in disseminating information on ADR. Many people are not aware about the benefits and availability of these ADR services where to access the services from. The need to scale up information sharing is key to foster a culture that embraces ADR as a legitimate alternative to litigation.

Capacity and resource remain as a major challenge in the use of ADR mechanisms. Limited understanding by some users on guidelines and procedures can cause confusion. Some ambiguities in the law and some procedural rules can create uncertainties for practitioners and parties seeking resolution.

Recommendations for Strengthening ADR in Zambia

1. **Public awareness:** There is need to scale up sensitization efforts on the availability and benefits of Alternative Dispute Resolution services especially for those may not afford litigation fees and those seeking for quick resolution of disputes.
2. **Legislation:** Government needs to step up efforts to ensure domestic laws are amended frequently to allow for incorporation of international law and standards. Enact an independent Mediation Act and Construction Adjudication Act. The lack of specific law on adjudication possesses several challenges in managing the mechanism effectively.

Adjudication Law: The Adjudication practice is limited despite the mechanism being important especially in the construction industry. The enactment of adjudication law will enhance resolving of construction disputes faster and will lead to many disputes being

resolved before getting to either arbitration or litigation. The enactment of Mediation Act will enhance mediation practice and allow for the growth of the commercial mediation practice.

Mediation law: There is need to enact a specific Mediation Act which will govern the general mediation practice as opposed to the current practice which requires parties to first commence an action in Court and then cases get referred to Court annexed mediation as this is the only way that the outcome of the mediation process which is the Settlement Consent Order can be registered in Court. Any mediation outcome as a result of the process initiated outside the Court system is not recognized hence enforcement of any outcome is a challenge in case a party default.

3. **Policy:** Develop a comprehensive national ADR policy that integrates various dispute resolution methods would also be beneficial.

Conclusion

This article has highlighted the significant progress Zambia has made in establishing a legal and policy framework for ADR. It has further informed on the expansion of institutional framework. despite all the highlighted progress, challenges remain that hinder Zambia's practice. There is need to address the legislative gaps to further improve the practice. The need to increase public awareness on the availability and benefits of ADR mechanisms will enhance access to justice not only for the corporates but most of the Zambians who have simple civil matters await a long queue in litigation which otherwise can be mediated or arbitrated. There is need to address these targeted legal and policy reforms, and public awareness initiatives to create a more robust ADR landscape that enhances access to justice for all its citizens.

References

1. The Arbitration Act No. 19 of 2000 as read with the 1st Schedule, commonly referred to as the Model Law and the 2nd Schedule commonly referred to as the New York Convention
2. The Arbitration (Court Proceedings) Rules, SI No. 75 of 2001
3. The Arbitration (Code of Conduct and Standards) Regulations 20076 SI No. 12 of 2007
4. UNCITRAL Model Law on International Commercial Arbitration
5. Statutory Instrument No. 72 High Court (Amendment) Rules of 2018
6. Statutory Instrument No. 73 The Subordinate Court (Amendment) Rules of 2018
7. National Legal Policy 2018
8. Alternative Dispute Resolution Practice in Zambia: Exploring Legislative Reforms and Future Prospects to further Enhance the Practice. Mary, April 2019