



**Institute of Legal Practice  
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# **Dispute resolution techniques: mediation, arbitration of environmental disputes**

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## About ILPD

- Former *Centre National de Formation Judiciaire CNFJ* (National Centre for Judicial Training)
- 2004 Legal Reforms
- Creation of ILPD in 2006
- 2008 Diploma in Legal practice
- 2012 Diploma in Legislative Drafting



# ILPD Mission

## ■ Missions:

- to provide legal professional education to persons holding at least a Bachelor's Degree in Law;
- to provide training to those working in the field of justice and in related fields;
- to promote research and disseminate law;



# Programs

- Diploma in Legal Practice (DLP)
- Diploma in Legislative Drafting (DLD)
- Continuing Legal Education (CLE)



# Mediation and arbitration of environmental disputes

- Mediation and arbitration are part of ADR
- Alternative Dispute Resolution: dispute resolution mechanisms that are short of, or alternative to, full-scale court processes.



- Mediation: intervention a third party called mediator between the disputants,
- Mediators simply facilitate communication, or may help direct and structure a settlement, but they do not have the authority to decide or rule on a settlement.



- Arbitration: a third party to decide how a dispute should be resolved after a fair trial procedure.
- Arbitration produces a third party decision that the disputants must follow even if they disagree with the result, much like a judicial decision.
- Quasi-judicial function



# Environnemental disputes

- Environmental problems are result of human interference with nature. Human interference with nature is inevitable. Our very existence depends on our capacity to utilize the physical environment and its resources. Such interference is problematic because of our methods of exploitation, which can jeopardize the source of our livelihood. The threat is very real where non-renewable resources are disturbed and unbalanced. (Pieter Glasbergen: Managing Environmental Disputes: Network Management as an Alternative, 1995,p.1)





# Environnemental disputes cont'd

- The need of utilizing natural resource vs protection and conservation of the nature.
- Enactment of laws for:
  - Preservation: regulatory measures taken to protect selected natural resources or infrastructure (unique or representative, fragile, endangered)
  - Conservation: regulatory measures taken to ensure that renewable resources are used sustainably (mainly using the principle of maximum or optimum sustainable yeild).



# Environnemental disputes cont'd

- Environmental disputes:
  - disagreements among stakeholders in a range of public disputes which involve environmental quality or natural resource management (Lawrence E. Susskind and Joshua Secunda, "Environmental Conflict Resolution: The American Experience," in *Environmental Conflict Resolution*, ed. Christopher Napier (London: Cameron May, 1998), p16.)



## Benefits of ADR (in general)

- Increase in efficiency: speedy resolution to a specific dispute and cost effective
- Encourages constructive approaches
- Gives sense of ownership to stakeholders
- Reduces ongoing disputation
- Flexibility: process of and by parties
- Courts can still enforce decisions reached through ADR(ex. of arbitration)



# Mediation-Benefits

- faster than litigation
- less expensive than litigation
- informal compared to litigation
- parties select the neutral facilitator
- parties determine the outcome
- non-binding until agreement is reached
- creative solutions are possible
- private -confidential



# Mediation-shortcomings

- one party can refuse to mediate
- can't make legal precedent
- may still need adjudication
- difficult if there is a power imbalance



# Arbitration-advantages

- Privacy
- Flexibility of procedure
- Speed
- Cost
- Arbitrators can be experts
- Quasi-judicial
- Limited avenues for appeal
- Enforcement : New York Convention



# Arbitration-shortcomings

- Flexibility – can lead to uncertainty
- Speed – scope for delay by parties or arbitrators
- Cost: it will depend on the nature of the case and it will depend on the size of the case (ex.: international arbitration with frequent travels)
- Expert arbitrators – variable expertise, may not know the law
- Avenues for appeal – bad if you lose and award wrong
- New York Convention : still national courts have a final word and they can deny the enforcement



## Rwanda: legal and institutional frameworks on ADR in environmental disputes

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- Law N° 06/2015 of 28/03/2015 relating to investment promotion and facilitation (art.11):
  - One of the requirements for **investment registration is**: the project **environmental impact assessment certificate** issued in accordance with relevant laws.
  - **Article 9: Dispute settlement**
    - First option: Any dispute arising between a foreign investor and one or more public organs in connection with a registered investment enterprise shall be amicably settled.
    - Second: When an amicable settlement cannot be reached, parties shall refer the dispute to an arbitration agency as agreed upon in a written agreement between both parties.
    - Third: Where no arbitration procedure is provided under a written agreement, both parties shall refer the matter to the competent court.





- **Art.14 : one of duties of the board in investment promotion and facilitation**
  - facilitate **amicable settlement of disputes** that may arise between an investor and one or more public organs;
- Any dispute....including environmental disputes (even disputes related to EIA)
- Amicable settlement: mediation included
- Arbitration when the first option failed



## Rwanda cont'd

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- Ad hoc arbitration:
  - Individual arbitrators-mainly lawyers
- Institutional arbitration
  - Kigali International Arbitration Centre (KIAC)
    - Panel of domestic arbitrators
    - Panel of international arbitrators
- Challenges-expertise
  - No environmental experts (*per se*) on a list of 52 domestic arbitrators.
  - Only 2 environmental experts on a list of 63



## Way forward

- Need of introducing environmental law in legal faculties
- Continuing legal education on environmental law:
  - Criminal law of environment law
  - Dispute resolutions including ADR
- ADR to environmental experts ( non lawyers)



**THANK YOU**