



**THE ROLE OF ADR IN INVOLVING  
THE PUBLIC IN JUSTICE SERVICE DELIVERY**

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## **The Role of ADR in Involving the Public in Justice Delivery**

Simply defined, “Alternative Dispute Resolution (ADR) refers to the different ways people can resolve disputes without a trial. Common ADR processes include mediation, arbitration and neutral evaluation. These processes are generally confidential, less formal, and less stressful than traditional court proceedings.”<sup>1</sup>

Studies by Ernest Uwazie<sup>2</sup> established that many African citizens have lost faith in the ability of their nations’ courts to provide timely or just closure to their grievances. A 2009 survey in Liberia found that only 3 percent of criminal and civil disputes were taken to a formal court. Over 40 percent sought resolution through informal mechanisms. The remaining 55 percent went to no forum at all. This includes cases where claimants felt the need to take justice into their own hands, often with violent consequences. In post conflict and fragile contexts, where societal tensions are already high and justice systems typically do not function, the need for prompt resolution of disputes is particularly critical. Without timely, accessible, affordable, and trusted mechanisms to resolve differences, localized disagreements or crimes can degenerate into broader conflict. This contributes to cultures of violence and vigilante justice.

Despite numerous attempts at modernization, many African countries are still struggling to establish functional, timely, and trusted judicial systems. Most courts in Africa are fraught with systemic problems, such as antiquated structures. Countless judges still take notes by hand, as there are no stenographers. Records are archived manually and a reliable computer in an African court is rare, especially at the magistrate courts that handle most cases. The biggest problem, however, is overcrowding. Many judges or magistrates have over 100 cases per day on their dockets, a number impossible to adjudicate. It can take many years to get to trial and months to have a motion heard. Disputants often express frustrations at the “come today, come tomorrow” syndrome and mounting legal fees for professional representation with each futile court appearance. It is not uncommon in African countries for a dispute to take a decade or more to reach resolution. As a foreign diplomat in East Africa once joked, “it is easier for one to pass through the mouth of a lion than go through the ... legal system.”<sup>3</sup>

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<sup>1</sup> New York State Unified Court System: [https://ww2.nycourts.gov/ip/adr/What\\_Is\\_ADR.shtml](https://ww2.nycourts.gov/ip/adr/What_Is_ADR.shtml)

<sup>2</sup> Ernest Uwazie: Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability, November 30, 2011: <https://africacenter.org/publication/alternative-dispute-resolution-in-africa-preventing-conflict-and-enhancing-stability/>

<sup>3</sup> Ernest Uwazie: Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability, November 30, 2011: *ibid.*

A number of studies have advocated for alternative and supplementary approaches to justice delivery that would render satisfactory results to the people. This is what we have come to baptize, the ADR. Whereas the *bazungu* have called this method of dispute settlement an **alternative**, to us the Africans, it is the court litigation process that is alternative. Native customs provided very satisfactory dispute resolution approaches that were people-centered and that left the community members largely satisfied.

In fact, Justice Katrina Bochner of the Supreme Court of Australia, asserts that:

*“..... determination by judicial decision-making is in fact the alter-native, and far less common, method of dispute resolution. Discussion, negotiation, and compromise or consensus-reaching — with or without the assistance of a third party — is the way in which the vast majority of disputes in our society are resolved, and indeed have been resolved for many centuries.”*<sup>4</sup>

The idea of using assessors and the concept of a public hearing must have been an attempt to buy the people’s acceptance of the court verdict, but unfortunately many people do not attend court sessions, those who do are unable to follow the proceedings; and even if they followed, their input in dispute resolution is not sought at all.

In much of Africa, we have made effort to re-engineer ADR processes in a number of legislations.<sup>5</sup> The Courts have deliberately introduced litigants to ADR and persuaded them to pursue appropriate options before they return to Court for formal adjudication. The common ADR systems applied here include arbitration, mediation, reconciliation, conciliation, and negotiation. We have successfully applied ADR in resolution of mainly: commercial disputes, labour disputes, tax disputes, land disputes, family property and administration causes; and construction and infrastructure disputes.

The voice of the people of Uganda is well articulated in Article 126 of the Constitution in the following authoritative terms:

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<sup>4</sup> Katrina Bochner: Alternative Dispute Resolution and Access to Justice in The 21st Century <https://law.adelaide.edu.au/ua/media/976/Alternative%20Dispute%20Resolution%20and%20Access%20to%20Justice%20in%20the%2021st%20Century.pdf>

<sup>5</sup> See: Arbitration Act, 1995 (Kenya), Arbitration and Conciliation Act, 2000 (Uganda), Arbitration Act, 2000 (Zambia), Arbitration and Conciliation in Commercial Matters, 2008 (Rwanda), Alternative Dispute Resolution Act, 2010 (Ghana), Judicature (Mediation) Rules, 2013 (U), Arbitration Act, 2020 (Tanzania), Civil Procedure (Court Annexed Mediation) Rules, 2022 (K), Arbitration and Mediation Act, 2023 (Nigeria).

- (1) Judicial power is derived from the people and shall be exercised by the courts established under this Constitution in the name of the people and in conformity with law and with the values, norms and aspirations of the people.*
- (2) In adjudicating cases of both a civil and criminal nature, the courts shall, subject to the law, apply the following principles –*
- (a) justice shall be done to all irrespective of their social or economic status;*
  - (b) justice shall not be delayed;*
  - (c) adequate compensation shall be awarded to victims of wrongs;*
  - (d) reconciliation between parties shall be promoted; and*
  - (e) substantive justice shall be administered without undue regard to technicalities.*

These imperative provisions call upon the Judiciary and the Courts to respect and enforce the values, norms and aspirations of the people of Uganda in the administration of justice.

What are the “aspirations, norms, and values of the people of Uganda”? According to the report of the Uganda Constitutional Commission, the people wanted the following values to inform the administration of justice: (i) independence of the Judiciary; (ii) the rule of law; (iii) just and fair trials; (iv) African values;<sup>6</sup> and (v) improved and fair access and equality before the law.<sup>7</sup>

### ***Have these aspirations been realised?***

In spite of these processes, a Justice Needs Report of 2016<sup>8</sup> revealed that courts and lawyers are marginal to the experience of the day to day justice needs of the people of Uganda. The report revealed that less than 5% of the dispute resolution takes place in court of law and in less than 1% of all the cases, a lawyer is involved. The report further

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<sup>6</sup> A majority of people agreed that both the law and the way in which justice is administered should reflect more values of African people.

<sup>7</sup> Report of the Uganda Constitutional Commission: analysis and recommendations (1994) 444-445.

<sup>8</sup> HiiL Justice Needs in Uganda Report (2016), <https://www.hiil.org/wp-content/uploads/2018/07/Uganda-JNST-Data-Report-2016.pdf>

revealed that most Ugandan citizens rely on informal justice processes. The report recommended the adoption of ADR mechanisms as a means of resolving disputes in a fair manner. In a Justice Needs and Satisfaction Report of 2020,<sup>9</sup> legal problems per year in Uganda were put as 12.8 million and, while many are resolved, majority are unresolved or the resolution is seen as unfair. The statistics are to the effect that every year, 4.7 million legal problems are abandoned without fair resolution, 1.9 million are ongoing, and 2.13 million are considered to be unfairly resolved. This is quite a significant justice gap, that deserves specific attention.

It is to be noted that, in spite of the ingenuity of the Courts in using ADR mechanisms over the past twenty years, the case-backlog problem is still prevalent. According to the Judiciary Annual Performance Report, 2021/2022, the total case backlog stood at 50,592 cases (30.11 %) against 168,007 pending ones. The total caseload for FY 2022/2023 was 422,672 cases and by 30<sup>th</sup> June 2023 the total pending caseload was **156,349 cases**, out of which **42,960 (27.48%) cases** were backlog.<sup>10</sup>

These statistics show that the Judiciary may not adequately attend to the needs of our people through the formal court system, alone. There is need to look outside the box into the traditional justice systems. It should be remembered that Traditional Justice systems predated the now current formal justice system which largely constitutes vestiges of a transplanted colonial legal system.<sup>11</sup>

Studies by Olajide Olagunju indicate that, unlike the European Judicial systems, African conflict resolution practices focus on communal peace as the guiding principle in managing all conflicts including interpersonal conflicts. The goal was never to punish *per se*, although wrong doers got convicted and punished. The ultimate aim of adjudication was always to promote the unity of the community as opposed to concern with individuals; in other words, the restoration of social equilibrium is the paramount factor and consideration. African conflict resolution is rooted in the supremacy of the social order, over and above the individuals in conflict settlement: it is the community that is wounded by unresolved conflict. Conflict resolution is the healing of communal

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<sup>9</sup> <https://www.hiil.org/research/justice-needs-and-satisfaction-in-uganda/>

<sup>10</sup> See: The Judiciary Annual Performance Report, 2022/2023, pp. 20-21,30, [https://judiciary.go.ug/files/downloads/Judiciary\\_Annual\\_Performance\\_Report\\_202223\\_Web\\_231115\\_140706.pdf](https://judiciary.go.ug/files/downloads/Judiciary_Annual_Performance_Report_202223_Web_231115_140706.pdf)

<sup>11</sup> See: Alternative Justice System (AJS) Strategy for The Judiciary of Uganda, 2023, p. 1

wounds and the restoration of social order and harmony. Reconciliation contains the power to heal broken emotions and to end cycles of violence.<sup>12</sup>

Our traditional justice system envisaged ADR and upheld it in the course of dispute resolution. In a number of communities, the elders in our villages, the clan leaders and even the family members held ADR meetings and took reasonable steps to reconcile parties who had offended one another or affronted society at large.

It is through this mechanism that an errant member was brought back to society sometimes after paying a fine which mainly included alcohol and or livestock. Sometimes the African justice system required restitution or making good the loss of what the complainant had suffered. All these mechanisms are embedded in Article 126 of the 1995 Constitution. The Constitution also calls for promotion of reconciliation<sup>13</sup> between parties to a dispute and better still for adequate compensation, among others. It also dictates that justice shall not be delayed. These values are fortunately espoused in the hybrid ADR packages available to the Judiciary clients. The Judiciary therefore continues to promote ADR in case management with commendable results across the various Court levels. The most employed forms of ADR include: Mediation, Arbitration, Plea Bargaining, Small Claims Courts and Community Service Orders, among others.

Interestingly African ADR applied to both civil and criminal matters. In civil matters it mostly applied to property cases and contracts. Matters such as damage to property, damage to crops by straying livestock, debts, conversion, failure to honour personal or socio-communal obligations and transgressions by children were the commonest *causes of action*. In criminal matters, the common cases that were managed through ADR included malicious damage to property, assaults, common thefts, animal thefts, human and animal trafficking, adultery and kidnap, among others. Homicides were also settled sometimes vengefully, and other times through fines, especially of cattle and other livestock.

When the Indian Penal Code was introduced in Uganda by the Colonial Government in 1930, there was hardly any provision that called for ADR in the criminal justice system.

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<sup>12</sup> Olajide Olagunju: Traditional African Dispute Resolution (TADR) Mechanisms: [https://www.academia.edu/9330421/Traditional\\_African\\_Dispute\\_Resolution\\_Mechanisms](https://www.academia.edu/9330421/Traditional_African_Dispute_Resolution_Mechanisms)

<sup>13</sup> See also: The Judicature (Reconciliation) Rules, SI. No. 41/2011

As we progressively tried to adapt the Code to our local circumstances, we have since introduced provisions on compensation and payment of fines; and have emphasised reconciliation, community service and plea bargaining as alternatives to the imprisonment that was the default form of punishment known under criminal law.

Under the United Nations Sustainable Development Goal (SDG) No. 16,<sup>14</sup> we are called upon to “*promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels.*” This is in line with the Third National Development Plan 2020/21-2024/25 (specifically Administration of Justice Programme), and the Judiciary’s Fifth Strategic Plan 2020/21-2024/25 which provide a framework for the alignment and execution of the core mandate and role of the Judiciary in the implementation of the SDGs as prescribed under these themes:

- (a) Rule of law
- (b) Access to justice
- (c) Gender and equity,
- (d) Climate change and natural resources
- (e) Accountability and transparency
- (f) Partnerships
- (g) Institutional strengthening

Today the Judiciary is trying to bless the aspirations of the people of Uganda by introducing and emphasising, among others, the following forms of ADR in both criminal and civil justice:

- (a) Emphasizing compensation in addition to or as an alternative to imprisonment in criminal matters;
- (b) Encouraging plea-bargaining and sentence bargaining in all categories of criminal cases;
- (c) Involving victims and considering victim and society interests in determining appropriate sentences;
- (d) Encouraging diversion especially in relation to juvenile offenders;
- (e) Promoting reconciliation especially in relation to domestic violence and personal offences;

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<sup>14</sup> United Nations: Department of Economic and Social Affairs Sustainable Development, <https://sdgs.un.org/goals/goal16>

- (f) Promoting community service in minor offences; and
- (g) Encouraging payment of fines especially in property related offences.

In civil matters, the administration of justice has been complicated by case backlog by which cases take a span of about 5 years to be concluded. The situation has been worsened by the appeal process and the exorbitant cost relating to paying lawyers' and bailiffs' fees. At the end of the journey the litigants feel they have not received the justice they had aspired for from the courts. In this line we have consequently introduced and encouraged:

- (a) The Small Claims Procedure Courts for matters not exceeding 10 million shillings to be handled at a minimal cost without involving lawyers;
- (b) Arbitration of commercial and other contractual disputes;
- (c) Mediation of all civil disputes, including costs;
- (d) We also introduced appellate mediation; and
- (e) Trained and accredited mediators.

Efforts have been made to sensitize and encourage the litigants and more so the lawyers to embrace these innovations in the interest of expedition and delivery of meaningful and acceptable justice. As already noted, the Judiciary has strived to use pro-people approach to justice delivery. The Judiciary has also deliberately increased people-involvement in its service delivery drive.

As you all know the Judiciary installed a 24/7 operational call Centre (**Toll Free Lines: 0800 111 900**), published a client charter and put up customer care service desks at various courts. Through several awareness interventions such as Radio/Talk shows and Court Open Days in collaboration with other justice actors such as Uganda Prisons, Uganda Police, ODPP and non-state actors, Court users and communities have been empowered with information and knowledge on how to access judicial services. The Judiciary services *information leaflets* have further been localised through translation into local languages.

Administration of Justice involves protection of the innocent, punishment of the guilty and the satisfactory resolution of disputes. The empowerment created through



information sharing and advocacy has great potential for promotion of rule of law, ending violence against women and girls and other vulnerable groups in society.<sup>15</sup>

The primary object of ADR movement is avoidance of vexation, expense and delay and promotion of the ideal of “access of justice” for all. ADR system seeks to provide cheap, simple, quick and accessible justice. So, precisely saying, ADR aims at providing justice that not only resolves dispute but also harmonises the relation of the parties.<sup>16</sup> At the conclusion of a criminal trial leading to a conviction, a classic judge asks the prosecutor what sentence is appropriate in the circumstances. He/she then asks the convict to *show cause* why such sentence should not be meted out against him/her. What remains to be answered is – where is the victim that brought the matter to court in the first place? What justice has such victim received? Does the justice offered by the Court answer the expectations of the weary victim? The answer, is, “May be or may be not!” This begs the question: why shouldn’t the Court ascertain the wishes of the victim at this point?

We have made a fair attempt to have the victims’ wishes heard and considered under the Plea Bargaining scheme. I believe we can still listen to the views of the victims and the plight of the community in all the other cases as well. One of the advantages of mediation is that, in mediation, the parties are full participants and can express their own opinions and concerns, whereas in civil litigation the parties’ attorneys are the only ones who represent their party unless the party “takes the stand” and is subject to cross-examination by the opposing attorney. Mediation allows the opportunity for parties to work together and reach a settlement and continue to work together to complete the project. In civil litigation, most often, there is a verdict or decision by a judge or jury and the parties must accept the court-rendered award, which in effect erodes the parties’ relationship.

Relatedly, the parties in Arbitration, like in mediation choose their judge. They can do background checks and even negotiate the terms of payment of his or her fees. They have a choice as to who should sit in their matter and at this point both parties may correspond or sit together to agree on the umpire. This opportunity is not available when a dispute is to be resolved by a Court. When a decision is made out of such proceedings, the decision is more acceptable and therefore neutralizes hostility and future conflict

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<sup>15</sup> ADR and Access to Justice: Issues and Perspectives: Hon’ble Thiru Justice S. B. Sinha, Judge Supreme Court of India <https://www.tnsja.tn.gov.in/article/ADR-%20SBSinha.pdf>

<sup>16</sup> ADR and Access to Justice: Issues and Perspectives: *ibid.*

between the parties. In mediation, the litigants actually make the decision with which they are pleased.

As part of a project on judicial reform, Ghana held its first mediation week in 2003 in which about 300 cases pending in select courts in Accra were mediated over five days. The effort was a major success, with 90 percent of surveyed disputants expressing satisfaction with the mediation process. The achievements of this initiative led to a follow-up ADR round in 2007 where 155 commercial and family cases from 10 district courts in Accra were mediated over 4 days. Almost 100 cases were fully mediated or concluded in settlement agreements. Eighteen cases reached partial agreement and were adjourned for a later mediation attempt. A total of 37 cases were returned to court. The 2007 program was expanded through 2008, and over 2,500 cases in seven district courts in Accra were mediated, with over 50 percent of the cases completely settled. This demonstrated both the scale and potential reduction in backlog that ADR can generate. More than 40 district courts in Ghana have since initiated court-connected ADR programs. In the ADR Center in the town of Ashaiman, for example, a group of five mediators settled 476 of 493 cases considered between January and June 2011 — significantly reducing the pressure on Ghana’s court system.<sup>17</sup>

It is accordingly recommended that legislation be reviewed and attuned to supporting ADR mechanisms; we should invest in training and supporting ADR networks comprised of mediators and advocates who can continually advance best practices. Capacity-building efforts should include training of legal professionals, local and religious leaders, traditional authorities, election officials, police and security personnel, human rights organizations, offices of ombudsmen, and women and youth leaders.<sup>18</sup>

It is also recommended that to maximize the efficiencies and complementarities of ADR with the official judicial process, a systematic monitoring process should be established to measure key qualitative and quantitative data that would then lead to adjustments in the scope and focus of ADR efforts.<sup>19</sup>

During the last Financial Year, a total of **1,250 cases** were mediated to conclusion out

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<sup>17</sup> The Judicial Service of Ghana: Strategic Plan for Judicial Service ADR Programme 2008–2013.

<https://africacenter.org/publication/alternative-dispute-resolution-in-africa-preventing-conflict-and-enhancing-stability/>

<sup>18</sup> The Judicial Service of Ghana: Strategic Plan for Judicial Service ADR Programme 2008–2013. *Ibid.*

<sup>19</sup> Ernest Uwazie: Alternative Dispute Resolution in Africa: Preventing Conflict and Enhancing Stability, November 30, 2011: *opcit.*

of the 2,210 cases enrolled under the mediation scheme. **22,092 cases** were concluded under Small Claims Procedure, leading to recovery of UGX 16,427,273,756. Under the Plea Bargaining scheme, **2,857 cases** were completed at the High Court level and 2,389 in the various Magisterial Areas.<sup>20</sup> This gives us indisputable confidence that ADR can work wonders if well planned out and devotedly supported by all of us.

Accordingly, the Judiciary officially launched the *Alternative Justice system (AJS)* in Uganda on 27<sup>th</sup> July 2023<sup>21</sup> which is premised on the commitment under Objective XXIV of the Constitution which enjoins us to develop and incorporate aspects of Ugandan life into the justice system. These cultural and customary values are consistent with our fundamental rights and freedoms. These pillars will instill faith in the AJS pathways, cultivate its usage and encourage people to utilise the pathways. The Judiciary will formally institutionalize AJS, define its scope and provide for the nature of cases for which recourse to alternative dispute resolution may be made as an appropriate first forum.

In May 2023, I commissioned a 09-Member Committee Chaired by the Hon. Deputy Chief Justice to spearhead the AJS Strategy and pave the future of ADR in Uganda. This Committee is strategically comprising of pioneers of the Masters in ADR Program of the Pepperdine University.

A pioneering team of 20 vibrant retired and serving lawyers and civil servants was constituted and are being equipped to shoulder the task. Key partners such as the Pepperdine University, the Ministry of Justice and Constitutional Affairs, IDLO, Uganda Bankers Association and the Swedish Embassy, among others have already supported the initiative, and have undertaken to continue with us on this journey.

The team has already organized the first *High Level National Summit on ADR in Uganda* (from 26<sup>th</sup> to 27<sup>th</sup> June 2023) which brought together national actors in the justice service industry, including leaders and representatives from the Judiciary, Ministry of Justice, Uganda Law Society, Law Reform Commission, Uganda Bankers Association, Uganda Law Reform Commission, Deans of Law Schools, among others. We are now planning to hold an *African ADR Conference* to be championed and hosted by Uganda in March

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<sup>20</sup> See: The Judiciary Annual Performance Report, 2022/2023:

[https://judiciary.go.ug/files/downloads/Judiciary\\_Annual\\_Performance\\_Report\\_202223\\_Web\\_231115\\_140706.pdf](https://judiciary.go.ug/files/downloads/Judiciary_Annual_Performance_Report_202223_Web_231115_140706.pdf)

<sup>21</sup> See: The Alternative Justice System (AJS) Strategy for The Judiciary of Uganda, 2023

2023 ahead of the *International Pan African Summit of Chief Justices* to be held in Switzerland in June 2024, under the auspices of the Pepperdine University. The African ADR Conference will bring together all the Chief Justices from Africa continent to share their national experiences on ADR and deliberate on the way forward for ADR in Africa.

Existing legislation is being scrutinized for inevitable reforms and the funding strategy is being worked out. We have already identified very committed ADR friends in Uganda including CADER, ICAMEK, Praxis Conflict Centre, Chartered Institute of Arbitrators (CI Arb.), among others. UNICEF has also agreed to fund the dissemination of the Alternative Justice System Strategy (AJS), for which we are grateful. We plan to work together to champion this imperative cause.

It is thus clear that a robust embracing of ADR is inevitable; hence it is the way to go. This mechanism is in synch with the traditional justice system that Africa has known and practiced from time immemorial; and, which has in the main defied the application of the adversarial adjudication mechanism imposed on us by western imperialism. The reintroduction and entrenchment of what is erroneously referred to as the ADR, is in reality a conscious move for the recapture and formalization of the long suppressed Original Dispute Resolution. In this regard then, it is the adversarial adjudication system that rightly deserves to be referred to as the Alternative Dispute Resolution mechanism.

Alfonse Chigamoy Owiny – Dollo  
**CHIEF JUSTICE**