



# Guidelines for Developing Good Construction Dispute Resolution Systems in Emerging Economies in Africa



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The IBQC intends to be a sounding board or point of reference for law reformers, policymakers and stakeholders intent on designing building regulation that provides the greatest opportunity for the realization of codes and laws that maximize:

- Public safety;
- Cost-effective and efficient construction systems; and
- Sustainability within the context of the built environment.

The IBQC provides a medium through which comparative analyses can be applied to reforming jurisdictions to enable the peer review of proposed concepts.

The paramount vision of the organization is that, through its research and its members, the IBQC will have a positive and material impact on building regulation and practices in jurisdictions across the world.

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## INTRODUCTION

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*"Building disputes are often costly and time-consuming. This cost and delay can add significantly to the stress associated with a building dispute and can sometimes result in there being insurmountable barriers to procuring an independent resolution of the dispute. Given these circumstances, those involved in building disputes can readily feel that justice and fairness are out of their reach. These challenging circumstances exist in many jurisdictions and can impact all types of building disputes. Parties and the community can be assisted by the availability of a Building Dispute Resolution mechanism which seeks to reduce cost, time, stress, and barriers to access."<sup>1</sup>*

## 1. BACKGROUND AND CONTEXT

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Access to formal dispute resolution in the construction sector is much harder for most people in emerging economies when compared to developed countries. Judicial infrastructure capacity across Africa varies significantly, with differences largely driven by the level of economic development in each country.

Limited economic capacity in many African countries means the large majority of citizens cannot afford Western style adversarial dispute resolution. In developed economies, accessing construction dispute resolution is financially challenging for many consumers; in emerging economies, it is more likely to be impossible for the majority of citizens. This makes it essential to create affordable and accessible systems to ensure justice and fairness for as many people as possible.

Emerging economies face unique building control challenges, including:

- **Weak Building Regulation:** In many developing countries, the design and construction of buildings are not regulated by statutes or building codes. There is, thus, a profound difference in construction paradigm to countries like Australia, Singapore, United States, Germany and New Zealand where all buildings come under the jurisdiction of highly developed uniform building codes.
- **Institutional Capacity and Limited Enforcement due to budget constraints:** Budget constraints lead to limited human resources and administrative infrastructure to enforce building regulations and a critical shortage of qualified building and enforcement inspectors.
- **Inadequate Judicial Funding:** Lack of sufficient judicial funding can culminate in limited judicial resources to resolve building disputes.
- **Affordability:** Citizens often cannot afford to construct engineered buildings.

## 2. TYPES OF CONSTRUCTION IN EMERGING ECONOMIES

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While some buildings in emerging economies might achieve engineered solutions, up to 80 percent are built without professional oversight or in compliance with building codes or standards of the kind typical in developed economies.<sup>2</sup>

In rural areas, traditional vernacular methods use local materials and techniques passed down through generations. These constructors are often owner/community builders, who, although often lacking formal qualifications, apply culturally rooted skills and knowledge.

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1 IBQC, June 2022, [Good Practice Guidelines for the Development of Construction Dispute Resolution Tribunals and Decision-Making Institutions](#)

2 Content in paragraphs 2, 3, 4, 5 and sub-indentations adapted from the [IBQC Good Practice Building Inspector Guidelines for Emerging Economies](#).

There are three general types of construction typologies in emerging economies:

- **Engineered Design and Construction:** Regulated by building codes, of the kind typical in developed economies
- **Vernacular Construction:** A construction methodology that is common in subsistence economy rural settings where traditional building techniques and materials are utilised by owner/community builders.
- **Informal Settings:** Unregulated buildings that typify shantytowns or favelas.

### 3. GUIDELINES FOR DEVELOPING CONSTRUCTION DISPUTE RESOLUTION SYSTEMS IN EMERGING ECONOMIES

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#### 3.1 Address Economic Constraints

- **Recognize Funding Constraints:** Be aware of, and sensitive to, the funding limitations that hinder the sustainability of robust dispute resolution systems.
- **Develop Cost-Effective Mechanisms:** Create viable systems that are contextualised to emerging and 'transitioning to' middle-income economies.
- **Recognise the Importance of Government and Institutional Support:** Such support is critical to sustaining strong and resilient judicial dispute resolution systems and the rule of law. Acknowledge that offshore funders intent on providing nation and capacity building investment require efficient construction dispute resolution systems to facilitate their ability to underwrite major infrastructure and public-private sector partnerships and projects of state significance.

#### 3.2 Encourage the Adoption of Contractual Mediation Clauses

- **Standard Form Contracts:** Promote mediation clauses in standard form contracts either for international use, such as Fédération Internationale des Ingénieurs - Conseils' ("FIDIC") or the standard form contracts. Adapt international contract conventions to local contexts and needs.
- **Advocate For The Adoption:** of internationally recognized building contracts that incorporate best practice mediation clauses to facilitate effective dispute resolution. Adapt international contract conventions to local contexts and needs.
- **Uniform Special Conditions:** Develop templates that outline the mediator appointment process, mediation procedures, and cost-sharing.
- **Encourage Mediation Before Arbitration:** Encourage the use of contract escalation clauses or proforma special conditions that mandate mediation before arbitration to reduce costs.

#### 3.3 Embrace and Develop Front-End Alternative Dispute Resolution ("ADR") and Mediation

- **Enshrine Mediation in the dispute resolution system:** Court-annexed mediation can facilitate quick and cost-effective dispute resolution.
- **Early Mediation:** Courts have the authority to identify cases that are particularly well-suited for mediation and can exercise their discretion to refer such matters accordingly. This is the approach used by court-annexed mediation in Nigeria.<sup>3</sup>

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3 Obamuroh, T, Weinstein International Foundation, Mediation Developments in Nigeria, "Court-annexed mediation takes place when a court directs parties in a pending litigation to seek amicable settlement, or directs them to the Multi-Door Court House (which has been adopted by a majority of the states in Nigeria)."

- **Binding Settlement Agreements:** A mediation process will only conclude once the settlement terms are documented in writing and signed by all involved parties, thereby making it legally binding. This principle is applied in the Lagos State of Nigeria Law, which established the Lagos Multi-Door Courthouse, as well as the High Court of Lagos State (Civil Procedure) Rules of 2012.<sup>4</sup>

### 3.4 Build Mediation Capacity

- **Generate Mediation Accreditation courses:** that can also be accessed online that equip mediators with the tailored skill sets, ethical disposition, and an understanding of the importance of impartiality.
- **Explore the feasibility of the use of AI platforms for small claims:** An example of a guideline that allows for mediation to be conducted electronically is found in the United Republic of Tanzania Court Annexed Guidelines of 2024.<sup>5</sup> Low-cost claims for an amount specified by the relevant jurisdiction may lend themselves to mobile phone-friendly platforms that allow disputants to feed key inputs into a template. It would be akin to deciding a case on the papers as it were.
  - » The platform would need to be mobile phone-friendly, as there is significant dependence on mobile phones in Africa, and the language would need to be in the predominant dialect.
  - » A small claims tribunal would be the most suitable venue to host this form of ADR.
- **Market good practice ADR:** Identify agencies that can fund the marketing of good ADR practices to promote greater uptake. Such agencies will, in all likelihood, include Justice Departments, Attorneys General, and appropriate associations such as Bar associations.



Image 1 – Dispute Resolution

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4 Lagos State of Nigeria, 2007, *A Law To Establish The Lagos Multi-Door Court House And For Other Connected Matters*; [section 19 \(1\)](#) “Upon the completion of a mediation proceeding, Settlement Agreements which are duly signed by the parties shall be enforceable as a contract between the parties; and when such agreements are further endorsed by the Referral Judge (court-referred matters) or the ADR Judge (Walk-in & Direct Intervention matters) or any other Judge as directed by the Chief Judge, it shall be deemed to be enforceable under Section 11 of the Sherriff and Civil Process Act.”; High Court of Lagos State ([Civil Procedure](#)) [Rules 2012](#), “An award made by an arbitrator or a decision reached at the Multi-Door Court House may by leave of the Judge be enforced in the same manner as a judgment or order of Court.”

5 Judiciary of Tanzania, 2014, *Court Annexed Mediation Guidelines of 2024*, “[Modality of conducting mediation 3.3](#). “Subject to the provisions of these Guidelines, where mediation is to be conducted electronically, either party may, by notice, at any stage, indicate his intention to proceed with mediation electronically, in a manner agreed by the parties”, page 2.

### 3.5 Recognize the Central Role of Courts

- **Courts are the most common and established dispute resolution theatres in Africa** and their sustainability is critical.
- **Promote and Improve Affordability and Accessibility:** Promote small claims tribunals where parties can appear without legal representation for low-value disputes.
- **Develop Alternative ADR Systems** for those who cannot afford traditional court proceedings having regard to international best practice ADR approaches. Regard can be had to the recently published United Republic of Tanzania Judiciary of Tanzania Court Annexed Mediation Guidelines 2024 as the protocols are in line with international good practice, mediation protocols.

### 3.6 Promote the Use of Arbitration in Large Disputes

- **Importance of Arbitration:** Arbitration is a valuable tool for larger and more complex projects within the engineered construction setting.
- **Legal Frameworks:** Develop legislative frameworks to support arbitration where appropriate, with an emphasis on affordability and a robust arbitration regime that has regards to international best practice.
- **Best Arbitration Practice Examples:** To avoid reinventing the wheel refer to best practice arbitration guidelines and template arbitration clauses and have regard to sources like UNCITRAL.<sup>6</sup>
- **Encouraging other jurisdictions to adopt and adapt** these practices as their capacity improves.

### 3.7 Acknowledge and Integrate Customary Law in ADR

- **Its Role in Vernacular Construction:** The application of customary law is significant in rural and vernacular construction contexts.
- **Integration with Formal Systems:** Ensure dispute resolution systems respect and complement customary law where possible.
- **Develop model ADR protocols for customary leaders** to use in local disputes to facilitate greater harmonisation of ADR principles.



Image 2 - Judiciary Oversight

6 [UNCITRAL](#), 1985, Model Law on International Commercial Arbitration - With amendments as adopted in 2006.

### 3.8 Use Expert Witnesses Most Effectively

- **Follow best practice approaches** for the use of expert witnesses
- **Expert impartiality:** Emphasise the importance of experts owing their primary duty to the court or tribunal appointed mediator, not to the client, to ensure an unbiased approach.



*Image 3 - Judicial Review*

## 4. CONCLUSION

These Guidelines provide methods to develop accessible and efficient dispute resolution systems tailored to African emerging and transitioning economies. By promoting cost-effective ADR and arbitration, they aim to reduce barriers to justice in building disputes. The emphasis is on leveraging existing court systems and adapting dispute resolution methods to local contexts. If applied, fairness will be enhanced, delays reduced, and access to justice in construction disputes improved for citizens.



**Additional IBQC Guidelines that should be read in conjunction with these guidelines are:**

- [IBQC Good Practice Guidelines for Low-Income Countries \(2021\)](#)
- [Good Practice Building Inspector Guidelines for Emerging Economies](#)
- [Good Practice Guidelines for the Development of Construction Dispute Resolution Tribunals and Decision-Making Institutions](#)

**Authors of these Guidelines and Acknowledgments**

The Guidelines have been approved by the IBQC Dispute Resolution Coalition that is chaired by the Honourable Brian Preston Chief Justice of the Land and Environment Court NSW Australia and Adjunct Professor Kim Lovegrove MSE RML.

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