

LUSAKA EVENT

**DRBF @30 CELEBRATED
AS A SIDE EVENT
TO LUSAKA ARBITRATION
WEEK IN ZAMBIA**



DRBF celebrated its 30-year existence as a side event of the Lusaka Arbitration Week, organized jointly by the Lusaka International Arbitration Centre and The Chartered Institute of Arbitrators (CIArb), Zambian Chapter. The guest of honour was the global President of the CIArb and DRBF member Cesar Pereira.

The presentations brought together industry experts, legal practitioners, financiers, and policymakers to examine the growing role of Dispute Boards and adjudication mechanisms within Zambia's dispute-resolution framework.

The opening session presented by Eng. Misheck Daka, the DRBF Representative for Zambia, brought out a comprehensive presentation on the emergence of Dispute Boards within the construction industry and the increasing relevance of statutory adjudication in Zambia. He observed that modern construction contracts inherently generate disputes due to the complexity of contemporary infrastructure projects, which are frequently affected by fluctuating exchange rates, regulatory developments, design challenges, environmental considerations, customs requirements, and broader economic risks.

Historically, dispute resolution within construction projects relied primarily on litigation. However, the slow pace of court proceedings necessitated a transition toward arbitration. While arbitration improved efficiency, it nevertheless proved inadequate in addressing disputes arising during ongoing project execution. This limitation ultimately led to the development of adjudication as a mechanism capable of resolving disputes in real time.

The presenter emphasized several advantages of adjudication, notably that disputes are determined while evidence and witness recollection remain fresh, preventing the accumulation of unresolved claims and enabling projects to proceed without interruption. Although adjudicators' decisions may be temporary in nature, they remain immediately binding upon the parties, thereby preserving contractual continuity.

Reference was further made to the definition and scope of construction contracts under the proposed ADR Bill, which would elevate adjudication to a statutory status, alongside the progressive stages of dispute management, namely dispute prevention, negotiation, non-binding resolution, and private binding resolution.

Eng. Daka also outlined the principal types of Dispute Boards, including Dispute Review Boards, Dispute Adjudication Boards, Combined Dispute Boards, and Dispute Resolution Experts thereby highlighting the distinction between **Ad Hoc Dispute Boards**, constituted only upon the emergence of disputes, and **Standing Dispute Boards**, established at the commencement of contracts to promote dispute avoidance through continuous engagement, site visits, and informal guidance.

Addressing prevailing misconceptions, he clarified that Dispute Boards do not increase project costs nor impose subjective notions of fairness; rather, they operate strictly within contractual parameters while improving communication and minimizing unresolved contractual issues.

The presentation was concluded by comments from delegates in the audience and further exploration of the use of Artificial Intelligence (AI) in construction adjudication. It was emphasized that adjudicators need to remain mindful of the ethical use of AI and avoid relying solely on AI-generated outputs when making determinations.

This was followed by Eng Suzanne Rattray, a member of the DRBF Region 2 Board of Directors, who examined Dispute Boards from the standpoint of project financing and lender confidence. She explored the increasing adoption of Dispute Boards by multilateral financial institutions and emphasised the importance of standardised construction contracts in mitigating investment risk.

She noted that institutions such as the World Bank have incorporated Dispute Board mechanisms since 2005, while the Fédération Internationale Des Ingénieurs-Conseils (FIDIC) has embedded such mechanisms in its standard forms since 1996, with substantial improvements introduced in the 2017 editions to strengthen dispute-avoidance procedures.

Empirical findings derived from research conducted at King's College London revealed strong institutional support for Dispute Boards among funders. Approximately 76.7% of funded projects incorporated Dispute Boards, with 73.9% operating as standing boards. A significant majority of funders regarded Dispute Boards as highly effective, while maintaining neutral positions regarding associated duration and costs. Notably, financiers rarely participate directly in negotiations concerning Dispute Board agreements between contracting parties.

Within Zambia, Dispute Boards have predominantly been utilised in transportation infrastructure, power generation, water supply, and sanitation projects funded by institutions such as the World Bank, African Development Bank, and the European Union.

During the discussion session, clarification was sought regarding the applicability of Dispute Boards beyond construction projects. It was confirmed that, while adaptable, Dispute Boards remain most effective within construction and infrastructure contracting frameworks; they have also been applied in the energy sector. It was further observed that the concept of Dispute Boards would also apply to mining disputes, and consideration should be given to this when operationalizing the ADR Bill.

Engineer Chabala Chabala presented the Employers perspective of the use of Dispute Boards. He submitted that Dispute Boards have supported and reduced escalation of disputes to Arbitration in major projects of the Road Development Agency, and thus enhanced project delivery since 2013. These projects were reported to include the Kazungula Bridge and approach roads, the Botswana One Stop Border Facility and the Chinsali Nakonde Lot 2, among others.

He presented that the agency has had Dispute Board clauses in nine contract agreements and has successfully implemented eight projects without escalating disputes to Arbitration. One dispute, which could have been elevated to arbitration, was resolved amicably. It was further presented that Dispute Boards have been applied in the context of road construction, open international bidding, and standard bidding documents.

He highlighted that the agency has noted the eventual rise in disputes and thus utilises the Advisory Opinion of the Dispute Board to facilitate better negotiation.

As to the lessons and challenges, it was outlined that some of these constitute the late formation of the Dispute Board in contracts, failure to agree on the fee payable to the board by contractors, and less value placed on Dispute Boards.

In summary, he noted the priority actions needed, stated that there was a need to formulate standardized payments, build more capacity among persons to be appointed to the Dispute Board, and require the Dispute Board to draft a report to showcase their value.

The final session was delivered by Mr. James Banda, a legal practitioner, who examined the legal enforceability of Dispute Adjudication/Avoidance Board (DAAB) decisions within Zambia. He highlighted that such decisions are not automatically enforceable through domestic courts, thereby necessitating reliance on contractual and arbitral enforcement mechanisms.

He explained that where a party refuses to comply with a binding DAAB decision, the successful party may refer the matter to arbitration pursuant to Sub-Clause 21.7 of the FIDIC Conditions of Contract concerning failure to comply. Under Sub-Clause 21.4.3, DAAB decisions remain binding irrespective of whether a Notice of Dissatisfaction has been issued.

Although Zambian courts do not directly recognise DAAB decisions, arbitral awards enforcing such decisions are enforceable under the framework of the New York

Convention. Alternatively, parties may initiate court proceedings seeking summary judgment based on a breach of contractual obligations arising from non-compliance.

Mr. Banda acknowledged practical challenges, including prolonged enforcement timelines and procedural complexities often described as the “long road to recovery.” He further emphasized that parties retain the option of amicable settlement within twenty-one days following issuance of a DAAB decision, thereby preserving commercial relationships while avoiding escalation to arbitration.

Questions raised during the discussion addressed practical enforcement difficulties, appointment procedures for Dispute Board members, and considerations relating to state sovereignty in commercial transactions. It was clarified that appointments are principally governed by contractual provisions supplemented by applicable legal frameworks.

The event was well supported by members of the Association of Consulting Engineers and other technical professional bodies, including the Law Association of Zambia. Participants who attended included delegates from Zimbabwe, Uganda, Kenya, Nigeria, Canada, and South Africa, to name a few.

Submitted by Eng. Misheck Daka, DRBF Representative for Zambia