

**ciarb.**  
Uganda Chapter

# News letter

Issue 3 | October 2024



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# Word from The Chairman

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**David Kaggwa**  
**FCI Arb, FICCP**



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*Together, we have achieved remarkable milestones, and I thank each of you for your support and engagement.*

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Dear Members,

Greetings from the Chartered Institute of Arbitrators – Uganda Chapter.

I am pleased to introduce the third edition of our quarterly newsletter. As we reflect on the progress made this year, it is evident that our Chapter continues to thrive, thanks to the dedication and active participation of our growing membership. Together, we have achieved remarkable milestones, and I thank each of you for your support and engagement.

One of the key highlights of recent months was our participation as proud strategic partners in the 11th East Africa International Arbitration Conference, which took place in Addis Ababa, Ethiopia, on the 19th and 20th of September. The conference was a great success, bringing together industry experts and practitioners from across the continent to discuss the future of arbitration in East Africa. We are honoured to have played a role in this event.

In addition, on the 2nd of July, 2024 we signed a Memorandum of Understanding with the African Women in Arbitration (AWA). This collaboration strengthens our ties with AWA and furthers our shared goals of promoting diversity and inclusivity in the arbitration profession. Together, we are working on creating more opportunities for women to take active roles in the arbitration space, both regionally and globally.

Another standout achievement of this quarter has been the successful launch of the Young Members Committee. This initiative marks a crucial step in ensuring the sustainability of arbitration in Uganda by nurturing the next generation of arbitrators and contributing to our efforts to transition into a branch. The YMC was officially launched on September 10th, 2024, and promises to bring fresh energy and innovative ideas to the Chapter.

Looking ahead, we have an exciting lineup of events. We will be hosting a non-pathway Arbitration Award Writing Training on the 21st and 22nd of November, conducted by our accomplished member, Philip Alier, FCI Arb, C.Arb. This training is set to be an impactful session designed to enhance the skills of arbitrators in writing clear and enforceable awards. I encourage all members to take advantage of this opportunity.

Additionally, I am pleased to invite you to the upcoming Annual Meet and Greet Event on the 4th of December at the Emin Pasha Hotel. We expect distinguished speakers to grace the event, and I urge all members to attend as this will be a valuable opportunity to interact and network with each other.

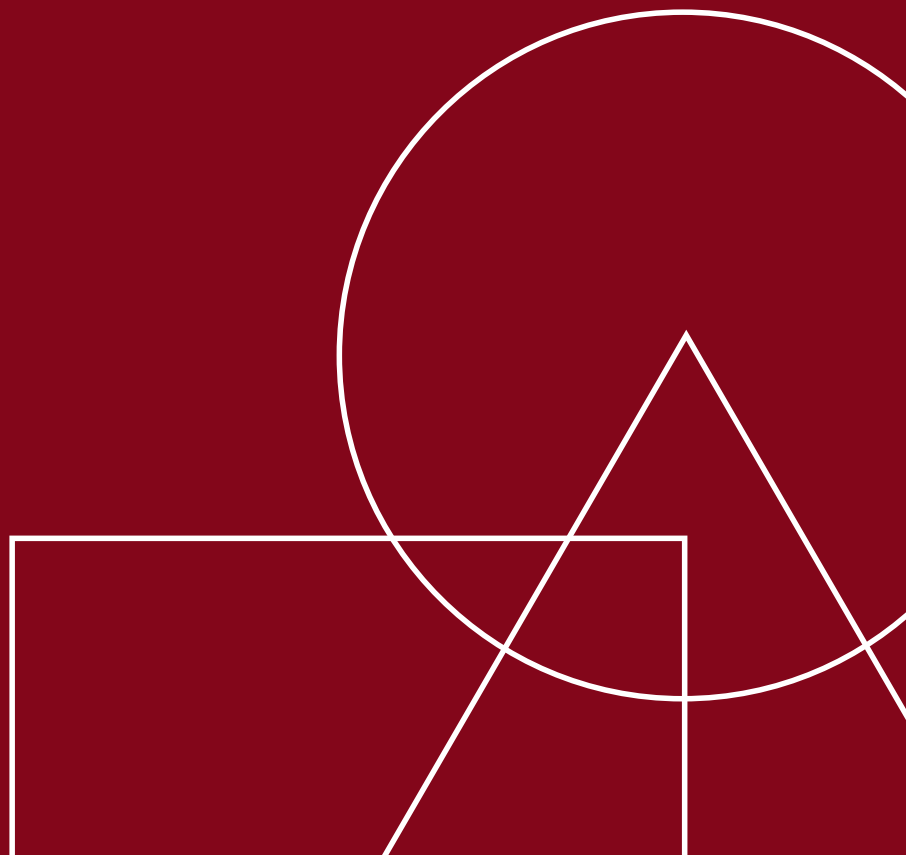
As always, our training programs continue to draw significant interest. The “Accelerated Route to Member” and the “Introduction to Arbitration” courses are proving to be highly popular, bringing us closer to our goal of reaching a membership of 150 professionals by December 2024.

I would like to thank the Steering Committee and the Education and Training Committee for their commitment in ensuring the continued success of our Chapter. As we move forward, I encourage you all to remain engaged, take advantage of the learning and networking opportunities, and continue to contribute to the growth of arbitration in Uganda and beyond.

**I thank you.**



# 01 Events





From L-R; Angela Kobel, FCI Arb, Hon. Secretary of the Chapter, Kenneth Akampurira, MCI Arb, Hon. Treasurer, Olivia Kyarimpa Matovu, MCI Arb, Chapter Chairman David Kaggwa, FCI Arb Executive Director AWA , Edith Twinamatsiko, MCI Arb, Mariam N. Iga, MCI Arb and Patricia Aibo, Administrator AWA at the signing event.

## MOU Signing With African Women In Arbitration

On the 2nd of July, 2024, the Chartered Institute of Arbitrators - Uganda Chapter and African Women in Arbitration signed a Memorandum of Understanding (MoU) to promote gender diversity and equality within the Alternative Dispute Resolution (ADR) community. This partnership marks a significant step towards a more inclusive and supportive ADR community."





Asmahaney Saad, MCIArb was one of the esteemed trainers

## URA Mediation Training

The Chapter conducted a mediation training at the Uganda Revenue Authority offices on the 6th of September and it was led by Olivia Kyarimpa Matovu, MCIArb, Asmahaney Saad, MCIArb and Nakiganda Belinda, MCIArb. The session focused on enhancing dispute resolution skills, emphasizing the practical aspects of mediation. The Chairman, Mr. David Kaggwa, FCIArb, was also present, adding value through his insights and reinforcing the importance of such training for effective conflict resolution within the organization.



Chapter Chairman David Kaggwa, FCIArb opening the mediation training at the URA offices.



Hon. Treasurer of the Chapter, Olivia Kyarimpa Matovu was also part of the training faculty





From L-R; Elizabeth Suubi, MCI Arb, Alexander Ssensikombi, ACI Arb, Amina Nasaazi, MCI Arb, Kisakye Martha, ACI Arb, Jeffrey Kaddu, MCI Arb with their co-ordinators Albert Mukasa, FCI Arb and Isaac Ssekabanja, MCI Arb at the launch

## Launch Of The Young Members Committee

The Young Members Committee (YMC) of the CI Arb Uganda Chapter was officially launched on the 10th of September at the Chapter offices by the Chairperson of the Steering Committee, David Kaggwa, FCI Arb.

The event was graced by the Coordinators of the YMC, Albert Mukasa, FCI Arb, Isaac Ssekabanja, MCI Arb and Hon. Secretary of the Steering Committee, Kenneth Akampurira, MCI Arb.

The newly launched Young Members Committee comprises; Chairperson Charles Gavamukulya, MCI Arb; Vice Chairperson Amina Nassazi, MCI Arb; Secretary Alexander Ssensikombi, ACI Arb; and members Jeffrey Kaddu, MCI Arb; Kisakye Martha Agatha, ACI Arb; and Ssubi Elizabeth, ACI Arb.

The Chapter is enthusiastic about the launch of the YMC and the positive impact it will have.



The Chapter Chairman David Kaggwa, FCI Arb officially launching the Young Members Committee with their Vice Chairperson, Amina Nasaazi, MCI Arb

# International Arbitration in Africa: Arbitrating in a New Age!

19-20 September 2024 | Sheraton Addis Hotel | Addis Ababa, Ethiopia

11th

**EAST AFRICA**  
INTERNATIONAL ARBITRATION  
CONFERENCE

## SESSION 5: IS AI (ALREADY) A GAMECHANGER FOR LEGAL SERVICES IN AFRICA?



## East Africa International Arbitration Conference

The East Africa International Arbitration Conference (EAIAC) 2024 took place in Addis Ababa, Ethiopia from the 19th - 20th of September.

The conference was action-packed with sessions on Green Growth in Africa, Regional Integration, Building and Growing an Arbitration Practice in a New Era and so much more. They also had an Oxford debate with the motion, "The Seat believes that Africa would be better off without investment treaties".

Our Chapter was honoured to have collaborated with them as their strategic partner for this conference and we congratulate them on an incredible two days of pivotal discussions that will shape the future of arbitration in Africa.



From L-R; Benjamin Ng'eno who opposed the motion, Guillaume Tattevin who moderated and Samuel Mbiriri Nderitu, FCI Arb who proposed the motion "The Seat believes that Africa would be better off without investment treaties" in the Oxford debate.

# East Africa International Arbitration Conference

Addis Ababa, Ethiopia from the 19th - 20th of September.



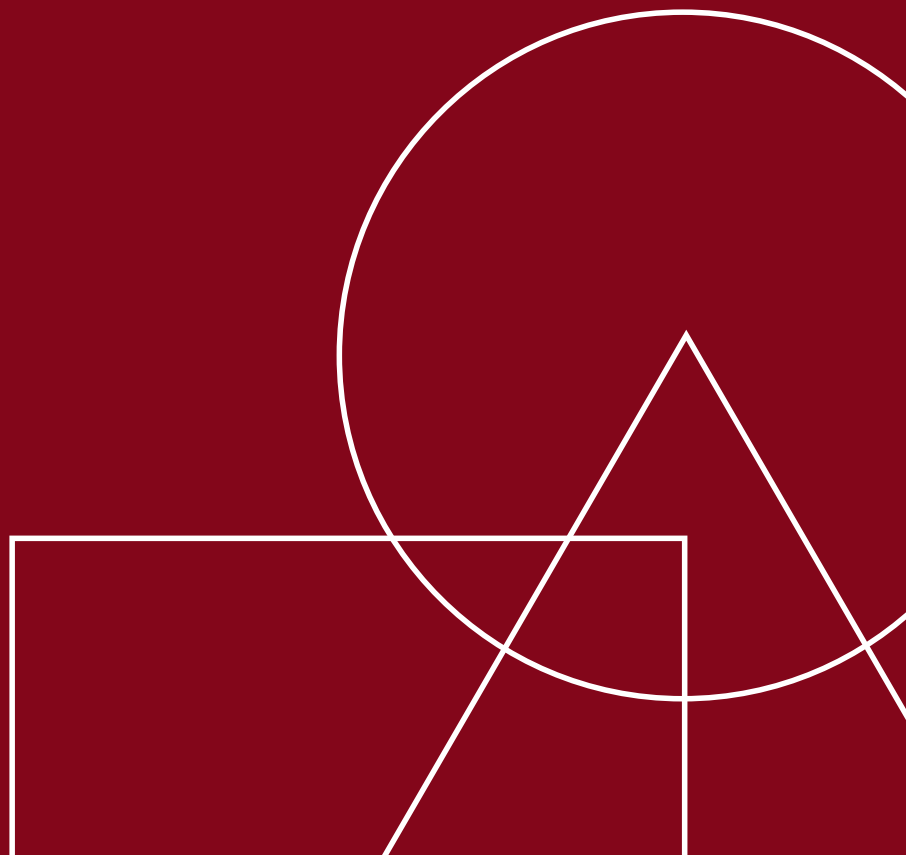
Alex Kabayo, Patrick Turinawe, Philip Kaheru FCIArb, Francis Tumwesige Ateenyi MCIArb, David Mukiibi, Daniel Angualia and Teddy Namasinga MCIArb with a Ghanaian delegate at the Conference



Our Member, Francis Gimara, MCIArb was part of a panel that ably discussed "The Latest and Greatest Developments in Arbitration on the Continent"

**02**

# Thought Leadership



# A Case for Dispute Avoidance Adjudication Boards (DAABs) Under PPDA General Conditions & Forms of Contract



**Philip Kaheru**

FCI Arb FISU FRICS.

# A Case for Dispute Avoidance Adjudication Boards (DAABs) Under PPDA General Conditions & Forms of Contract

The various alternative dispute resolution (ADR) mechanisms used in Uganda are negotiation, mediation, adjudication, expert determination and arbitration. They may be defined as follows;

**Negotiation** is the informal process of parties with a disagreement meeting to amicably resolve their differences through discussions without involving a third party.

**Mediation** refers to the process where a neutral third party assists two parties with a disagreement to come to a settlement.

**Adjudication** refers to the process where the parties obtain a legally binding third party decision on the issues under dispute.

**Expert determination** is where the parties allow the dispute to be decided by an independent third party with expertise in the subject matter of the dispute.

**Arbitration** refers to the process where the parties obtain a legally binding third party award on issue(s) under dispute.

These dispute resolution mechanisms are fast because most of them are time bound . Another advantage is that they are private and confidential. This means that the relations of both disputing parties can be maintained. Further the dispute resolution mechanisms are affordable and therefore attractive to the parties. In addition, the decisions rendered through the dispute resolution process are binding or final and binding to the parties. This means that the relief sought can be enforced through the courts of judicature by a winning party hence creating public confidence in their efficacy.

In Uganda, the absence of a statutory regime for adjudication necessitates the inclusion of specific clauses in construction contracts to govern dispute resolution. Because of the lacuna in our law, most construction projects in Uganda typically incorporate clauses stipulating adjudication or arbitration as a mode(s) of dispute resolution. The rules governing the adjudication or arbitration are also incorporated in the specific conditions of contract governing the project. More recently, the adjudication rules, such as those introduced by Construction Law Institute (CLI), in July 2024, provide a framework that can be integrated into contracts to aid the dispute resolution process .

The modes of dispute resolution in construction contracts are often times “two step” with the first mode being adjudication which culminates into an arbitration; should the parties not be satisfied with the decision of the Adjudication Board. The reference to adjudication is always preceded by a decision made by the Project Manager in respect to the Claim; which the aggrieved party deems unfair.

More recently, several construction contracts provide for the composition of DABs (Dispute Adjudication Boards) or DAABs (Dispute Avoidance & Adjudication Boards), legitimizing the use of dispute boards, whether standing or ad-hoc.

It should be noted that Federation Internationale Des Ingenieurs Conseils (FIDIC) (2017 edition) forms of conditions of contract has made it mandatory for all disputes to be decided by a DAAB; Sub – clause 21.1 Constitution of the DAAB states in part; Disputes shall be decided by a DAAB in accordance with sub-clause 21.4 (Obtaining DAAB decision).

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- <sup>1</sup> For example most standard form of contracts provide for a period of 84 days for a Dispute Adjudication Board to resolve a Dispute tabled before it.
  - <sup>2</sup> CII is a unique think tank that brings various experts and professional together from various fields of the construction industry with an aim to foster collaboration, knowledge sharing and the development of best practices in construction law, dispute avoidance and dispute resolution.



The DAABs offer a structured approach to resolving disagreements, ensuring that disputes are managed effectively throughout the project lifecycle.

## Standing Vs Ad-hoc dispute boards

**A standing dispute board** is established at the start of the construction phase and remains actively involved throughout the project. It ceases when terminated by either of the parties or when the contract is determined. This board is particularly suited for large, high-value and complex projects due to its continuous involvement. The board's familiarity with the project allows for proactive, efficient and cost-effective dispute resolution.

On the other hand, an **ad-hoc dispute board** is temporary and constituted only when a dispute arises, it is disbanded once the dispute is resolved. While suitable for smaller, less complex projects, the ad-hoc board may face delays as members familiarize themselves with the project, potentially leading to higher costs and inconsistent approaches to dispute resolution.

### But, what are disputes?

Disputes in construction typically arise from disagreements over contractual terms, obligations, or rights. These disputes can arise from unclear contract terms, breach of contract, or failure to fulfil obligations. Courts have also provided various interpretations of what constitutes a dispute emphasizing that it involves a claim and its subsequent rejection.

*In Monmouthshire County Council v Costelloe Kempleton Ltd (1965)*, Lord Denning MR expressed an opinion that there must be both a claim and a rejection of it to justify a dispute or difference. A dispute arises when there is a rejection of a claim.

*However in Tradax International v Cerrahogullaritas (1981)*, the defendants to a claim did not admit liability: in fact, it seems they did nothing because they ignored the communications related to the claim. It was held that the facts gave rise to a dispute. The absence of a response, within a reasonable time, may be taken as a non-admission of a claim and hence the rise of a dispute. In *Ellerine Brothers (Pty) Ltd v Klinger (1982)*, Templeman thought that the absence of a reply could give rise to a dispute.

In *Sindall v Solland (2001)*, the courts held that for purposes of exercising the statutory right to adjudication, a point must have arisen from the discussions that need to be decided. A point of dispute between the parties should be established before the statutory right to adjudicate can be exercised.

In the case of *Amec Civil Engineering v Secretary of State for Transport*; the guidance on whether a dispute had crystallized was given as follows;

- a) The word dispute which occurs in many arbitration clauses and also in Section 108 of the UK's Housing Grants, Construction and Regeneration Act 1996 should be given its normal meaning. It has no special meaning.  
Section 108 (1) of the UK's Housing Grants, Construction and Regeneration Act 1996 in part states that;  
*A party to a construction contract has the right to refer a dispute arising under the contract for adjudication under a procedure complying with this section.*  
*For this purpose "dispute" includes any difference.*
- b) The mere fact that one party notifies the other party of a claim does not automatically and immediately give rise to a dispute. It is clear, both as a matter of language and judicial decisions, that a dispute does not arise unless and until it emerges that the claim is not admitted.
- c) The period for which a respondent may remain silent before a dispute may be inferred depends heavily on the facts of the case and the contractual structure. Where the gist of the claim is well known and it is controversial, a very short time of silence may suffice to give rise to this inference. Where the claim is notified to some agent of the defendant who has a legal duty to consider the claim independently and then give a considered response, a longer time may be required before it can be inferred that mere silence gives rise to a dispute.
- d) If the claimant imposes upon the respondent a deadline for responding to the claim, that deadline does not have the automatic effect of curtailing what would otherwise be a reasonable time for responding. On the other hand, a stated deadline and the reasons for its imposition may be relevant factors when the court comes to decide what a reasonable time to give a response is.
- e) If the claim as presented by the claimant is so nebulous and ill-defined that the respondent cannot sensibly respond to it, neither silence by the defendant nor even an express non-admission is likely to give rise to a dispute for arbitration or adjudication.

### **What is the role of dispute boards in avoidance and resolution?**

Dispute avoidance is the process of resolving a disagreement between parties to a contract agreement through informal discussions before the matter escalates into a dispute. Avoiding disputes or minimizing their impact has been clear from practice in the construction industry through the creation of dispute boards. Dispute boards have been in use since 1975 on various projects like airports, tunnels and power plants. There are a variety of dispute boards which are as follows;

- a) Dispute Review Board (DRB): This board issues “Recommendations” to any dispute referred to it and constitutes a relatively consensual approach to dispute resolution. If no party expresses dissatisfaction with a Recommendation within a stated period, the parties contractually agree to comply with the Recommendation. If a party disagrees with the Recommendation within the stated time, that party may refer the dispute to arbitration. The parties may voluntarily comply with the Recommendation. The DRB has no right to enforce compliance with their Recommendation.
- b) Dispute Adjudication Board (DAB): This board issues “Decisions” to any dispute referred to it. The board uses a less consensual approach to dispute resolution. A DAB Decision provides for temporary finality and is intended to be enforceable. By contractual agreement, the parties must comply with a Decision without delay as soon as they receive it unless one of the parties wants to commence arbitration proceedings.
- c) Dispute Avoidance Adjudication Board (DAAB): This board looks to assist parties to a contract agreement on a matter brought before it in writing. The assistance and/ or informal discussions held between the board and the parties are so that an amicable solution may be reached to resolve a disagreement that may have arisen during the performance of the contract. This informal assistance may be given during site meetings and/ or site visits and inspections. If a party is dissatisfied with the informal assistance given, they may request that the dispute be handled by adjudication. The board then issues “Decisions” to any dispute referred to it and acts like the DAB as above.



## Why provide for the mode of dispute resolution in construction contracts?

It is very rare if not impossible for a construction project to be completed without any disagreements or disputes. This therefore means that the general conditions of the contract should have a provision to cater for this.

## How do the forms of conditions of contract used in the private and public (external source funded) sector projects in Uganda handle dispute resolution?

Some of the standard forms of contract often used in the Uganda construction and building industry like Federation Internationale Des Ingenieurs Conseils (FIDIC) and the East Africa Agreement and Schedules of Conditions of Contract (EAIA) handle dispute resolution as follows;

EAIA under clause 36 (1) Arbitration states that;

*“Provided always that in case any dispute or difference shall arise between the Employer and the Architect on his behalf and the contractor, either during the progress or after the completion or abandonment of the Works as to the construction of this contract or as to any matter or thing of whatsoever nature arising thereunder or in connection therewith (including any matter or thing left by this contract to the discretion of the Architect or the withholding by the Architect of any certificate to which the contractor may claim to be entitled or the measurement and valuation mentioned in clause 30 (5) (a) of these conditions) or the rights and liabilities of the parties under clauses 25, 26, 33 or 43 of these conditions, then such dispute or difference shall be and is hereby referred to the arbitration and final agreement within 14 days after either party has given to the other party a written request to concur in the appointment of an arbitrator, a person to be appointed on the request of either party by the Chairman or vice chairman for the time being of the East African Institute of Architects who will when appropriate delegate such appointment to be made by the chairman or vice chairman of the local (National) society of Architects.”*

The EAIA form of contract provides for the resolution of disputes through arbitration.

FIDIC has published a series of forms of conditions of contract that are being used worldwide on construction projects. These forms of conditions of contract cover almost (if not all) areas or aspects of construction. They have even been recognized by the World Bank which signed a memorandum of association with FIDIC to use their forms of conditions of contract for projects funded by them. The most commonly used books in Uganda are “the rainbow suite” which include the following;

- The conditions of the contract for construction (**red book**) are mainly used for building or engineering works designed by the Employer or by his representative, the Engineer.

- The conditions of the contract for plant and design-build (yellow book) are mainly used for the provision of electrical and/ or mechanical plant, and the design and execution of building or engineering works. Under this form of contract, the contractor designs and provides, in accordance with the Employer's requirements, plant and/ or other works.
- The conditions of contract for EPC/ Turnkey projects (silver book) are mainly used for provision on a turnkey basis of a process or power plant or a factory or of an infrastructure project where a higher degree of certainty of final price and time is required and the contractor takes total responsibility for the design and execution of the project with little involvement of the Employer.

The FIDIC forms of conditions of contract (2017 edition) all provide for dispute resolution by DAABs. The FIDIC rainbow suite (red, yellow and silver books) under clause 21 Disputes and Arbitration (2017 edition) provides for a comprehensive process for dispute resolution.

Sub-clause 21.1 Constitution of the DAAB (FIDIC 2017 edition) states that;

*"The DAAB shall comprise, as stated in the Contract Data either one suitably qualified member (the "sole" member) or three suitably qualified members (the "members"). If the number is not so stated and the parties do not agree otherwise the DAAB shall comprise three members.*

*The sole member or three members (as the case may be) shall be selected from those named in the list in the Contract Data other than anyone unable or unwilling to accept an appointment to the DAAB.*

*If the DAAB is to comprise three members, each party shall select one member for the agreement of the other party. The parties shall consult both those members and shall agree to the third member who shall be appointed to act as chairperson.*

*The DAAB shall be deemed to be constituted on the date that the parties and the sole member or three members (as the case may be) of the DAAB have signed a DAAB agreement."*

Sub-clause 21.3 Avoidance of Disputes states that;

*"If the parties so agree, they may jointly request (in writing with a copy to the engineer) the DAAB to assist and/ or informally discuss and attempt to resolve any issue or disagreement that may have arisen between them during the performance of the Contract. If the DAAB becomes aware of an issue or disagreement, it may invite the parties to make such a joint request.*

*Such joint request may be made at any time except during the period that the Engineer is carrying out his/ her duties under sub-clause 3.7 Agreement or Determination on the matter at issue or in disagreement or unless the parties agree otherwise."*

The above sub-clause allows the parties to take the disagreement to the DAAB for consideration before going to adjudication. The DAAB would handle it promptly and work would proceed swiftly.

Sub-clause 21.4.3 The DAAB's Decision (FIDIC 2017 edition) states that;

*The DAAB shall complete and give its decision within*

- a) 84 days after receiving the reference; or*
- b) Such period as may be proposed by the DAAB and agreed by both parties.*

Sub-clause 21.4.4 Dissatisfaction with DAAB's decision (FIDIC 2017 edition) states that;

*"If either party is dissatisfied with the DAAB's decision:*

- a) Such party may give a NOD to the other party with a copy to the DAAB and to the Engineer;*
- b) This NOD shall state that it is a "Notice of Dissatisfaction with the DAAB's decision" and shall set out the matter in Dispute and reason(s) for dissatisfaction and*
- c) this NOD shall be given within 28 days after receiving the DAAB decision."*

The sub-clause gives the parties an avenue of redress even against the DAAB's decision when it is given. This shows that the parties' interests are always at the forefront of this dispute-resolution mechanism. Justice for the parties at all stages of the dispute resolution mechanism is sought.

Sub-clause 21.5 Amicable Settlement (FIDIC 2017 edition) states that;

*"Where a NOD has been given under sub-clause 21.4 (obtaining DAAB's decision) both parties shall attempt to settle the dispute amicably before the commencement of arbitration. However, unless both parties agree otherwise arbitration may be commenced on or after the twenty-eighth (28th) day after the day on which this NOD was given, even if no attempt at amicable settlement has been made."*

The parties to the Contract (the employer and the contractor) still have a chance to resolve the dispute even when a party is not satisfied with the DAAB's decision. Arbitration is only engaged after these efforts have not yielded any good fruit.

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## How do the forms of conditions of contract used in the public (Government of Uganda funded) sector projects in Uganda handle dispute resolution?

The Government of Uganda procures, manages and completes various construction projects for the different entities operating on a state level using the Public Procurement and Disposal of Assets (PPDA) general conditions and forms of contract. These general conditions and forms of contract detail how the process through which a line entity of the Government should manage the construction process in its entirety. The PPDA general conditions and forms of contract under clauses 24 - 26 provide for the process and personnel responsible for overseeing disputes.

Sub - Clause 24.1 of the PPDA general conditions and forms of the contract states that;

*"If the Contractor believes that a decision taken by the Project Manager was either outside the authority given to the Project Manager by the Contract or that the decision was wrongly taken, the decision shall be referred to any Adjudicator appointed under the contract within 14 days of the notification of the Project Manager's decision."*

This sub-clause provides for the appointment of an adjudicator in instances where the contractor is dissatisfied with a decision taken by a project manager during the execution of a construction project.

### Why incorporate DAABs in PPDA contracts?

As a rule of thumb, contractors want their proposals and/ or submissions approved by the project manager. Often, the project manager has a different opinion from the contractor. These differing opinions imply that adjudicators are appointed on several occasions to handle these differing opinions and this can be avoided if the project has a standing Dispute Avoidance Adjudication Board (DAAB) in place. The DAAB would review these differing opinions and submit an independent decision respected by both the contractor and the project manager owing to the shared understanding of the role of the DAAB and consent to the appointment of the DAAB.

A standing DAAB would allow for timely, independent decisions on different opinions between the contractor and the engineer/ project manager, reducing the need for frequent adjudicator appointments and minimising project delays.

Sub-clause 25.2 of the PPDA general conditions and forms of the contract states that;

Any Adjudicator appointed under the contract shall give a decision in writing within 28 days of receipt of a notification of a dispute, providing that he is in receipt of all the information required to give a decision.

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<sup>3</sup> To note that the provision of amicable settlement provided for in FIDIC forms of contract and discussed in this article is also provided for under the PPDA general conditions and forms of contract.

The above sub-clause shows that the PPDA general conditions and forms of the contract appreciate the timely resolution of disputes between the parties. This is because the project depends on these decisions for certain portions of work to proceed. Both the contractor and the employer would not want the project stalled because of a delay that can be avoided. It however relies on sufficient information to be submitted to it.

Given the benefits demonstrated by other contract forms, it is recommended that the PPDA general conditions and forms of contract adopt the DAAB model. This would align Uganda's procurement practices with international best practices to ensure disputes are managed effectively and reduce unnecessary delays in construction projects. The advantages of a DAAB are clear and substantial for the success of a project.

There is also institutional support for DAABS in Uganda. The Centre for Arbitration and Dispute Resolution (CADER) is a body that was established by the Arbitration and Conciliation Act Cap 4 Section 67. Other bodies in Uganda like the Chartered Institute of Arbitrators (CI Arb) – Uganda chapter and the International Centre for Arbitration and Mediation in Kampala (ICAMEK) also provide dispute resolution mechanisms like arbitration and mediation. Further, as stated herein, Construction Law Institute also provides for dispute resolution mechanisms in respect to the appointment of adjudicators. These bodies would be the entities responsible for recommending competent members that can be appointed and/ or approved as adjudicators onto the various DAABs. These bodies would also assist the DAABs in facilitating the certification, registration and authentication of adjudication decisions and conciliation settlements.

I believe the proactive involvement of DAABs could prevent disputes from escalating, ensuring projects are completed on time, within budget, and to the satisfaction of all parties involved.

**What is your take on incorporating DAABs into Uganda's PPDA general conditions and forms of contract?**



# Through the lens of an engineer: Construction Adjudication in Uganda's construction industry



**Eng. Byangire Paul Rusoke**

PMP, R.Eng., MUIPE, MICCP, MPMI, ACI Arb

## Introduction

Adjudication is an Alternative Dispute Resolution (ADR) mechanism where an independent neutral third party makes a decision on a dispute between parties. The third party is referred to as an Adjudicator. Whereas Adjudication can be applied to other disputes, it is more popularly used in settling construction disputes. Adjudication has commonly been used as the first ADR mechanism before parties resort to Arbitration which is a full and final remedy.

## Forms of Adjudication

Adjudication as a mode of settling construction disputes takes one of three forms. The first form of Adjudication is statutory that is; it is a mandatory step included in construction laws of a country as the first mechanism in settling construction disputes. Adjudication can also be contractual i.e. Adjudication as provided for in a contract as a mode of dispute resolution. The final form of Adjudication is the adhoc form and this arises out of parties' decision to submit a dispute to an Adjudicator in as much as it may not have been provided for in their contract.

## The Uganda Experience

Adjudication in Uganda is not statutory. Adhoc Adjudication takes place but commonly in an informal way. This is partly borne out of the high prevalence of informal construction contracts in the country, and when disputes arise, any form of Adjudication is done adhoc with the ensuing consequence of a weak mechanism of enforcement of the award. Because of its adhoc nature, one is constrained in obtaining any records pertaining to adhoc Adjudication including the number and quality of awards rendered.

The most common form of Adjudication in Uganda is the contractual Adjudication. For the majority of public works procured under domestic bidding, the parties adopt the Public Procurement and Disposal of Assets Authority (PPDA) contract. In the PPDA contract, contractual Adjudication is promoted as the first mechanism ahead of arbitration.

The PPDA contract proposes the President of the Uganda Institution of Professional Engineers (UIPE) as the nominator for the Adjudicator. The PPDA contract provides timelines which guide on matters of limitation before, during and after the Adjudication. It is under the nominations of the UIPE president that I have undertaken some assignments as an Adjudicator.

It should further be noted that whereas Adjudication provides many benefits as an ADR Mechanism, it is not yet properly appreciated by the Employers, Contractors and even nominated Adjudicators.

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<sup>1</sup> England and Singapore are among the jurisdictions that have adopted statutory Adjudication.

<sup>2</sup> It should also be noted that other contracts name bodies such as at the Centre of Arbitration and Dispute Resolution (CADER) to nominate adjudicators.

For Contractors (especially indigenous contractors), the social norms play a role in their exercise of adjudication. It is a common misconception that the contractor will be ‘tagged’ as a “litigious entity” and therefore jeopardizing her future business relations. Subsequently, most contractors end up with unsettled disputes opting not to pursue Adjudication because of the deep rooted social norms.

Further, contractors comprise over 70% of claimants in Adjudication proceedings. However, they are not conversant with principles of specificity on matters to be adjudicated. As a result, in many instances, the Adjudicators do not rule in their favor with the ripple effect of some contractors shunning Adjudication of future disputes on grounds of “biased Adjudicators”.

For the Employers, there are reservations on independence of the process given that a fair number of contractors are members of UIPE. Some employers, therefore think that adjudication managed by UIPE will not be fair. Another common experience is that Employers (or either party) misunderstand commencement of adjudication in that they believe that they are supposed to agree / consent to a nominated adjudicator whereas not.

For the Adjudicators, there has been limited training by UIPE on the subject of Adjudication. Nominees have been largely seconded because of their experience in the Engineering practice.

In many disputes reported to UIPE, both claimants and respondents do not even know how to prepare the claim, defense and let alone counter defense by the claimant. Therefore, most supporting documents tendered by either side are usually lacking which results in either a shallow report or unnecessary delays in completing the Adjudication.

Yet another challenge faced during Adjudication is the persistent problem of payment of Adjudication fees especially from parties that are public bodies.

Despite the shortcomings experienced above, parties that undertake Adjudication in Uganda appreciate the advantages it offers such as delivery of a ruling in a short time and the privacy it offers as compared to formal litigation. It is hoped that the increased awareness campaign by the judicial community and CPDs by professional bodies will greatly help in use and implementation of Adjudication as an ADR in Uganda’s construction industry.

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<sup>3</sup> UIPE has recently launched a drive to train its membership in adjudication & other ADR mechanisms, and other non core engineering skill sets.

<sup>4</sup> For example, in one of the disputes that was technical, the claimant requested for adjudication but instead expected an investigation report from UIPE in respect to the dispute.

# Meeting Minutes in Construction Dispute Resolution



## **Lawrence Rugumambaju**

FCI Arb, Architect, Masters in Construction Law  
and Arbitration

Meetings in construction are a valuable tool. Meetings provide a record of discussions, document conversations, decisions, and actions agreed. They help track progress, identify issues, and monitor resolution. Meetings facilitate communication among team members, stakeholders, and clients. They promote accountability by recording responsibilities and deadlines. Meetings help to ensure quality standards. They help ensure compliance with regulations, contracts, and laws. In addition, meetings may help to identify best practices and areas for improvement. In case of disagreements, meetings are a critical piece of evidence that are relied upon by the parties to make their case.

However, meetings become more relevant when reduced to writing or minutes. Minutes help resolve disputes by providing a clear record of agreements, rights, responsibilities, and decisions in time. Minutes become a record when the protagonists are long gone.

## **Common Types of Meetings in Construction**

Construction projects are at times complex, costly and involve a multitude of stakeholders. Therefore, necessarily there are several meetings over the life of a project. The types of meetings include:

**Progress Meeting** – Progress meeting minutes are crucial in construction projects to ensure that stakeholders are aligned and informed about the project's status, issues, and next steps.

**Project Coordination Meeting** – Effective project coordination meeting minutes are crucial for keeping a team aligned and ensuring that all important decisions and actions are documented and known to key stakeholders.

**Safety Meeting** – Safety meeting minutes in construction are detailed records of discussions, decisions, and action items from safety meetings held on construction sites. They provide a written record of what was discussed, including safety protocols, hazards identified, and measures to mitigate risks, they assign responsibilities for specific safety tasks and ensure that follow-up actions are tracked, they help ensure that the construction site complies with safety regulations and standards and they facilitate clear communication among all team members about safety issues and procedures.

**Quality Control Meeting** – Quality control meeting minutes are records of discussions, decisions, and actions taken during a quality control meeting. These meetings are essential for ensuring that products or services meet specified quality standards and further are a useful tool in identifying areas for improvement.

Client Meeting -Client meeting minutes provide a written record of discussions, decisions, and action items from meetings between the client and the project team.

Common to whichever type of meeting is that minutes of the meeting provide a record of the proceedings and mentions persons present at the meeting.

## **Who Should Sign the Minutes of a Meeting?**

In construction where precise documentation is crucial, having signed minutes can help avoid misunderstandings and ensure that all stakeholders are aligned. Meeting minutes ought to be agreed to by the parties otherwise they may not be binding. Signing expresses knowledge and approval/ consent by the signatory.

In addition, signing the minutes ensures that attendees agree with the recorded information. This helps to confirm that the minutes accurately reflect the discussions and decisions taken during the meeting.

The admissibility and weight of such evidence depends on the context and how well the minutes are documented and authenticated. When signed, minutes show agreement, and consequently bind parties that have signed. Agreement of parties is indispensable to contracts and critical to ADR procedures. Once accepted, minutes may be used as prima facie evidence, meaning they are considered sufficient to establish a fact unless disproved.

### **However, who is the proper signatory?**

In common practice, construction meeting minutes are signed by **Chairperson of the Meeting**, often the project manager or lead consultant, sometimes **The Secretary**: The person who took meeting minutes, confirming that they accurately reflect the discussions and decisions made; the **Contractor** and/or **Subcontractor**: the entity building.

However, the jury is still out as to whether the signatory has the authority to bind the party for whom they are signing. This is a question on which a unanimous position needs to be taken by all players in the built environment.

## Are Meeting Minutes Admissible as Evidence in Resolution of Disputes in Uganda?

In Uganda, common methods of resolving construction disputes include Negotiation, Mediation, Arbitration,

Adjudication and Litigation. The methods are often summed up as Alternative Dispute Resolution (ADR) and Litigation. Whereas ADR processes are flexible, litigation is very exact on what is accepted as evidence. In litigation the evidence must be authentic, relevant and not covered by privilege to mention but a few conditions.

There is no specific provision in laws of Uganda that excludes presentation of construction meeting minutes as evidence. On the contrary, there are several cases in which meeting minutes have been accepted as evidence in court. The main value is that meeting minutes serve as a record of the proceedings and gives the list of persons that are present at the meeting.

In *Eseza Catherine Byakika v Amotrust Construction Services Limited & Another* (Civil Suit No. 951 of 2018), Meeting minutes; EXP P4, played a crucial role in documenting the discussions and decisions made during the meetings between the parties involved. These minutes served as official records that could be referenced to verify the agreements and understandings reached during those meetings. They were essential in providing evidence of the commitments and actions agreed upon, which were pertinent to the case.

In *BuildTrust Construction (U) Limited v Martha Rugasira* (Civil Suit No. 288 of 2005), the completion date as set out in minutes was accepted for there was no protest from the client in minutes in respect to the completion date.

In the case of *Ambitious Construction Company Ltd v Uganda Broadcasting Corporation* (Civil Suit No. 335 of 2012). the plaintiff, Ambitious Construction Company Ltd, sued Uganda Broadcasting Corporation (UBC) for unpaid dues related to the construction of a television complex. In this context, meeting minutes served as an official record of what was discussed and agreed upon during meetings. The discussed and agreed upon items included decisions on project changes, timelines, and responsibilities. In the case mentioned, the court relied on various documents, including meeting minutes, to determine the facts and make a judgment. This underscores the importance of thorough and accurate records in any contractual relationship. Properly documented and signed minutes can serve as valuable evidence to support a party's position in a dispute.

## Minutes of Meetings In ADR

Alternative Dispute Resolution (ADR) offers an expedited way to resolve disputes outside of traditional court systems.

Fast resolution of disputes is a coveted attribute to ADR. With accurate and authentic minutes, resolution of disputes is likely to be facilitated because of the following reasons:

**Documentation:** They provide a clear and detailed record of what was decided on during the meeting, which is essential for reference and accountability.

**Transparency:** They ensure that all parties have a shared understanding of the meeting outcomes, reducing misunderstandings and miscommunications.

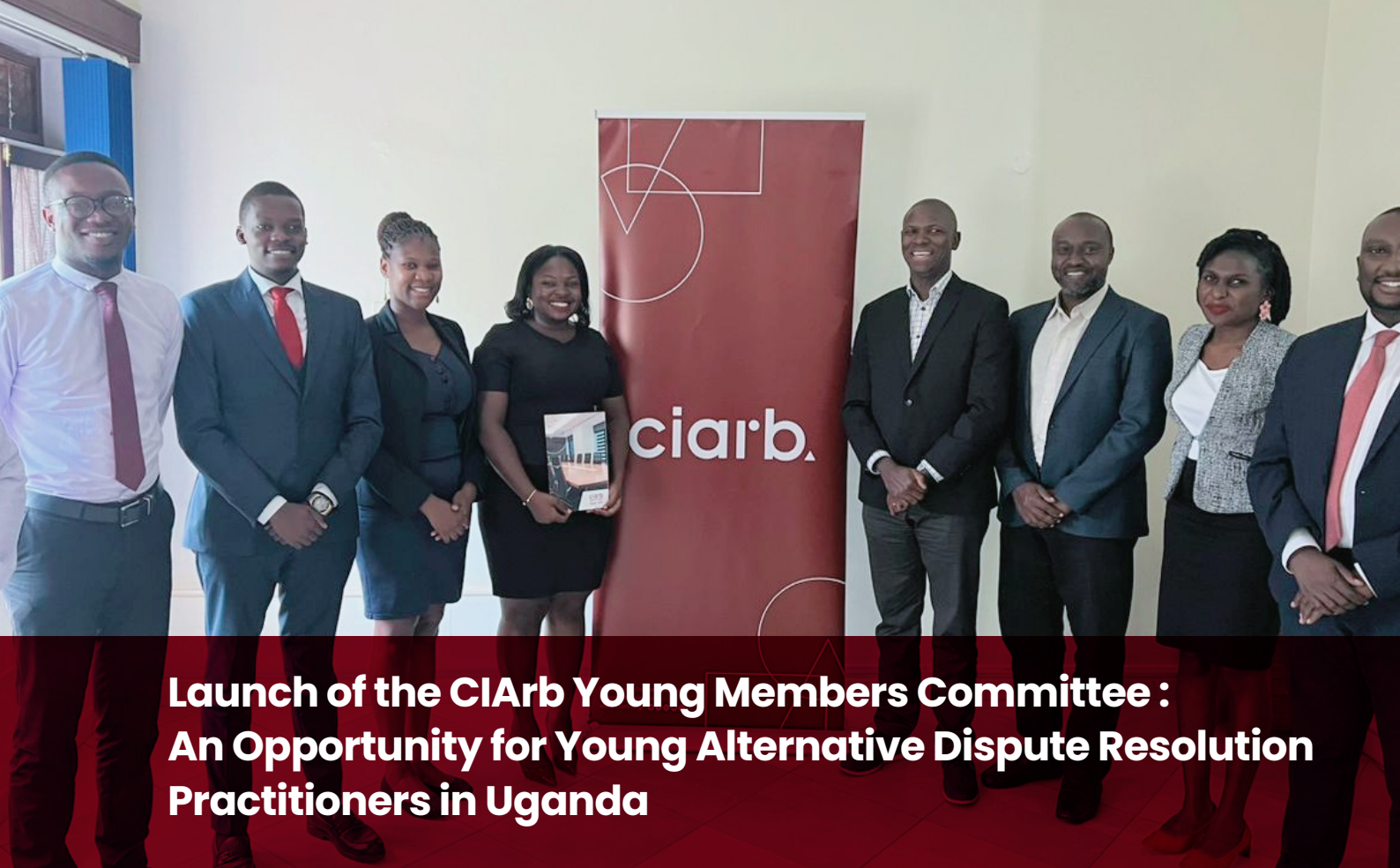
**Evidence:** In the context of dispute resolution, meeting minutes serve as evidence of agreements, discussions, and decisions, which can be critical in resolving conflicts efficiently.

**Follow-up:** They help in tracking action items and ensuring that tasks are completed as agreed upon, which is vital for maintaining progress and accountability.

## Conclusion

As discussed herein, meeting minutes are a critical component of evidence in both litigation and ADR. It therefore follows that the same must be well prepared and properly signed such that in the event of a dispute, the record contained therein enables expeditious resolution in both Court and ADR settings.





# Launch of the CIARB Young Members Committee : An Opportunity for Young Alternative Dispute Resolution Practitioners in Uganda

On 10th September, 2024, the Chartered Institute of Arbitrators (CIARB)– Uganda Chapter launched its Young Member’s Committee.

The inaugural Committee is led by Chairperson Mr. Charles Gavamukulya, an engineer with a passion for arbitration and adjudication. He is supported by a team of dedicated professionals who are; Ms. Amina Nassazi, the Deputy Chairperson and a Quantity Surveyor by profession, Mr. Alexander Ssensikombi, An Advocate, Ms. Elizabeth Suubi; an Advocate, Mr. Jeffrey Kaddu; an Advocate, and Ms. Kisakye Martha; a valuation surveyor. These comprise the six person team of the inaugural Young Members Committee of CIARB-Uganda Chapter.

The committee is superintended by two seasoned arbitration practitioners and these are, Mr. Albert Mukasa, FCIARB and Mr. Ssekabanja Isaac, MCIARB.

This Committee of young diverse professionals will steer the platform for members to acquire the necessary knowledge and skills to become recognized Alternative Dispute Resolution (ADR) practitioners and excel in arbitration.

## ABOUT THE AUTHOR



**Jeffrey S. Kaddu**  
MCIARB

Member, Young Members  
Committee - CIARB Uganda  
Branch  
Associate - AF Mpanga  
Advocates

The Young Member's Committee is open to all young professionals from different fields below 40 years with an interest in arbitration and the broader body of Alternate Dispute Resolution. The group's mandate is to provide opportunities for individuals to gain knowledge, develop skills and support the young members of the chapter finding their feet in the profession.

CIArb Uganda Chapter Young Members Committee has planned several initiatives to interest and grow membership in arbitration among young Ugandan professionals. These include; training programs covering various aspects of arbitration such as; commencement, trial, post trial and enforcement mechanisms, networking events to facilitate connections with other young professionals, a pilot mentorship program intended to connect young members to experienced arbitrators and opportunities for members to engage in research, publications, tribunal secretarial work and online webinars. The Young Members Group programs will be conducted by a blend of experienced arbitrators and legal professionals to young aspiring practitioners both locally and internationally.

The group's inaugural training webinar is scheduled for 11th October, 2024, and will raise awareness about the Young Members Committee, highlighting the objectives and goals of the Young Members Committee and opportunities available for young arbitrators.

For this webinar, the Young Members Committee shall host Mr. Ngugi Kairuki, the Chairperson of the CIARB YMG Kenya Branch and Mr. Muleba Joseph Chitupila, the Chairperson of the CIARB YMG Zambia

With the mentorship program due to be launched in 2025, the YMC shall pair young members with experienced arbitrators who will guide career paths, offer advice on specific cases, and share insights into the different industry practices.

The YMC will encourage members to engage in research and contribute to publications on arbitration-related topics providing platforms for young members to write and contribute to the body of scholarly knowledge in arbitration. This will help to advance knowledge in the field and provide opportunities for young professionals to showcase their expertise.

The CIArb Uganda Young Members Committee provides numerous advantages for young professionals, such as the opportunity to participate in research and publications, network with peers and experienced arbitrators and receive mentorship and guidance from seasoned professionals.

Further, young professionals shall be able to advance their professions in the field of arbitration, develop their skills, and acquire valuable experience by participating in the activities of the CIArb Uganda Young Members Committee. All Ugandan young professionals interested in arbitration and ADR are encouraged to participate in these activities.

# 03

# Upcoming Events

## October – December 2024 Activities

The Introduction to Arbitration and Accelerated Route to Member trainings are around the corner. Keep these dates in mind and stay informed on opportunities to enhance your arbitration knowledge. For more information, reach out to us at [info@ciarbuganda.org](mailto:info@ciarbuganda.org).

### Accelerated Route To Member

**ciarb.**  
Uganda Chapter

Organized by:  
CI Arb Uganda Chapter in conjunction  
with CI Arb Kenya Branch

## Accelerated Route to member Assessment 2024

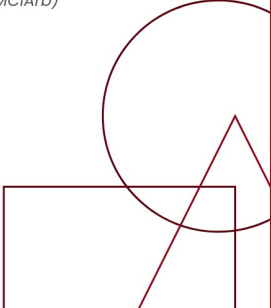
Qualify to become a Member of the  
Chartered Institute of Arbitrators (MCIArb)

**21st and 22nd October 2024**

**Fee: 650 US Dollars**

Book now  
+256 700 597888  
+256 775 934615

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[info@ciarbuganda.org](mailto:info@ciarbuganda.org)



### Introduction to Arbitration

**ciarb.**  
Uganda Chapter

Organized by:  
CI Arb Uganda Chapter in conjunction  
with CI Arb Kenya Branch

## Introduction to Arbitration

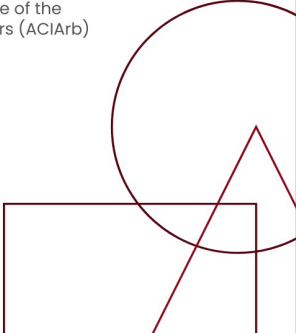
Qualify to become an Associate of the  
Chartered Institute of Arbitrators (ACIArb)

**4th December 2024**

**Fee: 400 US Dollars**

Book now  
+256 700 597888  
+256 775 934615

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## Arbitration Award Writing



**Phillip Alier**  
FCI Arb, C. Arb

We are pleased to announce a comprehensive "Arbitration Award Writing" training scheduled for the 21st and 22nd of November, 2024. This specialized training will be facilitated by Phillip Alier, FCI Arb, C. Arb., a seasoned arbitrator, renowned for his expertise in arbitration practice globally.

The two-day training aims to enhance participants' skills in drafting enforceable arbitration awards and is highly recommended for arbitrators looking to sharpen their proficiency in this area.

Keep a look out on all our social media pages for more information about this training.

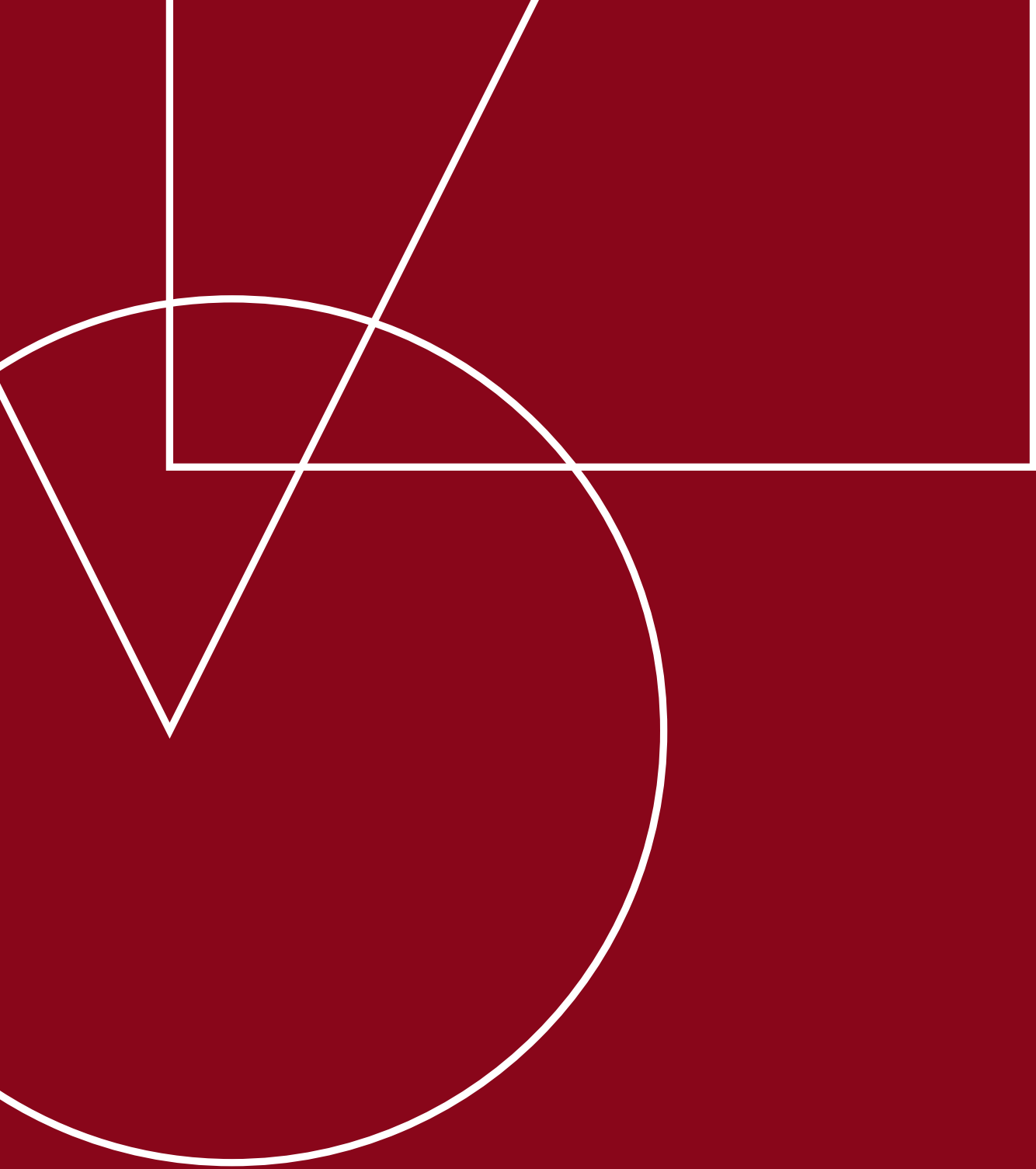
## Annual Meet and Greet



Mark your calendars for the Annual CIARB Uganda Chapter Meet and Greet, set for 6th December, 2024, at the Emin Pasha Hotel. This year's event will focus on the theme, "By the fireside: The multi dimensional world of ADR in Uganda" providing a unique platform for insightful discussions and networking opportunities.

We have an exciting line-up of distinguished speakers who will share their perspectives on the evolving landscape of ADR and its practical applications in the Ugandan context.

Look out for updates and do not miss out on this exciting opportunity to engage with top legal minds and peers in the field.



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