

The Role of Alternative Dispute Resolution in Procurement Disputes: The Case of Tanzania and Kenya

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Abstract:

Public procurement is a cornerstone of government operations, involving substantial financial commitments and the delivery of essential services. Due to its complexity, procurement frequently gives rise to disputes, ranging from bidding irregularities to breaches of contract. Traditionally, such disputes have been addressed through administrative review and litigation. However, these methods are often costly, time-consuming, and adversarial. This article explores the growing relevance of Alternative Dispute Resolution (ADR) in managing procurement-related disputes, with a comparative legal focus on Tanzania and Kenya. Drawing on doctrinal, empirical, and comparative methodologies, the article critically examines the legal and institutional frameworks that support procurement dispute resolution in both countries. In Tanzania, the Public Procurement Act, 2023 and the Arbitration Act provide internal and contractual mechanisms for dispute settlement, while administrative review is carried out by the Public Procurement Appeals Authority (PPAA). In Kenya, the Public Procurement and Asset Disposal Act, 2015 and the Arbitration Act, 1995 form the legal backbone, complemented by the Public Procurement Administrative Review Board (PPARB) and a strong constitutional mandate to promote ADR. The study finds that while both jurisdictions have made strides in creating formal review bodies, Kenya exhibits more advanced digital integration, greater constitutional support for ADR, and widespread adoption of arbitration clauses in procurement contracts. Tanzania's reforms under the 2023 Act mark a shift toward improved internal resolution mechanisms, though challenges in ADR implementation persist due to lack of statutory clarity and limited awareness. The article concludes with practical recommendations, including legislative reforms, institutional capacity-building, integration of ADR clauses in standard contracts, public awareness campaigns, and the promotion of mediation and early settlement options. These efforts would not only enhance dispute resolution efficiency but also strengthen trust and accountability in public procurement systems.

Keywords: Procurement disputes, Alternative Dispute Resolution, Arbitration, Mediation, Tanzania, Kenya.

Suggested Citation: G. Y. Muwanga (2025), 'The Role of Alternative Dispute Resolution in Procurement Disputes: The Case of Tanzania and Kenya,' *TzJMS*. Vol. 1. No. 1. pp. 94-113.

DOI: <https://doi.org/10.5281/zenodo.17117459>

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1. INTRODUCTION

Public procurement is a central component of public financial management and government service delivery.¹ Given its scale and value, procurement processes are prone to disputes that can lead to delays, increased costs, or compromised service outcomes.² Across many jurisdictions, Alternative Dispute Resolution (ADR) has emerged as a viable and often preferable mechanism for resolving such disputes, as it tends to be faster, more cost-effective, and less adversarial than traditional litigation. This article explores how ADR mechanisms are applied to procurement disputes, specifically within Tanzania and Kenya, using a comparative legal approach and focusing on the current statutory frameworks, institutional settings, and practical experiences in both countries.

Procurement disputes usually arise at different stages of the procurement lifecycle from pre-qualification, tendering, evaluation, and award, to contract performance.³ The nature of these disputes may range from alleged breaches of procedure, discrimination, and unfair award decisions, to contract enforcement issues.⁴ In both Tanzania and Kenya, laws have been enacted to establish institutions and procedures to address such disputes, including mechanisms for administrative review and appeals. However, while administrative review through regulatory bodies remains the predominant method, ADR methods such as mediation and arbitration are increasingly recognized for their capacity to resolve more complex or contract-based procurement disagreements.

In Tanzania, the legal foundation for public procurement is the Public Procurement Act, 2023, which repealed the earlier 2011 Act. It establishes a detailed procurement system, overseen by the Public Procurement Regulatory Authority (PPRA), with dispute settlement options outlined under Part XI of the Act. The law mandates that procurement disputes may be resolved through internal reviews by accounting officers and appeals to the Public Procurement Appeals Authority (PPAA). Moreover, Section 120 of the Act provides for the settlement of complaints or disputes by the accounting officer, which may involve negotiations or other internal means before invoking the formal appeal process.

2. Methodology

This research adopts a multi-pronged legal research methodology combining doctrinal, empirical, and comparative approaches to explore the role and effectiveness of Alternative Dispute Resolution (ADR) in resolving procurement disputes within Tanzania and Kenya.

¹ Ngwakwe, C. C. (2012). Public sector financial accountability and service delivery. *Journal of Public Administration*, 47(si-1), 311-329.

² Elhag, T., Eapen, S., & Ballal, T. (2020). Moderating claims and disputes through collaborative procurement. *Construction Innovation*, 20(1), 79-95.

³ Amireh, F. (2022). A study on the impact of contractor selection method and contractors' pre-qualifications on delays in Jordanian public construction projects.

⁴ Ibid.

The methodology was chosen to enable a well-rounded understanding of both the legal texts and practical applications of ADR mechanisms in the two jurisdictions.

2.1 Doctrinal legal research

The doctrinal method, also referred to as “black letter law” analysis, formed the foundation of this study. Through this approach, the research involved a close examination and interpretation of relevant legal instruments governing public procurement and ADR in Tanzania and Kenya. These included Tanzania, which has the Public Procurement Act⁵ the Arbitration Act,⁶ Civil Procedure Code,⁷ and relevant regulatory guidelines issued by the Public Procurement Regulatory Authority (PPRA). The study looks at Kenya, which has the Public Procurement and Asset Disposal Act, 2015, Arbitration Act, No. 4 of 1995 (Revised 2010), Constitution of Kenya, 2010; and practice guidelines from the Public Procurement Regulatory Authority (PPRA-Kenya).

The doctrinal analysis helped identify the statutory and institutional framework within which ADR is situated in both countries, as well as the legal recognition, scope, and limitations of ADR mechanisms like mediation, arbitration, negotiation, and internal reviews. The method further allowed a textual comparison of dispute resolution provisions and procedures, including the powers and jurisdiction of specialized procurement tribunals such as Tanzania’s Public Procurement Appeals Authority (PPAA) and Kenya’s Public Procurement Administrative Review Board (PPARB).

2.2 Empirical legal research

To complement the doctrinal framework, the study incorporated empirical insights drawn from secondary data sources, including; Judicial and tribunal decisions from Tanzania’s PPAA and Kenya’s PPARB, Reports and publications from procurement authorities and oversight agencies in both jurisdictions, International donor procurement reports (e.g., from the World Bank and African Development Bank) highlighting procurement dispute outcomes involving ADR and Professional opinions and policy commentary from procurement and legal experts published in academic journals, legal blogs, and institutional newsletters.

Though no primary data collection (such as interviews or surveys) was conducted, the empirical method helped evaluate the actual implementation and usage trends of ADR mechanisms in real-world procurement disputes. Through this, the study was able to observe gaps between the law in theory and the law in practice, especially in the use of arbitration or mediation post-contract award.

⁵ No. 10 of 2023,

⁶ Cap. 15 R.E. 2023.

⁷ Cap. 33, R.E 2023.

2.3 Comparative legal method

The comparative approach was employed to systematically contrast Tanzania and Kenya in their treatment of ADR in procurement. This involved identifying similarities and differences in their constitutional, statutory, and institutional frameworks. It also covered; Comparative timelines and procedures for administrative review, Jurisdictional boundaries of procurement tribunals, Incorporation of ADR clauses in procurement contracts, Digital integration of procurement and dispute resolution systems (e.g., eCitizen and IFMIS in Kenya versus semi-digital procedures in Tanzania) and Professional and institutional capacity to handle ADR.

The comparative analysis illuminated best practices and policy lessons that Tanzania could draw from Kenya, especially in areas such as constitutional promotion of ADR, arbitration clause usage, and tribunal efficiency. It also allowed for the identification of shared challenges, such as the underutilization of mediation and the lack of procurement officers trained in ADR.

3. CONCEPTUAL AND LEGAL FRAMEWORK OF ALTERNATIVE DISPUTE RESOLUTION (ADR)

Alternative Dispute Resolution (ADR) refers to methods of resolving disputes outside the traditional court system.⁸ These methods include negotiation, mediation, conciliation, and arbitration. The use of ADR in procurement disputes aligns with the global trend of adopting more efficient, less adversarial mechanisms for resolving commercial and administrative conflicts.⁹ ADR not only helps to reduce the burden on courts but also ensures speedy dispute resolution, confidentiality, cost-effectiveness, and, in many cases, preservation of contractual relationships.

The concept of ADR originates from the understanding that litigation may not always provide the most suitable forum for resolving disputes, particularly in the context of specialized areas like procurement. Litigation is often rigid and time-consuming.¹⁰ In contrast, ADR processes are generally flexible, allow parties to choose experts in procurement as decision-makers, and promote settlement based on mutual interests rather than strict legal positions. This is particularly important in public procurement, where continuity of supply and service is crucial to public interest.

In Tanzania, ADR is not defined directly in the Public Procurement Act, 2023. However, the Act recognizes dispute resolution mechanisms and permits the settlement of procurement complaints through procedures that mirror ADR. Section 120 of the Act

⁸ Sander, F. E. (1985). Alternative methods of dispute resolution: an overview. U. Fla. L. Rev., 37, 1.

⁹ Ibid

¹⁰ Davis, J. F. (1979). A New Approach to Resolving Costly Litigation. J. Pat. Off. Soc'y, 61, 482.

provides that a complaint or dispute by a tenderer may be submitted first to the accounting officer of the procuring entity, who is required to resolve the matter internally where possible before the matter proceeds to formal appeals mechanisms such as the Public Procurement Appeals Authority (PPAA).¹¹ This provision essentially reflects a form of negotiation or internal dispute resolution, which is a primary form of ADR. Furthermore, Section 125 allows for judicial review, indicating that parties must exhaust administrative remedies before turning to courts, thus encouraging alternative internal means of resolution.¹²

Additionally, Tanzania has made broader commitments to ADR through the Arbitration Act, Cap. 15, which governs arbitration proceedings and recognizes the enforceability of arbitral awards. This Act is applicable to disputes arising from procurement contracts, especially at the execution stage. For example, once a procurement contract is signed, any dispute arising from its performance may be referred to arbitration, provided the parties have included an arbitration clause in the contract. In practice, however, most procurement-related disputes in Tanzania are resolved through the administrative mechanisms under the Procurement Act.

In Kenya, the term ADR is not explicitly defined in the Public Procurement and Asset Disposal Act, 2015. However, Kenya has recognized ADR in several other legal instruments. Article 159(2)(c) of the Constitution of Kenya, 2010, provides that courts shall promote ADR, including reconciliation, mediation, arbitration, and traditional dispute resolution mechanisms.¹³ This constitutional mandate influences all areas of law, including procurement. Nevertheless, the Public Procurement and Asset Disposal Act focus primarily on administrative review mechanisms as the primary mode of resolving disputes, especially through the Public Procurement Administrative Review Board (PPARB) established under Section 27 of the Act.¹⁴

While the Kenyan procurement law is silent on explicit ADR provisions during the procurement process, disputes arising at the contract performance stage may be resolved through ADR.¹⁵ This includes arbitration clauses within procurement contracts. Section 131 of the Act refers to competitive negotiations, which though not an ADR mechanism per se do reflect a non-litigious form of resolving procurement disagreements during the contracting process.¹⁶ Moreover, Kenyan law, under the Arbitration Act, No. 4 of 1995, permits parties to use arbitration to resolve contractual disputes, including those related to public procurement contracts.

¹¹ Public Procurement Act, 2023 (Tanzania), Section 120.

¹² Ibid, Section 125

¹³ Constitution of Kenya, 2010, Article 159(2)(c)

¹⁴ Public Procurement and Asset Disposal Act, 2015 (Kenya), Section 27

¹⁵ Nyakundi, F. M. (2015). Development of ADR mechanisms in Kenya and the role of ADR in labour relations and dispute resolution.

¹⁶ Ibid 11, Section 131

From a doctrinal standpoint, ADR is classified into consensual methods (such as negotiation and mediation) and adjudicative methods (such as arbitration).¹⁷ In both Tanzania and Kenya, the legal recognition of arbitration and the use of negotiated settlements within public institutions indicates an acknowledgment of both classes. However, for ADR to be effectively integrated into procurement frameworks, there must be enabling clauses in procurement contracts and institutional capacity to support enforcement and oversight of these mechanisms.

Comparatively, both Tanzania and Kenya present frameworks that recognize the need for ADR in procurement but do so more through implication than explicit mandates.¹⁸ Administrative reviews dominate as the primary dispute resolution pathway, often taking on the functions of ADR without being labeled as such. For example, Tanzania's accounting officer process mirrors early neutral evaluation, while Kenya's use of procurement negotiation may reflect mediated discussions in contract awards. Nonetheless, gaps remain, especially in the pre-contract stages, where ADR could help resolve eligibility disputes or procedural irregularities without stalling the entire procurement process.

In conclusion, the conceptual and legal framework of ADR in both jurisdictions exists through a combination of constitutional provisions, sector-specific statutes, and contractual practices. However, for ADR to be fully functional in procurement disputes, these frameworks need to be harmonized, supported by explicit policy directions, and strengthened through institutional and legal reforms to clearly define when and how ADR should apply.

4. OVERVIEW OF PUBLIC PROCUREMENT DISPUTE RESOLUTION FRAMEWORKS IN TANZANIA AND KENYA

Public procurement involves multiple stages, each of which can generate disputes between tenderers, suppliers, and procuring entities.¹⁹ To manage these disputes effectively, both Tanzania and Kenya have established legal and institutional frameworks that provide specific mechanisms and timelines for addressing grievances. While both jurisdictions prioritize administrative reviews, there are distinct differences in the structure, procedure, and depth of the review processes provided.

In Tanzania, the dispute resolution framework under the Public Procurement Act, 2023 is laid out in Part XI of the Act. The framework provides a three-tier structure for dispute

¹⁷ Menkel-Meadow, C. (2015). Mediation, arbitration, and alternative dispute resolution (ADR). International Encyclopedia of the Social and Behavioral Sciences, Elsevier Ltd.

¹⁸ Engelbert, A., Kaltenborn, M., & Reit-Born, N. A. (2016). Effective corruption control: Supplier remedies in public procurement in Kenya, Uganda and Tanzania-A comparative analysis of mechanisms and their implementation (Vol. 68). Logos Verlag Berlin GmbH.

¹⁹ Mantzaris, E. (2014). Public procurement, tendering and corruption. African Journal of Public Affairs, 7(2), 67-79.

resolution. First, Section 120 stipulates that any complaints or disputes arising during the procurement process must be submitted to the accounting officer of the procuring entity. This internal review allows the entity a chance to address the issue without the need for formal proceedings.²⁰

If the dispute is not resolved at this level, the aggrieved party may escalate the matter to the Public Procurement Appeals Authority (PPAA), established under Section 112 of the same Act. The PPAA serves as a quasi-judicial body specifically tasked with handling procurement-related appeals. Its jurisdiction includes reviewing decisions made by accounting officers and determining the legality and fairness of procurement processes.²¹ Importantly, Section 121 of the Act provides the right to appeal to the PPAA if a tenderer is dissatisfied with the decision of the accounting officer or if no decision is provided within the prescribed period. Section 122 allows for an extension of time for submitting complaints, thereby reinforcing access to justice in procurement matters.²² Furthermore, Section 124 of the Act gives the Appeals Authority powers to suspend ongoing procurement proceedings where necessary to prevent harm or prejudice to any party, indicating a proactive oversight role.²³ In cases where the decision of the PPAA is challenged, Section 125 allows for judicial review by the High Court. However, parties must first exhaust the internal and administrative remedies before approaching the judiciary. This layered approach promotes the efficiency of administrative resolution while preserving the right to judicial redress.²⁴

By contrast, Kenya's procurement dispute resolution framework is governed by Part XV of the Public Procurement and Asset Disposal Act, 2015. The central body for handling procurement disputes is the Public Procurement Administrative Review Board (PPARB), established under Section 27 of the Act. Like Tanzania's PPAA, the PPARB is an independent quasi-judicial body responsible for reviewing complaints filed by aggrieved tenderers or suppliers during procurement processes.

Section 167 of the Kenyan Act allows any candidate or tenderer to request a review of a procurement decision within fourteen days of the alleged breach. The application must be filed with the Review Board, which then issues a determination within twenty-one days, as required by Section 171.²⁵ This tight timeline ensures swift resolution, which is vital for time-sensitive public contracts.

²⁰ Public Procurement Act, 2023 (Tanzania), Section 120.

²¹ *Ibid*, Section 112.

²² *Ibid*, Section 121 & 122.

²³ *Ibid*, Section 124.

²⁴ *Ibid*, Section 125.

²⁵ Public Procurement and Asset Disposal Act, 2015 (Kenya), Sections 27 & 167

Under Section 168, the submission of a review request results in automatic suspension of procurement proceedings. This suspension remains in force until the Review Board issues its determination.²⁶ Such provisions help to prevent wastage of public funds or illegal awarding of contracts while a dispute is pending resolution. Section 173 empowers the PPARB to annul procurement decisions, issue declaratory orders, or direct procuring entities to take corrective measures. It also allows the Board to award costs to either party where necessary. The decisions of the PPARB are binding, although dissatisfied parties may appeal to the High Court of Kenya under Section 175 of the Act, which provides for judicial review.²⁷

Notably, Kenya's system is considered more formalized and digitalized compared to Tanzania's, largely due to its integration with the eCitizen platform and the National Treasury's procurement systems. The digital platforms enhance transparency, accessibility, and efficiency in procurement processes.²⁸ However, both jurisdictions emphasize administrative review as a primary remedy before recourse to the courts. It is also important to recognize that contractual disputes those that arise after the procurement contract is signed are treated differently in both countries. In Tanzania, such disputes may be referred to arbitration or court litigation based on the terms of the contract. Similarly, in Kenya, once the contract has been executed, disputes are no longer under the PPARB's jurisdiction and must be resolved through arbitration or court proceedings, depending on the contractual agreement.

The key takeaway is that while both countries provide layered administrative review mechanisms, Kenya's framework is more rigid and timeline-driven, with a clearer integration of electronic processes. Tanzania, having recently revised its procurement law in 2023, reflects a renewed attempt to clarify and enhance dispute resolution processes but still operates largely on semi-digital or manual systems.

Despite these differences, both Tanzania and Kenya have converged on the principle that procurement disputes must be handled efficiently, fairly, and transparently. The frameworks aim to uphold public trust in procurement institutions and to ensure that public funds are used optimally. Still, improvements can be made in both jurisdictions by explicitly integrating ADR mechanisms like mediation and arbitration into the earlier stages of the procurement dispute resolution process.

²⁶ Ibid, Section 168

²⁷ Ibid, Section 173 & 175

²⁸ Bienhaus, F., & Haddud, A. (2018). Procurement 4.0: factors influencing the digitisation of procurement and supply chains. *Business Process Management Journal*, 24(4), 965-984.

5. LEGAL AND INSTITUTIONAL FRAMEWORKS SUPPORTING ADR IN PROCUREMENT DISPUTES IN TANZANIA

In Tanzania, the evolving legal and institutional frameworks for public procurement have created an enabling environment for the potential application of Alternative Dispute Resolution (ADR) mechanisms.²⁹ While the Public Procurement Act, 2023 does not explicitly designate ADR methods such as arbitration or mediation as the primary tools for resolving procurement disputes, it nevertheless contains procedural pathways that mirror ADR principles and support its integration particularly at the post-contract stage. The principal law governing public procurement in Tanzania is the Public Procurement Act No. 10 of 2023, which provides a structured process for procurement, oversight, and dispute resolution. Part XI of the Act³⁰ is dedicated to dispute settlement, outlining procedures for resolving grievances involving procurement entities, tenderers, and other stakeholders. The initial mechanism is the resolution of complaints by the accounting officer under Section 120, which requires that procurement-related complaints be submitted directly to the respective procuring entity for possible internal resolution.³¹ This is consistent with the ADR principle of resolving disputes at the lowest level and promotes efficiency, confidentiality, and reduced costs.

Further escalation is handled by the Public Procurement Appeals Authority (PPAA), established under Section 112 of the Act³², which acts as an administrative tribunal with powers to determine procurement-related appeals. While this tribunal operates in a quasi-judicial capacity, its structure bears resemblance to a formalized ADR forum, where parties may present arguments and evidence in a less formal environment than traditional courts. Importantly, Section 124³³ of the Act authorizes the PPAA to suspend procurement proceedings to avoid prejudice, aligning with the core ADR objective of preserving the status quo and avoiding further damage pending dispute resolution.³⁴ The Act also provides for judicial review under Section 125, which allows dissatisfied parties to challenge decisions of the PPAA in the High Court. However, this is conditioned on exhaustion of administrative remedies. This requirement promotes the idea that ADR-style resolutions should be pursued first, before engaging in formal litigation.³⁵

Beyond the Public Procurement Act, the Arbitration Act, Cap. 15 R.E. 2020 provides a general legal basis for arbitration in Tanzania. This Act is applicable to procurement disputes that arise post-contract, especially those concerning the performance, delay, or breach of contract terms. Parties are free to include arbitration clauses in procurement

²⁹ Mashamba, C. J. (2014). *Alternative dispute resolution in Tanzania: Law and practice*. Mkuki na Nyota Publishers.

³⁰ Public Procurement Act No. 10 of 2023.

³¹ *Ibid*, Section 120.

³² *Ibid*.

³³ *Ibid*.

³⁴ *Ibid*, Section 124.

³⁵ *Ibid*, Section 125.

contracts, thereby allowing disputes to be resolved through private adjudication by expert arbitrators. This is in line with international best practices in procurement contracts, particularly where technical complexity or confidentiality is paramount.

Moreover, Order VIIIA³⁶ recognizes court-annexed mediation, further supporting the presence of ADR mechanisms within the Tanzanian legal system. Though not procurement-specific, such provisions can be leveraged in procurement-related civil suits where parties agree to settle through mediation or judicial conciliation. Institutionally, Tanzania has taken important steps toward professionalizing procurement and dispute resolution functions. The Public Procurement Regulatory Authority (PPRA), established under Section 8 of the 2023 Act, is responsible for regulating and overseeing procurement activities across public bodies. Among its functions, the PPRA advises entities on best practices and compliance with procurement laws, including the resolution of disputes arising from non-compliance or breach of procedure.³⁷

Additionally, the Public Procurement Policy Commissioner, provided for under Section 6, develops procurement policy and strategy, including standards for transparency and integrity. While not directly tasked with ADR, this office plays a significant role in creating an environment conducive to alternative dispute resolution by promoting efficiency, capacity-building, and professional procurement practices across public entities.³⁸

Despite these legal and institutional structures, the practical use of ADR in procurement disputes remains limited. In most cases, the resolution of disputes ends at the administrative review level (either through the accounting officer or the PPAA), and contractual disputes are either settled informally or proceed to litigation. There is no mandatory requirement under the Procurement Act to use mediation or arbitration, nor is there a central ADR body specifically dedicated to procurement conflicts.

However, the use of “negotiated settlements”, particularly at the level of the accounting officer, reflects a foundational ADR principle. When disputes are settled at this level, it avoids escalation, reduces legal costs, and preserves business relationships between the government and suppliers or contractors. This form of internal dispute resolution is the most practical expression of ADR within the procurement regime as it currently stands. Another area of promise is the growing inclusion of arbitration clauses in procurement contracts, especially those involving infrastructure and high-value projects. These clauses are often adopted in line with international funding requirements from bodies such as the World Bank or African Development Bank, which encourage arbitration to ensure neutrality and predictability in case of disputes.

The recent overhaul of the procurement law in 2023 provides an opportunity for institutionalizing ADR further. With a clear push toward modernization, transparency,

³⁶ The Civil Procedure Code, Cap. 33 R.E 2023.

³⁷ Ibid, Section 8

³⁸ Ibid, Section 6 & 7

and local capacity-building, the PPRA and related entities can promote the adoption of formal ADR methods, particularly through standard form contracts that include ADR clauses and through training procurement professionals and tenderers on dispute resolution options.

Tanzania's legal and institutional framework lays a foundation for ADR in procurement, particularly through internal administrative processes and post-contract arbitration. However, to realize the full benefits of ADR, reforms are needed to explicitly recognize mediation and arbitration within the procurement cycle, enhance capacity among procurement officers, and encourage the use of standard contracts with ADR clauses.

6. LEGAL AND INSTITUTIONAL FRAMEWORKS SUPPORTING ADR IN PROCUREMENT DISPUTES IN KENYA

Kenya has developed a comprehensive public procurement regime supported by legal, institutional, and regulatory frameworks that emphasize transparency, accountability, and value for money.³⁹ The Public Procurement and Asset Disposal Act, 2015 (hereinafter "the PPAD Act") is the principal law governing procurement processes in Kenya. While the Act does not expressly promote Alternative Dispute Resolution (ADR) as the first line of resolution during procurement disputes, its interaction with other Kenyan legal instruments and practices supports the integration of ADR particularly during post-contract disputes.

The main legal framework for procurement disputes is established in Part XV of the PPAD Act. It outlines the procedure for administrative review of procurement decisions, which is the predominant method of dispute resolution at the pre-contract stage. Section 27 of the Act establishes the Public Procurement Administrative Review Board (PPARB), an independent quasi-judicial body mandated to handle complaints by aggrieved tenderers or candidates during procurement proceedings.⁴⁰ Under Section 167(1), any candidate or tenderer who claims to have suffered or risks suffering loss or damage due to the breach of a duty imposed on a procuring entity may seek a review by the PPARB within 14 days of notification of the contested decision. This mechanism offers a time-bound and cost-effective alternative to court proceedings, aligning with some of the core objectives of ADR: efficiency, accessibility, and early resolution.⁴¹

While the PPARB process is not formally classified as ADR, it possesses characteristics that mirror it.⁴² It provides a less formal environment, does not strictly follow technical

³⁹ Akech, J. M. (2004). Development partners and governance of public procurement in Kenya: enhancing democracy in the administration of aid. *NYUJ Int'l. L. & Pol.*, 37, 829.

⁴⁰ Public Procurement and Asset Disposal Act, 2015 (Kenya), Section 27

⁴¹ *Ibid*, Section 167

⁴² Knudsen, L. F. A Classification of Consumer ADR Schemes—A Way Towards a Better Understanding of the Concept of ADR Schemes. *European Integration and Baltic Sea Region: Diversity and Perspectives*. Riga: University of Latvia, 267.

rules of procedure and evidence, and is designed to allow for participatory engagement of all stakeholders. Moreover, Section 168 mandates the automatic suspension of procurement proceedings upon filing of a review application, thereby preventing procurement from proceeding until the dispute is resolved.⁴³ This provision enhances fairness and reduces the risk of irreparable loss, which is a common principle in arbitration and mediation.

In terms of institutional support, the PPARB has consistently demonstrated efficiency in dispute handling, delivering determinations within the statutory 21-day period as per Section 171. It is worth noting, however, that once a procurement contract is signed, the jurisdiction of the PPARB ceases under Section 167(4)(c). From this point onward, procurement-related disputes transform into contractual disputes, which may be addressed through arbitration, mediation, or litigation, depending on the terms of the contract.

It is at the post-contract stage that ADR is more clearly recognized in Kenyan procurement practice. The Arbitration Act, No. 4 of 1995 (as revised in 2010) governs arbitration procedures in Kenya and applies broadly, including to procurement contracts. Parties are encouraged to incorporate arbitration clauses into their procurement agreements, especially where the nature of the contract is complex or high-value, such as in infrastructure development, ICT supply, or medical equipment procurement.

Moreover, the Constitution of Kenya, 2010, under Article 159(2)(c), mandates courts and tribunals to promote ADR, including mediation, reconciliation, and traditional dispute resolution mechanisms.⁴⁴ This constitutional provision gives ADR a higher legal standing, implying that any statutory framework—such as the PPAD Act—should be interpreted in a manner that supports non-adversarial dispute resolution. Therefore, even in procurement disputes, especially those arising from the performance or interpretation of contracts, ADR methods such as arbitration and mediation are encouraged.

In terms of regulatory oversight, the Public Procurement Regulatory Authority (PPRA), established under Section 8 of the PPAD Act, plays a critical role in monitoring compliance and providing policy direction. Although not directly involved in dispute resolution, the PPRA develops standard bidding documents and contractual templates that often include ADR clauses, especially arbitration, as the method for post-award dispute resolution.⁴⁵

⁴³ Ibid, Section 168

⁴⁴ Constitution of Kenya, 2010, Article 159(2)(c)

⁴⁵ Public Procurement and Asset Disposal Act, 2015 (Kenya), Section 8

Furthermore, the National Treasury, under Section 7 of the PPAD Act, is responsible for procurement policy formulation and capacity-building, including guidance on dispute resolution processes. Through the Treasury Circulars and the Procurement Manual, procuring entities are encouraged to adopt best practices in contract management, including use of ADR where feasible.

In practice, however, challenges remain. ADR in procurement is still underutilized, largely due to limited awareness, inadequate training, and a tendency among public institutions to rely heavily on the formal processes established under the PPAD Act. Moreover, many standard contracts used by public institutions do not contain detailed ADR clauses, and where they exist, their implementation is rarely monitored. This has resulted in frequent escalation of disputes to the courts, despite ADR offering a more flexible and cost-effective option.

Nevertheless, there have been some notable instances where ADR, especially arbitration, has successfully resolved procurement contract disputes. For instance, disputes involving international donors or development partners such as the World Bank or African Development Bank typically require arbitration as a preferred mechanism. This has influenced local contracting practices, especially in infrastructure and utility projects, by reinforcing arbitration as a legitimate and preferred method of dispute resolution.

Kenya's legal and institutional frameworks support ADR in procurement disputes, particularly during the post-contract phase. The PPARB offers an efficient administrative mechanism for handling procurement complaints during the bidding and award stages. For disputes arising after contract signing, the Arbitration Act and the Constitution provide a strong basis for arbitration and mediation. To strengthen ADR in procurement further, it would be prudent for public entities to adopt standard contracts with robust ADR clauses, enhance training for procurement professionals, and integrate mediation and arbitration into early stages of dispute management.

7. COMPARATIVE ANALYSIS

A comparative analysis of the application of Alternative Dispute Resolution (ADR) in procurement disputes between Tanzania and Kenya reveals both convergence and divergence in legal recognition, institutional mechanisms, and practical implementation.⁴⁶ Although both countries have formally established public procurement regimes grounded in principles of fairness, efficiency, and transparency, the extent to which ADR has been embedded and institutionalized varies considerably.

⁴⁶ Kinyua, C. (2023). Using Alternative Dispute Resolution (ADR) Mechanisms as a Tool for Decentralization of Justice. Available at SSRN 4649540.

To begin with, legal recognition of ADR is more explicit in Kenya than in Tanzania. The Constitution of Kenya, 2010, under Article 159(2)(c), mandates courts and tribunals to promote alternative forms of dispute resolution, including arbitration, mediation, and traditional mechanisms.⁴⁷ This constitutional directive provides a binding obligation that shapes interpretation and application of all legal frameworks, including procurement. In contrast, Tanzania's Constitution does not expressly mention ADR in its dispute resolution framework. The use of ADR in Tanzania is instead governed by sectoral laws, such as the Arbitration Act, Cap. 15, and procedural codes like the Civil Procedure Code, Cap. 33, which offer general provisions on ADR without specific links to procurement law. Second, while both countries provide administrative remedies through procurement-specific tribunals, their positioning in the broader legal architecture differs. Tanzania's Public Procurement Appeals Authority (PPAA) and Kenya's Public Procurement Administrative Review Board (PPARB) are both empowered to hear procurement-related disputes before contract signing.

However, Kenya's Review Board is more structured in terms of timelines and enforcement. For instance, the PPAA in Tanzania has no fixed statutory period within which to resolve complaints, whereas the Kenyan PPARB must determine complaints within 21 days under Section 171 of the PPAD Act.⁴⁸ This provides predictability and faster resolution for tenderers in Kenya, aligning more closely with ADR principles of expediency and cost-effectiveness.

Third, the scope of jurisdiction varies significantly. In both jurisdictions, these administrative bodies can only hear disputes that arise during the procurement process before the contract is signed. Post-contractual disputes must be resolved through litigation or ADR methods such as arbitration or mediation. In Tanzania, Section 125 of the Public Procurement Act, 2023, allows for judicial review of decisions by the PPAA, but there is no statutory requirement that arbitration or mediation be pursued first.⁴⁹ In Kenya, Section 175 of the PPAD Act also allows for judicial review after exhaustion of administrative remedies, and the Constitution further encourages non-litigious dispute resolution mechanisms.⁵⁰

When it comes to contract-based disputes those occurring after contract award and execution both jurisdictions rely on the inclusion of ADR clauses in procurement agreements. Kenya has been more proactive in aligning its legal framework with this practice. Many standard procurement contracts developed under the Kenyan PPAD Act and Treasury Guidelines contain arbitration clauses, particularly for infrastructure,

⁴⁷ Constitution of Kenya, 2010, Article 159(2)(c)

⁴⁸ Public Procurement and Asset Disposal Act, 2015 (Kenya), Section 171.

⁴⁹ Public Procurement Act, 2023 (Tanzania), Section 125.

⁵⁰ Public Procurement and Asset Disposal Act, 2015 (Kenya), Section 175.

energy, and international donor-funded projects. In Tanzania, although the Arbitration Act permits arbitration in commercial disputes, the inclusion of such clauses in public procurement contracts remains inconsistent. As a result, more procurement disputes in Tanzania tend to end up in court than in arbitration.

From an institutional development perspective, Kenya's procurement system appears to be more digitally integrated and transparent. For example, procurement processes and appeals in Kenya are increasingly managed through the Integrated Financial Management Information System (IFMIS) and eCitizen platforms, enhancing accessibility and efficiency. In Tanzania, although modernization is underway, much of the procurement and dispute resolution process remains semi-digital or manual. This affects the efficiency with which disputes whether administrative or ADR-based are resolved.

Moreover, Kenya has more active policy support and training initiatives related to ADR in procurement. The Kenya School of Government and professional bodies such as the Kenya Institute of Supplies Management (KISM) provide training for procurement officers, including modules on dispute resolution and contract management. In Tanzania, while the Procurement and Supplies Professionals and Technicians Board (PSPTB) provide professional certification, its emphasis on ADR remains limited, often focusing more on procurement procedures than dispute resolution strategies.

Despite Kenya's more advanced approach, implementation gaps remain in both countries. For example, in both Tanzania and Kenya, the use of mediation as an ADR tool in procurement disputes is nearly nonexistent. Parties generally bypass it in favor of arbitration or formal administrative reviews. This is a missed opportunity since mediation offers an informal, confidential, and often faster resolution mechanism suitable for procurement disputes involving relationships and communication breakdowns.

Another important comparison lies in the involvement of international practices. Kenya's procurement framework is more heavily influenced by international standards and development partners, such as the World Bank and the African Development Bank, which encourage the inclusion of ADR clauses in procurement contracts. Consequently, large infrastructure and donor-funded projects in Kenya often feature arbitration as the default mechanism for resolving disputes. Tanzania also integrates international standards, particularly for donor-financed projects, but enforcement of arbitration awards and institutional readiness for ADR proceedings is relatively limited.

Thus, while both Tanzania and Kenya offer administrative mechanisms for resolving procurement disputes, Kenya's system is more advanced in terms of constitutional

recognition of ADR, speed of resolution, and contractual integration of arbitration. Tanzania, on the other hand, provides a robust administrative framework but lacks the statutory emphasis and institutional preparedness to facilitate widespread use of ADR in procurement. Nonetheless, both countries share the challenge of underutilization of mediation and lack of ADR awareness among procurement officers and contractors.

To foster ADR in procurement disputes across both jurisdictions, legislative clarity is needed in both countries to explicitly define ADR's role within procurement frameworks, Institutional training and capacity-building on ADR methods must be prioritized, standard contracts should include enforceable ADR clauses and donor-funded procurement models should be adapted locally to build sustainable ADR cultures.

8. CONCLUSION AND RECOMMENDATIONS

The comparative study of Alternative Dispute Resolution (ADR) in procurement disputes in Tanzania and Kenya reveals a shared commitment to improving public procurement governance, but differing levels of integration and utilization of ADR mechanisms. Both countries have adopted administrative review bodies the Public Procurement Appeals Authority (PPAA) in Tanzania and the Public Procurement Administrative Review Board (PPARB) in Kenya—which function as primary forums for resolving procurement complaints. These bodies offer structured, time-sensitive, and relatively cost-effective resolution processes that, although not formally categorized as ADR, perform some of the same functions and reflect its foundational principles.

In both jurisdictions, post-contract disputes are eligible for ADR through arbitration or mediation, depending on the contractual terms agreed upon by the parties. However, practical application remains limited, particularly with regard to mediation and conciliation, which are underutilized despite being less adversarial and more suited to maintaining long-term procurement relationships. Kenya appears to have an advantage, with constitutional backing under Article 159(2)(c), digital procurement systems, and more frequent adoption of arbitration clauses in public contracts. In contrast, Tanzania's framework, governed by the Public Procurement Act, 2023, provides space for internal administrative settlement and arbitration in contract execution, but lacks comprehensive integration of ADR throughout the procurement lifecycle.

Institutional and professional support for ADR also varies. Kenya benefits from stronger policy direction and capacity-building mechanisms, while Tanzania is undergoing reforms to catch up in terms of institutional development and procedural clarity. Both countries, however, face the shared challenge of underdeveloped ADR awareness, weak enforcement of arbitration awards, and a limited number of procurement officers trained in ADR procedures.

The findings suggest that, while administrative review mechanisms are well established, the formal and strategic application of ADR particularly arbitration and mediation—is still at an early stage. To move beyond rhetoric and fully embed ADR into procurement dispute resolution, both Tanzania and Kenya must undertake deliberate policy, legislative, and institutional reforms.

There is an urgent need for both Tanzania and Kenya to revise their procurement laws to include clear, enforceable provisions that promote the use of ADR throughout all stages of procurement especially pre-contractual and contract management stages. In Tanzania, the Public Procurement Act, 2023 should be amended to explicitly recognize ADR methods such as mediation and arbitration and to provide mechanisms for their application at all levels of procurement. Kenya should expand the PPAD Act to guide public entities on when and how ADR mechanisms can supplement the work of the PPARB and courts, especially in complex disputes. Additionally, both countries should standardize the inclusion of ADR clauses in government tender documents and contracts, especially for large and high-value projects.

The effective implementation of ADR in procurement disputes requires specialized institutions and personnel. Tanzania's PPRA, PPAA, and professional bodies such as the PSPTB should collaborate with institutions like the Institute of Arbitrators (Tanzania Chapter) to design and deliver ADR training for procurement officers, contract managers, and legal advisors. Similarly, Kenya's PPRA, KISM, and the Kenya School of Government should enhance capacity-building programs with a focus on practical ADR application in procurement. The creation of dedicated ADR units within these authorities could serve to guide stakeholders in ADR application and monitor compliance.

Mediation, though recognized under Kenya's Constitution and Tanzania's Civil Procedure Code, is hardly used in procurement disputes. Both countries should take steps to institutionalize mediation as a first step in resolving procurement conflicts, especially in relational disputes involving contract performance, supplier complaints, and delivery delays. Mediation centers can be integrated into procurement bodies or linked to existing public ombudsman offices. Such efforts would help reduce court backlogs, cut costs, and improve government-vendor relationships.

To build trust in ADR processes, both Tanzania and Kenya must run sustained awareness campaigns targeting procurement professionals, contractors, civil society, and development partners. These campaigns should explain the nature, benefits, and procedures of ADR in procurement and clarify the roles of respective institutions. This will enhance compliance, reduce misuse of administrative review processes, and promote settlement before escalation.

In conclusion, both Tanzania and Kenya stand to benefit greatly from fully embracing ADR in public procurement. While Kenya's framework demonstrates more formal recognition and institutional support, Tanzania's recent legislative reforms offer a unique opportunity to design a more inclusive and efficient dispute resolution regime. With appropriate legal amendments, institutional upgrades, and professional training, ADR can become a cornerstone of procurement dispute resolution enhancing not only efficiency and justice but also public confidence in government contracting systems.

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